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ANALYZING MISCONDUCT IN FEDERAL LAW ENFORCEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY, AND INVESTIGATIONS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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ANALYZING MISCONDUCT IN FEDERAL LAW ENFORCEMENT

WEDNESDAY, APRIL 15, 2015

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY, AND INVESTIGATIONS

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 2:10 p.m., in room 2141, Rayburn Office Building, the Honorable F. James Sensenbrenner, Jr., (Chairman of the Subcommittee) presiding.

Present: Representatives Sensenbrenner, Goodlatte, Chabot, Poe, Labrador, Buck, Bishop, Jackson Lee, and Richmond.

Staff present: (Majority) Robert Parmiter, Counsel; Alicia Church, Clerk; Allison Halataei, Parliamentarian & General Counsel; (Minority) Joe Graupensperger, Counsel; and Veronica Eligan, Professional Staff Member.

Mr. SENSENBRENNER. The Subcommittee on Crime, Terrorism, Homeland Security, and Investigations will come to order.

Let me say, we are due to have roll calls a little bit after 3:15, and in order to save time, I am going to ask unanimous consent to put my opening statement into the record and ask unanimous consent that everybody else's opening statement be put into the record. This will give more time for testimony and more time for questions.

Without objection, that is so ordered.

[The prepared statement of Mr. Sensenbrenner follows:]

Prepared Statement of the Honorable F. James Sensenbrenner, Jr., a Representative in Congress from the State of Wisconsin, and Chairman, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

Good afternoon, and welcome to today's hearing.

Over the past few years, there have been a number of troubling allegations regarding misconduct by Federal law enforcement agents. Since April 2012 alone, nearly a dozen high-profile, widely-reported incidents involving highly-trained law enforcement personnel, including at the Secret Service and the Drug Enforcement Administration, have roiled some of our nation's most venerated law enforcement agencies and have shaken law-abiding Americans' faith in these institutions.

In addition to the problems that have been reported in the media, and which largely involve the Secret Service, the Justice Department released documents on Monday to this Committee which cause me grave concern. In 2010, a DEA Special Agent in Bogota, Colombia, who was a frequent patron of prostitution, assaulted a prostitute and "left the woman bloody." He was ultimately suspended for 14 days.

In 2011, a DEA agent solicited sex from an undercover police officer here in the District of Columbia. He was suspended for a baffling 8 days. And in 2012, as we all know from the recent OIG report, DEA agents engaged in "sex parties" with prostitutes supplied by drug cartels. Ten individuals were involved. Two received letters of reprimand. One retired. The remaining seven were suspended by DEA for "Poor Judgment" and "Conduct Unbecoming", for 2, 1, 3, 3, 9, 10, and 8 days, respectively. "Poor Judgment," indeed.

I will not go into the remaining allegations in detail, because I have only five minutes, because we have all heard similarly salacious details from reading the news, and because our friends at the DOJ and DHS Offices of Inspectors General have done excellent work in this area. However, it is clear that the allegations of sexual misconduct and other shenanigans at the Secret Service and the DEA have given the American people the impression that these federal agencies, rather than being bastions of professionalism and integrity, can sometimes turn a blind eye to behavior that is better suited for the frat house, or the big house, than the White House.

Additionally, I am very troubled by the lack of transparency in the disciplinary process. We all know it is unreasonably difficult to fire a federal employee, even for gross misconduct. However, the evidence points to an epidemic of "under-discipline" at the DEA. In many cases, we have heard that the offending employees are merely placed on administrative leave, moved to desk duty, or quietly "resign," for conduct that would be grounds for immediate termination in the private sector. This cycle of chronic "under-punishment" must not be allowed to continue, particularly since many of these agents have done nothing less than engage in criminal behavior. I am interested in hearing more from our panel about exactly what happens when the agencies receive a complaint about the conduct of an employee.

Following the latest DOJ–OIG report, even Attorney General Holder felt compelled to act. He issued a memo which "reiterate[d] to all Department personnel, including attorneys and law enforcement officers, that they are prohibited from soliciting, procuring, or accepting commercial sex." As at least one commentator noted, "Finally, a Holder memo that got it right." However, the fact that the Attorney General would feel compelled to issue a memo reminding law enforcement professionals not to solicit prostitutes shows there are real problems at these agencies. That is why we are here today.

Let me be clear: our intent is not to disparage the vast majority of federal law enforcement personnel, who do their jobs professionally and honorably. The Secret Service employs some 6,500 people, and DEA has 10,000 employees. Every large agency will have a few "bad apples," and incidents of this nature will occur. However, the public perception is that federal law enforcement personnel can engage in severe misconduct, including conduct that would be illegal if committed in the United States, and the agencies do not take it seriously. It is my hope that our distinguished panel can help this committee identify areas where problems exist in the disciplinary process for federal agents, so that we can implement real solutions.

I look forward to engaging with our panel today on all these questions.

[The prepared statement of Ms. Jackson Lee follows:]

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Ranking Member, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

Today's hearing reflects bipartisan concern about serious instances of misconduct by federal law enforcement agents and the need to examine the adequacy of the processes used to report and investigate misconduct, as well as take disciplinary action when warranted.

Much of the attention to this issue was initially prompted by the revelations in 2012 involving the solicitation of prostitutes by agents of the Secret Service and the DEA.

At the time, it was reported that a dozen Secret Service agents engaged the services of prostitutes before a presidential visit to Colombia for the Summit of the Americas, which I attended, and we subsequently learned that DEA agents were involved in that and other incidents involving prostitutes in Colombia.

In my capacity as Member of the Committee on Homeland Security as well as this Committee, I examined the Cartagena incident, and met with then-Director Mark Sullivan to express my concern and press for strong corrective action, particularly regarding interaction between agents and foreign nationals while agents are working in foreign countries.

In fact, I have had a history of strong oversight with respect to issues involving the Secret Service, ranging from the intrusion into the White House last year to the 2009 incident in which a couple evaded security to attend a state dinner at the White House honoring the Prime Minister of India.

I have met with each of the directors of the Secret Service on multiple occasions over the past several years to discuss and address performance and misconduct issues. Their mission is critical and Congress must work to support and strengthen that agency.

Certainly, we should engage in consistent, vigorous oversight of all of the federal law enforcement agencies to ensure that agents are conducting themselves appropriately and within the bounds of the law. As the recent report of the Inspector General of the Department of Justice makes clear, we have a lot of work to do to address unacceptable incidents at a number of our federal law enforcement agencies, particularly including the DEA.

However appropriate this hearing may be, I call on this Subcommittee to take on *other* issues related to law enforcement—but at the state and local level.

We cannot ignore the fact that we have a crisis involving use of force by police in this country. Because no accurate statistics are required to be submitted or maintained, we do not know the actual frequency of police shootings across the country, or all of the circumstances in which they take place.

I call on this Subcommittee to address these issues by holding hearings and considering legislation concerning topics such as (1) the use of lethal force by state and local police departments, (2) educational requirements, mental health and psychological evaluations, and training in non-violent conflict resolution received by officers and recruits, (3) the use of technological devices such as body cameras, and (4) the state of social science research and statistics in criminal justice reform.

We have an obligation to the American people to investigate these issues, to find answers, and adopt solutions.

Less than two weeks ago, a police officer in North Charleston, South Carolina shot and killed Walter Scott, an unarmed African American man. Cell phone video footage showed that Scott, who was struck by four of the eight bullets fired at him, was running away from the officer.

The victim's mother, Judy Scott, stated that, "I almost couldn't look at it, to see my son running defenselessly, being shot. I just tore my heart to pieces. I pray that this never happens to another person."

Her prayer is our call to action. We must investigate what is going on with these shootings, which happen with alarming frequency, and we must help prevent them from taking place in the future. That is why I ask that this Subcommittee take on this issue.

So as we proceed with the current hearing, to address important concerns related to federal law enforcement, I hope that we will resolve to work on a bipartisan basis to address these other critical issues as well.

Thank you.

[The prepared statement of Mr. Goodlatte follows:]

Prepared Statement of the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary

Thank you, Chairman Sensenbrenner. I am pleased to be here today, and I am looking forward to a frank and detailed discussion with our distinguished witnesses, and the Members of this Subcommittee, on this important subject.

During my tenure at the helm of this Committee, I have repeatedly expressed my appreciation for the dedicated law enforcement professionals who protect and serve our communities. Every day, thousands of federal law enforcement agents are hard at work, doing their part to keep Americans safe and delivering them the justice they deserve.

Unfortunately, the indispensable services provided by the mostly-anonymous men and women of law enforcement are not what we are here today to discuss. Instead, we must deal with serious misconduct that has caused the public to forget that competent and professional service they expect from their federal law enforcement professionals. It is an inescapable fact that the exposure of a rogue agent or unsavory incident or series of incidents—such as agents engaging in sex parties with prostitutes paid for by drug cartels—stick in the collective memory more firmly than entire careers worth of effective, unblemished law enforcement work. That is why it

is so important that we get to the bottom of the troubling revelations involving our federal law enforcement agencies over the last decade.

My colleagues have already laid out some of the specific lapses in professionalism and more details can be found in the press. Over the past few days, this Committee has received additional information from the DEA indicating that our concerns about agent misconduct, particularly of a sexual nature, are well-founded. However, of equal concern to me is the apparent lack of a sufficient response to that misconduct by the officials in the chain of command. The case examples we have seen point to an agency with a disturbing tendency not to appropriately investigate and punish federal law enforcement agents who engage in severe sexual and other misconduct.

I am pleased that, though they are quite late in doing so, the agencies appearing before this Committee today finally seem to be taking this seriously. In December 2013, the Secret Service created its Office of Integrity, headed by a Chief Integrity Officer, who I assume has been quite busy over the last year-and-a-half. On Monday, we received a communication from the DEA indicating that their Office of Professional Responsibility would undertake "a comprehensive review of DEA's processes and procedures for investigating allegations of misconduct, as well as for determining and effectuating disciplinary action where appropriate."

It is good that DEA is conducting that review. I hope your review will result in significant and worthwhile changes to the disciplinary process. However, what troubles me is that we are learning about all of this only after these allegations have become public. The perception of agencies "protecting their own" and bad actors receiving "slaps on the wrist" has gained traction, and Congress has gotten involved. As professional law enforcement agencies, your integrity should be above reproach.

Today, this Committee will examine these issues and the processes in place to address misconduct at the Secret Service and the DEA. I will be interested in our witnesses' responses to a wide array of questions. What have you done to address these matters, at the ground level? Why was this misconduct allowed to persist for so long, and why does it keep occurring? Does Congress need to legislate in this area? And most importantly, as the officials responsible for investigating and dispensing discipline, how will you ensure that this sort of profoundly disreputable behavior will be met with an appropriately robust response in the future?

We all have a responsibility to ensure that such behavior, should it happen again in the future, is handled appropriately so that trust is rebuilt with the American people and the reputations of our federal law enforcement agencies are restored.

I thank the witnesses for their testimony, and yield back the balance of my time.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

The vast majority of federal law enforcement agents perform as we would hope, and in fact often engage in acts above and beyond the call of duty. We are grateful for their service. Unfortunately, the past few years have brought to light a number of instances of unacceptable conduct by some of the agents reporting to the Department of Justice and the Department of Homeland Security.

I have several observations and recommendations concerning this issue.

First, it is unacceptable for law enforcement officers to solicit prostitution, engage in sexual harassment, or allow alcohol use to impair their judgment. Misconduct by law enforcement agents involves harm to anyone who would be victimized by their behavior, damages morale within the agencies, and undermines the moral authority necessary for agents to enforce the law against others.

Of course these are problems suffered extensively outside the law enforcement community as well. But this Committee is charged with the responsibility of overseeing the actions of these agents, and we must investigate these problems and identify solutions.

Consequently, we must ensure that there are strong, independent mechanisms to review allegations of misconduct. It is difficult for government agencies to police themselves. That is why we have Inspectors General and other offices within agencies charged with investigating misconduct and imposing disciplinary measures, as governed by the civil service statutes.

The authority of the Inspectors General must be respected within the Departments, and they must have wide latitude to pursue indications of waste, fraud, and abuse. That is why I am disturbed that the DEA and FBI reportedly withheld infor-

mation from Inspector General's investigation into these issues. I hope we will hear more about that today.

Finally, I believe the issues we will explore today provide additional justification for H.R. 1656, the "Secret Service Improvements Act," which will strengthen the Secret Service largely by authorizing additional training and resources. I cosponsor this bill together with Chairman Bob Goodlatte, Crime Subcommittee Chairman Jim Sensenbrenner, and Crime Subcommittee Ranking Member Sheila Jackson Lee.

As we have learned through hearings and other oversight in recent months, that agency has been stretched thin and morale has suffered. Assistance that the bill would provide will help the Secret Service better perform its critical mission and also help a stronger agency work to prevent future misconduct.

I look forward to hearing from our witnesses about their experience with these issues and hope they will provide us with recommendations as to what steps we can take not only to better address instances of agent misconduct, but also to help prevent them from happening in the first place.

Mr. SENSENBRENNER. I will now introduce each of the witnesses. We have a very distinguished panel today.

I will begin by swearing in our witnesses before introducing them. So if you would, all please rise.

Do you and each of you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Let the record show that each of the witnesses answered in the affirmative.

You will be getting an abbreviated introduction, as well.

The first witness is the Honorable Michael Horowitz, who is the Inspector General of the Department of Justice. He is well known to this Committee. He has worked for DOJ in both main Justice as an Assistant Attorney General and as an Assistant U.S. Attorney for the Southern District of New York.

The Honorable John Roth is the Inspector General of the Department of Homeland Security. He most recently served as Director of the Office of Criminal Investigations of the Food and Drug Administration. He is a former Federal prosecutor, a senior official at the Department of Justice, and at DOJ he was the Department's lead representative on the Financial Action Task Force in Paris.

Herman Whaley is the Deputy Chief Inspector of the Office of Professional Responsibility at the DEA. He has had a professional career in local law enforcement, as well as a DEA Special Agent and a group supervisor.

Mark Hughes is the Deputy Assistant Director and Chief Integrity Officer of the Office of Integrity at the Secret Service. He has previously been the Deputy Special Agent in Charge of the Washington field office, and the Deputy Special Agent in Charge of the Secret Service's Office of Inspection.

So I think all of you know the drill. You have a red, yellow, and green light in front of you. The green light means talk away. The yellow light means start to wrap it up. The red light means that the hook is about ready to be prepared.

Mr. Horowitz——

Ms. JACKSON LEE. Mr. Chairman, may I ask a parliamentary inquiry? What is happening to the opening statements?

Mr. SENSENBRENNER. They have been dispensed with by unanimous consent, everybody's, and they will all be put in the record.

Ms. JACKSON LEE. Well, with a great deal of respect, Mr. Chairman, I realize I had a constituent in the anteroom, but I will hope to be able to make comments regarding my opening statement. So I thank the Chairman very much.

Mr. SENSENBRENNER. Okay. Well, each of you will be recognized for 5 minutes; and, Mr. Horowitz, you are first.

TESTIMONY OF THE HONORABLE MICHAEL E. HOROWITZ, INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

Mr. HOROWITZ. Thank you, Mr. Chairman, Ranking Member Jackson Lee, Members of the Subcommittee. Thank you for inviting me to testify today.

Federal agents are held to the highest standards of conduct, both on duty and off duty. As a former Federal prosecutor and as Inspector General, I know that the overwhelming majority of Department agents meet those high standards and perform their work with great integrity and honor, thereby keeping our communities safe and our country safe.

Nevertheless, we find instances where Department agents engage in serious misconduct, and even criminal violations, affecting the agency's reputation, potentially compromising prosecutions, and possibly affecting agency operations.

Furthermore, misconduct that involves sexual harassment affects employee morale and creates a hostile work environment.

Following the incidents during the President's trip to Colombia, the OIG conducted two reviews, one relating to Department policies and training involving off-duty misconduct by employees working in foreign countries, and one relating to the handling of allegations of sexual harassment and misconduct by Department law enforcement components.

Our off-duty conduct report found a lack of Department-wide policies or other training requirements pertaining to off-duty conduct, whether in the U.S. or other countries. This was particularly concerning given recommendations we made in 1996 that the Department provide additional training regarding off-duty conduct and examine the standards of conduct that apply to off-duty behavior. Despite our earlier recommendations, little had changed in the intervening two decades.

We did find the FBI made changes, including providing comprehensive training for its employees. However, the other three Department law enforcement components convey little or no information about off-duty conduct before sending their employees abroad. Having one of only four law enforcement components effectively prepare employees for these assignments demonstrates the need for Department-wide training and policies.

In March 2015, we issued our report on the nature of reporting, investigation, and adjudication of allegations of sexual harassment or misconduct in the Department's four law enforcement components. The report identified significant and systemic issues that require prompt corrective action. These include a lack of coordination between internal affairs offices and security personnel, failure to report misconduct allegations to component headquarters, failure to investigate allegations fully, weaknesses in the adjudication

process, and weaknesses in detecting and preserving sexually explicit text messages and images. Together, these reviews demonstrate the need to improve disciplinary and security processes, as well as to clearly communicate Department expectations for employee conduct.

Strong and unequivocal action from leadership at all levels is critical to ensure employees meet the highest standards of conduct and are held fully accountable for any misconduct.

As we also described in our March report, the failure by the DEA and FBI to provide prompt information to us in response to our requests significantly impacted our review. Both agencies raised baseless objections and only relented when I elevated the issues to agency leadership. Even then, the information was incomplete.

In order to conduct effective oversight, an OIG must have timely and complete access to documents and materials. This review starkly demonstrates the danger in allowing those being reviewed to decide on their own what documents they will share with the OIG. These actions impeded our work, significantly delayed the discovery of the issues that we ultimately were able to identify, wasted Department and OIG resources, and affected our confidence in the completeness of our review.

Unfortunately, this was not an isolated incident, and we continue to face repeated instances in which our timely access to records is impeded. Congress recognized the significance of this issue in passing Section 218 in the recent Appropriations Act. Nevertheless, the FBI continues to proceed exactly as it did before Section 218 was enacted.

We were told an opinion from the Department's Office of Legal Counsel would resolve this issue. Yet 1 year later, after the Department Deputy Attorney General requested that opinion, we still don't have the opinion and we have no timeline for its completion. The Department has said the opinion is a priority, yet the length of time that has passed would suggest otherwise.

The American public deserves and expects an OIG that is able to conduct rigorous oversight of the Department's and FBI's activities. Unfortunately, our ability to do so is being undercut every day that goes by without a resolution of the dispute.

Thank you for your continued strong bipartisan support for our work, and I would welcome any questions.

[The prepared statement of Mr. Horowitz follows:]

Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, Homeland
Security and Investigations

concerning

"Analyzing Misconduct in Federal Law Enforcement"

April 15, 2015

Mr. Chairman, Congresswoman Jackson Lee, and Members of the Subcommittee:

Thank you for inviting me to testify at today's hearing about misconduct in federal law enforcement. Given the nature of their work and the responsibilities delegated to them, Department of Justice (DOJ or Department) law enforcement agents are held to the highest standards of conduct and are accountable for their actions, both on- and off-duty. And let me state at the outset that it has been my experience, as a former federal prosecutor and as Department of Justice Inspector General, that the overwhelming majority of federal law enforcement agents perform their work with great integrity and honor, thereby helping keep our communities and our country safe. Regrettably, like in any profession, we find instances where law enforcement employees engage in serious misconduct and criminal violations, affecting the agency's reputation, undermining the agency's credibility, potentially compromising the Department's prosecutions, and possibly affecting the security of the agents and agency operations.

Our two recent reports on the policies governing off-duty conduct by Department employees working overseas, and the handling of sexual harassment and misconduct allegations by the Department's four law enforcement components domestically and abroad highlight the risks from a lack of consistent procedures, training, and effective reporting, investigation, and adjudication practices. Without consistent and serious follow-through from all levels of Department leadership regarding our findings in those two reports and in our other investigations, audits, and reviews, the systemic issues we identified may continue.

Following the incidents in April 2012 involving alleged misconduct by U.S. Government personnel, including three Special Agents with the Drug Enforcement Administration (DEA), during the President's trip to Cartagena, Colombia, the OIG conducted investigations and substantiated significant misconduct by those DEA agents. At about the same time, we received requests from Members of Congress to evaluate the systemic issues potentially reflected in these allegations. As a result, we conducted two program reviews: one relating to the Department's policies and training involving off-duty conduct by Department employees working in foreign countries; and one relating to the handling of allegations of sexual harassment and misconduct by the Department's law enforcement components. Both reviews involved examining systemic issues of Department policies, programs, and procedures, and how they were applied in practice within different components of the Department.

In January 2015, we issued our report in the review regarding overseas conduct, entitled *"Review of Policies and Training Governing Off-Duty Conduct by Department Employees Working in Foreign Countries."* It can be found on our OIG website at: http://www.justice.gov/oig/reports/2015/e152.pdf#page=1. Our report found that the Department lacked Department-wide policies or training requirements pertaining to employees' off-duty conduct, whether in the United States or in other countries.

In that report, we also specifically looked at the policies of the five Department components that are responsible for sending the most employees overseas: the Federal Bureau of Investigation (FBI); the DEA; the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); the U.S. Marshals Service (USMS); and the Criminal Division. We found that the FBI had taken steps to provide comprehensive training for its employees, but that the other components conveyed little or no information about off-duty conduct before sending their employees abroad, despite the fact that the components have more than 1,200 overseas positions and account for more than 6,100 trips a year to over 140 countries. Although all five components have policies that mention off-duty conduct in some way, the OIG found that much of the policy and training did not clearly communicate what employees can and cannot do off-duty. For example, many of the materials we examined did not clearly state that employees remain subject to DOJ requirements regardless of whether certain conduct, such as prostitution and drug use, is legal in the foreign jurisdiction where the DOJ employee is serving, an issue we also describe more specifically in our March 2015 review of the handling of sexual misconduct allegations in the law enforcement components. We found that the FBI had done the most to prepare its employees to make day-to-day decisions about appropriate off-duty conduct while working abroad. We also found that the DOJ component with the largest international presence, the DEA, provided its employees with the least information about off-duty conduct while abroad, and its policies and training had significant gaps. For example, DEA has no training requirements for DEA employees who are deployed overseas for less than 30 days.

