

USE OF CONFIDENTIAL INFORMANTS AT ATF AND DEA

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

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CONTENTS

Hearing held on April 4, 2017	Page 1
WITNESSES	
The Hon. Michael E. Horowitz, Inspector General, U.S. Department of Justice	
Oral Statement	5
Written Statement	7
Mr. Robert Patterson, Acting Principal Deputy Administrator, Drug Enforcement Administration	
Oral Statement	13
Written Statement	15
Mr. Ronald B. Turk, Associate Deputy Director and Chief Operating Officer, Bureau of Alcohol, Tobacco, Firearms, and Explosives	
Oral Statement	19
Written Statement	20

USE OF CONFIDENTIAL INFORMANTS AT ATF AND DEA

Tuesday, April 4, 2017

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 10:02 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Issa, Jordan, Amash, Gosar, DesJarlais, Meadows, DeSantis, Ross, Walker, Blum, Hice, Russell, Hurd, Palmer, Comer, Mitchell, Cummings, Maloney, Clay, Lynch, Connolly, Kelly, Lawrence, Watson Coleman, Plaskett, Demings, Krishnamoorthi, Raskin, Welch, DeSaulnier, and Sarbanes.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time.

We have an important hearing today, and we're here today to talk about the use of confidential informants in Federal law enforcement investigations. We love and appreciate the men and women who literally—I mean literally—put their lives on the line to support and defend this country. They do a very difficult job. And one of the tools that we authorize and appropriate money for is the ability to engage with confidential informants, but they still need oversight of these confidential informants. Just because they are trying to keep it quiet and trying to do some difficult work doesn't mean it goes above and beyond oversight.

We have with us today the Department of Justice inspector general. The IG's Office recently examined the use of confidential informants at the Drug Enforcement—at DEA, at the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Representatives from both of those agencies are here with us today.

Together, the DEA and ATF have more than 6,000 active informants at any given time. Over a 5-year period, the DEA and the ATF spent roughly \$260 million engaging with informants, again, over a 5-year period.

Whether they are paid or unpaid, informants are obviously very valuable tools to investigations. Both the DEA and the ATF told the IG they could not accomplish their mission without these informants. The information they provide may help keep us safe, and often, they have access to the information because of their own past involvement in the illegal activity.

Yet there's an inherent risk in signing up criminals to help bring down other criminals. Keeping those risks in check requires significant oversight. Again, that's what the committee is about. It is part of the duty—the role and duty of the United States Congress. We authorized it. We appropriated it. We allowed them to engage in it, but we also have to have some oversight.

And there have been some ups—well, you could call them mistakes, but there have been some significant problems.

In 2012, for instance, the ATF had an informant—an ATF informant, I should say, sexually abused a woman in a Seattle hotel in a room paid for by the ATF. This violent felon had already been in jail in 43 States. It's pretty hard to accomplish, but this person had already been in jail in 43 States, and the ATF signed him up as an informant. Then we have this incident in the Seattle hotel.

Six weeks ago, a court released the testimony of one confidential informant in Atlanta who received \$212,000 from the DEA from 2011 to 2013. She testified she wasn't sure why she was paid. That was her testimony. She also testified to a sexual relationship with the DEA group supervisor, who allegedly convinced the subordinates to falsify reports to justify the payments. That case is currently under review by the inspector general.

Many could look to the ATF's deadly Phoenix field division case, including Operation Fast and Furious highlighted—as this highlighted a number of different problems involving confidential informants. ATF signed one Federal firearms licensee—we refer to that as an FFL—to act as a confidential informant and treated another one as such an informant without signing them up. In its wake, the ATF revised its policies regarding the use of informants, but the attention to Fast and Furious, Operation Fast and Furious, also highlighted problems with other agencies' use of informants, including failing to share information about them with other agencies. Since then, most Justice Department components have followed suit to revise their policies.

Inspector General Horowitz is in a good position to fill us in on the lesson he's observed in this process. The DEA is the most recent component to update its policies, completing it in July of 2016. We expect to receive the new policy today. Yet even the policies are irrelevant if they aren't followed. Effective informant use requires rigorous supervision. That includes oversight of the agents handling the informants on the front line. It also includes robust accountability for special agents who commit misconduct in this area.

The committee, obviously, supports law enforcement and is committed to the rigorous oversight of that law enforcement, and I think we are all stronger and better for that.

Again, people on the front line are in a difficult situation. We understand that and respect that, but we also have a duty and responsibility to make sure that literally the hundreds and millions of dollars that are spent over the course of years are also dealt with properly. And that's why we're having this hearing.

So now let's recognize the ranking member, Mr. Cummings of Maryland.

Mr. CUMMINGS. Mr. Chairman, I thank you very much for calling this hearing. And I'd like to yield my time to Congressman Lynch,

the ranking member of our National Security Subcommittee. And he has been a true leader on this issue.

Congressman Lynch has consistently done everything in his power to make sure that law enforcement is fair but, at the same time, that we—that they are most effective and efficient in what they do. And so I'm proud to join him on a bill he's worked on over the years requiring agencies to report key information on their use of confidential informants to Congress.

I yield to the gentleman.

Mr. LYNCH. First of all, I'd like to thank the gentleman for yielding, and thank you for his kind words and his support of this legislation.

I want to thank the chairman and the ranking member. This is another issue that has been bipartisan in terms of trying to require accountability from our government agencies.

We've been working on trying to reduce the amount of waste, fraud, and abuse in the use of confidential informants by our Federal law enforcement agencies for some time now. I'd also like to thank today's witnesses for helping this committee with its work.

The use of confidential informants is an essential investigatory tool that oftentimes provides law enforcement with valuable and otherwise unattainable criminal intelligence. However—and it's a big however—the critical law enforcement mission of the Drug Enforcement Administration and the ATF and other Federal agencies are severely impaired in the absence of meaningful oversight over their confidential informant programs.

In September of 2016, Inspector General Horowitz from the Department of Justice released an audit report on the informant program administered by the Drug Enforcement Administration, also known as the DEA. That report is stunning in its clarity.

According to the report—now, get this—the DEA operated an estimated 18,000 active informants between 2010 and 2015 while over 9,500 of those individuals received approximately \$237 million in payments in exchange for information, and the DEA could not properly track their activities or fully document their payments. The Inspector General's Office also found that the DEA relies heavily on independent tipsters, known as, quote, "limited-use informants," who receive little to no agency supervision and whose reliability is highly questionable, as pointed out in the examples that the chairman brought forward in his opening statement. These limited-use informants remain some of the DEA's highest paid sources.

Similarly, the New York Times recently reported that Federal agents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or the ATF, directed their informants to engage in sham transactions with a collective of tobacco farmers as, quote, "an off-the-books way to finance undercover investigations and pay informants without the usual cumbersome paperwork and close oversight," close quote.

In his ongoing review of these income-generating undercover operations, also known as churning—I could think of some worse words than "churning"—the inspector general also found a serious lack of oversight by ATF, including one instance in which a confidential informant was permitted to keep more than \$4.9 million

out of a \$5.2 million gross profit generated from tobacco sales without even submitting adequate expense reports. That's quite a deal.

This past month, Inspector General Horowitz released a followup audit report detailing how the ATF maintained its informant records in hard-copy files in an antiquated automated filing system that prevented the agency from tracking and reporting even the most basic information relating to a program that included an estimated 1,855 active informants and an annual expenditure of \$4.3 million. Oversight is also lacking at the DEA when it comes to properly vetting informants, as the chairman pointed out, with one individual arrested in 43 States. I mean, you know, good luck to him on the remaining seven States. But if a guy has been arrested in 43 States, he should not be eligible as a confidential informant, especially one highly paid. Zero credibility. That's disgraceful.

In order to implement additional oversight into the selection and use of confidential informants by the DEA, the ATF, and other Federal law enforcement agencies, I've introduced H.R. 1857, the Confidential Informant Accountability Act of 2017. And I want to thank Ranking Member Cummings. As an original cosponsor, he's been a tremendous partner on this issue. This legislation would require Federal law enforcement agencies to fully report to Congress on their payments to confidential informants as well as the amounts they have received through their work or cooperation with informants. The bill would also require law enforcement agencies to report—just report—all serious crimes committed by their confidential informants, including an accounting of the total number of each type and category of crime, an attestation of whether the crime was authorized or unauthorized, and a listing of the State in which each crime took place. And in the interest of safeguarding the integrity of the ongoing criminal investigation, the bill would prohibit the reporting of informant names, control numbers, or other personal identification that could reveal informant identities.

This legislation has received the endorsement of the Project on Government Oversight, and I urge my colleagues on both sides of the aisle to join me in this effort. I'd also like to recognize Professor Alexandra Natapoff of Loyola Law School for her contributions to the legislation and to her continuing work in the area of confidential informant oversight.

Thank you, Mr. Chairman, and I yield back to the ranking member the balance of my time.

Mr. CUMMINGS. I yield back.

Chairman CHAFFETZ. Thank you.

We'll hold the record open for 5 legislative days for any member who wishes to submit a written statement.

We'll now recognize our panel of witnesses. We are please, once again, to have the Honorable Michael Horowitz, inspector general for the United States Department of Justice. He's testified before our panel, our committee, several times. We appreciate the good work from him and his—all the people that work for him there at the Inspector General's Office.

We also have Mr. Robert Patterson, the Acting Principal Deputy Administrator for the Drug Enforcement Administration.

We also have Mr. Ronald Turk, Associate Deputy Director and Chief Operating Officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

We welcome you all.

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

Do you solemnly swear and affirm 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.

All of you have testified, I believe, before. And in order to allow time for discussion, we would appreciate it if you'd limit your oral testimony to 5 minutes. Your entire written statement and any extraneous materials will be made part of the record.

Mr. Horowitz, you are now recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE MICHAEL E. HOROWITZ

Mr. HOROWITZ. Thank you. Mr. Chairman, Ranking Member Cummings, members of the committee, thank you for inviting me to testify today. Confidential informants are an important part of the Department's law enforcement operations. But as Department officials have acknowledged, there are substantial risks with using them.

As a result, the Department has developed the Attorney General's Guidelines on the Use of Informants. And law enforcement components should have in place rigorous oversight for their informant programs, including strict internal controls, clear policies and procedures, a tentative—a tentative program management at both headquarters and in the field, and substantial training.

Over the past 2 years, my office has issued reports on ATF's and DEA's oversight of its confidential informant programs. ATF managed over 1,800 active informants as of January 2016, spending approximately \$4.3 million annually on its program, while DEA managed about 18,000 informants during a recent 5-year period and paid about 9,000 of them approximately \$237 million.

Our audit last month of ATF's confidential informant program found that it required significant improvement, especially its management of relevant confidential informant information, tracking of payments to confidential informants, and oversight of higher risk confidential informants.

In particular, we found that ATF maintained important information in a compartmentalized way that made it difficult to assess whether an informant was providing information that assisted ATF investigations and to identify and track total payments made to an informant with sufficient accuracy or reliability.

In addition, we found that ATF's Confidential Informant Review Committee had not always met as scheduled, had not always reviewed and opined on all informant files provided to it for review, and may not have appropriately reviewed all long-term confidential informants.

We provided ATF with five recommendations to address these deficiencies. These include implementing a complete and reliable recordkeeping system, ensuring that its confidential informant committee is reviewing all informants as required by policy, and carefully monitoring foreign national CIs and appropriately coordinating with DHS regarding them. ATF agreed with all of the recommendations, and we will monitor ATF's efforts to implement them.

Our September 2016 audit of DEA's confidential source program found insufficient oversight and controls related to DEA's establishment, use, and payment of confidential sources, in particular sub-sources and limited-use and DEA intelligence-related sources. For example, we found that DEA files did not document all source activity, impacting DEA's ability to examine a source's reliability and to determine whether the source provides useful information and whether the information DEA agents acted upon resulted in identifying individuals involved in illegal activity or, instead, caused DEA to approach innocent civilians.

And in last month's addendum to our 2016 report, we described our concerns regarding DEA's establishment, oversight, and substantial payment of confidential sources used for overseas operations and by its Intelligence Division.

We found that DEA had not fully accounted for the national security, foreign relations, and civil liberties risks associated with using and paying these types of sources.

We made seven recommendations in our September 2016 report and several additional recommendations in last month's addendum to help DEA address these deficiencies. These include: developing sufficient controls and policies regarding limited-use informants and subsources; documenting all interactions with informants; prohibiting the use of unauthorized private correspondence; and improving training and ensuring consistent application of policies across DEA.

DEA agreed with all of our recommendations, and we will continue to evaluate and assess their actions in addressing our recommendations.

We look forward to our continued work with the Department and this committee to ensure that informant programs, which are unquestionably important to law enforcement, are appropriately overseen and managed.

Thank you, and I'd be pleased to answer any questions the committee 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

"Use of Confidential Informants at ATF and DEA"

April 4, 2017

Mr. Chairman, Ranking Member Cummings, and Members of the Committee:

Thank you for inviting me to testify about the Department of Justice (Department) Office of the Inspector General's (OIG) oversight of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Confidential Informant Program and the Drug Enforcement Administration's (DEA) Confidential Source Program. We appreciate the Committee's continued interest in the Department's confidential informant programs. Confidential informants are an important part of the Department's law enforcement operations, with both ATF and DEA relying heavily on confidential informants to provide information related to unlawful activity and services that further federal criminal investigations.

Department officials have acknowledged that there are risks involved with using informants because these individuals often have criminal backgrounds, and they often provide assistance or cooperation in exchange for cash or the prospect of a reduced criminal sentence rather than a desire to help law enforcement. The appropriate use of informants requires assessing the usefulness and credibility of the information and services they provide, and therefore requires significant oversight, attentive program management, and thorough guidance.

To address these risks, the Attorney General's Guidelines Regarding the Use of Confidential Informants (AG Guidelines) provides Department-wide guidance on various confidential informant matters, including determining the suitability of individual informants and providing enhanced oversight of high-risk informants. Compliance with the AG Guidelines helps ensure consistent and appropriate informant management among all Department law enforcement agencies and helps to mitigate the risks involved with using confidential informants in federal investigations. However, despite this guidance, our 2012 review of ATF's Operation Fast and Furious found that, until 2011, ATF had not updated its policies on confidential informants to account for the requirements of the AG Guidelines and our July 2015 review of DEA's confidential source policies found that they differed in several significant respects from the AG Guidelines' requirements.

In November 2016, I testified before this Committee and described the results of our July 2015 and September 2016 audits of DEA's Confidential Source Program. Two weeks ago, we released a public summary of a classified addendum to our September 2016 report that identifies specific findings related to the use of and payments to confidential sources by the DEA's Intelligence and Special Operations Divisions. Last week, we issued a report detailing our findings regarding ATF's Confidential Informant Program.

ATF's Management and Oversight of Its Confidential Informant Program

ATF managed over 1,800 active informants as of January 2016, spending approximately \$4.3 million annually on its Confidential Informant Program in fiscal years (FY) 2012 through 2015. Although ATF's Confidential Informant Program is not as large as others in the Department, the overall risks of using informants remain the same. Last week's audit found that ATF's oversight of its Confidential

Informant Program required significant improvement, especially pertaining to ATF's management of relevant confidential informant information, tracking of payments to confidential informants, and oversight of higher-risk confidential informants.

While we determined that ATF's confidential informant policies were generally aligned with the AG Guidelines, our audit also determined that ATF has not properly implemented practices that accomplish what is written in its policy, and ATF's informant policies and procedures did not provide for adequate management of the program. The deficiencies I will describe in more detail below did not allow for ATF to meet the oversight requirements established in the AG Guidelines, and did not allow ATF to employ the level of oversight or management that would have most effectively mitigated the risks involved in using confidential informants.

Of particular concern, we found that information critical to the management of ATF's Confidential Informant Program was compartmentalized in three different locations: (1) the informant file, which is a hard-copy file that includes basic background information about the informant and administrative documents related to the informant; (2) one or more investigative files, which are hard-copy files that include details of the informant's case-related activities, as well as documentation of payments provided to the informant; and (3) an electronic database that contained only identifying information about every informant. Maintaining information in this way made it difficult for us, and could make it difficult for ATF officials, to assess whether an informant was providing information that assisted ATF investigations, particularly those informants who were involved in multiple cases. Further, the automated system that ATF used during our audit to manage its informant information was unsophisticated and unreliable, and it did not retain historical information.

Moreover, the compartmentalized nature of ATF's informant information had particularly significant effects on ATF's ability to track payments to individual informants. The AG Guidelines require that all payments to individual informants be accounted for. However, during our audit we found that ATF could not efficiently identify and track total payments made to individual informants with sufficient accuracy or reliability because doing so required locating and reviewing numerous hard-copy documents in multiple, separate files and systems. Recognizing the importance of this matter, we alerted ATF management of our concerns in June 2016 - which was prior to the conclusion of our audit - that ATF's information environment did not provide sufficient safeguards to ensure that complete and accurate information was consistently available, including when such information was required to be made available to prosecutors for use during criminal proceedings. In response to our concerns, ATF concluded that it also could not completely reconcile some confidential informant payment records. Although we did not examine whether ATF provided incorrect informant payment information during any criminal proceedings, and we are not aware of any such instances, we consider this deficiency in ATF's information environment to be a significant concern.

