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OVERSIGHT OF DEA'S CONFIDENTIAL SOURCE PROGRAM

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

November 30, 2016

Serial No. 114–170

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PUBLISHING OFFICE

26–172 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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OVERSIGHT OF DEA'S CONFIDENTIAL SOURCE PROGRAM

Wednesday, November 30, 2016

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

The committee met, pursuant to call, at 10:01 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Duncan, Jordan, Walberg, Amash, Gosar, Gowdy, Massie, Meadows, Mulvaney, Buck, Walker, Blum, Hice, Russell, Carter, Grothman, Hurd, Palmer, and Lynch.

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

We have an important hearing today. It should be noted that Democratic leadership races elections are going on right now. But through mutual agreement with Mr. Cummings and their staff, we've agreed to go ahead and start this hearing. And as soon as that election is done, they will come join us. But we did so with a mutual understanding that we would start.

There are the requisite number of members here to start this, but I don't think I've ever started one without at least one member of the Democratic minority here, but we're starting it through mutual agreement.

Today's hearing is about the oversight of the Drug Enforcement Agency's confidential source program. And one of the most important tasks that our government has is to keep us safe, and there are a number of ways, there are a number of agencies this is done. We employ a number of tools to gather information, including human intelligence, human sources. And the Drug Enforcement Agency is one agency that uses these human sources to gather information on the illegal drug trafficking.

While the Nation is suffering through one of the deepest and most horrific opioid epidemics, the work done by the DEA is very important. There are thousands of really good men and women that put their lives on the line to do very important work, work that is furthered by confidential informants on a daily basis. Yet, the DEA has struggled with the management of its confidential source program. The American people, through Congress, have appropriated millions of dollars to help them do their jobs and get the information that they need.

But back in 2005, the inspector general called for the DEA to improve its oversight by monitoring of its confidential sources in sev-

eral areas. Specifically, the inspector general reported the agency failed to properly track its confidential sources resulting in paying sources well after they provided to be useful. So here we are about a decade later, and here's the big fear: The DEA wasn't listening, and they didn't implement. And if they did, at least based on this report, they did an exceptionally poor job.

So according to the inspector general, between fiscal year 2010 and 2015, the DEA had more than 18,000 confidential sources in the United States, but these aren't—these sources don't necessarily give up the goods for free. They want something in return.

In 2010 and 2015, the DEA paid some $237 million to 9,000, or roughly half of, its confidential sources. The average payment per source is roughly $26,000. When an agency is spending taxpayer dollars, it must get the most bang for the buck. We ask these men and women to make decisions on what the costs of these types of informants might be.

The DEA, according to the inspector general, paid $477, quote, "limited use sources," end quote, that the DEA deemed as relatively low risk, an estimated $26.8 million, that's an average payment of more than $56,000, to sources who were supposed to be providing information to the DEA on a limited and voluntary basis without direction from the DEA.

However, it turned out that many of these tipsters were actually working on behalf or in partnership with DEA agents. Other findings from the inspector general's report, this one just bugs me to no end, the DEA paid $1.5 million to Amtrak and TSA sources for information they could have gotten for free by going through the proper law enforcement channels.

In fact, in one case the DEA paid one Amtrak employee, a United States Government employee, $854,460 over 20 years just for sending passenger name records along. $854,000 this person took, one person from Amtrak.

The DEA's records were so bad that the inspector general couldn't determine whether the sources were paid were being reliable. The DEA paid more than $9 million to old informants that were no longer considered active, despite a policy against paying deactivated informants. The DEA provided Federal benefits, including Workers' Comp, to confidential sources with no process or controls on how these benefits were awarded.

And, finally, the DEA was uncooperative with the inspector general throughout much of the investigation. Nothing but nothing will frustrate Congress more than limited access by the inspector general.

You know, we—I say this almost every day now. We're different in the United States of America. We're different. We are self-critical. We do look under the hood. We do have people come in and audit things. We do it in the spirit of making things better. There is no reason, that I can think of, that the DEA should ever hold any information back from the Inspector General's Office. And I want to hear the answer to that. It's just terribly frustrating, and it's wrong.

The Department of Justice Inspector General also pointed out another boondoggle by the DEA in a joint venture with the Department of Defense. The purpose of the 2008 program was to procure

and modify an aircraft for surveillance operations in Afghanistan in 2012. After 8 years and millions of dollars wasted, the last report, the plane sits in Delaware, inoperable resting on jacks. The program has resulted in the government paying $86 million, four times what it was supposed to, for a plane that was supposed to be ready in 2012, and it's still not flying.

In fact, it's projected to be ready in 2017 and will never fly the mission it was intended for originally in Afghanistan. Despite the program's delay and expanding budget, 14 senior managers—and this is, again, you are going to have to explain this to me—here we have a plane that's approaching $100 million that isn't flying, wasn't used in Afghanistan, and the 14 senior managers responsible for the program received a combined $1 million in bonuses.

How can that be? How do you get a bonus when you screw up? How do you take $1 million out of the U.S. taxpayers' wallets and give it to 14 managers for a program that spent almost $100 million and doesn't work?

We love the men and women who work at the DEA. It is tough. I have but a few times gone out with agents like this and our local law enforcement and watched them go through this. It is dangerous. It is tough. It doesn't get enough patting on the back. But, ladies and gentlemen, we can't waste the American taxpayer dollars to this degree. Should we be paying for confidential informants? I think yes. Should we be giving one Amtrak employee $850,000-plus to hand offer a list of passengers? No. And that taints the entire agency, the reputation of the good men and women that work there, but we have to ask these questions and we want to get some answers to this so.

I would now like to recognize, actually, Mr. Lynch, the gentleman from Massachusetts, for an opening statement.

Mr. Lynch, you are now recognized.

Mr. LYNCH. Thank you very much, Mr. Chairman. And thank you so much. I had written a letter some time ago. I know we had a full schedule on this committee, but I want to look at the confidential informants. So I really am truly thankful for your willingness to take up this issue. It's an important one and not just for the DEA, but for the Department of Justice in general.

So I have some legislation. We went through this quite a bit in the city of Boston in the investigation of organized crime in the Boston office of the FBI. We ended up with about 19 murders committed by some folks who were informants and acting in conjunction with the Boston office of the FBI. Some of the agents went to jail. Special agent in charge Connolly went to jail, still there.

So the use of confidential informants is in darkness right now. And my bill, and maybe we can incorporate it with some of the chairman's ideas, would be to require the Department of Justice to give us a list of all the confidential informants being used by the Department of Justice and agencies under its purview. So it would not only be DEA it also would be FBI.

I had a conversation. We brought in Senator Grassley, myself, and some others, brought in the FBI to talk about their confidential informant program, and I asked for a list of all the confidential informants that the FBI was operating right now and the amount of money that they were spending in maintaining these confidential

informants. And the special agent in charge who came in to talk to us, his draw dropped. And he said, sir, that would be thousands and thousands of reports.

So all that money and all that activity out there, and you've got confidential informants that are committing serious crimes, and in our case we had—as I said before, we had 19 murders. And that's not all. You got a situation down in New York and also another situation in New England that we've got confidential informants out there that are committing major crimes against innocent citizens while they are under the protection of the FBI. So we need to blow the lid off this.

And we need to know what the taxpayer—and this is all happening sub rosa. There's not a whole lot going on out there. There are some guidelines. Janet Reno, former Attorney General, God bless her, had some guidelines for confidential informants. Those are being ignored, at least in the cases that we've looked at.

So I think this is an area where Republicans and Democrats can work together, I really do. It's a good thing for America to have transparency around these issues, and I think we can really make some—a meaningful difference in the way law enforcement is using confidential informants in our society.

With that, Mr. Chairman, thank you for your indulgence. We have a caucus election going on, so that's why there's nobody else here. We are we are all in caucus. But we'll try to jump back in periodically. Thank you for your indulgence, and I yield back the balance of my time.

Chairman CHAFFETZ. I thank the gentleman. We'll hold the record open for 5 legislative days for any members who would like to submit a written statement.

Chairman CHAFFETZ. We'll now recognize our one and only panel of witnesses. We are pleased to welcome Mr. Rob Patterson, who is the chief of inspections at the Drug Enforcement Agency.

We also have the Honorable Michael Horowitz, inspector general at the Department of Justice, who we've had a number of times before the committee.

We appreciate you two gentlemen joining us here today. As you know, it's committee rules that pursuant—that we—all witnesses are to be sworn before they testify. So if you'll please rise and raised your right hand.

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

Thank you. Let the record reflect that the witnesses both answered in the affirmative. We appreciate you limiting your verbal comments to 5 minutes. Your entire written record will be made part of the record.

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

WITNESS STATEMENTS

STATEMENT OF ROBERT W. PATTERSON

Mr. PATTERSON. Thank you, sir.

Chairman Chaffetz, Ranking Member Cummings, and the 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 today to discuss DEA's confidential source program and the enhancements made to our policies as a result of reviews and recommendations by both the Office of the Inspector General and the U.S. Government Accountability Office.

DEA's mission 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 work closely with our law enforcement counterparts by following the evidence wherever it leads. Central to this mission is a worldwide confidential source network, which uniquely positions DEA to act quickly, effectively, and proactively to reach beyond our borders to identify and investigate those who threaten the safety and interest of our country's citizens both home and abroad.

We recognize there can be inherent risks in using these sources, and these risks must be regularly and carefully balanced against their benefits.

With the responsibility of running a CS program, it is critical to have a strong foundation of clear policies and procedures to ensure a complete understanding by our investigative workforce. Policy alone, however, is not enough to remedy the concerns raised by these reviews. Management at all level share a tremendous amount of responsibility and must provide significant and sufficient oversight. Senior field leadership must also create an environment that stresses compliance and properly assesses these inherent risks.

DEA headquarters also shares responsibility for ensuring effective policy, processing and tracking of CS information and monitoring and auditing the use of CS' in the field. Collectively, we must always strive to do better. I am both pleased and proud to advise DEA has made and continues to make significant efforts in improving our program. We have agreed with all of OIG and GAO's recommendations for our CS program. We have acknowledged our shortfalls and are actively working with all appropriate parties to make improvements. We endeavor to faithfully execute our mission with excellence and integrity. Our culture is a healthy and a good one, and a vast majority of DEA employees perform their job to the highest standards.

Under Acting Administrator Rosenberg's leadership, we have made tremendous strides in the manner in which we effectively and transparently address these issues and concerns about the conduct of our employees and the manner in which we carry out our mission. One of the largest hurdles that hindered DEA from that goal prior to his arrival was a lack of staffing in key leadership positions. This created a vacuum of senior leadership and fostered a culture of acting leaders. Among these vacant positions were the chief inspector, the deputy chief inspectors, in the Office of Professional Responsibility, the Office of Inspections, and Security Programs, which collectively made up the entire leadership of DEA's inspection division. These positions along with other SES positions have since been filled.

I note the inspections division leadership, because the Office of Inspections plays a key role in ensuring the requirements of the CS program are carried out in accordance with established policy and procedure. Over the past year, we have made a concerted effort to

revise the inspection process to take a deeper look at high-risk programs such as the CS program. These changes range from modifications as basic as the revision of inspection checklist to the more robust review of CS documentation to ensure the proper use, approvals, and sound justifications for payments.

The Office of Inspections also works closely with DEA's new Office of Compliance, which was established earlier this year. The Office of Compliance includes a policy administration section, which is currently reviewing all of DEA's policy manuals, working with our chief counsel, and program offices, as well as fellow law enforcement agencies to review and revise existing policies governing DEA's operations.

Finally, where misconduct is alleged, those instances must be thoroughly investigated. In CS-related issues, the Office of Professional Responsibility is charged with not only addressing the specific allegation against an employee but examining the roles of management and providing significant and sufficient oversight. OPR conducts these investigations in close coordination with and in deference to the OIG. As appropriate, where the managers have failed in their duties and properly supervised—properly not supervising their employees or have failed to ensure the necessary oversight in program areas, they are being held accountable.

The DEA has always been committed to serving the public in fulfilling our mission. We are very proud of our accomplishments. Thus, it is never easy to hear about the weaknesses in our programs and see them identified or to hear about our past lack of cooperation during these reviews. The current administration has worked diligently to address policy gaps and programmatic shortcomings, fill leadership positions, implemented new training and place increased emphasis on our leaders for greater oversight. We fully believe these outside reviews by OIG and others make us better.

From our previous discussions with your staff and today's conversation, I hope you will recognize DEA's commitment to positive change in our agency. I want to thank you for your time today, and I look forward to your questions.

[Prepared statement of Mr. Patterson follows:]

Statement of Robert W. Patterson
Chief Inspector, Inspection Division
Drug Enforcement Administration
Before the Committee on Oversight and Government Reform
United States House of Representatives
November 30, 2016

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 discuss DEA's confidential source program and the enhancements we have made to our policies 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 network is vital to our operations. However, DEA recognizes that the nature of using these sources has inherent risk, something that must be regularly balanced against the benefits of utilizing these individuals. We believe that strict oversight and adherence to approved procedures is necessary to ensure both the safety of our employees and to maintain the integrity of operations.