We further found no indication that the Department had revisited its off-duty policies or training in any comprehensive manner since 1996, when the OIG published a report about the Good O'Boy Roundups, a series of private, annual gatherings attended by off-duty officers from a number of federal, state, and local law enforcement agencies that resulted in serious allegations of improper off-duty conduct. At that time, the OIG determined that the Department had only general provisions in place governing off-duty conduct and that many DOJ employees did not well understand their off-duty responsibilities. Among other things, we recommended that the Department provide additional training to its agents and examine the existing standards of conduct that apply to the off-duty behavior of DOJ law enforcement components. Despite these earlier recommendations, we were troubled to find that little had changed regarding Department-wide policies and training in the intervening two decades. Our 1996 report can be found at: http://www.justice.gov/oig/special/9603/index.htm.

In March 2015, we issued our report focused on the nature, frequency, reporting, investigation, and adjudication of allegations of sexual harassment or sexual misconduct, including the transmission of sexually explicit texts and images, in four of the Department's law enforcement components: ATF, the DEA, the FBI, and the USMS. This most recent report can be found on our website at: http://www.justice.gov/oig/reports/2015/e1504.pdf#page=1. Although the OIG found that there were relatively few such allegations during the period from fiscal years 2009 through 2012, the report identified significant systemic issues with the

components' processes for handling these important matters that require prompt corrective action by the Department. These issues include:

- *A lack of coordination between internal affairs offices and security personnel.* We found instances in which some ATF, DEA, and USMS employees engaged in a pattern of high-risk sexual behavior, yet security personnel were not informed about the incidents until well after they occurred or were never informed, potentially exposing ATF, DEA, and USMS employees to coercion, extortion, and blackmail and creating security risks for these components.

- *The failure to report misconduct allegations to component headquarters.* At the DEA and the FBI, we found that policies permitted supervisors to exercise the discretion not to inform headquarters, even when their respective offense tables characterized the conduct as something that should be reported to headquarters. Moreover, as a result of this, the OIG -- which is supposed to receive *all* allegations of misconduct to ensure they are investigated and addressed appropriately -- was not made aware of them when they first occurred.

- *The failure to fully investigate allegations.* We found instances where the FBI failed to open investigations at headquarters into allegations of serious sexual misconduct and sexual harassment when called for by its criteria. At the DEA, we found instances where the DEA Office of Professional Responsibility (OPR) failed to fully investigate allegations of serious sexual misconduct and sexual harassment.

- *Weaknesses in the adjudication process.* We found that although the DEA, FBI, and USMS offense tables contain specific offense categories to address allegations of sexual misconduct and sexual harassment and provide guidance on the appropriate range of penalties, these components often applied general offense categories to misconduct that fell within the more specific offense categories contained in their offense tables. For example, the component would charge the employee under the *Poor Judgment and/or Conduct Unbecoming* offense category instead of *Sexual Harassment* or *Sexual Misconduct – Non-Consensual*. In addition, we found that ATF offense table does not contain offense categories that specifically address sexual misconduct and sexual harassment.

- *Weaknesses in detecting and preserving sexually explicit text messages and images.* For a relatively new area of misconduct known as "sexting," which is the transmission of sexually explicit text messages, images, and e-mails, we determined that all the law enforcement components do not have adequate technology to archive and preserve text messages sent and received by their employees and are unable to fully monitor the transmission of sexually explicit text messages and images. Therefore, we could not determine the actual number of instances involving this misconduct. These same limitations affect the ability of the components

to make this important information available to misconduct investigators and may risk hampering the components' ability to satisfy their discovery obligations.

Overall, both reviews show a need to improve the law enforcement components' disciplinary and security processes as well as to clearly communicate DOJ's and the components' expectations for employee conduct. These actions will require strong messaging and action from Department and component leadership at all levels about what is acceptable behavior to ensure that Department employees meet the highest standards of conduct and accountability.

Continuing Challenges in Conducting Independent Oversight

As we described in our March 2015 report, the failures of the DEA and the FBI to promptly provide all the information we requested impeded our review of the handling of allegations of sexual misconduct. Both agencies raised baseless objections to providing us with certain information despite the clear language of the Inspector General Act and only relented when the issue was raised by the Inspector General with agency leadership. These delays created an unnecessary waste of time and resources, both on the part of the OIG personnel and the component personnel, and delayed us in completing our report addressing the significant systemic concerns outlined above.

Further, we cannot be completely confident that the FBI and the DEA provided us with all information relevant to this review. When the OIG finally received from the FBI and DEA the requested information without extensive redactions, we found that it still was incomplete. For example, we determined that the FBI removed a substantial number of cases from the result of their search and provided additional cases to the OIG only after we identified some discrepancies. These cases were within the scope of our review and should have been provided as requested. Likewise, the DEA also provided us additional cases only after we identified some discrepancies. In addition, after we completed our review and a draft of the report, we learned that the DEA used only a small fraction of the terms we had provided to search its database for the information needed for our review. Rather than delay our report further, we decided to proceed with releasing it given the significance of our findings.

We also determined that the DEA initially withheld from us relevant information regarding an open case involving overseas prostitution. During a round of initial interviews, only one interviewee provided us information on this case. We later learned that several interviewees were directly involved in the investigation and adjudication of this matter, and in follow-up interviews they each told us that they were given the impression by the DEA that they were not to talk to the OIG about this case while the case was still open. In order to ensure the thoroughness of our work, the OIG is entitled to receive *all* information in the agency's possession regardless of the status of any particular case.

As I have testified on multiple occasions, in order to conduct effective oversight, an Inspector General must have timely and complete access to documents and materials needed for its audits, reviews, and investigations. This review starkly demonstrates the dangers inherent in allowing the Department and its components to decide on their own what documents they will share with the OIG, and even whether the Inspector General Act requires them to provide us with requested information. The delays experienced in this review impeded our work, delayed our ability to discover the significant issues we ultimately identified, wasted Department and OIG resources during the pendency of the dispute, and affected our confidence in the completeness of our review.

This was not an isolated incident. Rather, we have faced repeated instances over the past several years in which our timely access to records has been impeded, and we have highlighted these issues in our reports on very significant matters such as the Boston Marathon Bombing, the Department's use of the Material Witness Statute, the FBI's use of National Security Letters, and ATF's Operation Fast and Furious.

The Congress recognized the significance of this impairment to the OIG's independence and ability to conduct effective oversight, and included a provision in the Fiscal Year 2015 *Appropriations Act* — Section 218 — which prohibits the Justice Department from using appropriated funds to deny, prevent, or impede the OIG's timely access to records, documents, and other materials in the Department's possession, unless it is in accordance with an express limitation of Section 6(a) of the IG Act. Despite the Congress's clear statement of intent, the Department and the FBI continue to proceed exactly as they did before Section 218 was adopted – spending appropriated funds to review records to determine if they should be withheld from the OIG. The effect is as if Section 218 was never adopted. The OIG has sent four letters to Congress to report that the FBI has failed to comply with Section 218 by refusing to provide the OIG, for reasons unrelated to any express limitation in Section 6(a) of the IG Act, with timely access to certain records.

We are approaching the one year anniversary of the Deputy Attorney General's request in May 2014 to the Office of Legal Counsel for an opinion on these matters, yet that opinion remains outstanding and the OIG has been given no timeline for the issuance of the completed opinion. Although the OIG has been told on occasion over the past year that the opinion is a priority for the Department, the length of time that has now passed suggests otherwise. Instead, the status quo continues, with the FBI repeatedly ignoring the mandate of Section 218 and the Department failing to issue an opinion that would resolve the matter. The result is that the OIG continues to be prevented from getting complete and timely access to records in the Department's possession. The American public deserves and expects an OIG that is able to conduct rigorous oversight of the Department's activities. Unfortunately, our ability to conduct that oversight is being undercut every day that goes by without a resolution of this dispute.

Conclusion

I would like to thank the Subcommittee for your continued strong bipartisan support of the OIG, and I would be pleased to answer any questions you may have.

Mr. SENSENBRENNER. Thank you very much, Mr. Horowitz.
Mr. Roth?

TESTIMONY OF THE HONORABLE JOHN ROTH, INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Mr. ROTH. Chairman Sensenbrenner, Ranking Member Jackson Lee, and Members of the Subcommittee, thank you for inviting me to testify here today to discuss Federal law enforcement misconduct within the Department of Homeland Security.

Inspectors General play a critical role in ensuring transparent, honest, effective, and accountable government. The personal and organizational independence of IG investigators, free to carry out their work without interference by agency officials, is essential in maintaining the public trust not only of the IG's work but of the DHS workforce as a whole.

Many DHS components have internal affairs offices that conduct investigations. Under the authority of the IG Act, the IG has oversight responsibility for those internal affairs offices. This oversight responsibility generally takes three forms.

First, we determine upon receipt of a complaint whether the allegations are of the type that should be investigated by the IG rather than the component's internal affairs office. A DHS management directive establishes the IG's right of first refusal to conduct investigations of misconduct by DHS employees.

Second, for those investigations the internal affairs offices conduct, we have the authority to receive reports on and monitor the status of those investigations.

Lastly, we conduct oversight reviews of DHS component internal affairs offices to ensure compliance with applicable policies, reporting requirements, and accepted law enforcement practices.

The Department employs more than 240,000 employees and nearly an equal number of contract personnel, including a large number of law enforcement officers and agents in the U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the Secret Service, and the Transportation Security Administration. We have about 200 investigators in headquarters and about 30 field offices across the country, which means we have less than one investigator for every thousand DHS employees.

Last year we received over 16,000 complaints. A substantial number of those complaints alleged DHS personnel engaged in misconduct. We initiated 564 investigations. The remainder were referred to component internal affairs offices, other agencies, or were closed. Our investigations resulted in 112 criminal convictions and 36 personnel actions. Thirteen of these convictions involved DHS law enforcement personnel, and 21 of the 36 personnel actions involved law enforcement. These convictions and personnel actions were for various offenses including theft, narcotics, child pornography and bribery.

In addition to the criminal matters we handled that are in my written testimony, we are also responsible for handling hundreds of complaints about employee misconduct. These include misuse of government assets, including government vehicles, failure to report certain contacts with foreign nationals, engaging in prohibited per-

sonnel practices, violation of conflict of interest restrictions on former DHS employees, violation of ethical standards concerning government employees, improper disclosure of classified or law enforcement-sensitive information, illegal drug use or excessive alcohol use, and domestic violence and other state and local crimes that affect fitness for duty.

Although a small percentage of our employees have committed criminal acts and other misconduct warranting sanctions, the behavior of these few should not be used to draw conclusions about the character, integrity, or work ethic of the many. I am personally grateful for the hard work and commitment to the mission demonstrated daily by the DHS workforce.

Mr. Chairman, this concludes my prepared statement. I welcome any questions you or other Members of the Subcommittee may have.

[The prepared statement of Mr. Roth follows:]

STATEMENT OF JOHN ROTH

INSPECTOR GENERAL

DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

JUDICIARY SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

ANALYZING MISCONDUCT IN FEDERAL LAW ENFORCEMENT

April 15, 2015

Chairman Sensenbrenner, Ranking Member Jackson Lee, and Members of the Subcommittee:

Thank you for inviting me here today to discuss Federal law enforcement misconduct within the Department of Homeland Security (DHS). My testimony will focus on the DHS Office of Inspector General's (OIG) role, authority, and process for investigating employee misconduct, including that of law enforcement officers, and our internal policies and processes for investigations. I will also discuss specifically the work we have done with regard to issues involving the U.S. Secret Service.

First, let me state that the vast majority of DHS employees are dedicated public servants focused on protecting the Nation. Although a small percentage of employees have committed criminal acts and other misconduct warranting sanctions, the behavior of those few should not be used to draw conclusions about the character, integrity, or work ethic of the many. I am personally grateful for the hard work and commitment to mission demonstrated daily by the DHS workforce.

OIG's Investigative Role, Authority, and Process

Through the *Inspector General Act of 1978* (IG Act), Congress established Inspectors General, in part, in response to concerns about integrity and accountability and failures of government oversight. The IG Act charged Inspectors General, among other tasks, with preventing and detecting fraud and abuse in agency programs and activities; conducting investigations and audits; and recommending policies to promote efficiency, economy, and effectiveness. The position of Inspector General was strengthened by provisions in the IG Act creating independence from department officials, providing powers of investigation and subpoena, and reporting to the Secretary as well as Congress.

Federal law provides protections for employees who disclose wrongdoing. Specifically, managers are prohibited from retaliating against them by taking or threatening to take any adverse personnel actions because they report misconduct. The IG Act also gives us the absolute right to protect the identity of our witnesses, who we depend on to expose fraud, waste, and abuse.

Inspectors General play a critical role in ensuring transparent, honest, effective, and accountable government. The personal and organizational independence of OIG investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust not only in OIG's work, but in the DHS workforce as a whole. The American public

must fundamentally trust that government employees will be held accountable for crimes or serious misconduct by an independent fact finder.

OIG and DHS Internal Affairs Offices

DHS Management Directive (MD) 0810.1, *The Office of Inspector General,* implements the authorities of the IG Act in DHS. MD 0810.1 establishes OIG's right of first refusal to conduct investigations of criminal misconduct by DHS employees and the right to supervise any such investigations conducted by DHS internal affairs offices. The MD requires that all allegations of criminal misconduct by DHS employees and certain other allegations received by the components—generally those against higher ranking DHS employees—be referred to OIG immediately upon receipt of the allegations.

Many DHS components have an internal affairs office that conducts investigations. Under the authority of the IG Act, OIG has oversight responsibility for those internal affairs offices. This oversight responsibility generally takes three forms. First, we determine upon receipt of the complaint whether the allegations are the type that should be investigated by OIG rather than the component's internal affairs office. Second, for those investigations the internal affairs offices conduct, we have the authority to receive reports on and monitor the status of investigations.

Lastly, we conduct oversight reviews of DHS component internal affairs offices to ensure compliance with applicable policies, reporting requirements, and accepted law enforcement practices. Our reviews are conducted on a three-year cycle and our findings are published through our website. In this fiscal year, we have reviewed two component internal affairs offices and made more than 45 recommendations for improvement. Our recommendations ranged from suggestions for improving the processing of allegations to counseling a component to seek the proper investigative authority for its internal affairs office. These reviews are critical to ensuring that misconduct allegations, whistleblowers, and those reporting allegations of wrongdoing by DHS employees are treated with the seriousness they deserve.

The investigative process generally follows these steps:

1. An allegation of misconduct is reported to OIG or other appropriate office; if reported to an office other than OIG and several criteria for seriousness are met, the component must report the allegation to OIG.
2. Whether the allegation was reported directly to OIG or through a component, OIG will decide to investigate the allegation or refer it to the component's internal affairs office; if referred, the component can decide to investigate the allegation or take no action.

3. If OIG decides to investigate, we develop sufficient evidence to substantiate or not substantiate an allegation and write a report of investigation.
4. OIG provides its investigative findings to the affected component, which uses this information to decide whether discipline is warranted. We are not involved in decisions regarding discipline after we provide our investigative findings.
5. For criminal matters, OIG presents its investigative findings to the Department of Justice (DOJ) for a determination of whether DOJ will pursue judicial action.

The Department employs more than 240,000 employees (and nearly an equal number of contract personnel), including a large number of law enforcement officers and agents in U.S Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement, the Secret Service, and the Transportation Security Administration (TSA). These officers and agents protect the President, our borders, travel, trade, and financial and immigration systems. In fiscal year (FY) 2014, we received 16,281 complaints. A substantial number of the complaints alleged that DHS personnel engaged in misconduct. We initiated 564 investigations. The remainder were referred to component internal affairs offices, other agencies, or were administratively closed. In FY 2014, our investigations resulted in 112 criminal convictions and 36 personnel actions. Thirteen of these convictions involved DHS law enforcement personnel and 21 of the 36 personnel actions involved law enforcement. These convictions and personnel actions were for various offenses including theft, narcotics, child pornography, and bribery.

DHS Employee Misconduct

OIG has about 200 investigators in headquarters and in about 30 field offices across the country. We have less than one investigator for every 1,000 DHS employees. A large number of investigators are located along the Southwest border, where we have one OIG investigator for about every 792 DHS employees.

The smuggling of people and goods across the Nation's borders is a large scale business dominated by organized criminal enterprises. The Mexican drug cartels today are more sophisticated and dangerous than any other organized criminal groups in our law enforcement experience. As the United States has enhanced border security with successful technologies and increased staffing to disrupt smuggling routes and networks, drug trafficking organizations have become more violent and dangerous and more clever. These organizations have turned to recruiting and corrupting DHS employees. The obvious targets of corruption are border patrol agents and CBP officers who can facilitate and aid in smuggling; less obvious targets are employees who can provide access to sensitive law enforcement and intelligence information, allowing the drug

cartels to track investigative activity or vet their members against law enforcement databases.

As demonstrated by OIG-led investigations, border corruption may take the form of cash bribes, sexual favors, and other gratuities in return for allowing contraband or undocumented aliens through primary inspection lanes or even protecting and escorting border crossings; leaking sensitive law enforcement information to people under investigation; selling law enforcement intelligence to smugglers; and providing needed documents, such as immigration papers. Border corruption impacts national security. A corrupt DHS employee may accept a bribe for allowing what appear to be simply undocumented aliens into the United States, unwittingly helping terrorists enter the country. Likewise, what seems to be drug contraband could be weapons of mass destruction, such as chemical or biological weapons, or bomb-making materials. Although those who turn away from their sworn duties are few, even one corrupt agent or officer who allows harmful goods or people to enter the country puts the Nation at risk.

Several examples from the last few years illustrate this problem:

- As acknowledged in their plea agreements, a border patrol agent and a former state prison guard formed a "criminal partnership" to earn money by helping traffickers smuggle drugs and aliens into the United States. As part of this multi-year partnership, the border patrol agent accepted bribes from the former state prison guard in exchange for providing him with sensitive information, including sensor maps, combinations to gates located near the Mexican border, computer records of prior drug seizures, and the location of border patrol units. The agent and former prison guard were sentenced to prison for 15 years and 9 years, respectively.

- While patrolling the border with Mexico, a border patrol agent driving a marked government vehicle helped three individuals on the Mexican side of the border smuggle bales of marijuana weighing 147 pounds into the United States. The agent pled guilty to possession of a firearm in furtherance of drug trafficking offense and was subsequently sentenced to 60 months in prison.

- We investigated a TSA supervisor in the U.S. Virgin Islands who was actively assisting a drug smuggling organization to bypass security at an airport. He was sentenced to 87 months imprisonment and 24 months of supervised release.

- With our Border Corruption Task Force partners, we investigated a border patrol agent who worked in the intelligence unit and sought to provide sensitive law enforcement information to smugglers. Intelligence

materials, such as border sensor maps, combinations to locked gates, and identities of confidential informants were delivered to the supposed smugglers who were actually undercover agents. The border patrol agent pled guilty and was sentenced to 180 months imprisonment, followed by 36 months of supervised release.

- We investigated two border patrol agents accused of abusing four marijuana smugglers, who were travelling on foot and were taken into custody on a remote section of the U.S.-Mexican border. After capturing the smugglers, the agents forced them to remove their footwear and jackets and eat handfuls of marijuana. The agents then burned the jackets and footwear and ordered the smugglers to return into the desert, miles from nearby shelter. The agents were found guilty and both were sentenced to 24 months imprisonment, followed by a term of supervised release.

Use of Force Investigations

We also investigate possible misconduct by DHS employees in use of force incidents. Typically, these are incidents that result in serious injury or death and include indications or allegations that the use of force was excessive or potentially violated an individual's civil rights. MD 0810.1 requires that such incidents be reported to OIG. If the matter involves possible criminal misconduct by DHS employees, which is within the jurisdiction of DOJ's Civil Rights Division, the matter is promptly referred to DOJ for consideration. Attorneys in the Civil Rights Division review the matter and determine whether to initiate an investigation, decline an investigation, or request more information. Because we have concurrent jurisdiction, OIG investigates some use of force incidents jointly with the Federal Bureau of Investigation. DHS component internal affairs offices investigate and/or review use of force incidents that do not meet our investigative thresholds and we provide oversight as appropriate.

Non-criminal Misconduct Investigations

OIG and component internal affairs offices are also responsible for handling hundreds of complaints about employee misconduct. This includes:

- misuse of government vehicles;
- failure to report certain contacts with foreign nationals;
- engaging in prohibited personnel practices;
- violations of conflict-of-interest restrictions on former DHS employees;
- violations of ethical standards governing government employees, including gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities;

- improper disclosure of classified or law enforcement information;
- illegal drug use and excessive alcohol use; and
- domestic violence and other state and local crimes that affect fitness for duty.

Allegations of Secret Service Misconduct in Cartagena, Colombia

Of note, one of our investigations concerned allegations that, in April 2012, during President Obama's visit to Cartagena, Colombia, for the Summit of the Americas conference, Secret Service agents solicited prostitutes and engaged in other misconduct.

During our investigation, we independently identified Secret Service personnel who directly supported the Cartagena visit and other potential witnesses who may have had information about the Cartagena trip. We identified the personnel directly involved in the incident, as well as the potential witnesses, through documentary sources, including official travel records, hotel registries, country clearance cables, personnel assignments, and Secret Service and U.S. Embassy records.

As part of our investigation, we conducted 283 interviews of 251 Secret Service personnel.[1] Based on our interviews and review of records, we identified 13 Secret Service employees who had personal encounters with female Colombian nationals consistent with the misconduct reported. We determined that one of the female Colombian nationals involved in the incident was known to the Intelligence Community. However, we found no evidence that the actions of Secret Service personnel had compromised any sensitive information.

Our investigation determined that 12 Secret Service employees met 13 female Colombian nationals at bars or clubs and returned with them to their rooms at the Hotel Caribe or the Hilton Cartagena Hotel. In addition, one Secret Service employee met a female Colombian national at the apartment of a Drug Enforcement Administration Special Agent. We interviewed the remaining 12 Secret Service employees who had personal encounters with the 13 female Colombian nationals. Through our interviews, we learned that following their encounters, three females left the rooms without asking for money, five females asked for money and were paid, and four females asked for money but were not paid. In addition, one female, who asked to be paid but was not, brought a Colombian police officer to the door of the Secret Service employee's room; the employee did not answer the door. As a result, she was paid by another Secret Service employee and left. A fourteenth Secret Service employee, who the Secret

[1] Thirty three Secret Service employees refused to participate in a voluntary interview and refused to answer our questions. Eight were senior level managers or senior executives, including Deputy Assistant and Assistant Directors; and 25 were special agents, inspectors, or employees of the Uniformed Division.