We also have concerns with ATF's management and oversight for certain categories of higher-risk confidential informants, because we found that ATF did not always categorize, track, and review the use of these informants. For one particular category of higher-risk informants, foreign nationals, we found that while ATF can sponsor foreign national informants for temporary legal status when ATF believes the informant will provide valuable information and assistance to its investigation, ATF officials did not completely and accurately track information related to these foreign national informants. As a result, we were unable to determine the total number of ATF-sponsored foreign national informants. The inability to efficiently identify these informants is especially problematic because these informants, as with many informants, can have criminal histories or may be involved with criminal organizations, and therefore the risks associated with these informants remaining in the United States without legal authorization are higher than normal. This lack of reliable information prohibited ATF headquarters from properly managing the informants and from ensuring appropriate coordination with the Department of Homeland Security.

We were similarly unable to obtain from ATF an accurate and complete picture of informants who are also Federal Firearms Licensees. While we found that ATF's policy provides guidance related to this informant category, we are concerned that ATF did not have a reliable method of querying its records to identify informants who may be a licensee. In our 2012 report on ATF's Operation Fast and Furious and Related Matters, the OIG found that ATF was receiving information and cooperation from a licensee regarding firearms sales to individuals who were engaged in firearms trafficking and illegal firearms purchases. That report revealed that ATF did not have controls in place to ensure that there was no conflict between its use of the individual in an investigative manner and its oversight of the same individual as an approved license holder. Although ATF officials told us that ATF does not currently have any licensees who are also informants, we continue to believe that this informant category requires increased oversight and therefore ATF should strengthen its recordkeeping in this area.

In addition, we reviewed ATF's efforts to manage certain categories of higher-risk informants that are identified within the AG Guidelines. For example, the AG Guidelines require law enforcement agencies to establish a Confidential Informant Review Committee comprised of component and Department officials to approve the continued use of long-term informants, which is defined as six consecutive years as a confidential informant. While ATF policy states that field divisions are responsible for determining which, if any, confidential informants have been active for six consecutive years and therefore must be submitted to the ATF Committee for review, we found that ATF headquarters officials did not have a sufficient method to verify that all such informants were submitted for Committee review. We could not determine, and ATF could not affirm, if ATF's Committee had reviewed all long-term informants, as ATF did not have adequate records about these informants and allowed the field divisions to manage long-term informant information. We are concerned that this decentralized process did not provide an adequate level of assurance that all long-term informants requiring this enhanced review were identified.

Moreover, the Committee had not always met as scheduled, had not always reviewed and opined on all of the informant files provided by ATF for review, and had postponed decisions to a later date on numerous occasions. As a result, we believe that ATF's review process for these informants had not provided the enhanced oversight required by the AG Guidelines.

We provided ATF with five recommendations to address the deficiencies in its informant program and to improve its ability to sufficiently identify, assess, and mitigate the risks involved with using informants. In responding to our audit, ATF agreed with all of the recommendations and expressed a commitment to implement program enhancements. We will monitor ATF's efforts to address our recommendations, including its implementation of the new informant database. Our report can be found on the OIG's website at the following link: <https://oig.justice.gov/reports/2017/a1717.pdf>.

Shortly after our entrance conference in October 2015, ATF informed us that it was in discussions to enhance its existing CI database and, in June 2016, ATF awarded the contract for its new database. Last fall, after our fieldwork was completed, ATF developed its new automated system that it believes will address many of the findings in our report. Because ATF has not yet fully implemented the system and integrated its use into ATF policy and guidance, we have not audited it. Based on a demonstration provided to us, we believe the system is an improvement over its unsophisticated legacy system and enhances ATF's information environment. However, the system is still in its infancy and several advancements are necessary to address the relevant findings in our report.

DEA's Management and Oversight of Its Confidential Source Program

In July 2015, the OIG issued a report that determined the DEA's confidential source policies were not in full compliance with the AG Guidelines and lacked sufficient oversight and consistency with the rules governing other DOJ law enforcement components. We made seven recommendations to the DEA, all of which are now closed as a result of DEA's issuance of new policies governing its Confidential Source Program and DEA's implementation of more comprehensive procedures and coordination with the Department. That report can be found on the OIG's website at the following link: <https://oig.justice.gov/reports/2015/a1528.pdf>.

In September 2016, we issued our next audit report that found that the DEA's management of its Confidential Source Program did not provide sufficient oversight and controls related to the DEA's establishment, use, and payment of confidential sources, in particular Limited Use and DEA intelligence-related sources. We made seven recommendations to help the DEA address deficiencies and improve various aspects of its Confidential Source Program. The DEA continues to evaluate and assess necessary actions needed to address our recommendations and remedy the deficiencies we found during our audit. As such, all of our recommendations remain

open. That report can be found on the OIG's website at the following link:
<https://oig.justice.gov/reports/2016/a1633.pdf>.

In March 2017, we provided the Department and Congress with a classified Addendum to our September 2016 report, and also issued an unclassified public summary, that provides additional details about the OIG's findings concerning DEA's establishment, use, and payment of confidential sources used in a DEA Intelligence Division program and by the DEA Special Operations Division for overseas operations. As we discuss in our public summary, we found that the DEA had not fully accounted for the national security, foreign relations, and civil liberties risks associated with using and paying certain confidential sources. We provided the DEA with several recommendations for the improvement of its efforts related to the use of these confidential sources. The DEA concurred with all of the recommendations and stated that it is taking necessary steps to implement the recommendations, which we plan to review and assess through our resolution and follow up process. Our unclassified public summary of that Addendum can be found on the OIG's website at the following link: <https://oig.justice.gov/reports/2017/a1633a.pdf>.

Informant programs are unquestionably important to law enforcement, but they also come with significant risks. My office will continue to be vigilant in helping to ensure that they are appropriately overseen within the Department of Justice. This concludes my prepared statement, and I will be pleased to answer any questions that the Committee may have.

Chairman CHAFFETZ. Thank you.
Mr. Patterson, you are now recognized for 5 minutes.

STATEMENT OF ROBERT PATTERSON

Mr. PATTERSON. Chairman Chaffetz, Ranking Member Cummings, and distinguished members of the committee, on behalf of the approximately 9,000 employees of the Drug Enforcement Administration, thank you for the opportunity to be here again today.

I am pleased to continue the discussion of DEA's confidential source program, the enhancements made to our policies and practices as a result of both the current and past reviews and recommendations by the Office of the Inspector General and the U.S. Government Accountability Office.

As you are already aware, DEA's mission is to identify, investigate, disrupt, and dismantle the world's most significant drug-trafficking organizations responsible for the production and distribution of illicit drugs. To that end, we will work closely with our law enforcement counterparts by following the evidence wherever it leads.

Central to this mission remains a worldwide confidential source network which uniquely positions DEA to act quickly, effectively, and proactively to reach beyond our borders to identify, investigate, indict, and incarcerate those that threaten the safety and interests of our country, citizens, both at home and abroad.

For the past decade, law enforcement has increasingly seen the loss of investigative tools, which are critical in solving crimes that have already occurred as well as in the prevention of other serious criminal acts. As the availability of these tools has diminished, the use of confidential sources has only become increasingly more important.

DEA regularly encounters sources with varying motivations. These range from the anonymous tipster looking to make the community safer or the individual who finds himself in a strategic position to help law enforcement all the way to those who cooperate in an effort to avoid or reduce the length of their incarceration. Sources who have participated in crimes provide tremendous value to investigations since they often have direct knowledge and access to the criminal targets in the organization. These sources can facilitate the gathering of evidence crucial to a successful prosecution. However, no matter the motivation or past history of the person, all cooperating sources utilized by law enforcement must have proper oversight.

In establishing and utilizing these sources, we recognize their value must be constantly and carefully balanced with the inherent risks involved. Accordingly, any CS program must have strong foundation of clear policies and procedures. These items help ensure our investigative workforce has the proper guidance to operate within established controls and allow agents to assess and mitigate potential risks while still advancing their investigations.

However, providing policies and procedures for our agents defining how they operate cannot and is not the complete extent to which we fulfill this responsibility. Management at all levels, both in the field and at headquarters, share responsibility for oversight through multiple levels of review and approvals, enforcement of

policy and procedures, and proper monitoring and auditing of CS utilization.

As we discussed in November, DEA has made and continues to make significant improvements in the CS program. As previously stated, we have embraced all of OIG and GAO's recommendations for our CS program, to include the most recent OIG report released in March of this year, and have actively worked with the appropriate parties to address the identified shortfalls. Some of these efforts go far beyond what is required under the AG guidelines, ranging from policy and procedural modifications to implementation of new audit controls. These actions will ensure that, moving forward, our continued reviews will be able to identify and correct problems before they become systematic.

Additionally, we have made concerted efforts to inform and consistently message these changes to our workforce so that, in addition to improving agency policy and procedures, there is an increased understanding of the importance of the modifications to our program and why these are necessary.

In conclusion, in addition to working through the recommendations, we continue to seek new ways to improve our CS program. The program is essential to our ability to effectively pursue investigations, and we recognize the responsibility entrusted to us to manage this with the greatest integrity.

I appreciate the opportunity to speak with you again on our program and welcome your questions.

[Prepared statement of Mr. Patterson follows:]



Department of Justice

STATEMENT OF

**ROBERT W. PATTERSON
PRINCIPAL DEPUTY ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION**

BEFORE THE

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

FOR A HEARING ENTITLED

“USE OF CONFIDENTIAL INFORMANTS AT ATF AND DEA”

PRESENTED

APRIL 4, 2017

**Statement of
Robert W. Patterson
Principal Deputy Administrator
Drug Enforcement Administration**

**Before the
Committee on Oversight and Government Reform
U. S. House of Representatives**

**At a Hearing Entitled
“Use of Confidential Informants at ATF and DEA”**

April 4, 2017

Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee: on behalf of the approximately 9,000 employees of the Drug Enforcement Administration (DEA), thank you for the opportunity to be here today to update you on DEA's confidential source program and the enhancements we have made to our policies since our November 30, 2016 hearing resulting from several reviews and reports by the Office of the Inspector General (OIG).

Our mission is to identify, investigate, disrupt, and dismantle the world's most significant drug trafficking organizations responsible for the production and distribution of illegal drugs. To that end, we work closely with our local, state, federal, and international counterparts by following the evidence wherever it leads.

Central to this mission is a world-wide confidential source (CS) network, one which uniquely positions DEA to act quickly, effectively, and proactively to reach beyond our borders to identify, investigate, and indict those that threaten the safety and interests of our country's citizens at home and abroad. This informant network is vital to our operations. However, DEA recognizes that the nature of using these sources has inherent risk, something that must be carefully and regularly balanced against the benefits of utilizing these individuals in furthering investigations. Strict oversight and adherence to sound policy and procedures are paramount to ensuring both the safety of our employees and the integrity of operations.

As we discussed during the November hearing, we have updated our CS policy to fully comply with the Attorney General's Guidelines, and in some cases even exceed the guidelines. The changes to our policy address the recommendations in OIG's July 2015 report, as well as a similar report released by Government Accountability Office (GAO) in September 2015. Those reports have been fully closed out based on DEA's implementation of all recommendations.

On September 29, 2016, the OIG issued a second report concerning the DEA's CS program, with a classified addendum released on March 22, 2017. This second report contained seven recommendations for DEA, primarily regarding increased oversight of the CS program from a Headquarters level to balance the Field responsibility, CS payments, and use of “Limited

Use” sources (often referred to as “tipsters,” or sources who make information available independently without direction from DEA). DEA agreed with all seven recommendations and we have provided OIG our way forward for addressing each of the recommendations. Based on these plans and subsequent actions, OIG considers all of the recommendations resolved. Once DEA has been able to fully implement actions for the recommendations and provide documentation to the effect, OIG may close out the report.

Although DEA’s next response to OIG is not due until May 2017, I would like to take the opportunity to update you on several of the improvements we have implemented to address the recommendations.

Regarding increased oversight of the CS program, we have implemented additional review and approvals to provide increased oversight for the establishment and use of CSs. In the field, we are in the process of implementing formal policy requiring a second line supervisory (at a Senior GS-15 level) review and approval for all CSs, including Limited Use CSs, where previously only a first-line (GS-14 level) approval was necessary. Although DEA policy has not yet been updated to reflect this requirement, procedurally this change is in place. DEA’s IT system for tracking CSs must be modified to allow for this second line supervisory requirement before we can update the policy to coincide with the change. We are also enhancing staffing in the Headquarters CS Unit to provide increased review on submissions from the field to ensure complete submissions with all necessary reviews and approvals conducted, and that CSs have been properly and consistently classified.

Further adding to oversight of the program, DEA has implemented increased reviews of the CS program by DEA’s Office of Inspections (IN). Increased emphasis is being placed on the CS program as part of the yearly Division Inspection Program conducted by each division, the on-site division inspections conducted by IN, as well as an annual special review audit of the CS program conducted by IN. Through this increased scrutiny, we will identify issues early on, correct them, and assess areas that require reinforced guidance, training, or procedural modifications.

The increased oversight over the CS program will also help ensure payments made to CSs are appropriate for the quality and amount of assistance being provided to the case. While approvals for smaller, more routine payments remain in the field, DEA has revised its procedures for significant payments to CSs through the CS Award Program. The CS Award Program allows for higher payments to CSs for information and assistance in the development of an investigation and/or for information or assistance leading to a civil or criminal forfeiture. DEA has established a Headquarters CS Award Review Board comprised of Senior Executive level Special Agents, who will review all CS award submissions and assess the impact of the CS’s contribution on the investigation. The Board will review each submission and determine the award amounts based on the established criteria, comparable cases, and prior awards. Thus, awards should be consistent based on similar contributions.

In addition to implementing changes to DEA's CS policy and procedures in the past year, DEA has actively messaged the importance of these modifications and compliance with new policy and procedures. This has been done at the leadership level to DEA's executive staff both in the field and Headquarters, as well as through training for personnel at the working level. Since OIG's issuance of the second report, all CS Coordinators have been trained on the revised CS policy.

Conclusion

Notwithstanding DEA's own dedicated and committed workforce, our CS program is among the most valuable assets our agency has in infiltrating, disrupting, and dismantling violent drug trafficking organizations responsible for perpetuating the deadly opioid epidemic and violent crime in our neighborhoods, as well as transnational organized crime around the world. We recognize that along with such value, this program also comes with risks and we share your concerns that the program be managed in a way that mitigates those risks as much as possible. We appreciate OIG's reviews of the program and have embraced their recommendations in an effort to improve it. We have made significant changes in the last year as a result, and we will continue our efforts to implement the remaining recommendations, as well as seek additional ways to better the program.

Chairman CHAFFETZ. Thank you.
Mr. Turk, you are now recognized for 5 minutes.

STATEMENT OF RONALD B. TURK

Mr. TURK. Thank you, sir. Mr. Chairman, Ranking Member Cummings, and members of the committee, good morning. Thank you for the opportunity to testify today. The use of confidential informants——

Chairman CHAFFETZ. Move the microphone just up a little bit. There you go.

Mr. TURK. Yes, sir.

The use of confidential informants is very important in the Bureau's mission. We also recognize the inherent risks that are involved with managing confidential informants. We take the matter seriously. We have reviewed the Office of Inspector General's report. We have already begun taking steps to manage that program even better. I think, over the last several years, you will find that we have made significant progress.

I'm a career special agent. I've worked with informants for many years. It's an honor to represent the men and women of ATF today, and I'm happy to answer your questions regarding the subject. Thank you.

[Prepared statement of Mr. Turk follows:]



Department of Justice

STATEMENT OF

**RONALD B. TURK
ASSOCIATE DEPUTY DIRECTOR
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES
U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

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

FOR A HEARING CONCERNING

USE OF CONFIDENTIAL INFORMANTS AT ATF AND DEA

PRESENTED

APRIL 4, 2017

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee, thank you for inviting me to appear before the Committee today. I welcome the opportunity to discuss the Department of Justice (DOJ) Office of Inspector General's (OIG) report "ATF's Management and Oversight of Confidential Informants" (the OIG Audit Report).

Mr. Chairman and Members of the Committee, ATF Special Agents, Investigators, and professional staff are dedicated to removing the most violent offenders from America's streets and making our communities safer. These violent offenders are often associated with gangs and other criminal organizations. To successfully investigate these cases, ATF must periodically enlist the cooperation and assistance of confidential informants. Cooperating informants often can obtain evidence about the activities of violent offenders, particularly those associated with gangs and other criminal organizations, that is not otherwise available to ATF and its law enforcement partners. Consequently, ATF's confidential informant program is an important tool in the fight against violent crime, and ATF is grateful that the Inspector General conducted a thorough assessment of this program.

ATF has carefully reviewed the OIG audit report, and concurs with all of the report's recommendations. I am pleased to have the opportunity today to provide some additional background to the Committee about ATF's confidential informant

program, and to describe the steps we have already taken to implement the OIG recommendations.

As the OIG report indicates, before the audit was completed, ATF recognized and had begun addressing many of the issues raised in the report's recommendations. In fact, many of the report's findings do not reflect the current status of ATF's confidential informant program.

ATF's administration of this program has evolved over the years. Prior to 2012, we primarily relied on a decentralized, paper-based system, with each ATF field division maintaining those paper files in the field. In 2012, recognizing the need to modernize and centralize this process, ATF developed an interim, headquarters-based electronic database to track basic information regarding all confidential informants. This database was designed to be temporary, acting as a bridge while ATF developed a robust, national computerized system. As early as 2013, ATF began evaluating system requirements and exploring cost-effective means of developing and implementing a new national system.

