

EPA MISMANAGEMENT

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

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EPA MISMANAGEMENT

Thursday, April 30, 2015

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

The Committee met, pursuant to notice, at 9:05 a.m. in room 2154, Rayburn House Office Building, the Honorable Jason Chaffetz (chairman of the Committee), presiding.

Present: Representatives Chaffetz, Duncan, Jordan, Walberg, Amash, Gowdy, Lummis, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Carter, Grothman, Palmer, Cummings, Maloney, Norton, Clay, Lynch, Kelly, and Lawrence.

Chairman CHAFFETZ. The Committee will come to order.

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

Once again, we find ourselves in a hearing examining the management failures at the EPA. We have seen numerous examples of fraud, unprofessional behavior, cronyism and outright theft at the EPA.

The most egregious example involved Mr. John Beale. Mr. Beale did not work for a decade while claiming to work for the CIA, a complete lie that his supervisors blindly accepted as fact. This is just one example among many of the glaring management failures at the EPA.

It is well past time that someone be held accountable for these management failures. Today, we will discuss more problems concerning EPA employees, including the outrageous behavior of now retired EPA employee Peter Jutro.

Mr. Jutro was the Acting Associate Administrator for the EPA Office of Homeland Security. He also happens to be a serial sexual harasser. As a result of an Inspector General investigation, we now know that Mr. Jutro sexually harassed at least 16 women while working at the EPA.

Even worse, EPA senior management was aware of his history of harassing women but continued to promote him. EPA management never even took the time to talk to his direct supervisor who had verbally warned Mr. Jutro several times about his unacceptable behavior.

In essence, there was no consequence for this abhorrent behavior. By turning a blind eye, EPA management allowed at least six more women to be harassed by Mr. Jutro. We know this because of the good work by the men and women who serve in the Inspector General's office.

When Mr. Jutro was finally placed on paid leave, he quickly retired with full pension benefits to avoid being interviewed by the IG about these allegations. Part of what I hope we look for in this Committee moving forward are ways the Inspector General can continue their investigation and continue to be able to compel someone to participate in their investigations and that they cannot just simply retire and get a get out of jail free card.

In addition to Mr. Jutro, there are continuing problems with EPA employees who watch pornography at work. To date, we are aware of two employees who have admitted to watching pornography several hours each and every day. It is a miracle they did any work at all—maybe they didn't. We don't know.

Even more insulting to taxpayers is that after the Inspector General reported these abuses, the porn-watching employees were placed on paid administrative leave for almost a year before anybody even tried to fire them.

These people were being paid roughly in the neighborhood of about \$120,000 a year. One of these employees finally retired after almost a year of paid leave. The other employee is still collecting his government salary and he too has been on paid administrative leave for almost a year. American taxpayers continue to pay this person.

If you sit watching hours of porn on your government computer, fire them. Fire them. Then let them try to come back but there is so much overwhelming evidence about what these people were doing.

This pattern of paid administrative leave followed by retirement with full benefits is totally and wholly unacceptable. It rewards bad behavior and leaves taxpayers footing the bill.

It is totally unfair to suggest that most, all or anything in between of these employees are participating in this abhorrent behavior. Most of the people, the overwhelming majority of the people who work at the EPA and other departments and agencies within the Federal Government are good, honest, decent people, working hard, trying to do the right thing. They are patriotic in their approach.

I think we, as a body, as an institution, the EPA and others, the Congress, we have a duty and obligation to the American taxpayer to fire the people who are abusing the system. Get rid of them. Kick them out of there.

That does not seem to happen and the EPA, from our viewpoint, our perch here—we have some good Inspector Generals who have done some good, quality work but when we know about these people who are participating in sexual harassment, more than a dozen times, and that person is not fired, that is a huge problem.

A lot of good people work at the EPA and do a lot of good and important work, but when we have a bad apple, we have to get rid of them.

Some of these good employees became victims of harassment due to these continued management failures. That is the sad thing. If somebody is going to do something stupid, if you do not take care of it immediately the first time, then there are more victims. That is the case and that is why we are here today.

In addition, high performing employees become discouraged when they see management rewarding bad behavior or ignoring clear signs of misconduct. There can probably be nothing more demoralizing than knowing that somebody has this problem that is affecting others, nothing is done about it and then they get promoted.

The Committee will continue to look at exploring legislative solutions to encourage agencies to weed out the bad actors while protecting the rights of the vast majority of good employees, creating a good, positive work environment so that we can get the job done.

I have said this several times, we, as a Nation, look at these things in an open, transparent way and do so in the effort to make it better. That is why we have this panel here today.

Chairman CHAFFETZ. I now recognize the Ranking Member, Mr. Cummings, for 5 minutes.

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

Before I begin, I would like to take a minute to thank you, Mr. Chairman, for your leadership. Over the last few days, there have been all kinds of things in the news but one thing that kind of slipped under the rug for many reasons is the NFL's decision to waive its tax exempt status.

Mr. Chairman, you worked very hard on that. You called a bipartisan meeting where you and I sat down with the NFL folks. You let them know, in a bipartisan way, we were concerned about this issue.

I know that you have filed legislation, something that is very near and dear to you. I know a lot of people are going to take credit for it, or try to. Often things that are done without legislation, when we sit down and work together, can be accomplished.

I compliment you and your staff for that. I am hoping that the NFL understands that we had at least two other issues about which we were concerned—the whole thing of concussions and we wanted to look at what they are doing with regard to spousal abuse, relationship abuse and those kinds of things.

I just wanted to compliment you and thank you for your leadership on that.

Chairman CHAFFETZ. Will the gentleman yield?

Mr. CUMMINGS. Yes, of course.

Chairman CHAFFETZ. Thank you. I appreciate it and I think it does demonstrate that in a bipartisan way, we can be more effective. Even though it is behind the scenes, I appreciate those comments because we did this in unison and it had the desired effect. We appreciate the NFL for taking the proactive nature and making this adjustment. I think it is the right thing to do. I think it is the fair thing to do.

Our thoughts and prayers are with you. I do not know how you are here. When I turn on the television, you are up in Baltimore dealing with some very difficult situations. It is admirable what you are doing to talk about the calm and the peace. I admire you for what you are doing and how you are doing it. You are making us proud.

Again, our thoughts, hearts and prayers are with you. I am amazed that you are able to be here this morning but I thank you for being here.

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

I thank you for calling today's hearing. Let me start by making a key point that I know we all agree on.

The overwhelming majority of Federal workers are extremely hard working and many devote their entire lives to serving this Nation. We recognize their service to our country and we honor and we thank them.

One of the things the Chairman said a moment ago, when we have cases like the ones we are addressing today, it only goes against the morale of those great employees. We want to make sure we do not tarnish their great reputations by the conduct of a few.

We also know that with a work force of millions of people, there are bound to be individuals who waste government resources, squander taxpayer dollars, violate the law, unfortunately, and fail in their core responsibilities as employees of this great United States of America.

Today, we will focus on a handful of these employees who worked at the Environmental Protection Agency and abused the public trust by viewing pornography at work. In each case, the employee signed a sworn Statement admitting to this misconduct.

We have now obtained these sworn admissions. Based on their own words—nobody else's, but their own words—there is no doubt that these employees should have been fired. There is no doubt whatsoever.

The questions for today's hearing are these. Why were some employees fired quickly while others were allowed to stay in their jobs for a long time? Something is wrong with that picture.

Why was there inconsistency in removing these employees? Are there ways to improve this process going forward?

One of the things that the Chairman and I have discussed with regards to some other agencies is when you have employees who are treated one way and others treated another way, it kills morale. It kills it.

People just want a level playing ground and want to know if they do something right, they are applauded just like everyone else, if they do something wrong, they want to know they are going to be disciplined, just like everyone else. They can accept that because those are the rules. However, when they see a deviation, that is a problem.

Based on the documents the Committee has obtained, I do not believe we need more legislation to address this issue. I certainly want to hear from our witnesses on that. Instead, I believe the EPA, the Inspector General and the Department of Justice need to coordinate and share information more freely and more quickly.

For example, EPA and IG officials responded very quickly in the case of Thomas Manning, a computer specialist in Chicago regional office who admitted possessing child pornography. He admitted it.

The EPA notified the IG of possible criminal conduct on March 13, 2013. The next day, the IG obtained Mr. Manning's sworn Statement in which he admitted that he looked at "child pornography on the EPA computer."

On that same day, the EPA placed this employee on administrative leave, the same day, blocked his access to EPA servers and

barred him from EPA buildings—the same day. A month later on April 10, the EPA placed him on indefinite suspension without pay.

On August 5, the IG provided the EPA with a copy of the employee's sworn admission and the agency initiated termination proceedings. He later pled guilty to possessing child pornography and was sentenced to 30 months in Federal prison.

In other cases, however, this process took much, much longer. For example, on September 11, 2013, the IG received a complaint that a GS-14 geologist had downloaded thousands of pornographic images into EPA servers.

One week later, IG agents went to talk to this employee and personally observed him viewing pornographic images on his work computer. The same day, this employee signed a sworn admission in which he explained how much time he spent at work surfing the Internet for pornographic images.

Although he stated "it varied from day to day," he admitted that on days when he had little work to do, "the surfing may be as much as five to six hours per day." A work day is only 8 hours.

This sworn admission of wrongdoing by the employee should have been enough to initiate termination proceedings against him. However, the IG did not provide a copy of the admission to the EPA for at least 9 months. Even then, nearly a year and a half passed before the EPA finally issued a notice to remove him.

As I close, there was a similar delay in another case when a GS-14 employee, an environmental specialist, admitted to the IG that he also viewed pornographic images while at work.

The IG also obtained a sworn Statement from this employee in which he admitted looking at pornographic pictures for up to an hour per day. Yet, the EPA did not initiate removal action until 10 months after the employee admitted to this misconduct.

I understand that the decisions in these cases may have been affected by ongoing criminal investigations by the U.S. Attorney and there may have been restrictions on what evidence could be shared and when, but if an employee admits to misconduct, if he actually signs a sworn Statement detailing what he did wrong, it seems to me—maybe I am missing something—that we should be able to share that information immediately so the agency can use it in termination proceedings.

Mr. Chairman, I thank you for calling today's hearing. I hope we can work together to develop concrete proposals to speed up this process, increase information sharing and ensure the EPA, the IG and the Department of Justice all have the ability to use as much evidence as possible against an employee who engages in this type of activity.

With that, Mr. Chairman, I thank you for your courtesy and I yield back.

Chairman CHAFFETZ. Thank you.

I hope those from the EPA understand the outrage we have on both sides of the aisle. This is totally and wholly unacceptable. This will be a good hearing and I appreciate your participation.

I will hold the record open for five legislative days for any members who would like to submit written Statements.

I will now recognize our panel of witnesses.

We are pleased to welcome back to the Committee—he has testified many time before us—we always appreciate having the Honorable Arthur Elkins, Inspector General, Office of the Inspector General, United States Environmental Protection Agency.

Mr. Patrick Sullivan is Assistant Inspector General for Investigations, Office of Inspector General, United States Environmental Protection Agency.

Mr. Stanley Meiburg is Acting Deputy Administrator, United States Environmental Protection Agency.

Mr. John Reeder is Deputy Chief of Staff at the Environmental Protection Agency.

Welcome to you all.

Pursuant to Committee rules, all witnesses will be sworn before they testify. Please rise and raise your right hand.

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

[Witnesses respond in the affirmative.]

Chairman CHAFFETZ. In order to allow time for discussion, please limit your opening Statements to 5 minutes but we are pretty liberal on that policy. Your entire written Statement will be made a part of the record.

My understanding is Mr. Reeder, you have combined your Statement with Mr. Meiburg. We will start with Mr. Elkins and go from there.

Mr. ELKINS.

WITNESS STATEMENTS

STATEMENT OF ARTHUR ELKINS

Mr. ELKINS. Good morning, Chairman Chaffetz, Ranking Member Cummings, and members of the Committee.

I am Arthur Elkins, Inspector General of the EPA. I will discuss two matters. First, I will report on the current status of impediments arising from the EPA's Office of Homeland Security and second, I will discuss the importance of immediately reporting all employee misconduct to the OIG.

During a September 14 hearing before this Committee, I testified that the EPA had asserted there was a category of activity defined as intelligence to which the OIG may have access only subject to the EPA's granting us permission.

This situation impeded the OIG's ability to investigate threats against EPA employees and facilities, conduct certain misconduct investigations and investigate computer intrusions.

Since that hearing, senior OIG officials have met multiple times with senior agency officials to address a range of issues falling under these general categories. We have theoretically agreed that there is no category of activity at EPA to which the OIG does not have unfettered access.

However, at least two crucial impediments remain. First is a 2012 MOU that EPA entered into unilaterally with FBI. EPA asserted that the MOU precluded it from sharing information with the OIG. However, FBI senior management has since confirmed to

EPA that the FBI does not require withholding information from the OIG.

During meetings with the EPA, we have stated that any MOU addressing these issues must be a three-way MOU among EPA, OIG and the FBI. EPA has not rescinded the existing MOU, even though its terms allow the agency unilaterally to rescind it any time it chooses, nor has the agency accepted our proposed elements for a revised MOU.

The second crucial OHS related impediment is that OHS continues to have a use of criminal investigators while lacking any investigative authority. The OHS examples are fundamental challenges to the legal authority of the OIG to do its job.

Under the theory being pursued by Administrator McCarthy, the head of an agency could preclude an IG from exercising responsibilities and authorities assigned under the IG Act by simply declaring that because an activity falls within an agency program for operation, that activity is exempt from OIG jurisdiction.

Agency heads would be empowered to decide when the IG Act is applicable and when it is not. If accepted, this approach would allow an agency to create out of whole cloth unilateral exemptions to the IG Act where no such exemptions currently exist.

Late yesterday afternoon, I received two emails from the Administrator advising of an eminent withdrawal of the MOU. While I sincerely appreciate the spirit of the proposal, the stated terms fall disappointingly short of addressing the OIG's concerns.

Without real clarity in this matter, we unfortunately continue to operate in a fog. This is the current state of affairs at EPA.

While Mr. Sullivan's testimony will address in greater detail the Peter Jutro investigation about which the Committee has asked, I want to address that case with a broader view as to why it matters relative to the OIG's oversight role.

We found that an SES level EPA employee engaged in offensive and inappropriate behavior toward at least 16 women, most of whom were EPA coworkers. Further, we found that very senior EPA officials in the Administrator's office were made aware of many of these actions and yet did nothing.

They did not tell the Administrator and they did not report any of this knowledge to the OIG. In fact, they approved Jutro for a detail assignment to be Acting Associate Administrator for OHS. Subsequently, Jutro engaged in such behavior toward an additional six women.

The necessary implication of the overall structure and certain explicit provisions in the IG Act is that the OIG will only be able to carry out its statutorily assigned functions if it receives cooperation from the agency.

Further, both the current and previous EPA Administrators have sent memoranda to the entire EPA work force setting forth an expectation of cooperation with the OIG. The OIG's investigation was negatively impacted and delayed by the fact that these senior EPA officials did not notify the OIG about their knowledge of underlying incidents.

This is not the first time that I have raised an alarm in regards to these issues to EPA leaders and at congressional hearings over the past 5 years. By this time, I have to question the priority or

the sense of urgency on the part of agency leaders to resolve these issues.

Cooperation, unlimited access and immediately reporting fraud, waste and abuse to the OIG are necessary tools that enable an OIG to fully accomplish its mission. Yet, OIGs have control over none of these tools, nor ultimately can we compile solutions.

It is essential that the tenets of the statute directing the OIG's work remain intact, well supported and not subject to arbitrary revisions by agency heads. Finally, I would like to reiterate my appreciation for this Committee's support in that regard.

Mr. Chairman, I would be pleased to answer any questions that you or Committee members may have.

[Prepared Statement of Mr. Elkins follows:]



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

**Ongoing Negotiations Regarding
Impediments to Full Inspector General
Access with the Office of Homeland Security
and Importance of Timely Reporting of
Employee Misconduct**

**Statement of Arthur A. Elkins Jr.
Inspector General**

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

April 30, 2015

**Statement of
Arthur A. Elkins Jr.
Inspector General
Office of Inspector General
U.S. Environmental Protection Agency
Before the
Committee on Oversight and Government Reform
U.S. House of Representatives
April 30, 2015**

Good morning, Chairman Chaffetz, Ranking Member Cummings and members of the committee. I am Arthur Elkins, Inspector General (IG) of the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear before you today. I will discuss two matters. First, I will report on the current status of impediments arising from the role that the EPA has given to a unit within the agency called the Office of Homeland Security (OHS). Second, I will discuss the importance of immediately reporting all employee misconduct to the Office of Inspector General (OIG).

Before I begin, I would like to publicly commend the expertise, dedication, diligence and professionalism of OIG staff—not only at the EPA, but across the federal government—who work hard each day to carry out our very important mission of promoting economy, efficiency and effectiveness, and preventing and detecting fraud, waste and abuse through independent oversight of programs and operations.

Overview of the EPA OIG

The EPA OIG is charged with conducting investigations and audits related to programs and operations at the EPA and the U.S. Chemical Safety and Hazard Investigation Board (CSB). This office operates with a separate budget and decision-making authority, and neither EPA nor CSB senior leaders may prohibit, prevent or obstruct us from conducting our work.

Challenges Regarding EPA's Office of Homeland Security

I will begin with an update regarding OHS. During a September 2014 hearing before this committee, I testified that the EPA had asserted there was a category of activity defined as "intelligence" to which the OIG may have access only subject to the EPA's granting of permission. This situation impeded the OIG's ability to investigate threats against EPA employees and facilities, conduct certain misconduct investigations, and investigate computer intrusions. In addition, OHS was conducting investigative activities of its own without any legal authority to do so, thereby interfering with—and in some cases fouling—OIG investigations.

Since that hearing, senior OIG officials have met multiple times with senior agency officials to address a range of issues falling under these general categories. We have reached at least a theoretical agreement on a substantial portion of the issues, although we are at an impasse with regard to a number of crucial points. What we have agreed upon is that there is no category of activity at the EPA to which the OIG does not have unfettered access, as provided by the IG Act.