We strive to faithfully execute our mission with excellence and integrity at all levels and are continually looking for ways to further improve our operations. Our culture is a healthy and good one, and the vast majority of DEA employees perform their job to the highest standards of integrity, honesty, and ethical behavior. Under Acting Administrator Rosenberg's leadership, DEA has made tremendous strides in the manner in which we effectively, efficiently, and transparently address issues and concerns about the conduct of our employees or the manner in which we carry out our mission. One of the largest hurdles that had prevented DEA from that goal prior to his arrival in May, 2015 was a lack of staffing in key leadership positions within the DEA. For example, upon DEA Acting Administrator Rosenberg's arrival, DEA had more than two dozen vacant positions at the senior executive service (SES) level, many of which were unfilled for years, creating a vacuum of senior leadership and a culture of "acting" leaders. Among these vacant positions were the Chief Inspector, and the Deputy Chief Inspector in the Office of Professional Responsibility (OPR), the Office of Inspections (IN), and the Office of Security Programs (IS). These positions, along with all other SES positions, have since been filled. OPR, which conducts investigations of all credible allegations of misconduct levied against a DEA employee, Task Force Officer, or contract employee, had significant case backlogs and its staffing levels stood at approximately 50 percent. Under Acting Administrator Rosenberg's leadership, OPR is now staffed at 90 percent, an increase squarely aimed at creating more thorough, efficient, and accurate investigations.

OIG's First Report on DEA's Confidential Source Program

In accordance with the recommendations of the OIG report released in July 2015,[1] and a separate similar review performed by the Government Accountability Office (GAO) regarding DEA's Confidential Source (CS) policy released in September 2015,[2] DEA management and the Department of Justice's (DOJ) Criminal Division conducted a thorough review of DEA's CS policy. Both reports concluded that the DEA policy was not fully compliant with the Attorney General's Guidelines Regarding the Use of Confidential Informants (AG Guidelines), issued in May 2002. The GAO report recommended that DEA work with the DOJ Criminal Division to ensure that DEA's CS policy fully complied with the AG Guidelines. The OIG report contained a similar recommendation, and provided specific areas to address.

We appreciate the work of the OIG and GAO and have fully implemented all of the recommendations. Specifically, in response to the recommendations, on April 5, 2016, the Assistant Attorney General (AAG) for DOJ's Criminal Division approved a revised CS policy, which addressed all of the issues identified by GAO and OIG. DEA's revised CS policy was subsequently published for DEA personnel and at the same time, a corresponding global message was broadcast to all employees to highlight notable changes to the policy. Additionally, DEA provided in-depth training to all field and headquarters CS program managers to ensure rigorous management and oversight of DEA's CS policy. These educational efforts remain ongoing, and this material was incorporated into DEA Academy curricula for new hires and management classes.

Recommendations of OIG's First Report on DEA's Confidential Sources:

The first OIG report contained seven recommendations, which can be grouped into the following four categories: categories of confidential sources; "otherwise illegal activity;" review of long-term confidential sources; and workers' compensation benefits for confidential sources.

OIG Recommendation on Categories of Confidential Sources:

DEA's confidential sources are classified into one of several categories, depending on the source's background and various specific risk factors. A source's classification dictates the supervisory level needed to approve the source for use, as well as various control requirements. The OIG report determined that DEA's confidential source classifications did not match the AG Guideline classifications with respect to high-level confidential sources (the leadership of certain national or international criminal organizations), and individuals under the obligation of a legal privilege of confidentiality, or affiliated with the media. It also found that DEA did not have a specific confidential source classification for DEA registrants, which, although not required by the AG Guidelines, was a recommendation the OIG made to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in a previous OIG report with respect to ATF registrants.

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[1] Department of Justice, Office of the Inspector General. *Audit of the Drug Enforcement Administration's Confidential Source Policies and Oversight of Higher-Risk Confidential Sources.* (July 21, 2015). Available at: https://oig.justice.gov/reports/2015/a1528.pdf#page=1.

[2] U.S. Government Accountability Office. *Confidential Informants: Updates to Policy and Additional Guidance Would Improve Oversight by DOJ and DHS Agencies.* (GAO-15-807; Sep. 15, 2015). Available at: http://www.gao.gov/products/GAO-15-807.

As part of the policy revision, additional classifications have been added to recognize high level informants, individuals under the obligation of a legal privilege or affiliated with the media, and registrant informants as separate informant classifications. This conforms DEA's policy with the AG Guidelines' requirements.

OIG Recommendation on Otherwise Illegal Activity:

Law enforcement utilization of confidential sources may involve the source engaging in activity that would be illegal but for the fact that the behavior is authorized by law enforcement as part of the investigative process. The AG Guidelines define such activity as "Otherwise Illegal Activity" (OIA) and categorize it as Tier 1 OIA, for certain particularly serious activity specifically defined in the AG Guidelines, or Tier 2 OIA, for less serious felonies or misdemeanors. The AG Guidelines also delineate activities that can never be authorized under any circumstances.

The AG Guidelines require that Tier 1 OIA be approved by a U.S. Attorney and by a Special Agent in Charge (SAC). They require that a second line supervisor approve Tier 2 OIA. The AG Guidelines require approval authorities to consider certain specific factors and make a finding that the benefits outweigh the risks. They also specify certain warnings be given to confidential sources in writing after the source is authorized to engage in OIA.

The then-existing DEA policy reviewed by GAO and OIG did not speak in terms of OIA. Rather, DEA policy had required that all illegal activity, except routine undercover drug activity, be approved through the Sensitive Activity Review Committee (SARC) process, which includes U.S. Attorney and SAC approval, as well as approvals from DEA Headquarters and DOJ's Criminal Division. These processes exceed the AG Guidelines approval requirements for such activity.

DEA policy regarding routine undercover drug activity had required a second line supervisor to review and approve an operations plan outlining the activity which would take place. The OIG review expressed concern that DEA policy did not make clear that "routine undercover drug activity" did not include Tier 1 OIA. Thus, the possibility existed that Tier 1 OIA could be approved at too low a level. In addition, the prior policy did not specify the criteria to be considered in approving CS participation in such illegal activity, nor did it require a specific finding by the approval authority other than his or her signature on the operations plan. Accordingly, as part of the policy revision, DEA addressed these concerns by requiring approval authorities to consider the AG Guidelines' specific criteria, as well as make a written finding that the benefits outweigh the risks as part of the operations plan approval. The revised policy also utilizes the AG Guidelines' nomenclature of "Tier 1" and "Tier 2 OIA," and defines routine undercover drug activity as Tier 2 OIA. In the rare instance where contemplated undercover drug activity would meet the definition of Tier 1 OIA, it will require a SARC approval.

The OIG report also raised concerns about the warnings given to confidential sources after approval for OIA. Under the AG Guidelines, these warnings are to be given after as confidential source is authorized to engage in OIA, and OIA can be authorized for 90 days at a time. The specific warnings required by the AG Guidelines are contained verbatim in DEA's

confidential source agreement, which is signed annually by DEA confidential sources, but this typically occurs *before* OIA approval, not after, and it is valid for one year, although DEA confidential sources are not given blanket authority to engage in OIA for a set period of time, but rather are told they may not engage in any illegal activity unless acting under the specific direction and supervision of DEA law enforcement personnel. The revised policy addresses the OIG's concern to ensure that warnings are renewed every 90 days.

OIG Recommendation on Review of Long-Term Confidential Sources:

The AG Guidelines require that confidential sources who have been active for six consecutive years be reviewed by a Confidential Informant Review Committee, which is the functional equivalent of DEA's SARC, and which must include certain specified DOJ representatives. When a source has been active for nine years, the AG Guidelines also require a review by the law enforcement agency's Headquarters. These reviews continue thereafter as long as the informant remains active, with SARC reviews at six-year intervals and Headquarters reviews occurring at the three-year midpoint between SARC reviews.

The OIG report expressed concern regarding the implementation of DEA's six-year reviews in terms of the depth of the review, and it found instances where reviews did not occur. It also found that DEA policy did not mandate the nine-year Headquarters reviews. The revised policy addresses these concerns by specifying the responsibilities of various officials to ensure the reviews take place on time and in sufficient depth, specifying the material that must be considered during the reviews, and otherwise ensuring that a stringent review takes place on the time schedule required. The revised policy also mandates the nine-year Headquarters reviews.

OIG Recommendation on Workers' Compensation Benefits:

Finally, the OIG review raised questions about confidential sources injured while assisting DEA and whether they are eligible for workers' compensation benefits under the Federal Employees Compensation Act (FECA), as DEA had eighteen confidential sources who, over the years, had been approved for FECA benefits by the Department of Labor (DOL). The OIG review recommended that DEA and DOJ determine whether confidential sources are eligible for FECA benefits and, if so, that DEA implement stricter policies for evaluating claims for such benefits. In consulting with DOJ and DOL, DEA has ascertained that confidential sources can be awarded FECA benefits by DOL in appropriate instances. DEA's revised policy addresses the OIG's concerns by specifying criteria that must be met before DEA will recommend DOL approval of a claim submitted by a confidential source and by requiring that such claims be reviewed at a high level within DEA before being submitted to DOL for adjudication. The policy also ensures communication and information sharing between DEA's Human Resources Division who is responsible for processing workers' compensation claims and its confidential source unit, to help ensure DEA is able to meet its obligations to investigate the claim.

OIG's Second Report on DEA's Confidential Source Program

On September 29, 2016 the OIG issued a second report concerning DEA's confidential source program.[3] We appreciate the OIG's wok and agree with all seven recommendations contained in the report. We are working swiftly to implement those recommendations as quickly as possible.

In particular, DEA is currently examining the issues raised by the OIG pertaining to the manner in which it utilizes "limited use" confidential sources and is developing guidance to address the OIG's concerns in this area. In addition, we are comprehensively evaluating our internal controls to ensure that our policies regarding payments to confidential sources are strictly followed.

Conclusion

Confidential sources provide invaluable contributions and assistance in furtherance of DEA investigations against major domestic and transnational criminal organizations. DEA's reliance on confidential sources whose motivations may be suspect, inevitably carries an inherent amount of risk. One important way for DEA leaders to mitigate this risk is through increased oversight and review, and a robust policy aimed at protecting ourselves and our sources. DEA will continue to review this important program and is committed to cooperating with the OIG to improve upon it.

[3] Department of Justice, Office of the Inspector General. *Audit of the Drug Enforcement Administration's Management and Oversight of its Confidential Source Program.* (September 29, 2016). Available at: https://oig.justice.gov/reports/2016/a1633.pdf#page=1

Chairman CHAFFETZ. Thank you.

Inspector General Horowitz, you are now recognized for 5 minutes.

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.

Proper oversight of the DEA's confidential sources program is critical given the amount of money paid to informants, approximately $237 million during a recent 5-year period, and the inherent risks associated with the program to the public safety, to privacy, and civil rights.

My office recently issued two audits finding the DEA faces significant challenges in managing its confidential sources program. Our July 2015 report determined that DEA's policies allowed the use of high-risk sources without the review required by attorney general guidelines and that DEA failed to always review long-term sources consistent with its own policies.

We also found that DEA paid certain sources substantial disability benefits without determining it had a clear legal basis to do so and without establishing any procedures or controls.

We made seven recommendations to rectify these issues. Since our report, DEA has issued new policies, and we have closed five of those recommendations. We will continue to monitor closely DEA's efforts to address the two remaining open recommendations.

In September 2016, we issued a second report and found that DEA needed to significantly improve the overall management and oversight of its confidential sources program. We determined that DEA did not adequately oversee payments to its sources, increasing the potential for waste, fraud, and abuse.

For example, while DEA policy prohibits paying certain deactivated sources, we found two concerning instances of such payments. We further found that DEA failed to appropriately track all confidential source activity, did not document proper justifications for all source payments, and at times did not adequately safeguard travel alert information it was collecting. Additionally, we found that DEA condoned the use of subsources, yet had no controls, policies, or procedures in place to oversee them.

Separately, we identified significant problems with DEA's use of what it calls limited use sources. DEA policy specifically specifies that limited use sources make information available to the DEA independently and without direction. However, we found that some DEA units were, in fact, instructing limited use sources about what information to provide and what actions to take.

Among DEA's limited use sources were Amtrak and Transportation Security Administration employees. As the chairman mentioned, during the 5-year period covered in our audit, DEA used at least 33 Amtrak employees and eight TSA employees as sources, paying them a total of over $1.5 million. Yet, we determined that DEA was entitled to receive this information at no cost, thereby wasting government funds.

We also found that DEA's intelligence division has conducted limited management, oversight, and tracking of source payments. For example, it does not independently validate the credibility of its sources or the accuracy of the information they provide. In addition, DEA was unable to provide us with an itemized list and overall total of payments to intelligence-related sources, who we determined were paid more than $30 million.

Our report made seven recommendations in our September 2016 report, and we expect an update from DEA next month on the steps it has taken to address them.

Finally, I want to acknowledge the serious commitment that current DEA management and program officials have made to improve the confidential source program and to implement appropriate controls.

These problems did not happen overnight, and correcting them will require a dedicated and sustained effort. To date, senior DEA management has shown its willingness to do so, and we will, obviously, monitor their efforts in this regard.

This concludes my prepared statement, and I would be pleased to answer any questions that you may have.

[Prepared statement of Mr. Horowitz follows:]

Office of the Inspector General
United States Department of Justice

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

before the

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

concerning

"Oversight of DEA's Confidential Source Program"

November 30, 2016

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 Drug Enforcement Administration's (DEA) Confidential Source Program. Confidential sources are an important part of DEA's law enforcement operations. Through our work, we found that the DEA relies heavily on confidential sources to conduct its investigations of criminal activity and drug interdiction operations. Between October 2010 and September 2015, the DEA had over 18,000 active confidential sources assigned to its domestic offices, with over 9,000 of those sources receiving approximately $237 million in payments for information or services provided to the DEA.

The DEA, as with any law enforcement agency, must take special care to evaluate and closely supervise the use of its confidential sources and manage its Confidential Source Program in order to balance the inherent public safety, privacy, and civil rights risks associated with the program. We found that the DEA continues to face challenges managing its Confidential Source Program and striking this important balance. Proper oversight of this program is particularly imperative considering that confidential sources are often motivated by factors other than combatting crime, including financial gain and avoidance of punishment. Since July 2015, the OIG has issued two audit reports related to the DEA's policies, oversight, management, use, and payments to confidential sources.

