



Office of the Inspector General
U.S. Department of Justice



Report of Investigation of the Actions of Former DEA Leadership in Connection with the Reinstatement of a Security Clearance

EXECUTIVE SUMMARY

I. Background and Summary of Factual Findings

This report summarizes the investigation by the Department of Justice (DOJ or Department) Office of the Inspector General (OIG) into an allegation that former-Drug Enforcement Administration (DEA) Administrator Michele M. Leonhart inappropriately intervened to reinstate the security clearance of a DEA Special Agent who had admitted engaging in serious misconduct and an allegation that Leonhart subsequently provided untruthful testimony to Congress. This report makes two recommendations to clarify DEA and Department policies in this important area.

In summary, we found that Leonhart did not directly intervene in the reinstatement decision but rather was told by the DEA's then-Acting Chief Inspector Herman E. "Chuck" Whaley that he opposed the suspension of the Special Agent's security clearance and intended to resolve the matter in a different manner. We concluded that Leonhart acquiesced to Whaley's flawed decision to intervene in the security clearance process, and therefore she shares responsibility for it. We also determined that she did not testify untruthfully to Congress regarding whether she had any impact on the adjudication of agents' security clearances.

The DEA Office of Professional Responsibility (DEA OPR) learned about the Special Agent's misconduct in 2013. The Special Agent admitted to DEA OPR that he had, among other things: carried on an extramarital affair with a woman who was a convicted criminal; allowed her after-hours access to a DEA office, including a drug evidence room; allowed her to listen to recorded telephone calls of subjects of DEA investigations; and had sex with her on numerous occasions in the DEA office and his DEA vehicle. DEA OPR, however, failed to advise DEA's Office of Security Programs (Security Programs), which is responsible for adjudicating security clearances of DEA employees, about the Special Agent's misconduct. Instead, Security Programs learned of the misconduct in 2014, as a result of a routine periodic re-investigation of the Special Agent's eligibility to maintain a security clearance. Security Programs thereafter reviewed the DEA OPR investigative materials from 2013, as well as information collected by the security clearance background investigators in 2014. Security Programs determined that the Special Agent gave statements regarding his misconduct to the security clearance background investigators that were inconsistent with his admissions to DEA OPR Inspectors.

Based on the Special Agent's misconduct and inconsistent statements, on March 24, 2015, the DEA Security Programs Manager (SPM) suspended the Special Agent's clearance, rendering him ineligible for access to classified (and, by DEA policy, ineligible for access to DEA sensitive information). However, 3 days later, then-DEA Acting Chief Inspector Herman E. "Chuck" Whaley instructed the SPM to reinstate the Special Agent's clearance. Whaley stated that the Special Agent's

misconduct merited significant punishment but did not raise national security issues because it did not involve a lack of candor, foreign nationals, or a foreign country.

While Whaley and Administrator Leonhart had differing recollections of their discussions about the Special Agent's security clearance, they agreed that Whaley told her at some point, either in late March (according to Whaley) or mid-April (according to Leonhart), that he had prevented, or intended to prevent, the suspension of the Special Agent's clearance contrary to the position of Security Programs, and Leonhart did not object or stop him from interfering in the process.

This situation is particularly remarkable given that it arose almost simultaneously with the public release of the OIG's March 26, 2015 report entitled *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*. Among other things, the OIG report contained a finding that DEA OPR had failed to refer allegations involving sexual misconduct that raised security concerns to Security Programs for adjudication, potentially exposing DEA employees to coercion, extortion, and blackmail, all of which create security risks.

In response to the OIG's March 2015 report, Congress held hearings. Administrator Leonhart testified before the House Oversight and Government Reform Committee on April 14, 2015. In response to the question "do you have any impact over . . . whether or not an agent has a security clearance, Leonhart answered: "No. There's adjudicative guidelines and that has to be adjudicated . . . by the security people." The day after the hearing, the SPM e-mailed the Department Security Officer to report the events leading to the reinstatement of the Special Agent's security clearance. The SPM told the Department Security Officer that Whaley had told him the Administrator (Leonhart) disagreed with the SPM's decision and directed him to reinstate the Special Agent's security clearance. On April 17, 2015, the Department Security Officer referred the allegations raised in the SPM's e-mail to the OIG and re-suspended the Special Agent's security clearance. The Department Security Officer subsequently revoked the Special Agent's security clearance after further review. During the Special Agent's appeal of the revocation, the DEA terminated his employment on March 2, 2016, for the underlying misconduct.

II. Summary of OIG Analysis

A. Responsibility for the Decision to Reinstate the Clearance

We determined that it was Whaley, and not Leonhart, who intervened to overrule the SPM's decision to suspend the Special Agent's clearance. Whaley admitted responsibility for overruling the decision to suspend the Special Agent's security clearance. Whaley said that while he believed that the Special Agent deserved significant discipline for his misconduct, he did not believe that the Special Agent should lose his security clearance because it did not involve a lack of candor, foreign nationals, or a foreign country. Whaley overruled the decision without consulting with the SPM or the Security Programs Specialist to identify the facts or

understand the analysis behind their decision. Instead, Whaley substituted his uninformed, inexperienced opinion for that of the trained, experienced analysis of Security Programs personnel.

We found that several factors contributed to Whaley's decision. First, Whaley believed he was acting within his authority as Acting Chief Inspector and that as such, he had the authority to overrule the SPM's decision. However, we found that the Department Security Officer's delegation of authority to adjudicate security clearances was to the SPM, and not to anyone else (including those above the SPM) in the DEA chain of command.

Second, Whaley did not determine the full basis of the SPM's suspension decision before overruling him. Whaley erroneously assumed that the facts uncovered in DEA OPR's investigation of the Special Agent were the entire basis for the SPM's decision. Whaley told the OIG that had he known that the Special Agent also gave statements during his security reinvestigation that were inconsistent with statements he made earlier to DEA OPR, Whaley would not have directed the SPM to reinstate the security clearance.

Third, Whaley told us he did not know that the Special Agent had already received the suspension memorandum when he overruled the SPM. Whaley told the OIG that had he known that the Special Agent had already received notification of his suspension, he would not have directed the SPM to reinstate the security clearance. We do not believe this should have been a determinative factor in Whaley's analysis but, had Whaley discussed the matter with the SPM, he would have known that the memorandum had been delivered and, by his own account, he would not have overruled the suspension.

The SPM indicated that, based on Whaley's statements, he understood that Leonhart made the decision to overrule him, though both Whaley and Leonhart indicated that this was not the case. Because no one else was present for any conversation about this matter between Whaley and Leonhart, and because both Whaley and Leonhart stated that the decision was made by Whaley, we did not find evidence to lead us to conclude that Leonhart ordered Whaley to reverse the SPM's decision to suspend the Special Agent's security clearance.

Nonetheless, we concluded that Leonhart shares in the responsibility for Whaley's flawed decision to intervene in the matter. Leonhart allowed Whaley to determine whether the Special Agent's security clearance would be suspended. Whaley told us that he informed Leonhart of his intentions in late March; Leonhart told us that Whaley informed her in mid-April. Either way, Leonhart learned that Whaley was planning to make or had made the determination that the Special Agent's misconduct did not merit the suspension of his security clearance and that Whaley's position was contrary to that of Security Programs, and she acquiesced in his making the decision.

Leonhart's acquiescence to Whaley's decision is particularly troubling given that she testified to Congress that she understood that the Department Security Officer's delegation only went to the "security people," not to others higher in the

DEA chain of command such as herself or Whaley. She knew that the expertise for adjudicating security clearances resided in Security Programs and testified that she believed that the sole authority within DEA for such decisions resided there as well. Yet her actions were not consistent with her understanding of the process.

At the time of her conversations with Whaley about the Special Agent, Leonhart was familiar with the contemporaneous OIG Report which contained a finding that DEA OPR had failed to refer allegations involving sexual misconduct that raised security concerns to Security Programs, potentially exposing DEA employees to coercion, extortion, and blackmail, all of which create security risks. The OIG found that when referrals of employee misconduct to Security Programs occur at DEA OPR's discretion, there is a risk that DEA OPR may not identify misconduct that raises potential security concerns, which is neither DEA OPR's function nor its area of expertise. Particularly in this context, Leonhart should have recognized that Whaley overruling the SPM could create precisely the kind of risk that the OIG had identified.

B. The Truthfulness of Leonhart's Testimony

We found that Leonhart did not testify untruthfully before the House Oversight and Government Reform Committee regarding whether she had any impact on agent security clearances. Leonhart's testimony that she did not have any "impact" on whether or not an agent had a security clearance was consistent with the line of questioning at the hearing, which was focused on whether she had the ability to recommend discipline, terminate employment, or suspend a security clearance for a specific individual. Leonhart testified accurately that she was not the DEA employee designated by DEA policies and procedures to suspend or revoke a security clearance and that it would be a violation of the Civil Service Laws for her to have intervened in the disciplinary process. And with respect to the handling of the Special Agent's clearance, we found that she deferred to Whaley, not that she personally intervened in the adjudication decision.

Moreover, Leonhart testified about her ability to impact special agents' security clearances outside, and independent of, the adjudicative process. Leonhart told Congress that she could affect a special agent's security clearance by ensuring that it was reviewed by Security Programs. In the sense that this was a function she was empowered to perform, by acting to ensure that misconduct matters were referred to the Office of Security Programs to be reviewed for potential security implications, her testimony was accurate. Ironically, in the case of the Special Agent, she did not ensure this result; instead, she deferred to the Acting Chief Inspector, who did not have the training, expertise, or designated authority to make a security clearance determination. Her omission in this case did not impact the truthfulness of her Congressional testimony, however.

Our investigation revealed that there is a lack of clarity within the DEA regarding who should determine whether allegations or findings of employee misconduct should be referred to Security Programs for adjudication. Historically, discretion lay within DEA OPR to determine which misconduct findings merited a

referral to Security Programs. The March 2015 OIG review revealed the risks created by such an approach.

As a result of a review of the DEA security adjudication procedures ordered by the Attorney General as a result of our March 2015 report, the Department Security Officer has required DEA OPR to provide Security Programs with greater access to information regarding allegations of misconduct. Nevertheless, we recommend that DEA policies be further amended to make clear that Security Programs will have the final say within the DEA with regard to whether employee misconduct merits a review and adjudication of the employee's security clearance.

During our review, we also identified a lack of clarity with respect to the Department Orders that address the Department Security Officer's delegation of authority to the SPMs and the role of the SPMs with respect to two separate chains of command. Therefore, we recommend that the Department amend or supplement the Department Security Officer's delegation of authority to the SPMs in the various components to clarify that for the purpose of security adjudications, SPMs report solely to the Department Security Officer, and not to senior officials within the components. If a senior official objects to a particular adjudication decision by the component's SPM, the official should present such concerns to the Department Security Officer for consideration rather than overruling the component's SPM.

We also believe that this matter illustrates the need for DOJ to ensure that Department units that are responsible for security adjudications access and review information from misconduct investigations. We are sharing our analysis and recommendations regarding this issue in a separate management memorandum to the Department.

Table of Contents

EXECUTIVE SUMMARY	i
I. Background and Summary of Factual Findings	i
II. Summary of OIG Analysis	ii
A. Responsibility for the Decision to Reinstate the Clearance	ii
B. The Truthfulness of Leonhart’s Testimony	iv
CHAPTER ONE: INTRODUCTION.....	1
I. The Drug Enforcement Administration	2
II. Relevant DEA Employees	3
A. Michele M. Leonhart	3
B. Herman E. “Chuck” Whaley	4
C. Robert Cone	4
D. Special Agent Grant Stentsen	4
III. The DEA Disciplinary Process.....	5
IV. The Department’s Security Operations and Delegation to the DEA SPM.....	5
A. DEA Security Clearance Requirement	7
1. Office of Personnel Management (OPM)	7
2. DEA Office of Security Programs	8
B. The DEA Security Clearance Suspension and Revocation Process	9
1. Suspension	9
2. Revocation.....	10
3. Frequency of Suspensions and Revocations.....	11
C. 2015 OIG Report	12
D. Responses to the OIG Report	13
E. April 21, 2015 Divisional Order	14
CHAPTER TWO: FACTUAL FINDINGS REGARDING THE STATUS OF STENTSEN’S SECURITY CLEARANCE	15
I. Summary of Facts.....	15
II. DEA OPR Investigations	16
A. August 2013 Investigation of Sexual Conduct and Unauthorized Disclosure	17
B. April 9, 2014 Investigation of Assault	19

III.	Security Programs Suspends Stentsen’s Clearance	20
IV.	Whaley Instructs Cone to Reinstate Stentsen’s Security Clearance	24
	A. Whaley Decides To Reverse Cone’s Decision to Suspend Stentsen’s Clearance	24
	B. Whaley’s Discussions with Leonhart and the Chief of Operations	26
	1. Whaley’s Account.....	26
	2. The Chief of Operations’ Account	27
	3. Leonhart’s Account	27
	C. Whaley Instructs Cone Not to Suspend Stentsen’s Clearance.....	31
	1. Cone’s Account.....	32
	2. Whaley’s Account.....	32
	D. Cone Takes Steps to Reverse Suspension	33
V.	Re-Suspension	34
VI.	Removal	38
	CHAPTER THREE: LEONHART’S TESTIMONY.....	41
	CHAPTER FOUR: OIG ANALYSIS.....	45
I.	Assessment of Responsibility for the Flawed Reinstatement of Stentsen’s Security Clearance	45
	A. Whaley	46
	B. Leonhart.....	49
II.	Leonhart’s Testimony to Congress.....	51
III.	Additional Issues Identified During the OIG Review	53
	A. Strengthening the Authority of DEA Security Programs.....	53
	B. Clarifying the Department Security Officer’s Delegation of Authority to the SPM.....	54
IV.	Conclusion and Recommendations	56

CHAPTER ONE: INTRODUCTION

This report summarizes the investigation by the Department of Justice (DOJ or Department) Office of the Inspector General (OIG) into an allegation that former Drug Enforcement Administration (DEA) Administrator Michele M. Leonhart inappropriately intervened in a DEA Special Agent's security clearance adjudication. A security clearance adjudication (or adjudication) is the Department's decision to grant, deny, suspend, or revoke a current or prospective employee's access to classified material. We also examined whether Administrator Leonhart's testimony to Congress in a 2015 hearing regarding her ability to impact a security clearance adjudication was truthful.

This matter occurred contemporaneous with the OIG's release of its March 26, 2015 report entitled *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*. The OIG report examined four of the Department's law enforcement components (DEA; Bureau of Alcohol, Tobacco, Firearms and Explosives; Federal Bureau of Investigation, and U.S. Marshals Service) and, among other things, identified significant systemic issues with the DEA's processes for handling these important matters. Among the OIG findings were instances where the DEA Office of Professional Responsibility (DEA OPR) failed to refer allegations involving sexual misconduct to the DEA Office of Security Programs (Security Programs). DEA OPR investigates allegations of misconduct as part of the DEA's disciplinary process, while Security Programs evaluates an employee's conduct (among other things) to determine the employee's eligibility to maintain a security clearance.

In response to the issues raised in the OIG report, the Attorney General issued an April 10, 2015 memorandum ordering the Department Security Officer to review the efficacy of the DEA's Security Programs (the DSO review), including the coordination between DEA OPR and Security Programs.¹ In addition, on April 14, 2015, the House Oversight and Government Reform Committee held a hearing involving the testimony of Inspector General Michael E. Horowitz, Administrator Leonhart, and executive management from the Federal Bureau of Investigation. In response to a question about whether she had "any impact" over whether an agent had a security clearance, Administrator Leonhart testified, among other things, that she did not.