“Intelligence” activities can and are to be shared with the OIG if the OIG seeks access or an issue is within OIG purview.

One specific impediment to being able to reach agreement previously is a 2012 memorandum of understanding (MOU) that the EPA had entered into unilaterally with the Federal Bureau of Investigation (FBI). The OIG was not party to, nor was it consulted in creating, that MOU. The EPA asserted that the MOU precluded it from sharing information with the OIG. However, FBI senior management has since confirmed to the EPA that the FBI does not require withholding information from the OIG. While the EPA has confirmed to the OIG that it will now share the information we had been seeking, both with regard to previous matters and on an ongoing basis, the agency has not shared the information requested.

During meetings with the EPA, we have stated that any MOU addressing these issues must be a three-way MOU among the EPA, the OIG and the FBI. The EPA has not rescinded the existing MOU even though its terms allow the Agency unilaterally to rescind it any time it chooses, without seeking consent of the FBI to do so. Nor has the Agency accepted our proposed elements for a revised MOU. Of equally serious concern, we also have not resolved the issue of OHS having and using an assigned criminal investigator while lacking any investigative authority.

These are important impediment issues that we have not yet resolved with the EPA.

The issue with OHS is fundamental to the legal authority of the OIG to do its job. Under the theory being pursued by Administrator McCarthy, the head of an agency could preclude an IG from exercising responsibilities and authorities assigned under the IG Act by simply declaring that because an “activity” falls within an agency “program” or “operation”, that “activity” is exempt from OIG jurisdiction. Under this interpretation of the IG Act, agency heads would be empowered to decide when the IG Act is applicable, and when it is not. If accepted, this approach would create a slippery slope whereby an agency may extend ever further into the OIG’s statutorily assigned jurisdiction, and create, “out of whole cloth”, unilateral exemptions to the IG Act; where no such exemptions currently exist. This is the current state of affairs at the EPA.

Employee Misconduct at the EPA

While Mr. Sullivan’s testimony will address in greater detail an investigative case that the committee has asked about, I want to address that case with a broader view as to why it matters relative to the OIG’s oversight role. In short, we found that an SES-level EPA employee engaged in offensive and inappropriate behavior toward at least 16 women, most of whom were EPA co-workers. Further, we found that very senior EPA officials in the Administrator’s office were made aware of many of these actions and yet did nothing. They did not tell the Administrator, and they did not report any of this knowledge to the OIG. In fact, they approved this individual for a detail assignment to be acting Assistant Administrator for the EPA’s Office of Homeland Security. Subsequently, this official engaged in such behavior toward an additional six women.

The necessary implication of various provisions included in the IG Act is that the OIG will only be able to carry out its statutorily assigned functions if it receives cooperation from the agency.

Further, both the current and previous EPA Administrators have sent memorandums to the entire EPA workforce setting forth an expectation of cooperation with the OIG. In this particular case, the OIG's investigation was negatively impacted and delayed by the fact that these senior EPA officials did not notify the OIG about their knowledge of underlying incidents.

Conclusion

I have discussed today both progress and challenges with regard to the EPA's Office of Homeland Security, and the importance of immediately notifying the OIG of employee misconduct at the agency. This is not the first time that I have raised an alarm in regards to these issues to EPA leadership and at hearings before this and other Congressional committees over the past five years. However, considering that these issues remain unresolved, I question the priority or the sense of urgency placed on resolution, on the part of agency leadership, to move beyond the current status quo.

Cooperation, unlimited access and immediately reporting fraud, waste and abuse to the OIG are necessary tools that enable an OIG to fully accomplish its mission. Yet, OIGs have control over none of these tools, nor, ultimately, can we compel solutions. As I have stated before, the authorities underlying the IG Act are fragile and wholly dependent upon the cooperation of the agency. It is essential that the tenets of the statute directing the OIG's work remain intact, well supported, and not subject to arbitrary revisions by agency heads. Finally, I want to reiterate my appreciation for this committee's support in that regard.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you or committee members may have.

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

STATEMENT OF PATRICK SULLIVAN

Mr. SULLIVAN. Good morning, Chairman Chaffetz, Ranking Member Cummings and members of the Committee.

I am Patrick Sullivan, Assistant Inspector General for Investigations for the EPA.

My testimony will highlight several cases of EPA employees who viewed and downloaded pornography on government-issued computers, as well as our investigation of a senior level official who exhibited inappropriate behavior toward several women over many years.

First, I will discuss employee A, who downloaded more than 7,000 potentially pornographic files into an EPA server.

In September 2013, an OIG special agent went to the employee's work location and observed the employee viewing adult pornography. The employee admitted that for approximately two to 6 hours daily, during his assigned work hours, he had viewed and downloaded pornographic images on an EPA computer.

We reviewed his laptop and discovered about 20,000 additional pornographic files. The employee advised that he was not doing anything wrong by accessing pornographic websites since he was completing his required work.

During the period he viewed the pornography, he received several performance awards, including awards up to \$2,000 and a time off award.

He was then placed on administrative leave by EPA in May 2013. In March 2015, the U.S. Attorney's Office declined prosecution. Earlier this month, EPA notified us that this month that the employee had retired.

Next, I will discuss employee B who had been witnessed viewing pornography on his government laptop computer during work hours by a child who happened to be visiting the office during Bring Your Daughters and Sons to Work Day.

The employee admitted that he viewed pornography at work between one to 4 hours per day. He said that approximately 30–40 percent of the data stored on his external electronic media devices contained pornography. Approximately 3,500 pornographic images were recovered from the employee's laptop and external media.

EPA placed the employee on paid administrative leave in May 2014. In March 2015, the U.S. Attorney's Office declined this case for prosecution. Last month, the EPA notified us that the employee had been proposed for removal.

The third investigation involves Thomas Manning, an IT specialist, who downloaded child pornography. He admitted to viewing child pornography on the EPA computer and attempted to erase it afterward.

We found that Manning also possessed tens of thousands of images of child pornography on a personal hard drive stored at work. He resigned while under investigation in August 2013. He later pleaded guilty in July 2014 to possession of child pornography.

Earlier this month, Manning was sentenced to 30 months in Federal prison to be followed by 5 years of supervised release.

Last, I would like to discuss our investigation involving Peter Jutro. In August 2013, we received an allegation that Jutro, the Acting Associate Administrator for the EPA Office of Homeland Security engaged in a series of interactions involving a 21-year-old female intern from the Smithsonian Institution.

The OIG's allegations and findings included the following. In July 2014, Jutro engaged in interactions involving a 21-year-old female intern who reported him to a supervisor and indicated that she was uncomfortable and scared.

In his office, he asked the intern what turned her on and what excited her. He also took photographs of the intern's face and toes. Contrary to the intern's Statement, Jutro denied brushing up against, attempting to kiss her, or grabbing the intern's buttocks but he conceded he might have placed his hand on her back.

From 2004 through July 2014, Jutro engaged in unwelcomed conduct with 16 additional females, which included touching, hugging, kissing, photographing, and making double entendre comments with sexual connotations.

We substantiated that Jutro had violated building entry security procedures when he bypassed security checkpoints and bringing the intern into EPA headquarters. We did not substantiate the allegation that Jutro discussed classified information in violation of Federal requirements.

However, we did substantiate that EPA senior level officials who were aware of multiple claims of unlawful conduct by Jutro. They did not take any actions against Jutro as a result of receiving this information about him.

Several senior officials were advised prior to or immediately following Jutro's February 2014 selection as Acting Associate Administrator for EPA's OHS that he had exhibited inappropriate behavior toward women.

Our case was negatively impacted and delayed due to the fact that these senior officials did not notify us about their knowledge of other instances of Jutro's inappropriate behavior. This case revealed no criminal violations and was therefore investigated as a purely administrative matter.

No criminal declination was sought or received from the U.S. Attorney's Office. Jutro retired from Federal service in January 2014.

We will continue to work closely with the agency, our law enforcement partners and Congress to ensure that allegations of employee misconduct are quickly and properly addressed.

That concludes my prepared Statement. Thank you, Mr. Chairman.

[Prepared Statement of Mr. Sullivan follows:]



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Employee Misconduct at the U.S. Environmental Protection Agency

**Statement of Patrick Sullivan
Assistant Inspector General for Investigations**

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

April 30, 2015

**Statement of
Patrick Sullivan
Assistant Inspector General for Investigations
Office of Inspector General
U.S. Environmental Protection Agency
Before the
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Good morning, Chairman Chaffetz, Ranking Member Cummings and members of the committee. I am Patrick Sullivan, Assistant Inspector General for Investigations for both the U.S. Environmental Protection Agency (EPA) and the U.S. Chemical Safety and Hazard Investigation Board (CSB). Thank you for inviting me to appear before you today to discuss specific Office of Inspector General (OIG) investigations of employee misconduct at the EPA. My testimony will provide an overview of several cases of EPA employees who viewed and downloaded pornography on government-issued computers, as well as two Reports of Investigations (ROIs) that detail our findings on a senior-level EPA official who exhibited inappropriate behavior toward many women over many years.

OIG Investigation of Office of Air and Radiation Employee (Employee “A”)

The EPA OIG hotline received a complaint on September 11, 2013, alleging that an EPA geologist in the Office of Air and Radiation (OAR) had downloaded more than 7,000 files (1.3 gigabytes) of potentially pornographic files onto an EPA server.

On September 18, 2013, an OIG Special Agent went to the employee’s work location to retrieve the employee’s EPA-issued computer and schedule an interview with him. As the Special Agent entered the employee’s assigned workspace, he observed the employee viewing pornography on his computer monitor. The Special Agent subsequently retrieved the employee’s EPA-issued laptop for forensic analysis.

That same day, the employee was interviewed by OIG Special Agents. The employee admitted that— for approximately 2 to 6 hours during his assigned work hours daily, over a period of “several years”—he had viewed and downloaded pornographic images on EPA computer equipment. The employee stated that much of his workday was devoted to organizing the downloaded pornography into saved folders. It was his belief that he was not doing anything wrong by accessing pornographic websites, since he was completing his required work and that other colleagues spend much of their assigned duty hours doing “personal” things rather than official EPA business.

During the course of the OIG’s investigation, the employee also stated that he had received several performance awards, which included monetary awards ranging from \$600 to \$2,000 and a time-off award of 16 hours.

On December 11, 2013, this case was presented to the U.S. Attorney's Office for the District of Columbia for criminal prosecution of 18 USC 641, theft of government funds, under the theory that the employee was claiming hours worked on his timecard and receiving pay for hours he was not doing EPA business. The U.S. Attorney's Office accepted prosecution and granted permission for the EPA to pursue administrative action concurrently. On December 17, 2013, the OIG informed the employee's supervisor that the agency could proceed with administrative action concurrent with the criminal prosecution. The employee was placed on paid administrative leave by EPA on May 9, 2014.

On June 19, 2014, as part of OIG's continued coordination with EPA regarding this investigation, the OIG provided the EPA with the employee's unredacted sworn statement and the memorandum of his interview.

Through continued coordination with the agency, OIG met with Labor Employee Relations (LER) representatives on October 3, 2014, to ensure that LER had the information needed to proceed with possible administrative action against the employee. On October 9, 2014, the OIG provided LER an electronic copy of the pornographic images found on the employee's EPA laptop, the pornographic images found on the EPA share drive, pornographic images found on the employee's thumb drives located at his desk, a computer forensic report, and reports on the employee's data usage and Internet history.

OIG investigators reviewed and analyzed the files on the employee's government-issued laptop and discovered approximately 20,000 adult pornographic files. None of these files contained images of child pornography.

On March 10, 2015, after doing extensive research into the applicability to the fact pattern of this case to 18 USC 641, theft of government funds, the U.S. Attorney's Office declined federal prosecution of the EPA employee. On March 13, 2015, the OIG provided the final summary memorandum report to EPA senior leaders. On March 24, 2015, the EPA notified the OIG that the agency had proposed removal of the employee. On April 22, 2015, the EPA notified the OIG that the employee had retired from federal service.

OIG Investigation of Office of the Administrator Employee (Employee "B")

The OIG received a complaint on May 2, 2014, alleging employee misconduct involving an EPA employee in the Office of the Administrator. Specifically, on April 24, 2014, the employee allegedly had been witnessed viewing pornography on his government laptop during work hours by a child who happened to be visiting during the EPA's "Bring Your Daughters and Sons to Work Day." The OIG immediately initiated an investigation into the violation of misuse of government time and resources.

On May 8, 2014, the employee was interviewed by OIG Special Agents. During the interview and in a sworn statement, the employee admitted that he viewed pornography at work between 1 to 4 hours per day. In addition, he stated that approximately 30 to 40 percent of the data stored on his external electronic media devices contained pornography. Approximately 3,500

pornographic images were recovered from the employee's laptop and external media. The EPA placed the employee on paid administrative leave by the EPA on May 8, 2014.

This case was presented to the U.S. Attorney's Office for the District of Columbia on May 28, 2014, for criminal prosecution of 18 USC 641, theft of government funds, under the theory that the employee was claiming hours worked on his timecard and receiving pay for hours he was not doing EPA business.

On June 19, 2014, through continued coordination with the EPA, the OIG provided LER with a memorandum of interview with sworn statement for the employee, a memorandum of interview for a witness who reported her concerns to management, and an interim forensic report. These documents were redacted to protect the identity of the witness and the child. On August 26, 2014, the final forensic report was provide to LER.

In a continued effort to coordinate with EPA, the OIG met with LER on October 3, 2014 to discuss LER's concerns with the reports already provided by the OIG and to determine what additional information LER needed to proceed with possible administrative action against the employee. On October 9, 2014, the OIG provided the additional requested information to LER in an electronic format, including copies of thumb drives, external hard drives, a laptop hard drive, forensic reports, timelines for non-work related activities and copies of pornographic images.

On March 4, 2015, the U.S. Attorney's Office formally declined this case for federal prosecution, again citing the applicability of the 18 USC 641, theft of government funds, to the facts of the case. The OIG provided on March 13, 2015, a final summary memorandum report to EPA senior leadership. On March 24, 2015, the EPA notified the OIG that the employee had been proposed for removal.

OIG Investigation of Thomas Manning

In July 2012, the OIG received information that potential child pornography was found on an EPA-Region 5 computer. An attempt had been made to erase the pornography, but during a routine service, EPA information technology personnel discovered it and notified their management who then notified the OIG.

Our investigation discovered that Thomas Manning, who was a Region 5 EPA Information Technology Specialist, was responsible for downloading the child pornography onto the computer. During our interview of Mr. Manning, he admitted to viewing child pornography on the EPA computer and attempting to erase it afterward. Our investigation also determined that Mr. Manning possessed tens of thousands of additional images of child pornography on a personal hard drive that he stored in his EPA workspace.

Mr. Manning resigned while under investigation on August 25, 2013. He later pleaded guilty in July 2014 to possession of child pornography violation of 18 USC 2252A for certain activities relating to material constituting or containing child pornography. On April 13, 2015, Mr. Manning was sentenced to 30 months in federal prison to be followed by 5 years of supervised release. He was also ordered to pay restitution to identified victims in addition to a fine of \$12,500.

OIG Investigation of Peter Jutro

On August 1, 2014, the OIG received an allegation that Peter Jutro, acting Associate Administrator for the Office of Homeland Security (OHS), from the EPA Security Management Division. The allegation stated that between July 16 and July 30, 2014, Jutro engaged in a series of interactions involving a 21-year-old female intern from the Smithsonian Institution.

The EPA presented OIG with the allegation regarding the Smithsonian Institution intern, and the OIG subsequently developed four additional allegations in this investigation.

The allegations investigated in this case are as follows:

- (1) Between July 16, 2014 and July 30, 2014, Jutro engaged in a series of interactions involving a 21-year-old female intern from the Smithsonian Institution who reported the interactions to her supervisor at the Smithsonian and indicated that she was “uncomfortable and scared” by their interactions.
- (2) From 2004 through July 2014, Jutro engaged in conduct and exchanges considered to be unwelcome by 16 additional females.
- (3) Jutro was not in compliance with building entry security procedures in the William Jefferson Clinton North facility.
- (4) Jutro discussed classified information in violation of safeguarding and access restriction requirements either in an unsecure location or in a careless manner.
- (5) A lack of due diligence by senior-level officials at the EPA in responding to earlier claims of unwelcome conduct and verbal exchanges, including some of a sexual nature, may have violated any mandate to take action, thereby resulting in additional women being subjected to inappropriate behavior by Jutro from January to July 30, 2014.

On August 4, 2014, Jutro was placed on paid administrative leave by the EPA pending the outcome of the OIG investigation. In coordination with the OIG, EPA’s Security Management Division also suspended Jutro’s top-secret clearance pending the results of the OIG investigation.

Allegation 1: Inappropriate Conduct with Smithsonian Intern

On August 4, 2014, during an interview with the OIG, Jutro provided a sworn statement regarding his interactions with the Smithsonian intern. The intern corroborated this information in a statement she provided to OIG. Jutro stated that his initial contact with the intern took place on or around July 16, 2014. Jutro confirmed that he gave the intern his business card, so that she could contact him regarding career questions. He stated that, after several failed attempts to meet, they finally met for lunch at a restaurant on July 30, 2014. Jutro stated, during lunch, that he invited the intern to his office, so they could talk where it was less noisy. Once in his office, Jutro confirmed he asked the intern what turned her on and what excited her. He explained to the OIG that he asked these questions from a career standpoint. Jutro admitted he took a photograph of the intern’s face and toes.

Contrary to what the intern stated, Jutro denied brushing up against, attempting to kiss or grabbing the intern's buttocks, but conceded that he might have put his hand on the small of her back as they walked through security. He admitted to wiping something off of the intern's face during lunch, but did not feel it was inappropriate.

Following their August 4, 2014, interview of Jutro, OIG Special Agents conducted numerous interviews of other EPA personnel and followed up on information provided by witnesses and victims. The OIG determined that, in addition to his inappropriate behavior toward the intern, from 2004 through July 2014, Jutro engaged in conduct and exchanges considered to be unwelcome with 16 additional females.

