

DOJ IG: HANDLING OF SEXUAL HARASSMENT AND MISCONDUCT ALLEGATIONS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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DOJ IG: HANDLING OF SEXUAL HARASSMENT AND MISCONDUCT ALLEGATIONS

Tuesday, April 14, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Jason Chaffetz (chairman of the committee) presiding.

Present: Representatives Chaffetz, Mica, Duncan, Jordan, Walberg, Amash, Gowdy, Farenthold, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Hice, Russell, Carter, Grothman, Palmer, Cummings, Maloney, Norton, Lynch, Connolly, Duckworth, Kelly, Lawrence, Lieu, Plaskett, DeSaulnier, and Lujan Grisham.

Chairman CHAFFETZ. Good morning. The Committee on Oversight and Government Reform will come to order, and without objection, the chair is authorized to declare a recess at any time.

We are here today to talk about some alarming problems at our country's premier law enforcement agencies. The latest report from the Department of Justice inspector general outlines a number of problems with the conduct of both law enforcement officers and the agencies that manage them.

That report outlined a number of key problems. First, law enforcement personnel at home and abroad engaged in reprehensible sexual harassment and misconduct that jeopardized our national security.

Second, the agencies they—where they work mishandled their responses to those incidents by failing to properly report them, leading to insufficient punishment.

And, third, the FBI and the DEA tried to hide these incidents from the inspector general by improperly withholding information and encouraging employees not to cooperate with the inspector general.

Hiding information from the inspector general is simply and totally unacceptable. The Department of Justice inspector general report documents a number of highly concerning findings about Federal law enforcement. One of the most shocking incidents Mr. Horowitz described in his report involved DEA agents in Colombia partying with prostitutes paid for by drug cartels. While the DEA agents were spending time with those prostitutes, local Colombian police were watching the agents' guns and property.

The fact that this happened was bad enough, but none of these agents were really even punished by the DEA. Most of the agents

involved were suspended for a few days and allowed to return to work with their security clearances in full.

Based on the testimony we have read from the DEA Administrator, she says she doesn't have the power to simply fire these people. I don't buy it. The American public doesn't buy it. And for the thousands of men and women who serve honorably—they're patriotic, they work hard, they put their lives on the line—this administration, this DEA Administrator, has got to hold those people accountable and get them out of there.

If this is the kind of behavior that they're going to engage in, it's totally unacceptable. They should not have a security clearance, and they should be fired.

Some of these agencies compromised our national security and then essentially got a vacation. The punishment for engaging in this type of behavior was 2 to 10 days off paid leave—or nonpaid leave. That sounds like a vacation to me. It doesn't sound like punishment. To suggest that these people couldn't be fired or do something more severe is simply unacceptable.

And, again, I want to remind our members. This is a matter of national security. We're talking about peoples' lives. And the DEA, as much as anybody, puts people overseas in very tough and difficult situations. But when we have bad apples who repeatedly do the same type of behavior, compromise our national security, then they need to lose their national security clearances, and they need to be fired.

The IG report found that this is hardly an isolated incident. The report highlights repeated abuses of sexual misconduct, including unreported cases of ATF training instructors sleeping with their students, using government vehicles to facilitate inappropriate sexual relationships, and managers sexually harassing employees and asking them to watch pornography.

The report also makes clear that when law enforcement agents engage in inappropriate and illicit sexual behavior, the agency they work for oftentimes just simply looks the other way. To use the IG's language, these cases of sexual misconduct are treated as, "local management issues." In other words, they're basically swept under the rug.

Adding to the concerns raised in this report is the fact that the DEA and the FBI tried to hide these incidents from their own inspector general. Both the DEA and the FBI went out of their way to impede and delay the inspector general's report. According to the report, the DEA and the FBI delayed responding to requests for information, provided heavily redacted documents, and even told their employees not to cooperate.

For example, the inspector general asked the DEA to run more than 40 search terms to search their data base and identify relevant information. The three terms, three out of the more than 40 that they ran, included "sex," "prosti," and "exposure." Not included were "brothel," "escort," "harass," "rape," "solicit," and the list goes on. Why exclude? Why exclude the search terms that the inspector general is asking for? It's not the DEA's responsibility to weed that out. Your job is to allow the inspector general to get in there and get his fingernails dirty and go figure out the truth. But that's not what happened.

I want to put up a slide here.

When the DEA finally did provide information after significant delay, in some cases, documents were so heavily redacted the IG couldn't even tell what the documents were about. This is the type of documentation that the inspector general was given by you at the DEA. And we want answers as to why that is. The good men and women who work at the Inspector General's Office do tough, difficult work. But they can't do anything if they get that kind of material from the DEA.

And it's not just the DEA. It's the FBI. It's the other agencies as well. It's not acceptable.

We have a lot of questions for our witnesses who are here today to testify on both behalf of the DEA and the FBI. It's incumbent upon the leadership of these law enforcement agencies to weed out employees who put our security at risk, embarrass the country, and break the law. To the good men and women, the overwhelming majority of men and women, who do their job in a patriotic hard-working way, put their lives on the line, God bless you. We need you. We love you. We care for you.

But it's also irresponsible of management to not deal with the bad apples. People are going to make mistakes. OK? But these weren't simple mistakes. This went on and on and on. Multiple reports of sex parties, of loud parties, to the point that the landlord was actually complaining back to our government about how out of control our own Federal employees were serving overseas.

Again, the people who cause these problems I recognize are a small population—a small percentage of the total population who have not been held accountable for their dangerous lapses in judgment.

I would ask unanimous consent. I would like to enter two documents into the record.

First of all is from our Attorney General Eric Holder on April 10 of this year, a Prohibition on the Solicitation of Prostitution. How bad is it? One of his last acts as the Attorney General, Eric Holder has to actually go forward and issue a memorandum explaining to people that you can't do this. Again. It's almost embarrassing that he has to do this. I appreciate that he did it to clarify if there's some misunderstanding out there. But I'd like to enter that into the record.

Chairman CHAFFETZ. I also want to enter into the record a document response—this is to the assistant inspector general for evaluations and inspections of the Office of Inspector General to Nina—I'm going to slaughter her last name—Pelletier, I guess.

Chairman CHAFFETZ. And it's from Michael Dixon, who is the acting deputy chief inspector, Office of Inspection, saying that—I'm going to read this quote here from the very last line: DEA did a second review of the cases the OIG reviewed to determine if the Office of Professional Responsibility had appropriately and thoroughly investigated these allegations. It was found through the review that the investigations were investigated properly through DEA's disciplinary process related misconduct—basically telling the inspector general that, yes, we did everything we could. That it was properly moved—investigated properly through DEA's disciplinary process, and it's a sad day for the DEA.

With that, I will now yield to the gentleman from Maryland, the ranking member, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

And set forth, Mr. Chairman, at the beginning of the inspector general's report is a well-known doctrine for law enforcement officers. It simply says, "Given the nature of their work, Federal law enforcement employees are held to the highest standards of conduct and must be accountable for their actions both on and off duty." Although this tenet should be obvious, it bears repeating here today. And it bears repeating every day. The inspector general's report details conduct that is simply deplorable for anyone, let alone law enforcement officials serving the United States of America.

The report describes allegations that a Colombian police officer, "arranged sex parties," "with prostitutes funded by the local drug cartels for these DEA agents at their government-leased headquarters or quarters."

Although the inspector general's report describes activities between 2005 and 2008, last night our committee obtained new documents showing that some of these allegations were made far earlier, and some date back as early as 2001. In response to the committee's request, the DEA has now produced to the committee 88 internal reports issued by its Office of Professional Responsibility. One of these reports in particular, case number 20120085, goes into great detail about these allegations. However, the agency has warned that releasing the entire report could, "expose complainants, witnesses, and victims." So we must summarize its findings today.

This new internal report details years of allegations beginning in 2001 that portray DEA agents as completely out of control. They appear to have fraternized with cartel members, accepted lavish gifts, and paid for prostitutes with no concern whatsoever for the negative repercussions with security vulnerabilities they created. This new internal report describes not one or two isolated incidents but literally dozens of parties with prostitutes in which DEA agents used government funds and government offices.

Mr. Chairman, my staff prepared a summary of this new internal report, and I ask unanimous consent that it be included in the hearing record.

Chairman CHAFFETZ. Without objection, so ordered.

Mr. CUMMINGS. This new internal report details a truly breathtaking recklessness by DEA agents who are sworn to protect our country. Today I want to know how these egregious misconduct incidents could have continued for so long, for the better part of a decade, without being addressed. The head of this agency, Michele Leonhart, is here with us today. Given her extended tenure at DEA during the same timeframe of these abuses, we will have very direct questions for her. The Administrator was nominated by President Bush in 2003 to serve as Deputy Administrator of DEA. She began serving as Acting Administrator in 2007, and President Bush nominated her to serve as the Administrator in 2008. She was nominated again by President Obama and confirmed by the Senate in 2010.

The inspector general reports, says that "The DEA supervisor has treated alleged sexual misconduct and sexual harassment as a local management or performance-related issue." It also finds that when the Administrator learned about these allegations, her agency imposed extremely light penalties. For example, when she was informed about wild parties involving prostitutes, she, "counseled the regional director for failing to report the allegations." That was it. Just counseling. No other disciplinary actions.

One critical question for the Administrator is what women who work in these law enforcement agencies must think. With only counseling sessions and suspensions of 2 weeks or less for misconduct like this, what incentive do women employees have to report sexual harassment by their supervisors?

So, on Friday, the Attorney General sent a letter to the committee outlining steps to address the issues. And we're very pleased to receive that letter. These included reexamining the security clearances of those involved, reviewing DEA procedures when investigating misconduct, and prohibiting the solicitation of prostitution regardless of whether it may be legal overseas. These steps are critical, but they are clearly long, long overdue if the first instances of this misconduct occurred in 2001.

Finally, let me note that these problems transcend politics. On March 27, Chairman Chaffetz and I wrote a bipartisan letter to the DEA announcing our investigation, and we are fully committed to working together to investigate these incidents, how the agency responded, and whether additional steps are needed to help prevent this misconduct from ever happening again.

And, with that, Mr. Chairman, I yield back.

Chairman CHAFFETZ. I thank the gentleman.

We will hold the record open for 5 legislative days for any member who would like to submit a written Statement.

We will now recognize our first and only panel of witnesses.

We are pleased to welcome the honorable Michele Leonhart, Administrator of the Drug Enforcement Agency; the honorable Michael Horowitz, inspector general of the United States Department of Justice; and Mr. Kevin Perkins, Associate Deputy Director of the FBI, the Federal Bureau of Investigation. We welcome all of you and thank you all for being here.

Pursuant to committee rules, all witnesses will be sworn before they testify. If you'll please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Thank you.

Let the record reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, we would appreciate limiting your testimony to 5 minutes. Your entire written Statement will be made part of the record.

So the DEA Administrator, Ms. Leonhart, we will recognize you first.

WITNESS STATEMENTS**STATEMENT OF THE HONORABLE MICHELE M. LEONHART**

Ms. LEONHART. Chairman Chaffetz, Ranking Member Cummings, distinguished members of this committee, thank you for the opportunity to discuss the Department of Justice Office of the Inspector General's report on sexual harassment and misconduct allegations by the Department's law enforcement components.

DEA has a single mission: To enforce our Nation's drug laws. Our more than 9,000 employees, including over 4,600 special agents, are dedicated to this single mission, and each one of us took an oath, the same one I took over 30 years ago, to serve the citizens of the United States with honor, professionalism, and pride.

DEA personnel located in over 300 offices around the world, including 67 foreign countries, are doing extraordinary work under often difficult and dangerous circumstances. And this includes the investigation and arrest of leaders of the most violent and sophisticated drug cartels in the world. Unfortunately, poor choices made by a few individuals can tarnish the reputation and overshadow the outstanding work being done at the DEA.

I want to assure the members of this committee that, like you, I am disgusted, I am appalled, by the behavior described in the inspector general's report. And to see the integrity of my agency and of Federal law enforcement, which I have been a part of for nearly my entire professional life, damaged by these allegations has not been easy. This conduct is a violation of the high professional standards of conduct that the men and women of the DEA are held to and undermines our effectiveness in fulfilling our mission. And, as noted in the report, this behavior is contrary to the behavior of the overwhelming majority of those at DEA.

Although the OIG audit generally found that there were relatively few reported allegations of sexual harassment and sexual misconduct, the serious allegations OIG highlight are certainly troubling and describe behaviors that cannot be ignored.

In particular, the allegations that agents assigned in Bogota engaged in prostitution and accepted gifts from drug traffickers was pursued by our Office of Professional Responsibility. However, the resulting investigation left some questions unanswered. Even though the events in question occurred between 2001 and 2004 and were not reported and investigated until 2010, it is nevertheless important that we hold our employees to the highest standards. And, in this instance, I assure you that I was quite disappointed in the penalties imposed.

However, consistent with the protections afforded to employees under civil service laws, I do not have ability to change the imposed penalties. I can and do, however, ensure that disciplinary actions are appropriately noted in an employee's personnel file, which is taken into consideration when that employee is considered for future positions within the DEA. This behavior should not be rewarded.

As outlined in my written Statement, DEA concurred with and has begun implementing changes responsive to each of the OIG

recommendations. However, it is also essential that we make clear to all employees that this behavior is not acceptable. It is my hope that the additional training and guidance that we have provided to all personnel, particularly those stationed overseas, will prevent similar incidents from occurring in the future.

DEA has taken specific concrete steps to accomplish this, including ensuring that it is clearly understood by all DEA employees that this kind of behavior is unacceptable; outlining the steps employees and supervisors must take when incidents occur; increasing training for all employees, especially those employees assigned overseas; further clarifying the guidelines for disciplinary offenses; and improving internal procedures so that appropriate individuals in field management and the Office of Security Programs and in the Office of Professional Responsibility are made promptly aware of allegations and can take appropriate action in a timely manner.

In closing, I want to reiterate that the kind of activity reported by the OIG has not and will not be tolerated. OIG plays an important role in reviewing our policies and procedures, and I am committed to working with the OIG to ensure they have access to the documents they need to do their work.

We have taken steps to address this kind of behavior, and moving forward, DEA will respond to this kind of misconduct head on and with the decisive resolve you and the public expect. We are open to further recommendations so that we can continuously improve our policies, policies that demand the highest levels of personal and professional integrity from our employees.

And thank you again for the opportunity to address you today.
[Prepared Statement of Ms. Leonhart follows:]



Department of Justice

TESTIMONY OF

MICHELE M. LEONHART
ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING EXAMINING

THE OFFICE OF INSPECTOR GENERAL'S REPORT, "THE HANDLING
OF SEXUAL HARASSMENT AND MISCONDUCT ALLEGATIONS BY
THE DEPARTMENT'S LAW ENFORCEMENT COMPONENTS"

PRESENTED ON

APRIL 14, 2015

**Testimony of Administrator Leonhart
Drug Enforcement Administration
Before the
U.S. House of Representatives
Committee on Oversight and Government Reform
Tuesday, April 14, 2015
Washington, D.C.**

Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee. Thank you for the opportunity to be here today to discuss the report released by the Office of Inspector General (OIG) of the Department of Justice (DOJ) titled, "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components." I am honored to lead the more than 9,000 men and women of the Drug Enforcement Administration (DEA) and I can assure you that I regard the issues raised by OIG as significantly troubling, and do not take them 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 working in foreign countries behave properly while on their foreign assignments. In fact, 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. 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.

Make no mistake, as a career federal law enforcement officer with over 30 years of experience, I am disgusted by the behavior described in these cases, and I remain committed to holding DEA employees accountable for their actions especially when those employees conduct themselves in a manner that is not befitting of the high professional standards I hold dear. As a fellow law enforcement officer, I am disappointed by the discipline imposed for the misconduct described in the report. I need to make clear however, that I do not have the authority to simply terminate employees at will. This is not because I am being overly cautious, but because federal employees have certain constitutional due process rights which are implemented through

statutory procedures granted by Federal Civil Service Law 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 caselaw 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 some 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.

As Administrator of the DEA, I take these matters seriously. In fact, shortly after the Cartagena incident in April 2012, I 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.

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 I tolerate any effort to do so. 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, 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, I 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. On November 17, 2014, a memorandum was issued 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.

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.

Prior to that review, DEA 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, we have already made significant policy changes designed to clarify and educate the DEA workforce. 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
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To:
 All DEA Employees

From: *Michele M. Lisenhart*
 Michele M. Lisenhart
 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 reprimand 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.

Chairman CHAFFETZ. Thank you.
I now recognize Mr. Horowitz for 5 minutes.

STATEMENT OF THE HONORABLE MICHAEL HOROWITZ

Mr. HOROWITZ. Mr. Chairman, Ranking Member Cummings, members of committee, thank you for inviting me to testify today.

Federal agents are held to the highest standards of conduct, both on and off duty. As a former Federal prosecutor and as an inspector general, it has been my experience that the overwhelming majority of Department agents meet those high standards and perform their work with great integrity and honor, thereby helping keeping—keep our communities safe and our country safe. Nevertheless, we find instances where law enforcement agents engage in serious misconduct and even criminal violations, affecting the agency's reputation, potentially compromising prosecutions, and possibly affecting the security of the agents and 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 in 2012, the OIG conducted two reviews, one relating to Department policies and training involving off-duty conduct by 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.

Our off-duty conduct report found a lack of Department-wide policies or training requirements pertaining to off-duty conduct whether in the United States or in other countries. This was particularly concerning, given that we made recommendations back in 1996 in an OIG report involving allegations at the time about Department law enforcement agent off-duty conduct. Despite those earlier recommendations, we found little had changed in the intervening two decades. We did find, however, that the FBI made changes, including providing comprehensive training for its employees to help them make day-to-day decisions—to make appropriate day-to-day decisions about off-duty conduct while working abroad. However, we found that the other three Department law enforcement components contained little or no information about off-duty conduct before sending their employees abroad. Having only one of four law enforcement components effectively preparing its employees for overseas assignments demonstrates the need for Department-wide training and policies.

In March 2015, we issued our report on the nature, frequency, reporting, investigation, and adjudication of allegations of sexual harassment or misconduct in the Department's four law enforcement components. The report identified significant systemic issues that require prompt corrective action by the Department. These issues include a lack of coordination between internal affairs offices and security personnel; failure to meet misconduct—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 our reviews demonstrate the need to improve disciplinary and security processes as well as to clearly communicate the DOJ's—to communicate to DOJ and components' employees the expectations for employee conduct. Strong and unequivocal action from Department and component leadership at all levels is critical to ensure that Department employees meet the highest standards of conduct and are held fully accountable for any misconduct.

As we also described in our March 2015 report, the failure by the DEA and FBI to promptly provide information we requested significantly impeded our review. Both agencies raised baseless legal objections and only relented when I elevated the issue to agency leadership. However, even then, the information we received was still incomplete. We, therefore, cannot be confident that the FBI and DEA provided us with all information relevant to this review.

In addition, after we completed our draft report, we learned that the DEA failed to conduct the entire search of its data base we had requested. In order to conduct effective oversight, the OIG must have timely and complete access to documents and materials. This review starkly demonstrates the dangers in allowing the Department and its components to decide on their own what documents they will share with the OIG. The delays we experienced impeded our work, delayed our ability to discover the significant issues we ultimately identified, wasted Department and OIG resources, and affected our confidence in the completeness of our review.

Unfortunately, this was not an isolated incident. Rather, we faced repeated instances in which our timely access to records has been impeded. Congress recognized the significance of this impairment and included a provision in the recent appropriations act, section 218, prohibiting the Department from impeding our timely access to records. Nevertheless, the FBI continues to proceed exactly as it did before section 218 was adopted, spending appropriated funds to review records to determine if they should be withheld from the OIG.

