



Office of the Inspector General
United States Department of Justice

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before the

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

concerning

"Analyzing Misconduct in Federal Law Enforcement"

April 15, 2015

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

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

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

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

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

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

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

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

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

- *A lack of coordination between internal affairs offices and security personnel.* We found instances in which some ATF, DEA, and USMS employees engaged in a pattern of high-risk sexual behavior, yet security personnel were not informed about the incidents until well after they occurred or were never informed, potentially exposing ATF, DEA, and USMS employees to coercion, extortion, and blackmail and creating security risks for these components.
- *The failure to report misconduct allegations to component headquarters.* At the DEA and the FBI, we found that policies permitted supervisors to exercise the discretion not to inform headquarters, even when their respective offense tables characterized the conduct as something that should be reported to headquarters. Moreover, as a result of this, the OIG -- which is supposed to receive *all* allegations of misconduct to ensure they are investigated and addressed appropriately -- was not made aware of them when they first occurred.
- *The failure to fully investigate allegations.* We found instances where the FBI failed to open investigations at headquarters into allegations of serious sexual misconduct and sexual harassment when called for by its criteria. At the DEA, we found instances where the DEA Office of Professional Responsibility (OPR) failed to fully investigate allegations of serious sexual misconduct and sexual harassment.
- *Weaknesses in the adjudication process.* We found that although the DEA, FBI, and USMS offense tables contain specific offense categories to address allegations of sexual misconduct and sexual harassment and provide guidance on the appropriate range of penalties, these components often applied general offense categories to misconduct that fell within the more specific offense categories contained in their offense tables. For example, the component would charge the employee under the *Poor Judgment and/or Conduct Unbecoming* offense category instead of *Sexual Harassment* or *Sexual Misconduct – Non-Consensual*. In addition, we found that ATF offense table does not contain offense categories that specifically address sexual misconduct and sexual harassment.
- *Weaknesses in detecting and preserving sexually explicit text messages and images.* For a relatively new area of misconduct known as "sexting," which is the transmission of sexually explicit text messages, images, and e-mails, we determined that all the law enforcement components do not have adequate technology to archive and preserve text messages sent and received by their employees and are unable to fully monitor the transmission of sexually explicit text messages and images. Therefore, we could not determine the actual number of instances involving this misconduct. These same limitations affect the ability of the components

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

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

Continuing Challenges in Conducting Independent Oversight

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

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

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

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

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

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

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

Conclusion

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