Allegation 2: Inappropriate Conduct with 16 EPA Females

Over the course of several months following the initial allegation from the intern, OIG interviews determined that 16 additional victims who described examples of Jutro's conduct toward them as unwelcome, including the following behavior: touching, hugging, kissing, photographing, and making double-entendre comments with sexual connotations. Of the 16 additional females, 13 had reported the matter(s) to their management. Of the three victims who did not report the matter(s) to their management, two were senior executives in EPA and the third did not report the matter to her management for fear of retaliation. In addition, two more females had been subjected to similar conduct and/or exchanges with Jutro, but did not consider it unwelcome. Although other potential victims were identified, the OIG's investigation ceased after the interviews of 16 additional victims and therefore not all identified victims were interviewed.

On January 8, 2015, the OIG attempted to schedule an interview with Jutro to provide him an opportunity to respond to the allegations regarding his conduct and interactions with 16 women. Jutro's attorney stated that Jutro would be willing to meet to discuss the allegations on January 12, 2015. However, on that day, his attorney contacted an OIG investigator and stated that Jutro had retired from the EPA effective immediately and therefore would not be speaking to the OIG regarding the allegations.

The EPA and OIG confirmed that Jutro, who was on paid administrative leave at the time, was still an EPA employee on January 12, 2015. The OIG informed Jutro's attorney of that fact, and attempted—with the assistance of EPA management—to compel Jutro's appearance for an interview. Jutro's attorney refused to allow the OIG access to Jutro. Jutro officially submitted his paperwork for retirement from federal service on January 12, 2015.

On January 13, 2015, Jutro amended his retirement package and requested that his retirement date be changed to January 9, 2015.

Allegation 3: Violations of Building and Security Procedures

The OIG investigation substantiated that Jutro had violated building entry security procedures when he bypassed the security checkpoint in bringing the intern into EPA headquarters and did not have her sign in as a visitor.

Allegation 4: Discussion of Classified Information

Our investigation determined that the allegation that Jutro discussed classified information in violation of federal requirements for safeguarding and restricting access to classified information was unsubstantiated. Although the investigation was able to determine that—from approximately 2004 to July 2014—Jutro repeatedly represented that he was sharing classified information in an unclassified environment, the investigation was unable to determine if, during these discussions, Jutro actually discussed classified information in an unsecure environment. However, the investigation was able to substantiate that he discussed potentially classified information in either an unsecure location or in a careless manner. Furthermore, the investigation revealed information that demonstrates Jutro is not “reliable or trustworthy,” per Executive Order 10450. Therefore, had this information been available as part of his background investigation or any future reinvestigations of Jutro’s background, it is likely he would not have been allowed to retain his clearance or the position requiring it.

Allegation 5: Lack of Due Diligence by Senior-Level EPA Officials

The OIG investigation substantiated that senior-level officials at the EPA had received information regarding multiple claims of unwelcome conduct and verbal exchanges by Jutro. The investigation further substantiated that those officials did not take any action against Jutro as a result of receiving this information about him. Subsequent to these officials receiving information about the Jutro’s actions, from January 2014 to July 30, 2014, six additional women were subjected to behavior by Jutro that they felt was inappropriate. Specifically, the former Deputy Administrator, former Associate Deputy Administrator, Chief of Staff, and the career Deputy Chief of Staff were advised prior to or immediately following Jutro’s February 2014 selection as acting Associate Administrator for OHS that he exhibited inappropriate behavior toward women. After receiving information from one of the victims and having uncomfortable interaction with Jutro herself, the former Associate Deputy Administrator reported her concerns regarding Jutro to the other senior-level officials, but none of the others took any action. On February 23, 2014, Jutro was designated the acting Associate Administrator for OHS, a position he held until he was placed on paid administrative leave on August 4, 2014.

From August 2014 until the time the OIG interviewed these senior officials (including the former Associate Deputy Administrator), the OIG had four meetings with these senior-level officials regarding Jutro and OHS issues, but none of the senior officials provided information to the OIG regarding the additional victims of which they were aware. In one case, the Deputy Chief of Staff was interviewed twice by the OIG regarding OHS and Jutro’s role with OHS, yet this senior-level official did not advise the OIG that he was aware of additional victims of Jutro’s conduct.

The OIG examined whether there was any requirement that the senior officials who were made aware of Jutro’s actions had a duty to take any specific action as a result of that knowledge, including reporting that information to OIG. In particular, the OIG examined whether their inaction violated any ethical regulations or the Inspector General Act of 1978, as amended, or breached the EPA’s anti-harassment policy. The investigation determined that there was no

affirmative duty of these senior officials to act on or report the information to OIG or anyone else.

However, the OIG's investigation was negatively impacted and delayed due to the fact that these senior officials did not notify the OIG about their knowledge of other incidents of Jutro's inappropriate behavior toward women.

This case revealed no criminal violations and was therefore investigated as a purely administrative matter. As such, no criminal declination was sought or received from the U.S. Attorney's Office. Jutro retired from federal service on January 12, 2015.

Conclusion

The OIG takes very seriously its overall responsibility for investigations into allegations of employee misconduct at the EPA. To that end, we will continue to work closely with the agency, the U.S. Department of Justice, our law enforcement partners and Congress to ensure that allegations of employee misconduct, including sexual harassment, are quickly and properly addressed. We appreciate your continued interest in the work of the OIG.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions that you, the Ranking Member and the committee members may have.

Chairman CHAFFETZ. Thank you, Mr. Sullivan.
We will now recognize Mr. Meiburg for 5 minutes.

STATEMENT OF STANLEY MEIBURG

Mr. MEIBURG. Thank you very much, Mr. Chairman, Ranking Member Cummings and members of the Committee. It is my pleasure to be here to testify today.

I am Stan Meiburg, the Acting Deputy Administrator of the Environmental Protection Agency. I am accompanied here today by John Reeder, one of the agency's Deputy Chiefs of Staff. Again, I appreciate the opportunity to be here today.

I have worked for EPA for over 36 years in four locations, starting here in Washington, our offices in Research Triangle Park in North Carolina, and in our regional offices in Dallas and Atlanta.

In both of those regional offices, I served as the Deputy Regional Administrator, which is a senior career office in that region. I held that position in EPA's Region IV office in Atlanta for the last 18 years of my career until my retirement last year.

To my surprise, last fall I received a phone call from EPA Administrator Gina McCarthy offering me the opportunity and the honor to return to the agency to serve as the Acting Deputy Administrator, a position that also serves as the Chief Operating Officer for the agency. That is the position I hold today.

John Reeder, who is joining me today, is another long time civil servant who serves as the career Deputy Chief of Staff for EPA. John previously served overseas in the military from 1979-1981 and began his career in Federal service as a Presidential management intern in 1987. He has served in his current position as Deputy Chief of Staff since 2010.

One of the reasons I came back to EPA was to again have the opportunity to work with the exceptional and hardworking people of this agency. I believe in the people of EPA. I believe in them because for over 36 years, I was one of them. I know how hard our 15,000 employees work day in and day out on behalf of the American people.

EPA employees who engage in serious misconduct are not representative of the broader work force. All of the EPA employees who work so hard especially deserve that we deal with misconduct or poor performance swiftly, with integrity and professionalism.

They further deserve our attention to their professional growth so that collectively we are able to keep our eyes on the mission of the agency.

Since returning to EPA, I have had the pleasure of working with John and other senior agency leaders to increase our support of agency employees and managers with the goal of continued improvement of our work force.

In particular, we are working to improve our support for our first line supervisors, develop a new and highly skilled next generation of senior leaders and to streamline our processes.

First line supervisors have some of the hardest jobs at any organization and EPA is no exception. Our goal is to provide our first line supervisors with the right tools and information to enable

them in performing their essential role at the agency, including addressing poor performance or improper conduct early in those rare instances where it is necessary.

Earlier this month, we launched a revised and updated first line supervisor's tool kit, the first comprehensive updating of that resource in 15 years. Through the coming year, we will be convening focus groups of first line supervisors to ensure we understand their needs and see how, as their senior leaders, we can make them better.

The agency has also placed a renewed emphasis on developing the next generation of senior leaders at the EPA. Earlier this spring, I announced the opening of EPA's first Senior Executive Service Candidate Development Program in many years. I am proud that EPA will enroll more than 20 candidates in the SES Candidate Program this year.

In closing, EPA has an honorable, 45-year history of protecting public health and the environment for the people of the United States. I am proud of the work accomplished every day by the employees of EPA and excited about our efforts to continue to improve and better support our managers and staff across the agency.

With that, we look forward to any questions you may have.

[Prepared Statement of Mr. Meiburg follows:]

**TESTIMONY OF
A. STANLEY MEIBURG
ACTING DEPUTY ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

April 30, 2015

Chairman Chaffetz, Ranking Member Cummings, and members of the Committee, thank you for the opportunity to testify today. I am Stan Meiburg, the Acting Deputy Administrator of the Environmental Protection Agency (EPA), and I am accompanied today by John Reeder, one of the agency's Deputy Chiefs of Staff. I appreciate the opportunity to testify before the Committee today.

I have worked at EPA for over 36 years in four locations: starting here in Washington, in our offices in Research Triangle Park in North Carolina, and in our regional offices in Dallas and Atlanta. In both of those regional offices I served as the Deputy Regional Administrator, which is the senior career official in the region. I held that position in EPA's Region 4 office for the last 18 years of my career, until my retirement last year. To my surprise, last fall I received a phone call from EPA Administrator Gina McCarthy, offering me the opportunity -- and the honor -- to return to the agency to serve as the Acting Deputy Administrator, a

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John Reeder who joins me today is another long time civil servant who serves as the career Deputy Chief of Staff for the EPA. He previously served overseas in the military from 1979 to 1981, and began his career in the federal civil service in 1987 as a Presidential Management Intern. He has served in his current position as Deputy Chief of Staff since 2010.

One of the reasons that I came back to EPA was to again have the opportunity to work with the exceptional and hard-working people of the agency. I believe in the people of EPA. I believe in them because for over 36 years I was one of them, and I know how hard our 15,000 employees work day in and day out on behalf of the American people.

EPA employees who engage in serious misconduct are not representative of the broader workforce. All the EPA employees who work so hard especially deserve that we deal with misconduct or poor performance swiftly and with integrity and professionalism. And they further deserve our attention to their professional growth, so that collectively we are able to keep our eyes on the mission of the agency.

Since returning to EPA, I've had the pleasure of working with John and other senior agency leaders to increase our support of agency employees and managers, with the goal of continued improvement of our workforce. In particular, we are working to improve our support for our first line supervisors, develop a new and highly-skilled next-generation of senior leaders, and streamline processes.

First line supervisors have some of the hardest jobs in any organization and EPA is no exception. They manage most of the agency's workforce, directing, coaching, and supervising their staff, yet many are also expected to be subject matter experts in their fields. Our goal is to provide our first line supervisors with the right tools and information to enable them in performing their essential role at the agency, including addressing poor performance or improper conduct early in those rare instances where that is necessary. Earlier this month we launched a revised and updated first line supervisors toolkit -- the first comprehensive updating of that resource in 15 years. The toolkit is intended to provide detailed information on a wide range of administrative topics that all supervisors should be familiar with, and resources for additional support for both first time supervisors and seasoned executives. Through the coming year we will be convening focus groups of first line supervisors to ensure we understand their needs and see how, as their senior leaders, we can meet them better.

The agency had also placed a renewed emphasis on developing the next generation of senior leaders at the EPA. Earlier this spring, I announced the opening of EPA's first Senior Executive Service Career Development Program in many years. Candidate Development Programs (CDPs) are intensive and extensive (in this case 13 months) programs that help to ensure agency employees promoted into the highest level of leadership at the agency are well trained and fully understand the incredible responsibility to the people of the United States that they are about to take on. I am proud that EPA will enroll more than 20 candidates in the SES Candidate Development Program this year.

In closing, EPA has an honorable 45-year history of protecting public health and the environment for the people of the United States. I am proud of the work accomplished every day by the employees of EPA, and excited about our efforts to continue to improve and to better support our managers and staff across the agency.

With that, we look forward to any questions you may have.

* * *

Chairman CHAFFETZ. Thank you.

I will now recognize myself for 5 minutes.

Mr. Reeder, how long have you worked at the EPA?

Mr. REEDER. Mr. Chairman, 27 years.

Chairman CHAFFETZ. Between the two of you, you have about 60 years of experience at the EPA. We thank you for your service, but I do not understand with Mr. Peter Jutro.

There were 13 times, 13 times that women had reported matters to the EPA about some form of sexual misconduct, sexual harassment and yet it took more than 13 times before you got serious about it. It finally percolated to the point where you were actually going to pursue it and then he just retires. He was in his 70's, correct?

Mr. REEDER. Mr. Chairman, I do not know his age.

Chairman CHAFFETZ. My understanding is he is roughly 70 years old. Why does it take 13 times before you all get serious about it? That is what is so infuriating.

Two of these incidents of sexual misconduct happened at the White House—at the White House. Who wants to answer that question? Why does it take so long?

Mr. REEDER. Mr. Chairman, I do not know where that comes from. Maybe the Inspector General is in a better position to answer the question about the incidences because I believe many of those were discovered in their investigation and were not raised to managers.

Chairman CHAFFETZ. Mr. Elkins or Mr. Sullivan? My understanding is that 13 times these matters had been reported to EPA management.

Mr. SULLIVAN. Yes, it was reported, in most cases, to the victim's immediate supervisor—in most of the cases, not in every case. Some of the victims came forward during our investigation.

At least one of the incidents at the White House was reported immediately during the alleged sexual harassment and inappropriate conduct by Mr. Jutro. The victim immediately communicated with her supervisor what Mr. Jutro had done.

Chairman CHAFFETZ. That happened in 2009–2010, something like that?

Mr. SULLIVAN. The last incident happened on or about July 29, 2014.

Chairman CHAFFETZ. One of the ones at the White House that was reported, at least according to what I read in here, was back in 2009–2010.

Mr. SULLIVAN. Yes, and the second one happened in July 2014.

Chairman CHAFFETZ. I do not understand why someone has to ever tolerate this and then tolerate such mismanagement that you do not deal with it. These people were promoted.

Go ahead, Mr. Reeder.

Mr. REEDER. Thank you, Mr. Chairman.

The way the sexual harassment policy works at the agency is if an employee complains about behavior, they would report that behavior to the supervisor. In most instances, those do not become formal cases and the supervisor is obligated—and I hope they have done this—the supervisor is obligated to take some action to either

end the behavior or if it is more serious, to conduct a more formal review and investigation.

I cannot answer for the supervisors who may have been involved with Dr. Jutro over the course of his career.

Chairman CHAFFETZ. Time is limited here. Under your policy, sexual harassment, first offense is either written reprimand or up to removal. The second offense is a 14-day suspension up to removal. There were more than two of those. There were more than two of those and that did not happen. The third offense is a 30-day suspension up to removal. Why didn't you follow your own policy in this? This person ultimately got promoted.

Mr. REEDER. I cannot answer the question about what happened in those instances before he came to the Office of the Administrator. I am sorry, Mr. Chairman.

Mr. MEIBURG. Mr. Chairman, let me just speak to a couple of things.

Since the incident that led to the Inspector General investigation occurred before I came back to the agency, I cannot really speak to that, but I will say that the issues that were uncovered in the Inspector General investigation were a result of the agency's asking the Inspector General to do the investigation following the behaviors that occurred with the Smithsonian intern.

Chairman CHAFFETZ. Do you dispute the idea that 13 times women reported to somebody in management that this was a problem and this person was getting promoted along the way? He got bonuses.

Mr. MEIBURG. Where I was going with this was simply to thank the Inspector General.

Chairman CHAFFETZ. That is not an answer. I want you to do your job. I want you to fire these people who are sexually harassing people at work. I want you to fire them. I want you to live up to the obligations that you put out in your own manuals. That did not happen in this case. Do you dispute that?

Mr. MEIBURG. What I do not dispute is that kind of behavior was appalling and is intolerable.

Chairman CHAFFETZ. You can say that but then there is no consequence and the guy gets promoted. It makes the situation worse. Would you disagree with that?

Mr. MEIBURG. Mr. Chairman, again, in the specific case of Mr. Jutro, the fact that the Inspector General was able to help in identifying things that had not otherwise come to light was useful and I think contributed and backed up the swift action that was taken.

Chairman CHAFFETZ. Swift action?

Mr. MEIBURG. Yes.

Chairman CHAFFETZ. Where do you think you had swift action?

Mr. MEIBURG. When the report came from the Smithsonian intern.

Chairman CHAFFETZ. When was the first time a woman stepped up and said this guy is harassing me? When was that time?

Mr. MEIBURG. When the agency got the information from the Smithsonian intern, they acted immediately and contacted the Inspector General. They took his badge, barred him from the building and he never came back.

Chairman CHAFFETZ. Mr. Sullivan and Mr. Elkins, to suggest that they acted swiftly upon the first time, you should not have to have the Inspector General go through this. Management should be able to deal with this immediately.

According to your own policy, that is what is supposed to happen, but that is not what is happening at the EPA.

Mr. Elkins or Mr. Sullivan?

Mr. ELKINS. Mr. Chairman, it is my understanding of the facts that members of the Administrator's office had notice that Mr. Jutro had some suspect conduct in the past. That was information they had prior to Mr. Jutro actually being assigned to have the Acting position as the Associate Administrator of OHS.

None of that information was provided to us prior to the incident with the intern. Mr. Sullivan may be able to give you a little bit more details.

Mr. SULLIVAN. Mr. Chairman, on or about February 20, 2014, when Mr. Jutro was being vetted for the position, the then Deputy Administrator, Mr. Perciasepe asked the Acting Associate Deputy Administrator, Ms. Feldt to speak to Mr. Jutro.

During that discussion, Mr. Jutro exhibited offensive behavior to Ms. Feldt that she felt was completely inappropriate based on his comments. The next day, a senior executive—who was a victim reported in our report of investigation—reported to Ms. Feldt, with great specificity, some of Mr. Jutro's prior behavior.

Ms. Feldt told us she then took that information from the victim, who was a senior executive, and reported back to Mr. Perciasepe and other senior executives in the Office of the Administrator urging them not to appoint him to the position of Acting Associate Administrator.