We're approaching the 1-year anniversary of the Deputy Attorney General's request to the Office of Legal Counsel for an opinion on those matters, yet that opinion remains outstanding, and we have been given no timeline for its issuance. Although the OIG has been told that the opinion is a priority, the length of time that has passed suggests otherwise. Instead, the status quo continues. 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.

I want to thank the committee again for its bipartisan support for our work, and I have—would be pleased to answer any questions that you may have.

[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 Oversight and Government Reform

concerning

The Department of Justice Office of the Inspector General's
Report on the Handling of Sexual Harassment and Misconduct
Allegations by the Department's Law Enforcement Components

April 14, 2015

Mr. Chairman, Congressman Cummings, and Members of the Committee:

Thank you for inviting me to testify about the Office of the Inspector General's (OIG) most recent work regarding how the Department of Justice's (DOJ or Department) law enforcement components handle sexual harassment and sexual misconduct allegations. Given the nature of their work and the responsibilities delegated to them, DOJ law enforcement agents are held to the highest standards of conduct and are accountable for their actions, both on- and off-duty. When employees engage in misconduct, it affects the agency's reputation, undermines the agency's credibility, potentially compromises the Department's prosecutions, and may affect the security of the agents and agency operations. Furthermore, sexual harassment and misconduct affect employee morale and hamper employees' ability to have and maintain effective working relationships. Without follow-through from all levels of Department leadership regarding our recommendations, the systemic issues we identified in our work 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 these components conveyed little or no information about off-duty conduct before sending their employees abroad, despite the fact that they 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. Of the components reviewed, 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 effect 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 Committee for your continued strong bipartisan support of the OIG, and I would be pleased to answer any questions you may have.

Chairman CHAFFETZ. Thank you, Mr. Horowitz.
I will now recognize Mr. Perkins for 5 minutes.

STATEMENT OF KEVIN PERKINS

Mr. PERKINS. Thank you, Mr. Chairman.

Good morning, Chairman Chaffetz, Ranking Member Cummings, and members of the committee. Thank you for the opportunity to appear before you today to discuss issues raised in the inspector general's audit entitled "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components."

The FBI's policy on sexual harassment and sexual misconduct is very simple: The FBI does not tolerate sexual harassment or sexual misconduct within the ranks. The FBI has a robust disciplinary process guided by well-established policies, procedures, and practices. It consists of trained special agents in the Inspection Division's Internal Investigations Section, who conduct thorough investigations of employee misconduct. When the investigation is completed, a team of experienced lawyers in the FBI's Office of Professional Responsibility take over, reviewing the investigative materials and determining whether applicable policies, rules, regulations, laws, or other legal standards were violated and, if so, what penalty should be imposed on employees in question, up to and including dismissal.

In addition, the Office of the Inspector General reviews all allegations of misconduct at the FBI prior to any investigation being initiated and all final adjudications of misconduct at the FBI are reported on a regular basis to the OIG.

We are pleased that the Office of the Inspector General found relatively few reported allegations of sexual harassment and sexual misconduct in the Department's law enforcement components for fiscal years 2009 through 2012. In fact, the OIG found that the FBI had the lowest rate of this type of misconduct across the components. While we strive to have no cases of sexual harassment or misconduct, we have and we will continue to implement measures to better address these types of allegations.

We are also pleased that the OIG's audit recognizes the FBI's coordination between our internal investigations section and our security divisions as a best practice to ensure that misconduct allegations are evaluated for potential security concerns, including continued eligibility to hold a security clearance.

Notwithstanding these findings, there are improvements to be made. We must always look to improve and evolve as an organization, and we appreciate the OIG's recommendations for making our process better.

As a result, the FBI concurs with the recommendations in the OIG's report. The FBI takes very seriously our obligation to enable Congress and the OIG to conduct effective oversight of all of our activities. We work closely with the OIG staff to ensure that we are responsive to their requests and that issues are identified and promptly resolved.

You may also be aware that we have a good-faith disagreement with the OIG regarding what law requires with respect to providing FBI documents that have been obtained pursuant to provisions of law such as the Wire Tap Act, the Bank Secrecy Act, and those related to grand jury proceedings. We have been completely transparent with the OIG and the leadership of the Department of Justice with respect to our legal disagreement and are presently awaiting the Office of Legal Counsel to render an opinion as to the correct reading of the law.

In the interim, we are giving the OIG an assumption of access to these—in these audits with respect to title III, rule 6(e), and FCRA materials. Senior leadership has also directed that our internal business process consulting group rigorously evaluate our processes to ensure that we are as effective and efficient as possible in providing the inspector general with requested documents in a timely fashion consistent with the law.

Chairman Chaffetz, Ranking Member Cummings and members of the committee, I thank you for the opportunity to testify before you today concerning these—our commitment to ensuring allegations of sexual harassment and misconduct are addressed in a prompt, thorough, and equitable manner. We take our responsibilities on this topic very seriously and appreciate your interest in these matters.

Now I'm happy to answer any questions you may have.
[Prepared Statement of Mr. Perkins follows:]



Department of Justice

TESTIMONY OF

KEVIN L. PERKINS
ASSOCIATE DEPUTY DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING EXAMINING

THE OFFICE OF INSPECTOR GENERAL'S REPORT, "THE HANDLING
OF SEXUAL HARASSMENT AND MISCONDUCT ALLEGATIONS BY
THE DEPARTMENT'S LAW ENFORCEMENT COMPONENTS"

PRESENTED ON

APRIL 14, 2015

**Testimony of Associate Deputy Director Kevin L. Perkins
Federal Bureau of Investigation
Before the
U.S. House of Representatives
Committee on Oversight and Government Reform
Tuesday, April 14, 2015
Washington, D.C.**

Good morning Chairman Chaffetz, Ranking Member Cummings, and Members of the committee. Thank you for the opportunity to appear before you today to discuss the issues raised in the Inspector General's audit entitled, "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components."

The Federal Bureau of Investigation's (FBI) policy on sexual harassment and sexual misconduct is simple. The FBI does not tolerate sexual harassment or sexual misconduct. We are a law enforcement organization charged with enforcing federal law and protecting the rights of all Americans. Our employees are expected to make the workplace a respectful, professional environment free from offensive behavior. A copy of the FBI's policy on sexual harassment is provided to every employee and is displayed in every field office and division.

The FBI has a robust disciplinary process guided by well-established policies, procedures and practices. It consists of trained Special Agents in the Inspection Division's Internal Investigations Section who conduct thorough investigations of employee misconduct. When the investigation is completed, a team of experienced lawyers in the FBI's Office of Professional Responsibility (OPR) take over, reviewing the investigative materials to determine whether applicable policies, rules, regulations, laws or other legal standards were violated, and, if so, what penalty should be imposed on the employee in question – up to and including dismissal.

In addition, the Office of Inspector General (OIG) reviews all allegations of misconduct at the FBI prior to any investigation being initiated and is given the opportunity to conduct their own independent investigation of any misconduct allegations, including all allegations of sexual misconduct or sexual harassment. Similarly, all final adjudications of misconduct by the FBI are reported to the OIG. As a result, there is independent oversight of our disciplinary process and its determinations regarding all allegations of misconduct.

OIG Audit Findings and FBI Responses

We are pleased that the Office of the Inspector General (OIG) found "relatively few reported allegations of sexual harassment and sexual misconduct in the Department's law enforcement components for fiscal years 2009 through 2012." Regarding the FBI, the OIG found that the "FBI had the lowest rate of this type of misconduct" across the components. While we strive to have no cases of sexual harassment or misconduct, we have and will continue to implement measures to better address these types of allegations.

We are also pleased that the OIG's audit recognizes the FBI's coordination between our Internal Investigations Section and our Security Division as a "best practice" to ensure that

misconduct allegations are evaluated for potential security concerns, including continued eligibility to hold a security clearance. We are also appreciative that the OIG noted the FBI has established criteria to determine when an investigation involving allegations of sexual misconduct or sexual harassment should be opened at Headquarters. We are further gratified that the OIG found that the FBI has the largest number of offense codes among the various components at the Department of Justice in order to address the many factual scenarios that may present themselves when addressing sexual misconduct and sexual harassment (including not just offense codes for sexual misconduct and sexual harassment, but also offense codes for improper personal sexual relationships with sources, witnesses, subjects, and subordinates). We are also pleased that the OIG found that the FBI's offense table can serve as a model for the other components in that it clearly addresses allegations of sexual misconduct and sexual harassment.

Notwithstanding these findings, there are improvements to be made. We must always look to improve and evolve as an organization, and we appreciate the OIG's recommendations for making our process better. As a result, the FBI concurs with the recommendations in the OIG's report.

- First, we will remind all supervisors and managers that they must report allegations of sexual misconduct and sexual harassment to Headquarters. To ensure compliance, the FBI is considering whether such reporting will be made a performance standard in annual evaluations.
- Second, the FBI agrees that we must follow our established criteria for determining when alleged misconduct will be investigated at Headquarters. To that end, the FBI will remind all employees within the Internal Investigations Section that the FBI's criteria must be adhered to when evaluating whether an allegation should be investigated at headquarters or referred back to the originating office to be handled as a management matter.
- Third, we agree that we should use the offense categories specifically designed to best address the misconduct present in each instance.

Finally, we concur with the commitment made by the Office of the Deputy Attorney General as it relates to the preservation of electronic communications, especially when such communications implicate legal discovery obligations, and to implement technology to be able to, when appropriate in the circumstances, proactively monitor text message and image data for potential misconduct.

Access to Materials by the OIG

The FBI takes very seriously our obligation to enable Congress and the OIG to conduct effective oversight of all of our activities. We work closely with the OIG staff to ensure that we are responsive to their requests and that issues are identified and promptly resolved.

To that end, our senior leadership has met personally with the Inspector General to discuss his concerns. Senior leadership has also directed that our internal business process

consulting group rigorously evaluate our processes to make sure that we are as effective and efficient as possible in providing the Inspector General with requested documents in a timely fashion, consistent with the law. We are confident that we provided the OIG all information relevant to this review.

Conclusion

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee, I thank you for this opportunity to testify concerning our commitment to ensuring allegations of sexual harassment and misconduct are addressed in a prompt, thorough, and equitable manner. We take our responsibilities on this issue very seriously and appreciate your interest in these matters. I am happy to answer any questions you might have.

Chairman CHAFFETZ. Thank you.
I now recognize myself for 5 minutes.

Mr. Perkins, I totally disagree with your assessment that you're being open and transparent and providing access to the inspector general. That is a topic we will continue to discuss today, but I find your comments to be totally inconsistent with what the inspector general is telling us, and we need to hash that out. It's one of the reasons that you're here today. Glad that you're here, but my questions—I want to focus with the DEA here for a moment.

Do you have any questions, Administrator, as to the accuracy of the OIG report? You don't question the accuracy of the report. Do you?

Ms. LEONHART. I don't question the accuracy.

Chairman CHAFFETZ. So this included allegations and examples of DEA agents participating in so-called sex parties where local police were watching DEA equipment, which included a, "loud party incident" involving what one would consider bad judgment for allowing prostitutes and allowing those in close proximity with DEA agents to be actually in these agents room and housing, you wouldn't then have a problem with these—this going away party that was—involved a DEA assistant regional director at his residence. You wouldn't disagree, then, with the assessment that they had multiple accounts of the landlord complaining about the loud parties and whatnot were going on there.

Is it wrong for prostitutes to be in government housing?

Ms. LEONHART. Well, first of all, it's deplorable behavior by those agents.

Chairman CHAFFETZ. But is it a violation of policy?

Ms. LEONHART. It's absolutely a violation of policy.

Chairman CHAFFETZ. Is it wrong to have a foreign national in close proximity to a DEA agent, close to their guns, personal effects, computer, smart phones? Does that pose any sort of security risk?

Ms. LEONHART. Of course, it poses security risks, and that is why it's—these are very serious allegations.

Chairman CHAFFETZ. Did you do any investigation as to the age of the women that were involved? Were they just simply there for entertainment?

Ms. LEONHART. The investigation, although it's 10 years later, the investigation—

Chairman CHAFFETZ. Don't try to paint a picture that this is one incident 10 years ago. There's an incident, for instance, in July 2009, for instance, where the DEA agent in Bogota was accused of physically assaulting a prostitute over a payment dispute. A security guard witnessed this agent throwing a glass and hitting the woman. This agent then claimed that the woman had had a seizure while she was in the bathroom and cut herself on a candlestick, but later admitted that, yes, he had engaged with a prostitute. And you know what the punishment for this person was? Fourteen days unpaid leave. Go on vacation for 2 weeks.

You can sit here and cry a pretty picture about how deplorable it is, but your actions suggest otherwise because there was not the consequence that should have happened. This person is imposing a national security risk, engaging in behavior that is just—it's em-

barrassing that we have to talk about this. It's an embarrassment that you don't fire that person. It's an embarrassment that you don't revoke his security clearance.

Why can't you revoke their security clearance? What prohibits you from revoking that person's security clearance?

Ms. LEONHART. Everything you've said about the behavior I completely agree with.

As far as the disciplinary penalties that were handed out in that case, I'm very disappointed in that and the——

Chairman CHAFFETZ. You're the administrator.

Ms. LEONHART. The system that's set up following civil service laws, I don't—I don't fire. I can't——

Chairman CHAFFETZ. Can you revoke their security clearance?

Ms. LEONHART. I can't revoke their security clearance. I can ensure that there's a mechanism——

Chairman CHAFFETZ. Why can't you?

Ms. LEONHART [continuing]. Like I did after the Cartagena incident, make sure that there is a mechanism in place for those security—for a security review which resulted in those three agents having their security clearances revoked, and they were fired.

Chairman CHAFFETZ. And here's the problem. Here's the concern I have. High profile. It's in all the media. Everybody's reporting about the Secret Service engaging with prostitutes. You all get nervous about it, and those people have some discipline, but when it's quiet and nobody hears about it, and it comes across your desk and your senior staff, can you show me another example where people were engaging in prostitution and creating these national security problems where you revoked their security clearances? That's what I want to see. Because in this case, that's not what happened. That wasn't too long ago. You're not disputing any of the facts that show up in the report. There's nothing that—there's no—is there a statute of limitations? Is there a limit that you can't reach further back? And yet you allow this person who engages a prostitute, throws glass at her, breaks the skin, there's blood all over the place, and they're still employed at the DEA? And you allow that. You're allowing that.

Did you—I mean, did you try to fire them? Did you try to revoke their security clearance? Do we need to change that law? What do we need to do?

Ms. LEONHART. Well, you could look at an exemption like the FBI has because the current disciplinary process, myself and other directors of Federal law enforcement agencies are not allowed to invoke ourselves in the disciplinary process. If we were exempted or if there was other legislation passed that would allow that, that would allow our directors of Federal law enforcement to take that action. The same thing that—with a result like Cartagena, where they have done these deplorable activities, that it is investigated, and that a decision is made by the agency without appeal rights to the MSPB.

Chairman CHAFFETZ. OK. So my concern is high profile, you take action. When it's not so high profile and there's a woman involved, you don't take action, and that's a concern, but I hear what you're saying.

The last question, because I've exceeded my time. If you are both, the FBI and the DEA, sincere about rooting out this problem and finding solutions, then you need to allow the inspector general to look at the information. Why do you continue to prohibit him from seeing that information? Why do you hold it back? Why not do all 45 search terms? Why did you only do three. So I really got to question your sincerity about getting out and rooting out this problem if you don't even know the extent of the problem. You don't even know the extent of the cases because you won't even allow the inspector general and his staff to actually look at the cases that are there. You're limiting the inspector from doing their job, which is to help you, help us, help them, help the rest of the agency. That's—I need you to both explain that answer to me, and then I'll yield to the ranking member.

Go ahead.

Ms. LEONHART. The—moving forward, because there's a number of things that I put in place after Cartagena, and you should know that the other incidents I learned about after Cartagena, but they had already been through the system, what we put in place in Cartagena moving forward, is the model for how we will handle—

Chairman CHAFFETZ. Is the model to impede the ability of the inspector general to look at the information?

Ms. LEONHART. I'm talking about the—

Chairman CHAFFETZ. I'm talking about the IG. Why can't the IG look at this?

Ms. LEONHART. And know that those cases, when they were first reported, are reported immediately over to the OIG. They handed those cases back to us to handle as management—as a management review. We felt that the behavior was so outrageous they needed to be investigated. What we've put in place—

Chairman CHAFFETZ. But you went back and investigated them again and still came to the same conclusion, that we would have come to this same conclusion.

My time is far exceeded, but you gave them 2 to 10 days paid leave, you put them on vacation, you didn't take the disciplinary action.

I've got to yield to the gentleman from Maryland.

Oh. We're going to go actually to Ms. Plaskett first. You're now recognized for 5 minutes plus very generous overtime if you need it.

Ms. PLASKETT. Thank you, Mr. Chairman, Mr. Ranking Member. Good morning to you all.

You know, of course, we all find the reports of sexual harassment and misconduct, particularly, I think, the actions of the DEA spanning back to 2001, extremely troubling, and the American people seem understandably outraged over this behavior, and particularly women.

The IG report States, "Sexual misconduct and sexual harassment in the workplace also affect employee morale and hamper employees' ability to have and maintain effective working relationships."

Mr. Horowitz, can you explain how sexual harassment and sexual misconduct can impact employee morale.

Mr. HOROWITZ. Well, it has a significant debilitating effect on morale, particularly when the individuals in the workplace try to report the information and see no results. And that's one of the things we highlight here that's particularly concerning when, for example, in three of the incidents we identified, in one of them we learned about it or it was reported—

Ms. PLASKETT. And which agency is that?

Mr. HOROWITZ. These are on the three matters involving DEA that we have been discussing.

One is reported in June 2010 through an anonymous letter. That's how that information gets forwarded. The 2001 to 2004 events that are referred to in the report as the sex parties, those don't get reported until 2009, 2010, when the corrupt law enforcement officers are charged.

Ms. PLASKETT. And what's the rationale that you were given as to why they weren't reported?

Mr. HOROWITZ. Because they were dealt with locally, reviewed locally and didn't need to be reported to—

Ms. PLASKETT. And were they dealt with?

Mr. HOROWITZ. They were not, and that was the concern we identified.

And on the third incident that we report there, that's sent to the OIG and DEA by the State Department, not through the DEA. Employees in the organizations not only need to know they have a safe work environment to go to and a nonhostile work environment, but they need to know they can come forward, report allegations, and that they'll be taken seriously and that they'll be addressed promptly.

Ms. PLASKETT. OK. Thank you.

Ms. Leonhart, you spoke about how your own outrage being a law enforcement officer for 30 years. I completely understand that. I was raised by a New York City police officer who says every good cop hates the most a bad cop because they make all the good cops—it completely taints everyone else. But do you agree with the IG that sexual harassment negatively impacts morale, and have you seen that in your agency?

Ms. LEONHART. I know it has the potential to do that, and that is why several directives, reminders—

Ms. PLASKETT. But I didn't ask you its potential. I asked you has it affected the morale.

Ms. LEONHART. In the offices where the employees attempted to report misconduct and there was nothing that happened, it was not reported up and investigated, I can imagine that those employees felt they lost faith in the agency.

In a number of other cases, however, where they are reported up. They are investigated. The supervisors take immediate action, help the employee who has come forward with a complaint. I see over my 35 years in DEA a huge change, more willingness to report, more willingness for supervisors to help that employee who came forward with it, and my job is to work on the disciplinary end to make sure that, as these are reported, as they're thoroughly investigated, that the proper discipline is handed out.