OIG 2015 Audit Report on the DEA's Policies on Confidential Sources and Management of Higher-Risk Confidential Sources

In July 2015, the OIG issued a report that determined the DEA's confidential source policies were not in full compliance with the Attorney General's Guidelines Regarding the Use of Confidential Informants (AG Guidelines). The AG Guidelines provide guidance to all Justice Law Enforcement Agencies, including the DEA, regarding the establishment, approval, utilization, and evaluation of confidential sources. Compliance with the AG Guidelines helps ensure consistent and appropriate source management among all Department law enforcement agencies and helps to mitigate the risks involved with using confidential sources in federal investigations. In our report, we found that instead of implementing the AG Guidelines as a separate policy, the DEA chose to incorporate provisions of the AG Guidelines into its preexisting policy – the DEA Special Agents Manual, which the DEA asserted successfully captured the essence of the AG Guidelines. Our audit determined that this was simply not the case in numerous areas. For example, we found that the DEA's Confidential Source Program allowed the use of individuals as confidential sources that present high risks, such as media-affiliated sources, doctors, or drug trafficking organization leadership, without the higher level review and approval required by the AG Guidelines for these types of sources.

We similarly concluded that the DEA's policies and practices were not in line with the AG Guidelines' requirements for reviewing, approving, and revoking confidential sources' authorization to conduct Otherwise Illegal Activity (OIA).

Moreover, we found that although the DEA's policy includes a provision that generally follows the AG Guidelines requirement for evaluating the use of long-term confidential sources, the DEA was not adhering to its policy and conducted inadequate and untimely reviews of these sources.

We also found that the DEA was providing certain confidential sources with benefits under the Federal Employees' Compensation Act (FECA), which generally provides federal workers compensation for injuries or death sustained in the line of duty. We estimated that, in the one-year period between July 1, 2013, and June 30, 2014, the DEA paid 17 confidential sources, or their dependents, FECA benefits totaling more than $1 million. We found that the DEA was making these payments without a clear determination as to their legal basis, and had not established any procedures or controls regarding the awarding of these potentially substantial benefits. We also found that the DEA had not adequately considered the implications of awarding benefits to the disclosure obligations of federal prosecutors, and had not consulted with the Department about this issue.

We provided the DEA with seven recommendations to rectify these issues. As a result of our report, the DEA issued new policies governing its Confidential Source Program, and we found that this new guidance was sufficient to close five of our seven recommendations. The OIG's remaining recommendations, for which the DEA has taken some corrective action but for which there are outstanding issues, pertain to updating the DEA confidential source policies to ensure that long-term confidential sources are reviewed in a timely manner; and consulting with the Department about paying FECA benefits to confidential sources. We will continue to monitor the DEA's efforts to address these remaining two recommendations. The July 2015 report can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2015/a1528.pdf.

OIG 2016 Audit Report on the DEA's Management of its Confidential Source Program

Two months ago, in September 2016, we issued a second report, this one focusing on the DEA's overall management and oversight of its Confidential Source Program. Our report found that the DEA's management and oversight of this program requires significant improvement.

Overall Program Management

We were particularly concerned to discover the DEA's use of "sub-sources" in its law enforcement investigations and intelligence programs. Sub-sources are individuals that confidential sources recruit and pay to perform activities or provide information related to the source's work for the DEA. We found that this practice was condoned by the DEA, yet the DEA has no controls, policies, or procedures for interactions with these sub-sources. Condoning the use of sub-sources to assist in investigations without the DEA's full knowledge, awareness, and approval raises serious questions. This lack of oversight increases the chance that individuals may be conducting unauthorized illegal activity on the DEA's behalf, potentially places

these and other individuals in harm's way, exposes the DEA and Department to significant liability, and could impact prosecutions.

We also found that the headquarters-based Confidential Source Unit relies heavily on the judgment of field office personnel for many aspects of its Confidential Source Program, which limits headquarters' ability to ensure that decisions related to confidential source establishment, use, and payments are appropriate and consistent. In addition, the DEA does not perform comprehensive reviews of the field offices' activities related to confidential sources, and the oversight that DEA does perform has been inconsistent and inadequate. As a result, we noted variations in how confidential sources are categorized. We further found that the DEA did not adequately review or ensure that the information in its electronic data system concerning confidential sources was complete, consistent, and accurate.

In addition, the DEA did not adequately oversee payments to its sources, which exposes the DEA to an unacceptably increased potential for fraud, waste, and abuse, particularly given the frequency with which DEA offices utilize and pay confidential sources. For example, DEA policy prohibits paying sources who were deactivated because of an arrest warrant or for committing a serious offense. Yet we found two concerning instances of payments to previously-deactivated sources. Based on our review of DEA's confidential source data, we estimated the DEA may have paid about $9.4 million to more than 800 previously-deactivated sources between fiscal years (FY) 2011 and 2015. Although we identified concerns related to the reliability of the data within the DEA's confidential source database, it appears that paying deactivated sources is common enough to justify much closer managerial oversight and review of such payments.

Utilization of Limited Use Confidential Sources

We also reported our significant concerns about the DEA's direction and guidance for what it calls "Limited Use" confidential sources. DEA policy specifies that Limited Use sources are those who make information available to the DEA independently, and without direction by the DEA. DEA regards the Limited Use confidential sources as low-risk, and therefore DEA policy requires less supervision of matters involving these sources as compared to other kinds of sources. However, we found that some DEA drug interdiction units – whose primary activity is to intercept drug trafficking at transportation and other facilities - relied heavily on Limited Use confidential sources. DEA Special Agents from these units gave instructions and guidance to Limited Use confidential sources about what information to provide and what actions to take to assist the DEA with interdiction activities, thus testing the boundaries of what it means for a source to provide information "without direction."

Further, we found that Limited Use confidential sources were some of DEA's highest paid sources, 477 of whom received an estimated $26.8 million between FY 2011 and FY 2015. Specifically, some of the Limited Use sources used by the drug interdiction units received significant payments for their assistance, including

an airline employee who received more than $600,000 in less than 4 years, and a parcel company employee who received over $1 million in 5 years.

Among the Limited Use confidential sources used by the DEA were Amtrak and Transportation Security Administration (TSA) employees. In November 2015, the OIG completed investigations into DEA's use of two Amtrak employees and one TSA employee as confidential sources. In one investigation, the OIG determined that the DEA paid two Amtrak employees more than $860,000 for information that was available at no cost to the government and in violation of federal regulations relating to the use of government property, thereby wasting substantial government funds. In another investigation, the OIG found that the DEA had registered a security screener for the TSA as a confidential source in violation of DEA policy, which precludes signing up as a confidential source "employees of U.S. law enforcement agencies who are working solely in their official capacity with the DEA." In addition, the TSA screener was required, without being compensated as a confidential source, to provide certain relevant information to the DEA. In both of these investigations, the OIG determined that the DEA violated or exceeded the terms of its confidential source policies.

In the September 2016 audit report, we found that between FY 2011 and FY 2015 the DEA used at least 33 Amtrak employees and 8 TSA employees as sources, paying the Amtrak employees a total of over $1.5 million and the TSA employees over $94,000. In March 2016, the DEA promulgated an interim policy with a specific prohibition on using government or quasi-government employees, such as Amtrak employees, as confidential sources to obtain information within the scope of their official duties.

The DEA also did not appropriately track all Limited Use confidential source activity. The DEA's current process does not adequately safeguard traveler information, possibly compromising personally identifiable information, affecting government record maintenance requirements, complicating the DEA's efforts to manage and access important case-related information, and potentially increasing the risk that information may not be available to prosecutors when needed in legal proceedings. Moreover, we found that the DEA's files do not document all source activity, which impacts the DEA's ability to examine a source's reliability and to determine whether the source frequently or rarely provides useful information, or whether the information DEA agents acted upon resulted in identifying individuals involved in illegal activity or instead caused DEA to regularly approach innocent civilians for questioning.

Overall, we believe the DEA's reliance on Limited Use confidential sources to accomplish interdiction operations, the DEA's direction and guidance to these sources, and the DEA's long-term and lucrative relationships with these sources raise questions as to whether these sources are truly providing information independently and without direction. Those questions also could have implications for any Fourth Amendment issues that may arise as a result of related searches and seizures.

DEA Intelligence Division's Use of Confidential Sources

We also found that the DEA has conducted limited management, oversight, and tracking of source payments by the DEA's Intelligence Division, which oversees several programs under which sources provide information or conduct narcotics-related intelligence-gathering activities. For example, DEA's Intelligence Division does not independently validate the credibility of sources used for intelligence programs or the accuracy of the information they provide. The Intelligence Division generally relies on DEA field offices' risk assessments and determinations that confidential sources are reliable. In comparison, the Intelligence Community, of which the DEA's Intelligence Division is a member, has standards for the appropriate handling of sources, including independent validation of sources. Relying on field offices to make these judgments without sufficient oversight from the Intelligence Division could negatively affect the Intelligence Division's ability to understand and appropriately use the information it receives.

In addition, the DEA was unable to provide us with an itemized list and overall total of payments to intelligence-related confidential sources. However, we determined that the DEA's Intelligence Division paid more than $30 million to sources who provided narcotics-related intelligence and contributed to law enforcement operations, $25 million of which went to just 9 sources.

Cumulatively, the deficiencies we identified in our reviews and investigations raise significant concerns about the adequacy of the current policies, procedures, and oversight associated with the DEA's management of its Confidential Source Program. Our September 2016 report made seven recommendations to help the DEA address deficiencies and evaluate aspects of its Confidential Source Program to ensure that it is managed effectively and consistently and that the DEA's handling of and payments to sources are appropriate, accountable, and reflective of the importance of, and risked posed by, its use of confidential sources. This report can be found on the OIG's website at the following link: https://oig.justice.gov/reports/2016/a1633.pdf. In responding to our audit, DEA management and program officials expressed a commitment to improve the DEA's Confidential Source Program, to implement appropriate controls over confidential sources, and to ensure that confidential sources remain a productive and essential element used by the DEA to accomplish its mission.

This concludes my prepared statement, and I will be pleased to answer any questions that the Committee may have.

Chairman CHAFFETZ. Thank you. We'll now recognize the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman. And thanks for the panel for being here and thanks for the work you do.

Inspector General Horowitz, your report found, as you've indicated, that there was a relationship created with DEA agents and some limited use confidential sources that went beyond simply being a person who gives tips rather than being in a partnership on behalf of and part of the DEA process.

What are the privacy concerns with DEA essentially treating these sources as independent contractors and asking them to perform specific tasks?

Mr. HOROWITZ. Well, there are several, Congressman. One being that among what we found was the requests were for various traveller records, personal information, itineraries of travel for various transportation companies, collecting that information. Not only collecting the information generally by directing people to do so, that's the first question, the second being, how is that information then protected? We had serious concerns about that.

The third being, little to no information being available on whether the collection of that information was useful in total.

We can find evidence when DEA actually successfully interdicted drugs or what they believed was improper cash transportation, but they did not keep records on what the overall success rate was. We don't know, for example, whether they were batting a thousand or batting 0.50. And that's a concern, because if you're going to ask for the collection of large amounts of records, I think the public wants to know that there's some success associated with that. And I know that's a concern we've talked about in the asset seizure context, and that's precisely what is potentially presented here.

Mr. WALBERG. Beyond the evaluation of success or failure, what other dangers do you see with this process?

Mr. HOROWITZ. Well, one that also comes up is the Fourth Amendment issue.

Mr. WALBERG. Okay.

Mr. HOROWITZ. If individuals in the public act independently, and wanted to call their police, their DEA office, the FBI, whomever on their own, they are obviously, entitled to do that, and of course, I think, we would all hope they would do so if they saw illegal activity. It's a very different analysis if people are acting as the agent of the law enforcement agency.

Mr. WALBERG. And are incentivized to do that?

Mr. HOROWITZ. And are incentivized to do that, and are incentiviced to do that in some cases quite substantially.

Mr. WALBERG. Okay. As you know, and you expressed, that I've had concern, longstanding concern, with civil asset forfeiture issue and asset forfeiture in general. It appears when I came across the fact that there was an individual, a confidential source, working in the parcel industry that had the ability to open packages, but it came to be that they opened packages but only reported not on drugs or anything else but simply on cash.

Are you concerned that the DEA's policies are warping priorities by prioritizing asset forfeiture rather than seizure of drugs?

Mr. HOROWITZ. That is a concern. And, in fact, we have an ongoing review of the department, and in particular, the DEA's use of assets seizures. And I'm looking forward to issuing that in the near future. And part of it grows out of some of the concerns that you have addressed and other members of the committee have mentioned on it.

Mr. WALBERG. Has the DEA taken any steps to remedy this problem that you are aware of?

Mr. HOROWITZ. They have taken some steps, and we've gotten some updates about their intentions on collecting more information that would allow, for example, the DEA most importantly and us, as well in our oversight role, to determine what is occurring, how frequently it's occurring, the success or failures, the incentivization or not of folks. I think there are several steps that are——

Mr. WALBERG. Mr. Patterson, could you address that?

Mr. PATTERSON. Absolutely, sir. So, certainly, we appreciate the OIG's review of this. It's an important area. I will say simply, we are working diligently on the limited use policy. It has now fallen under certain AG guidelines that it did not used to fall under the 6-year review. I share his concerns as well, related to Fourth Amendment violations or issues that may come up from such issues as the parcel interdiction.