Service initially identified as involved in the misconduct, was subsequently determined to have been misidentified.

Of the 13 employees accused of soliciting prostitutes in Cartagena, three were returned to duty with memoranda of counseling, after being cleared of serious misconduct. Five employees had their security clearance revoked because they either knowingly solicited prostitutes, demonstrated lack of candor during the investigation, or both. Five employees resigned or retired prior to the adjudication of their security clearance. Several of these last five employees appealed their adverse personnel actions to the United States Merit Systems Protection Board.

After the incident, the Secret Service instituted new rules regarding personal behavior. For example, it issued a directive addressing personal and professional conduct. This directive amended Secret Service standards of conduct with additional guidance and policies about off duty conduct, briefings, and supervision on foreign trips. In addition, the directive reiterated that the absence of a specific, published standard of conduct covering an act or behavior does not mean the act is condoned, is permissible, or will not result in corrective or disciplinary action.

During our Cartagena investigation, we asked employees about the Secret Service system of dealing with misconduct allegations in general. We received reports from Secret Service employees who alleged a culture of retaliation and disparate treatment toward employees, including directed punishment toward complainants and those voicing concerns about Secret Service programs and operations. Secret Service personnel reported that the resulting culture may have adversely impacted the employee retention rate. Several Secret Service personnel interviewed also reported that Secret Service officials "whitewashed" allegations of Secret Service employee misconduct, effectively downplaying and underreporting complaints to OIG so they would appear to be administrative and not potentially criminal. These actions would, in turn, cause the allegations to be returned to Secret Service internal affairs for inquiry instead of OIG accepting them investigation.

Other Misconduct by Secret Service Agents

We are also aware of other misconduct by Secret Service employees, including:

- In November 2010, a Secret Service employee traveling in Thailand to support a Presidential visit went into the local town with other employees during a stop. The employee failed to return on time and missed the assigned flight aboard a military aircraft. It took a resource-intensive response by Secret Service, military, and American civilian personnel to locate the employee, including a Secret Service supervisor who remained in the country to help locate the employee. The employee, who arrived at

the airport about four hours late, was observed arriving with unknown local residents and smelled of alcohol. Unfortunately, the Secret Service failed to fully investigate the matter and failed to report the matter to us. The agent was suspended for seven days.

- In November 2013, a Secret Service supervisory agent was involved in an incident at the Hay Adams hotel in Washington, DC. The supervisor began conversing with a woman at the hotel bar and later accompanied the woman to her room. The woman solicited the help of hotel security when she wanted the agent to leave her room, reporting that he had a gun and she was frightened. The agent left the room without incident. The Secret Service's Office of Professional Responsibility (Inspections Division) conducted an inquiry and the Office of Protective Operations issued the agent a letter of reprimand.

- In March 2014, a Secret Service Uniformed Division officer assigned to the Special Operations Division was involved in a car accident while driving a government-rented vehicle while on official travel to support a Presidential visit to Miami. The officer was found to have consumed alcohol in the hours preceding the accident, in violation of the 10-hour rule regarding alcohol consumption. The officer was ultimately served with a 7-day suspension, which was appealed and has not yet been adjudicated. This officer was one of 10 others who were out together the evening before the accident. Three of the other officers violated the 10-hour rule and a fourth misused a government-rented vehicle. These officers were issued suspensions ranging from 21 days to 35 days. One of the officers resigned.

- In March 2014, a Secret Service agent, who was a member of the Special Operations Division Counter-Assault Team (CAT), was sent back to Washington, DC, after being found unconscious outside his hotel room in The Hague, Netherlands, while on official travel. When interviewed, the agent said he went out to dinner at a restaurant with CAT personnel, during which he had several drinks. After dinner, the agent remained at the restaurant with two other CAT agents and had several more drinks. The agent could not remember leaving the restaurant or how he got back to his hotel. All three agents were found to have violated the 10-hour rule regarding alcohol consumption. The agent who was found unconscious resigned from the Secret Service. The other two agents were issued suspensions for 30 days and 28 days, respectively.

Prior to the last three incidents, in April 2012, the Secret Service instituted new policies involving the use of alcohol, particularly on protective assignments away from agents' home offices. Specifically, the new policy prohibited the use of alcohol with 10 hours of reporting for duty. Additionally, while on a

protective assignment away from the home office, agents were prohibited from drinking at the protectee's hotel once the protective visit has begun, but could drink "in moderate amounts" while off duty during the protective mission.

Previously, we have publicly acknowledged that, as a result of media reports, we are investigating other alleged Secret Service misconduct. Our investigations of these matters are ongoing and we therefore cannot discuss the details. At the conclusion of our investigations, we will issue public reports of our findings. These matters include:

- An allegation that two Secret Service supervisors in a government-owned vehicle drove through an active suspicious package investigation on March 4, 2015, in an attempt to enter the White House grounds upon their return from a retirement party.

- An allegation that, in March 2015, one or more Secret Service agents accessed, through the Secret Service data systems, the employment application of an individual who later became a member of Congress.

- An allegation that, in March 2015, a senior manager, after a farewell party involving drinking, sexually assaulted a female subordinate.

After the March 4, 2015 incident, the Secret Service issued yet another set of rules about alcohol consumption, prohibiting the use of a government-owned vehicle within 10 hours of drinking alcohol in any amount.

Inquiry into Systemic Issues

We conducted an inspection of the Secret Service's efforts to identify, mitigate, and address instances of misconduct and inappropriate behavior, which was published in December 2013.[2]

The inspection report described a situation in which many employees were hesitant to report off-duty misconduct either because of fear that they would be retaliated against or because they felt management would do nothing about it. As part of the report, we conducted an online survey as well as face-to-face interviews. Of the 138 electronic survey respondents who personally observed excessive alcohol consumption, 118 (86 percent) indicated they did not report the behavior. Each respondent could select multiple reasons for not reporting the behavior. Some frequently cited reasons included:

- 66 respondents (56 percent) indicated the employee engaged in the behavior while off duty.

[2] http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-20_Dec13.pdf

- 55 respondents (47 percent) did not believe that management supported employees reporting the behavior.
- 47 respondents (40 percent) were afraid of reprisal or retaliation.

In a separate question, 1,438 of 2,575 electronic survey respondents (56 percent) indicated that they could report misconduct without fear of retaliation, meaning that a significant portion of the workforce may fear retaliation for reporting misconduct.

We also looked at the employee misconduct that did get reported. From January 2004 to February 2013, the Secret Service tracked 824 incidents of employee misconduct. Excluding partial-year data from 2013, pending cases, and cases with incomplete date information, there were 791 misconduct cases between 2004 and 2012. The highest percentage of those involved neglect of duty. During this period, the Secret Service's workforce averaged 6,600 employees.

As a result of our findings, we identified areas in which the Secret Service needed better management controls for reporting misconduct or inappropriate behavior and adjudicating and administering disciplinary actions. We made 14 recommendations to improve the Secret Service's processes for identifying, mitigating, and addressing instances of misconduct and inappropriate behavior. Additionally, we suggested the Secret Service continue to monitor and address excessive alcohol consumption and personal conduct within its workforce. The Secret Service concurred with all 14 recommendations and implemented changes to its discipline program. Specifically, the Secret Service created:

- A table of penalties that serves as a guide in determining appropriate corrective, disciplinary, or adverse actions for common offenses. This policy requires employees to report information about potential misconduct involving violations, as set forth in the table of penalties, to their chain of command, the Secret Service Office of Professional Responsibility, or OIG. The policy also requires that supervisors report misconduct through their chain of command.

- Policies clarifying when and how managers are to conduct their own fact-finding inquires and requiring that the results of those inquiries be forwarded to the Office of Professional Responsibility.

- A policy granting the Chief Security Officer unfettered access to employees to obtain information relating to potential security concerns.

- Policies to ensure discipline files contain all required information.

Mr. Chairman, this concludes my prepared statement. I welcome any questions you or other Members of the Subcommittee may have.

Mr. SENSENBRENNER. Thank you very much.

Mr. Whaley?

TESTIMONY OF HERMAN E. "CHUCK" WHALEY, DEPUTY CHIEF INSPECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY, DRUG ENFORCEMENT ADMINISTRATION, UNITED STATES DEPARTMENT OF JUSTICE

Mr. WHALEY. Chairman Sensenbrenner, Ranking Member Jackson Lee, distinguished Members of the Subcommittee, thank you for the opportunity to testify here today. I appreciate the opportunity to explain how DEA responds to allegations of employee misconduct.

I currently lead DEA's Office of Professional Responsibility, which conducts investigations of all allegations of misconduct against DEA employees. Misconduct is generally defined as any violation of the Federal, state, or local law, or any violation of DEA standards of conduct. OPR also monitors trends in employee conduct and behavior; makes recommendations to DEA's executive management when there are weaknesses in DEA's internal controls, policies or procedures; and serves as a liaison to the Office of the Inspector General at the Department of Justice, as well as to other law enforcement internal affairs units in furtherance of misconduct investigations.

As a career special agent with over 30 years of law enforcement experience, I take my role seriously. I want to protect the reputation of all the DEA special agents that act with integrity in fulfilling our vital mission by holding accountable those who don't. We are DEA's single point of contact for all accusations of misconduct against any DEA employee, contractor, or deputized task force officer. This is true regardless of the source of the allegations, whether they are made anonymously by other DEA employees, supervisors, or the general public.

I can assure you my office takes every allegation of misconduct seriously and has procedures in place to ensure that complete, thorough, and fair investigations are conducted. DEA's Office of Professional Responsibility is the first of three parts of DEA's Integrity Assurance Program. Our role is limited to the investigation of allegations of misconduct. The Office of Professional Responsibility has no role in the process of imposing discipline. We collect and document the facts without opinion or bias and forward that information to DEA's Board of Professional Conduct, which imposes discipline. The case is subsequently forwarded to the office of the deciding official, who determines any disciplinary action.

The Office of Professional Responsibility works closely with the Office of the Inspector General of the Department of Justice to ensure all allegations are appropriately investigated. For every allegation that we receive, OPR shares the allegation with the Office of the Inspector General. OIG reviews each accusation of misconduct and determines how the complaint will be investigated. They can choose to investigate the complaint unilaterally, refer the complaint back to DEA and monitor the investigation, or they can refer the complaint back to OPR for us to investigate.

While I understand we are here to talk generally about how misconduct allegations are handled by Federal law enforcement, the

recent report by the Inspector General is also relevant. We must constantly learn lessons and seek to improve our efforts.

In addition to implementing all of the OIG recommendations, DEA has taken concrete steps to improve both the training we provide DEA employees, as well as how we coordinate investigations when allegations are made in an effort to avoid such problems in the future. These steps include ensuring that it is clearly understood by all DEA employees that this kind of behavior is unacceptable; outlining steps that employees and supervisors must take when incidents occur; increasing training for all employees, particularly those employees assigned overseas; further explaining the guidelines for disciplinary offenses; and improving internal procedures so appropriate individuals and field management and the Office of Security Programs and the Office of Professional Responsibility are promptly made aware of allegations so they can take appropriate action in a timely manner.

Consistent with the recent direction put forth by the Attorney General which seeks to not only improve the communication between my office and the Office of Security Programs, but also to review the security clearances of the investigative subjects cited in the OIG report, I am committed to continuing to review and push for changes to improve this process. I appreciate the feedback provided by the OIG and look forward to continuing to work with them to improve our systems.

Thank you for the opportunity to be here with you today. I look forward to your questions.

[The prepared statement of Mr. Whaley follows:]

Department of Justice

TESTIMONY OF

HERMAN E. "CHUCK" WHALEY
DEPUTY CHIEF INSPECTOR
OFFICE OF PROFESSIONAL RESPONSIBILITY
DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY, AND INVESTIGATIONS
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING ANALYZING

MISCONDUCT IN FEDERAL LAW ENFORCEMENT

PRESENTED ON

APRIL 15, 2015

Testimony of Deputy Chief Inspector Whaley
Office of Professional Responsibility, Drug Enforcement Administration
Before the
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives
Tuesday, April 15, 2015
Washington, D.C.

Chairman Sensenbrenner, Ranking Member Jackson Lee, and distinguished Members of the Committee. Thank you for the opportunity to be here today to discuss how the Drug Enforcement Administration (DEA) investigates misconduct allegations. On behalf of Administrator Leonhart and the more than 9,000 men and women of the DEA, I can assure you that these are issues we do not take lightly.

DEA's mission is to identify, investigate, disrupt, and dismantle drug trafficking organizations responsible for the production and distribution of illegal drugs. DEA is responsible for enforcing the Controlled Substances Act and is pleased to work closely with our local, state, federal, and international counterparts. Enforcement of our nation's drug laws is, and will always be, our top priority.

To address the international threat of the drug trade, DEA employs many of its staff in foreign posts of duty. DEA has the largest international footprint of any American federal law enforcement agency with 833 personnel permanently assigned to 86 foreign offices in 67 countries, including 459 Special Agents as of last year. The vast majority of DEA employees, whether assigned to foreign offices or domestically, do not engage in inappropriate behavior. Within DEA, the Office of Professional Responsibility (OPR), where I currently serve as the Deputy Chief Inspector, is responsible for investigating allegation of misconduct against DEA employees, contractors, and deputized task force officers.

Recently, the Office of Inspector General (OIG) with Department of Justice (DOJ) published a report titled, "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components." Although the OIG acknowledged in its report that they "found relatively few reported allegations of sexual harassment and sexual misconduct in the Department's law enforcement components" for fiscal years 2009 through 2012, they did raise concerns (highlighted by a few case examples) regarding how DEA handled allegations of misconduct. Unfortunately, the misconduct of a few individuals which are the subject of the present report overshadows the good work that we have done and casts an unfavorable light on DEA.

As a career federal law enforcement officer with over 30 years of experience, I am disgusted by the behavior described in these cases. As the OPR Deputy Chief Inspector for the DEA, I am committed to DEA employees being held accountable for their actions especially when those employees conduct themselves in a manner that is not befitting of the high professional standards of the agency I am proud to call home. I would also like to note that the Attorney General last week directed that the Department's Office of Professional Responsibility conduct review of DEA's process and procedures for investigating allegations of misconduct and effectuating discipline, and DEA welcomes that review.

As a fellow law enforcement officer, I am disappointed by the discipline imposed for the misconduct described in the report. I would note that DEA does not have the authority to simply terminate employees at will. As the Committee is aware, federal employees have certain constitutional due process rights which are implemented through statutory procedures granted by Federal Civil Service laws and further carried out through Office of Personnel Management's (OPM) regulations. The Merit Systems Protection Board (MSPB) serves as the guardian of the Federal Government's merit-based system of employment, and MSPB case law establishes that comments by senior agency officials about the merits of a particular case before it is finally decided can be deemed harmful procedural error and can actually result in the disciplinary action being overturned. The actions taken against the employees involved in these cases were all taken in compliance with statutory procedures and, where applicable, adjudicated in accordance with MSPB policies and procedures.

What has been overshadowed by the media coverage of this report is that OIG generally found that all components, including DEA, fully investigated reported allegations of misconduct. This said, the serious allegations OIG highlighted are certainly troubling, and outline behaviors that cannot be ignored.

One set of allegations in particular were not as fully investigated as they could have been. The events in question occurred between 2001 – 2004 and were not reported to our Office of Professional Responsibility (OPR) until 2010 at which time an investigation was opened. The allegations that Agents assigned in Bogota engaged in prostitution and accepted gifts from drug traffickers was pursued by OPR; however, the resulting investigation left many questions unanswered.

As a result, the subject employees may have received different sanctions if there had been further information developed through additional investigation. Regardless, the behavior in question is not acceptable and DEA hopes the additional training and guidance that we have provided to all personnel, but particularly those stationed overseas, make absolutely clear there is no tolerance for this misconduct and will prevent similar incidents from occurring in the future.

DEA takes these matters seriously, and has taken concrete steps to improve both the training we provide DEA employees as well as how we coordinate investigations when allegations are made. Shortly after the Cartagena incident in April 2012, DEA Administrator Leonhart formed a Task Force to address employee misconduct. The Task Force was comprised of representatives from the following DEA components: Office of Professional Responsibility, Field Management, the Board of Professional Conduct, Human Resources Division, and the Office of Chief Counsel. After numerous meetings and discussions, the Task Force made three recommendations, all of which were implemented in the fall of 2014:

1. Amend DEA's Personnel Manual to clarify and emphasize unacceptable conduct by employees as related to prostitution and association with the criminal element;

2. Issue an agency-wide message and memorandum to all employees reiterating the expected conduct for DEA employees and the possible discipline for violating these standards (Appendix A); and

3. Publish "Fact or Fiction?" questions and answers related to employee misconduct on DEA's intranet system (Appendix B).

Additionally, in September 2014, DEA's Office of Chief Counsel incorporated new material relating to off-duty misconduct into two ethics classes presented at DEA's Training Academy. The first class is taught to all new core series employees starting their career at DEA: Special Agents, Intelligence Research Specialists, Diversion Investigators, and Office of Forensic Science professionals. The second class is presented at the DEA Group Supervisor Institute and Supervisor Development Institute, which are attended by all DEA managers. Both of these courses not only address off-duty misconduct overseas, but also misconduct in the United States. Both courses address not only prostitution, but other forms of misconduct and emphasize that, while certain activities may be legal in a foreign country or United States jurisdiction, DEA employees would still violate applicable laws, regulations, and Department policy if they engaged in such acts.

For many years, the Office of Professional Responsibility has given and continues to give a presentation at core series training courses held at the DEA Training Academy and at the DEA Foreign Orientation Program, which is attended by all DEA personnel being transferred to an overseas assignment. The Office of Professional Responsibility updated their presentation to emphasize on-duty and off-duty misconduct which would be investigated by them both domestically and internationally. In addition, this material specifically addresses excessive alcohol consumption, illegal drug use, prostitution, and notorious conduct. The amended presentation was first provided to the Foreign Orientation Program in May of 2012, and it was implemented in all core series training courses beginning September, 2014.

I would also note that DEA has had the opportunity to review the report and regrets any misunderstanding we have had with OIG in relation to providing access to files regarding their audit. It is against DEA's best interests to obfuscate personnel issues, and I can assure you there was no effort to do so in this case nor would the Administrator tolerate any effort to do so. We generally have an excellent working relationship with OIG, particularly when it comes to investigative matters. We have had several conversations with OIG to discuss how we can better work with and communicate with each other in the future. We certainly believe that there is value in having the OIG examine policies and procedures to help identify areas where improvement may be needed.

Of the eight recommendations made by the OIG in the report, six are applicable to DEA. As noted in Appendix 11 of the report, DEA concurred with the four that were directly applicable to DEA and deferred to the Office of the Deputy Attorney General on the remaining two. For three of the six applicable recommendations, DEA was asked to provide additional documentation regarding our compliance by June 30, 2015. DEA is on track to provide this information to OIG. Let me highlight the actions DEA took prior to the release of OIG's report, as well as the work that we continue to do in an effort to address many of the recommendations in the report.

Reporting of Allegations of Sexual Harassment and Sexual Misconduct

The OIG found that DEA "lacks a clear policy" as to when managers should report allegations to Headquarters and recommended that DEA make such reporting mandatory. On October 22, 2014, Administrator Leonhart issued a memorandum titled "Conduct of DEA Employees" (Appendix A) to each and every employee which addressed specific areas of misconduct which can seriously impact the integrity of DEA. Such areas include Off-Duty Misconduct; Failure to Exercise Proper Supervision; Sexual Harassment; Discrimination and Retaliation; Improper Relationships with Cooperating Individuals/Sources of Information; and others. This memorandum ensures that supervisors and managers, as well as employees, are aware of their responsibilities concerning misconduct and that appropriate measures through the disciplinary process are taken once a report of misconduct is received.

In addition, all DEA employees are required to certify on an annual basis that they have reviewed and understand the DEA's Standards of Conduct. DEA's Standards of Conduct ensure that employees understand that they are held to a high standard of honesty and integrity and that any lapses from that standard can destroy the future effectiveness of employees and harm DEA's credibility with the public. Failing to adhere to the Standards of Conduct may result in disciplinary action, up to and including removal from service.

Coordination with DEA's Office of Security Programs

The OIG concluded that DEA's Office of Security Programs was not always informed about employees who were alleged to have engaged in high-risk sexual behavior. The report recommended that all non-frivolous sexual harassment and sexual misconduct allegations be referred to the Office of Security Programs.

DEA concurred with this recommendation, and on November 17, 2014, I issued a memorandum that implemented new procedures to ensure systematic coordination between the Office of Professional Responsibility and the Office of Security Programs. This coordination will ensure an assessment is made to determine whether an employee's security clearance should be maintained. I would note that improving this coordination continues to be an important issue for DEA, and we are examining possible additional steps to further enhance our coordination and cooperation.

Procedures for Reporting Allegations of Harassment and Misconduct

OIG concluded that DEA should have clear and consistent criteria for determining whether an allegation should be investigated at Headquarters or should be referred back to the originating office to be handled as a management matter.

DEA concurred with this recommendation, and OIG acknowledged in the report that DEA had established clear and consistent criteria to determine appropriate action. The Office of Professional Responsibility, at the discretion of the Deputy Chief Inspector, investigates all criminal violations, integrity violations, and violations of the DEA's Standards of Conduct. On occasion, issues such as insubordination or other administrative matters are referred back to Division management for action they deem appropriate.

DEA's "Disciplinary Offenses and Penalties Guide"

The report determined that DEA did not have specific offense categories to address allegations of sexual misconduct and sexual harassment. The DEA Disciplinary Offenses and Penalties Guide (Guide) is intended to provide information and guidance about the range of penalties that may result from a particular type of misconduct. The Guide is not intended to set forth specific charges, but rather to ensure that employees are charged consistently. DEA is currently examining and evaluating the offense categories specifically designed to address sexual misconduct and sexual harassment, and will revise the Guide as appropriate. However, prior to that review, DEA has modified its Personnel Manual in November 2014 to explicitly make clear that solicitation or engaging in prostitution is forbidden, even in foreign countries or other jurisdictions where it is not criminalized.