Chairman CHAFFETZ. What happened?

Mr. SULLIVAN. Nothing. He was appointed. They did some subsequent vetting, but we are not quite sure exactly what that vetting was.

Chairman CHAFFETZ. My time has well expired. I will now recognize the Ranking Member, Mr. Cummings.

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

I would like to ask why the EPA moved so quickly to remove some employees but so slowly to remove others? Let us start with the case where the process seems to have worked quickly.

Thomas Manning was a computer specialist in EPA's Chicago office who admitted viewing child porn on his work laptop. On March 14, 2013, IG agents interviewed Mr. Manning and he signed a sworn Statement admitting that he used his EPA computer to "search the Internet to view adult and child pornography."

The EPA immediately put Mr. Manning on administrative leave, blocked his access to EPA servers and banned him from the building. On April 10, less than a month later, the EPA placed Mr. Manning on indefinite suspension without pay.

On August 5, the IG provided the EPA with a copy of the employee's sworn admission and the agency then initiated termination proceedings. Today, Mr. Manning is currently serving a 30 month prison sentence.

Mr. Sullivan, what is your view on how this case was handled by your office and the EPA? Was it handled quickly, in your view?

Mr. SULLIVAN. It was handled very quickly and professionally by the EPA Region V staff. One of the differences here, Mr. Cummings, is that Mr. Manning admitted to committing a felony. The viewing and possession of child pornography is a felony under Federal statutes.

Once he gave us his confession confessing to a felony, we shared that with the Region V officials and they initially put him on paid leave. They changed that to unpaid leave and then initiated removal proceedings essentially because he had admitted to a felony.

The U.S. Attorney's Office had given us permission to share everything at that point with the Region V folks.

Mr. CUMMINGS. I am assuming he was aware this admission could be used against him in a criminal proceeding?

Mr. SULLIVAN. Yes, and we also had permission from the U.S. Attorney's Office to use that confession or to provide it to the Region V folks in Chicago for them to use in their administrative action. It was done on a dual track, simultaneously.

Mr. CUMMINGS. Let us talk about the case that took much longer. On September 11, 2013, the IG received a complaint that a GS-14 geologist had downloaded thousands of pornographic images. One week later, IG agents went to talk to this employee and personally saw him—this is amazing—personally saw him viewing pornographic images on his work computer. You just walked in on him, is that what happened?

Mr. SULLIVAN. That literally is what happened. The agent went over to interview him, walked to his workspace and observed him in real time viewing pornographic images.

Mr. CUMMINGS. This employee signed a Statement admitting that he surfed the Internet for pornography "as much as five to 6 hours per day." Again, an employee was saying, I did it. He signed an admission. In this case, however, the IG did not provide a copy of the sworn admission to EPA until June 19, 2014, 9 months later.

Inspector General Elkins, I am trying to understand this. Why would it take 9 months to provide the employee's signed Statement to EPA?

Mr. ELKINS. Representative Cummings, I think I would like to defer to Mr. Sullivan who has the specific facts on that.

Mr. CUMMINGS. Very well. Did we have a felony here?

Mr. SULLIVAN. No, there was no felony here per the viewing of adult pornography. The potential felony and the theory we were pursuing is that the geologist—we cannot mention his name here—was committing a violation of 18 USC 641, the theft of government funds, because he certified on his timecard that he worked 80 hours per week but by his own confession, he worked significantly less than 80 hours a week because between 2, 4 and 6 hours a day he was viewing pornography.

The U.S. Attorney's Office initially accepted that theory and was preparing a criminal prosecution against the geologist. Therefore, we verbally briefed the agency, the supervisors and the Labor Employee Relations attorney as to exactly what the gentleman admitted to, but we finally got permission from the U.S. Attorney's Office to physically turn over the confession. We got specific permission from the U.S. Attorney's Office for the agency to pursue parallel

administrative actions similar to what happened with Mr. Manning.

Mr. CUMMINGS. I see.

Mr. Meiburg, even after the IG provided the sworn Statement, it took another 9 months for the EPA to initiate removal proceedings. Why is that?

Mr. MEIBURG. Mr. Cummings, thank you. Let me must State the obvious, that viewing pornography has no place at EPA.

Mr. CUMMINGS. I got that, now answer my question.

Mr. MEIBURG. Right. In the case of the Chicago instance that you mentioned, there was, in fact, a reasonable cause to believe the employee committed a crime for which a sentence of imprisonment could be imposed. That gave us the ability in that case to act as Mr. Sullivan described and have that employee immediately suspended without pay.

In the case of the employees otherwise, we were waiting for a declination of prosecution from the U.S. Attorney's Office because we do not want to interfere with the prosecution of an investigation, a crime or any other activity.

Mr. CUMMINGS. Did the U.S. Attorney ask you for that?

Mr. MEIBURG. We asked to make sure we knew when that was the case, so we could then proceed.

Mr. CUMMINGS. No, no, no, you did not answer my question. Did the U.S. Attorney tell you what you just said? Did they tell your folks at EPA?

Mr. MEIBURG. I do not know the answer to that question.

Mr. CUMMINGS. Do you know whether there is a document that says that, that you may have in your possession?

Mr. MEIBURG. I do not know. I do not know the specifics of that case enough to say. I do know that it is our general practice to not try to pursue an administrative action—

Mr. CUMMINGS. Wait a minute now. Mr. Sullivan, do you know anything about this piece? You would have dropped out of it by now?

Mr. SULLIVAN. No, sir.

Mr. CUMMINGS. Tell me, do you know about the U.S. Attorney asking the department not to proceed for a while? Do you know anything about that?

Mr. SULLIVAN. Just the opposite. We received specific permission from the U.S. Attorney's Office for the EPA Administrator's office and the powers to be to pursue parallel administrative action.

Mr. CUMMINGS. That is what I thought you said.

Mr. SULLIVAN. Yes, sir, that is correct.

Mr. CUMMINGS. I thought maybe I missed something.

Mr. SULLIVAN. No.

Mr. CUMMINGS. Mr. Meiburg, did you hear that—I am sorry, Mr. Sullivan, what were you saying?

Mr. SULLIVAN. We communicated that to the geologist's supervisor and to the Labor Relations attorneys at EPA.

Mr. CUMMINGS. In other words, EPA knew they could proceed, right?

Mr. SULLIVAN. Yes, sir.

Mr. CUMMINGS. You are saying almost—I am not putting words in your mouth but you are saying almost the opposite of what Mr. Meiburg just said, I think.

Mr. MEIBURG. I think what there is here and one of the lessons from these cases that I completely agree with is that there is a need for a better understanding and communication between the Inspector General's Office, the Department of Justice and our own Labor and Employee Relations people to make sure everyone knows the terms of engagement.

I think people were acting in good faith, believing that they did not want to interfere with the potential criminal prosecution but as Mr. Sullivan has said—

Mr. CUMMINGS. Let me give you some advice. In the future, if the department is confused, maybe you might want to just pick up the phone, dial some numbers and call Mr. Sullivan, if they want to know where they stand. You would not mind taking that call, would you?

Mr. SULLIVAN. Mr. Cummings, not only would we not mind it, but in the case of the geologist and the other gentleman who was the environmental specialist, we had continual collaborative interaction with the agency, the supervisors and the Labor Employee Relations staff. We had contact with them on a weekly basis and multiple times every month during this period of action.

Mr. CUMMINGS. This is the last question.

If an employee admits to misconduct and if he signs a sworn Statement detailing what he did wrong, we should be able to immediately share that information. Mr. Meiburg, is there any reason—Mr. Sullivan, I want you to listen to this also—the IG and the EPA could not adopt a policy today, not yesterday, today, providing that sworn Statements like these will be turned over to the agency as soon as possible? Is there anything preventing us from doing that?

Mr. SULLIVAN. The only thing that would prevent us is that once the case is accepted for prosecution, we would have to get the acquiescence of the U.S. Attorney's Office before we turned over that document, but I cannot imagine that any U.S. Attorney would say we cannot turn over the confession to the agency for them to take administrative action.

Mr. CUMMINGS. Mr. Meiburg?

Mr. MEIBURG. I think that is something we would welcome and we welcome working with the IG and the Department of Justice.

Mr. CUMMINGS. I thank you, Mr. Chairman, for your courtesy.

I really think that if there is a way you all can work that out, that would be very helpful. Not every single thing has to be legislated, I do not think, but you all should be able to work this out.

I will talk to the Chairman and you all can bring us back some type of proposal so we can move on this because at the rate we are going, we will be talking about this same stuff—some of us, if we are still here—ten years from now.

Mr. MEADOWS [presiding]. I thank the gentleman.

The Chair recognizes the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman.

As I am listening to this testimony, we have heard it before. It appears there may be some need for the taxpayers to be protected

from the environment of the EPA. It is a concern that has to be addressed.

Mr. Elkins, yesterday you indicated—I believe around 5:28 p.m., after business hours—you received an email from Administrator McCarthy stating that the EPA had rescinded the MOU between the agency and the FBI.

Mr. Elkins, where does Administrator McCarthy's action leave the EPA OIG? What are the next steps?

Mr. ELKINS. Thanks for that question.

Actually, it leaves the whole situation muddier than it was before. First of all, let me start out by saying that my office has never really had an objection to an MOU with the FBI and the EPA on how to move forward. That would create a clear path that everybody understands who is on first, who is on second.

Mr. WALBERG. But you are all part of the game?

Mr. ELKINS. We are all part of the game. However, though we wanted to a part of that discussion, that never happened. We were never a part of the discussion. In effect, what we have now is by the Administrator doing away with the MOU—if you read the plain language of her email—it pretty much puts everything back to square one where the Office of Homeland Security will continue to do investigative activities with the FBI and will decide when they are going to bring the EPA OIG into an investigation. This is untenable. It is dangerous. At this stage of the game, we are still in a fog.

Mr. WALBERG. Which leaves a crucial ally tool out of the process for people like us as well, representing the taxpayer.

Mr. ELKINS. Yes. To the extent that the FBI has always said to the Administrator, just let us know who the point of contact is going to be at the EPA so we can work with them. This takes away that point, so the FBI does not know. Basically, the point of contact is back to the Office of Homeland Security, which in the past has excluded my office from participating. It is a serious issue.

Mr. WALBERG. The hen house is not guarded.

Mr. Sullivan, were senior level EPA officials, such as Mr. Reeder, cooperative in volunteering information to the OIG in order to assist you in uncovering further information about Mr. Jutro's past inappropriate behavior and probably more importantly, how many times did you have to interview Mr. Reeder in order to obtain the information you needed to proceed with your investigation?

Mr. SULLIVAN. We had to interview Mr. Reeder three times. There was a series of different subjects we discussed with him. With each interview when we obtained additional information, we then asked additional questions, so eventually we got more information from Mr. Reeder.

The first interview was rather limited and we subsequently found out that—I do not know whether it was our fault for not asking the right questions—we subsequently found Mr. Reeder had additional information which he had during the time of the first interview but ultimately it was not given to us until after the third interview.

Mr. WALBERG. Mr. Reeder, why didn't you give it to them? You had the information.

Mr. REEDER. Congressman, I am not sure what particular information Mr. Sullivan is talking about. If you were to make it more specific, I am happy to cooperate and answer the question.

Mr. WALBERG. If you were listening to the first question, it took a series of interviews to get the information that you should have had—at least Mr. Sullivan had indication that you had it—but there was not a forthcoming in trying to get to the bottom of bad behavior.

Mr. REEDER. I will try to be helpful in clarifying that.

I believe Mr. Sullivan is referring to something that another employee, Lisa Feldt had told me prior to the placement of Mr. Jutro in the position. If that is what he is referring to, I can certainly address that question.

Mr. WALBERG. Is that what we are referring to?

Mr. SULLIVAN. Yes, Mr. Walberg. Ms. Feldt—we found out subsequent to Mr. Reeder's first interview—told us specifically she discussed her concerns about Mr. Jutro with Mr. Reeder and other senior executives. During our first interview, Mr. Reeder never told us that.

Mr. WALBERG. My concern, as I listen to this, is that we have employees who receive pay while on administrative leave for long periods of time, and we have people who can retire to get away from some of the impact of their efforts.

Mr. ELKINS, would you be in favor of legislative or other fixes that would streamline the process by which Federal employees could be terminated, could be prosecuted, would have their administrative leave shortened and the impact to the taxpayer impacted in a positive way?

I say this having introduced legislation last term on SES streamlining to get at these issues. That legislation is upgraded and shortly in the next couple of weeks will be introduced as well. Would that be of help to you?

Mr. ELKINS. Let me answer the question this way. I believe that justice delayed is justice denied. Whether it is a criminal case or an administrative case, employees need quick action to determine whether or not there is guilt or misconduct.

Any legislation that sets some sort of timeline, like a speedy trial type of instance that requires agencies to move quickly.

Mr. WALBERG. Efficiently.

Mr. ELKINS. Efficiently, with a sense of urgency, I think would help the agency and the employee.

Mr. WALBERG. Thank you.

Mr. MEADOWS. I thank the gentleman from Michigan.

The Chair recognizes the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

I want to thank the witnesses for your attendance.

I actually think if we are going to look at new legislation, and I think we need to, we look at the authorizing statute for Inspectors General because the side deal between the FBI and the EPA to shut out the Inspector General is problematic.

It takes Congress out, as the gentleman previously indicated. There is nobody representing the taxpayer and obviously nobody protecting the employees either, the ones that were harassed.

Mr. Elkins and Mr. Sullivan, thank you so much for your service. You are both frequent flyers to this Committee and we appreciate your great work.

One of the provisions in the Inspector General statute says that when probable cause becomes apparent, you automatically have the authority to subpoena when there is probable cause that a crime has been committed.

Certainly either when the tenth, eleventh or twelfth woman complained about Mr. Jutro, I think you probably had probable cause to intervene and subpoena the records that the EPA was withholding from you.

Certainly when you get a written admission of guilt that the person was actually viewing pornography for numerous hours during the course of the day, when you have a stipulation that they are violating Federal anti-pornography statutes, certainly when you have an admission, a stipulation from the defendant that they have violated the law, that is probable cause.

What was the problem, once you had the admission, with going forward? It seems this delay for additional evidence after the individual stipulated they committed the crime, that they are guilty and then there is a nine or 10 month dialog about additional evidence. One the defendant admits or stipulates they have committed the crime, you don't need any more evidence to take action. That is a stipulation and you can go ahead, you can go forward. Am I missing something?

Mr. ELKINS. No, sir. Let me try to put this into a bit of perspective.

On the subpoena issue, inspector generals, yes, we do have subpoena authority but we cannot use a subpoena against Federal employees or Federal agencies. It does not work that way.

Mr. LYNCH. If the statute says you do—as a matter of fact, that is the only thing you can do, subpoena the agency that you are charged to oversee. That is the way the statute is written.

Mr. ELKINS. No, no, we cannot use subpoenas against Federal employees. We can use subpoenas, yes, but not against Federal employees.

To the extent there is an administrative process going on, that is one issue. If it is a criminal matter where the U.S. Attorney is involved, then through the U.S. Attorney's Office, we can use subpoenas. That is what the IG Act provides.

Mr. LYNCH. It says in the statute that authorizes you, Title V, Subsection 6, that you have the right to unfettered access to all materials.

Mr. ELKINS. I do.

Mr. LYNCH. It also says that you can exercise and issue a subpoena to gain those materials.

Mr. ELKINS. Yes, two different things. Yes, we do have unfettered access.

Mr. LYNCH. It does not sound like you have unfettered access.

Mr. ELKINS. No, we do not.

Mr. LYNCH. You are telling me we have unfettered access and I said it does not sound like you have unfettered access and then you say, we do not have unfettered access. I am at wits end here because nothing is happening.

Mr. ELKINS. Let me see if I can answer your question more directly.

Mr. LYNCH. Please.

Mr. ELKINS. This is not really confusing. The statute provides that we do have unfettered access, that the agency needs to cooperate with us. That is separate from subpoena issues.

Mr. LYNCH. That is the definition of unfettered.

Mr. ELKINS. In order for that to work, the agency has to cooperate with us. We do not have that cooperation. If we do not get the cooperation, it does not work. I cannot issue a subpoena to compel that cooperation. That is the distinction.

Mr. LYNCH. OK, so we need to change the statute. Not only that, in my opinion, we need to put a provision in here that there is an obstruction of justice penalty against individuals who get in the way of justice, of prosecuting these cases.

It is not merely an absence of reporting, there is an active effort here, in my opinion, to protect these employees. When you have an admission from an employee that they have broken the law and you promote them or if you have an admission within your department from an employee who works for you that they are downloading porn four or 5 hours a day, and you just kick the can down the road and let them retire without penalty, that is complicity. That is complicit in allowing that person to break the law and escape justice.

I am just beside myself with what is going on here. It is absolutely pathetic. I know there are a lot of good employees over at the EPA. This is just a disgrace to them of painting them with this brush. You are not helping.

I will yield back.

Mr. MEADOWS. I thank the gentleman.

The Chair recognizes the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Chairman, you have been on this Committee for a number of years, as have I. It is the same damned song, just a different verse. We cannot investigate because there is an ongoing Inspector General investigation, we cannot investigate because there may possibly be pending criminal charges.

Then we hear last week, Mr. Chairman, that we cannot discipline employees for anything other than sexual harassment. Here we have a fact pattern that includes sexual harassment and nobody is being disciplined.

Mr. Sullivan, what is the total number of women who made allegations against Mr. Jutro?

Mr. SULLIVAN. Seventeen.

Mr. GOWDY. Seventeen. Give me some of the specific allegations.

Mr. SULLIVAN. Some of them are pretty graphic and I do not know if we want to discuss it.

Mr. GOWDY. Oh, yes, I do because the two men beside you either knew about them or should have known about them and did not do a damned thing about it, so the more graphic, the better.

Mr. SULLIVAN. On one occasion, which was in December 2013, Mr. Jutro was at a restaurant in the Wilson Plaza right next to EPA headquarters with one of the senior female employees.

She described to Mr. Jutro that she had to leave to take the train home. He perked up and said, train, I have never had one of those. She knew exactly what he meant.