We have continued to look at training and making sure our employees are aware, and I think probably the most important issue that we're looking at is the changes to the limited use category to make it more robust and possibly moving that into a regular use and form as opposed to a limited use and form.

Mr. WALBERG. Okay. Thank you.

I yield back.

Chairman CHAFFETZ. Thank you.

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

Mr. MEADOWS. Thank you, Mr. Chairman.

Thank you both for being here. Mr. Horowitz, it's good to have you back with us. And as you can recall, some of our previous hearings have been rather illuminating I guess would be the best way to say that.

And so I want to focus a little bit on access, because the inspector general and your ability to do your job is only commensurate with your ability to access information. We've had some problems. As you well know, we've had some problems not only with the DEA, but we've had some problems in other agencies with access. And it's something that this committee will not tolerate, as you know.

So can you share with me where we are on access and with the DEA specifically, maybe where we've been and where we are today?

Mr. HOROWITZ. Absolutely. And I very much appreciate, as I know the whole IG community does, this committee's commitment to ensuring that fix and passing the IG Empowerment Act, which would address these issues. And I'm hopeful in the next week or so we can get it through the Senate as well.

Mr. MEADOWS. Well, that's where I was going. So you didn't swing in a miss with that softball that I teed up for you there. But

I do believe that—and so maybe you can speak to that critical nature of that particular piece of legislation on how it could have helped in this situation and other similar situations.

Mr. HOROWITZ. So we identified what I think it's fair to say, and DEA has also acknowledged in both of our reports, a very serious concerns in a lot of different areas. Our ability to find that information was delayed by about a year, because—we actually started this audit, or both of these audits, almost 3 years ago. February will be 3 years. The first year my auditors can explain in great detail how little they had to do because of how many roadblocks were thrown up in front of them. That has changed, I am pleased to report, dramatically with the new leadership, the acting administrator, the leadership of OPR.

Mr. MEADOWS. So what you're saying is the resignation of the previous administrator, who came under fire for a variety of issues, this new administrator is doing a better job?

Mr. HOROWITZ. The new acting administrator has done a much better job, and we have gotten the materials that we needed to do these reports in the last almost 18 months now. But that first year was delayed seriously. And it demonstrates why we need the IG Empowerment Act. It shouldn't be up to who sits in the chair in the corner office, of the components we oversee, or any other IG oversees, as to whether we get access to records.

Mr. MEADOWS. All right. So would you say—without disparaging the reputation of a previous administrator, would you say that there are typically conflicting priorities as it relates to access for administrators because they want to not share that they are doing a bad job in a particular area?

Mr. HOROWITZ. That's certainly the risk. And it should never be up to the person whose being reviewed by us and whether their conduct was appropriate to decide what they think we should look at.

Mr. MEADOWS. So it would be someone who was accused of a crime who would say that they could withhold evidence legally if we do not pass this act? Would you agree with that analogy?

Mr. HOROWITZ. I can assure you, as an AUSA having—in my former life and working with agents, I can't imagine a circumstance where the agents would say to the subjects or targets of a criminal investigation, you decide what we should see so that we can figure out whether you committed a crime.

Mr. MEADOWS. All right. So the IG Empowerment Act would give you most of the tools, you believe, to be able to make sure that we not only have a transparent and accountable government but empower the IGs to be able to better do their job not just at DOJ but across the spectrum of——

Mr. HOROWITZ. Exactly correct. There are 73 IGs out there, and many of them have faced, unfortunately, the same issues we did.

Mr. MEADOWS. All right. So, Mr. Patterson, let me come to you, because obviously, something has changed, and Mr. Horowitz is being complimentary in spite of the fact that we are here today over some very troubling concerns that the chairman has illuminated.

What individual policies or rules have you changed or has the acting administrator changed to make sure that access is not an issue?

Mr. PATTERSON. Well, certainly, our current acting administrator has made it very clear, and I feel in a similar fashion, that these reviews, whether it is OIG or any reviews from the Department, make us better. So we embrace that, and we will fully comply with that.

I mean, I will say, we have worked with OIG, my first few months after taking over this job, to rebuild this relationship with the various components that fall under Mr. Horowitz. We put out guidance to the field in terms of—and we worked, again, to put that guidance out jointly to the field as to how they are to respond and provide information to the OIG at the properly informed——

Mr. MEADOWS. So would you agree—and I'll yield back. Would you agree, then, at this particular point without the implementation of a legislative fix, the IG Empowerment Act, that it is up to the individual discretion of an administrator on how they comply and whether they comply, and you would agree that there should be some continuity there?

And I'll yield back to the chairman.

Mr. PATTERSON. I would.

Chairman CHAFFETZ. So to follow up on Mr. Meadows' question, what do you believe you don't have to share with the inspector general?

Mr. PATTERSON. Sir, nothing. I mean, there is—there is—at this point, I don't believe there is anything. I mean, there are safeguards on sharing information with them that's sensitive that they then must uphold and protect.

Chairman CHAFFETZ. Sure.

Mr. PATTERSON. So at this point, under the current administration of DEA, there is nothing that we will not share with them.

Chairman CHAFFETZ. Very well. Mr. Horowitz, is that the way you're finding it right now?

Mr. HOROWITZ. That's correct. In fact, we're going to have a follow-up report that this committee will get and others on the classified use of informants, and we've been getting access to the classified information.

Chairman CHAFFETZ. Very good.

Mr. HOROWITZ. So it has been a very significant change. But the impact and why the IG Empowerment Actis needed, is clear, this was delayed a year. We could have been here a year ago trying to fix these problems.

Chairman CHAFFETZ. Right.

Mr. HOROWITZ. What happened in that one-year period, there were some additional payments, by the way, which we've highlighted.

Chairman CHAFFETZ. Good. I appreciate Mr. Patterson.

We recognize the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

Let me just follow up on this. It sounds like there's some progress being made, certainly, and that's good news.

Mr. Horowitz, by the way, thank you for being back with us. The last time you were here, you expressed very serious concern and frustration over the employees of the DEA who were withholding information. And some of those individuals, it appears, had actually been told to not share information. And, in fact, I recall asking then Administrator Leonhart about this, and she had no satisfactory answer about that.

So are you saying today, a year later, that that issue has been resolved? Is there any shape, form, or fashion in which you're still experiencing this problem?

Mr. HOROWITZ. We don't have anything currently. There was in the last year plus one slight blip I can recall that I had to reach out to the acting administrator or to Mr. Patterson, and it was fixed immediately. But I think the message has gotten through from what my staff tells me, that we're getting compliance.

And my folks know, in light of the battles we fought over the last 5 years, that if there's the slightest hesitation on a component to give us what we need, they need to let me know so I can let you all know.

Mr. HICE. How much of this would you attribute to new leadership?

Mr. HOROWITZ. It's a substantial amount, and that's, again, going back to the issues. That should not be deciding what we get. I can't imagine anybody would want to see that be the deciding factor is, who's the administrator, or the attorney general or you can pick whatever department agency you want.

Mr. HICE. Okay.

Well, Mr. Patterson, how would you now describe the communication between DEA and the inspector general?

Mr. PATTERSON. I view it as outstanding. Again, you know, not——

Mr. HICE. Would you speak a little more—yeah. Bring it up.

Mr. PATTERSON. Not that we have, you know, a relationship out of friendship. I mean, there is a relationship out of necessity for the efforts they do. But I frequently have conversations with all of his staff. Our people on both the inspections division and OPR enjoy a good relationship with their folks. They're communicating well.

Again, and I think I probably recall the instance. We had a personality issue some time ago. It should never be that Mr. Horowitz even has to reach out to anybody at DEA. It should be dealt with at the appropriate level. It was, and it was fixed.

Mr. HICE. Oh, I think it was more than a personality issue. There were actually people who were instructed not to pass on information.

Has there anyone—at the DEA, has anyone been disciplined for directing employees to withhold information from the inspector general?

Mr. PATTERSON. Not—honestly, sir, I haven't looked into that. I'm not aware. I would—if you would want, I can go——

Mr. HICE. I would want, because that's—that should never take place for obstruction to be directed to employees, and yet, obviously, that was taking place, and those who were involved ought to be disciplined in one way or another.

All right. With the confidential source program, Mr. Horowitz, you brought this up a little while ago, are you satisfied that the recommendations that you have made have been fulfilled?

Mr. HOROWITZ. I'm satisfied that there's been progress made. We still have—we've closed some, but there are still——

Mr. HICE. You sad five out of seven?

Mr. HOROWITZ. Five out of seven on our first report, and we're waiting for the update, which we're supposed to get next month, from DEA on the status of our most recent recommendations.

Mr. HICE. All right. Supposed to get next month.

Mr. Patterson, when can we expect to have those new procedures implemented?

Mr. PATTERSON. Well, so we are implementing them as we can essentially get the fix. And I'll go back to the comment that Mr. Horowitz made in his opening. You know, this took us a while to get us to the point that we have found ourselves in. We need to properly unwind those issues.

One of the concerns we always have is that, you know, policy made in situations where you're doing it as a reaction as opposed to looking at the entire process generally doesn't fix those issues. So I think we're being thoughtful as we look at this and trying to come to the right and proper solutions.

Again, the issues that they've pointed out, we share those concerns. Our own inspections division is looking much harder at this program and certain areas at this point. And with that, we will come to, I think, a much better program.

Mr. HICE. Well, I commend you for the steps you're taking. But again, timeframe, when is a general—can you give us a general timeframe when you think it would be implemented?

Mr. PATTERSON. So some pieces are already being implemented. Right? Certain policies are being revised. Certain educational programs like with the——

Mr. HICE. So the full compliance, are we talking 3 months? 6 months?

Mr. PATTERSON. I would hope, you know, a 6-month time frame is an acceptable window.

Mr. HICE. Is that acceptable to you, Mr. Horowitz?

Mr. HOROWITZ. We get an update 90 days after, and we'll continue to get regular updates afterwards. Obviously, it will depend on what we're being told is—if there is a delay, why and on what issues. But I would say the first part would be to correct the policies, but then, of course, education, training is going to be critical to making sure that it's not just a paper program, but it's actually being implemented in the culture.

Mr. HICE. Well, thank you, gentlemen.

And thank you, Mr. Chairman. I yield back.

Chairman CHAFFETZ. I thank the gentleman.

We now recognize the gentleman from Oklahoma, Mr. Russell, for 5 minutes.

Mr. RUSSELL. Thank you, Mr. Chairman.

And thanks to both of our panelists today for the important work that you do in digging into fraud with the taxpayer's dollars. I do know that you have the best interest in heart as you discover these issues.

Mr. Patterson, can you, please, describe the global discovery program?

Mr. PATTERSON. So, sir, I have limited knowledge on this program in my current role. And I know that I believe our administrator has met with members already to discuss this, and I think is scheduled back for additional meetings. The latest issue on this is we continue to work with the Department of Defense and FAA on getting the proper permits to get this plane from its current location down to DEA's Fort Worth location to essentially determine the future usage of this plane.

Mr. RUSSELL. I guess a couple of follow-on questions with that. You know, this French-built ATR 42–500 aircraft, there's a lot of other twin turbo crop aircraft that could be used for surveillance other than a 45-passenger plane that's often used in commercial aviation. Do you have any idea why a French-built aircraft was selected being on average millions of dollars more expensive than some other platform?

Mr. PATTERSON. To give you the most candid answer, I can. I have absolutely no idea why.

Mr. RUSSELL. That might be worth investigating. And while we're going on that loop, in 2008 this aircraft cost, I believe, somewhere in the neighborhood of $8.5 million. Today they cost around $12 million.

We've currently spent, going on now, what, $86 million. How many aircraft could you buy, ten, at the 2008 rate? Were you also aware that there was $6 million worth of damage done to the aircraft as they are trying to install the different radars and cameras that they are not going to be able to install now?

Mr. PATTERSON. I am aware that there was damage. Again, I have limited——

Mr. RUSSELL. How was the damage caused?

Mr. PATTERSON. I don't know, sir. I have limited visibility. I certainly would like to take this back and have the right people——

Mr. RUSSELL. Yeah. You know, the FAA, I mean, they kind of certify mechanics and things to install and look at things. We might want to look at that before we go destroying an $8 million aircraft and turning them into $86 million expenditures.

Two million dollars from the DEA, as I understand it, spent on a hangar that will not be used in collaboration with the Department of Defense for this aircraft that will not fly and now will not be used in Afghanistan. And in addition, there were modifications made to existing hangars in Afghanistan. Can you speak to some of that?

Mr. PATTERSON. Obviously, with the downsizing of our workforce in Afghanistan, the usage of the plane there wouldn't make practical sense, so——

Mr. RUSSELL. Has anyone considered the downsizing of the airplane? Maybe it's elimination where it's selling and cutting losses.

What would be the benefit of having this nonflyable, noncamera operating, nonradar-capable $6 million worth of damage with installation? You see where we're going here? What could possibly—we're talking about 800,000 for an informant here, and, you know, maybe an abuse of $300,000—this is $86 million. Does anyone see a comparison that maybe this might be something that ought to

have a lot more investigation other than Amtrak, you know, manifest list?

Mr. PATTERSON. Look, I agree with you, and I believe—and Mr. Horowitz may know better than I do, that the DOD is also looking into these issues, but I'm not familiar with their investigation or what they're doing.

Mr. RUSSELL. You know, I——

Mr. Chairman, this is one of the most outrageous things that we have.

And, look, I know you guys, you are like us, you go pick up the rocks and look at the creepy-crawlies underneath them, and we certainly appreciate that, and that's how we find so much of what we find. So this is not a denigration of your important work, but this is what exasperates the American people.