On April 15, 2015, the DEA Security Programs Manager (SPM) e-mailed the Department Security Officer. In the e-mail, the SPM wrote that on March 24, 2015, he suspended the security clearance of a DEA Special Agent and that 3 days later, on March 27, 2015, the SPM's direct supervisor – Acting Chief Inspector Herman "Chuck" Whaley – told him that Administrator Leonhart disagreed with his decision and directed the SPM to reinstate the agent's security clearance. The SPM wrote

¹ The Attorney General also issued a second April 10, 2015 memorandum ordering the Department's Office of Professional Responsibility to review the DEA's handling of employee misconduct investigations including the sufficiency of those investigations and related disciplinary proceedings (DOJ OPR Review).

that he had suspended the Special Agent's clearance for engaging in sexual misconduct, providing access to DEA information to an unauthorized person, and providing inconsistent statements regarding this conduct to investigators from OPR and from the Office of Personnel Management (OPM). Per the direction of his direct supervisor (Whaley), the SPM reinstated the agent's security clearance on March 27, 2015.

On April 17, 2015, the Department Security Officer referred the allegations raised in the SPM's e-mail to the OIG. He also re-suspended the agent's security clearance. The Department Security Officer subsequently revoked the agent's security clearance after further review. During the agent's appeal of the revocation, the DEA fired (or "removed") the agent on March 2, 2016, for the underlying misconduct.

During our investigation, we obtained documents from the Department's Security and Emergency Planning Staff (SEPS) and the DEA. We interviewed 14 people, including former Administrator Leonhart; the SPM; the SPM's direct supervisor, then-Acting Chief Inspector and OPR Deputy Chief Inspector, Herman "Chuck" Whaley; the Department Security Officer; the SEPS Assistant Director for the Personnel Security Group; and DEA employees with responsibilities related to its disciplinary and security clearance adjudication processes. In addition to the interviews, we reviewed relevant documents and electronic communications (e-mails).

This report describes the results of our investigation. We first provide background information regarding the DEA, the employees involved in this matter, the disciplinary and security adjudication processes, and the OIG's March 2015 report. We then set forth our findings regarding the DEA's handling of the Special Agent's security clearance and Administrator Leonhart's testimony to Congress.

I. The Drug Enforcement Administration

The DEA is divided into six divisions, one of which is the Inspection Division. The Inspection Division is an investigative division that polices DEA personnel and offices. The Chief Inspector heads the Inspection Division and reports to the Deputy Administrator. The Inspection Division includes DEA OPR and Security Programs, both of which are headed by a Deputy Chief Inspector, who report to the Chief Inspector.

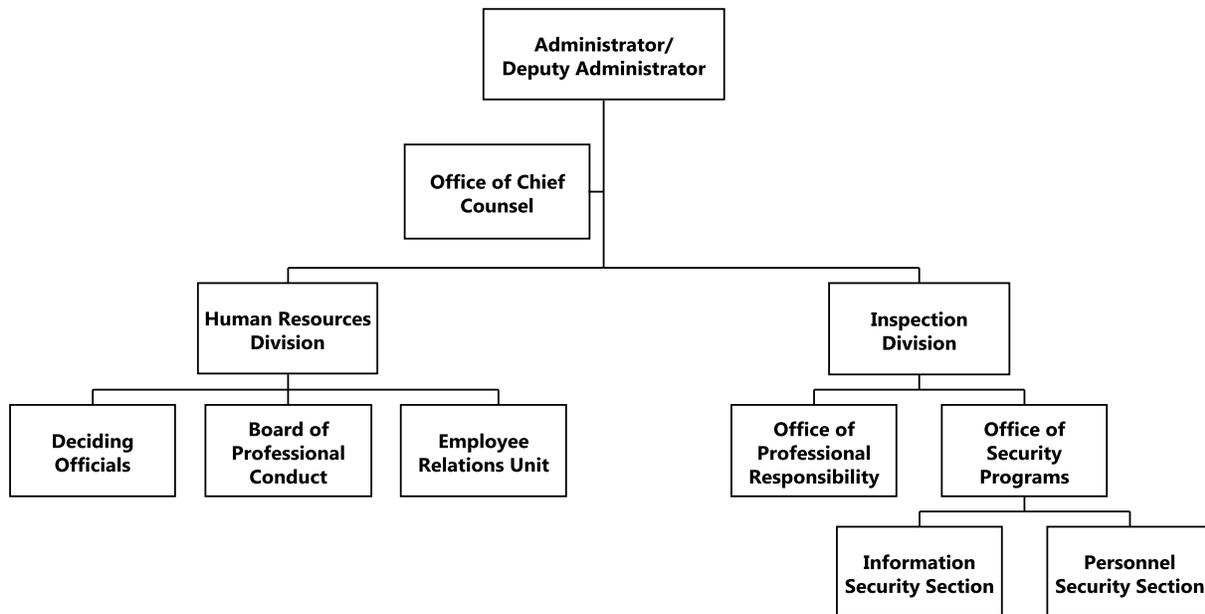
DEA OPR is responsible for investigating allegations of misconduct made against DEA employees, Task Force Officers, and contractors.

Security Programs is responsible for the DEA's security programs for personnel, information, and facilities. Within Security Programs is the Personnel Security Section, which is responsible for adjudicating security clearances for DEA employees. The Personnel Security Section is led by an Associate Deputy Chief Inspector, who reports to the Security Programs Deputy Chief Inspector.

Another DEA division relevant to this review is the Human Resources Division (HRD), which includes the officials and units responsible for proposing and deciding the resolutions to matters referred to HRD from DEA OPR and Security Programs.

Figure 1 below shows an organizational chart of the DEA divisions and offices relevant to this review.

Figure 1: Abbreviated Organizational Chart of the DEA



II. Relevant DEA Employees

A. Michele M. Leonhart

During the period of our review, Michele M. Leonhart served as DEA Administrator. Leonhart formally began her service as Administrator in January 2011, following her appointment by the President and confirmation by the Senate. However, Leonhart had been serving as Acting Administrator since November 2007. Leonhart retired from the Department in May 2015, during the pendency of our investigation.

Prior to her appointment as Administrator, Leonhart held several leadership positions within the DEA. She served as Deputy Administrator from 2004 to 2010, Special Agent-in-Charge of the DEA’s Los Angeles Field Division from 1998 to 2003, and Special Agent-in-Charge of the DEA’s San Francisco Field Division from 1997 to 1998.² Earlier in her career, Leonhart served as an Inspector in the Office of Professional Responsibility.

² During Leonhart’s tenure as Administrator, the Deputy Administrator position was often vacant. From 2004 until her Senate confirmation as Administrator in December 2010, she served as

B. Herman E. "Chuck" Whaley

Leonhart appointed Herman E. "Chuck" Whaley as Acting Chief Inspector of the Inspection Division on January 11, 2015. At that time, Whaley also served as the Deputy Chief Inspector of DEA OPR, a position that Whaley had held since May 4, 2014. As a result, Whaley served as both the Acting Chief Inspector of the Inspection Division and the Deputy Chief Inspector of DEA OPR from January through September 2015, when Whaley was reassigned to Associate Special Agent-in-Charge of the Miami Field Division.³ Whaley retired from the DEA in September 2016.

Whaley joined the DEA in 1995 and worked both in the field and at DEA Headquarters. He was Assistant Special Agent-in-Charge of a DEA field division from 2010 to 2014, DEA OPR Inspector at DEA Headquarters from 2009 to 2010.

C. Robert Cone

Robert Cone joined the DEA in 1986, became a supervisor in 1999 and was transferred to DEA Headquarters in 2004.⁴ Leonhart appointed Cone as Acting Deputy Chief Inspector of Security Programs on February 1, 2012. At that time, Cone was the Associate Deputy Chief Inspector and had held that position for 4 years. Cone served as both the Acting Deputy Chief Inspector and the Associate Deputy Chief Inspector of Security Programs from February 1, 2012 through October 2015. When Cone was appointed Acting Deputy Chief of Security Programs, he became the DEA's Security Programs Manager (SPM).

D. Special Agent Grant Stentsen

Grant Stentsen joined the DEA as a Special Agent and was assigned to a DEA Field Division in the United States.⁵

Special Agent Stentsen was removed from federal employment on March 2, 2016 for reasons discussed in this review.

the Deputy Administrator. (As noted above, she also served as the Acting Administrator as of November 2007.) A Deputy Administrator appointed by the President and confirmed by the Senate served from March 2012 through his retirement in December 2014. However, the Deputy Administrator position remained vacant from December 2014 through Leonhart's May 2015 retirement.

³ For several weeks in April and May 2015, Leonhart appointed another DEA senior manager as Acting Chief Inspector while Whaley responded to Department and Congressional inquiries initiated in response to the OIG's March 2015 report. During this time period, Whaley maintained his position as DEA OPR Deputy Chief Inspector.

⁴ Robert Cone is a pseudonym.

⁵ Grant Stentsen is a pseudonym.

III. The DEA Disciplinary Process

The DEA's disciplinary process is a multi-layered process that involves DEA OPR, the Board of Professional Conduct, the Deciding Officials, and, depending on the level of discipline, the Office of Chief Counsel. In brief, DEA OPR investigates allegations of misconduct, the Board of Professional Conduct proposes a resolution to investigations referred by DEA OPR, and the Deciding Official makes the final decision regarding the resolution to the investigations referred to the Board of Professional Conduct by DEA OPR.⁶ The Office of Chief Counsel reviews proposed disciplinary or "adverse" actions that are appealable to the Merit Systems Protection Board (MSPB) which includes suspensions of more than 14 days, demotions, and removals.⁷ As mentioned above, DEA OPR is part of the Inspection Division. The Board of Professional Conduct and the Deciding Officials are part of HRD. The Office of Chief Counsel is its own office within the DEA.

IV. The Department's Security Operations and Delegation to the DEA SPM

The Department's authority to conduct its own security program is dependent on its adherence to the applicable Guidelines and Executive Orders. The Department's security functions reside within the Security and Emergency Planning Staff (SEPS), an office within the Department's Justice Management Division. SEPS directs the Department's policies and initiatives pertaining to all aspects of security. The Director of SEPS is the Department Security Officer.

Federal regulation authorizes the Assistant Attorney General for Administration to administer the Department's national security program and to delegate those responsibilities to the Department Security Officer.⁸ The federal regulation also authorizes the Department Security Officer to grant, deny, suspend, or revoke employee access to classified information pursuant to Executive Order 12968 and to re-delegate that authority to qualified Security Program Managers.⁹

Through Department Order, the Assistant Attorney General for Administration established the responsibilities, policies and procedures for the

⁶ Although the DEA has an internal disciplinary process, allegations of criminal wrongdoing or serious administrative misconduct by DEA employees must be reported to the OIG. The OIG generally will investigate all allegations of criminal wrongdoing, serious administrative misconduct, misconduct by high-ranking employees, or matters in which the impartiality of a component's internal investigation might be open to question. For the cases the OIG investigates, it issues a final report of investigation that is provided to the DEA to be used as the basis for its ensuing disciplinary or security decisions.

⁷ The MSPB is an independent, quasi-judicial agency of the Executive Branch established by Reorganization Plan No. 2 of 1978, which was codified by the *Civil Service Reform Act of 1978* (CSRA), Pub. L. No. 95-454, 92 Stat. 1111 (CSRA) (1978). The CSRA authorized the MSPB to hear appeals of various agency decisions, most of which are appeals from agencies' adverse employment actions.

⁸ 28 C.F.R. § 17.

⁹ *Id.*

Department's employment security program and named the Department Security Officer or his designee as the person responsible for administering the program.¹⁰ Among other responsibilities, the Department Order requires that the Department Security Officer or a designee "make trustworthiness determinations for eligibility for access to classified information based on the appropriate [background investigation] and in accordance with [Executive Order] 12968."¹¹

Executive Order 12968 established a uniform federal personnel security program for employees considered for initial or continued access to classified information. The Executive Order required that an executive board develop adjudicative guidelines pursuant to its specification which included:

- Eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.
- A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel.
- Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (Guidelines) are codified at 32 C.F.R. Part 147. The Guidelines are based on the "whole person concept" and therefore require consideration of reliable information past and present, favorable and unfavorable. They address the fact that information that may not be disqualifying in itself, may – in combination with other information – establish "a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior." *Id.* at 2(d).

The Department Security Officer has delegated the authority to administer the DEA personnel security program to the DEA Security Programs Manager (SPM).¹² The delegation gives the DEA SPM the authority to grant, suspend, deny,

¹⁰ Employment Security Order DOJ 2610.2B.

¹¹ *Id.* at 7(a)(3).

¹² 28 C.F.R. § 17 and DOJ Order 2610.2B provide the authority for the Department Security Officer to re-delegate his authority to grant, deny, suspend or revoke access to classified material. Department Security Officers have delegated and suspended this authority to SPMs over the years.

and revoke DEA employees' security clearances. The delegation does not affect the Department Security Officer's ultimate authority to make these decisions and does not permit the SPM to further delegate the authority. According to SEPS Assistant Director for the Personnel Security Group, this means that no one outside of the delegation may exercise this authority.

Another Department Order provides that the DEA Administrator will appoint the DEA SPM.¹³ The DEA has assigned the role of the SPM to the person who is the Deputy Chief Inspector of Security Programs. The Department Order states that "SPMs are responsible to the appointing authority and the [Department Security Officer] for the management and coordination of all Department security programs and plans within their respective organizations." The order does not further clarify the roles of the Department Security Officer, Administrator, or SPM. As noted above, during the period relevant to this review, the DEA SPM was Robert Cone.

Thus, the delegation from the Department Security Officer to the DEA SPM creates a secondary chain of command (between the Department Security Officer and the SPM) separate from the SPM's DEA chain of command. The existence of dual chains of command raises practical issues, such as how an employee negotiates the two chains of command, addressed later in this report.

A. DEA Security Clearance Requirement

All DEA employees are required to have a security clearance, which allows them access to National Security Information (classified information) up to the Top Secret level, on a need-to-know basis.¹⁴ Per DEA policy, the security clearance also allows the employee access to DEA sensitive information.

1. Office of Personnel Management (OPM)

The Office of Personnel Management (OPM) provides background investigation services to the DEA and numerous other federal agencies to use as the basis for security clearance adjudications. OPM conducts the background investigation for prospective DEA employees and current DEA employees undergoing their periodic re-investigation. The periodic re-investigations are required every 5 years to evaluate the employee's continued eligibility to maintain a security clearance.

OPM investigative files include information provided by the employee, individuals who know the employee personally and professionally, and government

The authority has been delegated consistently to designated SPMs, including the DEA SPM, since February 1998.

¹³ DOJ Order 2600.2D, Security Programs and Responsibilities (June 16, 2011). The DEA also has an alternate SPM for occasions when the primary SPM is unavailable.

¹⁴ Security clearances are generally categorized into three levels: Confidential, Secret, and Top Secret. The level of classification denotes the degree of protection required for information and the amount of damage that unauthorized disclosure could reasonably be expected to cause to U.S. national security.

record checks. A copy of the OPM investigative file is provided to the DEA and indicates whether OPM identified issues that potentially disqualify an employee from eligibility for a security clearance as well as the specific investigatory material that is the source of the potentially disqualifying issues.