Mr. GOWDY. I think most of us know what he meant.

Mr. SULLIVAN. Yes, and she was very offended by that statement.

Mr. GOWDY. Yes, well, she should have been. What else?

Mr. SULLIVAN. At the incident at the White House in July, a female colleague was at the White House on assignment with Mr. Jutro. He asked her what she was doing and she I am tweeting back the event here so our colleagues back at EPA headquarters can understand what is going on and can follow in real time.

He said, oh, twating, I really like twating, again referring to part of the female anatomy.

Mr. GOWDY. Mr. Reeder, were you aware of an allegation of inappropriate, unwanted sexual discussion at an EPA happy hour on December 4, 2013 at a restaurant? Were you aware of that?

Mr. REEDER. No, sir.

Mr. GOWDY. Do you know why you were not aware of that, Mr. Reeder?

Mr. REEDER. I do not know why.

Mr. GOWDY. Because you did not bother to ask Mr. Jutro's supervisor when you were doing his background check. He knew about it but you did not bother to ask him.

How about July 29, the same female was again the victim of inappropriate and unwanted sexual discussion by Mr. Jutro at the White House Innovation for Disaster Response and Recovery Day. Do you know about that?

Mr. REEDER. I do not know.

Mr. GOWDY. Do you know why you did not know about that, Mr. Reeder?

Mr. REEDER. No, sir.

Mr. GOWDY. Because you did not bother to ask the person who did know which was the immediate supervisor of Mr. Jutro while you were vetting him for another position.

Did you know about an inappropriate and unwanted hugging and kissing that began with one of the victims in 2007?

Mr. REEDER. No, sir.

Mr. GOWDY. Do you know why you did not know about that, Mr. Reeder?

Mr. REEDER. It was not told to me.

Mr. GOWDY. Because you did not bother—no, no, no. You were not told? You did not ask. You did not interview his immediate supervisor. Do you recall what your rationale was for not interviewing that immediate supervisor?

Mr. REEDER. Yes, sir.

Mr. GOWDY. What was that?

Mr. REEDER. At some point before Dr. Jutro was put into the position—

Mr. GOWDY. I am looking for an answer. I am not looking for an encyclopedia. What reason did you give for not interviewing the immediate supervisor of the person that we are describing? Do you want me to refresh your recollection, Mr. Reeder—because you do not talk to people at that level. That was your response.

Mr. REEDER. That is the characterization of somebody else, sir. That is not my characterization.

Mr. GOWDY. It is the characterization of the Inspector General, Mr. Reeder.

Mr. REEDER. If you like, I can answer.

Mr. GOWDY. No, I am going to get through, first, Mr. Reeder.

Mr. REEDER. Yes, sir.

Mr. GOWDY. Were you aware of an allegation of inappropriate and unwanted hugging and kissing that occurred at another White House meeting in approximately 2009–2010?

Mr. REEDER. No, I am not, sir.

Mr. GOWDY. Do you know why you were not aware of that, Mr. Reeder?

Mr. REEDER. No, sir.

Mr. GOWDY. Because you did not bother to ask the person that had knowledge which would have been the immediate supervisor of the person you were vetting for another office.

Were you aware of inappropriate and unwanted hugging and kissing and sexual discussion that began with yet another victim in 2002?

Mr. REEDER. No, sir.

Mr. GOWDY. Do you know why you were not aware of that, Mr. Reeder?

Mr. REEDER. Congressman——

Mr. GOWDY. Because you did not bother to ask the person who knew. Did you volunteer the information when you were asked?

Mr. REEDER. I am sorry, I am not sure what information you are referring to.

Mr. GOWDY. Did you know any of these allegations, Mr. Reeder?

Mr. REEDER. No, sir.

Mr. GOWDY. Why did you not interview—let me ask the Inspector General. Do you agree with that, Mr. Inspector General, that Mr. Reeder was not aware of any allegations of wrongdoing at the time you interviewed him and failed to volunteer?

Mr. ELKINS. Let me defer to Mr. Sullivan who has the facts on the investigative piece.

Mr. SULLIVAN. Mr. Gowdy, we determined that at a minimum, Mr. Reeder was aware of the offensive discussion that Mr. Jutro had with Ms. Feldt. He was also aware of the reporting of Mr. Jutro's sexual harassment, including unwanted hugging and kissing with a senior executive. Ms. Feldt reported that to Mr. Reeder, as well as other senior people including the former Deputy Administrator, Mr. Perciasepe, before Mr. Jutro was appointed as the Acting Associate Administrator.

Mr. GOWDY. What did Mr. Reeder do with that information?

Mr. SULLIVAN. I do not know what he did but we did not find out about it——

Mr. GOWDY. But he was on notice before the promotion was made of some of these allegations?

Mr. SULLIVAN. Yes.

Mr. GOWDY. And would have been on notice of more had he bothered to ask the immediate supervisor?

Mr. SULLIVAN. Had he asked the immediate supervisor—we had interviewed the immediate supervisor—that supervisor told us, I

would have absolutely shared that with Mr. Reeder but he was never contacted.

Mr. GOWDY. I yield back, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman from South Carolina.

Mr. Reeder, I am concerned that, as a chief of staff, you are charged with a particular duty and a particular task and yet, under questioning from Mr. Gowdy, it sounds like you did not even conduct a thorough investigation before making a recommendation on this individual.

Mr. REEDER. Mr. Chairman, I disagree with that.

Mr. MEADOWS. How could you disagree with all the questions that Mr. Gowdy just posed to you and you had no knowledge but yet, Mr. Sullivan was able to get that by picking up the phone and having a discussion? How could you disagree with that?

In hindsight, you would acknowledge that you were wrong, would you not, in hindsight?

Mr. REEDER. In hindsight, I would have asked a different question, yes, sir.

Mr. MEADOWS. All right.

The Chair recognizes the gentlewoman from New York, Ms. Maloney for 5 minutes.

Ms. MALONEY. I am just astounded and I am getting a little clarification. It appears that you sexually harassed someone and you might just get a promotion. You are not disciplined, you are not put on leave to protect other employees from inappropriate behavior. It appears you get a promotion.

I want to followup with the questioning of my colleague from the great State of South Carolina.

Mr. Reeder, the IG report indicates that you were one of four senior officials who was notified of the concerns of two female employees on about February 20, is that correct? Were you notified by these female employees of their concern?

Mr. REEDER. I had a conversation with Lisa Feldt who told me of something she heard from a third party, yes.

Ms. MALONEY. Did you followup and talk to the third party?

Mr. REEDER. No, ma'am. I had the understanding from Ms. Feldt that the third party was not interested in speaking about the matter further.

Ms. MALONEY. Did you conduct any further checks of Mr. Jutro after you were informed of these concerns? Sexual harassment is a crime.

Mr. REEDER. Congresswoman, in this instance, Ms. Feldt told me that there was an issue, that there was some behavior which was not described to me. I think it is important for the Committee to know what I did know and did not know.

I did not know the place, the date, the time, the description of the activity or behavior. I did not have a complainant and I did not have a witness. I had a concern about something that he had done inappropriately at some point in the past. It certainly was not enough for me to open an investigation.

I was, frankly, conflicted about what I should do with that kind of information. It was a very difficult set of facts for me to deal with, frankly—to act on.

Ms. MALONEY. Is not sexual harassment, inappropriate touching and inappropriate language toward your coworkers defined as sexual harassment? You may not think it is inappropriate, but certainly my colleague on the other side of the aisle did.

I want to followup on when you are going to promote someone, you talk to the people who work with them. An allegation is an allegation. If they are serious, I try to followup on them. I got one the other day and I am making some phone calls on it.

Why didn't you check with the supervisor? The supervisor would know whether or not this person should be promoted? Why didn't you check with Mr. Jutro's immediate supervisor? Is it true that you did not check with the Office of Research and Development or the supervisor in his case or whatever? Why didn't you check with him?

Mr. REEDER. Congresswoman, when I heard this incident, which as I described was very vague information about some inappropriate behavior, I did make additional calls to people that I believed would be in a position to know more about Dr. Jutro.

Ms. MALONEY. Would not his immediate supervisor be in a better position than whomever you decided to randomly call? Why didn't you call him? I am just curious. What were you thinking?

Mr. REEDER. I called the senior people in the Office of Research and Development, I did. I did not call Mr. Sales. In the normal course of discussing the temporary detail of this matter, I would talk with somebody who was in charge of the SES folks in the other office—in this case, Research and Development.

Ms. MALONEY. Mr. Sales was his immediate supervisor, correct?

Mr. REEDER. Correct. I have to tell you, I really believed—I understand now maybe this did not happen, I do not know—that if there were serious concerns about Dr. Jutro's behavior, those were people that would know. This was the person in charge of HR.

Ms. MALONEY. I think supervisors, people who are close—hindsight is 20/20 but knowing what you know now, do you believe it would have been good judgment and appropriate to check with his supervisor?

Mr. REEDER. Knowing what I know now, I think I would have called the same people and I would have been explicit in whether they had checked with the supervisor of the individual. I would have been explicit.

Ms. MALONEY. You would not have called the supervisor?

Mr. REEDER. I may or may not. If I had the belief that something needed further investigation, I certainly would, but in the course of the normal vetting, I would be explicit that they check with the supervisor.

Ms. MALONEY. So you regret your actions now?

Mr. REEDER. I do not know what the supervisor would have said, Congresswoman. I certainly wish we had had that information at the start.

Mr. MEADOWS. I thank the gentlewoman.

Mr. Reeder, I find it just mind boggling that you cannot even say that in retrospect, you made a mistake. It is very ironic where an agency is charged with making sure that we have a clean environment but yet has a work environment that is polluted. It is just beyond comprehension.

Ms. Maloney makes a good point. Even in retrospect, you cannot even say that you made a mistake?

Mr. REEDER. Mr. Chairman, I honestly believe I did the best I could with the information I had. I do wish I had spoken to the—yes, I do.

Mr. MEADOWS. Mr. Reeder, I would suggest that you are probably the only person that believed you did as much as you should have done.

With that, I will recognize the gentleman from Alabama, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman, and I thank the witnesses.

I have been sitting here listening to the testimony. Frankly, I am absolutely astonished that either of you still have a job. It is absolutely unbelievable. Not only have you allowed a culture of sexual abuse to exist in your agency, you sit here and deny that you allowed it.

There was a report from Senator Jeff Flake last year that pointed out there were eight people on administrative leave at the EPA apparently because they were involved in cases of alleged serious misconduct and they were paid \$1,096,000. One person was on leave for 3 years.

Were any of those people involved in sexual misconduct, yes or no? Mr. Meiburg, Mr. Reeder, either one of you, yes or no?

Mr. MEIBURG. Congressman, let me speak to—

Mr. PALMER. It is a yes or no.

Mr. MEIBURG. The question that you asked was about a cultural of sexual harassment which I do not agree with.

Mr. PALMER. That was not the question, sir. That was an affirmative statement. The EPA tries to regulate everything from greenhouse gases to ditch water to cattle flatulence but if someone makes the slightest mistake in their business or farm or their duties as a municipal officer, they are immediately descended upon by the EPA.

They are subject to heavy handed action. There have even been cases where the EPA has showed up with weapons drawn. Last year, you backed off trying to garnish wages, you have taken personal property and people faced massive fines that have cost them their businesses, their farms, their careers and their savings.

Yet, you have employees who have been sexually abusive of women and others engaging in activities that are sexually abusive of children and no one, no one was fired. They were put on administrative leave, paid administrative leave.

The EPA, in some cases, has cost private citizens millions of dollars, virtually destroying their reputations, their lives and at the same time, you have protected sexual perverts, even rewarded them with promotions and pay increases.

Mr. Meiburg, Mr. Reeder, the EPA is not only mismanaged, it is misguided and in these cases, apparently morally corrupt. How can you sit there and defend these actions?

Mr. MEIBURG. Congressman, with respect, there are several elements to your question, some of which go far beyond the scope of this hearing.

Mr. PALMER. I have not asked a question. I made an observation. My question is, how can you defend these actions? You have not given a definitive defense of any of this. The gentleman from South Carolina, the gentlelady from New York—you have yet to give a definitive defense of your actions.

Mr. MEIBURG. Congressman, again, let me sort through a couple of different aspects of this.

One is we are very clear at EPA that sexual harassment and viewing porn is not a part of EPA.

Mr. PALMER. Why would you go after honest people who are trying to run a business, trying to raise a family or run a farm who make a mistake and come down on them, in some cases with fines of \$32,500 per day, when you have activities like this going on within your agency and you cannot act on that as definitively and as decisively as you do people who are trying to run a business or run a farm?

Mr. MEIBURG. Congressman, with respect, that is not an either/or question. We, in fact, do many actions and anyone who is subject to an enforcement action by EPA is entitled to due process under the law.

Mr. PALMER. I would not have any problem at all with due process for people who were actually charged with something. You impeded the investigation of the Inspector General and you withheld documents. In my opinion, you obstructed justice. I do not see how you can defend it.

Mr. Chairman, I yield the balance of my time.

Mr. MEADOWS. I thank the gentleman from Alabama.

The Chair recognizes the gentlewoman from Michigan, Ms. Lawrence.

Ms. LAWRENCE. Good morning.

I have some questions for the witnesses who are here today.

You have been members of the Federal Government for a while, so my question to Mr. Sullivan, have you ever received EEO training as a manager?

Mr. SULLIVAN. Yes, ma'am.

Ms. LAWRENCE. How often do you receive it?

Mr. SULLIVAN. Yearly.

Ms. LAWRENCE. I want to ask Mr. Meiburg, have you received EEO training as a manager and how often do you receive it?

Mr. MEIBURG. Yes, indeed, I have, annually as well.

Ms. LAWRENCE. Mr. Reeder, the same question to you. Can you tell me how many years you have had in the Federal Government and have you received the training?

Mr. REEDER. Yes, I have 30 years combined, military and Federal service and I have received the training.

Ms. LAWRENCE. In this training, is it stressed upon you that your obligation is to address any complaint of alleged sexual harassment or a hostile work environment?

Mr. REEDER. I think I can answer that. The policy calls—actually, it advises employees to tell their supervisor and the supervisor is obligated to take action which could be informal or formal, depending on the seriousness of the complaint.

Ms. LAWRENCE. In your training that you receive, do you feel that the allegations and the proper action that should have been taken was processed the way you have been trained?

Mr. REEDER. I honestly do not know of the cases prior to the time that Dr. Jutro was in my office.

Ms. LAWRENCE. No, I am talking about where you were directly involved?

Mr. REEDER. Yes.

Ms. LAWRENCE. You felt you met the training and the obligation that you had as a manager?

Mr. REEDER. Yes, ma'am.

Ms. LAWRENCE. I Stated before that I was an EEO investigator, so I clearly feel—not feel, I clearly see a disconnect from the training, the responsibility you have as a manager and what happened to an employee.

When you have 17 women—17—who are giving you the reports that their work environment is one that has been compromised because of sexual harassment, as a manager—as a manager—part of your responsibility is to manage your supervisors. You cannot divorce yourself from what happened.

Mr. REEDER. Absolutely.

Ms. LAWRENCE. It is challenging for me to sit here and know that women who come to work to earn a living, to take care of their families, women or men in our Federal Government who are the gatekeepers, the EEOC, the Federal agencies, to take care of the work environment, you failed these 17 women over the course of the years and you cannot divorce yourself from it because it was a supervisor.

I do have a question for you. How would you change the environment that we have seen here? You have been trained. You have been a manager for 30-plus years. This goes to Mr. Sullivan as well.

Mr. REEDER. I would be pleased to answer that.

When we have allegations that are filed with the Office of Civil Rights, those are tracked and we have pretty good data if it is an EEO-related type of harassment. In fact, last year, we had one filed case of sexual harassment with our Office of Civil Rights. In the preceding year, we had two.

That is very low in number but nonetheless, those three cases were filed with the Office of Civil Rights. There were other cases that were——

Ms. LAWRENCE. You do know if there is an environment where you feel you are not going to be heard and there are consequences, filing of the formal complaints does not negate your responsibility for a work environment, you know that?

Mr. REEDER. I am getting there. I think what might be helpful for us is to have a better system of knowing what other cases that are not going to the Office of Civil Rights, how they are being handled and how many there are.

Right now, the way it is handled, they are not all necessarily centrally identified. Individual managers may have dealt with a case informally and may have counseled the person. Once the harassing behavior stops, that is usually the remedy the victim wants. They want the behavior to stop. Once it stops, that sort of

is the end of that record. We do not have a really good sense of how often it is happening across the agency.

Ms. LAWRENCE. Mr. Sullivan, what are we doing to ensure that people come to work and they are not in this environment where it seems to be kind of well, if they stop, it is OK, we have achieved the goal, they did not file a formal complaint? What is your response to that?

Mr. MEADOWS. Mr. Sullivan, the gentlewoman's time has expired but you can answer the question.

Ms. LAWRENCE. Thank you.

Mr. SULLIVAN. Thank you, Mr. Chairman.

Ms. Lawrence, we, in the Inspector General's Office, do not normally investigate EEO violations. There is a certain process within most agencies and the IGs do not normally—

Ms. LAWRENCE. But you have the responsibility.

Mr. SULLIVAN. Yes, ma'am. I will answer that.

In this case, we did a very thorough and professional investigation. Some of the victims, quite frankly, told us they were afraid to report—

Ms. LAWRENCE. Absolutely, it happens every day because you do not have managers who take it seriously and respond.

Mr. SULLIVAN. That is correct. There were some of the victims that were afraid to report it and when they were interviewed by my special agents, they opened up and told us exactly what happened. There were other victims that felt that Mr. Jutro was not held accountable at all for his actions.

Mr. MEADOWS. You can followup in writing.

The Chair will recognize the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Mr. Chairman, thank you very much.

I will say to Chairman Chaffetz, I appreciate his calling this hearing and staying on top of these matters.

I am in my 27th year in Congress. In that time, I have served on four different Committees. I have been in so many hearings about horrendous waste by Federal departments and stupid decisions by Federal departments and agencies. I have heard about these on the floor of the House from every Committee.