Preservation and Monitoring of Text Messages and Images

OIG concluded that all four law enforcement components, including DEA, did not have adequate technology to archive text messages sent and received by their employees and are unable to fully monitor the transmission of sexually explicit text messages and images. As mentioned in the report, the OIG will work with the Deputy Attorney General to implement these recommendations and successfully resolve any outstanding issues.

As outlined above, DEA has already made significant policy changes designed to clarify and educate the DEA workforce, and we are open to further improvements as the need for these changes is identified. As a career Special Agent, I am here to testify that the professional standards and conduct of DEA is of paramount concern and I will continue to address these important issues moving forward.

In conclusion, I would like to reiterate that throughout DEA's history of over 40 years, we have safeguarded Americans from the dangers associated with the drug trade and, during that time, the vast majority of our employees have pursued that mission effectively and honorably. It is my sincere hope that DEA Agents will be regarded for their hard work in this arena and not by the poor choices of a few.

Thank you again for the opportunity to appear before the committee today, and I look forward to answering any questions you may have.

APPENDIX A

Memorandum

Subject: Conduct of Drug Enforcement Administration (DEA) Employees (DFN: 060-01)	Date: October 22, 2014

To: All DEA Employees

From: Michele M. Leonhart
Administrator

The Drug Enforcement Administration (DEA) is the premier drug law enforcement agency in the world. This is the result of the hard work and dedication of our employees, who are committed to the mission of protecting public health and safety. As a result of our work, DEA enjoys a tremendously positive reputation with the public that we serve.

Working to maintain the public's trust and confidence is vital to our success as a law enforcement agency. Without that, our ability to do our job becomes much harder, and we put ourselves and others at risk. While I am proud of the conduct of the vast majority of our personnel, our reputation is not something we can take for granted. DEA employees occupy positions of great trust and confidence. Our vital mission, and the tremendous authority that is committed to us by statute, demand that employees conduct themselves in an exemplary manner at all times, whether on or off-duty. DEA's Standards of Conduct, which all employees acknowledge that they have read and understand annually, set the standards of behavior to which all employees must adhere.

This memorandum, while not intended to be all encompassing or to in any way alter the Standards of Conduct, is intended to address specific areas of misconduct that are of particular concern to me in that violations in these areas can seriously impact the integrity of this agency. I have therefore instructed the Board of Professional Conduct and the Deciding Officials to closely review and to consider proposing and imposing severe disciplinary actions in all future cases of misconduct in these areas, as appropriate.

Making False, Misleading or Inaccurate Statements

In order to maintain the public trust, protect the integrity of the agency, and ensure the safety of our personnel and the public, it is imperative that DEA employees, regardless of job series or duties, be truthful and forthright in all aspects of their official duties. There can be no exception to this requirement, and all DEA employees must maintain the highest standards of integrity, trust and character. Creating false, misleading, or inaccurate documents or providing false, misleading, or inaccurate statements in any matter or context is unacceptable and will be dealt with through DEA's disciplinary system.

DEA personnel are expected to be candid, forthcoming, and responsive in all matters related to or impacting upon their official duties. As has long been the standard in this agency, employees will not use evasive or craftily worded phrases in their statements (written or oral), in their testimony, or in documents. Employees will not minimize or exaggerate facts and will not omit or distort information or data. Similarly, employees will not permit, condone, or acquiesce in other agency employees violating these basic principles. Violating these principles is a serious offense which is only marginally mitigated by telling the truth later, such as when an employee initially is less than completely truthful with Office of Professional Responsibility but subsequently tells the full truth, even if within the same interview. Similarly, these principles apply to both oral and written statements, whether under oath or not.

While these principles apply to all employees, misconduct along these lines is particularly egregious when committed by employees such as Special Agents, Diversion Investigators, Chemists, and other employees whose duties require testimony. DEA is required to disclose any instances of past conduct which negatively reflects upon a testifying employee's propensity to be truthful. Criminal defendants are often provided this information and use it to impeach the integrity of DEA employees. When a DEA employee commits an act involving falsification, then, he or she may be restricted or prohibited from testifying or from participating in criminal investigations, in addition to facing severe discipline.

Off-Duty Misconduct

It is important to remember that DEA's Standards of Conduct govern employee behavior both on and off-duty. The Standards specifically state, "DEA personnel, as members of the law enforcement community, occupy positions of trust and shall refrain from omissions or commissions of conduct in their off-duty hours which will impact, influence, impede, or in any way affect their DEA responsibilities." *Personnel Manual*, Section 2735.15.A.2. The Standards prohibit employees from "engaging in any criminal, infamous, dishonest, or notoriously disgraceful conduct or other conduct prejudicial to DEA, to the Department of Justice, or to the Government of the United States." *Personnel Manual*, Section 2735.15.A.1.

Any conduct, whether on or off-duty, that is of a nature that could bring discredit to DEA, that could adversely affect an employee's or co-worker's ability to perform his or her job, that could adversely affect or that opposes the agency's mission, or that causes the agency to lose trust and confidence in the employee, violates these Standards of Conduct. For example, soliciting or participating in prostitution, which is defined as engaging in sexual activity for money or its equivalent, is strictly forbidden, even while assigned to or in a foreign country where such activity is not criminalized.

Employees must remember that they represent DEA, the Department of Justice, and the United States of America at all times, whether on or off-duty. While this is true everywhere, it is particularly true for personnel who are assigned, sent TDY, or who are otherwise present in a foreign country. Conduct which is unacceptable in the United States may lead to disciplinary action if engaged in overseas, even though such conduct may be acceptable in a particular foreign country. The converse may also be true – conduct which is acceptable in the United States may lead to disciplinary action if engaged in overseas. Employees overseas must remember that they are subject to Department of State regulations governing conduct as well as those of DEA.

Consumption of Alcohol and Related Misconduct

One of the quickest ways to lose public trust and confidence is to call into question the sobriety of the workforce. DEA policy has long contained strong warnings about the use of alcohol by employees both on and off-duty. Employees are forbidden from consuming *any* alcoholic beverages during their assigned duty hours (unless formally authorized by their supervisors for mission-related reasons and in accordance with the Agents Manual) or when they will be operating an Official Government Vehicle (OGV). Consuming any alcohol under these circumstances is a serious matter, even if the employee is not impaired. Similarly, I want to remind employees that, under DEA's Table of Penalties, driving an OGV under the influence of alcohol carries a penalty of a minimum 60-day suspension for a first offense. I have instructed the Board of Professional Conduct and the Deciding Officials to strictly adhere to the Table of Penalties in this regard. In addition, employees in law enforcement positions who may be recalled to duty should not engage in the consumption of alcohol to such an extent that they are unable to return if called upon.

I believe that violations of these directives pertaining to alcohol consumption are extremely serious and merit severe disciplinary action, up to and including removal from DEA. Because the irresponsible or excessive use of intoxicating beverages directly affects the integrity of the service, it is incompatible with DEA's mission and will not be tolerated. DEA employees must appropriately monitor and control their off-duty consumption of alcohol to ensure that they do not bring embarrassment or discredit to this agency. Similarly, supervisory personnel will observe subordinate personnel for warnings signs or indicators which suggest that an employee may have a problem with intoxicants. In such situations, supervisors must make the appropriate referrals and notifications through the chain of command.

Domestic Violence

I have noted an increase in incidents involving allegations of domestic violence. Such conduct can adversely impact an employee's ability to do his or her job and cause agency leadership to lose confidence in the employee. It demonstrates a lack of the maturity and self-control that is expected of personnel working for an agency charged with authority to make decisions affecting life, liberty and property. It also negatively affects the reputation of this agency among the state and local law enforcement agencies with which we must work. Accordingly, I expect employees to refrain from all acts of domestic violence, and I have instructed the Office of Professional Responsibility, the Board of Professional Conduct, and the Deciding Officials to closely scrutinize allegations of domestic violence and to take stern disciplinary action when such charges are sustained.

Failure to Exercise Proper Supervision

Supervisors and managers play an integral role in maintaining the integrity of the agency and its personnel. DEA's ability to accomplish its mission is directly related to the supervision provided by first line managers and others in the chain of command. Managers are charged with ensuring that DEA's policies and procedures are followed. Ineffective or negligent supervision can endanger not only the welfare and safety of DEA personnel, but also the well-being of others. In fact, many errors and unfortunate outcomes that this agency has experienced could likely have been prevented or minimized by more effective management. Examples of inadequate supervision include managers who ignore or do not react appropriately when misconduct occurs; permit employees to disregard

procedures; fail to monitor the activities of subordinate employees; or simply do not ensure that an employee's work performance is acceptable or his/her conduct is appropriate.

In sum, supervisory personnel are to be held accountable for the misconduct of their subordinate employees when such acts could have been prevented by greater attention to supervisory duties. Supervisors are to monitor the work of subordinates and intervene as appropriate with guidance and direction. Failure to properly carry out supervisory or managerial responsibilities, regardless of outcome, may lead to the initiation of disciplinary action against the supervisor.

Sexual Harassment, Discrimination, and Retaliation

Diversity is vital to this agency's success, and indeed it is a major strength of DEA. We are a flexible, dynamic, and multi-talented workforce. Accordingly, I am strongly committed to maintaining a workplace free of the destructive effects of harassment, discrimination and retaliation. DEA personnel are to treat everyone professionally and with respect, regardless of any characteristic such as race, religion, ethnicity, gender, age, physical handicap, or sexual preference. Anything less will not be tolerated. DEA personnel shall not retaliate or reprise against employees who exercise their right to file a report or complaint of discrimination, who provide information in the course of any internal investigation of misconduct related to such allegations, or who otherwise engage in any protected activity.

Improper Relationships with Cooperating Individuals, Sources of Information, and Others

Personal or financial relationships with individuals who provide or who in the past have provided information to law enforcement or intelligence agencies can compromise investigations and result in the credibility and integrity of both the employee and the agency being called into question. These individuals may be formally documented sources, may be undocumented, and/or may be associated with other agencies. Regardless of affiliation, DEA employees are not to involve themselves personally or financially with individuals who are assisting or who in the past have assisted in the conduct of an investigation. In short, agency personnel will maintain a professional relationship, not a personal relationship, with these individuals at all times.

Additionally, DEA employees are precluded from developing a personal or financial relationship with individuals associated with criminal activity or who have a history of associating with criminal activity. Employees are also not to develop relationships and/or affiliate with any person or group which advocates or engages in illicit activity. Such relationships are inconsistent with the mission of a Federal law enforcement agency, directly call into question the credibility and integrity of DEA and the employee concerned, and potentially place the employee and DEA in a position in which this agency's operational effectiveness may be compromised. Employees are reminded that they are always to conduct themselves in a manner above reproach in all associations and relationships and to be mindful that even the appearance of impropriety can seriously jeopardize DEA's law enforcement mission.

Misuse of Office

It is important for all employees to recognize that Misuse of Office encompasses several different types of misconduct. Section 2735.15 (O) of the *Personnel Manual* includes examples of misconduct that I regard as serious enough to warrant disciplinary action, up to and including removal, for the

first offense. Of particular concern to me is destruction of evidence and obstruction or attempted obstruction of an official investigation, inquiry, or other matter of official interest. DEA employees must remember that, as a law enforcement agency, they are held to a high standard of conduct. DEA personnel must respond to and cooperate with investigators when so directed and must provide accurate and complete information in response to an investigator's requests. I expect that all DEA employees will provide all information and documents, including electronic communications, requested by investigating officials. If an employee is the target of a criminal investigation, he or she retains the ability to invoke any applicable constitutional protections he or she may have. However, any employee who destroys information requested by investigators during an official inquiry or obstructs an official investigation will be subject to severe disciplinary action, up to and including removal, for the first offense.

Loss or Theft of Firearms

Special Agent personnel are reminded of the importance of properly safeguarding their firearms. Weapons that are lost or stolen pose a grave danger to society and can be used to commit violent crimes. As a result, it is imperative that Agents maintain and safeguard all weapons issued by DEA or approved for official use in accordance with applicable policies and procedures at all times. I consider loss or theft of weapons resulting from a failure to properly maintain and safeguard them as a very serious matter, and I have instructed the Office of Professional Responsibility, the Board of Professional Conduct, and the Deciding Officials to treat it as such.

Repeat Offenders

I also want to remind employees that repeated acts of misconduct will not be tolerated. Multiple violations of the Standards of Conduct, even if each incident is relatively minor, are inconsistent with the high standards of this agency and indicate, at best, an uncaring, cavalier attitude towards one's responsibilities. Section 2735.13.B.4 of the *Personnel Manual* states that the commission of four acts of misconduct within a two-year period may be grounds for removal from DEA, regardless of the nature of the offenses committed. I have asked the Office of Professional Responsibility, the Board of Professional Conduct, and the Deciding Officials to be mindful of this provision and of employees' history of misconduct as they perform their duties.

Conclusion

The mission and work of DEA are highly respected by the public at large and the law enforcement community. It does not take much to tarnish this hard-earned and well-deserved reputation, however. As noted above, I have not attempted to address in this memorandum every area of conduct that an employee should avoid. Rather, my intent is to address certain areas of specific concern to me, where I believe misconduct can cause particular harm to DEA. Any violation of the Standards of Conduct can cause serious harm, however, and can warrant disciplinary action.

Accordingly, an employee who engages in on or off-duty misconduct can expect that appropriate measures will be taken and that, once a report of misconduct is received, the Office of Professional Responsibility and/or the Office of the Inspector General (OIG) will thoroughly and completely investigate such allegations. The results of these investigations will be evaluated through DEA's disciplinary process and, if appropriate, disciplinary action consistent with DEA's Table of Penalties

will be imposed. Sustained charges of misconduct will result in disciplinary action up to and including removal, as warranted.

APPENDIX B

Office of Professional Responsibility- Foreign Operations

You are part of the Drug Enforcement Administration... An Agency Set Apart. We are the best at what we do with our single-mission focus on enforcing our nation's drug laws. For example, consider our presence, relationships and our effectiveness in working with and in foreign countries.

DEA has the largest presence internationally of any American federal law enforcement agency. As of last year DEA had 833 personnel (Special Agents, Intelligence Research Specialists, support personnel, and other employees) permanently assigned to 86 foreign offices in 67 countries, including 459 Special Agents. Our personnel are not just present in those countries: they are working, accumulating accomplishments, and being good partners to our host-nation counterparts.

According to the DEA Office of Operations Management, DEA's foreign offices had 514 active Priority Target Organization cases (23 percent of which were linked to CPOTs. At the same time they dismantled 83 drug trafficking organizations, of which a quarter were CPOT-linked, and disrupted 124 Drug Trafficking Organizations in 2013.

That year DEA's foreign offices reported seizures of more than 223 tons of cocaine, nearly 11 tons of heroin, eight tons of methamphetamine, 24 tons of opium, nearly seven tons of morphine and more than a million kilograms of marijuana. It is estimated that the total revenue denied to drug traffickers by DEA's foreign offices was about $2.3 billion. These are big numbers that represent many major successes that significantly reduced the flow of drugs to our country and damaged many major international drug trafficking organizations.

In addition to our exceptional performance globally, the vast majority of DEA employees working internationally behave properly while on their foreign assignments. However, when DEA personnel engage in misconduct, it reflects poorly on our agency, erodes the public's trust in us, and diminishes DEA's image as a leader in law enforcement.

When misbehavior does happen, it is reported and thoroughly investigated by the Office of Professional Responsibility along with other appropriate Department of Justice internal affairs offices. This happens so that the American public will maintain their confidence in us, in the integrity of the process, and of all the important work we do.

The OPR would rather prevent misconduct than investigate these matters after they have occurred. With that in mind, test your knowledge on the following fact or fiction questions:

1. **Fact or Fiction**? Federal employees cannot be disciplined for off-duty misconduct unless that conduct amounts to a crime.

Answer: Fiction. DEA's Standards of Conduct state that DEA personnel are prohibited from engaging in any criminal, infamous, dishonest, or notoriously disgraceful conduct or other conduct prejudicial to DEA, to the Department of Justice, or to the Government of the United States. The Standards of Conduct also state that DEA personnel occupy positions of trust, and shall refrain from conduct in their off-duty hours which will impact, impede, or in any way affect their DEA responsibilities.

1. **Fact or Fiction**? In some overseas environments, DEA employees are permitted personal use of their assigned OGVs by their Regional Director because of security concerns. Even in those instances, DEA employees may not operate their OGVs after consuming alcohol.

Answer: Fact. A Regional Director's authorization of personal use of OGVs due to security concerns only permits employees to use the OGV for unofficial purposes, such as running errands and transporting

family members. Personnel remain subject to all other agency standards concerning OGV use, including the prohibition on operating the vehicle after consuming alcohol.

1. **Fact or Fiction**? If a DEA employee is sent TDY to a country where prostitution is legal, he or she may engage in the activity without violating the Standards of Conduct.

Answer: Fiction. DEA's Standards of Conduct prohibit employees from soliciting or participating in prostitution, defined as engaging in sexual activity for money or its equivalent or commercialized sex, even in countries where it is not criminalized.

1. **Fact or Fiction**? Occasionally, the Department of State or the DEA host country office imposes additional restrictions on employee conduct. For example, certain establishments may be declared off-limits. DEA personnel who are sent TDY to that country, or who visit the country on vacation, are subject to those additional requirements to the same extent as assigned personnel.

Answer: Fact. DEA personnel who are in a foreign country, whether permanently assigned, sent TDY, or simply visiting on vacation, are subject to all conduct requirements applicable to personnel assigned to that country.

1. **Fact or Fiction**? A DEA employee who is arrested must report the event to his or her supervisor. He or she need not make a report if he or she is merely detained by law enforcement personnel, however.

Answer: Fiction. DEA personnel must *immediately* report any incident in which they are taken into custody, held for investigation, or detained for questioning. They must also report any instance in which they are questioned by law enforcement authorities under circumstances suggesting that they might be under investigation for or suspected of a potential crime.

1. **Fact or Fiction**? During an official investigation or inquiry, an investigator instructs you to bring your Government issued cell phone to your interview scheduled for the following day to be relinquished to the investigator. Before you do so, you can delete your personal contacts, pictures, e-mails, or texts from the phone.

Answer: Fiction. DEA's Standards of Conduct prohibit employees from obstructing or attempting to obstruct an official investigation, inquiry, or other matter of official interest. Deleting information from a Government issued cell phone after an investigator has instructed you to relinquish it is obstruction of an official investigation and amounts to misuse of office.

The DEA is the best at what we do, and maintaining a high level of integrity is one of the most important things we can do to stay that way.

Mr. SENSENBRENNER. Thank you, Mr. Whaley.
Mr. Hughes?

TESTIMONY OF MARK HUGHES, CHIEF INTEGRITY OFFICER, UNITED STATES SECRET SERVICE, UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Mr. HUGHES. Good afternoon, Chairman Sensenbrenner, Ranking Member Jackson Lee, Chairman Goodlatte, and distinguished Members of the Subcommittee. Thank you for the opportunity to appear before you to discuss recent enhancements to the Secret Service policies and procedures that address allegations of employee misconduct.

The Secret Service must address allegations of employee misconduct aggressively, fairly, and consistently. Any employee, regardless of rank or position, who violates our standards of conduct to include the failure to report misconduct will be held accountable.

Secret Service employees take great pride in successfully carrying out the vital mission of our agency on a daily basis around the world. Unfortunately, the successes of the many have been overshadowed by the unacceptable failures of the few, resulting in significant changes to the way in which the Secret Service adjudicates allegations of employee misconduct.

In May 2012, the Secret Service established the Professional Reinforcement Working Group, or the PRWG. This group, co-chaired by former OPM Director John Berry and Director Connie Patrick of the Federal Law Enforcement Training Center, affirmed many existing Secret Service practices and identified enhancements that could be implemented to further support the workforce. The Secret Service accepted these recommendations, and all of them have since been fully implemented.

Additionally, the DHS OIG issued a report in December of 2013 stating that it did not find evidence that misconduct is widespread in the Secret Service. However, the report contained a number of recommendations for the agency, some of which paralleled those of the PRWG, and all were fully implemented by April of 2014.

Several recommendations focused on establishing a robust disciplinary process grounded on transparency, consistency, and fairness. They also led to the establishment of an Office of Integrity, a new set of disciplinary policies and procedures, and the development of a Table of Penalties which identifies specific actions that constitute misconduct, along with a range of potential discipline.

As the process now stands, outside of a limited number of minor violations, allegations are required to be reported through the chain of command to the Office of Professional Responsibility, or the OPR. Under certain circumstances, including allegations that are criminal in nature or involve senior supervisory personnel, the agency must, pursuant to Department directives, refer the matter to the DHS OIG.

The OIG will then make a determination whether to accept the case for further investigation or refer the matter back to the OPR. Following either the OIG's declination of the referral or the completion of its investigation, the allegations are forwarded to the intake group chaired by the special agent in charge of the Secret Service Inspection Division.

Ultimately, substantiated allegations are presented to the Office of Integrity. Established in December of 2013, the Office of Integrity reports directly to the Office of the Deputy Director and oversees adherence to Secret Service code of conduct by impartially adjudicating employee misconduct in a fair, consistent, and timely manner. In accordance with the Table of Penalties and taking into consideration any mitigating factors such as the acceptance of responsibility or aggravating factors such as whether an employee holds a supervisory position, the Deputy Chief Integrity Officer will prepare a formal disciplinary proposal for presentation to the employee. Employees subject to disciplinary action are afforded certain procedural rights pursuant to Title 5 of the United States Code, regulations issued by OPM, and corresponding Secret Service disciplinary procedures. There is no doubt that the resulting process can take time and can be cumbersome. However, that system was put in place by Congress to protect the rights of the government employees, and we at the Secret Service must respect and operate within that framework.

The foundation of this discipline process is strong. Standards of conduct will, however, need to be periodically reinforced and in some instances adjusted, and the consequences for failing to meet them will need to be clearly communicated. These functions are core responsibilities of the Office of Integrity.

For instance, following the March 4 incident, Director Clancy, in coordination with my office, issued an official message to all Secret Service employees making clear that they are required to report through their chain of command any activities that violate the Secret Service standards of conduct.

Secret Service employees are provided with a number of avenues to report misconduct, including the ombudsman, the OPR, Inspection Division, the DHS OIG, or the U.S. Office of Special Counsel. Those who fail to properly report misconduct will be held accountable.