2. DEA Office of Security Programs

Although OPM conducts background investigations and re-investigations for potential and current DEA employees, the DEA's Office of Security Programs, specifically the Personnel Security Section, determines whether a current employee is eligible to maintain his security clearance.¹⁵ The Personnel Security Section is primarily composed of Personnel Security Specialists (Specialists) who have received training on the Adjudicative Guidelines; review OPM re-investigation files and any other relevant, available information; apply the Guidelines; and make a recommendation regarding an employee's continued eligibility for a security clearance. If issues are identified by OPM or other sources, Security Programs may determine that those issues do not preclude the granting of a clearance based on the consideration of other relevant mitigating information. The Specialist's recommendation is reviewed by the Associate Deputy Chief Inspector and Deputy Chief Inspector of Security Programs. As noted above, at the time of our review, Robert Cone served in both positions (and, in the latter capacity, as the SPM).

As part of the adjudication process, Security Programs contacts DEA OPR to request an "integrity check" on the employee.¹⁶ Security Programs conducts integrity checks because there may be conduct identified in a DEA OPR investigation that is relevant to a Security Programs analysis, as it could raise security concerns that could render the employee ineligible to maintain his security clearance. According to the DEA OPR personnel we interviewed, during the period of our review, the scope for an integrity check for a re-investigation was limited to identifying closed DEA OPR investigations from the previous 5 years that resulted in a suspension or greater disciplinary action.¹⁷ Depending on the status of the case and the rules in place at the time, information about a DEA OPR investigation or DEA OPR investigative file that resulted in discipline may be made available to the

¹⁵ HRD makes the preliminary determination for new employees.

¹⁶ DEA OPR also conducts "integrity checks" for other purposes, such as promotions, awards, and reassignments; however, the scope of the integrity check varies according to its purpose.

¹⁷ Historically, DEA OPR and Security Programs have not had the same understanding of what information was required to be conveyed by DEA OPR to Security Programs through the "integrity check" process. However, in response to the DSO review, the DEA revised its practice and issued a June 2015 order which among other things, defined the scope of the integrity check for reinvestigations and required DEA OPR to provide Security Programs with all allegations of misconduct made against the subject during his entire tenure with DEA.

Associate Deputy Chief Inspector for Security Programs or the Specialist for consideration in the security clearance adjudication.¹⁸

Although adjudicating security clearances for employee re-investigations is the primary focus of the Personnel Security Section, there are occasions when DEA OPR identifies employee misconduct that DEA OPR deems as warranting a referral to Security Programs for adjudication. However, historically referrals from DEA OPR to Security Programs occurred informally and infrequently and, according to the DSO review, occurred only with respect to a limited number of specific DEA misconduct offenses deemed by DEA OPR to merit a security clearance adjudication.¹⁹

According to SPM Cone, Security Programs does not track the number of formal referrals or the number of informal discussions that arise from DEA OPR investigations. However, according to a Security Programs memorandum summarizing security clearance suspensions and revocations in the 7-year period between January 2008 and April 7, 2015 (Security Programs summary), Security Programs suspended and/or revoked 24 clearances based on a DEA OPR referral, and 8 of the 24 were suspensions or revocations of the security clearances of agents. Both the OIG March 2015 report and ensuing DSO review identified concerns with DEA OPR's failure to refer employee misconduct to Security Programs for adjudication under the Guidelines, which we discuss further below.

B. The DEA Security Clearance Suspension and Revocation Process

As discussed above, the Department Security Officer has delegated the authority to suspend or revoke a DEA employee's security clearance to the DEA SPM. The SPM relies on his staff of trained Specialists who make a recommendation based on an application of the Guidelines to the available information. As described above, Security Programs may identify a concern while adjudicating an OPM investigative file for a periodic background re-investigation, while reviewing a DEA OPR investigation received in response to an "integrity check" request, or while reviewing employee conduct referred by DEA OPR or other investigative agency.

1. Suspension

If the SPM determines that the employee's conduct supports the suspension of his security clearance, Security Programs prepares a memorandum for the employee and another memorandum for HRD. Both memoranda are reviewed by the Office of Chief Counsel.

¹⁸ Pursuant to the June 2015 Order issued in response to the DSO review, Security Programs can now obtain DEA OPR summary disposition documents and specific Security Programs employees may access all or part of a DEA OPR case file.

¹⁹ Pursuant to the June 2015 Order issued in response to the DSO review, DEA OPR must now inform Security Programs of all allegations of misconduct and not just security violations that DEA OPR thinks rise to the level of a security risk. As recently as 2010, DEA OPR only referred misconduct findings falling within just 8 of the DEA's 135 offense codes.

After review, the memorandum for the employee is sent to the employee's supervisor, usually the Special Agent-in-Charge of the field office where the employee works. The supervisor then delivers the memorandum to the employee along with a letter that the employee signs acknowledging its receipt. The memorandum notifies the employee that his access to classified information and DEA sensitive material, including access to DEA information technology systems, has been suspended pending the conclusion of any related administrative proceedings and a final decision regarding revocation of the security clearance. The memorandum states that the suspension will be in effect until a final determination is made but does not provide the employee with the underlying reasons in support of the decision.

The memorandum to HRD includes the reasons for the security clearance suspension and triggers two separate actions. First, HRD notifies the employee that he is being placed on either administrative leave or limited duty, depending upon the seriousness of the allegations and evidence that resulted in the security clearance suspension. Second, HRD notifies the employee that it is proposing to the Deciding Official that the employee be indefinitely suspended without pay based on the fact that the employee's security clearance, a necessary condition of employment, has been suspended.

The suspension of a security clearance is not an adverse action, is not appealable, and is effective immediately. A proposal to indefinitely suspend an employee without pay is an adverse action and therefore requires 30-days' notice to the employee.

2. Revocation

If the SPM determines that the employee's conduct supports a revocation, he notifies the employee of the decision to revoke the security clearance and provides a detailed "statement of reasons" to the employee setting forth the relevant facts and Guidelines that provide the basis for the decision. The employee may appeal the revocation decision to the SPM.

If the employee believes that the action affecting his security clearance was taken in reprisal for having made a protected disclosure, the employee may request a review by the OIG within 30 days of receipt of the SPM's decision. Such a review is conducted in accordance with Presidential Policy Directive 19 (PPD-19), Protecting Whistleblowers with Access to Classified Information.

If the employee does not invoke the procedures under PPD-19 or is unsuccessful in that pursuit, the employee then has 30 days to appeal the security clearance revocation to the Department Access Review Committee (ARC). The ARC

is a panel of career members of the Senior Executive Service (SES) at the Department.²⁰

If the revocation is upheld after completion of the Department appeal process, HRD then proposes the removal of the employee to the Deciding Official based on the revocation of the security clearance. The employee has the opportunity to respond to the Deciding Official but only with respect to whether the security clearance was a necessary condition of employment, whether it was revoked, and whether proper procedures were followed.

The Deciding Official's removal decision is appealable to the MSPB.

3. Frequency of Suspensions and Revocations

According to SPM Cone, Security Programs adjudicates thousands of DEA employee re-investigations each year. According to the Security Programs summary, the decision to suspend or revoke an employee's security clearance based on a background re-investigation is rare. According to the summary, in the 7-year period between January 2008 and April 7, 2015, Special Agent Stentsen was the only employee whose security clearance was suspended based on information exposed in a background re-investigation. In addition, Special Agent Stentsen was the only employee whose security clearance was reinstated (albeit briefly) after being suspended.

In the 7-year period, Security Programs suspended and/or revoked security clearances for a total of 32 individuals, 12 of whom were special agents, based on information acquired in numerous ways, such as referrals from DEA OPR or other agencies.²¹ Of the 32 individuals whose clearances were suspended or revoked, the majority (24) were because the employee engaged in criminal behavior or falsified documents. Four were because the employee mishandled sensitive DEA or classified information.²²

Only one individual's clearance was both suspended and revoked in the 7-year period. SPM Cone said that most employees retire or otherwise leave the DEA after their security clearances are suspended and before they are revoked because few security clearances are ultimately reinstated.

²⁰ The ARC is comprised of the Deputy Attorney General, the Assistant Attorney General for National Security, and the Assistant Attorney General for Administration (or their respective designees approved by the Attorney General). 28 C.F.R. § 17.15.

²¹ As noted above, 24 of those 32 individuals had their security clearances suspended and/or revoked after a referral from DEA OPR to Security Programs. Of the remaining eight individuals, three were referred to Security Programs by the OIG, two were referred to Security Programs by DEA management, one was referred by a DEA employee, one was identified during a review of a background investigation for a potential new hire, and one (Stentsen) was identified during a background reinvestigation of a current DEA employee.

²² Of the remaining four employees, two failed a random drug test, one had a foreign preference, and one had made threats of violence.

C. 2015 OIG Report

On March 26, 2015, the OIG issued a report that examined the handling of employee sexual harassment and sexual misconduct allegations by the Department's law enforcement components.²³ Although the OIG found that there were relatively few such allegations reported for fiscal years 2009 through 2012, the report identified significant systemic issues with the components' processes for handling these important matters that led the OIG to recommend prompt corrective action by the Department.²⁴ Most notably, with respect to the DEA, the OIG found instances where DEA OPR failed to refer allegations involving sexual behavior that raised security concerns to Security Programs, potentially exposing DEA employees to coercion, extortion, and blackmail, all of which create security risks.²⁵ The OIG also found instances where DEA OPR failed to fully investigate allegations of serious sexual misconduct and sexual harassment.

The OIG also found that there was no formal process for DEA OPR to refer misconduct allegations to Security Programs. Instead, the DEA OPR Handbook (a guide issued to DEA OPR Inspectors) required Inspectors to identify and refer misconduct allegations that raised security concerns to their management. However, unlike Security Programs Specialists, DEA OPR Inspectors are not trained on the Guidelines. Moreover, once informed by the DEA OPR Inspectors, the DEA OPR Deputy Chief Inspector or Associate Deputy Chief Inspector had the discretion, and were not required, to refer the misconduct allegations to the Security Programs Deputy Chief Inspector. The OIG concluded that when referrals occur at DEA OPR's discretion, there is a risk that DEA OPR may not identify misconduct allegations raising potential security concerns, which is neither DEA OPR's function nor its area of expertise.

The findings and recommendations in the OIG's March 2015 report were not a surprise to the DEA. In accordance with its standard procedures, the OIG first shared working drafts of its report with the DEA in October 2014.²⁶ The DEA

²³ The OIG conducted this review in response to congressional inquiries after allegations arose regarding the conduct of U.S. government personnel, including DEA agents, during a 2012 presidential trip to Cartagena, Colombia. The review focused on the nature, frequency, reporting, investigation, and adjudication of allegations of sexual harassment or sexual misconduct in the DEA; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Federal Bureau of Investigation; and the U.S. Marshals Service.

²⁴ These issues include a lack of coordination between internal affairs offices and security personnel, the failure to report misconduct allegations to components headquarters, the failure to fully investigate allegations, weaknesses in the adjudications process, and weaknesses in detecting and preserving sexually explicit text messages and images.

²⁵ Sexual behavior which raises security concerns is that which involves "a criminal offense, indicates a personality or emotional disorder, reflects a lack of judgment or discretion, or may subject an individual to undue influence or coercion, exploitation, or duress or raise questions about an individual's reliability, trustworthiness and ability to protect classified information." See 32 C.F.R. § 147.6(a).

²⁶ The OIG provided the DEA with working drafts of the report on October 3, 2014 and February 9, 2015, and the formal draft report on March 4, 2015.

responded shortly thereafter by drafting and implementing changes to its policies and procedures. One of the recommendations in the OIG report (recommendation #2), which appeared in the October draft, stated that the DEA “should ensure that all non-frivolous sexual harassment and sexual misconduct allegations are referred to their [] security personnel to determine if the misconduct raises concerns about the employee’s continued eligibility to hold a security clearance, and to determine whether the misconduct presents security risks for the [DEA].”

In response to OIG recommendation #2 in the draft report, the DEA reported that it had issued a November 2014 memorandum and implemented new procedures. The November memorandum retained DEA OPR’s discretion regarding which misconduct cases to refer to Security Programs, and cited DEA OPR’s obligation to protect the privacy interests of DEA OPR subjects and the lower GS series of the Security Program Specialists with respect to the DEA OPR Inspectors.²⁷ However, in response to the OIG recommendation, the memorandum recommended that Security Programs “provide annual training to DEA OPR personnel” and that DEA OPR personnel give “specific consideration” of each investigation whether the misconduct merited a referral to Security Programs at the DEA OPR Comp/Stat quarterly meetings.²⁸

The November 2014 memorandum was the first of several actions that DEA took to address recommendation #2.²⁹ The DEA amended its policies and procedures regarding DEA OPR referrals to Security Programs on three occasions – November 17, 2014, April 21, 2015, and June 6, 2016 – in its efforts to create a process that ensured that Security Programs could identify DEA OPR misconduct cases that warranted a security clearance adjudication. We discuss the April 21, 2015 and June 6, 2016 policies below.

D. Responses to the OIG Report

On April 10, 2015, Attorney General Holder ordered reviews of the DEA’s security programs and disciplinary system. Specifically, the Attorney General requested that the Assistant Attorney General for Administration direct the Department Security Officer to conduct a review of the DEA Security Programs, including the coordination between DEA’s OPR and Security Programs. The Department Security Officer completed his review and detailed his findings in a

²⁷ The memorandum also provided the rationale for the limited scope of information provided in response to integrity check requests citing to a 2002 memo by the Deputy Administrator which stated that prior to approving personnel actions, the DEA would review “significant misconduct” within a 3-year time period.

²⁸ Comp/Stat – (short for computer statistics) is a management system initiated in the New York City Police Department that has since been implemented by many other police departments, both in the United States and abroad. During Comp/Stat meetings, DEA OPR Inspectors discuss their investigations with DEA OPR executive management.

²⁹ In a March 13, 2015 memorandum to an OIG Assistant Inspector General requesting that the OIG close recommendation #2, the DEA wrote that it had implemented the recommendations of the November 2014 memorandum. In response, the OIG requested copies of the new procedures and training material. The OIG closed recommendation #2 on October 5, 2015, after the DEA provided the copies and implemented several additional policies.

November 12, 2015 report (DSO review). The Attorney General also requested that the Director of the Department's Office of Professional Responsibility (DOJ OPR) conduct a review of DEA's handling of employee misconduct investigations, including the sufficiency of those investigations and related disciplinary proceedings. DOJ OPR completed its review and detailed its findings in a report dated June 20, 2016 (DOJ OPR review).

Days after the Attorney General ordered reviews of DEA's security programs and disciplinary system, Leonhart and Whaley both testified before Congress. On April 14, 2015, Leonhart testified before the Committee on Oversight and Government Reform, U.S. House of Representatives. The hearing examined the OIG's findings detailed in its March 26, 2015 report and related issues. On April 15, 2015, Whaley testified before the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations of the Committee on the Judiciary, U.S. House of Representatives. The hearing examined the processes in place to report and investigate misconduct and take disciplinary action at the DEA and Secret Service. The hearing also included a discussion of the findings in the 2015 OIG report.