I have read about these dumb decisions and horrendous waste in all kinds of articles but this Committee is the main investigatory Committee of the Congress. In the time I have served on it, we have investigated I guess almost every department and agency at some point or another.

We realize when we sit here, that we just see the tip of the iceberg because we are not in these departments or agencies full time, so we are not seeing all the misconduct or all the waste that is going on. We are seeing a tiny, little portion of it.

I have to tell you, Mr. Meiburg and Mr. Reeder, what I have heard over these last few months about the EPA is absolutely the worse I have heard of any department or agency in the entire Federal Government.

A few months ago, we were here and heard about Mr. Beale or Dr. Beale who pretended to be a secret agent for a number of years and drew I think almost \$2 million in salary at the time he was

doing no work, taking vacations around the world, spending most of his time at home doing nothing.

Now we hear about EPA employees who are spending hours of their work day looking at pornography. Then we hear about another high ranking EPA employee who has 17 women charging him with sexual harassment. It just goes on and on.

It seems to me the people who are running the EPA—both of you gentlemen are very high level EPA employees—people who are running the EPA should be ashamed. You should be embarrassed.

It appears that the EPA has too many employees who are not doing anything. The ones who are doing work seem to be running amuck going almost power mad. It has just gotten ridiculous.

I am concerned about another thing. District Judge Lamberth made a ruling not long ago. He said in the case of Landmark Legal Foundation v. EPA, the EPA did not comply with FOIA requests, they were extremely negligent in processing the requests and apparently were delaying things to help the Presidential election in 2012.

We have another instance of the NFIB, the National Federation of Independent Businesses, sending a FOIA request to the EPA in May and not receiving an answer until December 30.

The abuse just goes on and on and on. These people are allowed to keep these high paying jobs—very high paying jobs, way above what average Americans are making—for months or even years after they have been discovered doing some of these terrible, even sometimes criminal activities.

It just is a shameful, embarrassing and pitiful record. Everybody connected with EPA should be ashamed and embarrassed about this because, as I say, we are just getting the tip of the iceberg.

Mr. Elkins, was this man—Mr. Jutro or Dr. Jutro—allowed to move his retirement date up so he would not be accessible to your people? Is that correct?

Mr. ELKINS. The facts suggest, sir, he did not want to talk to us and he used the vehicle of retirement to defect that outcome.

Mr. DUNCAN. Do you think EPA has been moving fast enough on these administrative procedures? It looks to me like they have been dragging their feet. As I think Mr. Lynch said a few moments ago, they are trying to protect these employees I guess because some of them were friends.

Mr. ELKINS. I am sorry, I cannot speak to the motives of the EPA management.

Mr. DUNCAN. I understand.

Mr. ELKINS. On the other hand, we have done everything we can do on our end to make sure that we follow the facts and bring the facts to the EPA as soon as possible so they can act.

Mr. DUNCAN. I want to say this. We certainly appreciate the work of your office because a lot of these terrible activities would not be here in front of us if it was not for your staff and your office. I just want to say I appreciate that.

I hope we greatly decrease the funding of the EPA and greatly decrease the number of employees so that the people over there will not have all that time on their hands. Maybe they will do some good things for the country instead of doing so many ridiculous, shameful, wasteful things.

Thank you very much, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman from Tennessee.

The Chair recognizes the Chairman of the full Committee, the Honorable Mr. Chaffetz from Utah.

Chairman CHAFFETZ. Thank you. I do appreciate it.

Mr. Meiburg, viewing pornography at work, is that allowable or not allowable?

Mr. MEIBURG. That is not allowable by very explicit EPA policy.

Chairman CHAFFETZ. What is the penalty for viewing pornography at work?

Mr. MEIBURG. The penalty will depend on exactly what happens.

Chairman CHAFFETZ. What is the range?

Mr. MEIBURG. The range is from a warning to dismissal.

Chairman CHAFFETZ. You say in your testimony at page two, "All the EPA employees who work so hard especially deserve that we deal with the misconduct or poor performance swiftly and with integrity and professionalism." Do you think you have lived up to that standard?

Mr. MEIBURG. I think that we are moving swiftly when we get information. I think there is room for improvement—we discussed that already this morning—in the communication between ourselves, the U.S. Attorney's Office and the Inspector General.

Chairman CHAFFETZ. I appreciate that but the cases we talked to you about, which were some of the most egregious we have ever seen in Federal Government, there is no evidence that you have moved swiftly. I do not see any evidence of that.

Let us go back to Mr. Manning for a second. Why didn't you swiftly and immediately—you put him on paid administrative leave?

Mr. MEIBURG. No, sir, I believe Mr. Manning is the case in Region V where he had child pornography and he was immediately taken on unpaid leave because there was reasonable cause to believe that he had committed a crime for which a sentence of imprisonment could be imposed.

Chairman CHAFFETZ. My understanding is he was put on paid leave and then transitioned to unpaid leave. Mr. Sullivan?

Mr. SULLIVAN. Yes, Mr. Chairman. He was initially put on paid leave for about 3 weeks. Then the agency transitioned that to unpaid status.

Chairman CHAFFETZ. Let me ask you, Mr. Elkins, last night my understanding is that the EPA Administrator sent out an email rescinding the MOU with the FBI. Explain that to us. What is it that you are not getting that you believe you should be getting?

Mr. ELKINS. Thank you for that question. Yes, I did receive just around 5:30 p.m. last night an email from the Administrator that stated that she had decided to rescind the MOU.

What that really does is murky up the waters. We have never said that the OIG did not want an understanding or an agreement with the agency and the FBI so that we all understand what our roles are.

You have to understand, sir, that we are in an environment where we have agents who are armed who may find themselves in situations if they do not know what they are doing, you can have a blue on blue sort of situation that is a very dangerous situation.

What the Administrator's memo basically has done is that now we really do not have any guidelines. What we have is OHS now will make the determination and work with the FBI on any intelligence matters that come in.

It seems that whether or not they are criminal or misconduct, we do not know and the OIG is then dependent on the OHS informing us as to what is going on.

I have been having this discussion for 5 years. That has been the practice. It has never worked, even with the MOU. Now, since the MOU has gone away, what gives me any assurance that things are going to be any different? We are back to square one again in a murky situation.

That is the problem we have. The OHS has investigators. That office is growing. They even have more investigators now with guns and badges. The situation is actually getting worse rather than better.

Chairman CHAFFETZ. How should it be? In your opinion—you have been around the block for a long time—how should it be?

Mr. ELKINS. What should happen is a clear acknowledgement of the OIG's primary role in serving as the investigative arm of the agency where employee misconduct is involved. Irrespective of whether it is an intelligence issue or whatever the matter is, the OIG should be the point of contact.

That message needs to come clearly from the Administrator so that everybody understands what their roles are. That has not happened.

Chairman CHAFFETZ. Mr. Meiburg, what is unreasonable about that?

Mr. MEIBURG. Mr. Chairman, a couple of things. One is I have to admit I am a little puzzled about the rescinding of the MOU because it was my understanding—I will have to work with the OIG on this as we move forward—that the MOU itself was an objectionable thing and that the rescinding of the MOU was something that was desired. I think the Administrator's intent was to take that issue off the table.

The Inspector General's Office has its jobs and the OHS has its jobs. We fully agree with the Inspector General that the Inspector General needs unfettered access in the conduct of its lawful duties. The Administrator has Stated repeatedly that is what she expects of every EPA employee.

Chairman CHAFFETZ. Do you have unfettered access?

Mr. ELKINS. No, sir, we do not have unfettered access.

Chairman CHAFFETZ. Mr. Meiburg, why doesn't he have unfettered access? You just said he should.

Mr. MEIBURG. I admit to being puzzled because from where I sit at least, he does.

Chairman CHAFFETZ. Mr. Elkins, what do you not have unfettered access to?

Mr. ELKINS. As I previously Stated, sir, in terms of investigations, we conduct the investigations. We have the ultimate authority to conduct those.

Chairman CHAFFETZ. Mr. Meiburg, do you disagree with that?

Mr. MEIBURG. Mr. Elkins, I believe, is referring to investigations of personnel matters which we believe he has the ability and right

to do and that we encourage employees to cooperate when he conducts those investigations.

Chairman CHAFFETZ. When you initiate those, do you inform the Inspector General?

Mr. MEIBURG. We generally ask the Inspector General.

Chairman CHAFFETZ. Generally? How about all the time?

Mr. MEIBURG. Pretty much all the time.

Chairman CHAFFETZ. Pretty much all the time? Why not all the time? What are the exceptions?

Mr. MEIBURG. When you have a matter that is serious—I will use the Jutro case.

Chairman CHAFFETZ. No, no, we just said all or nothing, right? Is it all or nothing?

Mr. MEIBURG. When we have a matter that involves conduct that requires investigation, we ask the Inspector General to come in and do an investigation. I will also say from the standpoint of my career, there have been many, very productive investigations the Inspector General has done that have been helpful to conduct and discipline in the agency.

Chairman CHAFFETZ. Mr. Elkins?

Mr. ELKINS. The question that needs to be asked is when do they provide that information to us? We are finding that the agency may have the information and sit on it for a while. Eventually, yes, it may get to us.

Also, Mr. Meiburg, I want to be clear that we are parsing things out here. Mr. Meiburg, with all due respect, indicated on personnel matters, they do refer matters to the OIG. It goes much further than that. Matters, not only personnel, criminal matters, any matter that has a nexus to employee misconduct should initially, as soon as it comes in the house, they should pick up the phone and give us a call. That is not happening.

Chairman CHAFFETZ. Mr. Meiburg?

Mr. MEIBURG. Again, I believe the agency has been very clear that the Inspector General, in carrying out their lawful duties, has unfettered access to the work of the agency.

Chairman CHAFFETZ. If they have unfettered access but they do not know what they do not know. For the process to work properly requires you, the EPA, to inform the Inspector General that there may be an issue. That means all of the issues, not just some of them, not pretty much, not any other disqualifier.

I think what we are looking for is the Administrator to clearly articulate that throughout in some sort of letter, memo or letter to Congress without getting somebody else involved. That is where they are bumping into other people. That is what I think is causing all the rub.

Mr. MEIBURG. Thank you, Mr. Chairman. I appreciate that. I will be glad to supply for the record the Statement the Administrator issued within the last 6 months over the fact that employees have the duty to cooperate with the Inspector General.

Chairman CHAFFETZ. Let us keep following up on that.

I need to ask a couple of others and the indulgence of the rest of the Committee. I appreciate it.

Mr. Reeder, I have a question about the personnel records. Part of the challenge that we have in the specific case that Mr. Gowdy

and others have brought up is that you did not go back and interview the immediate supervisor.

For someone under consideration for a promotion, it seems like the very first thing you would do is go talk to the immediate supervisor who is telling the Inspector General. That did not happen.

The question I have is, isn't there some sort of electronic record that you, as a manager, looking to promote someone, could go look and see, doesn't it show up in some sort of personnel record to show that this person has had, at this point, more than a dozen women complain of sexual harassment to one degree or another?

Mr. REEDER. Mr. Chairman, thank you, Mr. Chairman, over there as well, I do not mean to offer this in defense of myself or any other actions but just for clarification for the Committee, this was a temporary assignment for Dr. Jutro. It was not a promotion. It was not what we would consider a promotion.

Chairman CHAFFETZ. Did he make more money?

Mr. REEDER. No, sir.

Chairman CHAFFETZ. Did his title change?

Mr. REEDER. His title changed but his position of record remained in the Office of Research and Development. He was on a detail which was a temporary assignment.

Again, I do not mean that in defense in any way but it is important to get the facts straight. I know you are interested in that. It did not involve a promotion in the sense that the government considers promotions, so there was no formal vetting.

Chairman CHAFFETZ. We are talking about 17 women who were harassed and there does not seem to be a flashing red light that goes off in someone's office saying we have a problem down here. Why does it take 17 women? Why didn't it happen after the first incidence?

Mr. REEDER. Sir, in answer to your question, I think I kind of got to that earlier with Congresswoman Lawrence's question that I think it might be beneficial to have a better record of what actions are being taken by management that are not centrally investigated or adjudicated.

Chairman CHAFFETZ. What are you going to do about it?

Mr. REEDER. I have to say the vast majority of these cases often do not rise to the level of a serious charge of harassment but they are matters we have to take seriously. I have invested as much as any senior executive at EPA—

Chairman CHAFFETZ. What has to happen to a woman to be serious?

Mr. REEDER. If it is unwanted and it is persistent.

Chairman CHAFFETZ. Persistent? If it only happens once, it is OK?

Mr. REEDER. It does not rise to the legal definition.

Chairman CHAFFETZ. If it happens once, if it is not persistent in your mind, then it is not harassment?

Mr. REEDER. Mr. Chairman, I am not defending harassment.

Chairman CHAFFETZ. You said it had to be persistent. You qualified it with persistent. I am challenging that. Why does it have to be persistent?

Mr. REEDER. That is what I have learned in the training from EEOC, it has to be in a manner that creates this hostile work environment for an employee.

Chairman CHAFFETZ. If it happens once——

Mr. REEDER. That is very serious.

Chairman CHAFFETZ. If it happens once, is it unacceptable?

Mr. REEDER. It is unacceptable.

Chairman CHAFFETZ. In your mind, does it rise to the level? You said it has to be persistent.

Mr. REEDER. It rises to a level that a manager needs to do something about it, yes, it does. Does it meet the test for dismissal or formal disciplinary action, that is all very case specific, but I have to say it is unacceptable at any level. Our managers are obligated to take action, sir.

Chairman CHAFFETZ. I appreciate the indulgence here. Your written policy says sexual harassment, written reprimand to removal. It is obviously not working and it needs clarification.

With indulgence, I have one more question.

I was asking if there was a penalty for watching porn and you said, it depends on what happened. How many different ways are there to watch porn? Where is the threshold where it depends?

Mr. MEIBURG. Mr. Chairman, any amount of watching porn is unacceptable. When you are considering you have identified there was porn, you look at all the factors. You look at the so-called Douglas factors in considering what penalty would be imposed.

They include the magnitude and extent of the offense, the employee's prior discipline and conduct record and the other ten factors that go along with the Douglas factors. That is what the table is intended to represent.

Clearly, the cases we are looking at here were very severe cases and those exacerbating circumstances have been taken into account in the action the agency has proposed to take.

Chairman CHAFFETZ. They still were not immediately fired. They still were on unpaid leave.

Here are two things I would like you to do. One is specific to pornography. I want to see the written policy and I want to see whatever notification you have put out over the last several years. Maybe there are twenty, maybe there are none. I do not know. Provide those to us and our Committee. Second is the definition of the sexual harassment and why the wide range. Is it a definition of persistent, not persistent? We are trying to help solve this.

That is the spirit in which we do this. We would appreciate your help. We thank you gentlemen.

I yield back.

Mr. MEADOWS. I thank the Chairman.

Mr. Meiburg, let me followup on one question of his because you talked about viewing pornography. As you know, we have a bill that would prohibit that on Federal assets and computers. My question to you is very simple. How many hours of pornography watching is an offense?

Mr. MEIBURG. Any pornography watching on government time, on government equipment.

Mr. MEADOWS. How many of your employees would you say have this problem?

Mr. MEIBURG. Boy, I sure hope not many.

Mr. MEADOWS. What do you mean hope? Do you mean you have not checked?

Mr. MEIBURG. No, I have not personally supervised——

Mr. MEADOWS. Has anybody?

Mr. MEIBURG. Yes, their supervisors.

Mr. MEADOWS. Can you give us the names of the people who have actually checked all the EPA employees for this? Is that your testimony? I cannot believe that would be accurate.

Mr. MEIBURG. No, no, that is not my testimony.

Mr. MEADOWS. What is your testimony?

Mr. MEIBURG. My testimony is that I do not believe that EPA has a widespread culture of employees viewing pornography.

Mr. MEADOWS. How would you know?

Mr. MEIBURG. I would know because those issues would have been identified and reported to a greater degree than they have been.

Mr. MEADOWS. Seventeen counts of sexual harassment were reported to all kinds of people and we did not deal with it. Do you have 17 different violations of this particular thing before it gets raised to a point where somebody retires?

Mr. MEIBURG. I want to make sure we are clear about separating the pornography and the Peter Jutro case which was one individual.

Mr. MEADOWS. I see them as connected but you go ahead. You can separate them. If you want to justify pornography watching at the EPA, you go right ahead.

Mr. MEIBURG. Let my testimony be exceptionally clear, I do not want to justify any pornography watching at the EPA.

Mr. MEADOWS. My question still stands. How much is too much?

Mr. MEIBURG. Any is too much.

Mr. MEADOWS. How do you know what is being done at your agency, Mr. Meiburg? Have you instructed anybody to check into it?

Mr. MEIBURG. We have asked all of our supervisors to be aware that this is a top——

Mr. MEADOWS. Have you personally instructed—can you send us an email or a memo that was sent out that says we have zero tolerance—what you are saying today? Have you sent that out. The second part of that question is, have you put blocks on those government computers?

Mr. MEIBURG. Congressman, we have identified ways to put blocks against known porn sites. We have two issues that, in all candor, I have to describe.

One is that the Internet moves faster than we do. It moves faster in identifying sites. I cannot testify——

Mr. MEADOWS. You are saying it is a technology issue? Mr. Meiburg, come on. You are saying there is not the technology to block that on Federal computers?

Mr. MEIBURG. There is the technology to block sites that we know about. Sites come up faster than we can keep up with. That is life on the Internet.

Mr. MEADOWS. You have blocks on everybody's computer that as of today, we could check everyone's computer and there would be a block on there for current technology, is that your testimony?

Mr. MEIBURG. My testimony is, to the best of my knowledge, we have blocks on accessing known porn sites. I want to elaborate.

Mr. MEADOWS. It is amazing to me that they can watch it for several hours and continue to get a bonus. How does the guy get a bonus?

Mr. MEIBURG. I wish I could answer that question. I do not know.

Mr. MEADOWS. Are you in charge of that?

Mr. MEIBURG. I have not been in charge of that.

Mr. MEADOWS. Is Mr. Reeder in charge of that? How do you justify a guy watching porn 6 hours a day and he is still an outstanding employee and gets a bonus? Explain that to the American people.