In summary, the Secret Service is committed to ensuring a strict code of professional conduct, a transparent process for administering discipline, and accountability regardless of rank or grade. While it is ultimately the individual responsibility of employees to adhere to the standards of conduct, the Secret Service understands that it must provide its employees with clear, comprehensive policies, and mechanisms to reinforce them. When misconduct is found to have occurred, there should be no doubt that there is a mechanism in place to deal with it swiftly, fairly, and consistently.

Chairman Sensenbrenner, Ranking Member Jackson Lee, this concludes my testimony. I appreciate the opportunity to explain the Secret Service disciplinary policy and I welcome any questions you may have. Thank you.

[The prepared statement of Mr. Hughes follows:]

Statement of Mark Hughes
Chief Integrity Officer, United States Secret Service
Department of Homelaud Security

Before the Committee on the Judiciary
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
United States House of Representatives

April 15, 2015

Good afternoon Chairman Sensenbrenner, Ranking Member Jackson Lee, and distinguished members of the Committee. Thank you for the opportunity to appear before you to discuss recent enhancements to United States Secret Service (Secret Service) policies and procedures that address allegations of employee misconduct and any subsequent disciplinary actions. The Secret Service takes allegations of employee misconduct seriously. Any employee, regardless of rank or position, who engages in misconduct, will be held accountable for his or her actions. This includes employees failing to report an incident, supervisors inappropriately choosing not to act on information reported to them, or any acts taken or threats of retaliation against an employee who reports misconduct.

Our workforce takes great pride in successfully carrying out the vital mission of our agency on a daily basis around the world. Unfortunately, the successes of the many have recently been overshadowed by the unacceptable failures of the few, resulting in significant changes to the way in which the Secret Service adjudicates allegations of employee misconduct.

Very shortly after the misconduct by Secret Service employees in Cartagena, Colombia in April 2012, the Secret Service established a Professionalism Reinforcement Working Group (PRWG) in May 2012. The PRWG, co-chaired by former Director John Berry of the Office of Personnel Management (OPM) and Director Connie Patrick of the Federal Law Enforcement Training Center (FLETC), consisted of a panel of five government executives, supported by approximately 70 subject matter experts from the Office of Personnel Management (OPM), FLETC, the Federal Bureau of Investigation (FBI), the U.S. military, and the Secret Service. The PRWG was tasked with three major responsibilities: 1) review the Secret Service controls on professional conduct; 2) benchmark the Secret Service against other similar agency best practices; and 3) identify any areas where the Secret Service excelled and areas where there is a need for enhancement.

Following an eight-month review, the group found that, while a number of the Secret Service's procedures were identified as best practices, and many more were found to be consistent with its peer organizations, there were areas identified where enhancements could be implemented to

further support its workforce. The PRWG issued seventeen recommendations with the goal of reinforcing professionalism within the workforce. The Secret Service accepted all of the recommendations, many of which were implemented by the end of 2013, and, in accordance with a strategic action plan, all seventeen were fully adopted by the end of 2014.

As the PRWG was winding up its actions, the Department of Homeland Security's (DHS) Office of the Inspector General (OIG) began an audit and issued a report aimed at assessing Secret Service "Efforts to Identify, Mitigate, and Address Instances of Misconduct and Inappropriate Behavior."[1] In its report issued December 19, 2013, the DHS OIG, "did not find evidence that misconduct is widespread in [the] USSS."[2] However, the report contained recommendations for the agency. Many of these recommendations concerned matters that overlapped with the recommendations of the PRWG, some of which had already been fully implemented by the Secret Service. Regardless, by the middle of April 2014, all recommendations issued by the DHS OIG had been completed and the recommended procedural changes fully established.

Several of the recommendations made by the PRWG and the OIG focused on establishing a robust disciplinary process grounded in transparency, consistency, and fairness. In order to meet these objectives, enhanced training and educational materials emphasizing the expectation of ethical behavior and conduct were made available to all employees. The Secret Service introduced updated training on ethics and standards of conduct; developed new briefings on professionalism that are given prior to major protective events and all overseas protective trips; and issued a user-friendly Ethics Desk Reference Guide for all employees. This guide, published in January 2013, highlights our core values, compliance principles, standards of conduct, security clearance adjudication guidelines, and the expectation that all employees must adhere to standards of ethical conduct.

The recommendations also led to the establishment of an Office of Integrity that focused on issues of integrity and professional standards, a new set of disciplinary policies and procedures, and the development of a Secret Service Table of Offense Codes and Penalty Guidelines (Table of Penalties) to ensure fairness and consistency in the disciplinary process.

Established in December 2013, the Office of Integrity reports to the Office of the Deputy Director and oversees adherence to the Secret Service's code of conduct by impartially adjudicating employee misconduct in a fair, consistent, and timely manner. The Chief Integrity Officer and the Deputy Chief Integrity Officer apply the guidance contained in the Secret Service Table of Penalties developed and implemented in November 2013. The Table of Penalties identifies specific actions that constitute misconduct and the range of discipline associated with

[1] Dep't of Homeland Security Office of Inspector Gen., Adequacy of USSS Efforts To Identify, Mitigate, and Address Instances of Misconduct and Inappropriate Behavior, December 2013.
[2] *Id.* at 1.

each type of infraction. The Table of Penalties also sets out aggravating and mitigating factors for consideration in assessing an appropriate penalty for a provable offense of misconduct. These enhancements improved the process for reporting and adjudicating allegations of misconduct.

As the process now stands, if an initial complaint is received by a front line supervisor, he/she is required, outside of a limited number of minor violations, to report the allegation through their chain of command to the Secret Service Office of Professional Responsibility (OPR). Pursuant to DHS Management Directive 0810.1 (Appendix A), if the matter concerns an allegation of misconduct against a GS-15 level employee or above, an allegation of criminal misconduct, or other serious non-criminal misconduct, the OPR must refer this matter to the DHS OIG who may accept the case for investigation, refer the case back to the OPR, or choose to work with the OPR in its investigation of the case.

If the case need not be referred to the DHS OIG, DHS OIG declines the case, or once the DHS OIG investigation has been completed, OPR has a responsibility to convene and chair the Secret Service Intake Group (Intake Group) to review the allegations of misconduct. The Intake Group is comprised of the Special Agent in Charge of the Inspection Division; the Chief of the Security Clearance Division or higher; the Deputy Chief Integrity Officer; an attorney from the Office of the Chief Counsel; and a representative from the affected employee's Assistant Director's Office. The Intake Group has a responsibility to examine the allegation to: 1) determine whether further investigation by the Inspection Division is warranted; 2) refer allegations of misconduct where additional information is not warranted to the Office of Integrity for appropriate administrative action; 3) administratively close cases where allegations of misconduct are unfounded, lacking in specificity, or where no violation of Secret Service policy has occurred; and 4) refer the matter to the appropriate management official when appropriate.

Ultimately, substantiated allegations are presented to the Office of Integrity. Once received by the Office of Integrity, the Deputy Chief Integrity Officer will prepare a formal disciplinary proposal to present to the employee. This proposal is based on evidence and information provided to the Deputy during the intake process and through the reports of investigation, if in fact an investigation occurred. The Deputy uses this information in accordance with the Office of Integrity disciplinary policies and the Table of Penalties to prepare his proposed formal action. Consideration is given to a number of mitigating (e.g., acceptance of responsibility) and/or aggravating (e.g., holding a supervisory position at the time of the offense, prior disciplinary action, notoriety of the offense) factors. The Deputy Chief Integrity Officer is also the issuing official for reprimands and the proposing official for all adverse actions.

Once an employee is issued a disciplinary action, the employee facing such action is afforded certain statutory procedural rights pursuant to Title 5 of the United States Code, implemented

through regulations issued by OPM,[3] and corresponding Secret Service disciplinary procedures. These rights may include: (1) at least 30 days' advance written notice stating the specific reasons for the proposed action; (2) a reasonable time, but not less than seven days, to answer orally and in representation byan attorney or other representative; and (4) a written decision and the specific reasons therefore at the earliest practicable date.[4] These procedural safeguards, mandated by Congress in the case of proposed removals, suspensions, and demotions, must be respected and preserved.

It should be noted that, if practicable, an employee is carried in an active duty status prior to and during any mandatory disciplinary notice period and any investigative period that precedes the issuance of the proposal. An employee may be placed in a paid, non-duty status (administrative leave) prior to and during this notice period when the retention of the employee in an active duty status may pose a threat to the employee or others, result in loss or damage to government property, or otherwise jeopardize legitimate government interests, including security. Additionally, where an employee's security clearance has been suspended or where the agency has reasonable cause to believe that the employee has committed a crime for which imprisonment may result, the employee may be proposed for and then placed on indefinite suspension (unpaid suspension) until the underlying matters are resolved.

The Chief Integrity Officer is the deciding official for all adverse actions. He/she hears oral responses, reviews written submissions, and issues final written decisions on disciplinary actions.

In assessing and determining the appropriate penalty to impose for employee misconduct, the Chief Integrity Officer and Deputy Chief utilize the Secret Service's Table of Penalties as instructive guidelines as well as the Douglas Factors, twelve criteria established by the Merit Systems Protection Board (MSPB). The employee is ultimately issued a written decision that provides the specific reasons for the disciplinary decision as required under Title 5, OPM rules, and Secret Service policy. The written decision must also provide the employee notice of his/her appeal rights, which may include the right to grieve the decision to the Secret Service Discipline Review Board (DRB), appeal to the MSPB, file an Equal Employment Opportunity complaint alleging discrimination, or contact the Office of Special Counsel alleging whistleblower reprisal.

After the decision is issued, a non-SES employee may request review before the DRB, which has the authority to vacate, mitigate, or uphold the charge and penalty consistent with the Table of Penalties.[5] Alternatively, if the disciplinary action consists of a suspension of over fourteen days, a demotion, or a removal action, the employee may appeal to the MSPB.[6]

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[3] 5 U.S.C. § 7511-7513; 5 C.F.R. § 752

[4] *Id.*

[5] An SES-level employee cannot appeal to the DRB.

[6] 5 U.S.C. § 7701. As noted above, the employee can also file a complaint with the Equal Employment Opportunity Commission or the Office of Special Counsel.

If the employee files an appeal with the MSPB after the employee has been separated from or suspended from Federal service, the burden will be on the agency to prove all facets of the charge against the employee by a preponderance of the evidence, i.e., that the facts underlying the charge occurred, that they constitute misconduct, that the penalty promoted the efficiency of the service, and that the penalty was reasonable given the charges. In order to determine whether the agency has met its burden of proof by preponderant evidence, the MSPB will require the submission of documentary evidence and will allow for a period of discovery, including the opportunity for depositions, interrogatories, document requests, and requests for admissions. Once the period of discovery is closed, the MSPB will attempt to settle the case without a hearing. If unable to resolve the matter at this stage and when requested by the employee, the MSPB is required to hold a hearing where witnesses will provide sworn testimony and be subject to direct and cross examination.

After the close of the hearing record, the MSPB Administrative Judge will issue a written Initial Decision in the matter. If this decision upholds the agency's disciplinary action, the employee may appeal the decision to the full MSPB Board. If the full Board rules against the employee, the employee may bring the case before the United States Court of Appeals for the Federal Circuit.

The statutory, regulatory, and policy system described above protects the rights of government employees and we at the Secret Service work within and respect it.

While aggressively attempting to curtail instances of employee misconduct, the Secret Service will, like any large organization, continue to face isolated incidents requiring an appropriate response. All Secret Service employees must abide by the highest standards of professional conduct, whether on-duty or off-duty, and regardless of whether or not a particular behavior is prohibited in the Table of Penalties. As stated in the Secret Service manual, the absence of an offense code for a particular act does not mean that such an act is condoned, acceptable or that it will not result in adverse action or discipline.

The key to this process is the reporting of misconduct. Incidents may not receive the proper review unless employees are willing to come forward and report what they have done, seen, or heard. The Secret Service provides its workforce a number of avenues to report misconduct including the Secret Service's Ombudsman, the Secret Service's Office of Professional Responsibility, the Secret Service's Inspection Division, the DHS OIG, or the U.S. Office of Special Counsel.

The foundation of this discipline process is strong; however, standards of conduct will need to be periodically reinforced, and, in some instances, adjusted, and the consequences for failing to

meet them will need to be communicated. These functions are core responsibilities of the Office of Integrity beyond meting out discipline. For instance, following the March 4th incident, Director Clancy, in coordination with my office, issued an official message to all Secret Service employees making clear that they are required to report through their chain of command any activities that violate the Secret Service standards of conduct or that otherwise negatively impact the mission of the Secret Service. The official message further stated that failure by an employee to make such notifications may result in disciplinary action.

In addition, policy regarding the use of Government Owned, Leased, or Rented vehicles (GOV) has recently been updated. Effective March 23, 2015, Secret Service employees are prohibited from operating a GOV within ten (10) hours of consuming any amount of alcohol. All previous policies regarding the consumption of alcohol and the operation of a GOV were rescinded insofar as they may have been viewed as inconsistent with this policy. On that same date, in coordination with my office, Deputy Director Magaw issued an official message to all Secret Service employees emphasizing that any employee who violates this policy will be subject to the full range of available disciplinary and adverse actions up to and including removal from employment.

The Secret Service is committed to ensuring a strict code of professional conduct, a transparent process for administering discipline, and accountability regardless of rank or grade. While it is ultimately the individual responsibility of employees to adhere to the standards of conduct, the Secret Service understands that it must provide its employees with clear, comprehensive policies and mechanisms to enforce them. When misconduct is found to have occurred, those within and outside the Secret Service should be confident that there is a mechanism in place to deal with it swiftly, fairly, and consistently.

Chairman Sensenbrenner, Ranking Member Jackson Lee, this concludes my written testimony. I appreciate the opportunity to explain Secret Service disciplinary policy, and I welcome any questions you may have.

APPENDIX A

Management Directive & MOU

Department of Homeland Security
Management Directive System
MD Number: 0810.1
Issue Date: 6/10/2004

THE OFFICE OF INSPECTOR GENERAL

I. Purpose

This directive established Department of Homeland Security (DHS) policy regarding the Office of Inspector General (OIG). Any prior Management Directive and any instruction or agreement of any kind issued by or entered into by any DHS official or Component that is inconsistent in any respect with this directive is hereby superseded to the extent it is inconsistent with this directive.

II. Scope

This directive applies to all DHS organizational elements (OEs), including all employees, contractors, and grantees.

III. Authorities

A. The Inspector General Act of 1978, as amended

B. The Homeland Security Act of 2002, as amended, codified in Title 6, US Code

IV. Definitions

A. ***OE Offices*** – As used in this Management Directive, the term OE offices include all Organizational Elements offices of internal affairs, inspections, audits or Professional Responsibility. This term also includes the DHS Office of Security.

B. ***DHS Organizational Element*** – As used in this directive, the term DHS Organizational Element (OE) shall have the meaning given to the term DHS Organizational Element in DHS MD 0010.1, Management Directives System and DHS Announcements. This includes Elements such as the Bureau of Customs and Border Protection, the United States Coast Guard, the Federal Emergency Management Agency, etc. It also includes entities that report to DHS Organizational Elements, such as National Laboratories.

V. Responsibilities

A. ***The Heads of DHS Organizational Elements*** shall:

1. Promptly advise the OIG of allegations of misconduct in accordance with the procedures described in Appendix A, and when they become aware of any audit, inspection or investigative work being performed or contemplated within their offices by or on behalf of an OIG from outside DHS, the General Accounting Office, or any other law enforcement authority, unless restricted by law;

2. Ensure that, upon request, OIG personnel are provided with adequate and appropriate office space, equipment, computer support services, temporary clerical support and other services to effectively accomplish their mission;

3. Provide prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing;

4. Assure the widest possible dissemination of this directive within their OEs. They may issue further instructions as necessary to implement this policy. Any such further instructions shall not conflict with this MD and shall be provided to the OIG immediately upon issuance;

5. Assist in arranging private interviews by auditors, inspectors, investigators, and other officers authorized by the OIG with staff members and other appropriate persons;

6. Advise the OIG when providing classified or sensitive information to the OIG to ensure proper handling.

B. ***DHS employees*** shall report suspicions of violations of law or regulation to the DHS Office of Inspector General or the appropriate OE offices, and will likewise:

1. Cooperate fully by disclosing complete and accurate information pertaining to matters under investigation or review;

2. Inform the investigating entity of any other areas or activities they believe require special attention;

3. Not conceal information or obstruct audits, inspections, investigations, or other official inquiries;

4. Be subject to criminal prosecution and disciplinary action, up to and including removal, for knowingly and willfully furnishing false or misleading information to investigating officials; and

5. Be subject to disciplinary action for refusing to provide documents or information or to answer questions posed by investigating officials or to provide a signed sworn statement if requested by the OIG, unless questioned as the subject of an investigation that can lead to criminal prosecution.

VI. Policy and Procedures

A. The OIG, while organizationally a Component of the DHS, operates independent of the DHS and all offices within it. The OIG reports to the Secretary. Under circumstances specified by statute, the Secretary, upon written notification to the OIG which then must be transmitted to Congress, can circumscribe the OIG's access to certain types of sensitive information and exercise of audit, investigative, or other authority. The DHS Inspector General is the head of the OIG.

The OIG is authorized, among other things, to:

1. Administer oaths;

2. Initiate, conduct, supervise and coordinate audits, investigations, inspections and other reviews relating to the programs and operations of the DHS;

3. Inform the Secretary, Deputy Secretary, and the Congress fully and currently about any problems and deficiencies relating to the administration of any DHS program or operation and the need for, and progress of, corrective action;

4. Review and comment on existing and proposed legislation and regulations relating to DHS programs, operations, and personnel;

5. Distribute final audit and inspection reports to appropriate authorizing and oversight committees of the Congress, to all headquarters and field officials responsible for taking corrective action on matters covered by the reports and to Secretarial officers, office heads, and other officials who have an official interest in the subject matter of the report;

6. Receive and investigate complaints or information from employees, contractors, and other individuals concerning the possible existence of criminal or other misconduct constituting a violation of law, rules, or regulations, a cause for suspension or debarment, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety, and report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law;

7. Protect the identity of any complainant or anyone who provides information to the OIG, unless the OIG determines that disclosure of the identity during the course of the investigation is unavoidable.

Further, the OIG shall:

8. Follow up on report recommendations to ensure that corrective actions have been completed and are effective;

9. Prepare a semiannual report to the Secretary and the Congress, summarizing OIG audit and investigative activities within DHS. Section 5(a) of the Inspector General Act of 1978, as amended, requires this report.

B. Allegations received by the OIG or OE offices shall be retained or referred in accordance with Appendix A of this MD. The only exception to this requirement is that the OIG and the United States Secret Service will adhere to the terms of the Memorandum of Understanding entered into between those two entities on December 8, 2003, and as may be amended from time to time.

C. ***Standards***. Audits shall be conducted consistent with the standards issued by the Comptroller General of the United States. Inspections and investigations shall be conducted consistent with the quality standards issued by the President's Council on Integrity and Efficiency (PCIE).

D. ***Questions or Concerns***. Any questions or concerns regarding this directive should be addressed to the OIG.

The categories of misconduct identified below shall be referred to the OIG. Such referrals shall be transmitted by the OE offices immediately upon receipt of the allegation, and no investigation shall be conducted by the OE offices prior to referral unless failure to do so would pose an imminent threat to human life, health or safety, or result in the irretrievable loss or destruction of critical evidence or witness testimony. In such extraordinary situations, the OIG will be contacted as soon as practical, and all information and evidence collected by the OE office shall then be provided to the OIG as part of the OE referral to the OIG. The OIG will accept and retain all such allegations for investigation subsumed under this exigent circumstance exception.

- All allegations of criminal misconduct against a DHS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the OE offices;
- All allegations of serious, noncriminal misconduct against a law enforcement officer. "Serious, noncriminal misconduct" is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in loss of law enforcement authority. For purposes of this directive, a "law enforcement officer" is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- All instances regarding discharge of a firearm that results in death or personal injury or otherwise warrants referral to the Civil Rights Criminal Division of the Department of Justice;
- All allegations of fraud by contractors, grantees or other individuals or entities receiving DHS funds or otherwise engaged in the operation of DHS programs or operations;
- All allegations of visa fraud by DHS employees working in the visa issuance process.

In addition, the OIG will investigate allegations against individuals or entities that do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling, serious management problems within the department, or otherwise represent a serious danger to public health and safety.

With regard to categories not specified above, the OE offices will initiate the investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegations. The OIG shall notify the OE offices if the OIG intends to assume control over or become involved in such an investigation, but absent such notification, the OE office shall maintain full responsibility for these investigations.

Any allegations received by the OIG that do not come within the categories specified above, or that the OIG determines not to investigate, will be referred within five business days of receipt of the allegation by the OIG to the appropriate OE office along with any confidentiality protections deemed necessary by the OIG.

The OE offices shall provide monthly reports to the OIG on all open investigations. In addition, upon request, the OE offices shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the OE offices, upon request, with a complete copy of any Report of Investigation relating to its OE, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES SECRET SERVICE
AND THE OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

The United States Secret Service (USSS), an organizational component of the Department of Homeland Security (DHS), operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle C of the Homeland Security Act of 2002, as amended (the Act), and includes those responsibilities described generally in Section 1512 of the Act, as well as in various delegations of authority issued by the Secretary of DHS (the Secretary). The agency's dual statutory missions of protection and criminal investigations are more fully enumerated at Title 18, United States Codes, Section 3056 (Section 3056), and Title 3, United States Code, Section 202 (Section 202), and various other statutes.

The Office of the Inspector General (OIG), an organizational component of DHS, operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle B of the Act, as amended, and the Inspector General Act of 1978, as amended, and includes authority and responsibility acquired pursuant to Section 1512 of the Act.

To prevent duplication of effort and ensure the most effective, efficient and appropriate use of resources, the Secret Service and the OIG enter into this Memorandum of Understanding.