While the OIG accurately notes that ATF did not enter a final contract with the system vendor until June 2016, development of that contract was the result of a multi-year effort. In October 2016, that multi-year effort came to fruition, and ATF deployed our national confidential informant management system. ATF's new system is robust and adaptable, and its functionality immediately addresses many of

the concerns the OIG raises in its recommendations. We will continue to work with the OIG to ensure that our new confidential informant management system adapts to meet any continuing concerns, and to implement updated policies and procedures for the system's use by agents and managers.

I also want to emphasize that the report reflects the results of an audit of ATF's administrative oversight of its confidential informant program; the report does not identify any deficiencies regarding the manner in which ATF manages the use of confidential informants in its investigations. ATF strictly adheres to Department of Justice guidelines governing the use of confidential informants, and, since 2012, we have continually strengthened our internal orders applicable to the usage of confidential informants to provide safeguards that exceed baseline Department guidelines.

Finally, let me assure the Committee that ATF also takes very seriously the OIG's conclusion that its paper files and legacy database did not provide sufficient safeguards to assure that accurate and complete confidential informant payment information was consistently available to prosecutors. ATF is acutely aware of its obligation to provide accurate and complete information to prosecutors in the criminal discovery process, is fully committed to meeting that obligation in all cases, and is confident that our new system provides the consistency needed to ensure we continue to meet that obligation.

Mr. Chairman and Members of the Committee, I am proud to be here today representing the men and women of ATF; they work conscientiously every day to make America's streets safer. I assure you that ATF's executive staff will continue to identify areas where we can further strengthen our effectiveness; we owe no less to our dedicated employees and our communities. Thank you for this opportunity.

Chairman CHAFFETZ. All right. Thank you.

I'll now recognize myself for 5 minutes.

Mr. HOROWITZ, there are several components within the Department of Justice. Why are there multiple different standards and policies for confidential informants? Why not just one that they operate under? Why do they have individual ones? What's the answer to that question?

Mr. HOROWITZ. Well, I think in part it has to do with different missions, but that is a question we've repeatedly asked whenever we've looked at programs. We asked that question in the Fast and Furious review that we did. I think there are reasons why, for example, the FBI, which has a substantial counterintelligence component, would require additional and particular policies. But I think one of the challenges the Department faces is making sure that, through the Deputy Attorney General's Office, it is making sure that each of the components have certain baseline procedures that every single one of the components—

Chairman CHAFFETZ. Okay. So have you been able to look at, for instance, the DEA confidential informant policy?

Mr. HOROWITZ. We have.

Chairman CHAFFETZ. Mr. Patterson, we've asked repeatedly to see this policy. You have yet to give us a copy of this policy. Why not?

Mr. PATTERSON. Sir, back in November, you had asked me at the end of that hearing to provide you a copy. I set off on that endeavor throughout the month of December trying to get that or at least get some clarity as to the turning over of that policy. It became relatively apparent to me that I was going to need to wait for the next administration as people were leaving, as the outgoing administration and folks were leaving the Department.

Chairman CHAFFETZ. Were you told not to give it to us?

Mr. PATTERSON. During the previous administration?

Chairman CHAFFETZ. Yes.

Mr. PATTERSON. I got, quite frankly, no real answer.

Chairman CHAFFETZ. Which means don't do it?

Mr. PATTERSON. My understanding from the Department at the time was that the policy would not be turned over based on Department policy. I had been doing—

Chairman CHAFFETZ. Okay. So let me go back to June 22 of 2016. Mr. Rosenberg—who is Mr. Rosenberg?

Mr. PATTERSON. The Administrator of DEA.

Chairman CHAFFETZ. And he was before the Senate Judiciary Committee when Senator Grassley, who happens to be the chairman of that committee, asked if it had been completed and asked if the Senate Judiciary Committee could get a copy of it. Here's what Mr. Rosenberg said, and I quote: "It has been finalized. It's been approved by the Department. I'm more than happy to provide a copy to this committee and to your staff, sir," end quote.

Did they ever give a copy of the confidential informant policy to Senator Grassley and the Senate Judiciary Committee?

Mr. PATTERSON. They did not.

Chairman CHAFFETZ. Why not?

Mr. PATTERSON. I have spoken to the Administrator about that comment. You caught me off guard when you had brought that up

on November 30. He had said that he had intended to mean in camera, as a copy of the policy.

Chairman CHAFFETZ. But you understand that that's different, right? We've had that discussion.

Mr. PATTERSON. We have had that discussion, sir.

Chairman CHAFFETZ. Okay. Let's play—I actually want to play the video of you and I having this discussion last time you were here in November of last year. Let's go ahead and put up this video, if you could.

[video shown.]

Chairman CHAFFETZ. So, Mr. Patterson, when did you give me the answer to that question?

Mr. PATTERSON. I did not, sir. My understanding is——

Chairman CHAFFETZ. And you've testified under oath, you promised me in November as soon as you get back to your office. And we're in April, and I still don't have it, and I still don't have an excuse either.

So why are you not giving this to us?

Mr. PATTERSON. Sir, my understanding is that the committee staff was contacted yesterday by the Department.

Chairman CHAFFETZ. Yesterday, right before a hearing. What a coincidence.

Mr. PATTERSON. Sir, if I may say this, so I will take full responsibility that—I know the Attorney General was sworn in in February, and from February until March 11, I did not go back to ask this question.

On March 11, I had the opportunity to watch another hearing, which prompted me to ask two questions to the Department. One was why Mr. Horowitz had not received our policy on mitigation for threats, and the second was to go back and say that we still have a lingering thing to address the issue of the policy and the request of yourself.

Chairman CHAFFETZ. Okay. So let me get this straight. The inspector general and his staff can see the confidential informant policy, but you refuse to give it to Congress. What is it you think that Congress doesn't have the right to see?

Mr. PATTERSON. Sir, again, I work for the Department of Justice, and so that is——

Chairman CHAFFETZ. Who specifically is telling you not to give this to us?

Mr. PATTERSON. I spoke yesterday to members of the DAG's Office.

Chairman CHAFFETZ. Okay. Let's name some names.

Mr. PATTERSON. I had a conversation with Armando Bonilla in the DAG's Office yesterday.

Chairman CHAFFETZ. And what did he tell you?

Mr. PATTERSON. He made me aware that the committee staff had reached out to you and that you guys were going to work a path forward on this issue.

Chairman CHAFFETZ. Okay. So I've got to—I'm going to have to go another route, and I hope you understand it. Are you able to accept service of a subpoena—you personally?

Mr. PATTERSON. I would assume so, yes.

Chairman CHAFFETZ. You're not sure? I mean, your boss, right, the Acting Director, is testifying—actually, it's that way—next door. I think what I'm going to do, if you're not sure, I'm going to have someone else chair this hearing. I'm also a member of the Judiciary Committee, and I'm going to go serve him the subpoena.

Congress has a right to have this material it, and it is unbelievable to me that you think that we shouldn't have a copy of it.

Now, you may be caught in the middle. You may be listening to others, and I'm sure, in your mind, you're thinking, you know, "I don't get to make this decision unilaterally," but you are the one that the DEA sends before us.

So I don't care if it's the Obama administration or the Trump administration; nothing has changed here. And so, in order to get the result that we need so we can provide the proper oversight, we're going to need a copy of that policy. And I'm not buying this whole idea, "Oh, we give it to Congress, and it's public." We understand how sensitive it is. We have no intention of giving it to the public or releasing it.

But I think you do value in some part oversight because you do give it to the inspector general. But, remarkably, you won't give it the Oversight and Government Reform Committee nor will you give it to the Senate Judiciary Committee. And my guess is you won't give it to the House Judiciary Committee. And we find that wholly unacceptable, and so I'm forced to get into a position, which I didn't want to have to be into, but we are going to issue the subpoena and get a copy of this material.

My time has expired. I yield back now and recognize the ranking member.

Mr. CUMMINGS. Let me say this, Mr. Patterson: I wholeheartedly support the chairman.

We're just trying to do our job. And then, when I watch that video just now, it just reminded me that sometimes we find ourselves going in circles because we don't always get the cooperation that we should get.

Mr. HOROWITZ, just last week, your office issued a report on the Department's cash seizure forfeiture activities. The report found that the Department seizures have resulted in the forfeiture of \$28 million over the last 10 years. That's a lot of money—\$28 billion over the last 10 years. That includes seizures made by ATF, DEA, State and local law enforcement using the Federal law. Is that right?

Mr. HOROWITZ. That's correct.

Mr. CUMMINGS. Using the Federal law.

Of the 85 DEA interdiction seizures you received—you reviewed, 79 were, quote, "initiated based on the observations and the immediate judgment of DEA agents and task force officers absent any preexisting intelligence of a specific drug crime," end of quote.

Does that mean that officers were making on-the-spot judgments about who to approach and how to proceed?

Mr. HOROWITZ. That's correct. That's our understanding.

Mr. CUMMINGS. That's not—so, I mean—what types of risk does that pose?

Mr. HOROWITZ. Well, the risk is, without preexisting intelligence, the question is, what are the factors that are going into the assess-

ment of whether to approach an individual or not? And this grows out of a report we did 2 years ago on DEA's use of cold consent encounters and the concern that came to us about—from individuals who had been approached about the potential for racial profiling.

Mr. CUMMINGS. So were these the types of judgments also being made by State and local law enforcement officers?

Mr. HOROWITZ. Well, many of these task forces have deputized State and local officers. So they are acting as DEA agents having been deputized by the Department and by the DEA.

Mr. CUMMINGS. This is where I'm trying to get to: In your report, you stated that the DEA agent's manual described search and seizure as, quote, "one of the most dynamic and potentially confusing areas of the law today," end of quote.

Based on that, how important is adequate training to ensure consistent application of the law?

Mr. HOROWITZ. It's critical, and it is an issue we've consistently identified as a weakness. That was something in our cold consent encounter report that we've heard about. We first heard that there were these training programs developed, which they were, and then we found that a substantial number of the deputized State and local officers who were working these programs had never been trained.

Mr. CUMMINGS. So who developed the training?

Mr. HOROWITZ. It was DEA who's developed the training programs.

Mr. CUMMINGS. Were these officers deputized officers; they were required to do this, but it never happened?

Mr. HOROWITZ. They were supposed to be required, but it never happened.

Mr. CUMMINGS. Wow.

So, Mr. Patterson, do you agree that training is important—

Mr. PATTERSON. Absolutely.

Mr. CUMMINGS. —to ensure consistent application of the law?

Mr. PATTERSON. Absolutely.

Mr. CUMMINGS. So why aren't these people getting trained?

Mr. PATTERSON. So, as of March of this past year, we required that all individuals that work in DEA interdiction operations, to include State and local task force members, must be trained, to include both our agents and the State and local task force—

Mr. CUMMINGS. That is as of the end of March you said?

Mr. PATTERSON. I'm sorry. Not March—March of 2016, sir. I'm sorry.

Mr. CUMMINGS. Now, are you familiar with all of this, Mr. Horowitz? I mean, the fact that they apparently now—although it's been on the books, I guess, that they now are saying you've got to do it? I mean, what's the result of it?

Mr. HOROWITZ. Yeah. We got a report from DEA in December of 2016 updating us on that review, and we are now—we've followed up with them asking them for the material and the information to show that, in fact, the training is occurring as—

Mr. CUMMINGS. So you are going to basically say—you are going to look at the various people who have been deputized, the folks who are supposed to be trained, and see if they've gotten the training? Is that right?

Mr. HOROWITZ. We want the information from DEA to show that those individuals were in fact trained.

Mr. CUMMINGS. Now, you've seen the training? You're satisfied with the training?

Mr. HOROWITZ. We're assessing the training. I'm going to—I'll talk with my folks further and be back in touch with your staff about that.

Mr. CUMMINGS. Mr. Turk, does the ATF require its agents to receive specialized—similar specialized training?

Mr. TURK. Yes, sir, we do.

Mr. CUMMINGS. Mr. Horowitz, your report found that the Department did not require State and local law enforcement officers operating on task forces or participating in joint investigations to receive training on Federal asset seizure and forfeiture laws. Is that correct?

Mr. HOROWITZ. That's correct.

Mr. CUMMINGS. Do you believe that better training for State and local law enforcement could lead to a more consistent application?

Mr. HOROWITZ. It's critical for exactly that reason and to ensure that folks are following the Federal laws and rules. We're talking about State and local officers who have been trained in their State and local policies, but if they are going to be deputized, you want them to also understand any Federal rules that overlay what they've already learned about their State and local procedures.

Mr. CUMMINGS. And that it be consistent.

Mr. HOROWITZ. Correct.

Mr. CUMMINGS. And so, Mr. Patterson, do you agree?

Mr. PATTERSON. I do, sir.

Mr. CUMMINGS. All right.

I understand the Department accepted the inspector general's recommendation to ensure that State and local task force officers receive the specialized training.

Mr. Horowitz, will you keep us apprised of your progress and stay on top of this?

Mr. HOROWITZ. I will and be happy to update your staff on this.

Mr. CUMMINGS. Thank you very much. I yield back.

Mr. JORDAN. [Presiding.] I thank the gentleman.

So, Mr. Patterson, let me get this straight. Mr. Horowitz does an investigation, issues a report and says you guys aren't doing a very good job when it comes to how you handle confidential informants. It cites this Cromer situation where you had one of your employees with a totally inappropriate relationship with a couple of CIs, all kinds of money being paid to these individuals. I think, in the report, it talks about you did not have centralized records; the OIG found incomplete and inaccurate information in your system. And you then produced new guidelines to better deal with the poor situation that Mr. Horowitz uncovered in his investigation. Is that all accurate? You put together the guidelines now? Mr. Patterson? Let me go to Mr. Patterson. That's accurate? You have new guidelines?

Mr. PATTERSON. We do.

Mr. JORDAN. All right. And once you put together the new guidelines—the chairman of this committee just talked about this—asked to see them, and you won't show them to us. So why can't we see them?

Mr. PATTERSON. Sir, again, I understand that you have not had the policy turned over to you. We've done two in camera reviews with staff—

Mr. JORDAN. Are there names of confidential informants in these guidelines?

Mr. PATTERSON. There are not, sir.

Mr. JORDAN. Are there locations of where these confidential informants are at?

Mr. PATTERSON. There are not, sir.

Mr. JORDAN. So why can't we see it in public so we can actually review it? We go and see it in camera; you can't take notes. You can't take photographs; you've got this big document with all these guidelines. After the pathetic performance you've had dealing with this situation, why can't we see it?

Mr. PATTERSON. I think it certainly would be my position—and I don't know if the Department feels the same way—that this is highly sensitive material.

Mr. JORDAN. How is it sensitive when you don't have the names of the informants and locations of the informants? What's sensitive?

Mr. PATTERSON. Because it talks about the types of informants and what efforts and acts they perform.

Mr. JORDAN. Well, that's all important information that this committee would like to know and actually be—we're not going—like the chairman just said, we are not going to share that. We just want that information so we can review it and see if you are actually doing what Mr. Horowitz said you weren't doing and you are improving the situation.

Mr. PATTERSON. Again, sir, we've done multiple reviews with committee staff. We'd be more than happy to continue that. We've also done briefings for a whole host of folks.

Mr. JORDAN. And I think you heard from the chairman just a few minutes ago: that ain't good enough. We want the document. We want the guidelines so we can see what's going on here.

Let me ask you a couple of other questions. Do—I've got another report here from Mr. Horowitz dated 1 year ago—actually, 2 years ago, and it's talking about cold consent encounters. Are you familiar with this?

Mr. PATTERSON. I am, sir.

Mr. JORDAN. And tell me what cold consent is. Well, let me ask it this way: Are cold consent encounters where you just walk up to some individual and ask if you can talk to them and search their belongings?

Mr. PATTERSON. In part, yes, sir.

Mr. JORDAN. And is the individual who is approaching some individual—in that encounter, do your folks have on a uniform, law enforcement uniform?

Mr. PATTERSON. They do not, sir.

Mr. JORDAN. But do they show their badge?

Mr. PATTERSON. I would assume, yes, sir.

Mr. JORDAN. And my understanding is these things happen typically at airports. Is that correct?

Mr. PATTERSON. I would characterize it as mass transportation facilities.

Mr. JORDAN. Yeah. And you had some complaints from a couple of African-American women not too long ago on this very issue. Is that correct?

Mr. PATTERSON. I'm not familiar with that, sir.

Mr. JORDAN. It's in the report. "Initiated this review after receiving complaints from two African-American women resulting from separate DEA-initiated cold consent encounters at an airport." Is that right, Mr. Horowitz?

Mr. HOROWITZ. Yes, that's correct.

Mr. JORDAN. And—no. When you do these cold—Mr. Horowitz, when these cold consent encounters happen, is there a warrant? Is there any kind of judge signing off on you can go up and search this person's belongings?

Mr. HOROWITZ. There is not.

Mr. JORDAN. There is not. So think about this: You are at the airport where there's all kinds of security. Individual walks up to you, flashes a badge, and says, "Hey, can I talk to you and search your luggage?" That's going on right now in America, Mr. Horowitz?

Mr. HOROWITZ. That was certainly going on when we did this review. And my understanding is the—

Mr. JORDAN. Wow.

Mr. HOROWITZ. —are continuing.

Mr. JORDAN. Say it again. The what?

Mr. HOROWITZ. My understanding is that the program has continued.

Mr. JORDAN. They are still doing it.

Mr. HOROWITZ. That's my understanding, although—

Mr. JORDAN. Is it still happening, Mr. Patterson?