Mr. MEIBURG. There is no explanation for that.

Mr. MEADOWS. Why does it happen?

Mr. MEIBURG. Because there was a failure in the system.

Mr. MEADOWS. How many failures did you have, Mr. Meiburg?

Mr. MEIBURG. If I knew how many failures I had, then I would be in a better position to give an answer.

Mr. MEADOWS. You prepared for this particular hearing. I assume you coming to this hearing was not a surprise?

Mr. MEIBURG. No, it was not.

Mr. MEADOWS. When you did your research, how many problems did you have?

Mr. MEIBURG. I have not got a list of how many problems nor can I admit the problems I do not know.

Mr. MEADOWS. Therein is the problem. If the problems are there that you do not know and you are not looking, who has the responsibility for looking in your agency, Mr. Meiburg, you?

Mr. MEIBURG. The first line supervisors of employees are the ones who are responsible for supervising employee conduct. That, in fact, is the point of why we need to make sure our supervisors are well equipped—

Mr. MEADOWS. You are saying this is all a first line supervisor problem?

Mr. MEIBURG. No, sir, I am not. I think first line supervisors need support from the senior leadership of the agency so that when they find examples of misconduct—

Mr. MEADOWS. I could not agree more and therein is the problem, Mr. Meiburg. I do not think it is first line supervisors that see the problem. I think it is a cultural problem that goes up to the level of Mr. Reeder here.

When you have agencies, senior levels that are willing to turn a blind eye to the kind of horrific stuff that we have heard today, it is very troubling, wouldn't you agree, Mr. Meiburg?

Mr. MEIBURG. I completely agree that we need to create a culture in EPA that makes it clear that watching pornography on the job is unacceptable and that we need to support actions to make sure people who do that are properly sanctioned.

Mr. MEADOWS. Let me ask you this. We get whistleblowers. I have gotten people on Telmark@mail.house.gov that give me all

kinds of insight. I am finding more information about your agency than you are, Mr. Meiburg. Wouldn't you say that is a problem?

Mr. MEIBURG. That sounds like a serious problem.

Mr. MEADOWS. I am and what happens is there is a culture where they do not feel comfortable talking to you. They do not feel comfortable talking to the Inspector General; why would they not feel comfortable talking to you or Mr. Reeder? What possible reason would there be for that?

Mr. MEIBURG. That, I do not know.

Mr. MEADOWS. I can give you an answer. If you cannot come up with one, I can probably give you an answer.

Mr. MEIBURG. Let me State what my own view is. I do think we need to create a culture in EPA and support it at the highest levels—the Administrator shares this view—that people ought to feel comfortable in bringing things forward if they are concerned.

Mr. MEADOWS. Here is the commitment that I think is a bipartisan commitment here, Mr. Meiburg. This will stop. Do you know why, because it actually creates a very bad picture for the hundreds of thousands of good workers.

Every time you give a bonus to someone who has violated it and you go oops, I made a mistake, there are three or four other people saying why did that person get a bonus when I am working very hard and I am doing the very best job I can, yet they get rewarded. Don't you think there is a problem there, Mr. Meiburg?

Mr. MEIBURG. Congressman, I completely agree with you. The biggest obligation, even apart from the individual actions or other kinds of behavior, is the impact on other employees because you are quite right, employees at EPA do not deserve to be tainted by the actions of a few bad individuals.

Mr. MEADOWS. How many people have you fired because of that, you personally?

Mr. MEIBURG. When you say that, could you clarify?

Mr. MEADOWS. Looking at pornography or sexual harassment, how many people have you personally fired, Mr. Meiburg? I can give you the answer. I know it, but go ahead.

Mr. MEIBURG. This will be interesting. To the best of my knowledge, in my previous role—

Mr. MEADOWS. I am talking about your new role since you have come back. How many people have you fired?

Mr. MEIBURG. In the last 6 months?

Mr. MEADOWS. Yes.

Mr. MEIBURG. No, none, zero.

Mr. MEADOWS. Is there a problem today at the EPA?

Mr. MEIBURG. I believe that we are very clear at EPA about our policy with respect to pornography or sexual harassment and that we will be carrying out that policy.

Mr. MEADOWS. I believe you have a policy but I believe you are not enforcing it because Mr. Reeder, in his talking about the policy, he talked about the fact that it is up to the first line supervisor to report that. Wasn't that your testimony?

Mr. REEDER. I testified that our policy requires managers to take action if this is brought to them.

Mr. MEADOWS. When you were talking to Ms. Lawrence, I listened very intently. You said it is important that they mention it

to their supervisor and the supervisor is to take action. That was the policy. Is that your testimony?

Mr. REEDER. That is correct, sir.

Mr. MEADOWS. If that is the policy, why would you not have checked with a supervisor in the case of Dr. Jutro?

Mr. REEDER. I did check with his chain of command.

Mr. MEADOWS. You did not check with his supervisor?

Mr. REEDER. I did not check with his direct supervisor.

Mr. MEADOWS. The policy says, go to the supervisor, so the supervisor is the only one that would really know under your policy and yet, you did not go to him, did you?

Mr. REEDER. I assumed that the senior folks in that office would have been informed of any serious misconduct. I did. As I mentioned earlier, I would be more explicit in that check were I to do that again.

Congressman, you had asked about the culture at EPA. There is some data that addresses that. I have to agree with Deputy Meiburg that EPA does have a healthy work environment, I believe.

Mr. MEADOWS. Mr. Reeder, let me just tell you. We are checking into facts here. Your opinion on a healthy environment and the reality of the facts do not line up.

Mr. REEDER. The fact is that EPA employees were surveyed.

Mr. MEADOWS. I have gone way over my time. The Ranking Member has been very gracious.

I am going to recognize the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thank you. I am going to followup on that just a little bit.

Just so you know, in my area—we are supposed to be here looking for jobs and improving the economy—there is no Federal agency that is perceived to lack commonsense more and doing more to endanger the American economy than the EPA.

People, when I talk to them, always kind of wonder what these people are doing in Washington, that they are so far removed from reality when they come up with new regulations and this sort of thing to penalize or hamstring American business.

This is not exactly the type of hearing I thought I was signing up for when I ran for this job. I thought I was going to be talking to the EPA about what are your people doing when they come up with these ridiculous ozone rules. Now we kind of know at least what some of them are doing.

Is it really true what these people are saying that some of these people were spending two to 6 hours a day watching porn? Is that accurate, the testimony we are getting here?

Mr. MEIBURG. It is accurate that we had three cases, one of which was a criminal case, and then two other cases that were identified in the last couple of years that those two employees were watching unbelievable, completely offensive and unacceptable amounts of pornography. That is two people out of a very large agency. That is not to be defensive about that at all, but just as Stated.

Mr. GROTHMAN. Do you think because that is what they were doing, first of all, that more people were doing it?

Second, if in their job, they had the time to dilly dally around and spend two to 6 hours watching porn, maybe other employees are spending two to 6 hours doing maybe not things that would be as interesting to the home viewing audience but doing whatever else people do when they are not working?

Mr. MEIBURG. Congressman, I believe, from my experience with EPA, that is a very, very small number and that the vast, vast majority—I think the Inspector General would agree with me—of EPA employees are dedicated and hardworking and doing the things to protect the environment for the people of this country that have produced a much cleaner environment over the last 45 years.

Mr. GROTHMAN. In the future, if you catch someone watching porn on their computer, how often do you have to have that screen up before you think they are terminated?

Mr. MEIBURG. It is clear the two cases involved, the proposing official felt that was more than enough information to require them to be terminated. I do not know that there is a specific line because we have to consider due process and the Douglas factors in doing conduct and discipline cases.

Clearly, what these two employees did—not to prejudge the last action which is still in administrative process—but it was way out there.

Mr. GROTHMAN. Like a lot of people, we had other meetings going on in the building, so maybe I did not catch it. You are saying the Douglas factors. You think an hour a day, a half hour a day, 15 minutes a day, 5 minutes a day, what are you saying rises to the level where you feel maybe this person should find another line of work?

Mr. MEIBURG. Again, to be clear, any amount of watching pornography on EPA computers on EPA time is unacceptable. The question then becomes, what level of sanction would you impose as a result of that?

Mr. GROTHMAN. That is exactly right. If we find somebody has been watching porn for an hour a week, a half hour a week, 15 minutes a week, at what point do you think they should no longer be working for the EPA, if you just had to give us a wild guess?

Mr. MEIBURG. I am hesitant to do that about any specific case but some of the kind of upper numbers you mentioned would cause grave questions for me if I were their supervisor, why that person should be working for EPA.

Mr. GROTHMAN. How about the lower numbers I mentioned? How about a half hour? Do you think a half hour is out of line?

Mr. MEIBURG. There would be consequences and discipline associated with that. I do not want to make it sound like I am splitting hairs or being overly complicated, but each one of these cases has to be considered individually.

Mr. GROTHMAN. I think what I am going to do for you, just because this is not an area that I am an expert in, the next time I go back to my district and tour my local manufacturers being threatened with their existence and throwing all their employees out because of what the EPA is doing, I will ask them how many hours or half hours a week or 15 minute slots a week of porn they allow their employees to watch before they terminate them so you

kind of know what the average company out there feels is a good policy.

I will get back to you on that and then you will have some direction. Is that OK? I appreciate you spending the time today.

Mr. MEIBURG. Thank you, Congressman.

Mr. MEADOWS. I thank the gentleman.

The Chair recognizes the Ranking Member of the full Committee, the gentleman from Maryland, Mr. Cummings.

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

Gentlemen, your day with us has just about ended but I have to tell you, if I were watching this, Mr. Meiburg, just watching C-SPAN, I would be disgusted.

We are better than this. We are so, so, so much better. Just think of the idea that the sexual harassment issues. Are you married, Mr. Meiburg?

Mr. MEIBURG. Yes, sir, Ranking Member.

Mr. CUMMINGS. The idea that your wife would come to work, after doing all the things she has to do to get ready in the morning and take care of her family, then she has to come and be harassed. Then it seems as if the powers that be do not address those issues when they find out about them. Man, you would go crazy.

I was just thinking about what a negative impact all of this has on the morale. Mr. Chairman, you talked about it a minute ago. The idea that you have these folks who stay in the employment of our EPA, after having done these things, I just cannot get past what you told me a little earlier about how you guys are waiting for the U.S. Attorney and come to find out, you already had permission to move forward in one of the pornography cases.

Something is missing and we are better than this. We are so much better. If you cannot do the job, you need to let somebody else get in there and do it because a lot of people are depending on government functioning properly.

They just want to come to work, do their job, give them their blood, sweat and tears and then go home, but then their morale gets destroyed when they see people coming back to work, they will get a little tap on the hand, come on back, welcome, watch some more porn. Give me a break, this is crazy. We are better than this, do you agree?

Mr. MEIBURG. Congressman, I absolutely do. The point you made is that the people who most deserve that we take action on cases of folks who are engaged in terrible conduct, the ones who most deserve it are the employees of EPA. I want to make sure I am clear on a couple of points.

Mr. CUMMINGS. Be clear because I have to tell you, man, I am a bit concerned here. I do not feel the sense of urgency. That is right, I said I do not feel a sense of urgency. I do not feel the sense of significance.

The only reason I mentioned your wife is because sometimes I think people need to flip things and think about how they would want their relatives to be treated or their daughter. Do you follow what I am saying? I was trying to get some of that urgency out of you and I am working on it.

Mr. MEIBURG. Thank you because I think that would be an appropriate sense to get from me, that sense of urgency.

Mr. CUMMINGS. I wanted to paint a picture for you because sometimes when you think about somebody you are close to, somebody you love, somebody who supports you, somebody who has your children—go ahead. We have you at the urgency level now, I guess.

Mr. MEIBURG. Absolutely.

Mr. CUMMINGS. OK.

Mr. MEIBURG. The fact of the matter is watching pornography on government time and on government equipment is prohibited by EPA policy and we are, indeed, urgent about that because employees who engage in such behavior will face disciplinary action up to and including removal.

In doing that, the one thing that has not come out in this hearing—I do want to make a point.

Mr. CUMMINGS. Do it quickly because I have a few things else I need to discuss.

Mr. MEIBURG. EPA wants to follow the law and part of the reason we want to make sure we follow the law in these things is so that actions we take are sustained on appeal to either the Merit System Protection Board, the EEOC or in the District Court because the consequences of an action that we took where we removed somebody and then that action was overturned would be pretty bad.

Mr. CUMMINGS. I got you. The Merit System Protection Board submitted a Statement for today's hearing stating that "Current law permits an agency to take adverse employee action, including removal based solely on an employee's sworn Statement or admission." Several MSPB decisions are cited.

Mr. Chairman, I would ask that it be admitted to the record.

Mr. MEADOWS. Without objection.

Mr. MEIBURG. That would be helpful.

Mr. CUMMINGS. Thank you.

Do we have an extra copy for him? Mr. Meiburg, I am going to get you a copy of it.

The MSPB has determined that an agency may rely on an appellant's admission "in support of its charge." Mr. Meiburg, help me with this. Why wasn't this employee's detailed admission of downloading and viewing pornographic images on the EPA equipment over the course of years sufficient to initiate a removal?

Mr. MEIBURG. Congressman, I do not mean to be evasive, but I cannot speak to that particular thing. I do think, and I have urgency about this, that we do need to work better with the Office of the Inspector General, the Department of Justice and U.S. Attorneys to make sure we, ourselves, clearly understand. We have work to do. We understand that.

Mr. CUMMINGS. Were you familiar with what I just talked about—not necessarily the document but the fact that you could do this?

Mr. MEIBURG. No. This is actually new information to me.

Mr. CUMMINGS. Did you know that, Mr. Sullivan?

Mr. SULLIVAN. Yes, sir, I did, Mr. Cummings. We communicated that to the Labor Employee Relations attorneys that we dealt with continually on both of these cases that you were free to take action and they certainly could take action, but they chose to wait until

the very end. It is inexplicable to me and I do not know why they did that.

Mr. CUMMINGS. Mr. Meiburg, we have to do better. I am sorry, this is not acceptable. It is not acceptable. I feel sad about it. Listen to me. You do not have to say anything, I am almost finished.

I feel sad about it. You have Mr. Sullivan and Mr. Elkins and I think I was a little hard on you all in my opening Statement. Now that I look back, it is not your fault. You did your job. You did what you could do. You gave the advice, you tried but then it seems as if you were hitting brick walls in trying to accomplish what you wanted to accomplish. For that, I apologize for what I said earlier.

I could not figure out why things were not moving fast enough. Now, I know. Now I know. Do you know who it is? It is you, Mr. Meiburg and you, Mr. Reeder. There is absolutely no excuse for it, I am sorry. There just isn't.

This is the last thing, Mr. Chairman. Thank you for your indulgence.

Earlier, I asked for a commitment of the EPA and the IG to work together to share admissions of employee misconduct. Mr. Meiburg and Mr. Elkins, you both agreed to do that. I just want you to keep the Chairman and I informed of your progress. You all are going to start working on that immediately, somebody?

Mr. ELKINS. Yes, we will do that.

Mr. MEIBURG. Yes.

Mr. CUMMINGS. Can you give me some date when I can expect an answer because I do not want to wait too long? I want a date now. Give me a date.

Mr. MEIBURG. We will work together with the Inspector General and get you a followup on that by the end of June.

Mr. CUMMINGS. What did you say?

Mr. MEIBURG. The end of June.

Mr. CUMMINGS. Why is it going to take so long?

Mr. MEIBURG. I want to make sure that we are doing this——

Mr. CUMMINGS. Mr. Meiburg?

Mr. MEIBURG. I am not trying——

Mr. CUMMINGS. Mr. Meiburg, I tell you what. Make it the end of May, all right? To me that is too long, OK?

Mr. MEIBURG. Yes, sir.

Mr. CUMMINGS. The end of May, will you try?

Mr. ELKINS. Yes, sir.

Mr. CUMMINGS. If you are having difficulty, would you let us know? You can contact the staff or send us a letter if you are having difficulty getting together because we expect something by the end of May, all right?

Mr. ELKINS. Yes, sir.

Mr. CUMMINGS. Thank you all very much.

Mr. MEADOWS. I thank the gentleman. Before he leaves, I want to make one comment.

We were discussing and talking about employee morale. There is on one more committed to the Federal work force than the gentleman from Maryland but it also shows his character, Mr. Elkins and Mr. Sullivan, when the Ranking Member is willing to apologize

for perhaps being overzealous. That just speaks to your character, Mr. Cummings. I just want to thank you for that.

Mr. Meiburg, I want to be very specific. A lot has been talked about and I understand that you have a zero tolerance for porn watching but in light of the revelation that the Ranking Member just provided to you that you have the ability—not only the ability, the requirement—to address these kinds of behaviors, I would like to know from you today, if we have an EPA employee who is watching porn—let us pick an hour or a week on average—are you willing to fire them, yes or no?

Mr. MEIBURG. I am not willing to make a judgment on an individual case without—

Mr. MEADOWS. If they admit that they have been watching it and you find it on their hard drive, are you willing to fire them, yes or no?

Mr. MEIBURG. I will answer for myself.

Mr. MEADOWS. You are the head of the agency—one or two down—you can answer for the agency, yes or no, will you fire them?

Mr. MEIBURG. If we have an employee who is watching—I will go with your scenario—an hour a day of porn and that is documented by whatever forensics we need to do to document that, it seems to me that would be an appropriate case for proceeding with termination.

Mr. MEADOWS. That is not a yes or no, Mr. Meiburg. That is a question with a question. My question is very specific. If they are watching porn for a hour—it is a low threshold—I would not even tolerate that—would you fire them?

Mr. MEIBURG. I understand that.

Mr. MEADOWS. Yes or no?

Mr. MEIBURG. I would fire them.

Mr. MEADOWS. Will you instruct your departments to fire them?

Mr. MEIBURG. I will take that information back and—

Mr. MEADOWS. Yes or no? There is a yes or no to the end of this question and we are going to get there eventually. If the answer is no, just tell the American people no because I am sensing the answer is no.