Ms. PLASKETT. Well, that's interesting that you say that it's your job to deal with the discipline because you've just Stated earlier to

the chairman that you don't have any say over the discipline. So which one is it? Do you or don't you have say over the discipline of those individuals?

Ms. LEONHART. I am not in the process for investigating, proposing, or handing out discipline. What I can do is what I did a year ago. I sent out a directive to every DEA employee and said, Here are the conduct issues I am concerned about. They must be reported. They're not acceptable. This is not acceptable behavior in about five or six different areas, and I sent a strong message to the board of conduct and to the deciding officials that in these types of instances, there should be severe discipline handed out.

Ms. PLASKETT. And what do you—what would you consider severe discipline?

Ms. LEONHART. I would consider what happened with the Cartagena agents to be severe discipline.

Ms. PLASKETT. What about the agents who were given 2 to 10 days of paid leave?

Ms. LEONHART. I'm not happy with that. I am not in the disciplinary process. I am very disappointed—

Ms. PLASKETT. OK. Wait a minute. You mean, so you're not in the disciplinary process, but you're responsible for the discipline?

Ms. LEONHART. I'm responsible for the whole agency. So I am responsible to set up a mechanism to send messages to our employees to hold people accountable if they're not going to—if they're going to conduct this misbehavior, that they face significant discipline. And that is what I have done over the last couple of years to send that message to make sure our employees, No. 1, report—report their allegations; and No. 2, hold managers accountable for not reporting; and No. 3, make sure that we set up a process, have good OPR inspectors. I was one at one time. Do the investigation so that our disciplinary process, our board of conduct that proposes, and our deciding officials have all the information they need to be able to impose severe discipline.

Ms. PLASKETT. But don't you believe that the morale of your agents and the good men and the women of that agency would have been better served, and they would have believed that you really stood behind that if the information had been more fully and quickly forthcoming to the IG? How can you say that you are—you weren't pleased with the discipline when you and your agency impeded the investigation at the IG level?

Ms. LEONHART. The IG gave the investigation back to DEA. As—

Ms. PLASKETT. But they gave you the portion of it related to disciplining the individuals, not to investigating the systemic problems in the structure of your agencies.

Ms. LEONHART. No. They gave us back the investigation and said that they would not take it. It looked like a management issue. We investigated as misconduct, and as we investigated it and we learned more and more by interviewing a number of witnesses in the old Bogota case, the information that was put together, the interviews, all of that was entered into the discipline system. And I am very disappointed that our discipline system did not do what it needed to do. And we have to fix it, and I've put mechanisms in place moving forward to make sure that that does not happen

again because I don't believe that that discipline that was doled out in those cases that Chairman Chaffetz mentioned is even close to what it should be.

Ms. PLASKETT. OK. I've run out of more than the generous time that you've given me, Mr. Chairman, ranking member. But it's my assessment that the discussion here and the actions are at a complete disconnect.

Chairman CHAFFETZ. Thank you the gentlewoman.

I now recognize the gentleman from Florida, Mr. Mica, for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman, and let me ask—let me followup on some of the questioning that's taken place as to whether there was a full investigation of this whole matter.

You claim, Administrator, that there was a full investigation of the matter—all of these sexual harassment—sexual assault issues that have been raised that were—that were part of the inspector general's review. You claim—again, just tell us. You believe they were fully investigated.

Ms. LEONHART. I believe that they were investigated. I have concerns about the completeness, thoroughness, of a couple of the investigations.

Mr. MICA. So then you agree with Mr. Horowitz, the OIG, that there was not a thorough investigation of all of the incidents?

Ms. LEONHART. I agree that some of the incidents were not thoroughly investigated and fully investigated, yes.

Mr. MICA. OK. And that was your position too and the assumption that I have from your report.

Mr. HOROWITZ. That's correct, Congressman.

Mr. MICA. OK. Well, that in itself raises great questions when the inspector general says that the—these incidents were not fully investigated. So that, to me, is a big issue right there.

Chairman CHAFFETZ. Will the gentleman yield?

Mr. MICA. Yes, I yield for—

Chairman CHAFFETZ. And I hate to do this to you. On March—but I just was handed something. March 26 of this year, you, Ms. Leonhart, as the administrator, sent this email out within your agency. And you said these allegations were fully investigated by the DEA Office of Professional Responsibility.

Yield back.

Mr. MICA. Again, there seems to be a conflict between again what the chairman has just cited, what we've had as previous testimony, and what the inspector general's—OK. That being said—and I have some questions too.

You say you don't have the authority, but you took the authority post-Cartagena. It looks like before Cartagena—and you've been there since 2010. Is that right?

Ms. LEONHART. That's correct.

Mr. MICA. You didn't just arrive on the block, and you see the conduct that took place in 2006, 2008, the sex parties, the assaults, all of these things that were going on, Cartagena was, what, 2 years ago.

Ms. LEONHART. 2012.

Mr. MICA. Three years ago. Well, what happened is you set up a culture within the agency that you could get away with this, and

you were there. You must have known some of this was going on. Cartagena brought it to the press and our attention that—the size and scope of what was going on.

The thing that concerns me is, before that, some of the people got—who were involved, looks like if you attended a sex party, one report here, one agent was cleared of any wrongdoing. Seven of 10 agents ultimately attended to the parties and engaging with prostitutes. So it looked like the penalty—they got suspensions of a few days. And I think the most was like 6 days up to that time. So that was sort of the standard operating procedure while you were there until Cartagena. That's the kind of penalty they were getting. Right?

Ms. LEONHART. If I can explain, Congressman. The first—the first I heard of any of these sex parties or the behavior that's described in the reports was actually Cartagena. When Cartagena happened, I became concerned, is this systemic? Has this happened before? And we went back and we took a look at where this activity had occurred, if anybody had been disciplined for it, and we found one Bogota case.

Mr. MICA. Well, again, we have instances, and we have penalties. Most of them only got minor penalties, and it was known that some of this had posed great security risks. I guess drug folks were paying for some of this activity, and they got anywhere from 4 to 6 days. Only a suspension of 15 days or more is considered serious for adverse employment action. So those people went right on working at that time.

So what I'm saying is a culture existed while you were there up to Cartagena, and there were low penalties. After Cartagena, you did some—you took some action. Some people were actually fired. Is that correct?

Ms. LEONHART. Yes. That's the first case that came—

Mr. MICA. And the difference, folks, members of the committee, this is the same thing whether it's Secret Service, VA, IRS, HUD, any agency. She doesn't have the right to summarily fire people. She has to go through a process, Merit System Protection, the protections of Title V, a Federal act created by Congress. Unless you change that law and give these people the ability to fire people summarily when they are found in, you know, a proper process and a speedy process to violate, whether it's sexual assault, sexual harassment, you'll have this continue—all these problems continue across the scope of all of our civil service system. The only one exempt from that, I understand, is FBI. I didn't get enough time to ask you questions about how many people you've fired, but we'll get that in the record at some point I hope.

Yield back.

Chairman CHAFFETZ. Thank the gentleman.

I now recognize the ranking member—I'm sorry—Mr. Lynch, the gentleman from Massachusetts, who is the ranking member of the Subcommittee on National Security, now recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I want to thank the ranking member, Mr. Cummings, for allowing me to go in his place.

Ms. Leonhart, how do you hold people accountable if you are not able to discipline them?

Ms. LEONHART. The system in place, it is a three-tiered system. There's the inspectors who investigate—

Mr. LYNCH. You're not answering my question.

Basically, very briefly, because I only have a couple of minutes, how do you hold people accountable when you cannot discipline them when they do, like, OK, so we have got 15 to 20 sex parties, 15 to 20. We have got all these allegations. A lot of these agents admitted to prostitution, to soliciting prostitutes, having sex with prostitutes. We don't know their ages because there's been nothing disclosed here. We have them taking weapons. We have got foreign individuals, parts of terrorist groups complicit in this. We have got national security at risk, and you don't have the ability to discipline these people.

You know, when I came to this hearing, I thought my problem was that we weren't disciplining these people. I think the problem here, now after hearing you testify, even though you've said you were not happy, even though you said you were very disappointed—this is a prostitution ring—15 to—they are using taxpayer money to solicit and pay for prostitutes. And you're very disappointed; you're not happy. I think we're at different levels here. And I find completely vapid the Statement that we are not going to let this happen again. We're not doing anything. We're not doing anything.

We haven't—I think the problem now is we're protecting these people. That's what's happening in your agency. You're protecting the people who solicited prostitutes, who had 15 to 20 sex parties, went through this whole operation, used taxpayer money to do it and, I believe, compromised the national security. And you're not happy. You know, that's not what I would expect from your department. I really wouldn't.

I worked with DEA in Afghanistan, and those folks did a great job. And I think this is a disgrace that their reputation, I see—and they were in some dangerous, dangerous places in Afghanistan, down in Helmand Province trying to deal with the opium exportation there, doing heroic work. Those are the DEA agents that I know that worked hard and upheld the dignity of this country and worked with the local families down there, the farmers, just to try to protect them. I'm proud of those DEA agents. They're doing wonderful work on behalf of our country. And this is a blemish. You know, this is just disgraceful that they should be associated with this activity.

So I actually feel your system is protecting these people. So there's these 15 or 20 sex parties and then—and by the way, it says here sexual harassment and misconduct. It should be sexual misconduct upfront. That's what we're talking about here. This is a very serious issue, and you've done nothing. You've done nothing.

How about disclosure? If you can't even—if you can't prosecute them, if you can't bring justice to the situation, why are we stopping the inspector general from looking at this? Why do the American people do not—why do they not have the names of these individuals?

Ms. LEONHART. Well, we did provide the inspector general with the information so that he could do his review.

As far as protecting them, I take great offense to that because I feel exactly—

Mr. LYNCH. You do? You do? You take offense that someone who runs 15 to 20 prostitution parties, abusing women gets a 3-day, 2-day, 1-day, you're offended by that? You're offended by that?

Ms. LEONHART. I'm offended by their conduct. I'm offended by—

Mr. LYNCH. I don't see it, though.

Ms. LEONHART [continuing]. The behavior. I am trying to fix the system. I can't fire. I'm trying to fix a system.

Mr. LYNCH. How about just naming them, name and shame? How about that? You get—there was some discipline here. It's laughable. It's laughable, but you did suspend some people here with pay for—1, 2, 3—10 days. One guy got 10 days, conduct unbecoming and poor judgment.

It's just—you know what I think? You know and I appreciate the gentleman's earlier comments about we've got to give you power. I don't think that's the answer. I think there's a mentality here that needs to be extricated root and branch from the DEA operation. I think we have to have an independent agency that actually goes in that's not part of the old good ole boy network, that actually goes in and, with sunlight, with disclosure, goes after these people who—like I say, you know, when I think of the DEA agents and the jobs they're doing in Afghanistan right today, today and trying to protect the homeland, you know, this is a real—this is a disservice to those good agents.

I'll yield back the balance of my time.

Chairman CHAFFETZ. Thank the gentleman.

I now recognize the gentleman from Texas, Mr. Farenthold, for 5 minutes.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

Mr. Horowitz, Mr. Lynch really hit on something with respect to the good ole boy culture. And this is my concern that I'm seeing more and more of the good ole boy culture as this committee continues its investigation. I mean, we've seen it with the DEA sex parties. We've seen it with some of the things going on in the Secret Service admittedly, you know, not subject to this. We see it in a lot of government agencies.

In your investigation, do you get a sense that there is a good ole boy mentality? Is it as bad as I think it is?

Mr. HOROWITZ. Well, it's interesting, Congressman, you use these words because this all—our first review was of the good ole boy roundup events. Back in the early nineties, we did a report in 1969 about the culture and the need to make it clear about what is permissible and what clearly isn't permissible on and off duty, and yet we're 20 years later and there are still no department-wide policies or training.

Mr. FARENTHOLD. Ms. Leonhart, do you run the DEA. Do you think it's appropriate in your off time, even in a country where prostitution is illegal, to engage prostitutes?

Ms. LEONHART. Absolutely not. And it's against DEA policy.

Mr. FARENTHOLD. And how—

Ms. LEONHART. It's illegal.

Mr. FARENTHOLD. How could any of your agents not know this? This strikes me as just common sense that—I mean, and we have a memo from Eric Holder. Admittedly, not a fan of Mr. Holder. But, I mean, he really—I can't believe there's even a need for a memo that says it's not appropriate to hire prostitutes.

I mean, let me read from the memo—a couple of things from the memo: The solicitation of prostitution threatens the core mission of the Department, not simply because it invites extortion, blackmail, and leaks of sensitive or classified information, but because it is also undermines the department's effort to eradicate the scourge of human trafficking. Regardless of whether prostitution is legal or tolerated in the particular jurisdiction, soliciting prostitutes creates a greater demand for human trafficking victims and, as a consequence, an increase in the number of minor and adult persons trafficked into commercial sex slavery.

And now he goes on: For this reason, I want to reiterate to all Department personnel, including attorneys and law enforcement officers, that they're prohibited from soliciting, procuring, or accepting commercial sex.

To me, it seems ludicrous that we would even have to write a memo like this. It defies common sense.

Mr. Perkins, what about the FBI? Is there anybody in the FBI thinks it's OK to go hire a prostitute?

Mr. PERKINS. No, sir. We make it very clear to our employees both here domestically and overseas that's not going to be—

Mr. FARENTHOLD. But the message we're getting, with no disciplinary action or time off with pay, tends to reinforce that.

Mr. Horowitz, is there congressional action that needs to be taken? Do we need to change some of our laws to make it easier to fire people who are proved to have engaged in this?

Mr. HOROWITZ. Well, that's certainly something Congress could look at. As been noted, the FBI has certain authorities that the other three components do not. I will add that one of the things that would help address these is that the OIG—that they get reported as they should to headquarters, that they get reported to the OIG as they should, and that we get copies of records that we need promptly so that we can look at them promptly. That would help as well, and that takes no congressional action because you already have the law in the IG Act that says that should occur, but it's not occurring.

Mr. FARENTHOLD. All right. So what do we do to fix that? I mean, somebody is going to have to be disciplined for not reporting. It's not just the rank-and-file men and women who are engaged in misconduct that need discipline. It's their superiors that are covering it up and obstructing. Is that not correct?

Mr. HOROWITZ. It's certainly our view that if an employee fails to report to headquarters what the policy requires, which in all law enforcement agencies cases in the Department, that's the policy, that is a violation that should be looked at.

Mr. FARENTHOLD. Now, but we're also seeing—you want disclosure from the folks that you're investigating.

We're starting to see lots of redacted stuff here in Congress when the IG Act only says the identity needs to be—needs to be with-

held. In fact, had we wanted more information withheld, we could have modified it on Section 6103 of the taxpayer—of the IRS code.

I mean, you want full reporting. What's the excuse for not giving us more access here in Congress?

Mister—anybody want to field that? I mean, some of it's the IG, Mr. Horowitz.

Mr. HOROWITZ. We've certainly put forth, on our Website publicly and sent to Congress, everything that we're allowed to put forth pursuant to the Privacy Act. We've—we have not withheld material.

Mr. FARENTHOLD. I think we have a differing interpretation of that, but I see I'm out of time.

Chairman CHAFFETZ. The gentleman will yield.

Ms. Leonhart, will you agree to allow the inspector general to search all 45 terms? You've limited it to three.

Ms. LEONHART. Yes. We don't have the search capabilities that his systems have.

Chairman CHAFFETZ. Will you allow him full and unfettered access to review these records?

Ms. LEONHART. We would be glad to run that search. We had problems in doing a search that many names. We found a different way to do it by running offense codes. But I—Mr. Horowitz and I have a very good working relationship. And if there's something that he wants, he has not hesitated to pick up the phone and talk to me about it. And we'll work it out.

Chairman CHAFFETZ. Has she allowed you all the access that you want?

Mr. HOROWITZ. I think the problem has been that, frankly, I've had to call too much. I shouldn't have to make those calls, frankly, to the Administrator to get access. The staff—my staff shouldn't have to spend 4 months going back and forth with the line DEA staff getting redacted versions, being told they can't get things because of privacy issues when we—that is not a basis for a legal objection, which the DEA and the FBI ultimately conceded.

But I shouldn't have to be engaging at the highest levels of the FBI and the DEA to get the access that occurred—and let me just put in a—say something here about two agencies that complied fully. The ATF and the U.S. Marshals Service got us the material immediately. We had no delays. What it took us four, five—I don't even know how many months—to get from DEA and ATF we got in a matter of weeks from ATF and the Marshals Service.

Chairman CHAFFETZ. Did you mean the—

Mr. HOROWITZ [continuing]. Who fully cooperated with us.

Chairman CHAFFETZ. I think you meant to say DEA and FBI. Correct?

Mr. HOROWITZ. I'm sorry. FBI and DEA compared to ATF and the Marshals Service, who fully cooperated with us.

Mr. FARENTHOLD. Thank you very much. I see my time is expired.

Chairman CHAFFETZ. Thank you.

I now recognize the ranking member, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. Thank you very much.

Ms. Leonhart, do you think that you're the right person for this job? You know, I've been—I just intentionally wanted to hear some of the testimony. I have a lot of concerns.

It seems like there's a culture that has developed here. And even the Attorney General's letter when he has to say "don't fraternize with prostitutes"—hello? Am I missing something? I mean, I think that we are at an all-time low here. Don't you?

Ms. LEONHART. As a DEA agent and a female DEA agent for the past 35 years, I'm appalled of it over this as well. And like the Attorney General had to send a memo reminding people last Friday, I had to send one last year to remind everyone and put everybody on notice.

Mr. CUMMINGS. OK. I only have a few minutes, but I just—I'm very concerned, Mr. Horowitz. And on page 12 of your report, you made the following Statement, "We found the regional director and acting assistant regional director and the group supervisor failed to report through their chain of command or to DEA OPR repeated allegations of DEA special agents fraternizing with prostitutes and frequenting a brothel while in an overseas posting, treating these allegations as local management issues."

Is that correct?

Mr. HOROWITZ. That's correct.

Mr. CUMMINGS. So despite these facts, none of these employees—the special agent, the group supervisor, the regional director, and the acting assistant regional director—ever reported these allegations to the Office of Professional Responsibility or to you at the IG's office. Is that right?

Mr. HOROWITZ. That's correct.

Mr. CUMMINGS. Now, Mr. Horowitz, when these allegations finally came to light in 2012, your report States—"The DEA Administrator counseled the regional director for failing to report the allegations." Is that right?

Mr. HOROWITZ. That's correct.

Mr. CUMMINGS. And, Ms. Leonhart, is that correct? Did you personally counsel the regional director?

Ms. LEONHART. The regional director was first counseled by the chief inspector. He was then counseled by the deputy administrator, and then I counseled him as well.

Mr. CUMMINGS. Now, was that the only discipline that he got, somebody sitting there saying, you're supposed to do your job?

Ms. LEONHART. Yes. He was—

Mr. CUMMINGS. Please. You mean to tell me that was the discipline—"Do your job"? That's not discipline, is it?

Ms. LEONHART. The regional director—

Mr. CUMMINGS. Come on.

Ms. LEONHART. The regional director—the regional director was not aware of any allegation until it was brought to light a year, a year after an incident.

Mr. CUMMINGS. Who was the regional—

Ms. LEONHART. So when I counseled him—

Mr. CUMMINGS. OK.

Ms. LEONHART. So when I—when I talked to him and went—

Mr. CUMMINGS. Well, just tell us what you said very briefly. I only have a minute or so.

Ms. LEONHART. I was concerned that he had warnings that this person was involved with prostitutes. And I talked to him because, if that was the case, I would have been looking at significant discipline. It was not the case with him. I even went and looked at the letters that were sent. The letters were sent to——

Mr. CUMMINGS. And so what did he say? I mean, I wish I had a tape recording of that conversation, but——

Ms. LEONHART. Right.