Mr. PATTERSON. It is, sir. We still have interdiction units.

Mr. JORDAN. So think about this: First, Mr. Horowitz does a report on confidential informants where you've had all kinds of screw-ups, all kinds of poor recordkeeping; says this is a mess; tells you to put together the guidelines. You put together the guidelines, and then you won't show them to the United States Congress, the committee of jurisdiction. You won't show us those guidelines, and at the same time you won't show us those guidelines, you're walking up to American citizens—in this case, two African-American women—flashing a badge at an airport, intimidating those individuals without a warrant saying, "I want to search your belongings." Really? And you wonder why we want the—why we want to review the guidelines on this confidential informant in light of that?

I mean, that's the concern here. So I'm glad the chairman, and I'm glad the ranking member supports the chairman in getting this information to us, at least on the confidential informants. And we need to do some more on this cold consent encounters that are taking place at mass transportation areas where—think about this: Someone comes up and flashes a badge, "Can I look at your luggage?" What's that person going to do? And that's tough, and that is the kinds of things you guys are doing.

Any response, Mr. Patterson?

Mr. PATTERSON. Sir, I think that the cold consent, when properly trained, is a technique that can be used in discussing and moving forward with investigations.

Mr. JORDAN. Maybe so, but we'd also like to see the guidelines on another area of you guys' activity that has real concerns. And I just think that the contradiction here—you're doing this to American citizens, walking up to them, searching their belongings; at the same time, you won't even show us the guidelines, which have no names, no locations in them, you won't even show us the guidelines on a different program. I don't know. I think it's cause for concern.

With that, I'd recognize Mr. Lynch, I think is next. Is that right? The gentleman from Massachusetts.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. Patterson, this is the part that I struggle with. So Congress authorizes money to the Justice Department and to the DEA so you folks can do your job. And we don't just do that loosely. We have guidelines that are in place and requirements that you abide by the law. And then when we try to make sure that you're acting in compliance with the law, you tell us we can't—we can't see that policy that you're acting under. Do you see the problem we have here?

Mr. PATTERSON. Again, sir, the notion that you can't see the policy, you know, we're displaying it to you on a format that is obviously unacceptable to the committee.

Mr. LYNCH. No. No. No. That's not how this works. We're not playing secret squirrel with you.

You aren't even tracking the criminals that you're working with. We just want to see the policy that you're operating under, because we authorized it. We authorized it. This is due diligence on our part.

So—I'm not surprised that we see these horror shows. I'm not surprised that we see, you know, the abuse here, the theft. I'm not surprised because the whole thing is—is secret. There's no fresh air here. There's no sunlight. And this is totally being operated—I mean, when you let somebody keep, what, \$4.9 million out of a \$5.2 million sweep, I mean, there's no accountability here, nothing that we see.

There's been no serious—I mean, we had a horrible report on this back in 2005. And here we are, in 2017, you won't even let us see the policy and make it public. That should be a fair request. It just stuns me that you've taken this position that you don't think Congress has the right to read that policy, and we haven't been given a full and open opportunity to review that policy.

Mr. PATTERSON. If I could comment, sir?

Mr. LYNCH. Sure. Sure.

Mr. PATTERSON. Again, I'd be more than willing, following the Department's guidance, to come and I'll spend my own time sitting with you while you go over the policy.

Mr. LYNCH. Well—

Mr. PATTERSON. I somewhat want to push back a little bit that you haven't been able to see the policy, right? So the members have seen it. I get that that's not in the format that you want.

Mr. LYNCH. Correct.

Mr. PATTERSON. But it's certainly been viewed and briefed to certainly staff.

Mr. LYNCH. We represent the people, not the staff. The information, by its very nature, should be public. There's enough stuff

going on here that's horrific because it was kept sub rosa, that it was kept from the public. We think, in order to restore the credibility of the DEA, that we have to be honest and open with the American people.

Look, you operated 18,000 confidential informants. These are basically people going out in the public and surveilling the public. You have one guy here that was handing over the manifest for a bus company. Tens of thousands of people, innocent people, on a list that he was handing over to you, to your operation.

I mean, there's no protection at all for those innocent people that are being swept up in that. So that's why we want to make this whole process more transparent.

Mr. Horowitz, do you see any significant improvement here, you know, in terms of trying to hold people accountable? We saw the situation with the Boston office of the FBI, when there was so much money sloshing around that it corrupted the Federal agents that were involved. And that's what I think is happening here too. I think they're protecting their own. I think they're protecting the system. And it's—it's self-financing the operation, right?

Mr. HOROWITZ. Yes. Certainly, on the churning, it's self-funding. In—with regard to the others, we have seen both ATF and DEA take steps to improve their programs, put in policies—put in place policies to address the concerns we've identified. And as noted, one of the things that we're doing is following up on all of our most recent reports with DEA and our recent report with ATF to see how they've been implemented, but there are substantial steps that needed to be taken, and they have begun to take those steps, it appears, based on the reports that they've given us so far.

Mr. LYNCH. Well, I'll tell you this—in closing, this report that Mr. Horowitz produced puts a very dark cloud over the DEA, a very dark cloud, and also ATF. And that cloud remains until we have proof positive that we're straightened out and flying right. And that's not going to happen as long as we continue to operate like this.

I yield back.

Mr. HICE. [Presiding.] I thank the gentleman.

I now recognize the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Mr. GOSAR. So, Mr. Patterson, let's go back to what Mr. Jordan was talking about. So let's go through a scenario. So you walk up to me and ask me—flash your badge and tell me you want to search my belongings. What are you going to do when I tell you, "No, where is your warrant?"

Mr. PATTERSON. If you don't consent to have a search of your possessions, then it be won't be searched.

Mr. GOSAR. There's not going to be a scene or anything at an airport or a mass thing like that? I mean, this is kind of a little unusual, wouldn't you say?

Mr. PATTERSON. Sir, again, the—

Mr. GOSAR. So you'll just walk away?

Mr. PATTERSON. —the interdiction units are trained in how they, obviously, behave and question individuals.

Mr. GOSAR. So we'll see that in the policy manual?

Mr. PATTERSON. I don't know. I think there's already policy written on interdiction. I'm not familiar with it. I don't have it in front of me today.

Mr. GOSAR. I would probably tell you I think you're wrong. I think there would be a massive scene at any place that you do that. So I find it despicable.

Inspector General Horowitz, let me ask you another question. In the course of your review, did you have reason to believe that ATF had simply lost track of any foreign national confidential source?

Mr. HOROWITZ. We had real concerns over how they were tracking foreign national CIs, and we could not determine whether they had an ability to identify all of them. So that was our concern.

Mr. GOSAR. It was a mess. It was a mess.

So, Mr. Turk, let's go to you. What is ATF doing to determine whether any current or former confidential informants with expired sponsorships are in the United States?

Mr. TURK. Sir, in a broad sense, when you reference foreign nationals, we have roughly 13 that are registered with ATF right now.

Mr. GOSAR. In the whole country?

Mr. TURK. In the entire country. We take that program very seriously. We work very closely with HSI. Your question specifically relates to after they've completed service with ATF, I believe? We make the referrals back to Homeland Security. We present—or—we either present their information or their person to HSI or ICE, and at that point, we basically relinquish their custody to them or their situation to them and allow HSI to best determine where they go from there.

Mr. GOSAR. So I mean, so the whole country, only 13 foreign nationals?

Mr. TURK. Yes, sir. We have—our entire program, I believe, has 31 total foreign nationals registered with HSI, but 13 of them are acting as confidential informants. The remaining members are either witnesses that aren't informants or they are family members of informants or witnesses that, for one reason or another, needed to remain in the United States to be with family.

Mr. GOSAR. So, once the agents identify their usefulness and—do they go home?

Mr. TURK. There's several scenarios that could play out, sir, one extreme to another. And these are just hypotheticals. They could, in theory, go to—they could stay in the U.S. and go into the Witness Protection Program. They could also be immediately sent back and deported. Those decisions are made by ICE and HSI, not by ATF.

Mr. GOSAR. And I guess one of the reasons I ask that is that, being a foreign national, most of the time, they are involved in criminal activity. So there's a preponderance to reinvigorate or go back into that application, wouldn't you say?

Mr. TURK. Not necessarily, sir. We have seen foreign nationals that weren't necessarily involved in criminal activity but still have useful information for the government to perfect criminal cases.

Mr. GOSAR. And when you send them back to DHS, how long does this timetable usually take for evaluation for that foreign national?

Mr. TURK. I'm not exactly sure, sir. I think it would be a case-by-case basis. Some of it would probably be immediate action depending on the situation of the foreign national. Some may take some time. Some of these situations, the U.S. Attorney's Office may request that they remain for further court-type scenarios where we may potentially unregister them and leave them to the care and advice of Homeland Security and no longer monitor them with ATF.

Mr. GOSAR. And you said that you are very fixated on this. So is it every month, or is it every quarter that you're evaluating these individuals, or is it on a day-to-day basis?

Mr. TURK. There is a monthly update from our field divisions to our headquarters, sir. The ones that are of higher level concern will be brought to more higher attention, for example, to the front office. But there is a monthly communication from our special agents in charge around the country to our headquarters program office.

Mr. GOSAR. So, Mr. Horowitz, in listening to his conversation, you had doubts whether they could track. Can you tell us a little bit about that application?

Mr. HOROWITZ. Certainly. We found several instances where, as we looked through the ATF files, we found information lacking so that we couldn't determine whether they had been tracked all the way through. We found two informants, for example, who there was not a consistent flow of information that they were tracked. We found inconsistencies or lack of information or inconsistencies between the national CI registry system, which ATF is required to include data on, and the data that ATF had and irreconcilable information between the two. And so we ultimately could not conclude or evaluate whether the information that ATF had in its spreadsheets and databases accurately reflected, in fact, the number of people, foreign nationals, in its system and whether it had sufficiently and adequately tracked these individuals, many of whom, as you noted, don't have status in the United States.

Mr. GOSAR. Right. So, Mr. Turk, one last question. So would you—did you not provide all the information to the OIG so they could make that determination?

Mr. TURK. Sir, we were operating at the time when the Office of Inspector General was looking at ATF with an old—I wouldn't even call it a database. If you allow me to explain briefly. We went from a pen-and-paper, basically, archaic system up until 2012, 2013. It was completely inadequate, and we recognized that at the time. We moved into an off-the-shelf system to start to manage our informants. Frankly, we were facing things like sequestration, and we did not—

Mr. GOSAR. No, that—that same old crap keeps coming back. Why haven't you given a supplemental to the OIG?

Mr. TURK. Sir, I throw that out there only to point a positive, which is the database back—

Mr. GOSAR. It may be a positive, but why aren't you giving it to the inspector general as supplemental if it was so poorly done?

Mr. TURK. Sir, we have a new database now that's on line that tracks our particular, our foreign nationals as you are asking about very well. Where I was going with that story was that database, when we built that about a year and a half ago, probably saved the

taxpayers about \$800,000 because the delay we had from going to no system at all to an off-the-shelf system to the database we have today. So I think we are in a very good position right now to monitor that program, and I believe that the OIG has recognized we have that program, but they have not reviewed it.

Mr. HICE. I thank the gentleman.

The chair now recognizes the gentlelady from Illinois, Ms. Kelly, for 5 minutes.

Ms. KELLY. Thank you, Mr. Chair.

Mr. Horowitz, your reports raises serious concerns about ATF's management of high-risk confidential informants who require additional oversight due to their background, activities, and experience. These include senior leaders of criminal enterprises, individuals who have been informants for more than 6 consecutive years, foreign nationals, and informants registered as Federal firearms licensees.

Mr. Horowitz, can you explain what special risks and challenges these types of informants present?

Mr. HOROWITZ. Certainly. The long-term use of informants has been a concern of the Department for an extended period of time, and in fact, in the FBI matter involving Mr. Bulger in particular, that event demonstrated the risks of an informant being subsumed into the organization and being—and co-opting individuals that were their controlling agents. And so one of the things that is particularly important with the long-term informant is determining and assessing whether, in fact, they're delivering value for what is likely to be a substantial amount of payments over a lengthy period of time to ensure that they should continue to be used.

Using an FFL as a licensee we've identified as a concern because they are regulated by ATF. And so they are put a very challenging position if they are also being asked to be an informant for ATF. So the regulator on the one hand is asking to be a criminal informant on the other hand. That presents itself in various significant challenging ways, as we talked about extensively in Operation Fast and Furious report, because there was an example of that in there.

Mr. HOROWITZ. Using non-U.S. nationals presents risks because they are often sponsored into this country, don't have status, and if you lose control of them, you've brought someone into the country who is, by definition, working with criminals, and you've lost control of them in the country. So I could add further examples as well.

Ms. KELLY. How do we lose control of them?

Mr. HOROWITZ. Well, the problem is if you don't track them, if you don't consistently follow them, you've lost touch with an individual who is not only connected to criminal enterprises, but who also has no status in the country. It's hard to identify where they are and where they might be located.

Ms. KELLY. Do the Attorney General's guidelines require heightened review for high-risk confidential informants?

Mr. HOROWITZ. They do. In several different categories, including the ones I've mentioned.

Ms. KELLY. And your recent audit said this, and I quote, "ATF's practices for managing higher-risk CIs did not provide for adequate oversight or management of CIs. We found that ATF did not al-

ways appropriately identify these CIs, some of whom required approval from the Confidential Informant Review Committee, which results in CIs not being subjected to the required suitability assessment by DOJ officials outside of ATF. Why is a review by DOJ officials outside of ATF important?

Mr. HOROWITZ. It's important because you want to have a check and a balance within the operations of these programs, to make sure that the individual who's handling them, and the individuals who are normally working them and benefiting from their work, aren't the only ones deciding whether to continue to use them, and whether they are they are acting appropriately and consistent with the guidelines.

Ms. KELLY. And turning to long-term confidential informants the IG's report found flaws in ATF's process by identify and ensuring review of this category of high risk informants. Is that correct?

Mr. HOROWITZ. That's correct.

Ms. KELLY. And is the problem that field divisions are not adequately identifying long-term informants for headquarters, or that headquarters is not identifying them for the Department, or is there some combination?

Mr. HOROWITZ. Actually both, I think, Congresswoman. That the system—there needs to be a sufficient system in place, such that, both at the field level and at the headquarters level, there is preferably an automated system, the FBI has one now that would trigger a tickler if there isn't, that review within 6 years, because it shouldn't be up to a paper record or a paper system.

Ms. KELLY. And Mr. Turk, can you tell us what ATF has done or plans to do to address this concern?

Mr. TURK. Yes, ma'am. And if I may, Mr. Horowitz's comments were spot on. The high-risk informants and high-level informants are very serious to ATF. As I mentioned earlier, we do have a new—databases come online recently that will help us track and monitor those informants. We also have a commitment from the Department of Justice that we'll have routine meetings with our Confidential Informant Review Committee at the higher levels.

ATF numbers are relatively small. I mentioned how many foreign nationals we have already. Ma'am, you mentioned how many long-term informants we have. Right now we have 20, five are historic, 15 are new. So the risk is very high, our numbers are fairly small.

Ms. KELLY. Well, I'm glad to hear that you're taking steps to improve the situation, and I yield back the time I don't have.

Mr. HICE. I thank the gentlelady. I am now going to recognize myself for 5 minutes.

Mr. Horowitz, let me begin with you. And this would go both to DEA and ATF, what grade would you give them on the management of their confidential informants?

Mr. HOROWITZ. Well, I think prior to our audits, I think it would be they would be lucky to get a gentlemen's C, I guess I would frame it as, but I do think they've taken steps since then.

Mr. HICE. Okay. If they would be lucky to get a gentleman's C, that would be probably deserving of a D or below. At least poor, there's some great reason for concern.

Mr. HOROWITZ. And let me say that as to the specific areas we looked at, we obviously did not look at every single mechanism.

Mr. HICE. Sure, I understand that. So the reason for that poor grade, is it because the lack of reliability? What is the nutshell?

Mr. HOROWITZ. I think it was several things that we found up to the 2015, 2016 reports. One is a reliable system of oversight, different as to each organization, because they do have very different numbers of informants and different kinds of operations. But ultimately, in both of them, it was having sufficient controls, reliable controls in place, for what are likely to be among their highest risk CI uses.

Mr. HICE. So poor oversight, which would result in poor quality. I mean, if there's not good oversight of the management of this program, there's no way to tell the quality?

Mr. HOROWITZ. Well, that—your last point is the key issue for us, which is because of the lack of information and data and oversight, if we couldn't make an assessment of whether these informants had provided value, how many—what kinds of cases have they delivered, or worked on for the money they had been given, what was their success rate? We talked about this at last year's hearing. Are they batting 1,000, or are they batting less than 100 in terms of the information that they are passing on?

Mr. HICE. So there's no way to tell really. I mean, we're taking a stab in the dark at the whole program here.

Mr. PATTERSON, how many CIs do you have?

Mr. PATTERSON. Currently, approximately 3,900.

Mr. HICE. 3,900. Mr. Turk?

Mr. TURK. Approximately 1,600, sir.

Mr. HICE. All right. So we've got thousands. And we don't have a clue, the quality of the job they are doing. And all of these are getting paid. Is that correct?

Mr. PATTERSON. Not all, sir.

Mr. HICE. How many of them are getting paid?

Mr. PATTERSON. I'd have to go back and provide that number for you. Obviously, we have—

Mr. HICE. Give a stab in the dark, an estimate.