E. April 21, 2015 Divisional Order

On April 21, 2015, the DEA Inspection Division issued a new policy that addressed coordination between DEA OPR and Security Programs regarding security clearance determinations. The order identified the separate functions of DEA OPR and Security Programs and described DEA OPR as the entity responsible for investigating allegations of misconduct and Security Programs as the entity responsible for adjudicating security clearances.

The April 2015 order implemented several changes in addition to those identified in the November 2014 memorandum; for example, the order also required DEA OPR to notify Security Programs of misconduct allegations at intake and to include the Associate Deputy Chief Inspector from Security Programs in DEA OPR's quarterly Comp/Stat meetings. Prior to the April 2015 order, Security Programs had no formal role in DEA OPR's decisions as to whether misconduct merited a referral to Security Programs. However, while the April 2015 order provides the opportunity for Security Programs to identify which misconduct matters merit an adjudication, it does not address who had the final authority to decide which misconduct cases would, in fact, be referred for adjudication by Security Programs.

The April 2015 order also required DEA OPR Inspectors to consult with DEA OPR executive management during an investigation if DEA OPR Inspectors "discover that an employee has misused their security clearance privileges; for example, release of investigative or classified information or use of law enforcement databases for other than law enforcement purposes."

CHAPTER TWO: FACTUAL FINDINGS REGARDING THE STATUS OF STENTSEN'S SECURITY CLEARANCE

In this section, we first provide a summary of facts and then describe the underlying investigations involving Stentsen and the events involving his security clearance.

I. Summary of Facts

- August 2013: DEA OPR opened a misconduct investigation of Stentsen after his former girlfriend reported that: they had sex in the DEA Office and his DEA issued vehicle on numerous occasions; Stentsen shared sensitive DEA information with her; Stentsen allowed her to go into the DEA drug evidence room; and she took photographs of Stentsen in the DEA Office. When subsequently interviewed by DEA OPR, Stentsen admitted to the misconduct.
- January 2014: DEA OPR sent its completed report and investigation to the Board of Professional Conduct.
- February 2014: The Board of Professional Conduct recommended that Stentsen receive a 45-day suspension and sent the recommendation to Office of Chief Counsel for a legal sufficiency review. The Office of Chief Counsel did not approve the proposed 45-day suspension until May 2015, 15 months later.
- April 2014: DEA OPR opened a second investigation involving an alleged assault by Stentsen on the same former girlfriend. Stentsen denied the misconduct. The DEA Deciding Official resolved the matter in August 2014 with a letter clearing Stentsen of misconduct. This second DEA OPR investigation was not joined with the August 2013 sexual conduct/unauthorized disclosure matter, which was still pending at the Board of Professional Conduct and Office of Chief Counsel.
- May 2014: Whaley entered on duty as Deputy Chief Inspector of DEA OPR.
- October 2014: OPM provided its periodic background re-investigation of Stentsen to Security Programs for adjudication. When interviewed by OPM in August 2014, Stentsen provided statements to OPM investigators that were inconsistent with the statements he previously provided to DEA OPR during its August 2013 sexual conduct/unauthorized disclosure investigation.

- January 2015: Whaley was named Acting Chief Inspector and thus became the supervisor of Security Programs and DEA OPR. Whaley continued to serve as Deputy Chief Inspector of DEA OPR.
- March 2015: SPM Cone suspended Stentsen's clearance based on the information identified in the OPM re-investigation and DEA OPR's August 2013 sexual conduct/unauthorized disclosure investigation of Stentsen.
- Whaley decided that suspension of Stentsen's clearance was not warranted and should be handled differently. Whaley spoke to Leonhart and the Chief of Operations and then ordered Cone to reinstate Stentsen's security clearance. Cone complied and reinstated Stentsen's clearance 3 days after suspending it.
- The day before Whaley ordered Cone to reinstate Stentsen's security clearance, the OIG publicly released its report entitled *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*.
- April 2015: The Attorney General requested that the Assistant Attorney General of Administration direct the Department Security Officer to conduct a review of Security Programs. Acting Deputy Chief Inspector Cone informed the Department Security Officer about Stentsen's security clearance suspension and reinstatement. The Department Security Officer suspended Stentsen's clearance and referred the matter to the OIG.
- Administrator Leonhart and Acting Chief Inspector Whaley testified before Congress.
- May 2015: The Office of Chief Counsel found legal sufficiency for the proposed 45-day suspension of Stentsen based on DEA OPR's August 2013 sexual conduct/unauthorized disclosure investigation but asked the Chairman of the Board of Professional Conduct to consider enhancing the disciplinary recommendation. After initially resisting, the Chairman agreed to change his proposed discipline from a 45-day suspension to removal.

II. DEA OPR Investigations

The suspension of Stentsen's security clearance arose from an OPM background re-investigation that identified misconduct that had been investigated by DEA OPR in two separate misconduct investigations involving Stentsen and the

same former girlfriend, Marion Wardman,³⁰ with whom Stentsen had a 5-year relationship from February 2008 through July 2013.³¹ DEA OPR opened the first investigation on August 15, 2013 and the second on April 9, 2014. We discuss each of these investigations below.

A. August 2013 Investigation of Sexual Conduct and Unauthorized Disclosure

On August 15, 2013, DEA OPR opened an investigation of Stentsen after receiving a telephone complaint from Wardman on August 13, 2013 alleging, among other things, that she and Stentsen had sex in the DEA office.³²

During his October 1, 2014 sworn DEA OPR interview, Stentsen admitted to the misconduct reported by Wardman. Specifically, Stentsen admitted that:

- From 2008-2013, he had an extramarital affair with Wardman, whom he had met on the internet;
- He continued his relationship with Wardman after learning that she had been convicted of a crime;
- He entered Wardman's information in a sensitive local law enforcement database for personal reasons;³³
- He allowed Wardman to listen to two recorded telephone calls of two jailed subjects of DEA investigations;³⁴

³⁰ Marion Wardman is a pseudonym.

³¹ DEA OPR has investigated Stentsen for 11 incidents, 2 of which are described in this report. The other nine were DEA OPR investigations conducted before August 2013 and five of the nine involved damage to his DEA issued vehicle. Of the remaining four, Stentsen received discipline as a result of two investigations: 1) a letter of reprimand based on the charge of failure to follow written instructions when Stentsen drove his DEA-issued vehicle after consuming alcohol on-duty at a holiday party and 2) a 1-day suspension based on the charge of poor judgment for inappropriately displaying his firearm during a custodial interrogation at a local sheriff's office. Stentsen was cleared with respect to the two other investigations, one of which was based on Stentsen's conduct as a task force officer before he was hired as a DEA agent.

With respect to Stentsen's use of his DEA issued vehicle after consuming alcohol, DEA OPR investigated Stentsen for two offenses 1) Failure to Follow Instructions and 2) Alcohol Related Incident/Violation of DEA Alcohol Policy. However, the Board only charged Stentsen with the more general offense code of "Failure to Follow Written Instructions" which provides for a lesser penalty, including a reprimand. The Board did not charge Stentsen with the offense applicable to operating a vehicle after consuming alcohol which provides a minimum penalty for a first offense of a 60-day suspension.

³² According to Wardman, she reported Stentsen's misconduct because she was angry with his response when she told him she was pregnant with his child. Stentsen has denied that he is the father of the child born in February 2014 and, according to the investigations we reviewed, his paternity had not been established.

³³ Stentsen denied running Wardman's name in a DEA or National Crime Information Center (NCIC) database.

³⁴ Stentsen also told DEA OPR that Wardman may have seen DEA documents or photographs of evidence that were on his desk but that he did not think she saw any classified material.

- He allowed Wardman access to the DEA Office including the drug-evidence room and could not recall whether he left her unattended for brief periods of time;
- From February 2008 to September 2009, he and Wardman had sex on numerous occasions in the DEA Office and in his DEA issued vehicle,³⁵
- He told Wardman that “he [was] so stressed out he could blow his brains out;” and
- Wardman had previously reported some of these allegations to Stentsen’s former supervisor who told Stentsen to stay away from Wardman.

The DEA OPR investigation included interviews of Wardman, Stentsen, and his current supervisor as well as photographs that Wardman took inside the DEA Office.

On January 23, 2014, approximately 5 months after opening the investigation, DEA OPR forwarded its report and investigative material to the Chairman of the Board of Professional Conduct (Chairman). As noted above, the Board of Professional Conduct makes a proposal to resolve cases referred by DEA OPR. Approximately 1 week later, on January 31, 2014, the Board of Professional Conduct member assigned to the case recommended that Stentsen receive a 45-day suspension for violating the following sections of the DEA Standards of Conduct:

- Unauthorized use of an official government vehicle;
- Unauthorized disclosure of information;
- Conduct unbecoming to a DEA Special Agent; and
- Improper association with a criminal element.³⁶

The Chairman agreed with the recommendation and on February 6, 2014, forwarded a letter drafted to Stentsen to the Office of Chief Counsel for a legal sufficiency review. The draft letter identified the misconduct, the DEA standards of conduct that were violated, and the proposed discipline. As noted above, the Office of Chief Counsel is required to review proposed discipline appealable to the MSPB, which would include a suspension of 15-days or more.

Before the Office of Chief Counsel responded to the Chairman, DEA OPR opened and closed a subsequent misconduct investigation of Stentsen involving Wardman (described in the next section) that resulted in a letter clearing Stentsen of misconduct (letter of clearance).

³⁵ According to Stentsen and Wardman, they stopped meeting in the DEA Office in September 2009, after Stentsen’s then-second wife learned of their relationship.

³⁶ DEA OPR investigated and the Board charged Stentsen with the violation of the same offense codes.

B. April 9, 2014 Investigation of Assault

DEA OPR opened a second investigation of Stentsen on April 9, 2014, after the Special Agent-in-Charge of Stentsen's Field Division informed DEA OPR that the local sheriff's office had interviewed Stentsen in response to Wardman's allegation that Stentsen assaulted her on March 25, 2014.³⁷

According to the sheriff's report, on March 25, 2014, Stentsen and Wardman attended the same baseball game and Wardman alleged that, when she was driving home from the game, Stentsen pulled her over, yelled at her, and slammed her head against her car. Wardman was treated at the hospital and the sheriff's report noted her injuries: "I observed [Wardman] to have swelling and discoloration over her right eye, which corroborated her story of an attack taking place." Stentsen acknowledged attending the baseball game but denied having seen Wardman that night or for the past several months.

The sheriff's office did not arrest Stentsen. According to the sheriff's report, "[d]ue to no independent witness, conflicting statements and no obvious signs of damage to [Wardman's] vehicle where she stated that her head had been struck, [Stentsen] is not being charged with Battery – [Domestic Violence] in this case." The sheriff's office closed the matter and did not forward it for prosecution.

On March 27, 2014, Wardman obtained a Domestic Violence Injunction from a State court. Pursuant to the injunction, Stentsen turned over his personal weapons to the sheriff's office and his DEA weapons to his supervisor. Without a weapon, Stentsen was unable to participate in DEA enforcement activities. At an April 9, 2014 hearing on the injunction, Wardman agreed to dismiss the action and Stentsen retrieved his weapons.

The DEA OPR investigation included interviews of Stentsen; his supervisor; and the sergeant from the sheriff's office who had interviewed Wardman and Stentsen. DEA OPR Inspectors noted that the sergeant told DEA OPR that Wardman's statement could not be corroborated and the DEA OPR Inspectors' impression that the sergeant did not think that Wardman was believable. The DEA OPR investigation also included the sheriff's office report as well as court records for the Domestic Violence Injunction and its dismissal. In addition, DEA OPR obtained a trespass order requiring Wardman to stay away from Stentsen's home and the report of her November 2, 2013 violation of that order.³⁸ The DEA OPR

³⁷ Stentsen had reported his contact with law enforcement to his supervisor, who then reported the contact to her chain-of-command.

³⁸ On September 9, 2013, DEA OPR contacted both Stentsen and Wardman to schedule interviews for the August 2013 sexual conduct/unauthorized disclosure investigation. Wardman said she had spoken to Stentsen earlier that day but that when she tried to speak with him after DEA OPR called, Stentsen would not answer. When Stentsen did not respond to Wardman's messages, she drove to his office and home. Stentsen said that after being contacted by DEA OPR, he informed his supervisor who told him not to have any contact with Wardman and that, in response to Wardman's attempted contacts, he contacted a Sergeant he knew at the local sheriff's office who dispatched a deputy to issue Wardman a "trespass warning," notifying Wardman that if she did not stay away from

investigation did not include an interview of Wardman, Wardman's hospital records, or photographs of her injuries or her truck.³⁹

On July 2, 2014, approximately 3 months after opening the investigation, DEA OPR forwarded its report to the Chairman.⁴⁰ On July 10, 2014, the Board member assigned to the case recommended that Stentsen receive a letter of clearance. The Chairman agreed with the member's recommendation and sent a July 15, 2014 memorandum to the Deciding Official. In the memorandum, the Chairman wrote that "[t]he [DEA] OPR investigation failed to reveal evidence to substantiate [Special Agent] Stentsen assaulted [Wardman]."

On August 12, 2014, the Deciding Official issued Stentsen a letter of clearance.

III. Security Programs Suspends Stentsen's Clearance

Security Programs received a copy of OPM's routine periodic background re-investigative materials of Stentsen on October 6, 2014. Among other things, the re-investigative materials included a detailed questionnaire completed by Stentsen in April 2014 and OPM interviews of Stentsen and others who knew him personally or professionally conducted between August 26, 2014 and September 25, 2014.

The current standards for Office of Personnel Management (OPM) security clearance background investigations do not require OPM investigators to routinely search for records of OIG or OPR investigations while conducting background investigations. According to OPM, its investigators will make an inquiry if 1) its investigators independently learn of the existence of an investigation (issue resolution) or 2) the agency requesting the background investigation and OPM have negotiated this inquiry as an additional requirement for the background investigation in an extended coverage agreement.

Stentsen's home, she would be charged with criminal trespass. Wardman violated the trespass order on November 2, 2013, when she drove to his home.

³⁹ We asked Whaley and the Chairman: 1) why the assault investigation of Stentsen was not joined with the earlier August 2013 sexual conduct/unauthorized disclosure investigation, which was still pending in the Board of Professional Conduct, and 2) how the DEA OPR investigation could have been completed without DEA OPR interviewing Wardman. Neither Whaley nor the Chairman provided any reason why the investigations were not joined in this instance, and they indicated there are no rules for when two related misconduct investigations must be joined. As for the failure to interview Wardman, Whaley said he was surprised that Wardman was not interviewed but that it is his subordinate, the Assistant Deputy Chief Inspector, who approves DEA OPR investigations before they are sent to the Board of Professional Conduct. The Board of Professional Conduct Chairman said that if he thought he needed an interview of Wardman, he would have asked for it, but that he thought he had enough information to recommend a letter of clearance.

⁴⁰ The Board changed the DEA OPR offense code of "assault" to "conduct unbecoming."

In the Stentsen matter, OPM learned about aspects of the incidents investigated by DEA OPR from its interviews and record checks.⁴¹ OPM then asked DEA OPR for information regarding Stentsen's OPR history and provided a release signed by Stentsen which authorized his employer to provide information about his performance and disciplinary history, among other things. Although DEA OPR provided OPM with some information (such as the dates of its investigations), it declined OPM's request to provide additional information.⁴²

OPM informed DEA Security Programs that it had identified serious potentially disqualifying issues regarding the Stentsen's continued eligibility for access to classified information. OPM provided information from multiple sources, including interviews with Wardman, Stentsen's DEA supervisor, a colleague from the local sheriff's office, and court records which OPM identified as the sources of information that raised the potential security concerns for evaluation by the adjudicating officials.