Mr. CUMMINGS [continuing]. In 30 seconds, what was said by him?

Ms. LEONHART. He said, when he was aware of it, he was notified by the Embassy, the RSO, of what had happened. He was told about the incident. He called the agent in. That was the first he knew that this agent was involved with prostitutes. He called the agent in, told the agent, You're out of here, you're going home. He sent him TDY back to the States until he could finalize the tour.

Mr. CUMMINGS. So were they suspended at all?

Ms. LEONHART. I'm sorry?

Mr. CUMMINGS. I mean, you said he sent them back to the United States.

Ms. LEONHART. Yes. The agent received 14 days off.

Mr. CUMMINGS. And this—and so did you think that was sufficient?

Ms. LEONHART. The regional director took action when he heard about it, and he took action immediately after to put in place some mechanisms to make sure that those types of behaviors were reported promptly.

Mr. CUMMINGS. Who was the highest ranking DEA official between 2001 and 2008 who was aware of these misconduct issues?

Ms. LEONHART. Are you talking about the Bogota incidents?

Mr. CUMMINGS. No. I'm talking about the—well, let me change that to 2005 to 2009.

Ms. LEONHART. That they were aware of it? Probably——

Mr. CUMMINGS. Yes. The highest ranking person.

Ms. LEONHART. Probably a group supervisor.

Mr. CUMMINGS. Did you have power to discipline on the level of the regional——

Ms. LEONHART. I could discipline the regional director. He's an SES.

Mr. CUMMINGS. So you could have fired him. Is that right?

Ms. LEONHART. I couldn't—I couldn't fire him. You have to show misconduct for him to be fired. But with what the law allows me to do with an SES, he was counseled.

Mr. CUMMINGS. So you do feel that he did something wrong?

Ms. LEONHART. He failed to report it when he learned about it.

Mr. CUMMINGS. And so you—and you failed to discipline him, other than counseling him?

Ms. LEONHART. The discipline available to me—appropriate discipline—was to reprimand him——

Mr. CUMMINGS. Well, who came up with the suspension, then? I'm confused.

Ms. LEONHART. In SES, the discipline, there has to be misconduct.

Mr. CUMMINGS. Right.

Ms. LEONHART. And the discipline has to be 15 days or more. Reporting it to an embassy and working it out locally with the embassy rather than reporting it to OPR would not raise to that level—it's the only time that's happened with him—would not raise to the level to be misconduct.

Mr. CUMMINGS. Just one more question.

Ms. LEONHART. So I counseled him.

Mr. CUMMINGS. The OP—if—reporting, now if he had reported it, he was supposed to have reported to the Office of Professional Responsibility. Is that correct?

Ms. LEONHART. That's correct.

Mr. CUMMINGS. And if he had reported that there was a possibility that the agent would lose their security clearance. Is that right? Is that right, Mr. Horowitz? Do you know that?

Mr. HOROWITZ. They certainly could lose their security clearance if the process was followed through as it's supposed to be followed through.

Mr. CUMMINGS. And if they lost their security clearance, does that mean they, then, lose their job?

Ms. LEONHART. Yes. Like the three Cartagena agents. If you lose your security clearance, then, you—you cannot be a special agent. You would be demoted.

Mr. CUMMINGS. So, in looking at it in hindsight, the regional director, do you feel that he received appropriate discipline?

Ms. LEONHART. I believe he made a mistake by not reporting it in. He took action, but it wasn't the right action. And he has—that has not happened with him in the past, and he's done a number of things in Colombia since that incident to ensure that this does not happen again.

Mr. CUMMINGS. Do you think there's a culture problem here?

Ms. LEONHART. I believe there may have been a culture problem.

Mr. CUMMINGS. May have been? May have been?

Ms. LEONHART. May have been a culture problem.

Mr. CUMMINGS. When did it stop?

Ms. LEONHART. Years back.

Mr. CUMMINGS. When did it stop?

Ms. LEONHART. I—

Mr. CUMMINGS. When did it stop? You said “may have been,” so you're assuming that—I assume you have a date that you think it stopped, and I'd like—I'd love to know what it is.

Ms. LEONHART. When you—

Mr. CUMMINGS. Why you say that.

Ms. LEONHART. When you see that these parties and what was happening in 2000 to 2004 were by one group of agents within Bogota, Colombia, I would say that's a culture problem.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Now recognize the gentleman from South Carolina, Mr. Mulvaney, for 5 minutes.

Mr. MULVANEY. Thank you, Mr. Chairman.

Ms. Leonhart, I'm new to the committee so I'm going to ask you questions that I'm just curious as to the answer because I'm very confused. You said some things today that, I think, strike me as being unusual. They may be true. And I'm certain if anybody back home is watching it, they don't understand it either.

You said you can't fire people. Why can't you fire people? Everybody else could be fired. Why can't you fire people that work for you?

Ms. LEONHART. Under the civil service laws, I can't intervene in the disciplinary process and that's why DEA's process is similar to some of the other agencies, is a three-tiered process. The Administrator, the Deputy Administrator, management is not—cannot intervene in the disciplinary process, so that's a prohibited personnel practice.

Mr. MULVANEY. Who can fire people when they commit misconduct, egregious misconduct, like participating in—

Ms. LEONHART. Our deciding—

Mr. MULVANEY [continuing]. Cartel-funded prostitution.

Ms. LEONHART. Our deciding officials.

Mr. MULVANEY. Who? In your agency, who is a deciding official?

Ms. LEONHART. We have two deciding officials. They are senior DEA 1811s with prior OPR experience. They make all of the disciplinary decisions for the agency.

Mr. MULVANEY. Are they senior to you or junior to you?

Ms. LEONHART. They're junior to me.

Mr. MULVANEY. Could you recommend that they fire somebody? So if somebody—you're saying you can't fire somebody, but somebody junior to you can fire somebody? Is that what you—is that what you're telling us?

Ms. LEONHART. My position as Administrator, under the Civil Service Act, we have to follow certain civil service protections. And so our system is set up that the discipline is decided by these two senior people within DEA, deciding officials, who have—

Mr. MULVANEY. Senior people, but not senior to you. But I get that. So, OK, let's say that you wanted to fire these people. Let's say you saw some activity that merited somebody getting fired. Did you ever—by the way, have you ever seen that since you've worked there? Has any of this conduct that we've talked about today in these couple dozen sex parties, in your mind, merit dismissal?

Ms. LEONHART. The activity that's been explained today, I believe, not knowing all the facts, not knowing—

Mr. MULVANEY. Now, how could you possible—I can't let you off the hook like that, Ms. Leonhart. How do you not possibly know all the facts by now?

Ms. LEONHART. Not knowing the same facts that the deciding officials look at, which are called the Douglas factors. So not—not knowing that piece, only knowing what the behavior was and what the investigations show, I took action last year to put the agency on notice that activity like that—and I named it, prostitution, and named four or five other things—required significant discipline. And that put our deciding officials and our board of conduct on notice.

Mr. MULVANEY. Do you have any idea how absurd all of that sounds to an ordinary human being?

Ms. LEONHART. I can see someone, not knowing the civil service system and not understanding our system, would think that.

Mr. MULVANEY. All right. Let's assume—because I think I just asked you if you saw anything that merited somebody being dismissed, and you didn't say yes, which I assume means you meant

no. But let's assume for the sake of this discussion you saw something that merited dismissal, what would you do?

Ms. LEONHART. I can't intervene in the process the way the law is set up.

Mr. MULVANEY. How do you start the process?

Ms. LEONHART. What I can do is put the agency on notice, like I did last year, that this will not be tolerated and that I, in writing, told the deciding officials and the board of conduct that these kinds of behaviors required significant discipline.

Mr. MULVANEY. Mr. Horowitz, Mr. Perkins, is it like this at the other agencies? Does everybody deal with these arcane rules at other agencies?

Mr. PERKINS. Congressman, I can't speak for the other agencies. But for the FBI, we are exempt from Title V and civil service rules, regulations, and statutes. Director Comey can and has summarily fired individuals. We do have a highly structured disciplinary process within the Bureau that will, as you go through the process, it raises it up to the appropriate levels for the appropriate level of punishment. There are occasions when the conduct is so egregious that the Director can intercede and summarily dismiss somebody and has.

Mr. MULVANEY. Mr. Horowitz.

Mr. HOROWITZ. My understanding is that the FBI is unique in that regard, as Mr. Perkins outlined, and that the other three law enforcement components in the Department have to follow the Title V rules and the civil service rules.

Mr. MULVANEY. One last question Ms. Leonhart, then I'll wrap up. Is it true, Ms. Leonhart, that if you suggest a suspension longer than 14 days—and in all the examples that I've got the paperwork on, on these couple dozen events—no one was ever suspended for more than 14 days. Is it true that if you recommend or if someone gets a suspension of more than 14 days, that a Merit System Protection Board takes over the investigation in the handling of that matter?

Ms. LEONHART. Not quite. If the deciding officials dole out discipline and it's more than 14 days suspension, the employee can appeal it. And when the employee appeals it, it goes to the Merit System Protection Board.

Mr. MULVANEY. And who takes over the investigation of the matter when the Merit System Protection Board gets involved?

Ms. LEONHART. No one takes over the investigation because the investigation has already been done. This is at the very end of the disciplinary process. So the DEA deciding official can say 30 days.

Mr. MULVANEY. But is that internal to you, or is it external to you?

Ms. LEONHART. The deciding officials is internal. The MSPB is external.

Mr. MULVANEY. I thank the gentleman.

I thank the chairman. I asked both the chairman and the ranking member to—this is just—this is nuts. How we can't fix this, I have no idea, but clearly she is telling us she doesn't have the legal authority to do what everybody on this committee thinks that she should have done. Maybe we should try and figure out a way to fix that.

Chairman CHAFFETZ. Now recognize the gentleman from California, Mr. DeSaulnier, for 5 minutes.

Mr. DESAULNIER. Thank you, Mr. Chairman. I will say as a new Member of this body, I keep thinking I've gone through the looking glass and I won't do it again. And then you come to a hearing like this, and this just seems, on the surface, it's hard to believe. It does bring a number of questions, including sort of the collateral consequences to direct dealers on the street and the larger problems we have to face in this country when people see this kind of—this different type of administration of justice.

So, Mr. Horowitz, first question is: What was different, do you think, between ATF and the U.S. Marshals that you were—your underlings, your mid-management people were able to access the information you asked for so quickly as opposed to the DEA and the FBI?

Mr. HOROWITZ. They've been fully cooperative throughout our reviews, have not raised legal objections, and have read the IG Act and complied with what we've asked for.

Mr. DESAULNIER. Is it a cultural thing? Is it an enforcement thing?

Mr. HOROWITZ. Well—

Mr. DESAULNIER. Do you need more enforceability?

Mr. HOROWITZ. Well, certainly there—we don't have any enforceability at this point, other than my testifying publically and raising it to the—

Mr. DESAULNIER. It doesn't seem to be sufficient in this instance.

Mr. HOROWITZ [continuing]. Folks. It ultimately turns out to be, in some instances, but it's a problem and it's a repeated problem.

Mr. DESAULNIER. Ms. Leonhart, so the individuals involved in the sex parties, the Rolex, the accepting sophisticated weapons, are they still employed?

Ms. LEONHART. The majority are still on the job, yes.

Mr. DESAULNIER. And it's hard to believe—it just seems completely counterintuitive that they could go back to work with as little as 10 days suspensions and be model agents. Have you had to spend extra time overseeing their job performance?

Ms. LEONHART. Their supervisors, their special agents in charge or their—their high-level bosses are aware of the conduct. And with the exception of one, we have not seen any misconduct since.

Mr. DESAULNIER. Do they have heightened supervision because their past conduct?

Ms. LEONHART. The reason that the supervisors are made aware of what the conduct is so that they can put them in positions where they can have good supervision.

Mr. DESAULNIER. So go back to the questions asked Mr. Horowitz. Why is it that it took so long to get this information? Why was it—why did it take so long for the IG to get the information from your underlings? Being aware that you—didn't you feel at some point that you were spending too much time on this? Didn't you admonish people underneath your command that they should be more forthcoming to the IG?

Ms. LEONHART. Well, I knew early on that there was disagreement or misunderstanding in a couple of areas. What the scope of the audit was, that delayed it. What type of records they were look-

ing for, that delayed it. I wish I would have known about all of those delays and I could have done something more about it. But at the end of the day, the reports did get to Mr. Horowitz. And with audits since, he and I, we kind of have an agreement that if someone is going to deny something to the IG, that it has to be raised up to my level right away so that he and I can discuss it.

Mr. DESAULNIER. Wouldn't—sitting here, it seems like it's a question of management. That you have to spend this amount of resources in something that's such an egregious case, it just seems a misappropriation of taxpayer funds.

So, Mr. Horowitz, if the DEA had at that time the same exemption that the FBI has, would that have been a more efficient response by Congress in terms of making sure that the management tools were there?

Mr. HOROWITZ. Well, certainly on the personnel side, on the discipline side, that would be something that could occur. Frankly, on the access issues and getting the records promptly, there is no reason why DEA and FBI shouldn't have done the same thing the Marshals Service and ATF did. They didn't question the scope of our audit. They didn't raise concerns about whether we could see names or see the facts or run the search terms. They just did it.

Mr. DESAULNIER. So that seems, Ms. Leonhart, you're complicit in the management problems. That it's just not culture problem. And with all due respect to your years of service, we heard this, I believe, from the IG when it came to Secret Service, sometimes you need somebody from the outside. So how do I defend your performance?

Ms. LEONHART. I think being a DEA agent and being within the agency, I can intervene in ways—

Mr. DESAULNIER. All evidence to the contrary, with all due respect, in this case.

Ms. LEONHART. On this audit, I think there was misunderstandings, misunderstandings of what the scope was as well as misunderstanding on this Bogota case—or on this Bogota case—

Mr. DESAULNIER. Ms. Leonhart—

Ms. LEONHART [continuing]. Was not a closed case.

Mr. DESAULNIER. Excuse me. My time has expired. But for me to go back and talk to somebody in a poor section of my district or any of these members who have people who are selling drugs who say, "How can you admonish us and want to make laws tougher for us when you let the DEA manage their own department this way," is quite—is counterintuitive, with all due respect.

I yield back what time I have.

Chairman CHAFFETZ. Thank the gentleman.

Will now recognize the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Administrator Leonhart, if an agent Stateside were soliciting a prostitute that was provided by a drug conspiracy he was investigating, what would—punishment would you recommend?

Ms. LEONHART. I can't recommend a punishment. I would just hope that would be thoroughly investigated and—

Mr. GOWDY. So you're telling me nobody cares what the administrator of the DEA thinks should happen to an agent?

Ms. LEONHART. I believe——

Mr. GOWDY. You're powerless to express your opinion? You have no First Amendment right when it comes to who works for your agency?

Ms. LEONHART. I have expressed my opinion in a number of ways.

Mr. GOWDY. What was your opinion? What did you express? What did you think the proper sanction was?

Ms. LEONHART. Last year—last year I sent an email and I sent a memo to every employee in DEA and put them on notice that this kind of conduct was not——

Mr. GOWDY. My question must have been ambiguous because I wasn't talking about future conduct. I was talking about past conduct.

What punishment did you recommend for conduct that happened in the past?

Ms. LEONHART. Under the civil service law, I cannot recommend a penalty. I can't intervene in the disciplinary process. I can't even make a recommendation to the deciding official.

Mr. GOWDY. What does it take to get—what would it—hypothetically, what would it take to get fired as a DEA agent? Because the agents I used to work with were worried about using their car to go pick up dry cleaning. They were actually worried about using their OGF, OGV to pick up dry cleaning. They were worried about being disciplined. Apparently, that world has changed.

Do you know whether any of the prostitutes were underage?

Ms. LEONHART. I don't know that.

Mr. GOWDY. Would that impact whatever recommendation you might have in terms of a sanction?

Ms. LEONHART. I don't recommend the sanction. I can't fire. I can't recommend a penalty. There's a guide that the deciding officials abide by, and they have a penalty guide that they look at, and the penalty guide for this kind of activity is anything from reprimand to removal.

Mr. GOWDY. How about security clearance, do you have any impact over that, whether or not an agent has a security clearance?

Ms. LEONHART. No. There's adjudicative guidelines and that has to be adjudicated——

Mr. GOWDY. Well, I——

Ms. LEONHART [continuing]. By the security people.

Mr. GOWDY. Honestly, what power do you have? You have to work with agents over whom you can't discipline and have no control and you have no control over the security clearance, what the hell do you get to do?

Ms. LEONHART. What I can do is build on and improve mechanisms to make sure that the outcome is what we believe the outcome should be. And that is what happened in Cartagena. That is what's going to happen moving forward.

Mr. GOWDY. Inspector General Horowitz, I find that stunning. Let me ask you this: Did the agents know that the cartels were providing the prostitutes?

Mr. HOROWITZ. What we found, Congressman, from looking in the file was that they should have known, given they're trained law enforcement agents and they were dealing with corrupt law en-

forcement—local law enforcement that was providing them with the prostitutes as well as the various gifts.

Mr. GOWDY. Were they supposed to be investigating these cartels?

Mr. HOROWITZ. They were.

Mr. GOWDY. So they are receiving prostitutes from cartels that they are supposed to be investigating and she can't fire those agents? Do you agree with her, she can't fire them?

Mr. HOROWITZ. I think, as a matter of Title V, she can't directly intervene and fire them. I do think one of the concerns we outlined in the report as to DEA and the other three agencies is how they adjudicate these cases. They undercharge them in some instances. And so, at DEA, for example, sexual harassment if you're charged with that, there's only one punishment, removal. But if you're charged with conduct unbecoming or poor judgment, which isn't even actually a category, then you've got a range of penalties. And so one of the issues, you know as a former prosecutor, is how you charge the case, and that has a consequence.

Mr. GOWDY. Well, Mr. Chairman, I don't know what would need to be done. But I, like my friend from South Carolina, find it stunning that you can solicit prostitutes—Administrator Leonhart, do we know whether any of the prostitutes were underage? Do we know whether any of them were part of any human trafficking rings?

Ms. LEONHART. Because the Bogota case happened a decade ago, there were no interviews of prostitutes. On the more recent one, the Cartagena one, it did not identify an age for the prostitute involved.

Mr. GOWDY. Mr. Chairman, I would just find it impossible to explain to any reasonable-minded person how an agent cannot be disciplined for soliciting prostitutes from drug cartels that they were ostensibly investigating. I find that stunning.

Chairman CHAFFETZ. If the gentleman will yield?

If somebody murdered somebody, could you fire them?

Ms. LEONHART. If someone murdered someone, there would be criminal charges, and that's how they'd be fired.

Chairman CHAFFETZ. But if they were—could you take away their security clearance?

Ms. LEONHART. The Office of Security Programs can review security clearances and take their clearances, just as they did with the three agents in the Cartagena incident.

Chairman CHAFFETZ. Gentleman from South Carolina.

Mr. MULVANEY. Gentleman yield for just a second.

I'm sorry, I heard you say that there's one thing you could actually fire somebody for, which is sexual harassment. So let me see if I've got this correct, Mr. Horowitz, Ms. Leonhart. If I flirt with a coworker in the office and that constitutes sexual harassment, I can be fired, but I can take an underage hooker from a cartel I'm investigating and you can't fire me. Is that what we're talking about here?

Mr. HOROWITZ. Actually, Congressman, if you charge the offense, removal is a possibility. If you charge something less, conduct unbecoming or poor judgment—you don't charge what actually oc-

curred—that's when the ability to discipline is limited. And that's the concern we found, as you know, in our report.

Mr. MULVANEY. Thank you.