U.S. dollars—I love the French. Great people, great allies. They are always there on our endeavors, great foreign policy partner. We make aircraft in the United States as well, probably a lot cheaper than what we've done.

These are things that we really have to dig into. Because of all of the items that we've looked at, and what you presented to us this morning, none is as egregious as this. And just the $6 million worth of damage, you know, could go for a lot of—pay an Amtrak manifest, you know, to people that don't deserve it that you could get in other ways.

So I would hope that as you pick up the rocks and look at the creepy-crawlies, there are a lot more rocks on this aircraft issue, and I don't know how we recover from it other than we just cut the losses, and we move on. But there's a lot more answers that we would like to get regarding the airplane.

And thank you, Mr. Chairman, for your indulgence.

Chairman CHAFFETZ. Thank you.

I'll now recognize myself for 5 minutes.

Following up on Mr. Russell's questions, so Jack Riley, when he was chief of operations—what does that mean, chief of operations?

Mr. PATTERSON. He would oversee our operations division.

Chairman CHAFFETZ. Well I get that. Come on, put some meat on the bones. What——

Mr. PATTERSON. All of our enforcement priorities, which would include air wing and other areas.

Chairman CHAFFETZ. So were things going well with the air wing or not going well with the air wing?

Mr. PATTERSON. I don't have personal knowledge, sir, of how things were or weren't working with the air wing at the time that he was chief of operations.

Chairman CHAFFETZ. I mean, we just detailed an $86 million boondoggle. A lot of this responsibility goes to the Department of Defense. I did have a briefing on it, and I do buy that.

But I just struggle in figuring out how this person in 2015 got a $36,000 bonus. You know, the American people—we're $19 trillion in debt, and I'm sure he's a good, capable person, but it's just unimaginable that we can somehow justify handing out bonuses by the tens of thousands of dollars. I don't think the American people, the people we were hired to do this job for, I don't think they can look anybody in the eye and say, tell me why this person should

have gotten a $36,000 bonus? Because I tell you what, most of the people in our districts, they aren't getting $36,000 bonuses. They may not be getting $3,600 of bonuses.

So when you have a problem that's approaching $100 million, and the thing is sitting in the hangar, and you're the chief of operations, why should you get a $36,000 bonus? He then also got promoted, right? Now he's the acting deputy—principal deputy administrator. So what do you tell the American people about that?

Mr. PATTERSON. I mean, sir, I obviously know Mr. Riley well. I think he's an honorable man. I don't know at what point this rose to his level, the issue with the aircraft.

Chairman CHAFFETZ. He was chief of operations.

Mr. PATTERSON. Right. But again, I don't know at what point this came from our aviation division into the chief of operations.

Chairman CHAFFETZ. If it didn't, that would be a problem, right?

Mr. PATTERSON. And that is possible, sir.

Chairman CHAFFETZ. How do you excuse yourself from this one?

Mr. PATTERSON. Again, I don't have a sufficient answer for you.

Chairman CHAFFETZ. That's right. And I think that's a very candid answer. I think it's a very accurate answer. It's a question we're asking. And we've got to figure out how to figure this out. Because this whole page of people are making tens of thousands of dollars in bonuses, and we have an inspector general report come out. It's not too rosy, and it's just terribly frustrating.

The two recommendations that are outstanding, Inspector General, can you, please, articulate the two recommendations that haven't been agreed to or implemented, and why is there a conflict?

Mr. HOROWITZ. In the report that we received from DEA, they had made some steps towards implementing some of the actions they had presented to us.

Chairman CHAFFETZ. Explain to me what the two are, and then maybe Mr. Patterson can say why the DEA doesn't want to do that.

Mr. HOROWITZ. If you could give me one moment.

Chairman CHAFFETZ. Sure. Sure.

Mr. HOROWITZ. Sorry. The two that we still have—we have as, by the way, resolved in that they have acknowledged the steps that they are going to take and need to take——

Chairman CHAFFETZ. So there's no outstanding—when I heard your testimony, I thought you said five of the seven have been implemented. But the remaining two, are they in the clear now?

Mr. HOROWITZ. Correct.

They are closed—the five are closed. What we call resolved are when a component, here, the DEA, agrees to take the steps we have——

Chairman CHAFFETZ. Right. Are there any outstanding issues?

Mr. HOROWITZ. And there are some as to those.

And what they involve are the recommendations about the long-term confidential sources review, and they have taken some steps to implement policies that would ensure the long-term reviews.

The issue there that we've identified or what we're waiting to see is, if in fact, there's a clear system in place for the timely review of those. Because one of the concerns we found in the 2015 review, and that's what we're talking about right now, was the DEA wasn't following its own policy that then existed. It certainly wasn't com-

plying with the AGguidelines that were in place, and it wasn't clear to us, still, that they had a measurable timeline in place for how they were going to review long-term CIs and what the process was. That was one.

Chairman CHAFFETZ. Okay. And the other issue?

Mr. HOROWITZ. The second one was in looking at the FECA issue, the disability payment issue, two informants, which we had serious concern about whether there was a legal basis to do that, we—our recommendation was for the DEA to go back and evaluate whether there was a legal basis to do that. And our understanding is the DEA is still working on that issue.

Chairman CHAFFETZ. Can you illuminate—my time has gone over here, but why is a confidential informant getting benefits?

Mr. PATTERSON. So, absolutely, sir, on the FECA payments issue, a policy has been posed in extraordinary circumstances where an informant is performing a role as an informant and doing government work, they may be entitled to Department of Labor review for FECA payments.

Chairman CHAFFETZ. How many people are we talking about?

Mr. PATTERSON. A handful. I mean, I don't think actually we've had any in the last number of years. I think these go back some time. The issues were that we did not have a policy in terms of—you know, what the employees leave and know what had to be presented to the Department of Labor. That policy has been posted in our human resources site. The issue related to the question of legality has been worked with the department. We owe responses back, and I think it was essentially providing the proof of both of these things to the IG.

Chairman CHAFFETZ. Okay. Thank you. My time has expired.

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

Mr. PALMER. Thank you, Mr. Chairman. I appreciate the witnesses being here, and good to see you Mr. Horowitz, always.

Your September 2016 audit highlighted widespread issues with the DEA's tracking and oversight of payments, lack of receipts, a lack of information, justifying payments to sources. These are issues that have been going on for a long time and were noted in a, I think, 2005 report. Can you tell us how long these issues have been around and why they've been so persistent?

Mr. HOROWITZ. Well, it's clearly been from our review a long-term problem, because we found analogous problems in our 2005 audit, and now we were seeing the same in 2015 and 2016.

Why it's occurring? It's, in the first instance, a system that isn't being implemented effectively. So, for example, mandatory fields that you are supposed to enter, an agent can just skip over them. There's no point at which, like when we all fill out forms online, and it comes back as a sorry you can't go forward because this mandatory field needs to be filled in. There was no such stop gap with the DEA's files. So you had situations where sources were being input data, but key data, like occupation, wasn't being always entered.

The system wasn't being accurately reported in terms of dollar payments we found in many instances. And so these are systemic failures of the system.

And then separately, we found that DEA hadn't put in place policies, procedures, or practices that allowed headquarters based oversight such that they could watch for these issues, supervise these issues, and make sure change was occurring. It was being left to the field offices to handle these.

And some field offices we found were doing a good job, and some field offices were doing something very different.

Mr. PALMER. Well, you had some specific recommendations in your July 2015 report, and I think in your testimony said the DEA had only implemented five of seven of those. Is that—it begs the question why the recommendations haven't been implemented yet? Does that in any way reflect a resistance on the part of the DEA? I mean, why haven't they implemented all of them?

Mr. HOROWITZ. I don't think it reflects a resistance to them, because certainly, our communications have reflected an interest and willingness to do so. I think, frankly, these have happened, as I said in my opening statement, for such a long period of time, and you just mentioned as well.

They will require, and we expect not just paper policies, but we'll close recommendations when we see effective policies being actually implemented. So step one is the commitment to put the policies in place. Step two is are they now being followed? Can we go in and look at them and say, yes, these are working; yes, these are being followed?

Mr. PALMER. The reason I ask that about the resistance is that in Mr. Patterson's testimony he said that all the recommendations had been implemented. From that report and your testimony indicates that five of seven have been. So I'm just trying to determine——

Mr. HOROWITZ. I think there's an error in terms of the terminology.

Mr. PATTERSON. So as we put our testimony together, DEA has implemented those fixes. It doesn't mean that the IG has agreed with our implementation of those two being sufficient.

So I apologize for that oversight. I did not mean to make the reference that they were closed by the OIG, but that in fact DEA—and as I just explained to the chairman on the FECA matter, the other matter is the 6-year review of the informants. There is still additional work that we can do on that. However, we're now in conformity with the AG guidelines in terms of those reviews.

Mr. PALMER. I hope you can understand the frustration that some of us and maybe most of us on the committee feel and particularly in dealing with the DEA. It goes back to the issue of the sex parties in Colombia and the fact that the agents and many of our opinions were not punished severely enough.

In fact, I think Mr. Horowitz, your report from March 2015 indicated that they received bonuses, which is in conflict with DEA policy. The chairman has brought up the bonus paid to the person who has responsibility for the aircraft. And it's just hard to understand how an organization can operate and violate its own policies and do things that create so much bad publicity toward the agency and not impose any discipline.

So I think, you know, in regard to what we're trying to do here, we are trying to get the DEA in a position where they're func-

tioning with proper oversight where there's accountability and transparency in the agency. And I really want to see the agency implement the recommendations of the OIG.

I yield back.

Chairman CHAFFETZ. I thank the gentleman.

We'll now recognize the gentleman from Tennessee, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

Mr. Patterson, the staff, the committee staff has provided us with information that says, DEA intelligence division cannot provide DOJ OIG with an accounting of its sources or the total amounts paid to CS. And it says that OIG identified nine confidential sources, eight of which were paid $25 million between fiscal year 2011 and 2015.

One source has received $30 million over 30 years. Could that be accurate that the DEA has been paying one confidential source what averages out to $1 million a year?

Mr. PATTERSON. It is, sir.

Mr. DUNCAN. And I guess a lot of people are wondering how they can qualify for that kind of a job. That seems so ridiculously excessive to me to reward a drug dealer $1 million a year. But then there were payments of over $800,000 to an Amtrak employee, who over 20 years, 40 something thousand a year, and then he was later fired for violating Amtrak ethics rules, and he's being investigated by the IRS for not paying taxes. Are you familiar with that case?

Mr. PATTERSON. I am, sir.

Mr. PATTERSON. I am, sir.

Mr. DUNCAN. Did you hear Mr. Horowitz when he said a while ago that they didn't feel that there was adequate information to determine the success and failure rate, and that he couldn't tell whether you were batting 1,000 or batting 0.50. Did you hear that?

Mr. PATTERSON. I absolutely did.

Mr. DUNCAN. And what would be your response to that?

Mr. PATTERSON. Again, I agree with their assessment of that and we are working to fix those issues.

Mr. DUNCAN. Do you anticipate that this $237 million that's been paid over the last 5 years is going to—that you are going to continue those types of payments at that type of level or increase it or decrease it?

Mr. PATTERSON. I mean, obviously, those numbers have the ability to change. That funding is not all appropriated, sir. I will simply say this, that related to fundings of informants, we have to have good accountability and oversight on what these people are paid. We have to be good stewards of how we spend this money, and we are going to do a better job of ensuring that that, in fact, is happening, both in the field division, with our headquarters elements, and through the inspections process.

We have already put that word out to the employees that this is not a kind of voluntary change that we are doing. We are going to look much harder at these programs and inspect them more thoroughly.

Mr. DUNCAN. Well, would you be willing to give the committee detailed information as to people who are receiving payments like $1 million a year?

Mr. PATTERSON. Sir, I'd, absolutely—in fact, on those programs, and I have already informed staff, there are briefings that we could provide outside of the public forum with proper clearances on those programs. So they have been done in the past. I recognize that people have changed over and staff and Members. I would be more than happy to come back and brief you on those programs.

Mr. DUNCAN. I was a lawyer and a judge. I was a judge for 7–1/2 years before I came to Congress trying the felony criminal cases. And I have dealt with many, many cases involving large-scale drug dealers. And I can tell you, I think that paying any confidential informant at the rate of $1 million a year, is ridiculous. It's very excessive. And I'm—I am very disturbed that that type of thing is going on. I just don't see how that could be justified or worthwhile in any respect. Thank you very much.

Chairman CHAFFETZ. I thank the gentleman. I will now recognize the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman. Inspector General Horowitz, I want to see if I can get you to help me a little bit. You have a background as a very distinguished prosecutor, if my memory serves me correctly?

Mr. HOROWITZ. I was a prosecutor. I will leave it to others to decide how distinguished.

Mr. GOWDY. I think you were very distinguished. Why does law enforcement need informants?

Mr. HOROWITZ. They are critical to the effort to get into organized crime, drug rings, other organized criminal activity because the best information is gathered from the inside of the crime families, or structures.

Mr. GOWDY. Yeah, I remember trying to get some first grade and kindergarten teachers to help me in some of my drug prosecutions, but they didn't know anything about the drug ring, so sometimes you have to use people who are actually part of it. But there's a difference between someone working off charges and someone working for money.

Mr. HOROWITZ. Correct.

Mr. GOWDY. Help the jury understand why you would—why you need both, and what the difference between the two is?

Mr. HOROWITZ. Well, on a defendant who has been arrested who wants to cooperate, the law, the sentencing guidelines and policies in place, incentivize cooperation as a way to work off a potential sentence. So judges are informed, and judges then decide what benefit value to give to the individual who cooperates, and that is in the form of a reduced sentence, or, in some instances, no jail sentence that they might otherwise have faced.