Mr. PATTERSON. I mean, half of our informants are in the defendant category, they do not get paid for their work. Obviously, they are working for a different purpose. So I would say probably half, approximately.

Mr. HICE. Okay. About the same for you?

Mr. TURK. Probably a little more than that do get paid, sir. But if you run the basic math on average—

Mr. HICE. So still, either way, we have thousands that are being paid, and we don't have any idea of the quality of the information they are providing. Mr. Horowitz, do you have any plans, or do you have similar views of other agencies?

Mr. HOROWITZ. We don't have any ongoing right now.

Mr. HICE. Okay. Do you have any plans?

Mr. HOROWITZ. We haven't put together a plan. We obviously, having done two of the law enforcement components, the Marshals Service doesn't have many informants, and that would leave FBI, which we did a review, a couple of reviews several years ago. We

haven't planned yet to look at the FBI, but, certainly, at some point in time we would.

Mr. HICE. So when was the last time you conducted a review of the FBI?

Mr. HOROWITZ. It was 2005.

Mr. HICE. 2005, so it's been 12 years?

Mr. HOROWITZ. Correct.

Mr. HICE. It has been quite a while. Is it due another one?

Mr. HOROWITZ. Well, we will have—these kinds of reviews take a couple of years. And so one of the things, having just finished the ATF review, we'll consider what we do next.

Mr. HICE. Do you believe that most departments could produce, if asked, a number of active confidential informants?

Mr. HOROWITZ. I'm sorry, say that again?

Mr. HICE. If a department was asked to produce their confidential informants, could they do so?

Mr. HOROWITZ. Could they do—I do think they know who their informants are. The challenge for us has been is their headquarter-related oversight sufficient to know the wide scope of their informant program? And are folks not only in the field, but at headquarters making those assessments of the value they are delivering?

Mr. HICE. All right. So which departments would struggle the most with having the oversight?

Mr. HOROWITZ. Well, I think from as we—

Mr. HICE. These two?

Mr. HOROWITZ. Certainly until the last couple of years, I think ATF, in particular, with their compartmentalized data and information or lack of data, really, compartmentalized tracking system, would have a challenge. They have moved now to the computer-based system, and we will assess that, that's within the last year.

Mr. HICE. Okay. Real quick, how long do you need before you have a positive understanding of the evaluation of the computer?

Mr. HOROWITZ. I think it simply depends on what the level of implementation has been. Frankly, we will keep it open and look at it as long as we need to. The cold consent encounter report that we did that has been discussed, DEA was 2 years ago. That remains open and resolved, but we have not closed any of our recommendations yet. Until we are satisfied, we will continue to go back and forth with the components.

Mr. HICE. Thank you very much. I'm now going to recognize the gentlelady from New Jersey, Ms. Watson Coleman, for 5 minutes.

Mrs. WATSON COLEMAN. Thank you very much. Mr. Horowitz, your September 2016 report on DEA's confidential source program raises troubling questions about whether DEA is interfering with American civil liberties, and right to privacy. The DEA does have an important job to do as we all agreed, but it must comply with protections provided for in our Constitution.

Mr. Horowitz, on page 20 of your report, it describes one confidential source the DEA recruited, it states, "Between October 2012 and January 2016, the source provided the DEA, on an almost daily basis, the entire passenger manifest for buses traveling to or from a specific station of their private company employer." Is that a misprint or is that an accurate statement?

Mr. HOROWITZ. That's accurate.

Mrs. WATSON COLEMAN. So I understand this, this source, a bus company, provided the DEA with entire passenger manifests on an almost daily basis for more than 3 years. Is that so?

Mr. HOROWITZ. That's the information we have based on our review of the DEA's files.

Mrs. WATSON COLEMAN. Thank you. I don't think Americans fully grasp the breadth of the information as collected by the DEA, but this raises serious questions about the privacy of many innocent individuals that—Americans that may be swept up in the appropriateness of inducing employees to violate their employer's policies.

Mr. Horowitz, do you believe that, if challenged, a court would uphold the authority of the DEA to vacuum up daily manifests for over 3 years?

Mr. HOROWITZ. Well, that was one of the questions in our recommendation, was to ensure that the Department, that the DEA worked with the Department to assess the legal risks they were facing by conducting this kind of operation.

Mrs. WATSON COLEMAN. Thank you. Mr. Patterson, let me ask you a couple of questions. If this information is so important to DEA's investigation over such a period of time, why didn't the DEA, or why doesn't it request this information through formal legal channels, such as administrative subpoenas?

Mr. PATTERSON. Ma'am, I don't know the specific instance on this one passenger list that was given. I don't know that's an issue that they wouldn't provide, or could not provide. I don't know.

Mrs. WATSON COLEMAN. It is not just a list, it is a list of the passenger manifests for a period of 3 years on a daily basis.

Mr. PATTERSON. No, I understand. And what I'm saying is in the specific instance, I don't know what the purpose or what the reason was why they couldn't get that list.

Mrs. WATSON COLEMAN. Do you know if DEA still possesses this information?

Mr. PATTERSON. I don't believe we would retain information for any purpose.

Mrs. WATSON COLEMAN. So you don't think it is anywhere in the system?

Mr. PATTERSON. No, ma'am.

Mrs. WATSON COLEMAN. Mr. Horowitz, was this one of the pieces of information your office found was transmitted using personal communications?

Mr. HOROWITZ. I don't know, as I sit here, whether that was specifically part of the information, but certainly we did find information being emailed to personal email accounts and texting that went to personal cell phones, not on government systems.

Mrs. WATSON COLEMAN. The IG report also found the DEA paid this source \$429,000 for the contributions to several interdiction cases. According to the AG guidelines, sources that receive more than \$100,000 annually and \$200,000 in a lifetime must be approved by more senior levels of leadership.

So Mr. Horowitz, my question is, did you find any evidence that payments of this source had been reviewed and approved at more senior levels of leadership in the DEA?

Mr. HOROWITZ. Let me bet back to you on that. I don't recall, as I sit here, whether that occurred in this particular instance.

Mrs. WATSON COLEMAN. Thank you. According to the report, this activity extended through January of last year. So, Mr. Patterson, my question is, is this source still active? Has he or she been formally reviewed by senior levels of leadership in the DEA? Is it still active and has he or she been evaluated?

Mr. PATTERSON. Congresswoman, I would have to get back to you on the particular source. I will say that when you talk about the cap limits, it forces a review. We can't pay or make any more payments until those cap limits have been reviewed at a higher level.

Mrs. WATSON COLEMAN. So then we can presume as opposed to assume—

Mr. PATTERSON. That's correct.

Mrs. WATSON COLEMAN. —that there was a higher level review?

Let me ask you one question here, who determines how much you get paid?

Mr. PATTERSON. So under the older system, it would be—the recommendation would come from the agents in the field with management as to how that individual would be paid—they are eligible up to certain amounts of awards.

Mrs. WATSON COLEMAN. What determines how much the individual is being paid? I mean, it's not like it's the job market that's in competition.

Mr. PATTERSON. Again, at the time, ma'am, it was done based off of the direction of the field. That process, based on the OIG reviews, and, I think, important criticism has been moved into headquarters so that all payments now are reviewed out of the asset forfeiture by a group at DEA headquarters.

Mrs. WATSON COLEMAN. So are there standards that are applicable to how much you pay a confidential informant now?

Mr. PATTERSON. There is so—there is a set of guidelines being prepared so that the payments across the country for similar work are commensurate with each other.

Mrs. WATSON COLEMAN. Being prepared, but has not been prepared?

Mr. PATTERSON. Well, I should say that there is a panel that reviews each of these payments. And as they find best practices, they are putting that in writing, if that makes sense, as they go through these processes. This was a process that was probably started, I don't know, maybe about 6 months ago. But I can, again, get more information for you and follow up with you on that.

Mrs. WATSON COLEMAN. Thank you. I yield back.

Mr. HICE. I thank the gentlelady. The chair now recognizes the gentleman from Oklahoma, Mr. Russell, for 5 minutes.

Mr. RUSSELL. Thank you, Mr. Chairman. And thank you, gentlemen, for being here today. Mr. Horowitz, we thank you for your continued work. Where would we be without our Inspectors General?

In your report where you made the five recommendations, you lay out the percentages of the confidential informant expenditures: \$4.3 million in 2016, and it seems to have averaged that for the last several years. 78 percent was listed at "subsistence pay-

ments”; 13 percent as “rewards”; and 9 percent for “relocation.” Describe what subsistence might be?

Mr. HOROWITZ. For example, rent, food, other kinds of activity payment for transportation, travel.

Mr. RUSSELL. And that would be limited to \$200 per day. Is that correct?

Mr. HOROWITZ. That’s my understanding.

Mr. RUSSELL. Times 365 days, that about \$73,000 a year. Not bad. And yet, if we look at the average salary of an ATF agent, we have our entry level agents which go through an awful lot of training to get there, about \$34,000 a year for our entry level agents. Is that correct, Mr. Turk?

Mr. TURK. I suspect it is higher than that, sir.

Mr. RUSSELL. Okay. Perhaps with law enforcement incentive pay and some of that, but according to your 2016 pay scale, it is about \$34,000. A \$57,000 for mid grade, \$73,000 for an agent with full performance level, according to your most recent pay chart. It’s almost as if crime pays. And then you look at the agents and their effectiveness. In fact, in recent report, ATF agents currently rank at the top, or near the top, of all Federal law enforcers in terms of arrest, prosecution, referrals and time per defendant. It’s a remarkable record, and yet, we don’t have very many of them. 2,400. Is that about correct?

Mr. TURK. About 2,600, sir. Our men and women are highly effective. Thank you.

Mr. RUSSELL. So when we look at this \$4.3 million, we can hire anywhere from 75 to 125 agents, depending upon what type of scale that we would have, or we can pay it out to somebody arrested in 43 States.

I’m just curious of your opinion, and first off, I would like to thank you not only for your continued service in the ATF and the many years you’ve given, but also defending our country in your other capacity in the Air National Guard, and I do mean that sincerely.

You’ve been doing nothing but serving the public and defending the country, both domestically and abroad. What’s going to have more impact, an ATF agent or some schmuck arrested in 43 States?

Mr. TURK. Well, sir, I would say I have several answers for that, but man for man, woman for woman, you won’t find any finer than an ATF agent to go out and fight violent crime. But if I could put that in context, we have 1,600 informants, on average, their pay for an entire year is just over \$3,000. We have had one informant this year that has exceeded the single payment of 100,000; one, sir. When we talk about the national lifetime threshold of 200,000, less than 10.

So our informants, by and large, are not getting paid a lot of money as the IG indicated. We are paying them for their time basically per day. But I wouldn’t minimize the value necessarily as an agent, and I’ve done this for a lot of years, of the value we get out of information from an informant. We work the streets a lot. We take a lot of pride in the type of work we do with the criminal element on the street. Our undercover agents can only do so much. And our local partners can only get so much information. That in-

formation we are getting from our informants is very valuable. And I would submit that the amount of taxpayer money, it's very important and very high risk, it is important that we manage that money, but that we get a lot of value for that for criminal investigation.

Mr. RUSSELL. Well, I appreciate that. And I do know the value of using incentives. I've done it as a battlefield commander on a couple of continents, and you can get some very valuable information. But part of your informants appear, from the IG's report, to be FFLs. Is that correct?

Mr. TURK. No, sir. I believe he was referencing how we manage our systems and how we track information.

Mr. RUSSELL. But many in the tech spot notations according to the report, state that they were FFLs. What would that number be?

Mr. TURK. As we speak, sir, that number is 1; historically, it's generally zero. I can assure you that that one FFL that I'm aware of, I have personally been briefed on that. The United States Attorney's Office and another Federal agency are involved. And I am confident that our oversight informant is not only meeting a significant investigation, but is also managed very properly.

Mr. RUSSELL. And I would like to take, as I close, Mr. Chairman, the opportunity to stress that our FFLs do an awful lot of good work in cooperating with the ATF. Many of the crimes that are solved are due to the conscientious nature of our Federal Firearms Licensees. And I appreciate your comments before we started the hearing that the systems you are trying to get in place. And I think we're seeing some movement on that. But we absolutely have to manage these millions of dollars in both agencies with a system where it is not being wasted. I would rather have a DEA agent, or an ATF agent, who is out there putting their lives on the line and doing it with not only skill, but integrity, and wasting dollars that go like we've seen exposed here today.

Thank you, Mr. Chairman. I yield back my time.

Mr. HICE. I thank the gentleman. The chair now recognizes the gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Very much, Mr. Chairman. I want to follow up on Mr. Russell's questioning, if I could, Mr. Turk. When the confidential informants go on the payroll. How are they paid? Is that in cash or is it like direct deposit, or how do they make their money?

Mr. TURK. It's in cash, sir.

Mr. RASKIN. And you have got a system in place to monitor that cash, it's not like some cash disbursement systems we saw, I think, during the Iraq War where lots of money just disappeared?

Mr. TURK. We have a lot of safeguards in place for that, sir, including witness payments. And I'm very confident that where we have had some shortcomings in the past with managing our CI data nationally in a database-type setting, I'm very confident that operationally, the way we actually use informants on the streets, the way we pay them, the way we engage with them is very appropriate and managed very well.

Mr. RASKIN. Terrific. Do they pay taxes on the payments they get from the ATF?

Mr. TURK. They should, sir.

Mr. RASKIN. Did you do any effort to follow up to determine that they actually are paying taxes on it?

Mr. TURK. The vast majority of our informants I would say no, we don't directly follow up, but I would reflect back, again, that our average payment—or our average nationally is \$3,000 about for informant. Many informants are getting paid a lot less than that. So those are dollar figures where we leave that to them.

I would also reflect that a lot of our informants, their annual income is probably not necessarily that high.

Mr. RASKIN. Uh-huh. If you were to try to assess the principle value of having conventional—confidential informants, what would it be? Is it in the tips and information that you get that then lead to investigative breakthroughs, or is it in actual testimony that they provide in court?

Mr. TURK. Yes, sir. The tips and the information that we get from our informants in many of our cases is vital to making an effective prosecution. That being said, we work very hard to try and maneuver so that a CI is out of the investigation at some point. So we typically don't have a lot of our informants having to testify. For example, we'll introduce an undercover agent, we will move the CI on, we will have an undercover agent taking on that responsibility, and thus, we will have an agent testify.

Mr. RASKIN. Okay. Do you take precautions to see that the confidential informant's confidentiality is maintained? I assume some of these people could be in serious danger if their identity is revealed.

Mr. TURK. We do, sir. There are a lot of steps taken to make sure that their physical files are properly stored and maintained. And to go back in time, the establishment of an initial database, one of the challenges we had was dealing with decades of culture where such files would never be put into a database, particularly for that safety reason.

Mr. RASKIN. But I noted that there are some foreign national confidential informants. Are those people who live in the United States or do they live abroad?

Mr. TURK. No, they would typically be here, sir.

Mr. RASKIN. Okay. So—that's all. Thank you very much for your testimony to all for the witnesses today.

Mr. HICE. I thank the gentleman. The chair now recognizes the gentleman from California, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. A lot of questions. Let me start with one that's been covered already briefly, but in 2011, ATF Seattle field office had this serial felon with 43 States in which he had committed assaults. Additionally, in that case, the CI's handler had stolen approximately \$19,700, right?

Mr. TURK. I'm not sure if I'm making the connection, sir. The scenario you are describing by that informant, I'm not familiar with that criminal activity. As portrayed, it sounds awful, but I don't have any details myself of that.

Mr. ISSA. Okay. Well, he committed a crime in a room paid for by ATF, he was convicted and sentenced in 2012 to 10 years in prison. ATF also discovered the CI's handler had stolen almost \$20,000 from the CI's fund.

Now, since that's what we're being told here today, that was 2011, 2012. It's now 5 years later. How do I know that that's not happening now? Where is the accountability? For example, do you issue 1099s as required by law, even for a \$3,000 contribution to confidential informants, or do you have a specific IRS waiver that allows you not to comply with the law?

Mr. TURK. Sir, back to your first question. I'm not familiar with the details of that Seattle case.

Mr. ISSA. So we'll go right to the second question: Do you currently—pursuant to the Federal law that all the rest of us have to, if you give someone \$3,000 for services, you must, in fact, issue a 1099, do you do so? Do you, in fact, issue a series of documents which if received, would cause someone to say, Hey, I didn't get that money, or, Yes, I did, thus giving you a quality loop for the question of embezzlement?

Mr. TURK. I'm not quite sure I understand the question, sir.

Mr. ISSA. It's fairly simple, you give in this case \$19,000 went, \$20,000 went missing because one of your agents stole it, back in 2011. Now the question is, earlier, the gentleman from Maryland asked a question that made a lot of sense. You're giving out money and, I guess I'll go to Mr. Horowitz. Do they issue 1099s? Do they have an audit trail where there's a loop where the IRS knows that they've given this money and to look for it on someone's tax filing? Do they, in fact, issue them so that they can verify that the money has been given versus pocketed by the CI's handler?

Mr. HOROWITZ. I don't know specifically as ATF. I can follow up with you, but my general understanding is that DOJ law enforcement do not issue 1099s to informants for security reasons and get a waiver.

Mr. ISSA. Okay. Well, I would be interested to see the IRS waiver that specifically allows, and where the caps are, what the conditions are for it, because at some point, at \$3,000, I think we'd look at it as kind of a venial sin at 19 and 20 and 100. What was the—whatever the figure was for the woman who was having an affair with a man and she doesn't know what she was paid for. And he falsified the records so a quarter of a million dollars went to her. And they can't find anything she did, except have an affair. So let's see if we can figure out at what line you start tracking it.