Chairman CHAFFETZ. Thank the gentleman both from South Carolina.

I will now recognize the gentleman from California, Mr. Lieu, for 5 minutes.

Mr. LIEU. Thank you. I'd like to talk to you folks a little bit about the possible security risks from the sex parties. And on page 15 of the LPO report, it says the following: It says, Mr. Corroborator 2 Stated he believed that Mr. Corroborator 1 gained information from the U.S. agents by getting their guard down through the use of prostitutes and paying for parties. Mr. Corroborator 1 bragged about the parties with prostitutes and how he sowed relationship closeness with agents. Two, Mr. Corroborator 2. And then Mr. Corroborator 1 said that he could easily get the agents to talk.

So, Ms. Leonhart, do you believe actual information was compromised through these sex parties?

Ms. LEONHART. There's no evidence that actual—that any was compromised. But the concern is that participating in this kind of behavior, bringing four nationals, bringing prostitutes to your GLQ, bringing them around other agents, all of those are security risks.

Mr. LIEU. Doesn't the report itself provide evidence that you had agents in compromised positions that, at least, foreign officials believed that the agents were compromised and they could get the agents to talk? Did you do an investigate—how do you know that agents didn't say something that they maybe should not have said or disclosed some information they should not have?

Ms. LEONHART. Reading the report, one of the concerns was that the agents got very close to these two corrupt Colombian national police and that the Colombian national police were providing prostitutes and gifts to get in the good graces of the agent. And that's about the furthest that it goes.

Mr. LIEU. Did you then do an investigation as to what information may or may not have been leaked?

Ms. LEONHART. The OPR investigation, because it was 10 years after the fact, did not identify any instances. And, in fact, the agents were all out of country by the time it was investigated. But that is a major concern.

Mr. LIEU. So it's possible the information was leaked or compromised?

Ms. LEONHART. Absolutely. That's a major concern.

Mr. LIEU. So let me focus again on this discipline issue. When I served Active Duty in the Air Force and still in the Reserves as a JAG, I dealt with the Douglas Factors. And I understand some of the restrictions that you have because we're a civil service system.

The FBI is not under Title V. DEA agents, like FBI agents, go undercover. They're law enforcement. Any reason not to move the DEA out of Title V?

Ms. LEONHART. We would entertain any look at that, any exemption that could be given so that an administrator or director can take action and make sure that only the people with outstanding reputations and ethics are employed by the agency.

Mr. LIEU. If the deciding officials make a decision you don't like, can you do anything with that decision?

Ms. LEONHART. I can't do anything with the decision, but I can do what I did last year. And that is put on notice for the entire work force, not any one particular case, put on notice for the entire work force that this behavior is unacceptable and that I ordered the deciding officials and the board of conduct to consider significant discipline to include up to removal for behavior in these areas moving forward.

Mr. LIEU. Now, even though there are civil service protections for sort of the rank and file, when something goes badly wrong and it's a climate issue, a cultural issue, what happens is leadership resigns or it gets fired. So, for example, in the Air Force, when there was problems with some of the nuclear weapons we had, even though the Secretary of Air Force at the time, the chief of staff of the Air Force that really didn't know about it, wasn't aware, but because those things happened, they were both removed. Secret Service, their head is gone.

Do you believe it's a climate issue? And if it's a climate issue, do you believe then maybe, instead of focusing on the rank and file, maybe you need leadership change or removed?

Ms. LEONHART. We have changed leadership. We have a different set of leaders within DEA now than we did a decade ago. And I believe that, moving forward with our—a better system to deal with discipline and moving forward with—instead of looking at what the discipline was in the past that was doled out to individuals who took part in this kind of behavior, the deciding officials and the board of conduct has the clear ability now to—it's a reset and they can—they can look at the activity, and they can say this is—the Administrator said this is—deserves significant discipline, and they can take that kind of action.

Mr. LIEU. Thank you.

I yield back.

Chairman CHAFFETZ. Thank the gentleman.

Now recognize the gentleman from North Carolina, Mr. Walker, for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman.

Ms. Leonhart, you have said earlier today that you do not—this dispute, the report, I believe, is your exact words. Yet a couple of times you've mentioned this was an isolated incident.

From what we've heard today, this has been sort of a spring break, frat party mentality for the last 15 years. Now, the adjudicative guidelines for determining eligibility for access to classified information, these are the considerations for whether or not someone is given a security clearance. Is that correct?

Ms. LEONHART. That's correct.

Mr. WALKER. OK. Part of the guidelines covers conduct that reflects lack of judgment or a person's ability to protect classified information. Is that correct?

Ms. LEONHART. That's correct.

Mr. WALKER. Are you aware of anyone who's ever been fired for breaching that?

Ms. LEONHART. Cartagena, the three agents. And we've had other agents throughout DEA's history that have been fired.

Mr. WALKER. Did you ever have a role in someone losing their job because of the security breaches?

Ms. LEONHART. Cartagena.

Mr. WALKER. OK. Soliciting prostitutes, does that expose an agent to blackmail? Weren't some of those agents married?

Ms. LEONHART. I believe so.

Mr. WALKER. You know what really even is a—to me is a more potent question, 2 weeks ago we had the largest human trafficking event in North Carolina, brought members from 40 agencies across the State. Talked about the human trafficking specifically the drug cartels are involved with: 83 percent of those girls are from 12 to 14.

So my question is this: Having gratuitous sex with an underage prostitute, first of all, how egregious it is to even use that despicable language, but second of all, at what point does it become a security breach? You've mentioned the word "appalled" several times. Are you appalled with that?

Ms. LEONHART. Absolutely.

Mr. WALKER. Well, how appalled do you have to be before you jump up and down and scream and holler and say, This cannot be tolerated?

Ms. LEONHART. The first incident that I had any dealings with in this manner or about this behavior was Cartagena, and I made sure that the disciplinary system, that there was coordination between the people that do the investigations and the people that do the security clearances because I, like you, feel it is outrageous behavior. But there are security concerns. They have put themselves in danger. They have put other agents in danger. They have not protected—

Mr. WALKER. Sure they have. But, listen, there's no statute of limitations in our countries for having sex with a 13-or 14-year old. Why are we just—why are you just telling me that, well, that was long ago, but picking up at this point on, we're trying to—I don't understand that. Can you help me understand it?

Ms. LEONHART. Well, I will say that the security clearances, if all the people involved in the Bogota incident, the person—the one person involved in 2009, those security clearances are currently under review by the Department of Justice.

Mr. WALKER. Do you have any concrete proof of the age of these prostitutes that these men were involved with? Have you done any research on that at all? Is there any record that you've read?

Ms. LEONHART. I have read the reports, and there's nothing to indicate a name or an age.

Mr. WALKER. So maybe nobody ever even asked that question.

Let me ask you something else. Last Friday, April 10—the chairman referred to this a little bit earlier—3 days before this hearing, the Attorney General had to send out a memo reminding law enforcement agents that they are not to solicit prostitutes. Are you familiar with that memo?

Ms. LEONHART. Yes, I am.

Mr. WALKER. The problem with it. Or else what? What happens? Just a reminder. I mean, first of all, the fact that we have to remind these agents to be on your best behavior is ludicrous. But the fact is, then what?

Evidently, in the past, Hey, you may take a couple of days off or even unpaid for 2 weeks at the most. Where is the “or else” in this? Would you answer that question, what happens? I mean what’s—what’s—the Attorney General sent it out and said, Listen, hey, guys, you know leave the prostitutes alone. Well, what else? Or what’s the penalty? What’s the concrete solution that has been clearly communicated? Can you explain that or talk about that?

Ms. LEONHART. Well, working within our system, in the same way the Attorney General put the entire Department of Justice on notice, I a year ago—last year—put the entire DEA work force on notice that this type of behavior was not to be tolerated and that there would be significant discipline.

Mr. WALKER. Well, you know, I have three children, and I tell them—talk about sometimes not to do that. But unless the consequences are very clearly communicated, I don’t have a shot that they’ll change their behavior.

Last question, and I’ll yield back. If you had a chance going back, would you be so appalled that you would do some things different in handling these matters?

Ms. LEONHART. Without a doubt.

Mr. WALKER. Thank you.

Yield back.

Chairman MEADOWS [presiding]. I thank the gentleman.

The Chair recognizes the gentlewoman from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

I don’t know how to describe what we’ve seen here: Boys going wild; out of sight, out of mind. But what we do know and what most concerns me is how these prostitutes were funded. We are—it looks like we have implicated taxpayer funds, that some may have come out of official funds and some out of cartel funds. It’s hard for me to know which is worse.

But it does seem pretty clear that we may be dealing, to be sure, with a cultural problem but with a cultural problem that has—is so deep that it is now a problem of corruption. And I say that because I’m looking at some of the excerpts from the reports where apparently there were corroborating witnesses. And some of this is so eye-popping, I’m going to have to ask you what is your response. You know, I’m not going to ask you about why you don’t fire people because I do understand that when the State—that’s the United States or any of its agents—is an actor, then, due process, of course, requires you to go through certain processes; after all, those processes have been put there by the Congress of the United States.

So I’m going to ask you whether—about some things that perhaps you could do. This corroborating witness Stated, he recalled that the ASAC, that’s the Assistant Special Agent in Charge, I believe, that his farewell party where part of the—that was in 2003 and 2004—where part of the money requested from an operational budget—those are the operative terms, “operational budget”—was used for his party. He Stated that the—his party was organized by the assistant special agent in charge and that he paid 500,000 pesos—that’s approximately \$261—for each prostitute with funds

from an operational budget. Now, I want to try to identify what that means.

What is the purpose, Ms. Leonhart, of an operational budget? Is it taxpayer funds?

Ms. LEONHART. What I believe that refers to is money is given to the Colombian national police to pay for their operations that they're doing in collaboration with us.

Ms. NORTON. So it's given—taxpayer funds are given to them. So what we're talking about funds that were paid, not by—in this case, out of the operational budget, it looks like, by agents. Who is responsible for accounting for these funds in the regional office?

Ms. LEONHART. The regional director would be responsible for that.

Ms. NORTON. Now, if that's the case—since, of course, you have indicated—and I understand why you can't precipitously fire someone as if this were the private sector when the State is an agent—would that fund continue to be under the same supervision if you had—having this kind of information as it was before?

Ms. LEONHART. The Bogota incident you're talking about was—

Ms. NORTON. I am.

Ms. LEONHART [continuing]. Was three regional directors ago. And the way that DEA operates with the Colombian national police in these special units has completely changed since—

Ms. NORTON. Well, I didn't ask you that.

Ms. LEONHART. —2000, 2003—

Ms. NORTON. I'm asking how the operational—and now how is the operational budget dealt with? In other words, now it is not in control of the agents themselves to pass out this money to Bogota or anybody else? Is it controlled from your office?

Ms. LEONHART. No. The funds by the DEA Bogota office that go to the Colombian national police for operations now are audited. They require receipts. The 2000 to 2003 timeframe was at the beginning stages of these units.

Ms. NORTON. Well, according to this cooperating witness, the—again, the word “operational”—operational budgets were presented to the DEA, and there was additional information here—and I want to quote—for additional funds—apparently not enough funds were in the operational budget—for additional funds which were used for prostitution and parties for agents.

Are you aware of that allegation that they didn't have enough so they went back and got some more funds?

Ms. LEONHART. I'm aware that the corrupt national police officers who ended up being indicted by DEA and convicted, that what they were talking about is padding their operational requests that went to—

Ms. NORTON. Yes.

Ms. LEONHART [continuing]. DEA to get additional money.

Ms. NORTON. In other words, fraudulent budgets?

Ms. LEONHART. Yes. On behalf of the Colombian national police.

Ms. NORTON. You can't wipe—you can't wash the hands of the office. Look, this is a corroborating witness here who Stated that the operational budgets were presented to the DEA to cover operational expenses. So it doesn't seem to me you can wash your

hands of that as the DEA or that they could have washed their hands of that.

Has someone looked back at how these funds were expended during this period so that you could now lay out exactly what happened during this period? Part of the problem here and the frustration, I think, of the committee is that it's taken so long because you had no policy to go up the chain of command. And so you can tell me, well, this was 2003 and 2004. But I will tell you, if I was there, I'd want to know exactly what happened then so I'd make sure it wasn't happening now.

Ms. LEONHART. One part of the investigation was to go through and audit and do just that.

Ms. NORTON. From that period? From that period?

Ms. LEONHART. Yes. To look at the books from that period of time.

Ms. NORTON. Because we understand, again, from one of these cooperating witnesses, he could obtain—and this is a quote, “Prostitutes for agents from the DEA Bogota office.” This is what the cooperating witness said: He could—he would pay the girls to come to the parties and then the agents would pay the girls directly for any sex they wanted. He recalled getting prostitutes for these 15 to 20 parties.

Weren't the DEA agents in Colombia there to crack down on the agents who were—on the cartels who were given funds to pay for these parties?

Chairman CHAFFETZ. The gentlewoman's time is expired, but the gentlewoman may answer.

Ms. LEONHART. That's what's so appalling about this, that although the agents didn't know, the corrupt police were getting money from the traffickers. They were on their payroll and using that money for the prostitutes.

Chairman CHAFFETZ. Thank you. Thank the gentlewoman.

I will now recognize the gentleman from Georgia, Mr. Hines, for 5 minutes.

Mr. HINES. Thank you, Mr. Chairman.

Mr. Horowitz, in your office report you noted that during the interviews some in your office staff were evidently told that some DEA employees were under the impression, at least, that they were not to discuss information regarding open cases.

Do you know who provided that information?

Mr. HOROWITZ. We don't know who told them that information, but that is, in fact, what we were told.

Mr. HICE. All right. So did you ever determine whether or not the DEA staff, in fact, someone communicated that information?

Mr. HOROWITZ. We didn't determine definitively whether it occurred. We believe it did occur given we were told that by several individuals.

Mr. HICE. All right. So you were told by several individuals that was not an isolated incident. All right. So you did not investigate further.

Mr. HOROWITZ. We did not.

Mr. HICE. OK. Ms. Leonhart, did your office ever give information, instructions to that effect?

Ms. LEONHART. No. My office didn't and when the report—I saw the draft asking the Office of Professional Responsibility and Inspections about that, they said that there was a miscommunication. They were—they were under the belief that closed cases were not a part of what Mr. Horowitz' audit would cover.

Mr. HICE. All right. Well, there was obvious confusion. Did you yourself at any time ever give instructions to anyone to withhold information?

Ms. LEONHART. Absolutely not.

Mr. HICE. Did anyone in your staff?

Ms. LEONHART. No. No one in—

Mr. HICE. How do you know?

Ms. LEONHART. Because we weren't involved in that—in that part of the process.

Mr. HICE. Well, then you can't definitively say that no one did it. If you weren't involved in the process, I mean, obviously, there were reports. There was testimony given to Mr. Horowitz' team that your employees were instructed not to give information.

Ms. LEONHART. The inspectors that were interviewed received instructions from OPR and the Office of Inspections. There's—I have no information about what information was relayed to them other than it was relayed—

Mr. HICE. All right. So you don't know is the bottom line. You don't know if that information was relayed or not.

Let me—Ms. Leonhart, you were all over the board today. You say you can't fire anyone and that you didn't have all the facts, and yet you send information that this behavior is not going to be tolerated. It's absolutely all over the board. You have junior officers who evidently can fire, but you cannot fire. Do you have any authority over them? Can you fire those junior officers?

Ms. LEONHART. If they are not doing their job, they can be replaced, and that is done by the—

Mr. HICE. Did they do their jobs by not disciplining appropriately in this situation?

Ms. LEONHART. I'm disappointed in the discipline. I think that it's not enough.

Mr. HICE. So why were those junior officers not replaced?

Ms. LEONHART. Again, I can't interfere with the disciplinary process, but I can make sure through our career board that replacements or people that are coming up to take those positions are—are of utmost—

Mr. HICE. So do you or do you not have any authority over the junior officers?

Ms. LEONHART. I don't have the authority to intervene in the disciplinary process.

Mr. HICE. All right. A moment ago you said you would act differently if you had this to do all over again. Why in the world would you say that? It seems that you've made it clear today that you—your hands are tied, that you can do nothing. I'm really having a difficult time understanding. It appears to me that no one listens to you, quite frankly. You write a letter saying this behavior's not going to be tolerated, and yet you have no influence as to whether that behavior's going to be tolerated or not.

Did anyone listen to you when you wrote what letter?

Ms. LEONHART. Yes. The entire work force listened to me, and, in fact, like me—

Mr. HICE. Why would they listen to you if you have you no influence whatsoever on the disciplinary process? Ms. Leonhart, I've just got to tell you, you say you are in charge of discipline on one hand; then you come back and you say you have nothing to do with discipline. You're in charge of the entire agency; then you come back and say you have nothing to do with correcting problems. It—quite honestly, I have serious questions as to your competence, quite frankly, and it appears to me that we need to seriously consider new leadership at the DEA.

And I yield back the balance of my time.

Chairman CHAFFETZ. Before the gentleman yields back, I'd like to give Mr. Horowitz an opportunity to respond to the questions that Mr. Hice was asking earlier, if you could address that directly, Mr. Horowitz.

Mr. HOROWITZ. Certainly. With regard to the production of information and answering questions, again, the frustration we had with both the FBI and DEA during this process was we kept having to go back and ask for more once we learned what we weren't told originally. That was the case with regard to documents. We got redacted information. We had to—I had to elevate it in both instances months after this all started.

With regard to the interviews, we learned later in the process that certain individuals at DEA that we had interviewed hadn't told us about an open case because of their understanding that they shouldn't talk about an open case. We found out that when we did get productions from both the FBI and the DEA that they didn't give us everything. We only learned that because we went back and checked our own records to compare and see if we had everything that—whether they provided us with everything that we already had. We thought they had even more than we had, which is why we went to them in the first instance for the information, but then we found out that the production was incomplete. We then had to go back and ask for a further review, and then after we did the draft report, we found out that the DEA hadn't run all the search terms we had done without telling us that they had made that decision on their own.

So we had multiple instances where that occurred. It delayed our report. I can assure you it frustrated the good, hard-working folks in my office who spent months just trying to get information. And I will go back to what I said earlier: The ATF and the U.S. Marshal Service, we asked the same—made the same requests of them. We got the material. And we got it fast, and we never thought we didn't get from them what we were entitled to. That should have happened across the board, and it should be happening across the board in all instances.

Chairman CHAFFETZ. Appreciate it.

We'll now recognize the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman, and thank you for holding this hearing.

Mr. Horowitz, the IG report we're discussing today would seem to suggest the DEA's tolerance level for prostitution depends on the

local culture in which the—what we'd call offense occurs. For example, your report says the DEA inspector told us that prostitution is considered a part of the local culture and is tolerated in certain areas called tolerance zones. Is that correct?

Mr. HOROWITZ. That's correct.

Mr. CONNOLLY. Ms. Leonhart, does the DEA recognize that prostitution is embedded in certain local cultures and by implication, therefore, tolerable, and that you recognize—the agency recognizes tolerance zones for prostitution?

Ms. LEONHART. No. What I believe the inspector was talking about was, in Colombia, there's certain tolerance zones for prostitution. It doesn't matter with the DEA; the partaking in that kind of behavior is against all DEA policies. It's not—doesn't matter if it's legal in a particular country. It doesn't matter if it's legal in a particular area of a city. It doesn't matter. They're not to take part in that type of behavior.

Mr. CONNOLLY. So it's always wrong in terms of your policy no matter where, no matter when, no matter what the circumstances.

Ms. LEONHART. That's correct.

Mr. CONNOLLY. And that's an explicit policy?

Ms. LEONHART. It's—it's—you find it in our personnel manual. You find it—

Mr. CONNOLLY. There's a chapter called "Thou Shalt Not"?