After receiving a copy of the OPM re-investigative materials, the Security Programs Personnel Program Specialist (Specialist) assigned to the Stentsen matter requested a DEA OPR integrity check on October 8, 2014. In response, DEA OPR identified the case number of the August 2013 sexual conduct/unauthorized disclosure investigation but not the case number of the April 2014 assault investigation. According to the DEA OPR employee who completed the integrity check request form, the DEA OPR practice at the time was to identify only DEA OPR investigations that resulted in a suspension or greater discipline. As discussed above, the assault investigation resulted in a letter of clearance.

At the Specialist's request, Cone obtained the complete file for the August 2013 sexual conduct/unauthorized disclosure investigation from DEA OPR.

The Specialist told the OIG that she learned of aspects of the domestic violence allegation from the OPM interviews conducted as part of Stentsen's background re-investigation, including interviews of Stentsen and Wardman. However, she stated that OPM often does not learn of the basis for DEA OPR investigations because interviewees often decline to discuss anything related to a DEA OPR investigation, citing DEA OPR confidentiality agreements.

⁴¹ Some OPM interviewees refused to discuss matters that had been investigated by DEA OPR, citing the confidentiality agreements that DEA employees sign in the course of being interviewed by DEA OPR. Other interviewees provided information regarding the matters that had been investigated by DEA OPR. Stentsen did not refuse to discuss the DEA OPR matters that he was asked about. Whaley told us that DEA OPR confidentiality agreements do not provide expiration dates or other information regarding their duration, so DEA OPR witnesses may not realize when they are no longer bound by the confidentiality agreement.

⁴² We note that DEA OPR's refusal to share information with OPM in this instance is consistent with what we have been told is the former's general reluctance to provide information from its investigations. Of course, such reluctance may be warranted in some circumstances, but not when it results in relevant information being withheld from the agency charged with conducting its employees' background re-investigations. We recommend below that DEA review its policies and practices in this regard.

The Specialist said that, after reviewing the OPM re-investigative materials and DEA OPR's August 2013 sexual conduct/unauthorized disclosure investigative materials, she made the recommendation in October 2014 that Stentsen's security clearance be suspended and then revoked based on Stentsen's failure to protect DEA information, personal conduct, and unauthorized use of a government vehicle. At the time, the Specialist had 9 years of experience adjudicating security clearances. She said that she recommended a suspension followed by a revocation because a suspension could be imposed without the delays required by a revocation. The Specialist said that although there were additional potentially disqualifying issues identified in the OPM materials but not yet investigated by DEA OPR, she determined that there was enough disqualifying information in the DEA OPR and OPM investigative files to justify the decision under the Guidelines without the need to investigate additional issues. Her recommendation to Cone cited the conduct reported in DEA OPR's August 2013 sexual conduct/unauthorized disclosure investigative files of Stentsen and his inconsistent statements to DEA OPR and OPM investigators, which are discussed below.

Among the inconsistent statements identified in the Security Programs documentation supporting the recommendation for suspension were:

- Stentsen told OPM investigators that he never allowed Wardman into the DEA Office drug room but told DEA OPR Inspectors that Wardman had been in the drug room;
- Stentsen told OPM investigators that he never left Wardman alone in the DEA Office but told DEA OPR Inspectors that he might have left Wardman unattended when he used the restroom; and
- Stentsen told OPM investigators that he did not violate any security or DEA rules or regulations when he allowed Wardman in the DEA Office but admitted to DEA OPR Inspectors that he violated the Employee Conduct provision of the DEA Personnel Manual.⁴³

The Security Programs Specialist then drafted two documents: a memorandum of suspension and a memorandum identifying the basis for the suspension. The latter included:

- failure to safeguard DEA sensitive information;
- sexual activity with Wardman in the DEA Office and DEA car;
- allowing Wardman to access the restricted drug room and possibly leaving her unattended in the DEA Office;
- unauthorized use of a sensitive state law enforcement database to run Wardman's name for personal reasons;

⁴³ The OIG's Investigations Division examined whether Stentsen's inconsistent statements to DEA OPR and OPM investigators constituted a knowing violation of 18 U.S.C. § 1001, False Statements. The OIG did not substantiate the allegation of knowingly making false statements but concluded that Stentsen was "at least misleading to and not fully candid with the OPM investigator" and that "[Stentsen] misused a local law enforcement database when he used it to query his girlfriend for personal reasons."

- association with Wardman, who Stentsen knew had been convicted of a crime; and
- inconsistent statements to DEA OPR and OPM investigators.

Cone approved the memoranda drafted by the Specialist. Cone told the OIG that he believed that the Security Programs adjudication was appropriate based on Stentsen's conduct documented by DEA OPR's August sexual conduct/unauthorized disclosure investigation and Stentsen's inconsistent statements to the DEA OPR and OPM investigators. At the time, Cone had 7 years' experience in Security Programs.⁴⁴

Cone provided the draft memoranda to the Office of Chief Counsel to review.⁴⁵ The Office of Chief Counsel edited, approved, and returned the documents to Cone on March 20, 2015.

After the Office of Chief Counsel approved the documents, Cone informed the relevant parties of the imminent security clearance suspension. On March 24, 2015, Cone informed the Special Agent-in-Charge of Stentsen's Field Division of the suspension and then sent an e-mail with the suspension memorandum that a supervisor was to serve on Stentsen and a document that Stentsen was to sign acknowledging its receipt. The same day, Cone e-mailed a copy of Stentsen's suspension memorandum signed by Cone to Whaley and his Assistant Deputy Chief Inspector. Finally, Cone sent HRD the suspension memorandum to be used to draft Stentsen's proposed indefinite suspension letter.

The next day, March 25, 2015, Stentsen's supervisor served him with the suspension letter and Stentsen signed the acknowledgement of receipt. Cone notified the Office of Chief Counsel, HRD, and the Assistant Deputy Chief Inspector of DEA OPR that Stentsen had received and signed for the notification of suspension. Cone's e-mail confirming that Stentsen had been notified of his suspension was not sent to Whaley. HRD then drafted a letter to Stentsen notifying him that HRD proposed that he be indefinitely suspended without pay from DEA employment because he did not have a security clearance and a letter informing Stentsen that he would be placed on limited duty until the Deciding Official made a final determination on the proposed indefinite suspension. HRD sent the draft letters to Office of Chief Counsel for legal sufficiency review the afternoon of March 26, 2015.

According to both Cone and Whaley, sometime before Cone suspended Stentsen's clearance, Cone had informed Whaley of his intent to do so at a weekly managers' meeting. Whaley told the OIG he responded "okay" to Cone at the time

⁴⁴ The Specialist told us she thought this was the first time management had ever agreed with her recommendation to suspend a security clearance based on a background re-investigation.

⁴⁵ The Office of Chief Counsel assigned an attorney to review the legal sufficiency for the suspension memorandum since it would serve as the basis for HRD to propose the adverse action of an indefinite suspension. The attorney assigned was the same attorney assigned to review the legal sufficiency of the Board's proposed 45-day suspension in Stentsen's sexual conduct/unauthorized disclosure matter.

but that he always intended to review the DEA OPR investigative materials to determine if Cone's decision was justified. Whaley said that as Acting Chief Inspector, he was responsible for all decisions made in the Inspection Division.

On March 26, 2015, 2 days after Cone suspended Stentsen's security clearance, the OIG publicly released its report, Congress ordered hearings, and the national media reported the story.

IV. Whaley Instructs Cone to Reinstate Stentsen's Security Clearance

On March 27, 2015, 3 days after Cone suspended Stentsen's security clearance and the day after the OIG's report was publicly released, Whaley ordered Cone to reinstate Stentsen's security clearance. The facts relevant to this decision are discussed in detail in the subsections below.

A. Whaley Decides To Reverse Cone's Decision to Suspend Stentsen's Clearance

As noted above, Whaley said that he intended to review Stentsen's DEA OPR file once Cone told him that he intended to suspend Stentsen's clearance. However, Whaley did not review the DEA OPR file until after he received Cone's March 24, 2015 suspension memorandum to Stentsen. According to Whaley, he was aware that Security Programs had adjudicated Stentsen's security clearance in connection with a background re-investigation and not as a result of a referral from DEA OPR.

However, Whaley said he did not know Stentsen's suspension was based on anything other than the DEA OPR investigation until we told him during our interview that among the reasons given for the suspension decision were the inconsistent statements that Stentsen provided to the DEA OPR and OPM investigators. Whaley said that he assumed that the August 2013 DEA OPR sexual conduct/unauthorized disclosure investigation was the sole basis for Security Programs decision – and not any information from the background re-investigation - because it did not occur to him that information from the OPM re-investigation would be the basis for the suspension.

Whaley said that this was the first time in his experience that Security Programs was suspending a clearance based on a periodic re-investigation. "I think it's the first time [Cone suspended a clearance] as a result of a five-year re-investigation versus an DEA OPR investigation where we had specifically asked for it to be reviewed. I think it's the first one during my tenure -- in fact, I'm sure." Whaley also said this was the only security adjudication that he ever thought was inappropriate.

Whaley said that upon review of the DEA OPR investigation, he determined that Stentsen deserved significant punishment up to and including removal for his misconduct, but that he did not find Stentsen to be a threat to national security. Whaley said that Stentsen had a problem with a girlfriend but was honest when questioned by DEA OPR. He said that he did not think that the DEA OPR

investigation raised national security issues because it did not involve a lack of candor, foreign nationals, or a foreign country. Whaley said that he felt that Stentsen should go through the DEA disciplinary process but that his security clearance should not be suspended. Instead of a suspension, Whaley wanted to handle the security concerns in a different manner, such as a letter of warning or additional training. Whaley said that he was bothered that Stentsen was going to have his clearance suspended based on the DEA OPR investigation and saw himself at the time as “righting a wrong or choosing a better alternative than [the suspension of his security clearance].” According to Whaley, having your security clearance suspended as an agent is typically worse than punishment imposed through the disciplinary process because the DEA requires agents to have security clearances as a condition of employment and if the clearance is not reinstated, the agent will lose his job.

Whaley said that when making his decision, he did not know the basis for Cone’s decision or discuss the matter with Cone. In addition, Whaley said that he did not apply the Adjudicative Guidelines. Whaley said he had previously read the Guidelines but did not have any formal training on their application and that, at the time of his decision to overrule Cone, he did recall that one of the Guidelines addressed sexual misconduct.⁴⁶

Whaley said that he was not aware of any inconsistent statements that Stentsen made to DEA OPR and OPM investigators until we showed him Cone’s March 25, 2015 memorandum to HRD during our interview. Whaley said that if he had known this information at the time, he would have agreed with Cone’s decision to suspend Stentsen’s security clearance. Whaley acknowledged that he should have discussed the matter with Cone to understand the basis for Cone’s decision to suspend Stentsen’s clearance.

Whaley also told the OIG that, based on the DEA OPR investigation alone, he agreed that Cone was justified in suspending Stentsen’s clearance. According to Whaley, he simply disagreed with the result. Whaley stated:

Even based on the information in the [DEA] OPR case file, I don't think that [Cone] made – if, if that was the only thing that had been considered, I don't think that Robert Cone made an improper decision. I just don't think it would have been the best decision. I don't think [Cone] did anything wrong. I think he's clearly applying the adjudicative guidelines. It meets the requirements that you would need to, to meet to suspend the guy's security clearance. I'm not, I never argued that fact.

Whaley told us that he had worked with Stentsen briefly on a DEA investigation many years earlier when they worked in different field offices and that Stentsen had been instrumental in convincing one of the defendants to cooperate. Whaley said that he had not seen or spoken to Stentsen since then and that neither

⁴⁶ At the time, Whaley was familiar with the findings in the draft OIG reports identifying the failure to refer sexual misconduct to Security Programs for adjudication under the relevant Guideline.

Stentsen nor anyone else asked Whaley to intervene on Stentsen's behalf. Whaley said that his past association with Stentsen did not influence his decision.

Whaley also told us that DEA OPR's changing role with respect to Security Programs had no effect on his decision. He said the fact that he was also the Deputy Chief Inspector of DEA OPR and that DEA was in the process of implementing policies that affected DEA OPR's discretionary authority to refer investigations to Security Programs also played no role in his decision to overrule Cone.

B. Whaley's Discussions with Leonhart and the Chief of Operations

Whaley discussed the Stentsen matter with Leonhart and the Chief of Operations. We address each witness's recollection of the conversations below.

1. Whaley's Account

Whaley told the OIG that the decision to overrule Cone was within his discretion as Acting Chief Inspector. Whaley also said that when he exercises discretion, he either informs someone in a position of authority or documents his decision in writing. He further stated that, in this particular case, there was nowhere in the system for him to document his decision in writing, so he decided to check with Leonhart and the Chief of Operations to let them know that he was doing something that was "unusual and out of the norm."⁴⁷

Whaley said that, although he could not remember the exact dates, between March 24 and 26, 2015, after reviewing the DEA OPR investigation, he spoke to the Chief of Operations (the highest level supervisor for agents) and then to Leonhart. Whaley said he was not sure whether he spoke to them on the same day and that he did not make a special trip to speak with Leonhart but mentioned his decision regarding Stentsen's security clearance suspension when he was speaking with her about other matters.

Whaley said that he informed Leonhart and the Chief of Operations that Stentsen and his girlfriend had sex in the DEA office on numerous occasions and that Whaley personally knew the agent. According to Whaley he told them:

"I didn't think this case merited suspension of his security clearance, and that I intended to try to address it a different way. I was hiding nothing. I made both of them aware of it. And I always, I always, anytime I utilize discretion, I either document it in writing or with someone that I could be held accountable to."

Whaley said he told the Chief of Operations that "we had prepared a memorandum to suspend the agent's security clearance. And that I didn't feel that the facts warranted that in this particular case. And that I was going to be going

⁴⁷ The Chief of Operations is also an Assistant Administrator who advises the Deputy Administrator and Administrator on DEA operational issues.

about that a different route.” He said that the Chief of Operations said “thanks for informing me or something like that.”

Whaley said he told Leonhart that “we were lined up to suspend this guy's security clearance, and I don't think that's the best way to go. And I think I'm going to pursue a different avenue.” According to Whaley, although he had received a copy of the formal, signed suspension memorandum on March 24, he did not know at that time that the suspension memorandum had already been sent to Stentsen's supervisor and served on Stentsen.

According to Whaley, “[Leonhart] said that was my call,” “[o]r up to me, something like that.” “She didn't weigh, she didn't say don't do that or do that, either one. That was, that was my decision. I was just letting her know.” Whaley added: “And, and the only question that I remember her asking was, but he's still going through the disciplinary process, right? And I said yes. She said okay. That's the only thing I remember about that.”

As discussed further below, Whaley spoke to Leonhart about the Stentsen matter a second time in mid-April. Whaley did not recall the date but said that soon after he testified before Congress (on April 15), he received a phone call from the Office of the Deputy Attorney General asking if Leonhart ordered the reinstatement of Stentsen's security clearance. Whaley said that he informed the Office of the Deputy Attorney General that it was he who ordered the reinstatement, not Leonhart. According to Whaley, he informed Leonhart about the inquiry from the Office of the Deputy Attorney General and the fact that he corrected their misunderstanding the next time he spoke with her.