For a non-defendant, whether it's a citizen who has not engaged in wrongdoing, or someone who may be involved in wrongdoing but has never been charged, the payments are designed to incentivize them to report on information, provide information that there is no—oftentimes, no other leverage to get, although as I said earlier, for most individuals if they see wrongdoing and it's public, the hope

would be that they would come forward and report on it rather than need to be paid to do that.

Mr. GOWDY. Can you think of an example where you would use a paid informant to gather information that would be available via subpoena or search warrant?

Mr. HOROWITZ. Not off the top of my head as I sit here.

Mr. GOWDY. Do you recall the line of cases beginning with Giglio?

Mr. HOROWITZ. I do.

Mr. GOWDY. What's Giglio?

Mr. HOROWITZ. So Giglio when its progeny require prosecutors, the government, Federal or State, to provide defendants with information that would tend to exculpate them, to allow the defense to argue they are not guilty, but also separately, to impeach the credibility of government witnesses at trial proceedings or other court proceedings.

Mr. GOWDY. For instance, if we were to confer a benefit on a source, a confidential source, that would need to be disclosed to the defense attorney, the defense team?

Mr. HOROWITZ. Correct.

Mr. GOWDY. How do you do that with subsources?

Mr. HOROWITZ. That was our very serious concern, particularly if you don't even know who they are, and you have no policies or controls in place to identify them or understand what their—conduct they are engaged in.

Mr. GOWDY. It strikes me as a serious issue, or, or, I mean, you have that issue, or if there's no expectation of litigation, no expectation that a charge is ever going to be leveled, or a prosecution is ever going to be undertaken, then maybe you don't have to worry about Giglio.

Do you have a sense, in looking at this, whether or not arrest and prosecution were the ultimate objectives of the employment of some of these informants, or was it just simply information gathering?

Mr. HOROWITZ. Based on what we were told, our understanding was these were for the purposes of advancing criminal investigations. We did not go down the road and see who ultimately was arrested and what cases were about. But it was very clear to us that these were to advance criminal drug investigations.

Mr. GOWDY. So, if the objective is to one day wind up in a courtroom with charges, and hopefully a conviction, then how do you get around the use of subsources where you cannot meet your obligations under Giglio?

Mr. HOROWITZ. That was precisely our concern.

Mr. GOWDY. Do you still have that concern?

Mr. HOROWITZ. We do.

Mr. GOWDY. If you shared it with DEA, what did they do to assuage your conscience?

Mr. HOROWITZ. Well, that's one of the things we're waiting to hear back from next month in their first report following our September audit.

Mr. GOWDY. Would you let Chairman Chaffetz know what you—I have a world of respect for law enforcement as I know you do, too, but if the objective is an arrest and a successful prosecution

and you have constitutional requirements under Brady and Giglio, I don't know how do you that with the use of subsources where the prosecutor either doesn't know or doesn't know enough. I don't know how you do that.

Mr. HOROWITZ. Right. That's precisely our concern and there are, I might add, several other areas where we were concerned as to whether the—what was going on in practice impacted, and how it impacted, the necessary constitutional disclosures that needed to be made to the defense about a wide variety of activity we talked about, the disability payments.

It's not clear to us, in fact, it appears to us that that information—if those individuals ever ended up in court—wasn't widely known, and therefore, in almost all likelihood, wouldn't have been fully disseminated. Other activities of tipsters and other limited-use sources that resulted in criminal cases may or may not, unclear, but may be relevant to that decision and there didn't seem to be a system in place for anybody to, in fact, make that assessment.

Mr. GOWDY. Well, I know I'm out of time, but in addition to making life very uncomfortable for prosecutors who have to appear before judges and explain why they didn't turn over certain information, you also run the risk of whatever convictions you gather being overturned because of a discovery abuse. So I hope that you get the answers to your questions, and that if you're able to, you will share the results with Chairman Chaffetz.

Chairman CHAFFETZ. Before the gentleman yields back, could the gentleman yield?

Mr. GOWDY. To the chairman, yes.

Chairman CHAFFETZ. Following up on Mr. Gowdy's question, of the $230-plus million over 5 years that was paid, do you have a sense or precision on what percentage, or which dollars went to these so-called sub-informants?

And the second part of that is, what did the American taxpayers get? Do we have—are there any metrics on convictions, drug seizures? Like, what did we get for $237 million?

Mr. HOROWITZ. Taking that last question first, that was, in fact, one of the challenges that we faced in looking at these payments. It wasn't clear to us, and you couldn't connect, and, in fact, the database oftentimes wasn't accurate, to figure out where those payments went and what they resulted in. It's an issue we are looking at actually right now on the asset seizure review that we are doing. It's—a similar question has been raised, similar issues have been raised about interdictions. Yes, we know about the successful seizures, but where did that lead? What—did that lead to furthering a criminal investigation? Did it lead to an arrest? How many unsuccessful interdictions were there?

In other words, how much was the public's privacy being impacted, or civilians who are being asked questions at train stations, bus stations, airports, that don't ultimately have drugs, or cash; how many of those events occurred? And I think all of those are weaknesses in the data collection effort that's going on.

Chairman CHAFFETZ. Mr. Patterson, how do you answer those questions?

Mr. PATTERSON. Again, I agree with Mr. Horowitz' concerns. We are working on properly staffing and reviewing a number of these issues at the headquarters level, making sure that the data that is getting into our system is proper. Related to the other Member's question related to the subsources, we are working with our other Federal partners to find out how they are dealing with those specific issues and subsource-related cases.

So, again, we're——

Chairman CHAFFETZ. So do you or do you not have a database? If you get $50,000 to pay off some informants, you can't tell me there is a database, I can go to line whatever 237, and say, well, this is what happened?

Mr. PATTERSON. Sir, we do have a headquarters database, a centralized database in which we track this. As Mr. Horowitz——

Chairman CHAFFETZ. So what are the metrics? Where is this——

Mr. PATTERSON. I think it's the absence of the negative, right, in terms of we would have to go to specific case files in the field if it's available to see, you know, we made three other attempts at looking at information and saw nothing. That is essentially guidance that we are putting out to the field that we have to collect this information as well.

Chairman CHAFFETZ. So you have no—I'm still confused. Do you have data or not have data on how many convictions, seizures, those types of things? You don't—can't produce a sum total of that?

Mr. PATTERSON. Related to the specific payments?

Chairman CHAFFETZ. Yeah.

Mr. PATTERSON. There needs to be a proper justification for why those payments were made. That doesn't necessarily capture the totality of the circumstances, and I think that's the issue that they have presented. And that's something that we are working on.

Chairman CHAFFETZ. When you say you are working on it, come on, you are the senior management. You are the senior management. So how long have you been working on it and when are you going to have it?

Mr. PATTERSON. Well, we started to have these discussions, I think, probably over the summer. We started doing immediate work on the limited-use issues because, quite frankly to me, they are more important than capturing this data. And I'm not trying to say that anything is, you know, one thing outweighs the other, but I think there's some significant issues in the limited use, especially when it comes to Fourth Amendment issues that raised to get those issues addressed in front of this. But, again, we are working—I know the administrator is committed to doing this, is to getting this right in terms of making sure that we have the data because we also need to evaluate, and as I said earlier, to be good stewards of how we pay this money.

So we need to be able to balance those out internally as well. As I said, we have the Office of Inspections now going out, and to me, it's really about accountability and oversight both in field managers and from headquarters.

Chairman CHAFFETZ. Well, look, law enforcement is usually pretty good about bragging when they get a big seizure, arrest or conviction. We just don't have any metrics to compare a quarter of a billion dollars to what?

Mr. PATTERSON. Well, I mean, I think the issue that I was trying to refer to wasn't—look, we are seizing more than we are spending. Right? I mean, that's——

Chairman CHAFFETZ. I don't know that. How do I know that?

Mr. PATTERSON. Well, we have statistics on——

Chairman CHAFFETZ. Well, where are they? Can I get them?

Mr. PATTERSON. Yeah. I mean, I have no concerns about providing those to the committee. I will take them back and ask to get that provided to you.

Chairman CHAFFETZ. Okay.

Mr. HOROWITZ. You know, from our standpoint, I think our—I think the information shows that the seizures exceed the quarter of a billion dollars in informant payments, although I think there's a challenge in matching the payments to the seizures, and so macro numbers don't completely answer the question.

The other issue that's, of course, of significant concern is, if you incentivize an Amtrak employee or an airplane employee or a cargo company employee, if you seize money, we will give you a reward, how many boxes are they opening? How many passenger manifests are they providing? How many people are getting pulled out of line to find the person or persons that a seizure results in an award?

As I said earlier, is it, they are very good at it and so they are batting close to 1,000, or is it they are just picking as many people as they think fit a generalized profile such that they are batting near zero. But they are finding a few, so they are getting good cash awards.

Chairman CHAFFETZ. Right. We have gone way past. Let's recognize the gentleman from Wisconsin, Mr. Grothman, for 5 minutes.

Mr. GROTHMAN. Okay, for Mr. Horowitz, you reported that the relationships created by the DEA with limited use confidential sources went beyond that of a person who provides tips, but, rather, that people were acting almost on behalf of or in partnership with DEA, giving them real-time information. In some cases, the DEA compensation was greater than they were getting in their regular job.

What privacy concerns would DEA essentially treating these sources as independent contractors, and asking them to perform specific tasks do you see?

Mr. HOROWITZ. Well, the most significant one is the potential Fourth Amendment issue, and the privacy interests that are at stake, given what they are—what—having been categorized as limited use, they are supposed to be individuals who are simply on their own voluntarily tipping the DEA to information, when what we see here are multiple payment and even direction being given to those individuals on what information to provide, who to provide it on, et cetera, that it could easily be seen that they are, in fact, an arm of DEA and an agent of DEA, as opposed to a pure voluntary tipster, as what I think the limited-use category was intended to be, at least as we understood it.

Mr. GROTHMAN. Yeah. I will give you a more specific example. It appears that DEA had one confidential source working in the parcel industry and they were opening up packages and if they found cash, they were alerting DEA. Now, I assume if you were a DEA employee, you couldn't sit there and, you know, without a warrant

or something, just opening up packages. Furthermore, and this was kind of interesting. In this specific instance, they'd call if they found cash, but they never happened to find drugs, which seemed a little bit suspicious. So I wanted your comment on that.

Mr. HOROWITZ. It's a serious concern for the—precisely for the reason you indicated. I think there are two competing issues here. Right? The public wants two things to be occurring. They want—they don't want to see drugs, or illegally transmitted currency being transmitted through these processes, but they also want to make sure that people are following the constitutional rules, laws, and procedures and that everybody's privacy and expectations, when they send a package through the mail, aren't invaded simply in a rummage or search by someone who is looking for a cash reward with little control over them.

And that's the problem that we saw here.

Mr. GROTHMAN. So as a practical matter, they are hiring people, or they are giving payment, sometimes payments more than a person's salary, to do something that would be unconstitutional if their own employees did it?

Mr. HOROWITZ. They are potentially incentivizing individuals to essentially act as their arm raising that Fourth Amendment issue as you indicated.

Mr. GROTHMAN. Okay. Switch gears a little bit. Your September 2016 audit highlighted widespread issues with DEA's tracking and oversight of payments. A lot of these issues have been going back—are similar to those that were happening in a report that was issued in 2005. So we've had an 11-year period here, and we are still finding the same issues. Could you comment on that?

Mr. HOROWITZ. Yeah, that was a concern to us, and obviously, something that should have been long ago addressed. And it cascades into a whole series of issues. It limits, as Mr. Patterson said, the ability of management at headquarters to understand how their program is working and whether it's working well. It prevents or affects the ability of the DEA and the agents to provide accurate and full information to prosecutors so they can fulfill their constitutional responsibilities if they are prosecuting somebody. It limits the ability of the public and through reports to Congress and the work that we do, to understand whether its money is being used wisely and consistent with the parameters of what is permissible and not permissible.

Mr. GROTHMAN. Okay. We will ask Mr. Patterson, kind of going off the same line of questioning, what your comments are that we seem to have the same problems in 2016 as we identified 10 years ago, 11 years ago.

Mr. PATTERSON. That's correct, sir. So we have a computerized database that is about 5 years old that did not exist back in 2005 that resides at headquarters. During their review, and, frankly, during our current reviews, we are seeing that not all information is filled in. We now have the headquarters review by individuals that work in operations management to ensure all those fields are, in fact, filled in. It seems like a relatively simple thing. Again, it needs to be done better and we need to ensure that it's happening.

Mr. GROTHMAN. Thank you very much. I see my time has expired.

Chairman CHAFFETZ. I thank the gentleman. We will now go to the gentleman from Texas, Mr. Hurd, for 5 minutes.

Mr. HURD. Thank you, Chairman. I would like to pick up on Mr. Grothman's line of questioning. And let me preface by, I spent the majority of my adult life managing sources in the CIA. Now it's different. It was foreigners and it was overseas. And my question is, how do you not have a receipt for a payment? And let's start with you, Mr. Patterson.

Mr. PATTERSON. So the issues—and I don't have a full understanding of the actual, the missing receipts for payments. I think it was the accounting. I don't know if it was actually missing receipts, but the accounting that they were able to look at, I would like to follow up, certainly, with my counterpart to come across that. It shouldn't be possible. The question is, is it physically a missing form? I don't believe that it would be possible to——

Mr. HURD. Mr. Horowitz, do you have any perspective on that?

Mr. HOROWITZ. Yeah, I think from our standpoint, it was missing data, missing information that we couldn't confirm because of the absence of the document. Doesn't mean the document wasn't, perhaps, created earlier and lost, but we don't know—I think it's fair to say the challenge we had in working through the system and understanding what was missing and how did we—how do we learn what is going on here.