Let me go to a much greater concern even than dollars spent. As you know, Mr. Horowitz, you know in the Fast and Furious, the Obama administration willfully and deliberately broke the law and conspired to move guns that they knew went to Mexico and other criminal activities. More than 2,000 weapons were sold to straw people knowingly. Now, if anyone other than the Federal Government does it, that's a crime. When the Federal Government does it, the question is, do they track the crimes they facilitate? Where would I find a list of all the criminal activities done or facilitated by the two gentlemen to your left?

Mr. HOROWITZ. Well, the actions that were authorized, presumably by the individuals handling the informants, I don't know of a system where they are reporting that to the Congress.

Mr. ISSA. So for the American people—we'll ignore the Congress for a moment, since we'll still be waiting on documents from Fast and Furious from 7 years ago, to internally, if the President of the

United States or the Attorney General says, I want to see the list of all the criminal activities that my government did on behalf of law enforcement, things which would be crimes if not done by the government, but they are still basically crimes, selling weapons, allowing illicit drugs to be consumed, et cetera, et cetera. Where would the Attorney General find a log in each of these two agencies for the criminal activities they facilitated?

Mr. HOROWITZ. I don't believe there is a centralized database for either organization. Although, I would defer to them on this. I think you'd have to, in most instances, go file by file.

Mr. ISSA. Okay. So for both of you, if your agencies through confidential informants, through sting operations, et cetera, are doing things which are criminal activities if done by other than the government, where is the law that says even—not central, just logs of other than maybe hidden in a record where somebody could interpret this crime, where is the record of authorization to commit a crime in order to support justice?

Mr. TURK. Sir, if I may take that first. If I heard you right, you said earlier you reflected that crimes done by the gentleman to your left?

Mr. ISSA. No, your—not you personally.

Mr. TURK. —an agent 32 years. And my honor is very important so I wanted to make sure.

Mr. ISSA. Well, so is Attorney General Eric Holder, but he was held in contempt because he, in fact, withheld information related to crimes.

My question is from an organizational standpoint, if the IG doesn't know, can you tell me where somebody, yourself included, would go to see all the things which are being authorized, which would otherwise be crimes, but if somebody's—

Mr. HICE. The gentleman's time has expired. If we could answer the question real quickly. And we need to move on.

Mr. TURK. Yes, sir. I can tell you just speaking from personal experience, I was brought into ATF to help post F&F. I will hold our people accountable wherever necessary. So if you're asking—

Mr. ISSA. Mr. Chairman, the only question I am asking is, is there a log of some sort where people can see the combination of U.S. attorney authorization and these agencies going forward?

As you know, Mr. Chairman, in Fast and Furious, everyone pointed fingers that it was nobody's fault that nobody authorized 2,000 guns to go to Mexico. And so the question is when something that is being done that would be a crime, if you did it, is done, where can anyone, including the Attorney General, go to see that record? And if it doesn't exist, a simple "it doesn't exist" would be fine.

Mr. TURK. I'm not aware of any such records, sir.

Mr. ISSA. Mr. Patterson, are you aware of any such record?

Mr. TURK. Electronically, no, sir, but we would have case files that would reflect traditional buys in terms of that type of information. And then, certainly, on more sensitive investigations, we have a sensitive activity review committee in which all that documentation is kept, but, again, it's a manual process.

Mr. ISSA. Thank you. Thank you, Mr. Chairman.

Mr. HICE. I thank the gentleman. We now recognize the gentleman from Michigan, Ms. Lawrence, for 5 minutes.

Mrs. LAWRENCE. Thank you, sir. Thank you, Mr. Chairman.

Mr. Horowitz, I want to thank you for being here. Your recent report revealed serious weakness in the ATF's oversight of this confidential informant program. The report found, and I quote, "While ATF CI policies generally align with the Attorney General guidelines, ATF's oversight of its CI program requires significant improvement."

Mr. Horowitz, why is the oversight of the confidential informants comply with the AG's guidelines important?

Mr. HOROWITZ. Well, as history as shown, the failure to ensure compliance with strict oversight and controls can lead to not only unaccountable informants who have—who may think they've been authorized to engage in certain activities but have not, but it also can lead to improper connections, relationships between the handler, the agent who's handling the informant and the informant. And so, you need to have strike rules, policies and procedures in place not only to address the relationship between the agent and the informant, but also supervision within the field office, and then supervision at headquarters.

Mrs. LAWRENCE. I want to focus for a minute on one of the concerns raised in the audit, the ATF's lack of efficient and effective recordkeeping. According to the record, and I quote, "Of particular concern during the audits we found that the CI information critical to the strategic management of the program was unsophisticated, automated system that hindered ATF's ability to report information in an efficient and reliable way."

Mr. Horowitz, did that pose challenges to your investigation trying to piece it together? And, in fact, were you significantly alarmed that you issued a management advisory to the ATF?

Mr. HOROWITZ. It did impact us and we did issue a management advisory because of the concern. It was at about that time that ATF was in the process of putting into place an electronic database, because we were stuck, literally, looking through case files to try and reconcile payment data which raises concerns not only about controls, but as we noted, whether prosecutors had sufficient information to be able to comply with their discovery obligations. So it creates a whole series of issues. The ATF has now put in place its electronic system, and one of the questions, as we go forward is, is the information being entered as it should? And are the controls and training in place to do that first step?

Second step is, is that data then being used in any way to assess the value and the continued use of those informants, because that's one of the main purposes, in part, of ensuring central—

Mrs. LAWRENCE. Mr. Turk, could you please answer that question? I want to know is the system, according to your statement today, is it fully operational? And are those concerns been alleviated, input being put in on regular basis, and now, therefore, we can say collectively that its operating?

Mr. TURK. Thank you, ma'am. Our system is probably 90 percent operational. Regarding that issue that you asked about for tracking CI payments, it's fully operational. We are confident that we can track how much our informants have been paid consistently. You

mention that matter with the five individual informants that were referenced in the referral from the OIG. We took immediate steps to review those instances, and did not find that any of those informants had any testimony or any impact on any Federal cases. So, I think that's important to note that. The 10 percent that's left in that database that had I mentioned, we feel that it is not long ago. We are waiting for more input from our field special agents in charge to help us further address and fine-tune that program. So I'm confident that is where it needs to be. I'm confident that we have good oversight. But, you know, as all things, we have time to—room for improvement, and we are waiting to hear back from our field on—

Mrs. LAWRENCE. What's the timeline for you to hear back?

Mr. TURK. I would say within the next 6 months, we will be adjusting that program; some will also be modifying our informant policy at that time.

Mrs. LAWRENCE. Have you gotten the same amount of confidence from the—from Mr. Horowitz that your system is working?

Mr. TURK. I believe his investigators have looked at that, but they have not took a deep dive, for lack of a better word. So I think they liked what they saw initially, and we like what we see, too, but there is certainly room for review.

Mrs. LAWRENCE. This is a much-needed step forward. I'm disappointed that we had an audit that revealed such an antiquated system. And so I'm looking forward to being 100 percent, because it is needed for us to be able to have full oversight.

Mr. TURK. Yes, ma'am, thank you.

Mrs. LAWRENCE. I yield back.

Mr. PALMER. [presiding.] The gentlelady yields.

I recognize myself now for questions for 5 minutes. And yield such time as he may consume to the chairman, Mr. Chaffetz.

Chairman CHAFFETZ. Thank you, Chairman.

Mr. Turk, I'd like to start with you. On March 9th of this year, this committee held a hearing regarding the death of Agent Zapata. You were invited to come to this hearing, correct?

Mr. TURK. I was, sir.

Chairman CHAFFETZ. Why weren't you here?

Mr. TURK. If you will allow me to explain, sir.

Chairman CHAFFETZ. Yes.

Mr. TURK. We had about, I want to say, a day's notice with that hearing. Right out of the box, we were advised by Department of Justice that they thought there were certain, for lack of better words, etiquette rules from past committees and past Department membership for things like 14-day rules. They talked about how most organizations would only send one representative, not multiple representatives, and typically, that that would be the head of the agency. It was completely, of my understanding in that of the SAC of Dallas, who also was not here, that there was communication not only with ATF, but with the Department.

Chairman CHAFFETZ. So who made the discussion not to be here?

Mr. TURK. I would say that was a collective decision. Ultimately, we were following guidance by DOJ, and I believe that the SAC and I—our lack of attendance here was in good faith, that we were operating from guidance from above. And we—

Chairman CHAFFETZ. No, wait. The chairman of the committee invites you to come to the hearing, you just unilaterally decided not to show up? You didn't even inform us until, I think it was less than 24 hours before the hearing.

Mr. TURK. Sir, it was my understanding that communication was happening throughout that last——

Chairman CHAFFETZ. No, no. Listen, we appreciate being here today. I appreciate what you do for this country, but attending a congressional hearing is not an optional activity. And I want to be crystal clear with you, as I did the acting administrator—the acting—your boss, that it is not an optional activity. And for you to let unilaterally, just kind of collectively say, well, two of our people aren't going to show up. Come on, that doesn't happen in any other setting, and you should be ashamed of yourself for that.

Mr. TURK. Well, sir, I would say, and if you may please allow me, because you're questioning my honor now.

Chairman CHAFFETZ. Yeah, I am.

Mr. TURK. I don't appreciate that.

Chairman CHAFFETZ. Because you were invited to come——

Mr. TURK. Sir, I was following guidance. I'm a good soldier. I was following orders.

Chairman CHAFFETZ. Who told you not to come?

Mr. TURK. The Department of Justice decided——

Chairman CHAFFETZ. Who? I want to know a name. I don't want to know the——

Mr. TURK. There are so many names. I could probably list off eight names between the agency and the Department.

Chairman CHAFFETZ. Good, start. Give me one.

Mr. TURK. So——

Chairman CHAFFETZ. You've got eight names, name them right now.

Mr. TURK. Who all that this was discussed with?

Chairman CHAFFETZ. Yes. Who told you not to come? Start naming them.

Mr. TURK. Sir, you're suggesting that I shouldn't follow guidance from the Department of Justice?

Chairman CHAFFETZ. I want to know who's giving you that guidance?

Mr. TURK. Sir, I don't understand how this gets to this point.

Chairman CHAFFETZ. You told me there were at least eight and that you could name more. So give me one and then we'll start with number two.

Mr. TURK. Sure. Mr. Ramer, he's the head of the Office of Legislative Affairs.

Chairman CHAFFETZ. Keep going.

Mr. TURK. Correct?

Chairman CHAFFETZ. Number two?

Mr. TURK. There's several individuals that work in that shop, correct? I believe one of them is named Jill Tyson.

Chairman CHAFFETZ. Keep going. Number 3?

Mr. TURK. I don't recall their names.

Chairman CHAFFETZ. Number 3?

Mr. TURK. I don't recall his name, but there is another one involved. I know that Zach Terwilliger, from the ODAG's office, there was conversations with him as well.

Chairman CHAFFETZ. Who else. Number 4?

Mr. TURK. This information was briefed to the deputy attorney general.

Chairman CHAFFETZ. Number 4.

Mr. TURK. From ATF, there was discussions with Director Brandon and every one of our assistant—

Chairman CHAFFETZ. Number 5, name number 5.

Mr. TURK. Joe Allen, who is our chief of staff.

Chairman CHAFFETZ. Number 6?

Mr. TURK. Right now I'm having a memory block, sir.

Chairman CHAFFETZ. You will get me 6, 7 and 8?

Mr. TURK. I guarantee you I can get you more names than that, sir.

Chairman CHAFFETZ. When, when will you give me those names?

Mr. TURK. I will give those names as soon as I can recall, sir. And I'm sure my staff can help me with that.

Chairman CHAFFETZ. Give me a date, give me a date when you're going to give me those names.

Mr. TURK. Sir, I would never, ever give dishonor to this committee, or myself, or the agency and fail to appear if I thought for a minute that this would have ever happened, not for a minute.

Chairman CHAFFETZ. Yeah, if you didn't think there were going to be any consequences. You deserve—

Mr. TURK. I briefed your staff, I've offered three times to meet with you.

Chairman CHAFFETZ. We want you to brief the Members of Congress.

Mr. TURK. Sir, I offered to meet with you personally on this matter the day after that hearing took place. I've met with—

Chairman CHAFFETZ. No, no, no, no, no. We do this in the open, in the public so all Members of Congress—it is nice that you say that you are going to brief staff.

Mr. TURK. And I am happy to answer that right now—

Chairman CHAFFETZ. We want you to—hold on, hold on. We want you to brief Members of Congress, not behind closed doors either. You were invited here for a purpose. Now, I appreciate you giving me those names.

Mr. TURK. I came here as a good, honorable person, and you admitted that you challenged my honor. I do not appreciate that. I operated in good faith, I had—

Chairman CHAFFETZ. Operating in good faith, you didn't show up.

Mr. TURK. Sir, I was told that it was an invitation, as Director Brandon explained. I did not know that was not optional. I would have happily—I would have happily gone against Department of Justice guidelines and been here that day. I have even discussed it with Inspector General Horowitz. Everyone I have ever talked to about this understands precisely what happened that day, yet, you want to get your 15 seconds of YouTube minute time to challenge my honor. You know that night, sir, I had to call my sister. My sis-

ter and brother worked for ICE. It was portrayed that I failed to testify——

Chairman CHAFFETZ. You did.

Mr. TURK. —before a hearing.

Chairman CHAFFETZ. That's a fact.

Mr. TURK. I did not fail, sir.

Chairman CHAFFETZ. That is the fact. You failed to testify.

Mr. TURK. I was following guidance. I would never dishonor the memory of an ICE agent that way.

Chairman CHAFFETZ. In fact, this is what Mr. Brandon said: "Well, the decision is theirs voluntarily. To let you know, Mr. Chairman, I did not order them not to be here. And no one that I know of from the Department ordered them not to be here." Is it that correct or incorrect?

Mr. TURK. Sir, it is my understanding that that was the first time he was ever made aware that morning. I think he got caught off guard, and I believe you had some words before the hearing started.

Chairman CHAFFETZ. Is that accurate?

Mr. TURK. It is not completely accurate, no.

Chairman CHAFFETZ. So what Mr. Brandon testified to was not accurate?

Mr. TURK. What he said was well, it is true to the extent, no, I was not ordered not to come, no one needed to order me, sir. All I need to be is told, I don't need direct orders. I didn't need your subpoena. If I would have known I needed to be here, I would have been here.

Chairman CHAFFETZ. That's why you were invited to come testify.

Was it your voluntary decision to do it or not do it?

Mr. TURK. No, sir. I was following guidance.

Chairman CHAFFETZ. Okay. To the members of this committee, it is stunning that we have to take now 6 minutes to go through this.

Mr. TURK. It is stunning to me that you're challenging my entire career, sir, over a thing that is quite obvious——

Chairman CHAFFETZ. I didn't challenge your entire career. I started off by saying we said we appreciate everything you do.

Mr. TURK. Yes, you did. You're challenging my honor.

Chairman CHAFFETZ. No, hold on. When I am asking you a question, you're going to listen. Okay? I thanked you for your service to this country. You've done innumerable things that we can't even name here, throughout a long and distinguished career. That is why you are in a senior position. But when you are invited to Congress, it is not an optional activity.

Mr. TURK. You can't separate my honor from what I do, from my career, my life, sir, to your scenario that you're trying to play out. They are one and the same, sir, they are one and the same.

Chairman CHAFFETZ. Okay. Well, I'm not here to disparage your entire career based on one incident. I'm here to say that that one incident was a really, really bad decision. And we're tired of people saying, oh well, I'll brief staff or I will talk to you privately when we're trying to do it in the open light of day. We have very valuable

time and lots of important things to deal with here. That's why when you're invited to Congress, you're expected to show up.

Now, if I have to issue subpoenas to do so, then we will do that. And we appreciate you being here today, but we shouldn't have to go through that. I shouldn't have to go to the U.S. Marshals to go deliver you a thing. And for you to suggest that as the chairman of the committee I'm just here to get a YouTube moment, are you're kidding me?

Mr. TURK. Sir, I can assure you in the future——

Chairman CHAFFETZ. You don't think the value we're trying to do on these cases is a value to the American people? When you hide information, when you hide information you don't provide it to the United States Congress, you're having massive problems, and we can't get the answers to the questions we have. There is a reason why I do have to issue subpoenas, and these two agencies, DEA and ATF, I love the men and women who do this, but the management, I have got a serious problem with. That's why you're getting a gentleman's C from the inspector general, that is why we're doing these types of hearings, is because you do need to be held accountable. And when you're invited to Congress, you don't sit around and have a group and say, Well, it is probably in our best interest not to show up. We act in the best interest of the American people, and you don't respect that. That's why you didn't show.

Mr. TURK. Sir, I do respect that tremendously, I can assure you that in the future, regardless of what guidance I'm given from the Department of Justice, I will be very responsive to this committee. I can guarantee you that.

Chairman CHAFFETZ. We understand each other.

Mr. TURK. Oh, yes, sir. I absolutely value the role of oversight. It's critical, we have to be accountable to the American people, sir. I never intended for this to be a personal issue, this is business. Unfortunately it became a personal issue. I'm—I will be held accountable for ATF, I am the second in command at ATF, even though I'm acting, I am happy to be accountable to the agency for anything that happens. You all need something out of this committee, you name it, you got it.