The categories of misconduct listed below shall be referred to the OIG. Such referrals shall be transmitted by the USSS Office of Inspection immediately upon the receipt of adequate information or allegations by the USSS Office of Inspection to reasonably conclude that misconduct may have occurred, and no investigation shall be conducted by the USSS Office of Inspection prior to the referral. In cases involving exigent circumstances, if the OIG decides to investigate the allegation but is unable to do so immediately, the USSS Office of Inspection will conduct the investigation until the OIG is able to take it over. In cases not involving exigent circumstances, the OIG will determine within one business day of the referral whether to investigate the allegation itself or to refer the matter back to the USSS Office of Inspection for investigation. If no determination is communicated to the USSS Office of Inspection within one business day of the referral, the USSS Office of Inspection may initiate the investigation. The acceptance of a referral by the OIG reflects a determination that available investigative resources will be able to conclude the referred investigation within a reasonable time. This will afford the agency a reasonable opportunity to act expeditiously, if necessary, regarding the allegations.

- All allegations of criminal misconduct against a USSS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the USSS Office of Inspection;
- All allegations regarding misuse or improper discharge of a firearm (other than accidental discharge during training, qualifying or practice);

- All allegations of fraud by contractors, grantees or other individuals or entities receiving Department funds or otherwise engaged in the operation of Department programs or operations.

In addition, the IG will investigate allegations against individuals or entities who do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling; serious management problems within the Department, or otherwise represent a serious danger to public health and safety.

With regard to categories of misconduct not specified above, the USSS Office of Inspection should initiate investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegation. The OIG shall notify the USSS Office of Inspection if the OIG intends to assume control or become involved in an investigation, but absent such notification, the USSS Office of Inspection shall maintain full responsibility for these investigations.

Pursuant to Section 811(a) of the Act, OIG audits, investigations, and subpoenas which, in the Secretary's judgment, constitute a serious threat to the protection of any person or property afforded protection pursuant to Section 3056 or Section 202, or any provision of the Presidential Protection Assistance Act of 1976, may be prohibited. Accordingly, to assure proper and timely responses to OIG requests for information or records, all OIG plans for audits involving the Secret Service shall be communicated via entrance letter by the OIG either directly to the USSS Office of Inspection or to the Office of the Deputy Director; any OIG investigation shall be communicated orally or via e-mail to the same entities. Any Secret Service Headquarters' concern under section 811(a) regarding the scope or direction of a planned audit or investigation will be raised and resolved expeditiously with OIG officials, or immediately communicated to the Secretary in the absence of resolution.

The USSS Office of Inspection shall provide a monthly report to the OIG on all open investigations. In addition, the USSS Office of Inspection, upon request, shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the USSS Office of Inspection, upon request, with a complete copy of any Report of Investigation relating to the Secret Service, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

This MOU shall be effective upon the signature of both parties and shall remain in effect until revoked by one party upon thirty day's written notice to the other.

W. Ralph Basham
Director of the United States
Secret Service

Dated: 12/5/03

Acting Inspector General

Dated: 12/8/03

Mr. SENSENBRENNER. Thank you very much.

I yield myself 5 minutes.

First, I would like to commend the two Inspectors General here, Mr. Horowitz and Mr. Roth, for a very comprehensive and enlightening report. Very infrequently do witnesses get commended from the Chair. Please note that this time both of you are being commended from the Chair, and we hope that this is a string that continues.

Now, to Mr. Whaley and Mr. Hughes, let me give a couple of instances, particularly with the DEA.

In 2010, there was a special agent in Bogota, Colombia who was a frequent patron of prostitutes, and on one of them he beat her up and left her bloody. He was ultimately suspended for 14 days.

And the next year, in 2011, a DEA agent solicited sex from an undercover police officer in D.C. He was suspended for 8 days.

And then in 2012, we know the DEA agents engaged in sex parties with prostitutes supplied by drug cartels, meaning the bad guys that law enforcement is supposed to be penetrating and bringing to justice.

Now, of those 10 agents, two received letters of reprimand, one retired. The remaining seven were suspended by the DEA for poor judgment or conduct unbecoming for 2, 1, 3, 3, 9, 10, and 8 days, respectively.

Now, this behavior is probably more likely to occur in a frat house or result in going up to the big house but has nothing to do with a law enforcement agency that depends upon the respect of the public for the support both in terms of appropriations as well as credibility in what they do.

Now, let me ask you first, Mr. Whaley, since these were DEA agents. Just in your personal and private opinion, how long do you think those suspensions should have been? We will start out with the one who, in Colombia, was a frequent patron of prostitutes and left one of them beaten and bloody. Is 14 days enough?

Mr. WHALEY. Sir, that behavior that that agent engaged in is absolutely deplorable to me, and——

Mr. SENSENBRENNER. Should he have been fired?

Mr. WHALEY. In my opinion, he should have been fired. Yes, sir.

Mr. SENSENBRENNER. Okay. Now, what is wrong with the system? Why wasn't he fired?

Mr. WHALEY. Well, DEA's disciplinary system is comprised of three parts, the OPR——

Mr. SENSENBRENNER. You have already told us what the three parts are.

Mr. WHALEY. Yes.

Mr. SENSENBRENNER. You think he should be fired. I think everybody on this Subcommittee thinks he should be fired. What changes in the system are needed to make sure that somebody who is a repeat offender, from what was in the report, is fired?

Mr. WHALEY. Sir, the decision to fire someone would be that of the deciding official. I thought the behavior exhibited by that man was deplorable, and if I had the power I would have fired him.

Mr. SENSENBRENNER. Okay.

Mr. WHALEY. But it would be up to the deciding official to——

Mr. SENSENBRENNER. Now, in D.C., soliciting a prostitute who was an undercover police officer only got a suspension. Isn't that a tap on the wrist?

Mr. WHALEY. I was particularly offended by that case because you had an undercover police officer that was a witness against the agent, and I agree in that case that he should have been removed from service as well.

Mr. SENSENBRENNER. Okay. Then we have the DEA agents who were engaged in sex parties with prostitutes supplied by drug cartels. The longest suspension was 10 days, and I listed a whole bunch of other numbers. Obviously, if you are engaged in a sex party with prostitutes that are supplied by the folks that you are supposed to be enforcing the law against, that certainly is the ultimate conflict of interest.

Now, do you think that maybe we should have kind of a suspension suggestion, like we do with the sentencing guidelines and trying to match offenses, so that somebody at least has an acceptable period of suspension depending upon how heinous the offense is?

Mr. WHALEY. Sir, in the instance you are referring to in Bogota, I was concerned not only by the sexual conduct engaged in by the agents with prostitutes and living quarters and the close proximity, but also the transactions that were going on between them. So in that case, yes, absolutely, I think they were under-punished.

Mr. SENSENBRENNER. Well, you can understand why Congress and the public is upset when we see this outrageous behavior that is happening, and in every one of these instances I have cited the suspension has been less than a light tap on the wrist.

The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I join you in this hearing and I believe this is an important hearing. Responsibilities that we have on behalf of the American people is for oversight.

Let me say that I am sickened by the series of stories that we have had to face in our local communities as we have opened our local newspapers, because most of Americans view all of the services that are before me, from the FBI, who is not present, but the DEA, the ATF, the Secret Service, U.S. Marshalls and beyond, in a very high level of respect.

You carry the mantra, the red, white and blue, the stars and stripes, the highest level of integrity. And frankly, I am very disappointed that we are even having to have this hearing.

I just want to take just a moment as I make just a comment about law enforcement and the concepts of criminal justice that I wanted to make mention of in my opening statement. This is the first criminal justice committee hearing since the killing of Walter Scott and the unfortunate incident in Arizona where one was to have a stun gun but yet had a gun that wound up in the death of an individual in Arizona.

I would indicate that I hope and look forward to the fact of being able to have hearings on the use of lethal force by state and local police departments, educational requirements, mental health and psychological evaluations, and training in non-violent conflict resolution received by officers and recruits, the use of technological de-

vices such as body cameras, the state of social science such as securing statistics about the use of lethal force.

And I say that because there are many people in America, no matter what their racial background, who are crying out for relief. The victim's mother, meaning Walter Scott's mother, the incident that happened in South Carolina, stated that "I almost couldn't look at it to see my son running defensively, being shot. It just tore my heart to pieces. I pray that this never happens again." And I think we in the United States Congress have a responsibility to make sure that it never happens again.

As a segue to my series of questions, I hope that what we are confronting today on the Federal level, that we can say that it never happens again.

Let me quickly, Mr. Horowitz—and I will be stopping questioning since I want to get to a number of questions—your detailed IG report made reference, I believe, to the fact that there may have been few, but our review of the handling of these allegations of harassment and sexual misconduct reveal some significant systemic issues with the components processes that we believe require prompt corrective action.

So let me pointedly say to you, why is there not a process to fire these bad actors?

Mr. HOROWITZ. Congresswoman, there is a process, and the disciplinary process that goes forward under Title 5 would require a charging decision, and one of the concerns we highlighted, as you noted, was the charges being filed. The charges being filed were not the charges that the table that the DEA provides for these kind of offenses. Had certain charges been brought, a minimum 14-day penalty would have been required, up to possible removal. In the sexual harassment case that we cited in our report, if sexual harassment had been charged and found, removal would have been the only penalty.

So one of our concerns was, like in many decisions you make with discretion, what decisions were being made at DEA about what to charge, and the most serious penalties, the most appropriate charges it didn't seem to us were being filed.

Ms. JACKSON LEE. Let me move to Mr. Roth. Thank you.

Mr. Roth, you mentioned in your statement, you discuss problems with the corruption of border agents and CBP. Please tell us more about these issues, whether the agencies involved are appropriately addressing the problems. I really need a succinct, quick answer.

Mr. ROTH. Certainly. When we talk about border corruption, we are talking about criminal activity, largely. We work closely with the CBP internal affairs offices and the U.S. Attorney's Office——

Ms. JACKSON LEE. So the point is?

Mr. ROTH. They are addressing it, usually through criminal means.

Ms. JACKSON LEE. Mr. Whaley, with the DEA, let me say that I was in Colombia during this horrific incident, and I think we should read into the record that the report states that DEA agents had sex parties with prostitutes hired by local drug cartels overseas for several years. One of those happened to be in Colombia. That triggered the investigation in the Secret Service.

So it is baffling to me—it is alleged that three supervisory DEA agents were provided with money, expensive gifts, and weapons from drug cartel members. It baffles that we do not have an expedited process, and I, for one, am a strong supporter of the rights of workers. But the question is, if you already had a record of complete ignoring of the rights of individuals, tell me why some immediate changes were not made.

Mr. WHALEY. The investigation in Bogota happened in 2010, prior to the Cartagena in 2012, and both of them were decided at approximately the same time.

Mr. SENSENBRENNER. The time of the gentlewoman has expired.

The gentleman from Virginia, the Chair of the full Committee, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

I have said many times how much respect I have for Federal law enforcement officers who combat the drug cartels and the scourge of drugs in this country, who track down terrorists and prevent terrorist attacks, who put their lives on the line to protect the President of the United States and others, and the people around him. But that is not why we are here today. This is very concerning to me.

Mr. Whaley's testimony says that the DEA generally has an excellent working relationship with the Office of the Inspector General, particularly when it comes to investigative matters. So I want to ask you, Mr. Horowitz, do you agree with that statement, and are you confident that the DEA is committed to reform in this area?

Mr. HOROWITZ. As we noted in our report, we had serious concerns in this review as to how we were given materials. On the investigative side, we have had a strong relationship. We have had difficulties up until recently with regard to audits and reviews like this one. That has improved recently, and I will say that the problems currently are primarily with the FBI.

Mr. GOODLATTE. So you were not getting cooperation prior to this, but with the DEA you are getting more cooperation now with regard to the data and information and the ability to go in and examine and conduct an audit?

Mr. HOROWITZ. That is correct. In fact, Section 218 I think has had an impact in a positive way with regard to the compliance by DEA.

Mr. GOODLATTE. Now, with regard to the FBI, your testimony and your report discusses the failures of the DEA and the FBI to promptly provide all the information you requested despite the requirements in Section 218 of the Fiscal Year 2015 Appropriations Act, where we specifically address this. Is there a legislative solution to this problem beyond what we have already done?

Mr. HOROWITZ. I have to say, I think the law is clear that we should be getting the materials. I think the appropriators, frankly, will have to look and Congress will have to consider what it means for an organization to not follow a crystal clear provision that Congress has put in place.

Mr. GOODLATTE. In other words, we could withhold some funds from an agency for failure to comply.

Mr. HOROWITZ. I think it is up to the Congress to decide how to treat such a——

Mr. GOODLATTE. You know, I hate to do that with the FBI. They have a very important and very serious role. But it is also important that they respect the Office of the Inspector General. I have raised this with the Director of the FBI. Has there been no improvement there?

Mr. HOROWITZ. There has been no change at all since December when Congress passed that provision.

Mr. GOODLATTE. Your testimony, Mr. Roth, describes in detail the allegations of Secret Service misconduct in Cartagena, Colombia, and the new rules it has instituted regarding personal conduct. Are you confident that the Secret Service appears to be taking this matter seriously? Because it seems to have gone on for several years without them taking it seriously when we have seen three or four instances just since the beginning of this year.

Mr. ROTH. There is no question that the Secret Service has taken steps to try to combat this problem. One of the issues that we have is we believe that there is a feeling among law enforcement officers, Secret Service officers, that they are not able to report misconduct up the chain because they will be either retaliated against or those complaints will be ignored. We think that is a serious problem within the Secret Service.

We do applaud the structural changes, for example in Mr. Hughes' group, that have been instituted as a result of our December 2013 inspection.

Mr. GOODLATTE. Is there anything the agency is not doing that you feel it should?

Mr. ROTH. I think it is a difficult problem. I think the message has to be said loud and clear as to what is acceptable conduct, and there has to be the ability for agents to be able to report misconduct in a way that allows them to do so without fear of retaliation.

Mr. GOODLATTE. Mr. Whaley, on Monday evening the Justice Department sent a letter to this Committee identifying a couple of significant failures by OPR in connection with the investigation, including a failure to fully investigate the misconduct and a failure to properly refer the matter to the Office of Security Programs. Why were those failures allowed to happen?

Mr. WHALEY. I concur that the investigations cited in the OIG report were not done as thoroughly as they should have been. I can assure you that going forward I will personally ensure that the investigations are done as thoroughly as I can possibly control.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. Thank you.

The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

I would like to ask this question of Mr. Horowitz, Mr. Roth and Mr. Whaley.

Recently it has come to light that in 2013 the DEA was caught impersonating an individual on Facebook, including using provocative photos of her and pictures of her children without her permission or knowledge. In a January 2015 article in Newsweek magazine, it stated that the Justice Department recently reached a set-

tlement with the woman impersonated by the DEA to the tune of $134,000 of taxpayer money.

Additionally, there is a presentation that was put together by the DHS Inspector General's Office explaining how to use fake Facebook pages in an attempt to infiltrate drug rings. At the same time, the FBI is shopping for location-based social media monitoring.

Should law enforcement be able to utilize social media to monitor or impersonate Americans without a court order or informed consent of the Americans being impersonated, as other types of monitoring require?

Mr. HOROWITZ. Congressman, you raise some very significant issues and something we have had concerns about and have been discussing internally, and we have done some reviews in these areas and are considering, frankly, in light of some of the reports and news you cited, whether we need to look in other areas as well.

Mr. CHABOT. Mr. Roth?

Mr. ROTH. It is certainly a matter of concern any time that you have this kind of conduct that exposes the United States taxpayer to this kind of potential fiscal liability. We ought to be looking at that, and certainly that is something that we are considering as well.

Mr. CHABOT. Mr. Whaley?

Mr. WHALEY. I know that the instant case you discussed was handled civilly through the court system. It wasn't handled by OPR, but I certainly can see the privacy protection concerns being discussed by you, sir.

Mr. CHABOT. All right, very good. Well, we appreciate your attention to this matter to the degree possible. Let me move on to another question.

Mr. Horowitz, I will ask you about this. Your testimony touches on two specific OIG reports regarding misconduct by employees with the DOJ, specifically referring to those actions by DEA employees. I was interested in finding out about whether or not there has been any review of the DEA's use of the license plates LPR technology in unsavory or nefarious ways. During a recent staff briefing given by DEA employees, it was indicated that there have been no identified instances of misconduct by those law enforcement officers using the database of license plates.

Has there ever been an objective outside audit or review on this matter? And with all the other issues facing law enforcement branches of the DOJ, has this been an issue discussed internally, or do you take them on their word that all the users of the database system are using it specifically for law enforcement purposes and not for other purposes?

Mr. HOROWITZ. We have not conducted a review of that. We have noticed, again, the stories and the issues you have identified, and again it is something we have discussed. I would be happy to come and speak further with you and your staff about it as we consider those issues as well.

Mr. CHABOT. All right. I would appreciate that, and I will have my staff follow up with you on that particular matter.

I will yield back at this time, Mr. Chairman.

Mr. SENSENBRENNER. Thank you.

The gentleman from Texas, Mr. Poe.

Mr. POE. Thank you, Mr. Chairman.

Thank you all for being here.

I am embarrassed about this whole situation. It is embarrassing. It is embarrassing to the country.

I am a former criminal court judge. I know a lot of peace officers. And like has been said, generally speaking, peace officers do the work nobody else would do. I respect them a great deal. And this conduct that has been discussed here today is not so much a reflection on the rest of us, but it hurts good peace officers throughout the country, those that work at the DEA, Secret Service, and state agencies, because too many want to classify all of them based upon the conduct of a few here.

But the ones, from what I hear, it seems like some believe in this system that the rule is for thee but not for me, and they are not held accountable for what they do as other people in the country would be held accountable for.

So, Mr. Whaley, just based upon looking at you, you seem to be a little embarrassed about this whole situation. Is that a fair statement?

Mr. WHALEY. Yes, sir. I hold DEA agents in the highest regard, and this is very embarrassing to me.

Mr. POE. I mean, it is tough work. They are all over the world. They are working undercover. Nobody knows what they are doing for the good of this country, and here we have a few that have hurt the reputation really of the whole agency.

I have questions for both you and Mr. Hughes. I will ask you first. Mr. Hughes, I want to ask you the same questions.

Let's use 2013, or 2014. Maybe you got those. How many complaints have been filed against DEA agents in 2014?

Mr. WHALEY. In 2014, it is approximately 860 allegations of misconduct.

Mr. POE. That is fine, allegations. Of those allegations, how many did you determine, your agency determine were bona fide allegations?

Mr. WHALEY. I don't have an exact number here with me today, but——

Mr. POE. Well, why not?

Mr. WHALEY. It is going to be approximately 160-some-odd.

Mr. POE. One hundred and sixty.

Mr. WHALEY. Somewhere in that range, yes.

Mr. POE. Okay, 160. How many of those in 160 were disciplined by being fired?

Mr. WHALEY. I could take that question back and have that researched for you, sir.

Mr. POE. Any?

Mr. WHALEY. I do know there have been some removals.

Mr. POE. Five?

Mr. WHALEY. I don't know the exact number, sir.

Mr. POE. Would you be surprised—I mean, you don't know what number it is.

Mr. WHALEY. No, sir, I don't.

Mr. POE. Okay. How many of them went to jail, were prosecuted and went to jail?

Mr. WHALEY. There have been a number of personnel incarcerated.

Mr. POE. How many?

Mr. WHALEY. I don't know the exact number, sir.

Mr. POE. Mr. Roth, do you know?

Mr. ROTH. I do not.

Mr. POE. Mr. Horowitz?

Mr. HOROWITZ. I can get that quickly, but I don't know the answer.

Mr. POE. Okay. I want the answer.

Mr. SENSENBRENNER. Without objection, the responses will be put in the record at this point.

Mr. POE. Mr. Hughes, the same questions. In 2014, how many allegations, complaints, by any source, were made against a Secret Service agent?

Mr. HUGHES. Congressman, we have approximately 100 to 120 cases that we provided formal discipline on.

Mr. POE. All right. Would that include all the complaints, even the unfounded ones? That is what I am asking you, all the complaints made against Secret Service agents.

Mr. HUGHES. I don't have a solid number for you on that, sir.

Mr. POE. So you don't know how many complaints were made by any source.

Mr. HUGHES. A majority of the cases that we provided formal discipline on were substantiated and were the allegations that came forward. The way the Office of Integrity works, our initial stage is an intake stage which evaluates the circumstances surrounding an allegation.

Mr. POE. But you can find out the number of allegations.

Mr. HUGHES. Yes, sir. I can get that for you.

Mr. POE. Somewhere along the system, those were removed, and you had how many bona fide accusations?

Mr. HUGHES. That would be approximately 100.

Mr. POE. How many of those 100 were fired?

Mr. HUGHES. Two.

Mr. POE. How many went to jail for criminal violations?

Mr. HUGHES. None.

Mr. POE. Nobody went to jail.

Mr. HUGHES. No, sir.

Mr. POE. Were any of those—well, how many people were prosecuted?

Mr. HUGHES. None. To the best of my knowledge, there were none, sir.

Mr. POE. So, what were the allegations? Can you give us a list of the allegations that were found to be bona fide by the Secret Service of that 100-plus?

Mr. HUGHES. I would be able to get that list for you. Yes, sir.

Mr. POE. And nobody went to jail.

Mr. HUGHES. No. Out of all the allegations and discipline that was brought forward, there were no—very limited criminal activities that were followed up on within the judicial system.

Mr. POE. I ask unanimous consent, Mr. Chairman, to submit a list of questions for each of the witnesses and their answers be given back to the Chair.

Mr. SENSENBRENNER. Without objection, the witnesses are directed to respond promptly so this can be printed in the Committee record.

Mr. POE. I yield back. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman.

Thank you, gentlemen, for being here, for your service.

I am concerned about these actions, mostly because of what it does with the trust that the general public has with law enforcement, and I assume that you have the same concern. It seems, at a time when we have this 24-hour news and we have all these issues that are happening in America, that continuing to talk about these issues is bringing down the trust that the American people have in your agencies, and I don't want that. I want the opposite. I want people to really feel like they are being empowered and being protected by your agencies.

Mr. Horowitz, I have a few questions for you. In your written testimony you discuss the lack of clarity regarding off-duty conduct for agency personnel and relate that these conduct requirements have not been updated since 1996. I understand that clarity for off-duty conduct is vital. However, don't you find that a little bit troubling, that these agencies would require more training and more clarity just to determine that hiring prostitutes is not the right thing when you are protecting the President of the United States?

Mr. HOROWITZ. Unfortunately, I think it is pretty clear from what we have reported here that there does need to be training and a greater understanding of what is allowed and what off-duty is not allowed.