2. The Chief of Operations' Account

The Chief of Operations told us that he had only been in his position since late January when Whaley came to his office in March “troubled” about a matter involving an agent who had sex in a DEA building. He said that it was his impression that Whaley knew the agent, was concerned that the agent would get fired or lose his security clearance, and thought that was an extreme result – that “the punishment didn't meet what [Whaley] thought was the crime.” He said that this may have been a matter that Whaley wanted to raise with HRD “to see if there were other options.” He said that he told Whaley that “it's an [a DEA] OPR problem. It has nothing to do with Operations, so thanks for telling me.”

3. Leonhart's Account

We interviewed Leonhart twice. The first time was on May 4, 2015, 6 weeks after Cone signed the suspension memorandum. During this interview, Leonhart stated that she had a single conversation with Whaley about the Stentsen matter in mid-April shortly after they testified before Congress and that they did not have a conversation about Stentsen in March. After this interview, Leonhart searched her records and found contemporaneous handwritten notes of her March conversation with Whaley about Stentsen. When Leonhart notified the OIG that she had located

her notes, we interviewed her for a second time on September 25, 2015. We summarize those interviews below.

In her first interview in May 2015, Leonhart said that she had “very recently” talked to Whaley about the Stentsen matter. Leonhart said that she had a conversation with Whaley shortly after he testified and that Whaley stopped by her office on the evening of either April 16, 17, or 20, 2015. According to Leonhart, Whaley told her that he had already or was about to pull a DEA OPR matter back from Security Programs because the matter did not warrant the suspension of an agent’s security clearance. According to Leonhart, Whaley said that the matter did not rise to the level of “Cartagena” as it did not involve prostitutes or foreign nationals.⁴⁸ Leonhart said:

[Whaley] came to me that night and, and said I wanted you to know what I did or what I'm doing. And he says, I'm having discussions with Security Programs because I'm having difficulty with, with a case. And he said I pulled it, which I thought meant I, I, I pulled it, I didn't refer it. But I'm having discussions with Security Programs about it because I don't think it rises to the level of the other cases, like the Cartagena, [redacted]. It doesn't have to do with prostitutes. He said it's a good agent who made some stupid mistakes, had his girlfriend in a car and had his girlfriend in the office. And I just wanted you to know that I don't feel comfortable that that is, that is a case that someone should lose their security clearance on. And so I didn't – he gave me the name. The name didn't ring a bell. It was a very short conversation. And he said I just wanted you to know, you know, what I did. And I said, well, you continue to have conversation with Security Programs about it if you have concerns. That was it.

Leonhart said that she thought the issue was whether DEA OPR should refer the matter to Security Programs for adjudication. She also stated that Whaley said he was “on the fence” about whether the case should be referred to Security Programs for an adjudication of Stentsen’s security clearance, that he was “pulling it back” from Security Programs, or that he already “pulled it back” from Security Programs. Leonhart was also aware that Whaley and Cone disagreed and did not see “eye-to-eye” on the matter. Leonhart said:

What [Whaley’s] coming to me about, and I think we’re discussing is [Whaley] sees a case that he didn’t think should be referred. [Cone] sees a case that he thinks should be referred. And I tell [Whaley], I tell [Whaley] to talk to [Cone] about it and let him know why he thinks it doesn’t need to be referred.

⁴⁸ As discussed above, the March 2015 OIG report was initiated in response to allegations regarding the conduct of U.S. government personnel, including DEA agents, during a 2012 presidential trip to Cartagena, Colombia where, among other things, agents were alleged to have engaged with prostitutes while at their government-leased quarters, raising the possibility that DEA equipment and information also may have been compromised as a result of the agents’ conduct.

Leonhart also told the OIG that Whaley said that he could “vouch for” the agent. Leonhart said that she assumed that meant that Stentsen was not a “regular client” of DEA OPR, meaning someone investigated by DEA OPR on a number of occasions. According to Leonhart, she did not weigh in on the matter, did not know the case, and did not ask for the file. Leonhart said that she told Whaley that if he had concerns about the matter, he should talk to Cone.

Leonhart said the conversation with Whaley occurred when DEA OPR still had the discretionary authority to refer DEA OPR misconduct investigations to Security Programs because the April 21, 2015 order had not yet been issued. Leonhart stated, “[Whaley] has the authority at that period of time to decide which DEA OPR investigations are referred over to Security Programs.” Leonhart said that once the April 21, 2015 order was official, Cone would be in a position to make that decision. Leonhart said that the April 21 policy change not only provided for Cone to participate in Comp/Stat meetings where DEA OPR matters would be discussed, but also transferred to Cone the authority to determine which DEA OPR investigations merited a review by Security Programs.⁴⁹

When we asked Leonhart why she did not tell Whaley to follow the April 21 policy that she and Whaley had agreed to implement and which Leonhart said required that DEA OPR defer to a Security Programs decision to adjudicate a DEA OPR matter, she replied, “I didn't go that far. I said if you have problems with that case, you should talk it over with Security Programs” and that it was a “grey area” at the time. She said that during her and Whaley’s discussions about changing DEA policy over the prior few weeks and months, she and Whaley had discussed the fact that some DEA OPR matters would not rise to the level or meet the threshold for a referral to Security Programs, a distinction she described as similar to a misdemeanor versus a felony, or frivolous versus non-frivolous. Leonhart said that she believed in these distinctions and expected there to be instances where DEA OPR and Security Programs would disagree about whether a specific matter reached that threshold.

Leonhart said that her intent was that Whaley and Cone discuss the matter but that ultimately, Whaley still had the authority to decide whether to refer the DEA OPR matter to Security Programs for adjudication.

Leonhart also said that Whaley had no authority to make any finding with respect to a security clearance and that Whaley’s authority with respect to a security clearance was limited to deciding which DEA OPR cases to refer to Security Programs. Leonhart said that she was not aware that the Stentsen matter had arisen from a background re-investigation (as opposed to a DEA OPR referral) until she was informed of this fact in her first OIG interview.

⁴⁹ It appears that Leonhart misunderstood or overstated the effect of the April 21 Order. As noted above, the April 21 Order provided that Security Programs would participate in DEA OPR Comp/Stat meetings, and required DEA OPR to inform Security Programs of all new allegations of misconduct at the point of intake, but did not specifically state who had the authority to determine which DEA OPR matters would be reviewed by Security Programs.

Leonhart repeatedly stated that the conversation with Whaley did not occur in March. She said she had a single conversation with Whaley about Stentsen in April and that as Administrator, she would not be briefed on lower level DEA OPR investigations such as Stentsen's. She said:

Never, never had a discussion about this Stentsen [in March]. Never had a discussion about anything that could even have been close to Stentsen. Because I don't, I, I wouldn't be getting briefed on something like that. Not a 15, not an SES. From what I understand, a girlfriend in a car, a girlfriend in the office, that wouldn't that wouldn't rise to something that would come up to me.

We also asked Leonhart whether she and Whaley ever discussed a DEA employee's security clearance in any context in late March. She stated that Whaley briefed her on high-profile cases involving security clearances, but the only one she recalled from the past few weeks involved DEA employees from another field division.

When asked why Whaley would raise the issue with her in April, she speculated that it may have had something to do with the call from the Office of the Deputy Attorney General. She said her conversation with Whaley, the call from the Office of the Deputy Attorney, and an e-mail about the Office of the Deputy Attorney General's request for Stentsen's files occurred simultaneously. (Whaley e-mailed Stentsen's files to the Office of the Deputy Attorney General in response to their request on April 17, 2015.)

Leonhart said that on April 20, she learned from the Acting Chief Inspector (standing in for Whaley) that the OIG would be investigating the Stentsen matter and that his security clearance had been reinstated in March.

We interviewed Leonhart again 5 months later, in September 2015. After our first interview, Leonhart reviewed her files and provided the OIG with her handwritten notes from two meetings. The first was a single page note that was undated and labeled "OPR" at the top and indicated that she had been briefed on four DEA OPR matters: the arrests of two DEA employees, the Stentsen matter, and a matter involving an SES-level employee. Leonhart said the notes were from what she believed was a March 24, 25 or 26, 2015, discussion with Whaley and that she could approximate the date of the notes because she found them in a file she prepared for a March 25, 2015 Career Board. With respect to Stentsen, Leonhart had written:

18 ½ years an agent, September 2013, woman went to his house on a dist. She admits sex since 2008, after hours sex, played tape of def. March 2015 susp his clearance.

Leonhart said that the notation "dist" meant that the woman had gone to the agent's house on a "disturbance"; that "def" meant "defendant" and that "susp" meant "suspended." Leonhart said that she did not recall two of the matters in her

notes but that she recalled being briefed by Whaley about an agent in Florida who let his girlfriend listen to tapes and that they suspended his clearance.⁵⁰

Leonhart stated that she had no recollection of the March conversation with Whaley outside of the handwritten note and that the note did not indicate that Whaley informed her that he intended to overrule Cone's decision and direct that Cone reinstate Stentsen's clearance. When asked whether she recalled anything else about the conversation such as whether Whaley was going to restore the agent's clearance or thought that suspension was inappropriate, she also said:

[T]here was no discussion about whether his clearance should be suspended or not or anything to do with his clearance. It was like just to tell me, we had this – like this is a fresh [DEA] OPR case from September 2013 that probably just got adjudicated and he was telling me that they suspended his clearance. I don't recall any conversation about whether that's right, that's wrong. None of those kind of conversations. That is a conversation that comes up, I thought, later and that's about whether that case is something that raises to the bar for a security clearance to be pulled and that is what he and [Cone], in this process of Security Programs looking at all the [DEA] OPR cases, that's something that they'll work out.

Leonhart said that to her memory, the March 2015 discussion with Whaley was separate from the April 16, 17, or 20, 2015 discussion with Whaley that she discussed during our first interview when Whaley informed her that he had pulled or was pulling a case back from Security Programs.⁵¹

We asked Leonhart why Whaley would include a GS-13 employee in a DEA OPR briefing unless he was informing her that he disagreed with the decision to suspend Stentsen based on the DEA OPR investigation and wanted to find a different way to handle the matter. Leonhart suggested that, despite the caption and substance of her notes, it might not have been a DEA OPR briefing after all, and that Whaley might have been briefing her as Chief Inspector "because that's something that the – one of the things that the Chief Inspector probably would have told me about."

C. Whaley Instructs Cone Not to Suspend Stentsen's Clearance

On March 27, 2015, Whaley instructed Cone not to suspend Stentsen's clearance. We address their recollections of the conversations below.

⁵⁰ Leonhart also said she recalled that Whaley briefed her about the DEA OPR matter involving the SES employee included in the notes.

⁵¹ The second handwritten note was a single page dated April 20, 2015, which listed five matters, one of which was the Stentsen matter. It indicated that the OIG had requested "all prior cases on Stentsen and [his security clearance]."

1. Cone's Account

Cone said that Whaley never commented on his decision to suspend Stentsen's clearance until the morning of March 27, 2015, when, in a brief telephone conversation, Whaley ordered him to reinstate it. According to Cone, on March 27, 2015, Whaley told him that the night before (March 26), "[Whaley] briefed [Leonhart] and [the Chief of Operations] on the Stentsen case. They believed that the clearance should not have been suspended, and they [the Administrator and Chief of Operations] wanted me to reinstate it."⁵² According to Cone, Whaley said that "they [the Administrator and Chief of Operations] believed" that Stentsen's behavior did not "rise to that level" justifying a security clearance suspension. "I asked [Whaley] if I could brief him . . . so he could see that this was consistent with other decisions I've made. And [Whaley] said no."

We asked Cone if the request to reinstate Stentsen's clearance could have come from Whaley and not from the Administrator. Cone responded, "I wouldn't know. I only know what he told me." Cone said that he understood Whaley to be the messenger and did not think that Whaley shared the opinion since Whaley had not objected when Cone previously informed him of his decision to suspend Stentsen's clearance at the manager's meeting.

Cone told the OIG that he followed what he believed was Leonhart's instruction – as conveyed through Whaley – and reinstated Stentsen's clearance on March 27, 2015. Cone said that it is his practice to follow the instruction of his chain of command unless the instruction is illegal or immoral. In this case, Cone said he thought the decision to reinstate the clearance was wrong, but not illegal or immoral. Cone said that where his chain of command may have seen a performance issue, he saw an integrity issue. Nonetheless, Cone said that his supervisors have every right to direct the actions of their subordinates and that "there's a lot of gray" in the Guidelines, and therefore, people applying them may come to different conclusions.

2. Whaley's Account

Whaley said that after speaking with Leonhart and the Chief of Operations in late March, he then called Cone. According to Whaley, to the best of his recollection, he told Cone that the suspension was "not warranted in this case. I've already talked to [the Chief of Operations] and [Leonhart]. Let's, let's go about this a different way." Whaley told the OIG that he is confident that he did not tell Cone that Leonhart issued the order or made the decision, because that would not have been the truth. Whaley said he did not ask Cone to explain his rationale for suspending Stentsen's clearance, but that if Cone disagreed with the decision, Cone should have taken the initiative and made his argument.

Whaley said that he told Cone not to tell Chief Counsel about the decision on Stentsen's clearance. Whaley said that he knew everything he needed to know at

⁵² Cone said that he did not consider the opinion of the Chief of Operations because he was not in Cone's chain of command.

the time, "certainly legally wise," and that he was concerned that the suspension memorandum would go out while the attorneys reviewed the matter, only to be rescinded later. Whaley said his intent was to avoid involving anyone in the Office of Chief Counsel, as opposed to Chief Counsel specifically.

In addition to speaking with Cone the morning of March 27, 2015, Whaley also spoke to the HRD Acting Administrator. According to e-mails, HRD staff was then informed that Whaley was reviewing Stentsen's suspension and HRD was not to send any letters to Stentsen's supervisors. Whaley told us that he did not realize the suspension letter had already been sent to Stentsen's supervisors and issued to Stentsen. (Cone had e-mailed Whaley a copy of the formal signed and dated suspension memorandum to Stentsen on March 24, but not Stentsen's signed acknowledgment of receipt.) Whaley told the OIG that he probably would not have intervened in the suspension if he had known the suspension memorandum had already been issued to Stentsen since reversing the suspension reflected poorly on the DEA and appeared unprofessional.

D. Cone Takes Steps to Reverse Suspension

The morning Cone received Whaley's order, he informed the Deputy Chief Counsel and the attorney who had been assigned to review Stentsen's suspension memorandum. According to the Deputy Chief Counsel, Cone told her that per Leonhart's instruction, Whaley directed Cone to reinstate Stentsen's security clearance. The Deputy Chief Counsel also told the OIG that Cone said that Whaley told him not to inform Chief Counsel. (As noted above, Whaley told the OIG that he instructed Cone not to inform the Office of Chief Counsel because he knew everything he needed to and he was concerned that the suspension memorandum might go out while the attorneys reviewed the matter.) The Deputy Chief Counsel said that, according to Cone, Whaley said that the rationale for the reversal was that the agent was guilty of bad judgment and had made a "dumb[]" mistake" but that it should not affect his clearance because it was not as if "national security was going out the door."