Mr. MEIBURG. I do not think that is fair but I also do not think it is fair to me that you prejudge every case that would come before a supervisor or before the agency. I am sorry that is not a simple yes or no answer but it is just not.

Mr. MEADOWS. So the answer is no?

Mr. MEIBURG. The answer is not no and the answer is not in every case.

Mr. MEADOWS. Mr. Meiburg, let me just tell you, I know they brought you back and you had a stellar career in Region IV and other places, but I can tell you that you are doing the EPA a disservice today.

If you cannot, before the American people, admit that watching porn is offensive enough to fire them, moms and dads all across America do not understand that and quite frankly, neither do I.

Mr. MEIBURG. Congressman, I completely agreed that watching porn on EPA computers is not acceptable.

Mr. MEADOWS. But if you do not do anything about it, Mr. Meiburg, it will never change. What I am hearing from you today is that you are not going to do anything about it. I am saddened to hear that.

Mr. Sullivan and Mr. Elkins, I want to thank you for your work. I want to also let you know that the Ranking Member and I were talking about this and I know that Chairman Chaffetz is not going to let this go by the wayside. If you will continue to followup and do your work, please thank all of those who work with you.

The other thing is if we do not get clarity by the end of May, as the Ranking Member suggested, on working with you, we are asking you to report back to this Committee any potential problems. Mr. Elkins, are you willing to do that?

Mr. ELKINS. Yes, sir. Thank you for your support.

Mr. MEADOWS. You have it.

I would also suggest at this particular point, Mr. Meiburg, if at 72 hours you have an employee issue that you would notify Mr. Elkins within 72 hours, your supervisors or anyone else, on anything that may be of a concern and let the Inspector General determine whether it is something that needs to be followed up, not just those that you think are important.

Wouldn't you agree that all—as your previous testimony would indicate—need to go to the Inspector General?

Mr. MEIBURG. Again, my testimony is that my own experience in going to the Inspector General—

Mr. MEADOWS. I do not care about your own experience, you will be long gone eventually. Should the agency have the commitment to refer all—a-l-l, all—to the Inspector General, yes or no?

Mr. MEIBURG. Again, not to parse hairs, but when you say all, are you referring to all issues of employee misconduct?

Mr. MEADOWS. Yes, all issues of employee misconduct or potential employee misconduct, all, a-l-l?

Mr. MEIBURG. The reason I am hesitating—not to parse words—is that—

Mr. MEADOWS. Well, you are parsing words so I would suggest that you get somebody else to come and testify the next time around.

Mr. Clay, we will recognize you for 5 minutes of questioning.

Mr. CLAY. Thank you so much, Chairman Meadows.

I know some of this ground has been covered already but I would like to focus on the case of the GS-14 environmental protection specialist. Help me with the timeline. On May 2, 2014, the IG received allegations that this employee was viewing pornography at work. On May 8, the IG interviewed the employee and took his sworn Statement. On June 19, the IG provided the EPA with a copy of the employee's sworn Statement.

It took the IG about a month after the Statement was given to provide the EPA with a copy. That is a quick turnover compared to the case of the geologist.

Despite receiving the sworn Statement on June 19, the EPA did not start to process removing him. Instead, dialog ensued between the EPA and the IG over the next 10 months regarding additional evidence.

On February 23, 2015, the U.S. Attorney's Office for the District of Columbia declined prosecution of this case. The IG communicated this to the EPA in its final Summary Memorandum Report on March 13, 2015.

After this happened, the EPA acted quickly, issuing a Notice of Proposed Removal on March 23, 2015. This case is currently pending so we cannot delve further into the details, but it is difficult to understand why the EPA did not go forward with removal proceedings as soon as it received the admission.

At that point, these were no longer just allegations. They were admissions by the employee himself. Yet, here we are and it is nearly a year later and the employee's removal is still pending.

I would like to hear from the panel whether there is a way we can handle similar cases more effectively and efficiently in the future? Mr. Elkins, I will start with you.

Mr. ELKINS. Yes, sir. Thank you for the question.

I think initially in our conversations and after we complete investigations, we immediately and timely have a conversation with the agency as to what our findings are. At that point, once we turn it over to the agency, it is up to the agency to act on it.

In the past, we have had discussions about what an admission means, what the culpable level of standard of proof—we had that discussion so we have gone through this many times with the agency, but once it leaves my shop and we give it to the agency, we are dependent on the agency to act.

Mr. CLAY. Mr. Sullivan, anything to add?

Mr. SULLIVAN. Mr. Clay, no, I concur with Mr. Elkins. We acted appropriately in this investigation. Not only did we turn the report over within a month, immediately after we interviewed the environmental specialist, we verbally briefed his supervisor as to the results. Within a day of the investigation beginning and the interview being conducted, we verbally briefed the supervisor and turned over the confession within a month.

Mr. CLAY. Take it from there, Mr. Meiburg.

Mr. MEIBURG. To that point, one of the things we have discussed in this hearing this morning is that perhaps EPA—not perhaps, EPA needs to look back at its own internal procedures to enable us to proceed based on the admission without waiting for the final conclusion by the Attorney General's Office about whether or not they are going to accept a matter for criminal prosecution. That would have speeded up this case.

Mr. CLAY. Where is it now?

Mr. MEIBURG. Which one?

Mr. CLAY. Is the employee still there?

Mr. MEIBURG. I am trying to remember which employee. There were two employees. I am trying to remember which one.

Mr. CLAY. This is the GS-14 environmental protection specialist.

Mr. MEIBURG. The agency proposed removal of the employee. The employee, as is his right, contested this and is going to a hearing with the deciding official today.

Mr. CLAY. I see.

Mr. Reeder, anything to add?

Mr. REEDER. No, Congressman.

Mr. CLAY. Let me pose this question to the entire panel. What can we do to get all of the necessary evidence to the agency more quickly to facilitate quicker removals in cases where the individual has admitted serious misconduct? Mr. Elkins, we will start with you.

Mr. ELKINS. Yes, sir. One of the issues here is that once we have provided our evidence to the agency, we hear in many cases that the agency says we do not have enough evidence, so give us more evidence. Again, when you have an admission, you do not need much more than that.

Also, we are not talking about a criminal case where the standard of proof is proof beyond a reasonable doubt. It is a preponderance of the evidence. When we prepare a case and that case is going to the U.S. Attorney's Office, we prepare it to meet the burden of beyond a reasonable doubt.

When we turn it over to the agency, it is a lower standard, so they have everything they need, yet what we hear and what we have heard from the agency is, give us more.

Mr. CLAY. Did the agency tell you that in this case?

Mr. ELKINS. Yes, I believe in most of the cases that I have been involved with, that is what I have heard.

Mr. CLAY. Mr. Meiburg, tell me why the agency needed more evidence after you had an admission from the employee?

Mr. MEIBURG. Congressman, I cannot speak to this particular case on that matter. As a general matter, the agency wanted to make sure we were not taking any action to interfere with a possible criminal prosecution or with the Inspector General's investigation, which was not the issue in this case and to make sure we had enough information so that when we take a final action that was subject to review, that it would be sustained either administratively or in the courts.

Our fear, if you will, is that actions we take are overturned which would result in not only having to pay back salary, attorneys' fees and possible penalties, but then the employee ends up being reinstated at the agency. That would not be a happy outcome.

Mr. CLAY. Mr. Reeder, now this employee is going to an administrative hearing to contest his firing?

Mr. REEDER. I know that only because of the Deputy Administrator's testimony. I am not familiar with this case.

Mr. CLAY. You are not familiar with this one.

My time is up but thank you.

Mr. MEADOWS. I thank the gentleman from Missouri.

If there is no further business before the Committee, I would like to thank all the witnesses for being here today.

This meeting of the Oversight Committee is adjourned.

[Whereupon, at 11:33 a.m., the hearing was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

MAY 12 2015



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Chairman
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Washington, DC 20419-0002

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Chairman

May 4, 2015

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On April 15, 2015, you chaired a hearing of the Committee on Oversight and Government Reform ("Committee") entitled: *DOJ IG: Handling of Sexual Harassment and Misconduct Allegations*, in which you and other members of the Committee addressed the alleged misconduct of, and the associated discipline for, certain employees of the Drug Enforcement Administration (DEA). On April 30, 2015, you chaired another hearing, entitled: *EPA Mismanagement*, in which the Committee examined the alleged misconduct of certain Environmental Protection Agency employees.

As the Chairman of the U.S. States Merit Systems Protection Board (MSPB), I commend you for holding these hearings, and seeking to ensure that allegations of misconduct by federal employees are properly investigated and addressed by their employing agencies. I am, concerned, however, that certain testimony from witnesses at these hearings could be construed as suggesting that MSPB in some way prevents or delays agency officials from taking disciplinary action or even imposing more stringent discipline for the alleged conduct addressed at these hearings.

As one witness stated in written testimony for the April 15, 2015 hearing, MSPB serves as the guardian of the federal government's merit systems, and one of our statutory functions is to adjudicate appeals filed by federal employees over certain adverse personnel actions. MSPB renders its decisions in accordance with statutory law, MSPB precedent, and precedent from United States federal courts, including the United States Court of Appeals for the Federal Circuit.

There is, however, no MSPB law, rule or regulation that prevents any federal agency official from imposing disciplinary penalties, including removal, for conduct addressed at these hearings. Similarly, there is no MSPB law, rule or regulation that instructs federal

agencies on when to take disciplinary action. Simply put, the role MSPB would play in these circumstances would be to adjudicate appeals filed by the disciplined employees to the extent those individuals chose to exercise their statutory right to file an appeal with our agency.

We understand that federal personnel law can be complex, even for those such as yourself, with significant experience in the field. To the extent your schedule permits, I would like to meet with you to discuss our agency and, specifically, the role it plays in the Federal Civil Service. Also, I would be happy to address the state of the law on a number of issues you have personally raised at these hearings, including the role of proposing and deciding officials in connection with disciplinary matters, the role that agency heads may play in connection with disciplinary matters, and the current state of the law on security clearance revocations. My staff is available to meet with your staff to answer any questions as you and your colleagues consider possible changes to federal civil service law.

Thank you again for the important work that you and your committee do on these issues.

Respectfully,

A handwritten signature in black ink, appearing to read "Susan Tsui", followed by a long horizontal line extending to the right.

Susan Tsui Grundmann



U.S. MERIT SYSTEMS PROTECTION BOARD

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Chairman

April 29, 2015

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Cummings:

I am writing in response to your staff's April 27, 2015, request for information from the United States Merit Systems Protection Board ("MSPB"). It is my understanding that this request is related to a hearing the Committee on Oversight and Government Reform will hold on April 30, 2015, entitled "EPA Mismanagement."

I would like to emphasize that MSPB is prohibited by statute from providing advisory opinions in any matter. 5 U.S.C. § 1204(h) ("The Board shall not issue advisory opinions.") As such, in response to your staff's questions, we are only providing the current state of the law, as reflected in MSPB decisions or statute. Our responses should not be construed as an indication of how an MSPB administrative judge, or the three-member Board ("Board") at MSPB Headquarters in Washington, D.C., would rule in any future case.

I would also like to emphasize that, as a quasi-judicial agency, MSPB is not involved in any managerial action or inaction by any official of a federal agency. To the extent that a federal agency chooses to impose an adverse action against an employee, and the employee exercises his or her statutory right to file an appeal with MSPB, MSPB would adjudicate the appeal in accordance with statutory law, MSPB precedent, and precedent from United States federal courts, including the United States Court of Appeals for the Federal Circuit.

The following are the questions from your staff and MSPB's answers:

Question #1

Does current law allow an agency to take adverse action (such as removal) against an employee based solely on the employee's sworn statement or admission? If so, provide relevant precedent.

Answer to Question #1

The Board has sustained adverse actions (including removal) when an employee's admission was the sole evidence presented by the agency to support its charge. In Cole v. Department of the Air Force, 120 M.S.P.R. 640 (2014), the Board reversed the decision of the MSPB administrative judge and affirmed the agency's removal of the employee based on his marijuana use. The agency charged the appellant with the "use of an illegal drug," and the only evidence in this case was the appellant's admission of marijuana use. The Board found the admission, with nothing more, sufficient to sustain the agency's charge. Specifically, the Board stated:

[A]n agency may rely on an appellant's admission in support of its charge, Leaton v. Dept. of the Interior, 65 M.S.P.R. 331, 337 (1994) . . . , and appellant's admission to a charge can suffice as proof of the charge without additional proof of the agency. See Wells v. Dept. of Defense 53 M.S.P.R. 637 (1992) ("appellant's own admission that he engaged in alleged conduct in violation of a regulation is sufficient proof to sustain the charge of disregarding a regulation or directive."); Mascol v. Dept. of Navy, 7 M.S.P.R. 565, 567 (1981) (the appellant's admission was sufficient to sustain the charge).

Cole, 120 M.S.P.R. at 645.

The Board further stated in Cole that the "appellant's admissions [regarding his marijuana use] constitute preponderant evidence that he used an illegal drug, as charged [by the agency] . . ." Id. at 646.

Additionally, in Wells v. Dept. of Defense, 53 M.S.P.R. 637 (1992), the agency charged the appellant with, among other things, the violation of an agency regulation related to timekeeping. The appellant admitted that his conduct violated the regulation. The Board held that the appellant's admission constituted "sufficient proof of the misconduct." Id.

Question #2

Does this law apply to violation of agency policy that does not amount to a criminal violation?

Answer to Question #2

The Board has not addressed specifically - in the context of a violation of an agency policy that does not also amount to a criminal violation - whether an employee's admission, without additional evidence, can be sufficient to sustain an adverse action. Nevertheless, as stated in response to Question #1, the Board has held that admissions, without further evidence, can be sufficient to sustain agency charges and the penalty of removal.

Question #3

What is the standard of evidence required for removal in non-criminal agency policy violations?

Answer to Question #3

Removals for non-criminal violations of agency policy will typically be based on charges of employee misconduct. In cases brought pursuant to 5 U.S.C. Chapter 75 (allegations of misconduct), an agency has the burden of proof in any appeal filed at MSPB by an employee. 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b). An agency must prove the alleged misconduct by a "preponderance of the evidence." 5 C.F.R. § 1201.56(b)(1)(ii). Preponderance of the evidence is defined as: "the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue." 5 C.F.R. § 1201.4(q). The United States Supreme Court has stated that a preponderance of the evidence standard "simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence. *In re Winship*, 397 U.S. 358, 371-72 (1970).

Regarding the evidence that an agency must produce to an appellant, the Board has held that "an appellant is not entitled ... to material on which the agency did not rely" in charging the employee. *Forrester v. Dept. of Health and Human Services*, 27 M.S.P.R. 450, 453-54 (1985), citing *Klein v. Dept. of Labor*, 6 M.S.P.R. 292, 295 (1981). Thus, prior to the imposition of any adverse action, an employee is only entitled to the evidence upon which an agency intends to rely on to support its charge.

Question #4

Under current law, can an agency place an employee on indefinite suspension where alleged employee misconduct has been referred to the U.S. Attorney's Office for potential criminal prosecution? If so, does the agency need to have specific knowledge of the potential criminal violation?

Answer to Question #4

With respect to the imposition of an indefinite suspension, an agency must prove that it: 1) imposed the suspension for an authorized reason; 2) the suspension has an ascertainable end, *i.e.*, a determinable condition subsequent that will bring the suspension to a conclusion; 3) the suspension bears a nexus to the efficiency of the service; and 4) the penalty is reasonable. Hernandez v. Dept. of the Navy, 120 M.S.P.R. 14 (2013). Among the authorized reasons for imposing an indefinite suspension is an agency's reasonable belief that an employee has committed a crime for which a sentence of imprisonment could be imposed. Gonzalez v. Dept. of Navy, 120 M.S.P.R. 14 (2013). Other authorized reasons include an agency's legitimate concerns regarding an employee's serious medical condition and the suspension of an employee's access to classified information. Gonzalez v. Dept. of Homeland Security, 114 M.S.P.R. 318, 327 (2010). Regarding an agency's concern that an employee has committed a crime for which imprisonment could be imposed, the Board has held that the standard for imposing an indefinite suspension in this circumstance is not whether the agency could prevail on the criminal charge, but rather whether it had a reasonable belief that the appellant committed a crime punishable by a term of imprisonment when it imposed the suspension. Dalton v. Dept. of Justice, 66 M.S.P.R. 429, 435-36 (1995).

In Martin v. Dept. of Treasury, the Board held that "an investigation, in and of itself, is insufficient, to give rise to reasonable cause." 12 M.S.P.R. 12, 19 (1982). In Thompkins v. U.S. Postal Service, 23 MSPR 5, 10 (1984), the Board held that the mere referral to the Department of Justice, without more, would not be enough to meet the "reasonable cause" standard.

Examples that would establish "reasonable cause" under § 7513(b)(1) include: (1) an indictment; (2) an employee arrested and held for further legal action by a magistrate; (3) an arrest or investigation accompanied by such circumstances showing reasonable cause; (4) criminal information; and (5) certain egregious acts such as murder or national security offenses, which are detrimental to the agency's mission, brought to the agency's attention via the news media. Gonzales v. Dept. of Treasury, 37 M.S.P.R. 589, 591 (1988).

Question #5:

Does an agency have to wait until the U.S. Attorney's Office or the Inspector General's Office completes its investigation in order to proceed with an administrative action?

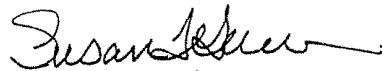
Answer to Question #5:

We cannot locate any Board decision that would prohibit an agency from imposing an adverse action against an employee (including removal) before a U.S. Attorney's Office or the Inspector General's Office completes its investigation. It is possible that, in making such a determination, an agency could have concerns in

connection with an employee's Fifth Amendment rights, or other concerns, that could impact its decision to impose an adverse action. Stated differently, the decision on when to impose an adverse action most likely depends on the facts and circumstances of each case.

Should you or your staff have any questions, please do not hesitate to contact Bryan Polisuk (202-254-4403) or Rosalyn Coates (202-254-4485) on my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Tsui Grundmann", with a long, sweeping horizontal line extending to the right.

Susan Tsui Grundmann
Chairman
U.S. Merit Systems Protection Board

c.c.:

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
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