Ms. LEONHART. Basically. It's very clear.

Mr. CONNOLLY. OK. Mr. Horowitz, did you confirm that?

Mr. HOROWITZ. Well, certainly that wasn't the case back in—during the course of the years that we reviewed this. That's the problems that we identified here.

Mr. CONNOLLY. It was not no case.

Mr. HOROWITZ. That was not—certainly not the culture and certainly not the understanding based on the interviews we conducted.

Mr. CONNOLLY. I'm going to get to that, but did you find an explicit policy in their personnel manual, human resource policy that explicitly barred such illicit activity.

Mr. HOROWITZ. It did not at that time. It does now in light of both the Administrator's memo and the Attorney General's memo.

Mr. CONNOLLY. So, Ms. Leonhart, when you said to me just now that's a violation of our existing policy, you meant the new existing policy. Is that correct?

Ms. LEONHART. The new existing policy, but it existed in our personnel manual in a couple of different sections. One about you cannot have a relationship with someone involved in illegal activity. You can't do anything that—

Mr. CONNOLLY. Well, wait a minute. Wait, wait, wait, wait, wait. You just said to me that the tolerance zones referred to Colombia, not to DEA designating tolerance zones, in which prostitution, in fact, was legal. You just cited something that refers to illegal, but if you go to Colombia, it is not illegal in certain parts of the country, and does—did your policy, therefore, in a sense open the door for what we would consider in most of the United States illegal activity that was not prohibited in the host country?

Ms. LEONHART. What we found with the Cartagena case was our policies didn't specifically say you cannot partake in prostitution, but we had different sections in our personnel manual, different

sections in our standards of conduct that every agent in the agency signs once a year and acknowledges, things such as DEA personnel are prohibited from engaging in any criminal, infamous, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to DEA, to DOJ, or the Government of the United States.

Mr. CONNOLLY. Well, apparently, some of your agents, when they went to Cartagena thought prostitution was not included in that litany.

Ms. LEONHART. No DEA agent thought that prostitution was OK.

Mr. CONNOLLY. Well, I don't think that's what the inspector general found.

Let me read to you further from the report: According to the inspector, it is common for prostitutes to be present at business meetings involving cartel members and foreign officers. The DEA inspector also stated that the acceptability of this type of behavior affects the way in which Federal law enforcement employees conduct themselves in a particular country.

So what you just read to us notwithstanding, the practice seems to be very much contingent upon local acceptable practices and were influenced by that, your policy notwithstanding. Would that be fair to say?

Ms. LEONHART. I would say every DEA agent knows, to include going back to 2000 to 2004, in that period of time, knows that that—partaking in that kind of activity is against DEA policy.

When Cartagena happened and we reviewed all our policies just to make sure, we decided to strengthen them and to put wording in about prostitution specifically just so that—just to put everybody on notice and make sure it was clear. Our policies were not as clear. They did not specifically say “prostitution,” but there are three or four different places in our standards of conduct where you could point to that and say that's a violation of standards of conduct.

Mr. CONNOLLY. Would the chairman allow me one more question? I just have one more question if the chair would indulge.

Chairman CHAFFETZ. Yes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Perkins, the report talks about FBI providing employees with extensive predeployment training regarding conduct abroad and has done the most to prepare its employees to make day-to-day decisions, unlike, apparently, DEA or even the Secret Service.

Can you comment on that? I mean, does your training program, in terms of deployment overseas, explicitly deal with issues like prostitution and the sense of dishonor it brings on the United States if its employees engage in that kind of activity?

Mr. PERKINS. Yes, Congressman, it actually covers a universe of issues from the personal security of the individuals going overseas to the standards of conduct that we would expect them to exhibit while they're overseas. A good bit of this began actually under former director Louis Freeh as we began to expand our overseas presence. With the wars in Iraq and Afghanistan, we had a significant presence overseas at that time which required yet again additional training added to that. As our overseas presence remains high, we see great benefit in maintaining that type of predeployment training for these individuals.

Mr. CONNOLLY. And final point on training, Ms. Leonhart, does DEA have a program similar to the FBI in terms of predeployment training?

Ms. LEONHART. Yes, we do. It's called the Foreign Orientation Program, and in May 2012, we started—we were handing out State Department cable prohibiting prostitution even if it's legal in a country. We also added extra slides to a presentation that our OPR gives to all the employees and their spouses before they head overseas, and that includes information about prostitution, information about security clearances. So there—they are informed before they go overseas.

Mr. CONNOLLY. OK. Thank you. My time is up. Mr. Chairman, I just would like to pursue with you at some point this whole issue of training because I think that has a great bearing on what was allowed to happen.

Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you.

Now recognize the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

Ms. Leonhart, you've been with DEA for how many years?

Ms. LEONHART. 35.

Mr. MEADOWS. 35 years, and as I understand it, about 5 years as—in your current position from—

Ms. LEONHART. Since 2010.

Mr. MEADOWS. Since 2010. So you take this very seriously being part of law enforcement. You know, I enjoy a great relationship with law enforcement back home and in the standards of which they take, and so standards that are violated by some within our ranks really paint a very bad picture for the rest who serve diligently. Wouldn't you agree with that?

Ms. LEONHART. Yes. These are, you know, a few compared to the 4,600 agents that work for DEA. I'm very proud of our agency, and this hits us hard.

Mr. MEADOWS. Well, and it should hit you hard, and it sounds like that, you know, you keep saying that you're appalled and that you just can't believe this kind of behavior, but my concern is, is in 1994 there was a GAO report that outlined, and you were there at that particular time, that outlined, you know, sexual misconduct within the agency. Then again in 2004, there was an OIG study that talked about this same kind of inappropriate behavior. And yet here we are today with a new OIG report that's over 100 pages in length, but we're addressing a decade-old cultural problem. Aren't we? This is not new to you. Is that correct?

Ms. LEONHART. This is—this is new to me in this position, but in law enforcement, obviously every—every company, every organization has some people that are not going to follow the rules, and to see what happened back in 2000 to 2003 in Colombia, to see what happened in 2009 with the incident with the agent in Bogota, and then to see Cartagena, this is our opportunity to make sure that that culture, if there was one that existed, that there's—there's no doubt that employees know that this is unacceptable and see what will happen to them. That is why firing the three employ-

ees, agents, after Cartagena sets the tone for what happens from here on.

Mr. MEADOWS. Well, it might if it wasn't reinforced in other ways. And let me tell you, you keep coming back to Cartagena because it really may be the only time that there have been people that have actually been disciplined for improper conduct. Wouldn't you agree with that? So you keep running back to this as a good example, but yet your directive didn't come out until 2 years after that event. You were bragging about your directive that you sent out. Didn't that go out in 2014?

Ms. LEONHART. Yes. It went out—

Mr. MEADOWS. So why—if you were concerned about the culture, wouldn't it have gone out immediately after the event, or is it just that the press has started to report this as a problem and now it's a problem for you?

Ms. LEONHART. No. Actually, we—we had discussion, the executive staff, on what—what things we should put in place, and we started putting things in place in 2012 after the discovery of what happened in Cartagena.

Mr. MEADOWS. So it is your testimony that it took you 2 years to figure out what to put in a directive? Is that your testimony here today?

Ms. LEONHART. No. Actually, we drafted that back after a working group got together to decide what steps should we immediately put in place. We drafted that and on the heels of the Cartagena case being able to show here's what happens if you partake in this behavior. We had the case—disciplinary case finalized. We went out with a series of things. That memo—we had already put additional training—every basic agent training, every intel analyst training—

Mr. MEADOWS. OK. I'm running out of time. So let me—let me do this one followup because I have reason to believe that some of the people that today you're saying maybe should have been fired but that you didn't give a directive, but I have reason to believe that some of them have actually gotten promotions, have gotten bonuses, and have gotten new assignments. Would you agree with that?

Ms. LEONHART. I know that—

Mr. MEADOWS. That some of them.

Ms. LEONHART. I know that a number of them were promoted between the activity in 2000 and when it came to light in 2010. I can tell you that since the allegations were raised and investigated, there have been no promotions.

Mr. MEADOWS. How about bonuses? Because I have reason to believe that there were bonuses that were given. I'm sure you've just looked into all of this. So were there bonuses given to some of those folks?

Ms. LEONHART. Of the—I know that there were bonuses given to the regional director. I don't know about bonuses given to the—I don't know about—

Mr. MEADOWS. So some bonuses were given to people who were directly involved in this particular thing that most Americans find offensive?

Ms. LEONHART. The regional—

Mr. MEADOWS. Yes—yes or no.

Ms. LEONHART. No. The regional director was not—

Mr. MEADOWS. Well, you said you just didn't know. So how would you know that—

Ms. LEONHART. No. The regional director that got bonuses was not directly involved in this.

I don't know as to the other employees.

Mr. MEADOWS. So is it possible they got bonuses?

Ms. LEONHART. It's very possible.

Mr. MEADOWS. It's very possible. Because our intel would say that it is. So here's my—I appreciate the patience of the chair.

If you would give, without names, because obviously that is critical, would you agree today to give the names and the number of people involved in this to the OIG so he can report back to this committee on how many of those people got bonuses? Would you agree to do that? Because I find that that's reenforcing a bad behavior, if they're getting bonuses. Would you do that? Would you agree to that?

Ms. LEONHART. I will work with the department who is going to be giving you additional information here shortly to see about adding that in.

Mr. MEADOWS. So we can get bonus information to see if these people that were involved in this got bonuses. And you can redact the names. I just want to know the number of them.

Ms. LEONHART. So I'll discuss it with the department at—

Mr. MEADOWS. So is that a no? I mean, you're the Administrator. You can make the decision. Are you going to give it to us or not?

Ms. LEONHART. If I'm able to give it to you, you'll get it.

Mr. MEADOWS. Mr. Chairman, I—

Chairman CHAFFETZ. If the gentleman would yield.

Mr. MEADOWS. Yes.

Chairman CHAFFETZ. We're asking you to provide the information to the inspector general. Will you or will you not do that?

Ms. LEONHART. If it was up to me to give it to you—

Chairman CHAFFETZ. You're the administrator.

Ms. LEONHART [continuing]. I'd give it to you.

Chairman CHAFFETZ. You're the Administrator. Who do you have to ask? Who do you report to?

Ms. LEONHART. The documents that are going to your committee were—

Chairman CHAFFETZ. We're asking you to give them to the inspector general.

Ms. LEONHART. If the inspector general wants that, we'll give him it.

Chairman CHAFFETZ. Does the inspector general want that information?

Mr. HOROWITZ. I'd be happy to take that information and look into the issue.

Chairman CHAFFETZ. Will the inspector general report back to this committee at his—

Mr. HOROWITZ. We will.

Chairman CHAFFETZ [continuing]. Earliest convenience about these particular individuals?

And to suggest that the more senior person wasn't directly involved, he was involved. Was he not?

Ms. LEONHART. He was not involved in the activity.

Chairman CHAFFETZ. Did he properly report up the chain of command?

Ms. LEONHART. He didn't report it to the right place.

Chairman CHAFFETZ. OK. So he was involved in it. He may not have been naked and having sex in his apartment like everybody else was, but he was involved. Correct?

Ms. LEONHART. He failed to report to OPR.

Chairman CHAFFETZ. That person should be included in the information that you give regarding bonuses and promotions. Now, can we also add into there promotions, title changes? Bonuses, title changes, promotions. Is that fair?

Mr. HOROWITZ. Yes. We will followup.

Chairman CHAFFETZ. Looking for a yes here from the Administrator.

Ms. LEONHART. We'll work to get you that information.

Chairman CHAFFETZ. Is that a yes or no?

Ms. LEONHART. Yes. We'll get you that information.

Chairman CHAFFETZ. Thank you.

Gentleman have any other—

Mr. MEADOWS. I thank the chair for their patience. I yield back.

Chairman CHAFFETZ. Did you want to add something, Mr. Horowitz? It looked like you may have wanted to—

Mr. HOROWITZ. No.

Chairman CHAFFETZ. OK.

We now recognize the gentleman from Wisconsin. He is now recognized for 5 minutes.

Mr. GROTHMAN. Sure. Couple questions for you. One of the things that's a little bit frustrating about this hearing, and I apologize. I feel a little bit sorry for you is that you've expressed concerns about some of the civil service protections. And so people back home understand civil service protections are very important because if we didn't have civil service protections, you could wind up at an agency like the IRS or something firing anybody who wasn't on the right side politically. Nevertheless, you have expressed frustration, and I do believe some of people are expressing the greatest anger at you today, or some of the people express anger at you may be the first to fight any change in those civil service laws.

But could you give us some suggestions that you may have to make it easier to remove an employee who is a misbehaving employee? And I'll tell you one of the things that frustrates me today, and you can think about this when I talk about it. We have a situation in which people are just behaving in outrageous conduct. I mean, something just—you know, somebody—if a late night talk show host made it up you wouldn't believe it, but it really happened apparently. So things that are obviously wrong. It makes me wonder what's happening if we just have employees who aren't doing a very good job at their job—right—where it's a little bit more subjective. But could you give me any suggestions you'd have for changing the civil service laws?

Ms. LEONHART. If you looked at giving us the same exemption as the FBI, I think that we then would be able to make sure that the penalties were appropriate.

Mr. GROTHMAN. And what would you think an appropriate penalty is for this behavior?

Ms. LEONHART. I think this is outrageous behavior, and that knowing the facts of the cases as I do, without having to be concerned with the appeal rights and being able to sustain it in a Merit System Protection Board, I believe that some of these—some of the behavior would raise to the level of removal.

Mr. GROTHMAN. By “removal,” you mean they should be fired.

Ms. LEONHART. Just like Cartagena, yes.

Mr. GROTHMAN. OK. Just because you kind of dance around, could you just describe to the public today why you feel this behavior was wrong so I get a sense? Why is this bad behavior? Could you explain in your own mind?

Ms. LEONHART. Well, partaking—it’s—it’s wrong on a number of levels. Start with prostitution itself. You know, it’s—human trafficking is like the second highest illegal market besides drug trafficking. Look at all the efforts the government has been putting into—especially in recent years—to go after the human trafficking threat. That’s No. 1.

No. 2, it is so far away from the type of conduct and ethical behavior that is required of someone to carry a badge as a Federal agent, that those are the reasons, and the security clearance issues. The security—putting—putting people and our information at risk are all reasons that I—this is appalling.

Mr. GROTHMAN. It is appalling. When I read this stuff, is it right that some of this stuff was maybe brought to the attention or made aware Colombian authorities? They were aware of this.

Ms. LEONHART. Actually, the Colombian authorities, by the time this was discovered on the corruption of the two police officers, the Colombian national police did a great job in helping us convict them. And also they removed a number of Colombian national police officers who were involved in this same activity.

Mr. GROTHMAN. OK. I’ll ask the same question to Mr. Horowitz there because he seems a little—could you comment on how you feel we should change without—with still keeping protections for people but change things a little bit so that we maybe had a little—not just outrageous conduct but even competent conduct out of the DEA.

Mr. HOROWITZ. Well, within the current structure, there needs to be prompt reporting, prompt investigating, prompt disciplinary action, and follow through. I mean, that’s—within the current structure, that can be done. It’s—you mention the Colombian national example. Those events that were learned about from the Colombian national officers who were corrupt and disclosed the information related to the 2001, 2004 events. All of the DEA officials involved in those events down in Colombia said nothing about it. Think about it: It was learned 8 years—6, 7, 8 years later when corrupt Colombian national officers disclosed it. That’s a problem, a serious problem, that no one thought that that was reportable to headquarters and that there needed to be follow through, whether it’s the current system, frankly, whether it’s under an FBI regime, that was

the fundamental flaw there. Right? No one thought it was important enough or serious enough to raise to headquarters.

Mr. GROTHMAN. Well, it's good that the Colombian people had a little higher standards.

Mr. HOROWITZ. Well, these were the corrupt officers.

Mr. GROTHMAN. Right. But, I mean, eventually that they—that they felt there was something wrong.

Mr. HOROWITZ. Right. That they felt it was wrong and once they of course got arrested, they were more than happy to come in and report out on what had occurred.

Mr. GROTHMAN. Thank you.

Chairman CHAFFETZ. Thank the gentleman.

Now recognize the gentleman from Alabama, Mr. Palmer, for 5 minutes.

Mr. PALMER. Thank you, Mr. Chairman.

Ms. Leonhart, is there any policy against turning over DEA weapons or communication devices to foreign agents or any non-DEA or non-U.S. officials?

Ms. LEONHART. If I hear you right, you're asking about prohibition on turning over a device?

Mr. PALMER. Not having immediate supervision of the weapons and devices that belong to an agent.

Ms. LEONHART. Well, No. 1, securing your weapon, that's—that's required.

Mr. PALMER. No. I'm not asking you about that. I'm asking you is there any policy at the DEA that would result in any kind of reprimand or punishment for not having immediate supervision of your weapons and communication devices? That's a yes or no.

Ms. LEONHART. It could fall under—depending on the circumstances—

Mr. PALMER. No. It's a yes or no. You either have a penalty for not securing your weapon and your communications devices because there are things on those communications devices that could be used against other agents, against this country.

Ms. LEONHART. It could fall under poor judgment. There's a number of areas—there's policies on securing—

Mr. PALMER. Poor judgment has already been—it's already been pointed out. Poor judgment's not one of those official criteria, and what happened here, you talked about these corrupt police officers, is it true that the same officers who helped facilitate these parties, may have helped pay for the prostitutes, supervised, had control of the agents' weapons and communication devices, possibly the security—their badges, and is that also the case?

Ms. LEONHART. Part of the report is that while some of the agents were involved in that activity—

Mr. PALMER. No. It's a yes—it's a yes or no.

Ms. LEONHART. Yes.

Mr. PALMER. OK. As egregious as the activity that the agents were involved in, which is, in many respects, a crime against humanity because of the ages of these girls, could you not find a reason to reprimand or fire agents for turning over their weapons and their communication devices to foreign nationals? I mean, for crying out loud, China is investing in South America and Latin America. They're going to spend another \$250 billion over the next 10

years down there. Did it not occur to anyone that this might also be a national security breach or a problem along that line?

Ms. LEONHART. Someone doing a security adjudication could look at that and find that those are reasons why a security clearance should be suspended and revoked.

Mr. PALMER. Were they for any of these people?

Ms. LEONHART. For the Bogota case, their clearances were never looked at.

Mr. PALMER. OK. Let me ask you this, and, Mr. Chairman, you brought this up. Who is your immediate supervisor? Who do you report to? Who has the authority to hold you accountable for the oversight of the DEA?

Ms. LEONHART. The Deputy Attorney General.

Mr. PALMER. OK. Have you discussed this with the Deputy Attorney General and how to proceed with this?

Ms. LEONHART. I briefed the Deputy Attorney General on these cases recently.

Mr. PALMER. Did he make any recommendations about how to proceed?

Ms. LEONHART. Yes. The security clearances are currently being reviewed by—

Mr. PALMER. No. I want to ask you something more specific. Did the Deputy Attorney General express any reservations about how the DEA has handled this, and in the discussions, was there any discussion about how to respond to the requests from the Inspector General's Office? Office of the Inspector General.

Ms. LEONHART. I've had multiple conversations with the DAG's Office on document—turning over documents to the OIG. And they've given us good guidance on that.

Mr. PALMER. So they gave you good guidance. So that means they approved of not turning over the documents that the inspector general requested?

Ms. LEONHART. No. Actually, we didn't know—we were worried about the victim—victims' names and how to handle that.