Mr. HURD. So do you, Mr. Horowitz, do you feel that within the DEA, that there is a clearly-established criteria to be used to determine whether money being paid to a confidential source was valuable or worth it?

Mr. HOROWITZ. No. I don't think that that was going on, that that was one of the issues, that there were success payments for successes, but beyond that, there weren't evaluations going on of how many misses there were, how many times were packages opened, how many times were people pulled out of line that resulted in——

Mr. HURD. And when you use those examples, pulled out of line, going into a package, is that because we are talking specifically about limited use, or is this the payments to people that are trying to infiltrate some of these gangs and these criminal organizations?

Mr. HOROWITZ. Many of these issues we found were in the limited-use category. So that's where we saw, over and over again, our area of concern on this issue, in particular. Separately, the subsources may have been in a different category, much more like what you're suggesting, which were more traditional criminal use of those individuals that present a slightly different issue.

Mr. HURD. Mr. Patterson, do you feel that DEA has a clear criteria on what is a successful use of a limited-use confidential source?

Mr. PATTERSON. Just specific to limited use?

Mr. HURD. Yeah.

Mr. PATTERSON. So look, there's a number of issues related to limited use. One is, obviously, direction. That is a definition that we are working with our chief counsel to get out to the employees. It has got to be a one-way flow of information. We have made our employees aware of that, but again, we need to get the policy correct on this.

In terms of payments to the individuals, you know, that is directed, and although limited use requires a lower level of oversight for establishment, those now informants fall under the same policy as all informants.

Mr. HURD. So the DEA officer that is involved in the recruitment of limited source, are promotions based on the number of sources you recruit, whether it's any limited use or not?

Mr. PATTERSON. No, sir.

Mr. HURD. What is the criteria for moving up the chain?

Mr. PATTERSON. For promotion within DEA?

Mr. HURD. Yes.

Mr. PATTERSON. Promotion is, obviously, based on performance and depending at what levels that they are done, there is also additional testing that's done.

Mr. HURD. So is it number of arrests, the amount of dope you get off the streets, or are there any issues like——

Mr. PATTERSON. No. I mean, the current administrator has made it very clear that we do not use a metrics-type system for promotions; that our mandate is to essentially work the biggest and best cases.

Mr. HURD. So how does headquarters evaluate the approval process to go forward with the recruitment of a source, whether it's limited or not?

Mr. PATTERSON. How does headquarters validate that?

Mr. HURD. Uh-huh.

Mr. PATTERSON. So in the field when they essentially complete the—not the request, the establishment paperwork, that is reviewed at the headquarters level and then is assigned a number back to the field.

Mr. HURD. And are these criterias not used? What criteria are being used to determine whether money should be spent in order to run that source?

Mr. PATTERSON. So that is, again, administered at the field level up to a certain dollar amount. And, again, as I started to explain on the limited use, although there is less oversight in the establishments of these individuals, the financial pieces of this all have the same regulations.

Mr. HURD. Right.

Mr. PATTERSON. There are certain approval levels that are able to happen in the field. And once they exceed a certain amount——

Mr. HURD. And there's not—so the problem, Mr. Horowitz, that you're seeing is that there is not a connection between when there's a payment back to what the criteria that was originally used to authorize that payment?

Mr. HOROWITZ. I think we have a couple of concerns based on what we see is that there is really no measurement beyond, did you make a seizure, and did you get an award, beyond—or are you sending us leads that never panned out? Right? Does this informant send us 1,000 leads and one pans out, or 10 leads and 10 pan out.

Mr. HURD. Yeah.

Mr. HOROWITZ. Another part of it is, we are concerned that when they did their—in the past, at least when they did reviews of long-term sources, when they had committees get together to look at

these individuals who got large dollar amounts, or were in place for long periods of time, we saw that they were spending less than a minute per source per review, which, obviously, is not a serious review of that.

Now, we've seen changes that have occurred since we issued our audit in the last 2 years in that regard. That was several years ago. But that was indicative, I think, of a significant concern for precisely the reason you indicated.

Mr. HURD. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you. And to now recognize the gentleman from Georgia, Mr. Carter.

Ms. CARTER. Thank you, Mr. Chairman, and thank both of you for being here. Gentlemen, I'm a lifelong healthcare professional, a pharmacist. I've practiced pharmacy for over 30 years, and have owned and operated my own pharmacy. So I know about the laws and the regulations that pharmacists must comply with in order to handle or dispense controlled substances. And this includes licensing and it includes inspections of pharmacies that are conducted by the DEA.

Without a proper license, and without a DEA number, a pharmacist can't practice. We can't dispense controlled substances. And I certainly understand that and certainly have experienced that.

Mr. Horowitz, I'll start with you. Would you agree that there's a potential for a conflict of interest whenever there's a licensee of the DEA, such as a pharmacist?

Mr. HOROWITZ. Absolutely.

Ms. CARTER. And also, acting as a confidential source for that same agency?

Mr. HOROWITZ. That's correct.

Ms. CARTER. You would agree that's a conflict of interest?

Mr. HOROWITZ. And in fact, it presents certainly a potential for that conflict, and in fact, that was one of the concerns we found in our 2015 audit, that DEA didn't have those procedures in place. And, actually, going back 4 years to our Fast and Furious report, we made that precise point with ATF because they were using FFLs as sources of information and presenting in a different context, but precisely the same issue that you've identified, Congressman.

Ms. CARTER. I can tell you, it puts us in a precarious position. For someone who controls my license, for someone who, you know, controls my practice, and here I am, and all of a sudden I'm a confidential source, that puts me in a very sticky situation. And as you pointed out, there was an audit in July of 2015 that the DEA did not have the proper controls and policies in place to ensure that there was no conflict of interest when a license holder, such as a pharmacist, was also a confidential source. The DOJ previously issued guidance to address this issue. Is that right?

Mr. HOROWITZ. That's correct.

Ms. CARTER. Okay. Is—and it was after the ATF, as you mentioned, in Fast and Furious that was after that happened. So has the DEA used the guidance issued by DOJ to develop policies and help control this potential conflict of interest?

Mr. HOROWITZ. Our understanding is that since our report, they have now moved forward with those procedures.

Ms. CARTER. Did you see the recommendations, Mr. Horowitz? Did you think that they were applicable and would offer, for lack of a better term, protection to the licensee?

Mr. HOROWITZ. Absolutely. It's particularly important that that be done for the reasons you indicated and what we saw before with ATF as well.

Ms. CARTER. Okay. Also, it's my understanding in this audit that DEA didn't have a special category to designate a confidential source to have a dual relationship as both a source and a licensee. Is that important? Is it important to have a designation like that?

Mr. HOROWITZ. It's critical because you want to make sure that supervisors all along the chain of command, including at headquarters, have the ability to make that assessment as they are first approving the source, and then secondly, as they are reviewing the use of the source. In both ways, you need that information or else you may not know who falls into that category.

Ms. CARTER. Right. So Mr. Patterson, can you tell me the status of these concerns that were raised by the July 2015 audit of licensees, such as pharmacists acting as confidential sources?

Mr. PATTERSON. As Mr. Horowitz just stated, so we have both issues addressed and placed in policy. I would be more than happy to get that policy to you if you'd like to look at it yourself.

Ms. CARTER. Has it been implemented?

Mr. PATTERSON. It has been, sir.

Ms. CARTER. Okay. I would—if you don't mind, if you could get that to us. I hope you all can appreciate the precarious position this puts us in. Let me tell you, you know, the pharmacies that my wife now owns, since I became a Member of Congress, you know, we don't—we love the DEA. And we love seeing the DEA, but we'd just as soon them not be in our stores, if you understand what I'm saying.

I mean, not that we have anything to hide. We don't. But at the same time, we have a great respect for someone who holds our license, and it is just a difficult situation if we are going to be put in that situation to be a confidential source like that. I mean, and we want to help. We want to do everything we can to cooperate. And, you know, more so than anyone, we want the bad guys caught too. So, but, it's just a very precarious situation, as I said before.

Just very briefly, if you could, just how can the policy be enforced? Can it be enforced?

Mr. PATTERSON. The policies?

Ms. CARTER. The policies.

Mr. PATTERSON. Yes, certainly, in terms of our oversight internally to make sure that it's being applied appropriately, absolutely. And we'll do that with our Office of Diversion Control and with our operations manager to make sure that's the case.

Ms. CARTER. Okay. Well, thank you again. Thank you both for this. And if you could get me those policies, I'd appreciate it very much.

Mr. PATTERSON. Absolutely.

Chairman CHAFFETZ. I thank the gentleman. I have a few follow-up questions as we conclude here.

And Mr. Patterson, I appreciate the commitment that you're making on behalf of the DEA to be cooperative.

On June 22 of this year in the Senate Judiciary Committee, Chairman Grassley, who has done exceptional work on this topic, he asked, when will the DEA confidential source policy be fully implemented? And he asked a few follow-ups directly on that same question.

Mr. Rosenberg said that it had been finalized. I'm quoting, "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. He went on and extrapolated on this. But my understanding from Senator Grassley is they have not been given a copy of that policy and we have not been able to see a copy of that policy.

Is that something you are or are not able to provide to the committee?

Mr. PATTERSON. Yes, sir. I just asked—I mean, we have done in-camera reviews with staff and I don't know what staff, but I'd be happy to let you know who it's been done with and follow up with you on that piece of information.

Chairman CHAFFETZ. And why was the justification for not allowing us, giving us a copy of that policy?

Mr. PATTERSON. That I don't know, sir, but I'd be happy to find out what the justification is and also get that.

Chairman CHAFFETZ. What do you believe Congress should not be able to see?

Mr. PATTERSON. I don't—I don't have any idea why that would have been done. So I'd like to find out the proper answer to give to you as opposed to guessing.

Chairman CHAFFETZ. When you have the acting director committing to the Senate Judiciary chairman that he can have it, and then he's not given it, you see where that's a problem?

Mr. PATTERSON. Understood.

Chairman CHAFFETZ. Do you see—understand why I'm going to have a problem if you don't give it to us?

Mr. PATTERSON. Understood.

Chairman CHAFFETZ. Have you seen it, Mr. Horowitz?

Mr. HOROWITZ. One second. I have not personally seen it. We have seen it.

Chairman CHAFFETZ. Okay. So you give it to the inspector general. That's good.

Mr. HOROWITZ. Right.

Chairman CHAFFETZ. When will I—when will you get me that answer?

Mr. PATTERSON. I will get you that answer as quickly as possible after returning to the office.

Chairman CHAFFETZ. Do you understand that in camera is different than giving us a copy of that policy?

Mr. PATTERSON. I do understand that.

Chairman CHAFFETZ. And you understand we are not going to be satisfied with an in-camera review?

Mr. PATTERSON. You are making that very clear.

Chairman CHAFFETZ. Okay. Thank you.

Mr. Horowitz, give us perspective here. You know, within the Department of Justice, there are other law enforcement agencies who do deal with confidential informants; the FBI, for instance. Are

there totally different policies, procedures and implementations between these agencies, even though they are all within the Department of Justice? And why are they not taking best practices and making them uniform across agencies?

Mr. HOROWITZ. That's an excellent question, Mr. Chairman, and one——

Chairman CHAFFETZ. Just a little closer.

Mr. HOROWITZ. Sorry. That's an excellent question and one that we have asked repeatedly, because you're right. If you look at the three components that deal the most with informants which is FBI, DEA and ATF, they have varying policies, even though there are the attorney general guidelines on the use of informants, and in just the 4–1/2 years I have been the IG, we have now issued two reports finding that two of those three components were not in compliance with the attorney general guidelines.

As you well know, 4 years ago when the Fast and Furious report, we made that finding with regard to ATF. And in last year's July 2015 report, we made that clear as to DEA as to the categories we were looking at.

And, obviously, that's of concern, and while there should be supplemental and differences in the policies given some of the unique uses of informants for each of those agencies, for example, the FBI has a very robust intelligence program, and other needs. The DEA, obviously, has much more foreign uses and international reach and other issues. ATF, obviously, again, many localized issues. So each should be particularized. But it has been a question we have and will continue to raise exactly what you just indicated, which is why aren't there consistent overarching principles and procedures and policies all across the multiple components?

Now, we are seeing that in response to our reports, our first Fast and Furious report, the follow-up Fast and Furious report, the two audits we have done here. We are seeing more of a centralization, but that is something that we continue to push forward, actually not only in this area, but in several other areas as well.

Chairman CHAFFETZ. Yeah. And I guess that's part of the point, Mr. Patterson, to carry back to the DEA as a whole. This is not a start-from-scratch project, you know, this is—you are not necessarily blazing new trails and ground that has already been tilled here. You can actually, you know, learn. And somehow, we need the Department of Justice to kind of coordinate. That's why they are all within one—we have one attorney general who can say, look, here are—you can solve 80, 90 percent of this with best practices and these are the tools and the mechanisms and the software, quite frankly, in order to track and do these types of things. And I don't expect you to respond to that other than to say it would be encouraging to know that we are getting some economies within the Department of Justice.

Mr. PATTERSON. If I could actually respond to it.

Chairman CHAFFETZ. Sure, sure.

Mr. PATTERSON. I mean, and hopefully this will be a piece of good news. We are actively working with both the Bureau and other components right now to look at those best practices, especially when it comes to subsources and other categories that we have struggled with.

Chairman CHAFFETZ. Okay. Great.

Mr. PATTERSON. So that process is already underway.