Mr. LABRADOR. But what is it about the culture that would tell you that that is okay without clarity? I guess that is where I am having a hard time. To me, that is pretty clear. I don't need any additional training to let me know that I shouldn't be doing that.

Mr. HOROWITZ. I completely agree with you, Congressman. But I think what is evident here about the culture, certainly that existed at the time of these events, was how they ultimately came to be reported, which we describe in our report. So we have three incidents in there that we describe related to the prostitution issues. One is in the 2001-2004 time period. OPR learns of that not from a DEA employee supervisor reporting but when they arrest Colombian national police for corruption. That is how it gets reported.

The second one is from 2005 to 2008. That gets reported in June 2010 in an anonymous letter.

The third one gets reported by the State Department, not by DEA, and I think that is indicative of the culture and the problem and a reform that has to happen. Those reports need to go not 5 years later or 10 years later from somebody else but immediately.

Mr. LABRADOR. So, can you describe the type of training, and quickly, the type of training that you feel will effectively prevent these instances of inappropriate conduct?

Mr. HOROWITZ. Well, first of all, there has to be clarity on what is allowed and what is clearly not allowed. That was missing. Whether it should have been obvious or not, it wasn't to certain folks. That has to happen. There has to be real and rigorous training. The State Department, as we indicate in our report, the State

Department has rigorous training, the Defense Department has rigorous training, and the FBI has put in place some comprehensive training. There is no reason that the other law enforcement components shouldn't be doing the same thing.

Mr. LABRADOR. Okay. So if the offenders felt that this behavior was okay despite a set of clear expectations, why weren't they reported every time? What is missing from the reporting requirements that we need to change?

Mr. HOROWITZ. I think there are a couple of things that should happen. First and foremost, there needs to be a clear, unequivocal understanding of the responsibilities of every supervisor that they need to report this kind of misconduct to headquarters, to OPR immediately.

Number two, there has to be consequences for not doing that. Much of the discussion is about the actions of the actors here. But the failures of the supervisors are equally serious. They didn't have to engage in the prostitution, but they knew what was going on and didn't take action, and that allowed this to continue.

Mr. LABRADOR. So if the issue is that the expectations were not clear, and you say that the expectations have not been updated since 1996, why hasn't that been done since 1996? Why haven't we updated the expectations on a regular basis?

Mr. HOROWITZ. It clearly should have been done. We issued a report in 1996 after the good old boy roundup allegations that occurred back then about much similar issues and allegations, but in the United States. Twenty years later, 19 years later, nothing has changed. It should have happened. I think these kind of hearings and discussions will cause it to happen now.

Mr. LABRADOR. Do you think there have been more instances of inappropriate conduct that were simply not reported because the expectations were not clear?

Mr. HOROWITZ. That is a great question, Congressman, because as we indicate here, we found a relatively low number of instances, but then you have to step back and ask what don't we know, right? If in the three instances I described it took someone else to report what was going on, I don't think any of us can say with any certainty we know what the scope of the issues were because folks at DEA were not reporting these events. The corrupt Colombian police officers were, the State Department did, and an anonymous letter did. And that has got to change.

Mr. SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Louisiana, Mr. Richmond.

Mr. RICHMOND. Thank you, Mr. Chairman.

Mr. Horowitz, are you familiar with the incident in the U.S. Attorney's Office in the Eastern District of Louisiana where top Assistant U.S. Attorneys were blogging and commenting on cases online?

Mr. HOROWITZ. I am.

Mr. RICHMOND. Have you read the OPR report?

Mr. HOROWITZ. I have read a summary of the OPR report. I actually have not read the full report.

Mr. RICHMOND. What is troubling to me—first of all, the OPR report I think was done in 2013, and it was just released to the public 2 weeks ago. But what the report seems to outline, first of all,

I think the conduct of the Assistant U.S. Attorneys borders on criminal violations, and I would ask that the office look into those, because they have put people in jail for less than what they did. If you are talking about New Orleans and the Eastern District of Louisiana, there is a very severe, I would say, distrust of the U.S. Attorney's Office and our Federal law enforcement there, and I don't think that this breeds any more confidence in that, and the U.S. Attorney's Office has done some very good things.

But this scandal appears to be something that, from the public perception and my perception, something that is being swept under the rug and not investigated to its end conclusion. I know that the Inspector General's Office did not do it, and I would like the Inspector General's Office to get involved because I am sure, as I sit here today, that there were FBI agents that were also involved in this, and the OPR report—I am not sure if they even had the authority to wage an investigation into whether the Federal law enforcement partners of the U.S. Attorney's Office was also engaged in that activity.

But the culture in that U.S. Attorney's Office was that of a rogue frat house, with the authority to charge people where the charging document says "United States of America versus you." And when people get charged, you know and I know that it up-ends their life and their life goes on a different journey.

I am not sitting here defending anyone who has been indicted or charged for breaking the law, but I do want a U.S. Attorney's Office that is trustworthy, and I want to know that my FBI agents in that office, in my district, are playing above board. As I sit here today, I can't tell you that I have that trust about all of them.

What is it that your office can do in terms of a follow-up investigation and looking into the actions of the law enforcement as it relates to that case, and just a general interaction with my U.S. Attorney's Office?

Mr. HOROWITZ. Congressman, on that matter, we had some involvement later on in the process, and I am happy to talk further with you. I have to go back and refresh myself and also understand what I am able to say and might need to say in private to you about the work we did and what we have learned or not learned. But one of the concerns we had, and I know we talked about this a year or two ago when this occurred, was we only came to know about this nearer to the end of the process than to the beginning because the Department referred the matter to the Office of Professional Responsibility, not to the OIG.

Primarily there is the issue out there about our jurisdiction, and the Inspector General limits our ability to look at certain matters. In this area, frankly, we thought we could have done that work, and ending that limitation on our jurisdiction needs to occur so that if we are going to be involved in something, we are involved at the earliest parts of it when the information is fresh and people, for example, are still working in that office who are available to us, because we don't have the ability to question people who have left the office as we would when they were still in the office.

So I would be interested in talking with you further about that and how we can move forward and speak to you about those issues.

Mr. RICHMOND. And I would be interested in knowing the specific language of the limitations, and a cite would be helpful because I would be interested in lifting some limitations. I think the OPR report was carefully written, to say the least, to still try to put the office in the best light and protect individuals. Even the version that was released was redacted significantly. I have heard many people express concern.

But what that did is we had convictions overturned because of that report, and we had an entire investigation that was dismissed because of it. So, I would love to talk to you.

Mr. Chairman, thank you for the time, and I yield back.

Mr. SENSENBRENNER. The gentleman's time has expired.

The Chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 2 additional minutes to get an answer to a question she was propounding to Mr. Whaley.

Do you remember what the question was, sir?

Ms. JACKSON LEE. I will restate it.

Mr. SENSENBRENNER. Okay.

Ms. JACKSON LEE. Let me restate it.

Mr. Whaley, we have learned in recent days that the sex parties and the solicitation of prostitutes by DEA agents in Colombia went back as far as 2001. So I was pressing the point of when your office learned of the behavior, when did you become aware of the solicitation, and the question is what you did about criminal behavior that is obviously separate from other work failures; and why, in knowing this, there was not an expedited process for those who were on the brink of criminal behavior? So the process that you offered I think has to separate itself when you are dealing with actors who were engaged or DEA agents who were engaged in what could be considered criminal behavior.

Mr. WHALEY. Just like you, I am concerned about the behavior that was done down there. Like you said, the behavior happened, began in around 2001. It was reported to OPR in 2010 after the arrest of the corrupt CMP officers.

Ms. JACKSON LEE. You didn't know before 2010 about the behavior in 2001 that was going on for 9 years?

Mr. WHALEY. That is correct.

Ms. JACKSON LEE. So, if I may, Mr. Whaley, have you looked back to cure that very severe problem, which is 9 years you did not know? And as you know, as I indicated, I was in Colombia with the President when the incidents occurred, and I can assure you it was an international incident because you were dealing with young women who were prostitutes. But the question is, then, we are talking about a culture that no one, supervisor or otherwise, never got to headquarters. Is that what you are saying?

Mr. WHALEY. I don't believe there is a culture problem in DEA. None of the agents I have ever worked with, anywhere I have ever worked, have engaged in similar behavior. But there were different sets of incidents, one that ran from 2001 to approximately 2004, and then 2009-2010 to 2012.

Mr. SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE. I will submit questions for the record, Mr. Chairman.

Mr. SENSENBRENNER. Without objection, all Members may submit questions to the witnesses within the next 5 days.

If you receive any of these questions, it would be appreciated that you promptly respond so that the answers can be placed in the record.

This concludes the business that we have before the Subcommittee today, and without objection, the Subcommittee stands adjourned.

[Whereupon, at 3:10 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Response to Questions for the Record from the Honorable Michael E. Horowitz, Inspector General, United States Department of Justice

Question for the Record from Congresswoman Sheila Jackson Lee:

With respect to federal law enforcement agents under your jurisdiction, please describe the procedures for investigating and imposing punishment for allegations of serious misconduct that involve substantiated suspicion of criminal activity. Are such procedures different than those involving more routine matters of misconduct? Do you believe current law and regulations adequately allow for swift removal from federal employment of agents in such circumstances? Would you suggest changes to allow for expedited removal from service in these circumstances, with appropriate procedures for swift consideration of appeals and reinstatement upon successful appeals?

Response: The Office of the Inspector General (OIG) has authority to investigate allegations of both criminal wrongdoing and non-criminal administrative misconduct by employees within the Department of Justice (Department), including its law enforcement agents. In a criminal investigation, the OIG provides evidence of criminal misconduct to a U.S. Attorney's Office so that prosecutors can determine whether to pursue criminal charges. When the OIG completes a non-criminal administrative misconduct investigation, this Office forwards its report of investigation with our findings to the Department component where the employee works – for example, the Federal Bureau of Investigation, the Drug Enforcement Administration, the U.S. Marshals Service, or the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The OIG, however, is not involved in either the Department's decision whether to impose discipline or punishment on a Department employee where there has been a finding of misconduct, or the nature of the discipline or punishment to impose; this responsibility lies entirely with the Department.

Generally, the OIG investigates all criminal allegations against Department law enforcement employees. However, given the large number of administrative misconduct complaints that we receive and the OIG's limited resources, the OIG cannot investigate all of the non-criminal misconduct allegations it reviews. Accordingly, the Department's law enforcement components maintain their own "internal affairs" offices to handle those non-criminal employee misconduct matters which the OIG is unable to investigate, and the OIG forwards those cases to the components' internal affairs offices for their review, investigation, and disposition. In general, the OIG investigates non-criminal misconduct allegations that involve high-level DOJ employees, concern matters of significant public interest, or would present a conflict of interest for the component itself to investigate. By contrast, the OIG will generally refer to components for their handling allegations of administrative misconduct by lower-level employees that involve less significant violations of Department rules, regulations, or policy.

At present, Federal law and regulations allow for removal of law enforcement agents where there are findings of misconduct that involve a removal offense. However, we have found that the disciplinary process, which as noted above the

OIG is not a participant in, generally does not move swiftly. The OIG would support actions that made the process more timely. However, given the OIG does not participate in the discipline process, the Department is in a better position to provide information regarding the swiftness of disciplinary actions to remove a law enforcement agent for misconduct and how the process could be made more timely by, for example, speeding up the appeal process.

Response to Questions for the Record from the Honorable John Roth, Inspector General, United States Department of Homeland Security

Questions for Mr. Roth
Inspector General
U.S. Department of Homeland Security
Office of the Inspector General

Questions from Representative Sheila Jackson Lee (TX-18)
Subcommittee on Government Operations
Committee on the Judiciary
Hearing on:
"Analyzing Misconduct in Federal Law Enforcement"

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1. With respect to federal law enforcement agents under your jurisdiction, please describe the procedures for investigating or imposing punishment for allegations of serious misconduct that involve substantiated suspicion of criminal activity.

The Office of Inspector General (OIG) has jurisdiction to investigate allegations of serious misconduct relating to law enforcement agents within DHS, but, with the exception of its own agents, does not have authority to impose discipline on those agents.

While the OIG does not investigate every instance of alleged misconduct within DHS, we handle investigations where the independence of the Inspector General will bring unique value by assuring a full and neutral review of the facts, as well as investigations in a number of key categories. For example, the OIG handles investigations of all allegations of: criminal conduct by a DHS employee; misconduct by employees at the GS-15 or GM-15 level or higher; misconduct by employees of components' internal affairs, audit, investigations, or professional responsibility offices; serious, noncriminal misconduct by a law enforcement officer; discharge of a firearm resulting in death or injury; allegations of fraud related to receipt of DHS funds or DHS programs; and, allegations of visa fraud by DHS employees. Additionally, the OIG may step in to investigate allegations that reflect management problems, systemic violations, or civil rights abuses, among other issues.

In cases where our investigation substantiates potential criminal activity by a DHS employee, we refer the matter to the appropriate U.S. Attorney's Office or Department of Justice office for consideration for prosecution. Our agents continue to investigate those matters in coordination with federal prosecutors during all stages through prosecution. For example, we investigated a Transportation Security Officer (TSO) who conspired with members of the public in a scheme to smuggle Brazilian nationals through an international airport. For his role in the crime, the TSO was sentenced to 10 months' incarceration, followed by 36 months of supervised release. In another case, a supervisory TSO was convicted for assisting a drug trafficking organization responsible for smuggling large quantities of narcotics through an airport. With the supervisory TSO's assistance, the organization bypassed security with the narcotics and passed them to couriers on the secure side of the airport for transport to the United States. The TSO was sentenced to 87 months of imprisonment and 2 years supervised release.

2. Are such procedures different from those involving more routine matters of misconduct?

Yes. Where potential criminal conduct is not involved, the OIG may refer the matter back to a component's internal affairs office for full investigation if it is determined that no particular circumstance

warrants OIG involvement. Additionally, in instances where the OIG has conducted the investigation, the OIG will provide the departmental component with its investigative findings for purposes of allowing the component to undertake the appropriate discipline. The OIG does not have authority to impose discipline on DHS employees other than its own.

3. Do you believe that current law and regulations adequately allow for swift removal from federal employment of agents in such circumstances?

As a general matter, in accordance with 5 U.S.C. § 7513(b)(1) and the implementing regulations at 5 C.F.R. § 752.404, if there is reasonable cause to believe that a crime has been committed for which a term of imprisonment may be imposed, an employee may be suspended indefinitely without pay. If an employee ultimately is convicted of a serious crime, that employee may be removed from federal service. It is appropriate to balance these laws and regulations against critical due process safeguards to ensure fairness and consistency to the federal workforce.

The question of whether existing laws governing removal of federal employees for criminal misconduct place unnecessary roadblocks to the removal process is a question that this office will need to further explore to be able to answer. What is clear, however, is that agencies must do more to ensure their investigations of criminal and other misconduct move swiftly and expeditiously and that remedial action is not unnecessarily delayed. It should be noted, however, that all agencies face delays in the removal process that are unavoidable in some instances. For example, where criminal investigations are concerned, once the matter has been referred to a prosecuting office, the required secrecy of grand jury proceedings may limit an agency's ability to move forward with a removal.

4. Would you suggest changes to allow for expedited removal from service in these circumstances, with appropriate procedures for swift consideration of appeals and reinstatement upon successful appeals?

We do not currently have sufficient information regarding the applicability and use of the removal laws and procedures within DHS to opine on whether changes would be beneficial. An expedited process for indefinite suspension without pay is currently available under existing regulations in instances where there is reasonable cause to believe that a crime has been committed for which a term of imprisonment may be imposed. Further, in instances where an employee involved in a pending criminal investigation is in a non-duty, non-pay status, there may be no benefit to immediately removing that employee, thereby risking the added administrative burden of reinstatement in the event the allegations were not ultimately substantiated.

Response to Questions for the Record from Herman E. "Chuck" Whaley, Deputy Chief Inspector, Office of Professional Responsibility, Drug Enforcement Administration, United States Department of Justice

Question for the Record
Herman E. "Chuck" Whaley
Deputy Chief Inspector, Office of Professional Responsibility
Drug Enforcement Administration
U.S. Department of Justice

Subcommittee on Crime, Terrorism, Homeland Security and Investigations
Committee on the Judiciary
U.S. House of Representatives
"Analyzing Misconduct in Federal Law Enforcement"
April 15, 2015

Question Posed by Representative Sheila Jackson Lee

With respect to federal law enforcement agents under your jurisdiction, please describe the procedures for investigating and imposing punishment for allegations of serious misconduct that involve substantiated suspicion of criminal activity. Are such procedures different than those involving more routine matters of misconduct? Do you believe current law and regulations adequately allow for swift removal from federal employment of agents in such circumstances? Would you suggest changes to allow for expedited removal from service in these circumstances, with appropriate procedures for swift consideration of appeals and reinstatement upon successful appeals?

Response:

The Drug Enforcement Administration's (DEA) process for addressing allegations of serious misconduct is built on and consistent with the provisions of Chapter 75 of Title 5 of the U.S. Code, and the Office of Personnel Management's (OPM) implementing regulations. When an allegation of misconduct is raised, whether it involves potential criminal activity or violations of DEA's Standards of Conduct, it is referred to DEA's Office of Professional Responsibility (OPR). OPR, in turn, reports all such allegations to the Department of Justice (DOJ) Office of the Inspector General (OIG). OIG decides the extent to which it will participate in the investigation. OIG may decide to conduct a unilateral investigation; conduct a joint investigation with OPR; refer the matter back to OPR as a management issue; or refer the matter back to OPR to be investigated as a monitored referral (a copy of the OPR report is provided to OIG). Often, the cases in which OIG decides to investigate unilaterally are those involving potential criminal activity.

OPR assumes the lead investigative role for all non-criminal, administrative matters in which OIG declines to participate. OPR may also assume the lead investigative role for criminal matters, but only for those falling within DEA's area of authority (specifically, violations of Title 21 of the U.S. Code). In cases in which a DEA employee is suspected of criminal activity, OPR

will assign an Inspector to coordinate the investigation with the law enforcement agency with legal authority to investigate the matter.[1]

Upon conclusion of the criminal investigation, OPR submits its entire investigative file to DEA's Board of Professional Conduct (HRB). The HRB Chairman then assigns one of five HRB Members to review the matter for recommendation to the HRB Chairman as to disposition of the matter (e.g., clearance, caution, reprimand, suspension without pay, demotion, or removal from the federal service). The assigned HRB Member reviews the file, makes a recommendation to the HRB Chairman as to what action should be taken, and if applicable, researches penalties given in comparable cases.

Based upon this recommendation and the HRB Chairman's review of the OPR file, the Chairman issues either a proposal letter to the employee or prepares a memorandum recommending a clearance or caution.[2] If discipline is proposed against the employee, the proposal letter sets forth the proposed disciplinary charge(s), the basis for the charge(s), and a resulting proposed penalty. The proposal letter typically also provides the employee with 30 days' advance written notice of the proposed action. However, if the agency has reason to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and the agency is proposing indefinite suspension or removal, a shortened notice period of seven days is usually provided to the employee. The agency's ability to provide the shortened notice period is commonly referred to as invoking the "crime provision." The proposal letter also sets forth the employee's right to have a representative review the material upon which the proposal is based and provide an oral and written response to the Deciding Official.[3] The proposal letter and a copy of the OPR file are also transmitted to the head of the office where the employee is assigned. Upon request by the employee, the office head makes the OPR file available to the employee and the employee's representative for review.

The OPR file and the proposed disciplinary letter or memorandum recommending clearance or caution is also transmitted to the Office of the Deciding Officials, within DEA's Human Resources Division. The matter is assigned to one of two Deciding Officials for decision. The assigned Deciding Official reviews the proposal letter and the OPR file, and considers any response provided by the employee.

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[1] If the law enforcement agency with jurisdiction over the alleged criminal activity elects not to investigate the matter, the assigned OPR Inspector will contact the appropriate United States Attorney's Office and/or District Attorney's Office and relay the allegation to obtain a decision regarding the potential for charging the subject criminally.

[2] A "clearance" is a decision finding no wrongdoing. A "caution" refers to the issuance of a letter of caution, which is issued to an employee to inform the employee that he or she has engaged in conduct that has raised concerns, but that no disciplinary action is being taken against the employee at that time. The issuance of a caution is an action signifying that, upon investigation and review of the facts, a determination has been made that the conduct did not rise to a level warranting disciplinary action.

[3] Deciding Officials are career GS-15 Special Agents whose function is to review and decide proposed disciplinary matters. The employee is permitted not less than 10 calendar days to respond orally and in writing to the Deciding Official. If the proposed discipline is for a suspension of 15 days or more, a demotion, or a removal, the agency will not decide the action less than 30 days from the date the proposed action was served upon the employee. Upon request by the employee, the Deciding Official may agree to extend the time period for response.

The Deciding Official may sustain the proposal in whole or in part, not sustain the proposal, mitigate the penalty, or withdraw the proposal and re-propose the action with additional charges and/or an enhanced penalty. If the Deciding Official re-proposes the action, the matter is assigned to the other Deciding Official for decision, and the employee is given notice and an opportunity to respond to the new Deciding Official, as set forth above.

The Deciding Official renders a decision in writing. That decision is served on the employee, and provides the employee with notice of any appeal or grievance rights. If the decision is a suspension of 15 days or more, a demotion, or a removal,[4] the employee (if in the competitive service and not serving a probationary period) has the right to file an appeal for review of the action by the Merit Systems Protection Board (MSPB). If the recommended action is a clearance or caution and the Deciding Official concurs, the memorandum forwarded by the HRB Chairman to the Deciding Official is forwarded to the employee's office head.

One common occurrence in misconduct cases involving potential criminal activity is that, while the above-described discipline process is ongoing, an employee may be subjected to an unpaid indefinite suspension from work. In order to indefinitely suspend an employee suspected of criminal activity, the agency must have reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment could be imposed. In cases of felony criminal indictment or an order for trial in felony offenses, DEA has a mechanism in place to expeditiously and indefinitely suspend the employee without pay. However, even in instances in which the requisite evidence of a criminal offense has not yet been established, DEA will impose a prompt, indefinite unpaid suspension when the DEA Office of Security Programs (IS) deems it appropriate to suspend the employee's security clearance based on the conduct underlying any criminal charges.