Mr. PALMER. Mr. Horowitz, you have said that there have been numerous instances where the FBI has failed to submit sufficient material to the office. You mentioned it about the DEA. When you were here in January and you spoke of agencies, particularly the FBI and others delaying production of material, I asked you then, did this rise to obstruction? You said it had a significant impact on reviews but failed to go as far as—you failed to go as far as calling it obstruction. I want to ask you that again. Are you willing to call it obstruction now?

Mr. HOROWITZ. What occurred back in 2013 when we were given redacted documents, it impeded and obstructed our ability to move forward with this investigation in a timely manner, and it took months, and it required me to elevate it to the leadership of both agencies. And it was when I elevated it that we got—got the reaction, but I didn't have to do that with ATF and the Marshal Service, and I shouldn't have to do that.

Mr. PALMER. Right.

Mr. HOROWITZ. And I'm still having to do that in multiple instances.

Mr. PALMER. You know, I'm not trying to put you on the spot, but it appears to me that you've been obstructed.

Mr. HOROWITZ. Yep. I—I think, in this instance, we were obstructed.

Mr. PALMER. Ms. Leonhart—is there still information that you'd like to get from the DEA?

Mr. HOROWITZ. I think at this point we made a decision to simply move forward, issue the report, even though we had concerns about both the FBI and DEA's productions because this was so important to put forward. And, frankly, at this point, we've got other reports to do and get to that we still have the same issues on, just different context.

Mr. PALMER. Is there additional information you'd like to have—

Mr. HOROWITZ. On this issue, no.

Mr. PALMER. OK.

Mr. HOROWITZ. On others, yes.

Mr. PALMER. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank the gentleman.

Now recognize the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. Chairman, I'm not sure if the memo from Attorney General Holder has been admitted into evidence, but in case it hasn't, would you without—

Chairman CHAFFETZ. Without objection, so ordered.

Mr. LYNCH. OK. Great.

Ms. Leonhart and Mr. Horowitz, in the Attorney General's memo for all department personnel, dated April 10, 2015, subject, "Prohibition on Solicitation of Prostitution," it says that solicitation of prostitutes creates a greater demand for human trafficking victims and a consequent increase in the number of minors and adult persons trafficked into commercial sex slavery.

Do you agree with that? Do you agree with that assessment?

Mr. HOROWITZ. I certainly think it raises the risks.

Mr. LYNCH. Do you agree with that?

Ms. LEONHART. I certainly do.

Mr. LYNCH. Yes. OK. And also in—you know, under the Department of Homeland Security regs and a couple of the statutes we have, what we're talking about here, the solicitation of prostitutes for 15 to 20 parties, is clearly within the definition of human trafficking. And—and yet the DEA is actually charged—I know that Mr. Farenthold and Mr. Gosar and myself and Mr. Issa were down in Central America recently, and that's a big part of the DEA's mission is really to combat human trafficking. And we actually give grants to the department of—to the DEA and to the FBI and to State Department as part of the Trafficking Victims Protection Act and the Violence Against Women Act. We give—we give grants to your agency to prevent human trafficking. Prevent prostitution. And yet the very people—the very departments that are getting this money, in this case, are engaging in human trafficking, and it just brings me, you know, back to the unbelievability of what has happened here. It is really—it is really unbelievable.

Under the Douglas Factors that we use in determining discipline, one of the factors is the seriousness of the offense and whether the

offense is—is in direct violation of the agency policy. And the notoriety of the offense and whether that offense prohibits that individual from doing their job.

So, in this case, we have DEA agents that are still on the job that are receiving Federal grants to stop trafficking who have already engaged and admitted to trafficking, and I don't see the end of this. I don't see the end of this if we leave this situation the way it is. And so, Ms. Leonhart, you know, I wouldn't believe this would be necessary, but we may need to amend Title V. We may have to put in a provision that says that—that holds you accountable because right now you could pass it off to somebody below you. You don't have to accept responsibility, and you haven't, and that's—you know, that's clear. But if we adopted an amendment to Title V that said outrageous and/or criminal conduct in direct violation of an agency's mission would give you the ability to fire somebody, that would solve this, I think, in part. And also the failure to report because that's where this has started, where the managers at the lower levels did not report, did not kick this up the chain of command, and so we need to hold them accountable too. And there should be a provision that says refusal or failure to report an offense like this will give the agency and the government the ability to claw back pensions, claw back salary that was accepted by those individuals who were violating the law. It's a shame that we have to get to this, but, you know, I actually think that that may be where we're at right now.

I'll yield back the balance of my time.

Chairman CHAFFETZ. Thank the gentleman.

I'm going to recognize myself. I do have a series of questions as we wrap up here.

Administrator Leonhart, you became the—you've tried to paint a picture of this as a decade ago. I heard you say multiple times 10 years ago. When did you become the Deputy Administrator?

Ms. LEONHART. I was confirmed in March 2004.

Chairman CHAFFETZ. How many deputies are there? Deputy Administrators are there?

Ms. LEONHART. There's one.

Chairman CHAFFETZ. So you were the sole Deputy Administrator, and then you became the acting administrator, and when was that?

Ms. LEONHART. 2007.

Chairman CHAFFETZ. And then you were confirmed in 2000—

Ms. LEONHART. Ten.

Chairman CHAFFETZ. —10. So it's pretty safe to say that you've had your finger on the pulse of this department or this agency for more than a decade. Correct? You've been there 35 years. Correct?

Ms. LEONHART. Either as the Deputy Or the Acting Administrator Or Administrator, yes, since 2004.

Chairman CHAFFETZ. One of the things that you said that is troubling in a long list and was brought up by Mr. Lynch, is the idea that—and it was in response to some of the gentlemen over here who asked the question about those that were directly involved. I got to—I want you to seriously consider—I want all the departments and agencies to seriously consider—in my mind, they are directly involved if they fail to report. You may not have been

the person who was directly fully engaged in the inappropriate behavior, but once you know about it, you have a responsibility to deal with it under the department policies. Correct?

Ms. LEONHART. That's correct.

Chairman CHAFFETZ. So when you suggest that they weren't directly involved, that offers me great concern. Do you understand that?

Ms. LEONHART. I do understand that. I was—I was just making the point that he wasn't involved in the behavior. He failed to report and—and that's what his shortcomings were.

Chairman CHAFFETZ. Part of the abhorrent behavior is covering it up. That's the concern. And that's essentially what it is. It's covering it up by not reporting it up the chain because, as Mr. Horowitz pointed out, the only—the only alternative based on the law enforcement component offense tables in appendix 3 of sexual misconduct and sexual harassment is removal. It's the only one. There's no—there's no ifs, ands or buts. There's no ambiguity. I know there are things that we're going to look at with Title V and whatnot, but removal is the only option.

So let me ask you, Administrator, do you believe that soliciting prostitution is sexual harassment?

Ms. LEONHART. No. I believe that prostitution is sexual misconduct.

Chairman CHAFFETZ. Explain the difference between sexual misconduct and sexual harassment.

Ms. LEONHART. Sexual harassment is a workplace behavior. It's what you—sexual harassment is something that affects the employees in the workplace or an employee.

Sexual misconduct is outside of the work—outside of the workplace, like prostitution. There's a difference. Does it affect the employee getting a raise? Does it affect an employee getting a transfer, getting a particular job? Is it a hostile work environment? Those are sexual harassment.

Sexual misconduct is a different—you could have sexual misconduct that's also sexual harassment, but there is a difference. Prostitution would be sexual misconduct.

Chairman CHAFFETZ. So explain to me then exactly what you believe—fully more explain to me what you think sexual harassment is. What would be some examples, and what's sexual harassment?

Ms. LEONHART. Unwelcome remarks. Touching an employee. A supervisor touching an employee. A supervisor making threats about you're not going to get that promotion unless you do A, B, C, and D. Those kinds of activities.

Chairman CHAFFETZ. Mr. Horowitz, do you want to weigh in here, the difference between sexual harassment and sexual misconduct?

Mr. HOROWITZ. Well, I think it's based on what you have before you which is what's written down as the definitions and looking at the actions. Some of these—for example, one of the incidents that we cite talks about the assistant regional director making inappropriate sexual comments, forcing others to watch pornographic movies, yelling at employees, other kinds of actions obviously clearly within the definition of sexual harassment.

Chairman CHAFFETZ. So, within the report, do you believe that those are sexual harassment?

Ms. LEONHART. That's sexual harassment.

Chairman CHAFFETZ. So if you're a DEA agent in this case, and you're having sex—commercial sex paid for, you don't believe that that's sexual harassment?

Ms. LEONHART. No. That's sexual misconduct.

Chairman CHAFFETZ. Is procuring a prostitute sexual harassment?

Ms. LEONHART. It would be sexual misconduct. It didn't happen—

Chairman CHAFFETZ. No harassment.

Ms. LEONHART. It's not the workplace.

Chairman CHAFFETZ. It happened in government housing.

Ms. LEONHART. It's not—it's not behavior against an—a fellow—another employee.

Chairman CHAFFETZ. So, in your mind, in your world, which is a different planet than I live, it's not sexual harassment if you do something to somebody who is not a Federal employee?

What if they were here in the Washington, DC.—or you were in charge of Los Angeles field office. Is it sexual harassment if they go up to somebody in Los Angeles and start saying, you know, some ridiculous comments and trying to solicit somebody? That's just harassment? Or isn't? It's not in your world.

Ms. LEONHART. As it's—as it's defined for government, as it's defined by the EEO in EEO terms, it's all workplace related.

Chairman CHAFFETZ. So, in the course of the workplace, somebody they're investigating, if they accept—the Federal employee accepts commercial sex, is that sexual harassment?

Ms. LEONHART. That's sexual misconduct.

Chairman CHAFFETZ. We'll have to further explore this because I think this is—we're getting to the heart of one of the biggest problems here, which is, in your world, which I don't think is the real world, the charge here for the person in Bogota was improper association. Does that sound like the appropriate charge?

Ms. LEONHART. For which person in Bogota?

Chairman CHAFFETZ. The Bogota—the DEA agent in Bogota in July 2009 when they engaged—this is the case with the prostitute. They had a payment dispute. He throws a glass at a woman. A security guard sees this happening. There's no doubt about the facts, according to your previous testimony. So that was not sexual harassment?

Ms. LEONHART. It's sexual misconduct.

Chairman CHAFFETZ. Wow. And under sexual misconduct, do you think that improper association is one of the proper charges? Do you think this person was properly—I guess the word is “charged?” Based on that case and everything that you know, this person was suspended without pay for 14 days for conduct unbecoming and improper association. Do you believe that that was the proper charge for that person?

Ms. LEONHART. I believe those are two proper charges. The deciding official had a number of other charges that they could have looked at as well.

Chairman CHAFFETZ. I'm asking what you personally believe. What do you believe they should have been charged with, or do you believe that that was the proper conclusion?

Ms. LEONHART. I think it would be conduct unbecoming. It is improper an association. I would have concerns about false Statements. I have a number of concerns with those cases.

Chairman CHAFFETZ. Any other—your professional opinion, your experience, you worked for the OPR, you've been at the agency for 30-plus years. You've been either the Acting Or the Deputy Or Administrator for more than a decade. Do you believe that this person in Bogota was properly charged, or do you believe that they fell short? What else—if they did fall short, what else do you think they should have been charged with?

Ms. LEONHART. I do believe it felt short.

Chairman CHAFFETZ. So what else should they have been charged with?

Ms. LEONHART. As I said, it's not so much the charge; it's the penalty. The other charges that could have been not—

Chairman CHAFFETZ. The charge determines the penalty. And when you say that this person engaging with a prostitute, throwing a glass at her, I mean, how many things could we list out that are wrong with that at every step? And improper association is the one that they go with?

Ms. LEONHART. The penalty for improper association and conduct unbecoming can be removal.

Chairman CHAFFETZ. And it was only 14 days. We even has an eyewitness. Security guard. Worked for the Federal Government.

Do you think any of these cases that we brought before you should be—there should be additional charges?

Ms. LEONHART. Again, not knowing all the facts that the—

Chairman CHAFFETZ. You said you knew all the facts. You just issued a memo on March 26 saying that you had fully investigated this.

Ms. LEONHART. If I can—

Chairman CHAFFETZ. It says, "These allegations were fully investigated by DEA Office of Professional Responsibility." You sent this out at 5:33 p.m., on March 26, 2015.

Ms. LEONHART. Not knowing all the circumstances that the deciding officials, who are the only ones that can decide punishment in DEA, not knowing everything they took into consideration, they—they could have—by charging conduct unbecoming and improper association, the penalties are up to removal.

Chairman CHAFFETZ. Mr. Horowitz, do you have a comment on this?

Mr. HOROWITZ. Well, I think the concern we found as we cite in our report is that they were charged with offenses, such as conduct unbecoming, poor judgment, which, by the way, isn't the category, and others, that were inconsistent. And the concern is, and we deal with this in our own agency when we have to look at individuals who may have engaged in misconduct, you want to charge what the number of charges should be in part because there's precedent. You look to what prior individuals got for similarly situated conduct under similar charges, and so that's one of the concerns we have

as we lay out here as to the importance of consistent charging and charging the appropriate offense.

Chairman CHAFFETZ. To the Administrator, are you—is the DEA part of the intelligence community?

Ms. LEONHART. A sliver of DEA—a sliver of DEA is a part of the intelligence community.

Chairman CHAFFETZ. Is it governed by the intelligence community directive No. 704?

Ms. LEONHART. That sliver of the agency is, yes.

Chairman CHAFFETZ. Define that sliver, please.

Ms. LEONHART. Under 60 positions in DEA within the Intelligence Division.

Chairman CHAFFETZ. Those that are serving overseas, would they be subject to this?

Ms. LEONHART. Depends on the position. There are in some countries some intelligence analysts that would be under that. The special agents would not.

Chairman CHAFFETZ. Again, we're getting close to wrapping up. I promise. We're not at half time. We're well past that.

So walk me through security clearances. Who makes the determination who gets the security clearance, and who makes the decision as to whether or not it's revoked and when?

Ms. LEONHART. The same office that determines that a new employee gets a security clearance, that same office makes a determination—

Chairman CHAFFETZ. What office is that?

Ms. LEONHART. Office of Security Programs. They do all adjudicating of security clearances for new employees, for contract employees, for anybody that's going to be in the work force within DEA. The same office also handles review—periodic reinvestigations and handles reviews of people who already have security clearances. So, for instance, in the Cartagena case, OPR referred—referred the case over to Security Programs when they had completed their investigation. And Security Programs did a complete review of their security clearances, adjudicated it, made a decision that there was enough to move to suspend the clearance. And then the agency moved for, because the person no longer has a security clearance, removal from service because they can't be a DEA employee without having a security clearance.

Chairman CHAFFETZ. So what are the standards by which you can have and not have a security clearance? Where is that standard?

Ms. LEONHART. There's a number of things they look at. The main thing is securing—securing information, national security interest information.

Does this person with their—

Chairman CHAFFETZ. Contact with a foreign national, allowed or not allowed? Unreported, I should say.

Ms. LEONHART. Not allowed if it's unreported, and there's rules for reporting.

Chairman CHAFFETZ. Is there a document that determines—that governs what you will and will not give to—for security clearances?

Ms. LEONHART. There's a document that every employee is to fill out, an SF86 that—

Chairman CHAFFETZ. But it's just a couple of dudes down in the bowels of the DEA that just make a random decision, or how is the decision made?

Ms. LEONHART. No. They're trained on adjudication. They review—if there's anything that is a red flag for them like past—

Chairman CHAFFETZ. Sexual misconduct a red flag?

Ms. LEONHART. Sexual misconduct, if a person was disciplined, received any discipline, they on their—on their form, check it. Office of Security Programs does a review of that. The gentleman—

Chairman CHAFFETZ. Has the Office of Security, have they—have they ever revoked somebody's security clearance for people engaging in prostitution?

Ms. LEONHART. I don't know about prostitution. I know that they have revoked security clearances. So other than the three—

Chairman CHAFFETZ. Right.

Ms. LEONHART [continuing]. From Cartagena, I'm not sure.

Chairman CHAFFETZ. You're just the Administrator.

Mr. Horowitz, have you looked into the security clearance possibilities?

Mr. HOROWITZ. We didn't look into what could have happened had they been referred to the Office of Security Programs primarily because the concern we saw was that they weren't being referred to the Office of Security Programs. So we weren't in the position to review what actions they took with regard to these matters because we learned that OPR, when they did finally get these allegations, never turned around and sent them to the OSP to look at.

Chairman CHAFFETZ. What do you say that about, Ms. Leonhart?

Ms. LEONHART. That's one of the changes we've put in place.

Chairman CHAFFETZ. When?

Ms. LEONHART. November. November of last year. We—we've never had—in the history of DEA, we've never had a formal mechanism for those security clearances to be reviewed upon an OPR investigation.

Chairman CHAFFETZ. So you were the Administrator Or the Deputy Administrator or the Acting Administrator for almost 10 years at that point and you had never had that policy in place. It seems like a, well, duh.

Ms. LEONHART. We never had a formal policy. It would be up to the Office of Professional Responsibility to flag an internal investigation that had security issues and then to refer that over to security programs. So we've set up a mechanism for that to happen automatically.

Chairman CHAFFETZ. So were those recommendations made before or after the draft report from the inspector general?

Ms. LEONHART. The recommendation that security programs—that Office of Professional Responsibility flag security violations and give them to security programs was happening long before that.

What we did is, in Cartagena, made sure that the security clearances reviewed—were reviewed and then, more recently, in November, set up a mechanism so that security programs and OPR have a mechanism to pass on a regular basis security clearances over.

Chairman CHAFFETZ. That's just unbelievable to me. It just—you know, there are some things you just think—you just think this

has to be happening. On the one hand, you've got this problem—I mean, we've listed out the host. This is not one incident. I mean, we're going to have some people do something stupid somewhere. People are going to make mistakes. People are going to get themselves into trouble. I get this. But this is happening with such frequency. To not have that moved up the chain, for you to earlier not—say, Well, they weren't directly involved. You have got to hold everybody accountable to get that thing all the way to the finish line. I just don't understand why you personally don't take a hand in that.

Mr. Horowitz has referenced these made-up categories of offenses. Why did you make those up?

Ms. LEONHART. That's how employees for the last 40 years have been charged at DEA. So that—

Chairman CHAFFETZ. So never mind the guidelines. You just—so we just keep doing it like we did 40 years ago. What?

Ms. LEONHART. Part of—part of charging by the Board of Conduct and by the deciding officials is to look at agency precedent and government precedent and so the—

Chairman CHAFFETZ. The problem though—and, again, we've exhausted this. We're getting to the end—is that this is a problem. You say, you come to—you get called before this committee and say, Oh, it's terrible; it's awful. But you, you personally have been responsible for this for more than a decade, and you didn't do anything about it. You may cry in the mirror. But I'm telling you, you are in a position to do it and you didn't.

And after Cartagena, that should have been a wake-up call, and it took you 2 years to get out a memo, 2 years, as Mr. Meadows brought up. I—I—we have a lot more that we need to go through.

Mr. Horowitz, are there any other outstanding issues that you need help with from the department, the Drug Enforcement Agency?

Mr. HOROWITZ. With the Drug Enforcement Agency, no.

Chairman CHAFFETZ. With the FBI?

Mr. HOROWITZ. We have, not as to this review, but as to at least four other ongoing reviews, we still do not have all the records that we need because of the FBI's continuing process of reviewing records, determining what it is allowed under its legal judgment to provide to us, go through that process, go to the Attorney General or the Deputy Attorney General, get their approval and then get it to us. So as to several ongoing reviews, we still do not have all the materials that are responsive to our requests.

Chairman CHAFFETZ. So, Mr. Perkins, why does the FBI think that they're so special and don't have to adhere to the law and don't do what the other agencies are doing within the Department of Justice?