The Deputy Chief Counsel told us that she and Cone agreed that the Administrator's order to reinstate Stentsen's clearance was strange because neither of them were aware of any previous matter in which the SPM had been overruled on a decision to suspend a security clearance. However, the Deputy Chief Counsel said that since she believed that the SPM's delegated authority came from the Administrator through the Chief Inspector, she thought the Administrator was within her authority to overrule Cone. The Deputy Chief Counsel also said that she thought the re-instatement order was strange because she believed the decision to suspend the security clearance was justified under the Guidelines. As for Whaley's request that Cone not inform Chief Counsel, she told the OIG that she thought Cone was referring to the Chief Counsel's Office generally, and believed that Whaley did not understand the process for security clearance suspensions and the fact that the supporting documents are reviewed by the Office of Chief Counsel because of its effect on the employee's employment status.

The Office of Chief Counsel attorney who had been assigned to review the suspension memorandum told us that he received a telephone call and an e-mail from Cone informing him that Cone's chain of command instructed Cone to reinstate Stentsen's security clearance and that the attorney understood from Cone that the order came from Administrator Leonhart. According to the attorney, Cone said that his chain of command did not want agents' security clearances suspended for "poor judgment."

The same morning, Cone instructed Security Programs personnel to reinstate Stentsen's clearance. The Specialist told us that Cone gave her the directive in a telephone call and that when she questioned it and asked "has anybody been watching the news?" (in reference to the press coverage of the March 2015 OIG report) – Cone hung up the telephone. She said that later, another supervisor told her that the decision came from "above Cone" and that Cone thought she was being insubordinate. The Specialist reinstated Stentsen's clearance.

The Specialist told the OIG that she believed that the order to reinstate Stentsen's clearance violated the Department Security Officer's delegation of authority and that only the Attorney General and the Department Security Officer are in Cone's chain-of-command for the purpose of a security clearance determination. She also said that there are resources available to assist the adjudicators in applying the Guidelines, such as the Adjudicative Desk Reference, which identifies cases in which a clearance was suspended or revoked and the rationale that supported the decision.⁵³

After speaking to the Deputy Chief Counsel and Security Programs personnel, Cone sent an e-mail to the Office of Chief Counsel and HRD stating, "At the request of my chain-of-command, I have reinstated SA Stentsen's clearance and I have directed [Security Programs] to reinstate his access to IT systems." Cone then e-mailed Stentsen's supervisors informing them that he had reinstated Stentsen's clearance.

V. Re-Suspension

As noted above, in response to the March 2015 OIG report, the Attorney General issued an April 10, 2015 memorandum requesting that the Assistant Attorney General for Administration direct the Department Security Officer to review the efficacy of the DEA's Security Programs, including the coordination between DEA OPR and Security Programs.

In anticipation of the upcoming review of Security Programs, Cone telephoned the Department Security Officer and then sent an April 15, 2015 e-mail informing him of the actions he took with respect to Stentsen's security clearance. Cone said that but for the upcoming review, he would not have had any reason to

⁵³ Per Whaley's request, Cone directed the Specialist to draft a letter of warning to Stentsen but, as discussed below, the Department Security Officer re-suspended Stentsen's clearance before the letter was sent.

inform the Department Security Officer of the Stentsen matter. In the e-mail, Cone wrote, in part:

On March 24, 2015 I suspended the security clearance of DEA Special Agent [Grant Stentsen] for engaging in sexual misconduct, providing information access to an unauthorized person, and providing inconsistent accounts to [DEA] OPR and OPM investigators (Guidelines "D," "K," and possibly "E" [Sexual Behavior, Handling Protected Information, and Personal Conduct, respectively]). I intended to go forward with revocation and suspended pending the preparation of [a Statement of Reasons]. On March 27, my first line supervisor told me the DEA Administrator disagreed with my decision and directed me to reinstate the clearance.⁵⁴

Both the Department Security Officer and the Assistant Director for the Personnel Security Group told us that Cone's DEA supervisors should not have overruled Cone's decision to suspend Stentsen's clearance. The Department Security Officer told us that Cone should have notified his DEA supervisors that he needed to involve the Department Security Officer when he was instructed to reinstate Stentsen's clearance. He stated that per the delegation of authority, only the Department Security Officer, the Assistant Attorney General for Administration, or the Attorney General has the authority to overrule Cone's adjudication and that no one in Cone's DEA chain of command has the authority to overrule his adjudication. The Department Security Officer stated that the Department does not negotiate security clearances, and that they are decided based on the facts of the investigation and the application of the Guidelines.

The Assistant Director told the OIG that no one outside the clearance process should try to influence an SPM's security clearance decision. She explained that suspension decisions are based on applying the Guidelines to the facts and if a decision that followed that process is overruled by someone outside of the delegation, then the Department would not be applying the standard required by the intelligence community. She said that if the Department failed to follow the Guidelines and Executive Orders, it could lose the authority to conduct its security program.

Whaley said that he first learned that Cone attributed his directive to reinstate Stentsen's clearance to the Administrator when he received a call from the Office of the Deputy Attorney General. Whaley said that although he was not sure of the date of the call, it was after his April 15, 2015 testimony and that he understood that the Office of the Deputy Attorney General was responding to the Department Security Officer's belief that the Administrator ordered the reinstatement of Stentsen's clearance. (Cone informed the Department Security Officer about the reinstatement on April 15, 2015.) Whaley told us that when the Office of the Deputy Attorney General asked about the Administrator's order to

⁵⁴ Cone also sent an April 17 e-mail to the Department Security Officer describing the Inspection Division managerial structure and indicating that Whaley was an SES and Cone was a GS-15 level employee.

reinstate Stentsen's clearance, Whaley immediately clarified that it was he, not Leonhart, who was responsible for the order to reinstate Stentsen's security clearance. Whaley said that Cone must have misinterpreted him when he directed Cone to reinstate Stentsen's clearance. Whaley said he did not make a special trip but that the next time he saw Leonhart he told her of his call from Office of the Deputy Attorney General and that he had clarified that it was he who made the decision. Whaley also said that he informed Cone that it had been his decision, not Leonhart's.⁵⁵

In her OIG interview, Leonhart said that she did not recall who informed her of the inquiry from the Office of the Deputy Attorney General and that it might have been the Acting Chief Inspector (temporarily standing in for Whaley). Leonhart said that she learned about the inquiry around the time of her discussion with Whaley, but was unsure if it occurred when Whaley was responding to the Office of the Deputy Attorney General's inquiry about the reinstatement and request for Stentsen's files (April 17) or when she learned of the OIG's investigation (April 20).

On April 17, the Department Security Officer referred the matters described in Cone's e-mail to the OIG and re-suspended Stentsen's clearance.⁵⁶ The Department Security Officer took over the adjudication of Stentsen's security clearance as soon as he learned about the interference by Cone's DEA chain of command. According to the Department Security Officer, he referred the matter to the OIG because the OIG had already addressed similar issues in its recent March 2015 report.⁵⁷

On April 24, 2015, a week after re-suspending Stentsen's clearance, the Department Security Officer issued a memorandum to four SPMs to whom he had delegated his authority to administer their components personnel security program.⁵⁸ The Department Security Officer said that after the Stentsen incident, he thought it necessary to reiterate that the authority to grant, suspend, deny, and revoke a security clearance was delegated to them as SPMs and could not be re-

⁵⁵ Cone told us that just 4 days before his April 27, 2015 OIG interview, Whaley informed him that that he [Whaley] had made the decision to reinstate Stentsen's clearance, not Leonhart. Cone said that when he responded that he understood Whaley to have said it was the Administrator's decision, Whaley did not reply and "that was basically the entire conversation."

⁵⁶ Stentsen received the memorandum notifying him that the Department Security Officer re-suspended his security clearance on April 20, 2015 and, on April 29, 2015, HRD placed Stentsen on limited duty pending the Deciding Official's decision on HRD's proposal to place Stentsen on indefinite suspension. On May 26, 2015, after the 30-day notice period, the Deciding Official notified Stentsen that he would be placed on indefinite suspension without pay pending a final decision regarding his security clearance eligibility.

⁵⁷ The OIG initiated two reviews in response to the Department Security Officer's referral. The Oversight & Review Division examined the allegations involving Leonhart described in this report. As stated above, the Investigations Division examined whether Stentsen's inconsistent statements to DEA OPR and OPM investigators violated 18 U.S.C. § 1001, False Statements.

⁵⁸ The DSO sent the memo to the SPMs of the Federal Bureau of Prisons, U.S. Marshals Service, Bureau of Alcohol, Tobacco, Firearms and Explosives, and DEA. (The Department Security Office has delegated the FBI's the authority to conduct its security program in a separate, broader delegation.)

delegated any further. The Department Security Officer also wrote in the memorandum that if the SPM's had "any concerns regarding a decision, [they] should consult with [him], as the Department Security Officer, for advice or for a final determination."

Cone referred to the Department Security Officer's April 24, 2015 memorandum as the "Stentsen rule" and stated that he viewed it as the Department Security Officer's effort to prevent another situation in which an SPM's component's chain-of-command overruled the SPM's decision with respect to a security clearance. However, Cone stated that the "Stentsen rule" does not resolve the problem because he is still subject to the directives of his DEA chain of command, as long as they are not illegal or immoral. While the Department Security Officer also stated that he followed the directives of his chain of command unless they were illegal or immoral, he added that there are some matters within his scope of duties that his direct supervisor lacks the authority to influence.

Both the Department Security Officer and Assistant Director told the OIG that there are no policies clarifying the role of the SPM and his dual chains of command or memoranda informing the SPMs and their chains of command of the parameters of the delegated authority. The Department Security Officer stated that after our discussion, he would raise the issue with his General Counsel.

The Department Security Officer subsequently revoked Stentsen's clearance on June 10, 2015. Although Stentsen appealed the revocation, the Department Security Officer closed the matter before issuing a final decision because Stentsen had been removed from federal employment on March 2, 2016, as discussed below. However, in his August 2, 2016 letter to Stentsen's attorney, the Department Security Officer wrote, "[B]ased on all information received, and if [Stentsen] was still a current employee with DEA, I would have sustained my initial decision to revoke his national security clearance." The Department Security Officer's decision was based on Stentsen's personal conduct and handling of protected information. The decision letter cited Stentsen's inconsistent statements to the [DEA] OPR and OPM investigators, pattern of dishonesty and rule violations (regarding his sexual conduct in the DEA office and car), and the unauthorized disclosure of information (including audio tape recordings, photographs, and possible exposure of other case sensitive information during Wardman's after-hour visits to the DEA office).

Furthermore, the DSO review required the DEA to revise its April 21, 2015 order, among other things. As noted above, the order required that DEA OPR Inspectors confer with their supervisors about referring cases to Security Programs if, during the course of a DEA OPR investigation, they find that an employee misused his security clearance privileges, such as by releasing investigative or classified information or used law enforcement databases for other than law enforcement purposes. The Department Security Officer required the revision because the scope of the April 21, 2015 order unduly limited DEA OPR's responsibility to update Security Programs on potential security concerns identified during the course of its investigations. The DSO review informed the DEA that "misconduct beyond the scope of such security violations could warrant the review by [Security Programs] of an employee's continued eligibility to hold a security

clearance.” The DEA responded by providing certain Security Programs personnel with greater access to DEA OPR investigative information and issuing a June 6, 2016 memorandum which, among other things, requires DEA OPR to advise Security Programs “of any new developments that may have an impact on the employee’s security clearance eligibility, to include any confirmed or dismissed allegations of misconduct or new allegations of misconduct.”⁵⁹

VI. Removal

As noted above, Cone and the Department Security Officer suspended Stentsen’s security clearance (on March 24, 2015 and April 17, 2015, respectively) based in part on DEA OPR’s August 2013 sexual conduct /unauthorized disclosure investigation. However, as of April 17, 2015, Stentsen had not yet been disciplined for the underlying misconduct and the Board of Professional Conduct’s recommendation that Stentsen receive a 45-day suspension without pay had been pending with the Office of Chief Counsel for over a year. Both Stentsen matters – the security clearance suspension and disciplinary proposal – had been assigned to the same Office of Chief Counsel attorney.⁶⁰ The attorney told us that even though he was assigned the disciplinary proposal (March 2014) before he was assigned the security clearance suspension (January 2015), he worked on the security clearance first because he prioritized security clearance matters over disciplinary matters.⁶¹

The attorney told us that after completing the legal sufficiency review for Cone’s suspension of Stentsen’s security clearance, he turned his attention to the disciplinary proposal. The attorney said between April 15 and May 15, 2015, he met with his immediate supervisor on four or five occasions, with the Deputy Chief Counsel in attendance at some of these meetings. According to the attorney, his supervisors – both his primary supervisor and the Deputy Chief Counsel – wanted

⁵⁹ In response to the DSO review, the DEA also issued a June 3, 2016 memorandum to all employees which reiterated the requirement that employees self-report arrests and off-duty misconduct to their chain of command and added the requirement that employees self-report the same conduct to Security Programs. While the June 3, 2016 memorandum also required that the employee’s chain of command report the employee’s conduct to DEA OPR, the DEA issued the June 6, 2016 memorandum requiring that Security Programs report the employee’s misconduct to the Department Security Office if the employee has access to “Sensitive Compartmented Information (SCI).” The Department Security Office adjudicates DEA employees’ security clearances for access to Sensitive Compartmented Information Facilities (SCIF).

⁶⁰ For simplicity, we have referred to the two matters as the “security clearance suspension” and the “disciplinary proposal.” However, the decision to suspend a security clearance is not an adverse action reviewable by the Office of Chief Counsel. The draft memorandum that Cone sent to Office of Chief Counsel is reviewed for legal sufficiency because it serves as the basis for HRD to propose an indefinite suspension without pay, which is an adverse action. The disciplinary proposal refers to the Board’s proposed 45-day suspension without pay based on the DEA OPR’s August 2013 sexual conduct/unauthorized disclosure investigation.

⁶¹ The attorney told the OIG that his priorities are driven by deadlines and there are no deadlines for disciplinary matters, so they are the last to be addressed. For example, in an April 30, 2014 e-mail to his supervisor, the attorney assigned to the Stentsen matter identified 13 pending disciplinary proposals, 10 of which had been pending longer than the Stentsen matter.

the Board of Professional Conduct to enhance the proposed discipline because they thought it inconsistent to propose a 45-day suspension on the disciplinary matter and a suspension on the security clearance matter. The attorney said that he did not understand his supervisors' position because discipline and security matters were on separate tracks. Both supervisors asked that he research comparable cases as a means to recommend an enhanced penalty to the Board and call the Chairman to discuss the issue.⁶²

The attorney's primary supervisor said that the request to enhance the disciplinary proposal was not influenced by the suspension of the security clearance and stemmed from a belief that the discipline proposed for Stentsen's misconduct was insufficient. However, on May 1, 2015, the attorney's primary supervisor e-mailed the attorney:

In the [Grant Stentsen] disciplinary matter, make sure you create a note in [the Office of Chief Counsel legal database] regarding your call with [the Board of Professional Conduct Chairman] today, indicating what you told me (i.e., *that in light of the proposed indefinite suspension, he's going back and re-evaluating the DEA OPR file and comps regarding the appropriate penalty*). (Emphasis added).

The supervising attorney said that she could not recall the source or import of the reference to the indefinite suspension in her e-mail.

The Deputy Chief Counsel told us that she was not concerned about reconciling the Board's proposed 45-day suspension with the HRD's proposed indefinite suspension because the two actions, one of which stems from a security clearance suspension, can proceed simultaneously along separate tracks. Instead, she stated that she questioned the consistency of the Board's proposed penalty with other comparable cases. She further stated that it is not unusual for the Office of Chief Counsel to have some contact with the Board of Professional Conduct to discuss a case.