Chairman CHAFFETZ. We'll see. I yield back.

Mr. PALMER. The gentleman yields. The chair recognizes the gentlelady from Florida, Mrs. Demings for 5 minutes.

Mrs. DEMINGS. Thank you so much, Mr. Chairman. And this is a good place to start with the statement that was just made. We do answer to the American people, even when it is uncomfortable to do so. I want to thank our witnesses for being here today.

Mr. Turk, on February 6th of this year, The Washington Post reported on an internal ATF document, dated January 20th, with the title, and I quote, "Options to Reduce or Modify Firearms Regulations." The paper stated, and I quote, "These general thoughts provide potential ways to reduce or modify regulations, or suggest changes that promote Congress and defend the Second Amendment without significant negative impact on ATF's mission to fight violent crime and regulate the firearms industry."

Mr. Turk, you are listed as the author of this document. Did you, in fact, author this document?

Mr. TURK. Yes, ma'am, I did.

Mrs. DEMINGS. Why did you write these proposals?

Mr. TURK. A lot of those proposals, ma'am, were issues that had been floating around for years, from the gun industry, in particular, with ATF, many of which, for different reasons, we either couldn't take action on, or really weren't in the position to openly discuss. And with the change in administration, it was our impression that we could expect, from either team coming in, particularly after the election, that we could expect a conversation about the regulations within the firearms industry.

And I felt it very important to be able to assemble the ATF executive staff to talk about key issues across the gun industry, to be able to have potential positions for the Bureau in place, should we be asked by the Department or the administration.

Mrs. DEMINGS. So they had been forwarding around for years. So was that a proactive action on your part, or were you asked to write the proposals by anyone in the transition?

Mr. TURK. I was not asked by anyone to write those proposals, ma'am, that was my paper product.

Mrs. DEMINGS. So you initiated it?

Mr. TURK. I did.

Mrs. DEMINGS. In paragraph 8, you wrote, and I quote, "In the past several years, opinions about silencers have changed across the United States." Then you wrote, "Silencers are very rarely used in criminal shootings. Given the lack of criminality associated with silencers, it is reasonable to conclude that they should not be viewed as a threat to public safety necessitating NFA's classification. So you don't believe silencers should be regulated under the National Firearms Act?"

Mr. TURK. Ma'am, that paper that I wrote was intended for private conversations to elicit discussions amongst other people, key staff at ATF. My opinions are not really necessarily relevant. They certainly weren't intended—

Mrs. DEMINGS. I think they are very relevant, considering you're a supervisor, manager at ATF, whether private or public. As has already been stated, we operate in the sunshine and our opinions—I served 27 years in law enforcement, my opinions in private mattered in public. So do you believe that silencers should be regulated under—so you don't believe that silencers should be regulated National Firearms Act?

Mr. TURK. Well, ma'am, I was referencing, if I could, that public, private comment in relation to pending legislation. So not necessarily to what I think or don't think. But it is long. It has been historical for ATF, particularly leadership, to not take stances on pending legislation, unless we are asked for technical expertise from the Members of Congress, or from the administration.

Mrs. DEMINGS. When you stated that the opinions about silencers have changed in the United States, what did you base that statement on?

Mr. TURK. Well, ma'am, over the past several years many, many States that once prohibited use of silencers now authorize the use. I believe approximately 42 States now allow for the use of silencers in some form. Many years ago, there were few States that allowed that.

Mrs. DEMINGS. And so I'm trying to understand, Mr. Turk, why you would take an active role in this particular topic as an ATF agent?

Mr. TURK. Well, ma'am, on that particular topic, we have had a couple of different versions of proposed legislation, if you will, that were, again, internal for Department discussion regarding multiple things, like a gun trafficking statute. And we know there is pending legislation with silencers as we speak. Some of the pending legislation, you know, there could be some technical concerns with some of the proposals being made, so we need to have conversations with ATF to discuss that.

Mrs. DEMINGS. In paragraph 6, you discuss the import ban on assault weapons put in place by President Bush. You wrote, and I quote, "Restrictions on imports are questionable public safety interest, as these rifles are already generally legally available for manufacturing ownership in the United States." So you also opposed the import ban on assault weapons?

Mr. TURK. No, ma'am, I don't necessarily have a position on that whatsoever. I think it is something that ATF needs to discuss. We haven't done a review of that topic for probably close to 20 years. So the firearms industry has changed, and I think it would be appropriate for us to just have that discussion. We meet routinely with members, if you will, from both sides of that issue, gun safety groups, gun industry groups. We look forward to getting input from them from time to time. We will do that again. And I think it's sort of an open issue that we need to have a discussion on.

Mrs. DEMINGS. Thank you. I'm out of time. I yield back.

Mr. PALMER. The gentlelady yields. The chair recognizes the gentleman from Maryland, Mr. Sarbanes, for 5 minutes.

Mr. SARBANES. Thank you, Mr. Chairman. I thank the panel. I have a couple of disjointed questions, mostly factual ones. I was curious, I saw that ATF, a number of active CIs, confidential informants, over a period from 2012 to 2015, was 1,855. And I was curious if you could give me a sense, maybe the IG's in the position to do this, both with respect to ATF and DEA of what the history, in terms of the numbers of CIs, like, has this ramped up significantly in recent years? Is it pretty steady? And if there has been a ramp up, has that maybe contributed to some of the problems with accountability that we've been discussing today?

Mr. HOROWITZ. My recollection is, although I defer to the two agencies, is that the number of informants within the Department as a whole has increased over time. The amount of payments have increased as a number, a broad number. I don't have that data in front of me. I can get that to you; that's my general recollection. But I think many of the problems here don't necessarily—that we identify, don't necessarily have to do with the number of payments or the amount of payments, but rather the controls that were in place at the time we did these reviews.

Just generally, that across the board, that these would have been issues whether there were hundreds of informants or 10,000. You need basic controls in place, basic data, basic information, to understand what kind of work they are doing? What kind of oversight do they have? Is it sufficient and are they providing useful information in return?

Mr. SARBANES. Can the agency reps answer that question about what the trend has been in terms of the numbers?

Mr. PATTERSON. Sir, consistently for the last couple of years, we have been traditionally been around the number 4,000 active informants. I'd have to go back, and I don't mind going back to look at years before that to see if that number has picked up. I know that in the reviews that the OIG did, which, I think, from 2010 to '15, during that period, we had 18,000 informants over that span of time. So, I mean, if you did the basic math, it would still put you roughly in that same area of probably 3- to 4,000, I would be more than happy to go back and get those—

Mr. SARBANES. I appreciate that.

Mr. TURK. Sir, with ATF, probably this past year, we came down a slight degree. I think over time, our numbers for how many informants we have is pretty consistent, anywhere from 1,500 to 1,800 or so. And our payments, probably pretty consistent too, where we're averaging roughly 3,000, give or take—

Mr. SARBANES. Question for the IG. With respect to DEA and the asset seizure and forfeiture, one of the conclusions of the report, I guess, is there is no requirement for task force officers to receive training on Federal seizures and forfeiture. Has that always been the case, or was there one time when training was in place, and it has sort of fallen down more recently?

Mr. HOROWITZ. I don't know the history of it. I defer to Mr. Patterson on that. But I'd be surprised if there was training and then someone intentionally took it out. We've tended not to see that being the process, generally. But I—

Mr. SARBANES. Mr. Patterson, do you know if there was ever that kind of training?

Mr. PATTERSON. Sir, we have had numerous forms of training, probably for the last 20 years. I think the question here is whether it was mandated or not, and that training, like I said, in March of 2016, was mandated for anybody that works interdiction cases. It has both interdiction-type training, as well as asset forfeiture training combined in those classes. But again, I can find out if that was mandated prior to that. I would agree with Mr. Horowitz, I would find it hard to believe that it was mandated and stopped.

Mr. SARBANES. Mr. Horowitz, you concluded that the task force officers at DEA made different decisions with respect to seizure of proceeds where they should seize all or part so forth in very similar situations. Giving rise to the appearance that this was arbitrary, can you maybe give us a little more insight into that?

Mr. HOROWITZ. Certainly. Well, part of the reason you want training when you've got deputized officers from State and local jurisdictions from around the country is, they each have different rules, law, States, policies. They are dealing with all sorts of different requirements when they are at the State and local level. Now they come federally, and there is a series of policies at the DEA, for example, if that's who they are deputized and working with, that they are supposed to follow. And the critical nature of training, both with regard to making sure that it's being done properly, consistent with policy and legally—

Mr. SARBANES. Was there any evidence, because I will run out of time—was there any evidence that there might have been some

distorting incentives in play that we're leading to different treatment of these assets seizures, in some instances, versus others that you're aware of?

Mr. HOROWITZ. I'm not aware of that. Our concern, of course, is that if you don't have consistent operation application of the training and the rules behind it, that you end up with those kind of questions, precisely the ones you're asking, Congressman.

Mr. SARBANES. Okay. Thank you. I yield back.

Mr. PALMER. The gentleman yields. The chair now recognizes the gentleman from Missouri, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. Horowitz, last week, your office issued a much-anticipated report on the Department's oversight of cash, seizure and forfeiture activities. In recent years, a potential abuse of this tool and its widespread views, have attracted significant attention. Your report found that DEA accounted for 80 percent of the Department's total cash seizures from fiscal years 2007 to 2016. That amounted to \$4.2 billion. Is that correct?

Mr. HOROWITZ. That's correct.

Mr. CLAY. As I understand it, DEA can seize cash based on probable cause alone, and does not need to arrest or charge a person. In addition, DEA forfeiture frequently occurs without judicial oversight. Is that correct?

Mr. HOROWITZ. That's correct.

Mr. CLAY. Your report asks, how many seizures were connected to any criminal investigation? Why was that an important question to ask?

Mr. HOROWITZ. Well, one of the issues that we've heard consistently asked of us and that we've seen asked of DEA and others in the Department is, do the seizures and do the action, the forfeitures, help with criminal cases, with actual cases, whether it's intelligence or directly linked to a case? And that was what we wanted to look at.

Mr. CLAY. And according to your report, based on a review of a sample of 85 high-risk interdiction seizures, only 34 percent had any connection to criminal investigations. Do I have that right?

Mr. HOROWITZ. That's right. We could not determine in those cases or find evidence in those cases of a connection to a criminal case. And one of the challenges we faced is that DEA's system for tracking forfeitures isn't married to its system for tracking cases. And so we had to go back and look manually to make that assessment, and in many of those instances, there was no evidence apparent to us of a connection.

Mr. CLAY. Now, that's stunning. That means that, in this sample, two-thirds of seizures were not connected to criminal investigations.

Did the Department thank you for alerting them to this important finding? And just how did they react?

Mr. HOROWITZ. Well, the response from the Department, the Criminal Division, I wouldn't characterize as thanking us; took issue with the data and how we went about our work. We stand by the methodology we used, and we stand by our findings.

Mr. CLAY. Thank you.

And, Mr. Patterson, what was your reaction when you got this report?

Mr. PATTERSON. Sir, I got the report last week, and I read it over the weekend. And in this case, I think I see both sides. I think that OIG was very clear that they said they reviewed a judgmental sample of the 100 cases that posed the highest risk for concern. I also understand the Department's position, which that doesn't necessarily reflect the entire asset forfeiture community.

To go back to one of the points that you just raised, whether it's administrative, civil, or criminal, all of our seizures are reviewed by Department of Justice attorneys. In the administrative, obviously, there is not a legal proceeding that occurs.

And I'd like to add one other comment, which is—and I think, to Mr. Horowitz' point, and it is a difficult challenge for us—is that we need to be able to better capture and explain the cases, especially in the interdiction arena, that occur and how they tie in to other cases. That is a struggle we have. The CATS system that he referred to that tracks the assets is not a system that allows that, but that's on DEA to be able to do a better job of explaining that. Although what I will say is, overall, I think probably the vast majority of our cases, one, end up either criminally or civilly and, secondly, I think you would see are very reflective of ongoing criminal investigations because it's an important tool we use to deny revenue to those groups.

Mr. CLAY. Now, you understand the public perception on this and the optics are real bad. I mean, are your agencies arbitrarily making these decisions, or are we like, "This artwork over here; let's take this too?" I mean, do you see the optics can be kind of negative for reflection?

Mr. PATTERSON. I completely understand the optics, but I also think that you have to truly read the report. Again, I'm not being critical of anybody. I think you have to understand how this was done. I don't disagree with the approach that OIG took in doing it, but I also don't think it represents the overall Asset Forfeiture Program.

Mr. CLAY. Okay. I see my time is up, Mr. Chairman.

I would love to hear more on this—just this subject alone by this committee. I think it's quite important. And I know my office takes in complaints as well as others on this subject matter, and so perhaps we can explore another hearing on this.

Mr. PALMER. I thank the gentleman.

The chair now recognizes the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Turk, what's the F in ATF stand for?

Mr. TURK. Firearms, sir.

Mr. CONNOLLY. And what is your mission with respect to firearms?

Mr. TURK. We have a dual mission, sir. We work with and regulate the industry, the gun industry, and we also enforce the Federal firearms criminal laws.

Mr. CONNOLLY. And you wrote a white paper—I'm following up on Mrs. Demings' questions dated January 20th. And you've testi-

fied that no one asked you to write that paper. You just kind of thought time for a white paper on this subject?

Mr. TURK. I did write the paper, sir. As I said, a lot of those thoughts came from others and myself that had been in the works for years. So I didn't necessarily develop it in and of itself.

Mr. CONNOLLY. A lot of those thoughts read like an NRA white paper. Do you represent the NRA, or do you represent the American people at ATF?

Mr. TURK. Sir, I represent ATF. And with all due respect, sir, if you would read—there are portions of that report that I believe—you could argue that there are portions of that report that—

Mr. CONNOLLY. Well, with all due respect, Mr. Turk, I represent victims from Virginia Tech in my district. We buried six young people. And I couldn't explain to them why an ATF agent or representative would think legalizing silencers might be a good idea or rolling back dealer oversight with respect to law enforcement, examining allowing dealers to avoid reporting requirements. That's in your white paper. Considering dropping a proposed long-term sales records requirement that helps local law enforcement trace gun crimes and having further discussion on curtailing the antitrafficking program that requires dealers in Southeast—Western States to notify ATF of multiple sales of high-powered rifles.

You think those are all measures to protect public safety? Is that your position?

Mr. TURK. Sir, they are all just discussion points.

Mr. CONNOLLY. Discussion points?

Mr. TURK. Yes, sir.

Mr. CONNOLLY. After everything this country has been through, you think it's time to have that discussion? You cited, in response to Mrs. Demings, that what really spurred you was a change in administrations, correct?

Mr. TURK. I also indicated that I believe I would have written the paper had the—it gone in a different direction—

Mr. CONNOLLY. Okay. Mrs. Demings comes from local law enforcement. I was the county chairman. I dealt with law enforcement in my county. Big city police departments came to you and said, "It's time that we actually unshackle these requirements, ATF; we'd welcome this discussion," like Chicago, right? Or New York?

Mr. TURK. Sir, I believe a lot of those issues in that paper have been and will continue to be discussed with law enforcement.

Mr. CONNOLLY. Did you discuss this white paper with the NRA?

Mr. TURK. No, sir.

Mr. CONNOLLY. You had no input from the NRA?

Mr. TURK. No, sir.

Mr. CONNOLLY. You had no outside input of any kind?

Mr. TURK. Well, sir, over time, we've had outside input from many organizations.

Mr. CONNOLLY. I'm talking about your white paper, January 20th.

Mr. TURK. Well, yes, sir. Many of the ideas in my paper came from other organizations' issues over the years. None of them necessarily at that timeframe, but of course, it wasn't just my—those weren't just—

Mr. CONNOLLY. I'm going to take a page out of the chairman's book. Name one. What outside group?

Mr. TURK. For example—

Mr. CONNOLLY. How many, by the way? Eight?

Mr. TURK. I don't know if I can give you a number, sir. I can give you an example, though.

Mr. CONNOLLY. No. How about you give me a group that helped—that you talked to.

Mr. TURK. Yes, sir. One of the issues in the paper discussed licensing and the ability of licensees to sell only at gun shows. That issue was brought up through an organization that represents gun show—

Mr. CONNOLLY. What organization is that, Mr. Turk?

Mr. TURK. I can't remember the name, sir, but it's a gun show organization. I can get back to you with the exact name. But they came to us with a written request for an answer from ATF: Can we, as an organization, license someone to be an FFL, a Federal firearms licensee, that predominantly only sells at gun shows?

Mr. CONNOLLY. Well, Mr. Turk, I want to give you one more chance. You are under oath. You've had no conversation or input from the NRA on this paper?

Mr. TURK. No, sir.

Mr. CONNOLLY. Well, they must be doing a jig over at NRA headquarters, which is in my district, having read this white paper. I must tell you: I would have a lot of trouble explaining your thoughts in this white paper to the victims I represent from Virginia Tech.

I yield what little time I have to Mrs. Demings if she wishes to pursue.

Mrs. DEMINGS. No. I just want to thank my colleague for that line of questioning. As well, I'm from the Orlando Police Department. I spent 27 years there. We've just buried one of our officers who was a victim of gun violence, and I'm sure you and everybody in the world know about the 49 victims who were shot and killed in a nightclub doing nothing to harm anybody but just in the wrong place.

And I wonder, Mr. Turk, what would have happened had the shooter had a silencer on the end of his assault rifle when he entered that club? Do you believe it would have helped the shooter or help the victims who ran for their lives once they heard the sound of gunfire?