OPR monitors judicial proceedings involving employees and immediately forwards the file to HRB when the reasonable cause requirement (e.g. indictment) has been satisfied. OPR presents an abbreviated case file containing a copy of the indictment, along with any available police reports, to HRB and to IS concurrently for their independent consideration.[5]

Based solely on the felony indictment or the Judicial Order for trial, the HRB Chairman can propose the indefinite unpaid suspension of the employee. As is the process with all agency disciplinary actions proposing suspensions over 14 days, the HRB then presents its proposal for indefinite suspension to the employee, who is entitled to notice and an opportunity to respond. Pursuant to the "crime provision" noted above, the notice is typically seven days. The Deciding Official evaluates the proposal and response, and determines whether to impose the indefinite suspension. The letter imposing the indefinite suspension must articulate ascertainable conditions subsequent, which must occur for the indefinite suspension to come to an end. For example, the suspension could continue until the pending charges against the employee are resolved.

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[4] Demotions and removals are effective upon receipt of the decision letter by the employee. For suspensions, the decision letter will specify when the suspension will be served.

[5] OPR refers all new allegations of misconduct to the Office of Security Programs for consideration.

An employee may also be subjected to an unpaid indefinite suspension from work if their security clearance is suspended due to the employee's felony arrest via criminal complaint or information. As mentioned above, when an active criminal investigation results in a felony arrest of a DEA employee via a criminal complaint or information, OPR also submits the complaint or information to IS, which independently reviews the felony indictment, with the purpose of determining the employee's ability to maintain a security clearance. Based on the felony indictment or criminal complaint, IS may elect to suspend the employee's security clearance, which is then an independent basis upon which the Deputy Assistant Administrator, Human Resources Division, can propose an indefinite suspension of the employee. That proposed indefinite suspension would also go to a Deciding Official for resolution, and the employee must be given 30 days' notice and an opportunity to respond before a decision can issue.

In all cases involving indefinite suspensions, the employee has the right to appeal to the MSPB. While the appeal is in progress, the employee remains suspended, unless the condition subsequent of the suspension has occurred or the MSPB judge orders otherwise. The process for removing agents who have engaged in criminal activity is the same as for removing agents for routine matters of misconduct – a proposal from HRB and a decision from a Deciding Official, after the agent has had an opportunity to be heard orally and in writing, followed by the right to appeal to the MSPB.[6]

To ensure that DEA properly investigates and holds accountable its employees who engage in serious acts of misconduct, former Attorney General Holder, in April 2015, directed the head of the DOJ Office of Professional Responsibility (DOJ OPR) to undertake a comprehensive review of DEA's processes and procedures for investigating allegations of misconduct as well as for determining and effectuating disciplinary action where appropriate. The DOJ OPR will also evaluate DEA's coordination of potential security matters between DEA OPR and the DEA Office of Security Programs. Following this review, DOJ will work with DEA to enhance its policies and procedures to ensure that all allegations are thoroughly investigated and that any substantiated findings of misconduct are properly addressed through the disciplinary process and appropriately reported to the Office of Security Programs.

[6] An independent basis upon which to remove the employee exists if the Office of Security Programs ultimately determines that the employee's security clearance must be revoked, and that determination is sustained. A security clearance is required to work at DEA. Security clearance revocations are appealable to the DOJ Access Review Committee.

Response to Questions for the Record from Mark Hughes, Chief Integrity Officer, United States Secret Service, United States Department of Homeland Security

U.S. Secret Service Responses to the
Post-Hearing Questions for the Record
Submitted to Mark Hughes
from Ranking Member Sheila Jackson Lee

Committee on the Judiciary
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
United States House of Representatives

"ANALYZING MISCONDUCT IN FEDERAL LAW ENFORCEMENT"
April 15, 2015

Question 1: With respect to federal law enforcement agents under your jurisdiction, please describe the procedures for investigating allegations of serious misconduct that involve substantiated suspicion of criminal activity.

Response: The general procedures of the United States Secret Service (Secret Service) for investigating allegations of serious misconduct that involve substantiated suspicion of criminal activity by law enforcement officers are set by the Department of Homeland Security (DHS) Management Directive (MD) 0810.1, the December 2003 Memorandum of Understanding (MOU) between the Secret Service and the DHS Office of the Inspector General (OIG), and the internal operating procedures of the Secret Service's Office of Professional Responsibility (RES). Pursuant to the MD and MOU, all allegations of criminal misconduct against a Secret Service employee must be transmitted to the DHS OIG upon receipt of the allegation, and, with limited exceptions, no investigation may be conducted by the Secret Service RES prior to that referral. After receipt of the notification, the OIG will within one business day advise RES if the OIG will accept the matter for investigation, work with RES to investigate the matter, or is returning the matter to RES for investigation. When a criminal matter is returned to RES for investigation, RES will notify and work with the appropriate federal, state, or local law enforcement and prosecutorial agency to fully pursue the investigation and any prosecution of the offense. For further information regarding MD 0810.1 and the MOU, see Appendix A.

Question 2: With respect to federal law enforcement agents under your jurisdiction, please describe the procedures for imposing punishment for allegations of serious misconduct that involve substantiated suspicion of criminal activity.

Response: The procedures for the imposition of disciplinary action against a Secret Service law enforcement officer when there is substantiated suspicion of criminal activity are set by title 5 of the United States Code, Chapter 75; title 5 of the Code of Federal Regulations, Part 1200; the Secret Service Office of Integrity's Manual, (ITG) -06(01) -07; and the administrative case law developed through the Merit Systems Protection Board (MSPB). Pursuant to these policies, practices, and standards, the Secret Service may propose placing an employee accused of serious criminal activity on indefinite suspension (suspension without pay) when there is sufficient evidence to show reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. When such a proposal is issued it may be effected and the employee's pay suspended within seven days of the issuance of that proposal. Additionally, where there is substantiated suspicion of serious criminal activity, the Secret Service could choose to suspend and/or revoke the employee's Top Secret security clearance.

which would lead to a proposal to remove the employee from employment with the Secret Service due to the failure to maintain that clearance. Alternatively the Agency could take a disciplinary action up to and including removal based on the underlying facts of the matter.

In each of the actions described above, indefinite suspension, removal based on failure to maintain a Top Secret security clearance, or removal or other disciplinary action based on the underlying action, the employee against whom the action is proposed is entitled to certain procedural rights. These rights include at least seven days advance written notice, a written proposal stating the specific reasons for the proposed action, an opportunity to review the documents on which the proposal is based, an opportunity to respond orally and/or in writing to the proposal, and a final written decision from a deciding official. Following the issuance of a final decision on the disciplinary action, an employee has two avenues of recourse. A non-SES employee may request review before the Secret Service's Discipline Review Board (DRB). The DRB has the authority to vacate, mitigate, or uphold the charge and penalty. Alternatively, the employee may appeal to the MSPB. If the employee files an appeal with the MSPB, the employee must first prove that the appeal is timely and the MSPB has jurisdiction to hear the appeal. If the employee meets this initial burden, then the burden shifts to the agency. The agency must prove all facets of the charge against the employee by a preponderance of the evidence, *i.e.*, it is more likely than not that the facts underlying the charge occurred, that they constitute misconduct, that the penalty promoted the efficiency of the Service, and that the penalty was reasonable given the charges. An employee may appeal an unfavorable MSPB initial decision to the full MSPB board and a final order of the MSPB to the United States Court of Appeals for the Federal Circuit, and eventually may request certiorari from the United States Supreme Court.

Separate and apart from the procedures stated above, Title 5 of the United States Code, section 7371, provides for "mandatory removal from employment of law enforcement officers convicted of felonies." Pursuant to this section a law enforcement officer who is convicted of a felony is automatically removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date. Law enforcement officers removed under this section are entitled to written notice of this action within five calendar days after the conviction notice date; an Agency's failure to issue this notice will not, however, stay the removal action. Finally, an employee subject to such an action is entitled to appeal the removal to the MSPB, but only in regard to 1) whether the employee is a law enforcement officer, 2) whether the employee was convicted of a felony, and 3) whether the conviction was overturned on appeal.

Question 3: Are such procedures different than those involving more routine matters of misconduct?

Response: Yes, the procedures for investigating allegations of criminal misconduct are different than those involving more routine matters in that allegations of criminal wrongdoing are first referred to the DHS OIG for investigation. More routine matters may be investigated by the Secret Service RES or by a supervisory management inquiry. In some very routine matters, there may be little to no need for investigation as the underlying actions may be admitted or well documented without investigation. Further, more routine matters will not require the involvement of outside law enforcement or prosecutorial entities, as there will be no possibility of prosecution. Finally, in cases involving allegations of possible criminal misconduct an employee may be given *Garrity* warnings by RES or the OIG and may refuse to answer questions without fear of loss of employment for failure to cooperate in the investigation. The employee would also be entitled to have an attorney present during questioning. In more routine matters, not involving possible criminal misconduct, the employee will be required to speak to investigators and to provide responses to questioning, and the failure or refusal to do so my result in a disciplinary action, up to and including removal.

The procedures for disciplinary actions in more routine matters differ from those used in serious misconduct involving substantiated suspicion of criminal activity in several ways. First, where there is reasonable cause to believe that a crime has been committed for which imprisonment may result, the disciplinary notice period may be shortened from thirty days to seven days. Second, employees who are accused of more routine misconduct and subject to a suspension of less than fifteen days, a letter of reprimand, or letter of counseling have no right to appeal to the MSPB, while those subject to a suspension of fifteen days or above, a demotion, or a removal may appeal to the MSPB. Finally, where a federal law enforcement officer has been convicted of a felony the penalty is set at removal and the employee's notice and appeal rights are significantly limited. Specifically, under the provisions of 5 U.S.C. 7371, the removal is automatically effected on the last day of the first applicable pay period following the conviction notice date; written notice of the removal action should be given within five calendar days after the conviction notice date, but failure to issue the notice will not forestall the removal action; and, the employee may only appeal to the MSPB on the questions of 1) whether the employee is a law enforcement officer, 2) whether the employee was convicted of a felony, and 3) whether the conviction was overturned on appeal.

4. Do you believe current law and regulations adequately allow for swift removal from federal employment of agents in such circumstances? Would you suggest changes to allow for expedited removal from service in these circumstances, with appropriate procedures for swift consideration of appeals and reinstatement upon successful appeals?

Response: We believe that current law allows for a reasonable process and means to remove Special Agents and Uniformed Division Officers from Federal employment in instances where there is preponderant evidence of criminal activity. However, as a result of the Office of Inspector General (OIG) and their investigative process and procedures, the Secret Service can be delayed in taking action to address instances of employee misconduct including criminal misconduct. When the OIG takes an investigation the Secret Service must often wait for the OIG to fully complete their investigation and issue a report before it may take disciplinary action. We believe a change to the current procedures should be made to require the OIG to either allow the Agency to conduct an internal investigation of employee misconduct, so as to allow for swift disciplinary action based on the facts and evidence discovered during that investigation; or, to work directly with the Agency's Office of Integrity so that real time information concerning evidence developed during an OIG investigation is provided to that Office thereby allowing that Office to act on this evidence and take swift disciplinary action against its employees who engage in criminal activity.

APPENDIX A

Management Directive & MOU

Department of Homeland Security
Management Directive System
MD Number: 0810.1
Issue Date: 6/10/2004

THE OFFICE OF INSPECTOR GENERAL

I. Purpose

This directive established Department of Homeland Security (DHS) policy regarding the Office of Inspector General (OIG). Any prior Management Directive and any instruction or agreement of any kind issued by or entered into by any DHS official or Component that is inconsistent in any respect with this directive is hereby superseded to the extent it is inconsistent with this directive.

II. Scope

This directive applies to all DHS organizational elements (OEs), including all employees, contractors, and grantees.

III. Authorities

A. The Inspector General Act of 1978, as amended

B. The Homeland Security Act of 2002, as amended, codified in Title 6, US Code

IV. Definitions

A. ***OE Offices*** – As used in this Management Directive, the term OE offices include all Organizational Elements offices of internal affairs, inspections, audits or Professional Responsibility. This term also includes the DHS Office of Security.

B. ***DHS Organizational Element*** – As used in this directive, the term DHS Organizational Element (OE) shall have the meaning given to the term DHS Organizational Element in DHS MD 0010.1, Management Directives System and DHS Announcements. This includes Elements such as the Bureau of Customs and Border Protection, the United States Coast Guard, the Federal Emergency Management Agency, etc. It also includes entities that report to DHS Organizational Elements, such as National Laboratories.

V. Responsibilities

A. ***The Heads of DHS Organizational Elements*** shall:

1. Promptly advise the OIG of allegations of misconduct in accordance with the procedures described in Appendix A, and when they become aware of any audit, inspection or investigative work being performed or contemplated within their offices by or on behalf of an OIG from outside DHS, the General Accounting Office, or any other law enforcement authority, unless restricted by law;

2. Ensure that, upon request, OIG personnel are provided with adequate and appropriate office space, equipment, computer support services, temporary clerical support and other services to effectively accomplish their mission;

3. Provide prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing;

4. Assure the widest possible dissemination of this directive within their OEs. They may issue further instructions as necessary to implement this policy. Any such further instructions shall not conflict with this MD and shall be provided to the OIG immediately upon issuance;

5. Assist in arranging private interviews by auditors, inspectors, investigators, and other officers authorized by the OIG with staff members and other appropriate persons;

6. Advise the OIG when providing classified or sensitive information to the OIG to ensure proper handling.

B. ***DHS employees*** shall report suspicions of violations of law or regulation to the DHS Office of Inspector General or the appropriate OE offices, and will likewise:

1. Cooperate fully by disclosing complete and accurate information pertaining to matters under investigation or review;

2. Inform the investigating entity of any other areas or activities they believe require special attention;

3. Not conceal information or obstruct audits, inspections, investigations, or other official inquiries;

4. Be subject to criminal prosecution and disciplinary action, up to and including removal, for knowingly and willfully furnishing false or misleading information to investigating officials; and

5. Be subject to disciplinary action for refusing to provide documents or information or to answer questions posed by investigating officials or to provide a signed sworn statement if requested by the OIG, unless questioned as the subject of an investigation that can lead to criminal prosecution.

VI. Policy and Procedures

A. The OIG, while organizationally a Component of the DHS, operates independent of the DHS and all offices within it. The OIG reports to the Secretary. Under circumstances specified by statute, the Secretary, upon written notification to the OIG which then must be transmitted to Congress, can circumscribe the OIG's access to certain types of sensitive information and exercise of audit, investigative, or other authority. The DHS Inspector General is the head of the OIG.

The OIG is authorized, among other things, to:

1. Administer oaths;

2. Initiate, conduct, supervise and coordinate audits, investigations, inspections and other reviews relating to the programs and operations of the DHS;

3. Inform the Secretary, Deputy Secretary, and the Congress fully and currently about any problems and deficiencies relating to the administration of any DHS program or operation and the need for, and progress of, corrective action;

4. Review and comment on existing and proposed legislation and regulations relating to DHS programs, operations, and personnel;

5. Distribute final audit and inspection reports to appropriate authorizing and oversight committees of the Congress, to all headquarters and field officials responsible for taking corrective action on matters covered by the reports and to Secretarial officers, office heads, and other officials who have an official interest in the subject matter of the report;

6. Receive and investigate complaints or information from employees, contractors, and other individuals concerning the possible existence of criminal or other misconduct constituting a violation of law, rules, or regulations, a cause for suspension or debarment, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety, and report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law;

7. Protect the identity of any complainant or anyone who provides information to the OIG, unless the OIG determines that disclosure of the identity during the course of the investigation is unavoidable.

Further, the OIG shall:

8. Follow up on report recommendations to ensure that corrective actions have been completed and are effective;

9. Prepare a semiannual report to the Secretary and the Congress, summarizing OIG audit and investigative activities within DHS. Section 5(a) of the Inspector General Act of 1978, as amended, requires this report.

B. Allegations received by the OIG or OE offices shall be retained or referred in accordance with Appendix A of this MD. The only exception to this requirement is that the OIG and the United States Secret Service will adhere to the terms of the Memorandum of Understanding entered into between those two entities on December 8, 2003, and as may be amended from time to time.

C. ***Standards***. Audits shall be conducted consistent with the standards issued by the Comptroller General of the United States. Inspections and investigations shall be conducted consistent with the quality standards issued by the President's Council on Integrity and Efficiency (PCIE).

D. ***Questions or Concerns***. Any questions or concerns regarding this directive should be addressed to the OIG.

The categories of misconduct identified below shall be referred to the OIG. Such referrals shall be transmitted by the OE offices immediately upon receipt of the allegation, and no investigation shall be conducted by the OE offices prior to referral unless failure to do so would pose an imminent threat to human life, health or safety, or result in the irretrievable loss or destruction of critical evidence or witness testimony. In such extraordinary situations, the OIG will be contacted as soon as practical, and all information and evidence collected by the OE office shall then be provided to the OIG as part of the OE referral to the OIG. The OIG will accept and retain all such allegations for investigation subsumed under this exigent circumstance exception.

- All allegations of criminal misconduct against a DHS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the OE offices;
- All allegations of serious, noncriminal misconduct against a law enforcement officer. "Serious, noncriminal misconduct" is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in loss of law enforcement authority. For purposes of this directive, a "law enforcement officer" is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- All instances regarding discharge of a firearm that results in death or personal injury or otherwise warrants referral to the Civil Rights Criminal Division of the Department of Justice;
- All allegations of fraud by contractors, grantees or other individuals or entities receiving DHS funds or otherwise engaged in the operation of DHS programs or operations;
- All allegations of visa fraud by DHS employees working in the visa issuance process.

In addition, the OIG will investigate allegations against individuals or entities that do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling, serious management problems within the department, or otherwise represent a serious danger to public health and safety.

With regard to categories not specified above, the OE offices will initiate the investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegations. The OIG shall notify the OE offices if the OIG intends to assume control over or become involved in such an investigation, but absent such notification, the OE office shall maintain full responsibility for these investigations.

Any allegations received by the OIG that do not come within the categories specified above, or that the OIG determines not to investigate, will be referred within five business days of receipt of the allegation by the OIG to the appropriate OE office along with any confidentiality protections deemed necessary by the OIG.

The OE offices shall provide monthly reports to the OIG on all open investigations. In addition, upon request, the OE offices shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the OE offices, upon request, with a complete copy of any Report of Investigation relating to its OE, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES SECRET SERVICE
AND THE OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

The United States Secret Service (USSS), an organizational component of the Department of Homeland Security (DHS), operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle C of the Homeland Security Act of 2002, as amended (the Act), and includes those responsibilities described generally in Section 1512 of the Act, as well as in various delegations of authority issued by the Secretary of DHS (the Secretary). The agency's dual statutory missions of protection and criminal investigations are more fully enumerated at Title 18, United States Codes, Section 3056 (Section 3056), and Title 3, United States Code, Section 202 (Section 202), and various other statutes.

The Office of the Inspector General (OIG), an organizational component of DHS, operates within the Department under the authority and responsibilities enumerated in Title VIII, Subtitle B of the Act, as amended, and the Inspector General Act of 1978, as amended, and includes authority and responsibility acquired pursuant to Section 1512 of the Act.

To prevent duplication of effort and ensure the most effective, efficient and appropriate use of resources, the Secret Service and the OIG enter into this Memorandum of Understanding.

The categories of misconduct listed below shall be referred to the OIG. Such referrals shall be transmitted by the USSS Office of Inspection immediately upon the receipt of adequate information or allegations by the USSS Office of Inspection to reasonably conclude that misconduct may have occurred, and no investigation shall be conducted by the USSS Office of Inspection prior to the referral. In cases involving exigent circumstances, if the OIG decides to investigate the allegation but is unable to do so immediately, the USSS Office of Inspection will conduct the investigation until the OIG is able to take it over. In cases not involving exigent circumstances, the OIG will determine within one business day of the referral whether to investigate the allegation itself or to refer the matter back to the USSS Office of Inspection for investigation. If no determination is communicated to the USSS Office of Inspection within one business day of the referral, the USSS Office of Inspection may initiate the investigation. The acceptance of a referral by the OIG reflects a determination that available investigative resources will be able to conclude the referred investigation within a reasonable time. This will afford the agency a reasonable opportunity to act expeditiously, if necessary, regarding the allegations.

- All allegations of criminal misconduct against a USSS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the USSS Office of Inspection;
- All allegations regarding misuse or improper discharge of a firearm (other than accidental discharge during training, qualifying or practice);

- All allegations of fraud by contractors, grantees or other individuals or entities receiving Department funds or otherwise engaged in the operation of Department programs or operations.

In addition, the IG will investigate allegations against individuals or entities who do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling; serious management problems within the Department, or otherwise represent a serious danger to public health and safety.

With regard to categories of misconduct not specified above, the USSS Office of Inspection should initiate investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegation. The OIG shall notify the USSS Office of Inspection if the OIG intends to assume control or become involved in an investigation, but absent such notification, the USSS Office of Inspection shall maintain full responsibility for these investigations.

Pursuant to Section 811(a) of the Act, OIG audits, investigations, and subpoenas which, in the Secretary's judgment, constitute a serious threat to the protection of any person or property afforded protection pursuant to Section 3056 or Section 202, or any provision of the Presidential Protection Assistance Act of 1976, may be prohibited. Accordingly, to assure proper and timely responses to OIG requests for information or records, all OIG plans for audits involving the Secret Service shall be communicated via entrance letter by the OIG either directly to the USSS Office of Inspection or to the Office of the Deputy Director; any OIG investigation shall be communicated orally or via e-mail to the same entities. Any Secret Service Headquarters' concern under section 811(a) regarding the scope or direction of a planned audit or investigation will be raised and resolved expeditiously with OIG officials, or immediately communicated to the Secretary in the absence of resolution.

The USSS Office of Inspection shall provide a monthly report to the OIG on all open investigations. In addition, the USSS Office of Inspection, upon request, shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the USSS Office of Inspection, upon request, with a complete copy of any Report of Investigation relating to the Secret Service, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

This MOU shall be effective upon the signature of both parties and shall remain in effect until revoked by one party upon thirty day's written notice to the other.

W. Ralph Basham
Director of the United States
Secret Service
Dated: 12/5/03

Acting Inspector General
Dated: 12/8/03