Chairman CHAFFETZ. Very good. Let's go back to the $1.5 million, I believe the number is, that was paid to TSA employees and Amtrak. I don't know if it's employees, or employee. Let's first go to Amtrak. What were we paying off—what were we getting for that money? I believe it was $800-plus thousand went to one Amtrak employee over a course of 20 years. What did we get for that? What was he giving you or she giving you on a monthly, daily, whatever basis it was?

Mr. PATTERSON. The individual was providing information related to suspicious travel, last-minute purchases of tickets, other things that would raise to that level over the course of that 20 years.

Chairman CHAFFETZ. But why do you have to pay for that to an individual? Why not go to Amtrak and say, look——

Mr. PATTERSON. So I don't have the good answer for why this started back in the 1990s. What I can tell you is that this practice has been stopped. We have clear guidance that this is not permitted for both quasi-government, and government employees; that there is no payments to be made if they are performing as an individual providing information that they should be doing in their daily job.

So it is fixed moving forward. I don't feel like I have a satisfactory answer. I know we have engaged with Amtrak to try and acquire this information. That is still a work in progress. You know, I don't think it's as simple as, you know, having access to information. I think it's knowing more about that, and like I said, we are working on that currently with Amtrak.

Chairman CHAFFETZ. Let's go to the TSA. What—how many TSA employees were you paying off?

Mr. PATTERSON. I believe it—I think it was a total of eight had been established at some point. I think two or three of those individuals ultimately received payments. I know there is an ongoing investigation by the OIG, which I don't believe we can comment on.

Chairman CHAFFETZ. That's a significant amount of money to TSA, right? How much money went out the door to TSA employees?

Mr. PATTERSON. I think it was—I don't know the exact figure, sir. It's in the $50,000 to $100,000 range, I believe.

Chairman CHAFFETZ. Inspector General Horowitz, can you illuminate this anymore?

Mr. HOROWITZ. I'm just looking for the precise number.

Chairman CHAFFETZ. Sir, I guess staff is telling me the number is about $84,000 paid to three different people.

Mr. HOROWITZ. Yeah.

Chairman CHAFFETZ. What were the TSA employees providing to DEA, surreptitiously?

Mr. PATTERSON. I believe it was information related to seizures of currency.

Chairman CHAFFETZ. Seizures of currency?

Mr. PATTERSON. Information related to passengers. These were screeners with TSA, not law enforcement personnel. That was the weakness in our policy, quite frankly, is it dealt with law enforce-

ment individuals? And I said, again, that that practice has been stopped and it's clear in policy.

Chairman CHAFFETZ. Okay. So since it's stopped, we can talk about what happened. So when they were finding currency, they would go to the DEA and say, hey, I found some currency. Give me some cash?

Mr. HOROWITZ. My understanding, they were being asked if they saw currency as you went through an x-ray, to tip the DEA to that, so they could follow up on it afterwards. And of course, that's a potentially—depending on how it's arranged—wholly inappropriate use of the entire screening system that's been put in place in this country and raises, again, Fourth Amendment issues as to who they worked for, did those individuals, were they incentivized through the payments to be DEA, arms of DEA and be supporting criminal investigations, or were they there in a public safety role to protect the flying public?

Chairman CHAFFETZ. So where is this?

Mr. PATTERSON. The reason why I hesitate is because I know there is an ongoing OIG investigation and that's why I didn't, you know, I'm not familiar with their investigation. We'll obviously look at any administrative impacts that come at the completion of that investigation.

Chairman CHAFFETZ. So is it fair to say, Inspector General, that there's an ongoing OIG investigation into this?

Mr. HOROWITZ. We are continuing to review that and through our investigations.

Chairman CHAFFETZ. And is the inspector general for Homeland Security involved in that, or is this just coming through DOJ?

Mr. HOROWITZ. He is aware of that and we have been in communication, as have our teams on all of these issues.

Chairman CHAFFETZ. So I'm trying to figure out who did something wrong and whose going to be held accountable for that. And what were the implications?

Mr. HOROWITZ. Well we, you know, we certainly, for example, on the Amtrak matter, we worked closely with the Amtrak OIG to move forward and look at that matter. And we are doing the same on the Homeland Security side with our counterpart at OIG there. And will hold accountable, as we always do, our—the individuals that we find engaged in wrongdoing, whether criminal or noncriminal. Criminal, obviously, goes through the judicial process, administrative noncriminal, we would report back to DEA for their handling on administrative matters.

Chairman CHAFFETZ. To Mr. Patterson, I want to ask you here. The Atlanta Journal Constitution had an article by Alan Judd of November 28th, "Sex Drugs, and the DEA. Atlanta Agent Accused of Improper Conduct." An Atlanta-based supervisor allegedly having a sexual relationship with two DEA confidential informants, and arranged for the agency to pay one of them some $212,000. Senator Grassley, again, has been leading out on this, and hats off to his good work and him and his staff.

Where is this investigation and what's being done about this?

Mr. PATTERSON. Again, this was an investigation in which we had gone to OIG and it had come back to DEA. We began the investigation. As we did, we found issues that rose to criminal, poten-

tial criminal charges. We went back to OIG. They had been handling that part. I will tell you though, sir, and outside of that and I'll leave that to Mr. Horowitz to discuss if he can, we have held managers accountable as well as people below them in this particular instance.

Chairman CHAFFETZ. You've done what with them?

Mr. PATTERSON. We have investigated and held managers accountable.

Chairman CHAFFETZ. When you said held them accountable, how did you hold them accountable?

Mr. PATTERSON. Well, ultimately they resigned, but they were being investigated by the Office of Professional Responsibility for their role in oversight of——

Chairman CHAFFETZ. How many people resigned?

Mr. PATTERSON. —the individual. We had an agent task force officer return to his department, and then a grade 15 retire from DEA.

Chairman CHAFFETZ. So he gets full benefits. He's not prosecuted. So you just let him go? You didn't—no prosecution?

Mr. PATTERSON. It's not criminal in nature for him. I will also say, one of the things, the employee was put out on suspension without pay during the course of the investigation.

Chairman CHAFFETZ. How long had he worked for the DEA, if you had to guess?

Mr. PATTERSON. Yeah, I think it's about 15 years. But again, I can find that out for you.

Chairman CHAFFETZ. Well, look, again, this is a tough thing because the men and women—9,000-plus employees, did I get that right—they do a good, hard, decent patriotic job. They put their lives on the line, and we are immensely grateful. But you do have bad apples as we do in every department and agency, quite frankly. The bigger the agency, this is going to happen. I mean, just human nature. The odds are that the bigger the department or agency, you are going to have more and more bad apples. It's just the reality of it. But it is important that—I feel very strongly and passionately of the idea that you need to hold people accountable and you do—they do need to have consequences. And I worry that it is all too often in the Federal Government, they just walk away, you know, go ahead and retire, get your full benefits. Pat you on the back on the way out when you have done something really dramatically wrong. And in some cases, it is criminal. Other parts, it's not. But I want people to be held accountable and I want the other 9,000 people who do it by the book and do do it right, to know that when somebody does step over the line, there are consequences. And not just, Hey, you know, go ahead and retire, and, you know, move on.

That's—that seems to fall far short of the proper justice that should be required. So listen, we appreciate, again, please carry back the—how much we do appreciate the DEA and the tough work that they do to the inspector general. You have got a wonderful staff. They do hard work over in this case, close to 3 years, but let's also make sure that, you know, this was done 10 years ago. And we didn't learn the lessons and implement that. I don't want to come back again only to find out that with a change of administration, or a change of personnel, that this gets forgotten about.

And I think that's incumbent upon us to continue to ask you about it, and make sure that the progress continues.

But it's also just the best practice to make sure that the future generation of people that are working at the DEA have the proper support, the resources, the policies to protect themselves, but also to make sure that the agencies, be the premier agency that we need it to be.

So, again, to Inspector General, please know how much we appreciate your staff. And I know they beat their head on frustration trying to get things. But I am very pleased to hear, Mr. Patterson, about the progress and cooperation. That's very, very encouraging, and very much appreciated. So we thank you both for the work and this hearing now stands adjourned.

[Whereupon, at 11:48 a.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Opening Statement
Ranking Member Elijah E. Cummings

Hearing on "Oversight of the DEA's Confidential Source Program"
November 30, 2016

Mr. Chairman, thank you for holding today's hearing, which focuses on a report issued in September by the Inspector General (IG) of the Department of Justice that identifies weaknesses in the management and oversight of DEA's confidential source program.

Confidential sources are essential to DEA's efforts to combat illicit drug trafficking. DEA Special Agents are on the front lines of recruiting and managing these sources. This is an extremely difficult and dangerous task.

Unfortunately, the confidential source program has long suffered from inadequate oversight—at least as far back as the Bush Administration—and although they have made some improvements, they still have a lot of work to do, particularly in safeguarding civil liberties.

In July 2005—during the Bush Administration—the Inspector General issued a report finding, "deficiencies" that led them to conclude that "DEA does not have an effective confidential source payment tracking system."

This finding is almost identical to the IG's report this past September, which found, "deficiencies" that led them to conclude that "DEA did not institute sufficiently strong internal controls over confidential source payments."

Back in 2005, the IG found, "multiple DEA offices categorized the same source differently and improperly categorized other sources."

Eleven years later, the IG again found "substantial variations in how confidential sources are categorized."

The IG report in September raised serious concerns about so-called "Limited Use" sources, or sources who provide information they receive by virtue of their business position.

The IG found that DEA doesn't require the same level of oversight of these sources, which are managed at lower levels in Field Offices.

According to the IG, DEA paid $26.8 million to 477 Limited Use sources between FY2011 and FY2015. That's an average of about $56,000 per source. Some of these sources were used on a daily basis over an extended period of time.

In addition, DEA paid employees from the Transportation Security Administration and Amtrak for information that DEA should have obtained from them at no cost. In fact, one Amtrak employee—who I understand was terminated in 2014—was paid nearly a million dollars over 20 years to provide information that DEA could have obtained by picking up the phone and calling the Amtrak Police Department. That was money Amtrak could have used for new equipment for its police officers.

These challenges are persistent, they are longstanding, and they predate the current Administrator. Nevertheless, Mr. Patterson, this is your watch and your boss's watch, and we expect you to work tirelessly to address these issues.

Now, DEA has definitely made progress in improving oversight of its program. Just today, the Government Accountability Office sent a letter to this Committee stating that DEA fully met the recommendation made in 2015 to improve monitoring of informant activities.

Despite these improvements, I believe there is one significant area that has not received sufficient attention, and that is the issue of protecting the civil liberties of innocent Americans. As part of this investigation, we have heard how one DEA agent encouraged a confidential source at a bus company to provide entire passenger manifests for some bus routes—on a daily basis for more than three years.

Think about that. No warrant. No probable cause. No apparent standard at all. That means if you traveled by bus between two U.S. cities, it's possible that the DEA obtained your personal information. And they still may have it today.

The breadth of this power raises serious questions about the privacy of many innocent Americans, and it raises questions about the need for legal process.

This is not a partisan issue, and I'm sure many of my colleagues on the other side of the aisle are also concerned about this extensive government intrusion into their lives with little oversight. I hope we can pursue some of these questions here today, and I thank all of our witnesses for being here.

Thank you again, Mr. Chairman.

Statement for the Record
Rep. Michelle Lujan Grisham

House Committee on Oversight and Government Reform Hearing on "Oversight of the DEA's Confidential Source Program"

November 30, 2016

Thank you, Mr. Chairman, for holding this important hearing today. Frankly, I'm not surprised by the Inspector General's (IG) report which found significant failures in DEA's management and oversight of its Confidential Source Program. My home town knows the consequences of what can happen when DEA mishandles high-risk informants.

Edward Quintana is a violent convicted felon with a history of violence in Albuquerque, New Mexico. Quintana was arrested 14 times between 2002 and 2011, including drug possession, drunk driving, drug trafficking, multiple probation violations, beating his wife and threatening her with a firearm, child abuse, and even attempted murder. And in 2011, police seized heroin, $12,000 in cash, and three stolen semiautomatic handguns from his house.

However, instead of being prosecuted and potentially spending 20 years in prison for his crimes, the DEA decided to make him a confidential informant. In 2013, while he was still working with the DEA, Quintana sexually abused a 6 year old boy and murdered his father. He is currently serving a 21 year sentence.

I would like the DEA to answer the following questions:

- How much money did the DEA pay Quintana as a confidential informant? Was he required to repay that money after his arrest and conviction for murder and child molestation?

- Did the DEA perform a background check, risk-assessment, and obtain all of Quintana's arrests, charges, and convictions before deciding whether to use him as a confidential informant? If so, was the information they received in the National Crime Information Center complete?

- The IG report found inconsistencies in DEA's risk assessment of confidential informants, was Quintana appropriately categorized based on his violent criminal history as a "restricted use" informant, which requires the highest levels of DEA oversight?

- If Quintana was appropriately categorized as a "restricted use" informant, does DEA believe that it followed all of its rules, procedures, and regulations regarding his oversight and management? Did senior-level field office leadership approve of his use as a confidential informant and were they involved in his oversight?

- Why did the DEA justify using a violent convicted felon like Quintana as a confidential informant?

- How many individuals were arrested and convicted due to information that Quintana provided? And what were those charges?

- Where does DEA draw the line in terms of working with a confidential informant? Is there a line?

The DEA is playing with fire by working with confidential informants with a violent criminal background, and I understand these individuals can provide valuable information to DEA investigations, but the lack of oversight and accountability of this program is appalling. I am particularly concerned that the IG found significant issues with the accuracy and completeness of DEA data for this program, which significantly impacts the ability of both Congress and the DEA to evaluate the program's effectiveness.

I expect the DEA to provide my office with written responses to the questions that I asked.