I yield back.

Mr. TURK. Ma'am, that was an absolute tragedy, and the men and woman, I can assure you, work every day within ATF to fight violent crime and reduce the gun violence.

Chairman CHAFFETZ. [Presiding.] I now recognize myself.

Our committee is looking into what happened with ATF's disciplinary process with respect to two ATF officials involved in Fast and Furious and also the arson investigation of former Special Agent Jay Dobyns in his home. For those of you that aren't as familiar, Mr. Dobyns' home was burned down after receiving threats flowing from his undercover work in infiltrating the Hells Angels, a matter that yielded dozens of arrests, indictments, and resulted in multiple prosecutions.

At the heart of both of these matters were two ATF special agents from the Phoenix field division, Special Agent in Charge William Newell and Assistant Special Agent in Charge George Gillett.

In the Dobyns case, Mr. Gillett and Mr. Newell were implicated by ATF's Office of Professional Responsibility for serious wrongdoings in investigating the arson at the agent's home.

Are you familiar with the Office of Professional Responsibility's October 2012 report, Mr. Turk?

Mr. TURK. Not specifically, sir. I've heard parts of that, but I don't recall ever reading it. I'm assuming you're referencing the fire, not Fast and Furious, sir?

Chairman CHAFFETZ. The what?

Mr. TURK. You're referencing the ATF Internal Affairs investigation related to the fire, not the OIG—

Chairman CHAFFETZ. Yes. It got into a number of things. But it is the specific report, case No. 20120079. The Office of Professional Responsibility report led to a notice of proposed removal for both of these officials. Both were proposed for removal for their role in Fast and Furious as well. So it did hit on both.

What was your position at that time? Do you recall?

Mr. TURK. What year was that, sir?

Chairman CHAFFETZ. This was October of 2012.

Mr. TURK. Yes, sir. I would have been the Assistant Director for Field Operations, and I would have taken that position slightly earlier that year.

Chairman CHAFFETZ. So you're in charge of field operations. This is field operations really gone awry. Would you agree?

Mr. TURK. I would certainly agree that there were some concerns with that overall investigation, but I also—

Chairman CHAFFETZ. Do you recall what happened to Mr.—these two, Mr. Newell and Mr. Gillett? Were either of them removed?

Mr. TURK. No, sir.

Chairman CHAFFETZ. No. They weren't. So here's the problem: You have an Office of Professional Responsibility. Here's the report. It's long. It's thick. It's detailed. It's specific, and it comes to a conclusion for removal, and neither of them were removed.

If you can't get fired for—I mean, orchestrating Fast and Furious is one of the most egregious uses of law enforcement. I mean, it's just a debacle from start to finish, to say the least. And people lost their lives as a consequence of that. And then to compound that, to try to wrongly frame a fellow agent for a crime—I mean, if you can't get fired for that, what are you going to get—what are you going to get fired for? Why didn't that happen?

Mr. TURK. Sir, in general—I appreciate the question. I have very much throughout my career, when it was appropriate, held people accountable. In this particular instance, I was not in the position to review all of the records or be in a position to take action. They are personnel matters, and I would not be in a position to take an opinion one way or another because I never saw all the facts that were involved.

Chairman CHAFFETZ. Okay. But you are in a position now, correct?

Mr. TURK. I would be now, correct—

Chairman CHAFFETZ. Yes.

Mr. TURK. —but coming into this new position, I—

Chairman CHAFFETZ. So would you—the committee would like you to produce those documents we requested regarding the discipline in the Jay Dobyns matter. Is that something you'll provide this committee?

Mr. TURK. Sir, it's my understanding that those documents may have been provided in camera for review.

Chairman CHAFFETZ. No, but there's a difference between in camera review and actually providing them to the committee.

Will you provide to this committee the draft settlement agreement emailed to George Gillett?

Mr. TURK. Sir, I'm—I'm not—I don't necessarily—I have not seen that product. I don't know what that says. I'm under guidance—

Chairman CHAFFETZ. I will take you at your word that you haven't seen it. My question, though, is, will you get it and provide it to the committee?

Mr. TURK. Sir, this is very similar, if I could—I understand you want straight talk, and I appreciate that completely. This is very similar to the order that was brought up earlier.

Chairman CHAFFETZ. Right. Yeah.

Mr. TURK. I'm operating under guidance from the Department of Justice and statutes that actually reflect on the disclosure of personnel—

Chairman CHAFFETZ. Which statute says that Congress—that Congress can't see something? Tell me which statute that is.

Mr. TURK. I'm not aware of any such thing, sir.

Chairman CHAFFETZ. Oh, you just said there was a statute that may have prohibited this.

Mr. TURK. I'm talking about in a public setting, sir.

Chairman CHAFFETZ. I'm not asking you to read it out loud in this public setting but providing—we are the recipient of highly classified information on a regular basis. In our little exchange a few minutes ago, you assured me that whatever I wanted to see, whatever—you would give me whatever I wanted to get. So I'm asking very specifically for the documents regarding the disciplinary matter of Mr.—regarding the Dobyns case, and I'm also asking for the settlement agreement that you mailed—emailed—not you personally but the Department, emailed to George Gillett. I want straight talk from you. Are you or are you not going to provide that to us?

Mr. TURK. Sir, I'll take that back to the Department. If I'm given authorization by—

Chairman CHAFFETZ. Who makes that decision? So you are not a decisionmaker. Who makes that decision?

Mr. TURK. That decision would come from the Department of Justice.

Chairman CHAFFETZ. I know, but—

Mr. TURK. I—I believe the—it could be a couple of different shops. It could be the Office of Legislative Affairs. It would be the Office of the Deputy Attorney General.

Chairman CHAFFETZ. Legislative Affairs?

Mr. TURK. I suspect the Deputy Attorney General's Office.

Chairman CHAFFETZ. Why does Legislative Affairs—they are not—the job of Legislative Affairs is not to be the road block, the speed bump on the way to Congress. I know that's what they do. That—they—they get paid. I wish they would look in the mirror and self-assess what their role in life is, because Congress has some work to do. And, obviously, we're having a hearing again because there's a problem.

Mr. TURK. Yes, sir. Sir, I'm—

Chairman CHAFFETZ. And oversight—let me give you some history. In 1814, they founded this committee. Okay? We've seen a few things on this committee. It was to oversee every expenditure on everything we do in Congress. It's one of the unique things is I can unilaterally sign a subpoena. I shouldn't have to do that. You should provide that material and not go ask some, you know, desk jockey, who just decides that it's easier not to comply with the Constitution and not comply with Congress' request.

I want to just be crystal clear: We want all of that information. If you're not going to give it to me, tell me, because I'll just sign a subpoena. I don't need to ask anybody. I don't need to go to a judge.

Mr. TURK. Sir, I personally don't have any problem with the committee getting any of those documents that we've discussed. I haven't seen anything—

Chairman CHAFFETZ. Then get them and give them to us.

Mr. TURK. —but I do have to follow guidance from my superiors as well.

Chairman CHAFFETZ. Okay. That's this dam that we're trying to undo, you know, openness, transparency. You give a lot of lip service, but then when it comes to the reality of actually getting these documents—we have the chairman of the Judiciary Committee in the Senate; you have the chairman of the Oversight Committee. We're both asking for the information. And you all won't provide it because there's some, again, desk jockey sitting at DOJ making who knows how much money saying, "Nah, they don't need to see it." That's not how America works. That's not how Congress works. We're accountable to the people of the United States of America. That's the way it's supposed to work.

So—and don't—you don't need to answer this. Okay? But I want you and your patriotic commitment to this country to help us break down that wall.

Mr. TURK. I would love—

Chairman CHAFFETZ. I don't want to get in a fight with all. You guys do amazing things. And the other self-assessment—it's just me just giving this free advice—there's the United States Constitution, and then there's DOJ guidance. You've got to make a personal decision: Which is more important? And help us break down those walls. That goes for everybody here. This is unbelievable what gets hidden from Congress and what gets—we're different in the United States America. We are self-critical. We do look under the rocks. We do go find out what's wrong, and then we take that and make it better. That's what makes this country great, but that's not what happens on a daily basis at the Department of Justice.

And it seems to be it doesn't matter who's in charge. There's this bureaucracy that puts up this wall that says, "The American people

don't need to hear that; we'll protect them." Well, the only way we can protect them is actually have somebody looking over the shoulder to make sure they're telling the truth and doing things on the up-and-up.

And in the case of Mr. Dobyns, it is unbelievable. You had a professional go in there with a staff and look at this report. Please familiarize yourself with it. The reason we do that is so we don't make that mistake again. And that's the spirit in which we're trying to do our jobs.

And you're in a difficult spot. Okay? You are getting a lot of people telling you not to do things, and so just communicate that with us. We'll blow right past it. We'll go right to the subpoenas and—

Mr. TURK. Sir, I will do everything in the power that my minimal office has to make that happen, but it's not my decision. I don't disagree in general with any of these discussions—

Chairman CHAFFETZ. —I need the names because I want to drag them in here, and we're going to have quite a hearing with people who are making these decisions.

Mr. TURK. I have made that recommendation that we disclose some of those documents already, sir, and I will continue to. I assure you that.

Chairman CHAFFETZ. Thank you. And if there is somebody giving you a road block, I'm asking you to please provide those members—those names to Congress. And we can put you in the Witness Protection Program if you need be. Okay? We can do that. Thank you.

We'll now recognize Mr. Cummings.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Let me ask you something, Mr. Turk.

I'm looking at your white paper, "Options to Reduce or Modify Firearm Regulations," and I notice that it's interesting that it's dated on Inauguration Day. Help me with that. Why is that?

Mr. TURK. Sir, I've been asked that question several times recently by members of the media. I don't really know. I signed that on the 23rd on the last page. I'm not sure why that's there on that day. I suspect when I came in—I've been working on parts of that document, and some of that has been cut and pasted from documents of mine in the past. I suspect I may have worked on that that day some, and that date may have gotten on the cover. There's no significance of that to me. I recognize the significance of that day nationally, but I signed that on the 23rd.

Mr. CUMMINGS. Well, I'm reading from an article in The Washington Post, dated February 6th. It says, "Senior ATF Official Proposes Loosening Gun Regulations." It says: "The second highest ranking official at the Bureau of ATF, has written a proposal to reduce gun regulations, including examining a possible end to the ban on importing assault weapons into the United States."

This is your paper, right?

Mr. TURK. It is my paper. I believe that may be a slight mischaracterization from the paper—

Mr. CUMMINGS. Well, why don't you tell me what this is, then? I mean, did you—you were involved in it. Is that right?

Mr. TURK. Yes, sir.

Mr. CUMMINGS. Were you the second highest ranking official?

Mr. TURK. I was. I still am.

Mr. CUMMINGS. So why don't you tell me your role in the paper, then, with the paper.

Mr. TURK. Yes, sir. That particular issue, ATF from time to time is asked to make determinations, not only on individual type firearms and how they are classified, but also on broader issues for things like importation. On that particular issue, we haven't looked at that matter for almost 20 years. So we're getting questions, particularly from the gun industry, but also from others from time to time on where do we stand on these issues.

I think it's time for ATF to reexamine that. I don't particularly have a position myself at all one way or the other, nor do I necessarily recommend a position on that matter one way or the other for the agency. I do think it's time to have that conversation. I think it's appropriate as things change. Some of things—

Mr. CUMMINGS. Hold it right there. Let's put a pin on there. Hold on a second.

Mr. TURK. Sure.

Mr. CUMMINGS. You say "as things change." What has changed?

Mr. TURK. The firearm—

Mr. CUMMINGS. Wait. Wait. Wait. Let me just finish. In my neighborhood, people are still getting blown away with assault weapons. I live in Baltimore, in the inner city. People can get a gun faster than they get a cigarette. But, anyway, you go ahead. I'm trying to figure out what's changed.

Mr. TURK. I understand. I think we take the gun violence in Baltimore very seriously, sir.

Mr. CUMMINGS. I know you do. It's important.

Mr. TURK. The gun industry, particularly when it relates to your modern sporting firearms type platforms, for example your M4s, your AKs, the products that can go with those over the last two decades has changed tremendously. So one slight variance in a stock or in a grip or in a—can change the classification of the firearm. And the gun industry—some manufacturers are pushing that right to the envelope, and they are coming to the ATF, and we're constantly having to reexamine, what is this classified as? Is this a machine gun? Is it not a machine gun? Is it a short-barreled rifle? Is it not. So the dynamics for where we operate in a broad sense and what we thought could be imported to the United States 20 years ago has changed significantly.

I think people have perhaps misunderstood some of the way I wrote that paper. I think it's a subject for discussion. I don't necessarily think we should open up the floodgates for more things coming into this country. As a matter of fact, there may be certain areas where we should not do that. But I think it's appropriate for us within ATF to have that conversation.

Mr. CUMMINGS. Yes.

Mr. TURK. Some of these matters, sir, have been—we've been reluctant to discuss some of these things for years in ATF. I think that's not healthy. I think it's important for our staff to be able to totally discuss the entire broad range of gun regulatory issues and get input from all communities and then present reasonable recommendations that don't impact public safety.

If something is going to negatively impact public safety and we think it's going to directly lead to more shootings, I can assure you it won't have my name behind it.

Mr. CUMMINGS. Well, let me tell you: I have spent a lot of time defending the ATF, and I think the ATF has been treated look a stepchild that's not liked. And when you say that you—you know, the gun industry—I think that's what you said—has some input, I got that.

The question is—and this is where I really get confused. My law enforcement folks are telling me that folks have armor-piercing guns, and they're trying to shut this stuff down. What—do you hear from them too?

Mr. TURK. Absolutely, sir.

Mr. CUMMINGS. And so what do you hear from them? Because I'm wondering how much balance there is when you have someone like the NRA, which is extremely powerful, although its members believe in gun safety, reasonable gun safety, apparently the gun manufacturers are not necessarily in tune with the membership, the rank-and-file membership, of the NRA. So I'm just wondering how do the—my law enforcement, who I support a million percent—you know, if I've got people who are going out there, and they're worried that there's going to be say, for example, armor-piercing weapons, and my police chief tells me the folks in some of these neighborhoods in some instances have weapons more powerful than what they have.

So what—how does ATF strike that balance at the appropriate moments? I mean, what do you—how does that affect you all? I get the impression that the gun lobby has extremely strong views and expresses them. And I'm just wondering, how about police officers?

Mr. TURK. Yes, sir. I think there are broad opinions across the board. Our partnerships with our State and local partners with law enforcement are critical to ATF. I mean, that is our bread-and-butter mission working violent street crimes. And we would never take a regulatory step that would intentionally put any law enforcement or the public in jeopardy at all.

We talk to law enforcement all the time, sir. We have memberships on, for example, IAC, International Association of Chiefs of Police committees, Major City Chiefs committees. All of our agents in charge and our supervisors are very much in tune with their local city and State police entities. We're getting input from them all the time. Our public and governmental affairs folks routinely meet with them and hear from them as well.

That particular issue you're talking about, without getting too detailed about armor-piercing ammo, I don't believe we would be in a position—I don't believe we would support anything that would directly lay—I mean, for example, the law doesn't allow for pistols to have armor-piercing ammo. So what's up for discussion is rifle—

Mr. CUMMINGS. I just used that as one example. Let me—we're having to have to—we've been here for a while. But let me—I have been watching this. I've been in and out, but I've been watching it back there. We have video back there. We can see you in the room there, and I've watched all this. I want to go back to something very quickly that you and the chairman got into.

You know, you kept saying that the chairman was—I can't remember the exact words you used, but basically violating your honor. Your honor. Am I right?

Mr. TURK. I said that at the time. I don't—yeah.

Mr. CUMMINGS. Let me tell why you I'm bringing this up. We get very frustrated when we cannot get information to do our jobs. And it's not about your honor. It has nothing to do with your honor. As a matter of fact, I think you took it there, but it wasn't—it's not about that. It's about whether we can get the information we need so that we can do our job. It's simple. It's not complicated.

And when you get an invitation—I forget the gentleman's name who appeared the last time, but he was very clear that, you know, he had a misunderstanding, I guess. Maybe you had a misunderstanding. But that's not about your honor. That's about, again, us trying to get the information we need so that we can do our job. That doesn't mean you haven't been a great soldier; you haven't been, you know, doing a great job. You follow what I'm saying?

Mr. TURK. Yes, sir, I am.

Mr. CUMMINGS. Yes. Because sometimes I think we can take things so far, and it doesn't have to go that far. As a matter of fact, when we take it that far, a lot of times we still don't end up getting what we need because we lose sight of what we were talking about from the very beginning.

And I'm hoping that you can get us whatever the chairman has asked for. I think he's been very reasonable. We try hard to work with our witnesses. We try to have as much latitude as we possibly can. But at some point, we got to have what we need to do our job. You got me?

Mr. TURK. Absolutely, sir. Thank you.

Mr. CUMMINGS. All right now. Thank you.

Chairman CHAFFETZ. Thank you.

Just an invitation here at the end if you have any last comment. Otherwise, we are going to close the hearing. Anybody have something they want to share? All right.

We want to thank you for taking time to appear today. Again, we appreciate the men and women who are on the front line doing the hard work here.

We'd ask unanimous consent that members have 5 legislative days to submit questions for the record. We'd appreciate your helping to follow up with those.

Without objection, so ordered.

If there's no further business, without objection, the committee stands adjourned.

[Whereupon, at 12:30 p.m., the committee was adjourned.]