Mr. PERKINS. Mr. Chairman, we are adhering to the law. I take exception with the inspector general's comments along those lines.

Let me tell you, sir, there are—in his latest letter, dated yesterday, his 218 letter as we refer to them, were five investigations noted. The records, they are—that they wish to receive; they're being delayed—involve email. We have turned over 35,000 emails to them. There are 200 emails in question out of 35,000 that we

are working with them to go through. We believe in the rule of law. We have a legal disagreement with the Inspector General.

Chairman CHAFFETZ. Mr. Horowitz.

Mr. HOROWITZ. Can I be clear? They're not working with us to get us the 200 emails. They haven't given us the 200 emails. Our understanding is it's because they believe they have a legal review to conduct. That's why our—what our understanding is as to why we're not getting them.

For several of these matters, these are multi months we've been waiting for them. There is no reason why we should not be getting the materials immediately. None whatsoever. I understand they have a legal position that is different. Frankly, the easiest way to resolve this—and I think on this we're in complete agreement—is if the Office of Legal Counsel would simply issue its opinion, I think, we would both say we would be very satisfied on that point.

Chairman CHAFFETZ. And how long has this been pending at the OLC?

Mr. HOROWITZ. Well, May will be the 1-year anniversary.

Mr. PERKINS. I concur with the inspector general. We—we will follow the OLC opinion to the letter.

Chairman CHAFFETZ. Why are you different than the other departments and agencies within the Department of Justice?

Mr. PERKINS. I can't speak for the other agencies, Mr. Chairman. What I can speak for is matters involving rule 6(e), matters involving the Financial Privacy Act and other matters that we believe—we strongly believe we have a legal responsibility to review and provide them to the inspector general.

Chairman CHAFFETZ. What are you not willing to share with the inspector general?

Mr. PERKINS. Any number of series of items. As I mentioned, for instance, rule 6(e) material, there are certain aspects from—

Chairman CHAFFETZ. Explain that people so people can understand.

Mr. PERKINS. I'm sorry.

Chairman CHAFFETZ. Yes, yes.

Mr. PERKINS. —6(e) of the Rules of Criminal Procedure, the secrecy rules involving grand jury information.

Chairman CHAFFETZ. But you had given that to them previously?

Mr. PERKINS. Once—once matters had been reviewed, once matters are—

Chairman CHAFFETZ. No. But it had been a longstanding practice of the FBI to provide the inspector general this material. Correct?

Mr. PERKINS. I can't speak to that, sir.

Chairman CHAFFETZ. You can't speak to the history of the FBI document production? That's why you're here.

Mr. PERKINS. Yes, sir. We can—we provide the information once there has been a legal review that says—that we determine legally that we are on solid ground to provide the information.

Chairman CHAFFETZ. But that's a change; correct?

What was it before, Mr. Horowitz?

Mr. HOROWITZ. Pre-2010, there was no such objection from the FBI as to wiretap information, Fair Credit Reporting Act information, grand jury information. We got that material. In fact, in a 1998 and 1999 proceedings in District Court in Oklahoma, the de-

partment itself took the position that we were entitled to grand jury material and two Federal judges agreed.

This has all changed since 2010 with no change in the law. The only thing, frankly, that occurred was several hard-hitting OIG reviews about how the FBI was handling some of its national security authorities. Other than that, nothing changed in 2010.

Chairman CHAFFETZ. And, Mr. Perkins, that's the concern from this committee. And we—we have hundreds of people working for the Inspector General's Office there in the Department of Justice intending to be the fair arbiters who can get in and look under the hood and see and ferret out these problems.

And, quite frankly, this—the reason that the DEA and the FBI are here today is they're the problem children. We've cited several times that ATF and Marshals and others, this is not a problem. It's not an issue. Now, they've got problems in the Department within their agencies, don't get me wrong. They—they've got things they've got to clean up and we're going to work with them on that. But the reason you're sitting here today in the hearing—and I know we were very focused on the DEA—but the two agencies, the FBI as well as the DEA, are impeding the ability to understand and unearth what the problems are.

Mr. PERKINS. Mr. Chairman, let me clarify. There's an apples-and-oranges issue here. With regard to this particular report that we're here today for, there are process issues within the FBI that the Deputy Director has made changes that the inspector general is aware of and those changes in our business process will eliminate these types of holdups—

Chairman CHAFFETZ. All of them?

Mr. PERKINS. For these types of records. Not having to do with the other issues that he brings up in 218. We are waiting—as the inspector general said, if OLC would render their opinion, we will march forward and abide by it 100 percent.

Mr. HOROWITZ. And I would just add on that, I think we would both take any opinion at this point, good or bad, because this is ongoing. We completely disagree on the legal issue. And certainly we've questioned why all of a sudden in 2010—

Chairman CHAFFETZ. And this is why—again, we're wrapping up. I got hours of questions on this, but we are going to wrap up here pretty quick.

This act, the inspector general act, authorizes, “to have access to all records, reports, audits, reviews, documents, papers, recommendations and other—or other material available to the applicable establishment which relate to the programs and operations with respect to which that inspector general has responsibilities under this act.” It doesn't sound ambiguous. It doesn't sound like there—and there was no change in the law.

It's just, in 2010, after the inspector general was unearthing a lot of very difficult things for the agency, they just decided, ah, we're going to change the rules. We're going to change the rules.

I'm not suggesting, Mr. Perkins, that you personally did that. But the consequence is—the consequence is we have hundreds of people at the Inspector General's Office who can't do their job and you, the FBI, are standing in their way, and the DEA is standing

in their way. And we're going to keep yanking you up here time after time after time if we have to.

You know, I am fortunate enough to become the chairman of this committee. The very first hearing we had is on this. And I can promise you, I can promise you we will continue to yank you up here as long as this continues to be a problem.

The act is clear, the inspector general is to have unfettered access to all records, not just the ones you want to choose from. I don't—this idea that an OLC opinion is just pending and it's going on for close to a year is just intolerable. And there's not a prevailing attitude within the FBI or the DEA that believes that the inspector general work is of value to those departments and agencies; otherwise, they would want them to come in and help clear their good name or ferret out problems and work to fix it.

See, in this Nation, we're different. We are self-critical. I can't have this type of hearing in another nation. I probably couldn't go to Colombia and do this type of hearing, but you can in the United States, but it requires good people to allow somebody to come in and check and look under the hood, which is what the inspector general is supposed to do.

We've had a long hearing. I appreciate your patience. We need your help and cooperation moving forward. Again, to the thousands of men and women who serve in these departments and agencies, I cannot thank them enough for putting their lives on the line. My grandfather was a career FBI agent. I care about the agency.

Mr. PERKINS. Thank you, sir.

Chairman CHAFFETZ. OK. I care about law enforcement in this Nation, but we're going to do it the right way. We're going to do it the right way and allowing sexual harassment or misconduct to get a little slap on the wrist with 2 to 14 days paid leave is not acceptable. It wasn't then. It isn't now. And it shouldn't be moving forward.

We're going to look toward other things we can do within law to give future administrators and directors more latitude.

And to the inspector general, I thank you for this report. We wouldn't have known about it without your good work and the good people in your agency within the—and so we thank you.

And this hearing stands adjourned.

[Whereupon, at 1:11 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



Office of the Attorney General
Washington, D. C. 20530

April 10, 2015

MEMORANDUM FOR ALL DEPARTMENT PERSONNEL

FROM:  Eric H. Holder, Jr.
Attorney General

SUBJECT: Prohibition on the Solicitation of Prostitution

The Department of Justice is measured by the conduct of those who work on its behalf. The solicitation of prostitution threatens the core mission of the Department, not simply because it invites extortion, blackmail, and leaks of sensitive or classified information, but also because it undermines the Department's efforts to eradicate the scourge of human trafficking. Regardless of whether prostitution is legal or tolerated in a particular jurisdiction, soliciting prostitutes creates a greater demand for human trafficking victims and a consequent increase in the number of minor and adult persons trafficked into commercial sex slavery.

For these reasons, I want to reiterate to all Department personnel, including attorneys and law enforcement officers, that they are prohibited from soliciting, procuring, or accepting commercial sex. This rule applies at all times during an individual's employment, including while off duty or on personal leave, and applies regardless of whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic.

Department employees who violate these prohibitions will be subject to suspension or termination. Supervisors and managers are subject to discipline for failing to report suspected violations. Suspected violations by Department employees must be immediately reported to the internal affairs personnel of the relevant component's headquarters (or, for those without an internal affairs department, an equivalent entity). Allegations determined to be non-frivolous also must be reported to the component's security personnel. The Department also expects adherence to these standards by its contractors and sub-contractors, grant recipients and sub-grant recipients, and cooperative agreement holders, who are subject to all remedies available by statute and regulation when such standards are not met.

**APPENDIX 11: THE DRUG ENFORCEMENT ADMINISTRATION'S
RESPONSE TO THE DRAFT REPORT**



U. S. Department of Justice
Drug Enforcement Administration

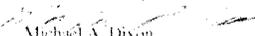
www.dea.gov

Washington, D.C. 20537

MAR 13 2015

MEMORANDUM

TO: Nina S. Pelletier
Assistant Inspector General
Evaluations and Inspections
Office of the Inspector General

FROM: 
Michael A. Dixon
Acting Deputy Chief Inspector
Office of Inspections

SUBJECT: DEA's Response to the OIG Draft Report, "*The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*"

The Drug Enforcement Administration (DEA) has reviewed the Department of Justice (DOJ) Office of the Inspector General's (OIG) Draft Report entitled, *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*.¹ DEA acknowledges OIG's efforts in conducting a review to assess how the DOJ's four law enforcement components respond to sexual misconduct and harassment allegations made against their employees.

The OIG indicated in its report that in 96% of DEA cases reviewed for this evaluation, DEA's Office of Professional Responsibility (OPR) fully investigated all reported allegations of misconduct and did not refer matters back to local supervisors unless the matter reported was clearly a management or performance related issue. However, DEA noted that OIG focused the DEA portion of this report on the 3% of cases that, in their opinion, DEA could have investigated the allegations more thoroughly.

The investigation of allegations of misconduct is the primary mission of the OPR and OPR inspectors are afforded specific authorities to execute this mission. DEA has established criteria for the intake and investigations of allegations and investigates all misconduct allegations. DEA did a second review of the cases that OIG reviewed to determine if OPR had appropriately and thoroughly investigated these allegations. It was found through this review that the investigations were investigated properly through DEA's disciplinary process for related misconduct.

SUMMARY OF NEW INTERNAL DEA REPORT ON COLOMBIAN “SEX PARTIES”

On April 6, 2015, the House Committee on Oversight and Government Reform requested that Michele Leonhart, the Administrator of the Drug Enforcement Administration (DEA), produce internal documents relating to allegations that DEA agents engaged in “sex parties” in Colombia with prostitutes funded by drug cartels.

On April 13, 2015, the DEA produced 88 internal reports issued by its Office of Professional Responsibility (OPR). One report in particular—Case Number PR-ZE-2012-0085—went into great detail about these allegations.

Although press reports indicated that instances of DEA sexual misconduct occurred between 2005 and 2008, this new internal OPR report indicates that these activities began much earlier—and some date back as far as 2001.

In producing this internal report to the Committee, the DEA redacted the names of employees, victims, and other individuals, but the cover letter warned that even with these redactions, releasing the report in its entirety could “expose complainants, witnesses, and victims.”

To accommodate the agency’s request not to disclose the entire report, excerpts from the report are set forth below that do not identify individuals, but are particularly relevant to the Committee’s inquiry.

- “The investigation revealed that while the three agents were assigned to the Bogota Country Office, SSA [Target 9] received an AK-47 rifle from an AUC member during the course of a jungle operation and maintained it in his possession until shortly before departing post over one year later.” (p.6)
- “SA [Target 3] and SA [Target 9] allegedly received AK-47 rifles from a member of a “Parra-military terrorist organization” after meeting with them in the jungle. The AK-47 rifles were transported back via a CNP vehicle to inside the US Embassy walls where they were placed in an armored diplomatic vehicle.” (p.8)
- “He would obtain prostitutes for agents from the DEA Bogota Country Office. He would pay the girls to come to the parties and then the agents would pay the girls directly for any sex they wanted. He recalled getting prostitutes for at least 15-20 parties for the DEA agents.” (p.8)
- “He said while the agents were having sex, he would stay at the party and provide protection for the agents weapons and personal belongings.” (p.8)
- “Mr. [Cooperator 1] was interviewed and stated he remembered four specific parties he paid prostitutes to attend. The agents then had to pay the prostitutes \$150 USD to have sex with them. Mr. [Cooperator 1] said the agents would then go into separate bedrooms with the prostitutes while he watched their personal belongings.” (p.10)

- “Mr. [Cooperator 1] said that during October or November 2004 he received \$40,000 USC from SA [Target 3] to set up an office in ... Colombia. Mr. [Cooperator 1] said he would rent undercover apartments for DEA and the agents would use them for parties with prostitutes.” (p.11)
- “Mr. [Cooperator 5] stated he recalled ASAC [Witness 2]’s farewell party, in 2003 or 2004, where a part of the money requested from a operational budget was utilized for his party. Mr. [Cooperator 5] stated that Mr. [Cooperator 1] organized ASAC [Witness 2]’s party and paid 500,000 pesos (approximately \$261 USC) for each prostitute with funds from an operational budget. Mr. [Cooperator 5] stated operational budgets were presented to DEA to cover operational costs and the budget presented would allow for additional funds which were used for prostitution and parties for agents.” (p.13)
- “Mr. [Cooperator 2] stated he believed Mr. [Cooperator 1] gained information from the US agents by ‘getting their guard down’ through the use of prostitutes and paying for parties. Mr. [Cooperator 1] bragged about the parties with prostitutes and how he ‘sold’ the relationship/closeness with the agents to Mr. [Cooperator 2]. Mr. [Cooperator 1] stated he could easily get the agents to talk.” (p. 15)
- “Mr. [Cooperator 2] stated that CNP officers were paid at least 1.5 million USC for their information. Mr. [Cooperator 2] stated he remembered one time they were paid \$500,000 USC for their assistance with his properties where he was able to sell them before they were seized.” (p. 15)
- “Mr. [Cooperator 1] stated if money was left over, SA [Target 3], SA [Target 4], SA [Target 9], and SA [Target 6] would utilize the remainder of the money for parties and it was the ‘daily routine,’ to use the extra money in this manner.” (p.17)
- “SA [Target 7] admitted he engaged in prostitution on one occasion. SA [Target 7] stated he held two parties at his residence where prostitutes were present.” (p.18)
- “SA [Target 7] stated that ‘going away’ parties were possibly funded by operational funds. SA [Target 7] stated money was so easily distributed to CNP officers that anything was possible.” (p.19)
- “Mr. [Cooperator 5] stated he did not recall if SA [Target 7] engaged in prostitution; however, he recalled SA [Target 4], SA [Target 3], ASAC [Witness 2], and SA [Target 6] engaging in prostitution.” (p.20)
- “NOTE: SA [Target 7] and SA [Target 9] both stated GS [Target 2] would provide women for any party. GS [Target 2] stated the married ‘guys’ were ‘out of control,’ and they did ‘the most running around (referring to having girlfriends in addition to their wives).” (p.22)
- “SA [Target 6] was interviewed and stated he engaged in prostitution six to seven times during his tenure in the Bogota Country Office (CO). SA [Target 6] stated he hosted GS

[Target 4]'s bachelor party at his residence and they all gave money for GS [Target 4] to engage with a prostitute. SA [Target 6] stated his 'going away' party was held at SA [Target 5]'s residence and a prostitute was paid for and provided to SA [Target 6]." (p.25)

- SA [Target 6] stated Mr. [Cooperator 1] provided [beauty queen] for his going away party which was held at SA [Target 5]'s residence. SA [Target 6] stated [beauty queen] was provided to him and he had sex with her." (p.25)
- SA [Target 3] was interviewed and stated he attended parties where prostitutes were present. SA [Target 3] stated all agents knew when dancers/strippers attended parties that they were prostitutes." (p.26)
- SA [Target 3] stated if an agent stated he did not know if the dancers/strippers who attended parties were prostitutes; they would be lying." (p.26)

Punishments

The internal OPR report references ten DEA agents who were investigated for their actions. In many of these cases, recommended punishments were reduced without explanation. The internal report does not discuss punishments for DEA supervisors who may have known about these allegations and failed to report them.

Employees	Alleged Offenses	Recommended	Imposed
Agent GS-13	Poor Judgment	3-day suspension	2-day suspension
Agent GS-13	Conduct Unbecoming	administratively closed after retirement	concurrent
Agent GS-14	Improper Association with a Criminal Element	3-day suspension	1-day suspension
Agent GS-14	Failure to Follow Instructions; Conduct Unbecoming; Poor Judgment	5-day suspension	3-day suspension
Agent GS-13	Conduct Unbecoming	5-day suspension	3-day suspension
Agent GS-14	Conduct Unbecoming; Improper Association with a Criminal Element	14-day suspension	9-day suspension
Agent GS-13	Conduct Unbecoming; Poor Judgment	14-day suspension	10-day suspension
Agent GS-15	Conduct Unbecoming; Improper Solicitation/ Acceptance of a Gift	Letter of Caution	concurrent
Agent GS-14	Conduct Unbecoming; Failure to Follow Instructions; Poor Judgment	14-day suspension	8-day suspension
Agent GS-13	Abuse of Authority	Letter of Clearance	concurrent

Statement of Congressman Gerald E. Connolly (VA-11)
Committee on Oversight and Government Reform
DOJ IG: Handling of Sexual Harassment and Misconduct Allegations
April 14, 2015

Chairman Chaffetz and Ranking Member Cummings, thank you for holding this morning's hearing to examine the handling of sexual harassment and misconduct allegations at four Federal law enforcement agencies housed within the U.S. Department of Justice (DOJ): U.S. Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and U.S. Marshals Service.

I share the serious, bipartisan concerns expressed by the Chairman and Ranking Member in a March 27, 2014 letter to DEA Administrator Michele Leonhart. Specifically, I concur that not only is it disturbing to hear allegations that overseas DEA personnel participated in "sex parties" with prostitutes hired by drug cartels operating in Columbia over a time period spanning from 2001 through 2004, but it is just as troubling to hear assertions that DEA, in addition to not opening an investigation into these activities until 2010, also impeded legitimate investigative efforts by the DOJ Office of Inspector General (DOJ OIG) to examine these matters.

If true, the alleged patterns of misconduct and cover-up may hint at the presence of broader dysfunction with respect to DEA's organizational culture and standards of integrity. Administrator Leonhart is no stranger to controversy, particularly concerning DEA's apparent refusal to recognize and adhere to the chain of command within DOJ, which includes troubling incidents that come perilously close to outright insubordination. For example, Administrator Leonhart has appeared reluctant to embrace and implement Administration policies on a wide range of law enforcement matters, including sentencing reform and drug control initiatives.

The bottom line is that leadership matters in any organization. DEA appears to be an organization in disarray, with vague policies that may not even explicitly prohibit DEA agents from soliciting prostitutes during off-hours while serving abroad, and a lack of accountability that allows DEA agents who engage in serious sexual misconduct with foreign nationals to inexplicably retain active security clearances.

Regrettably, the DOJ IG's testimony this morning that, "We also determined that the DEA initially withheld from us relevant information regarding an open case involving overseas prostitution," is not shocking in light of Administrator Leonhart's often evasive responses and refusal to answer straightforward questions posed by Members of Congress conducting oversight of the efficacy of our Nation's drug control policy. I believe DEA rank and file special agents take cues from the top, and plan to examine closely whether the Administrator is truly committed to cleaning up and transforming the culture of a DEA in disarray.

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