The Board of Professional Conduct Chairman initially declined to change his recommendation from a 45-day suspension to a removal. The attorney e-mailed his primary supervisor on May 4, 2015 stating:

After several discussions with [the Chairman] (and after his additional review of [comparable cases] and the file), he cannot issue a proposed removal, and stands by his proposed 45-day suspension without pay. [The Chairman] just read to me the following from page 39 of [Mr. Stentsen's DEA] OPR interview, "I have admitted – I admit what I've done wrong . . . I admit everything that I've done wrong," and told me that he cannot propose a removal in light of [Mr. Stentsen's] admission.

⁶² Comparable cases or "comps" refer to discipline meted out to other DEA employees for similar misconduct.

We asked the Board of Professional Conduct Chairman why an admission would prevent him from proposing a removal. The Board of Professional Conduct Chairman told us that an admission was merely one of the Douglas Factors that he considered in mitigating an employee's misconduct and assessing the appropriate discipline.

On May 15, 2015, the attorney sent the finalized legal sufficiency memorandum and proposal letter to the Chairman. While the memorandum stated that the proposed 45-day suspension was legally sufficient, it also identified eight comparable cases for the Chairman's consideration. Each of the eight comparable cases justified the proposal for removal from DEA employment; none recommended any other type of enhanced penalty.⁶³

On May 18, 2015, the Chairman agreed to change his proposal from a 45-day suspension to a removal and sent Stentsen the letter proposing his removal and informing Stentsen that he was placed on limited duty. The Chairman said he changed his proposal after reviewing the comparable cases identified by the Office of Chief Counsel in the legal sufficiency memorandum. He said that he did not find those particular comparable cases during his previous searches.⁶⁴

Stentsen was removed from DEA employment on March 2, 2016 and has appealed his removal to the MSPB.

⁶³ The Office of Chief Counsel edited the Chairman's letter to Stentsen. Among other edits, the Office of Chief Counsel added a specification to the charge of conduct unbecoming a DEA special agent based on Stentsen's use of a state law enforcement database for personal, unauthorized reasons, and a standalone charge of poor judgment based on Stentsen allowing Wardman to take photographs inside the DEA Office.

⁶⁴ The eight comparable cases were decided over a 22-year period (from 1990 to 2012). These comparable cases contain little information, only one or two summary sentences describing the employees' conduct and the resulting discipline.

We note that the DOJ OPR review recommended that the DEA disciplinary officials (both the Chairman and the Deciding Officials) fully document the basis for disciplinary proposals and decisions including any charges to those matters and advice received from outside sources, such as the Office of Chief Counsel.

CHAPTER THREE: LEONHART'S TESTIMONY

In this section, we discuss Leonhart's April 14, 2015 testimony before the House Oversight and Government Reform Committee hearing regarding her inability to "impact" an agent's security clearance adjudication. The issue regarding the accuracy of her statement arose after her testimony, based on the allegation that she had ordered Security Programs to reinstate Stentsen's security clearance just 2 weeks before she testified before Congress that she could not impact a security clearance.

Below is the exchange in which Leonhart testified that she did not have the ability to impact an agent's security clearance, and that she understood her role in the disciplinary process to be significantly limited.⁶⁵

MR. GOWDY: Thank you, Mr. Chairman.

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

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

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

LEONHART: I believe –

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

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

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

LEONHART: Last year -- last year I sent an e-mail and I sent a memo to every employee in DEA and put them on notice that this kind of conduct was not –

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

⁶⁵ As noted by Assistant Attorney General for Administration Lee J. Loftus after reviewing our draft report, Leonhart's testimony regarding her role in the disciplinary process reflected an incomplete understanding of her ability to have appropriate input as to how a disciplinary matter should be treated in a particular situation. See Memorandum attached as Appendix A.

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

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

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

Do you know whether any of the prostitutes were underage?

LEONHART: I don't know that.

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

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

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

LEONHART: **No. There's adjudicative guidelines and that has to be adjudicated –**

MR. GOWDY: Well, I –

LEONHART: [continuing]. **By the security people.**

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

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

(Emphasis added). Leonhart also testified at the hearing to the following:

CHAIRMAN CHAFFETZ: Can you revoke [agents'] security clearance[s]?

LEONHART: I can't revoke their security clearance[s]. I can ensure that there's a mechanism –.

CHAIRMAN CHAFFETZ: Why can't you?

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

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

LEONHART: Cartagena.

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

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

Leonhart testified that she could not impact an agent's security clearance, but she also testified that she played a role in the removal of three DEA agents because of their conduct in Cartagena. Leonhart testified that her role in the removal of the three agents was in ensuring that DEA OPR refer the misconduct to Security Programs for adjudication under the Guidelines. As a result of the Security Programs adjudication, the agents lost their security clearances and then their jobs, because a security clearance is a requirement for DEA employment.

When asked to explain her statement about her inability to "impact" a security clearance, Leonhart told the OIG that as Administrator, she has an "impact" over everything but that she understood the specific question to ask whether she had a designated role in the security clearance adjudication process. Leonhart said that she testified that she had no role in the adjudicative process and that only the trained personnel in the Security Programs had the authority to adjudicate an agent's security clearance.

Leonhart distinguished her ability as Administrator to influence DEA-wide policy and procedure from her inability to participate in individual employee disciplinary and security decisions. For example, Leonhart told Congress that as Administrator, it was a violation of the civil service laws and a prohibited personnel practice for her to intervene in the disciplinary process, but that it was appropriate for her to identify misconduct that warranted significant discipline. She told Congress that in the Fall of 2014, 2 years after she learned of the agents' conduct in Cartagena, she issued an agency-wide memorandum that informed all DEA employees and disciplinary officials that particular misconduct impacts the integrity of the DEA and warrants significant disciplinary action.

As for security clearances, Leonhart told Congress that while she could not revoke or impact an individual agent's security clearance, it was appropriate for her to ensure that there was a mechanism in place for DEA security personnel to review an agent's security clearance. Leonhart said that Security Programs was the mechanism in place at the time of the Cartagena matter. However, Leonhart also told Congress that there was no formal mechanism for DEA OPR misconduct investigations to be referred to Security Programs for a security review under the Guidelines. Leonhart testified that in November 2014 the DEA implemented its first formal policy addressing security clearance reviews following DEA OPR investigations. (As discussed above, the November 2014 memorandum was replaced with an April 2015 order and further amended in a June 2015 order.)

CHAPTER FOUR: OIG ANALYSIS

Our review focused on two issues. The first was to assess responsibility for the flawed decision to reinstate Stentsen's security clearance, with particular attention to whether Leonhart inappropriately interfered in the matter. The second was whether Leonhart testified truthfully to Congress when she stated that she could not "impact" an agent's security clearance adjudication because that was a role assigned to the DEA "security people." We address the two issues in that order. In addition, at the end of our analysis we discuss additional policy issues identified during the OIG review.

I. Assessment of Responsibility for the Flawed Reinstatement of Stentsen's Security Clearance

In assessing responsibility for the reinstatement decision, we identified differences in the accounts of Cone, Whaley, and Leonhart that affected our analysis.

First, Whaley and Leonhart told us the reinstatement was Whaley's decision, but Cone said that Whaley told him in March that the order had come from Leonhart. We concluded that Cone did in fact understand Whaley to have told him that Leonhart gave the order, as Cone described in contemporaneous conversations with the Deputy Chief Counsel and another attorney, as well as in a subsequent e-mail. However, only Whaley and Leonhart were present during their March conversation, and neither told us that Leonhart gave such a direction during their March conversation. Under these circumstances, we did not find sufficient evidence to conclude that Leonhart ordered Whaley to reverse the SPM decision to suspend Stentsen's security clearance, and we concluded that it was Whaley who made the decision.⁶⁶

Second, Leonhart and Whaley gave differing accounts regarding the timing of their conversation about stopping or reversing the suspension. Whaley said the conversation occurred in March, but Leonhart said the conversation about stopping or reversing the suspension happened in April. We did not find it necessary to resolve the timing of this conversation. Either way, Leonhart understood that Whaley intended to prevent or overrule the security clearance suspension and, at the very least, acquiesced in Whaley doing so, either before or after the fact. We found that both Leonhart's and Whaley's actions in this matter were rooted in a failure to recognize the important role of Security Programs and a corresponding

⁶⁶ In this regard, there are several possible explanations for how Cone might have gotten the impression that Leonhart gave the order. Whaley said that he told Cone that he had spoken to Leonhart about the issue. Depending on the language that Whaley used and its precision, it would not have been a huge leap for Whaley to have implied or for Cone to have inferred that Leonhart had made the decision and, at the very least, it would have been clear to Cone that she acquiesced in the direction. Indeed, it might have been useful for Whaley to leave the impression that he was speaking with Leonhart's imprimatur as a means to avoid further debate with Cone, since he knew that Cone disagreed with him about the issue and, according to Cone, refused to even let Cone present the contrary evidence to him.

lack of clarity with respect to the Department Security Officer's delegation of authority to the SPM.

A. Whaley

We determined that it was Whaley, and not Leonhart, who intervened to overrule the SPM's decision to suspend the Special Agent's clearance. Whaley told us he was responsible for overruling Cone's decision to suspend Stentsen's security clearance. His decision to overturn Cone's suspension of Stentsen's security clearance reflected poor judgment and leadership. Whaley overruled Cone's decision without consulting with Cone or the Security Programs Specialist to identify the facts or understand the analysis behind their decision. Instead, Whaley substituted his personal, uninformed, inexpert opinion for that of the trained, experienced analysis of Security Programs personnel.

Whaley said that he acted in his capacity as Acting Chief Inspector when he ordered his subordinate, Security Programs Acting Deputy Chief Inspector Cone, to reinstate Stentsen's clearance. At the time, Whaley was an SES-level employee and Cone was a GS-15. Whaley recognized that Stentsen's conduct merited discipline but did not appreciate the significance of the misconduct with respect to security concerns. Whaley had no training on the application of the Adjudicative Guidelines, no experience adjudicating security clearances, and had served as Acting Chief Inspector for only 2 months. In contrast, Cone had worked in Security Programs for 7 years and had reviewed and accepted the recommendation of the Security Program Specialist. The Specialist recommended that Stentsen's security clearance be suspended and revoked based on her training on the Adjudicative Guidelines, her 9 years of experience adjudicating security clearances, and the totality of information available to her. The information that Cone and the Specialist relied upon was not limited to DEA OPR's August 2013 sexual conduct/unauthorized disclosure investigation of Stentsen but also included OPM's periodic background re-investigation of Stentsen, information that, as we discuss below, was unknown to Whaley and that he admitted would have changed his decision.

We found that several noteworthy facts contributed to Whaley's decision. First, Whaley believed he was acting within his authority as Acting Chief Inspector. As Acting Chief Inspector, Whaley said that he was the person responsible for all decisions in the Inspection Division (including Security Programs) and Cone's supervisor. Whaley said that, as such, he had the authority to overrule Cone's decision. In addition to Whaley, Deputy Chief Counsel, Cone, and the attorney assigned to the Stentsen matter also believed that Whaley was acting within his authority to overrule Cone. As detailed elsewhere in this report, the DSO's February 27, 1998 delegation of authority to the SPMs created a second, separate chain of command for those SPMs – but the delegation did not make it entirely clear that an SPM's security adjudication could not be overruled by a superior within the

component's chain of command.⁶⁷ (Notably, Whaley's superior, Leonhart, apparently did not share this confusion. As detailed above and discussed below, she testified to Congress that she understood that the DSO's delegation only went to the "security people," as opposed to others higher in the DEA chain of command such as herself or Whaley.) We discuss the delegation of authority to the SPM below.

While we do not find that Whaley acted with an improper intent, we do find that his decision evidenced poor leadership and judgment since he lacked the knowledge, the expertise, or an appropriate basis to intervene in the matter.

Second, Whaley erroneously assumed that the August 2013 DEA OPR sexual conduct/unauthorized disclosure investigation was the sole basis for Cone's decision.⁶⁸ Whaley told the OIG that had he known that Stentsen gave inconsistent statements to DEA OPR and OPM investigators, Whaley would not have directed Cone to reinstate the security clearance. In addition to believing that he had the authority to overrule Cone as Acting Chief Inspector, historically at the DEA, Security Programs did not adjudicate misconduct unless DEA OPR referred a matter for that purpose. As the Deputy Chief Inspector of DEA OPR, Whaley believed that he had the authority to decide whether Security Programs adjudicated misconduct for the purpose of evaluating the employee's continued eligibility for a security clearance. Nonetheless, we found that Whaley's failure to identify the basis for Cone's decision and ensure that he had evaluated the available information before deciding the decision was inappropriate and a serious lapse in judgment.

Third, Whaley told us he did not know that Stentsen had received Cone's suspension memorandum. Whaley told the OIG that had he known that Stentsen had received notification of his suspension, he would not have directed Cone to reinstate the security clearance essentially because it would have looked unprofessional for DEA to change positions after the fact. Putting aside the suggestion that substantive decisions on security clearances would be impacted by such consideration of appearances, we note that Cone had e-mailed Whaley a copy of the final signed and dated suspension memorandum to Stentsen on March 24 but Whaley was not aware that it had already been sent to Stentsen's supervisors and served on Stentsen. In any event, had Whaley obtained the full details of the situation from Cone, he would have known that the memorandum had been delivered, and by his own account he would not have overruled the suspension.

Whaley's actions also reflected a disregard for the OIG's findings in the several drafts (October 2014, February 2015, March 2015) and final (March 2015) reports regarding the handling of sexual harassment and misconduct allegations by the DEA and other DOJ components. Whaley was familiar with the OIG review,

⁶⁷ Because of the misunderstanding with respect to the chain of command as it pertains to Security Programs adjudications and Cone's belief that he was obligated to follow Whaley's order since he did not believe that it was illegal or immoral, we do not assess Cone's conduct in the matter.

⁶⁸ While neither Leonhart nor Whaley knew that Security Programs decision was based on information from both the DEA OPR and OPM investigations, Cone told the OIG that the suspension would have been justified based on the DEA OPR investigation alone.

having received a draft report as early as October 2014, and was responsible for revising DEA policy to address this precise issue. Among other things, the OIG report identified security risks created when DEA OPR employees untrained in security adjudications were allowed to determine whether to refer findings of sexual or other misconduct to Security Programs. Nonetheless in late March 2015, Whaley reviewed DEA OPR's August 2013 Stentsen investigation, which identified both sexual conduct and potential security concerns (including disclosing DEA sensitive information to unauthorized personnel, using a state law enforcement database for personal reasons, providing a girlfriend with access to the DEA facility after hours, and associating with a criminal), and he did not make any effort to discuss the matter with Cone, ensure that he himself was aware of all the relevant information, or ask whether the Stentsen case warranted closer attention given the findings in the OIG report. Whaley's lack of leadership in this regard is particularly troubling considering that on March 26 (the day before Whaley instructed Cone to reverse his decision), the OIG publicly released the final report, Congress ordered hearings, and the national media reported the story.

Moreover, in the Stentsen matter, Whaley was not just deciding whether to refer a DEA OPR investigation to Security Programs for adjudication, but specifically overruling a Security Programs adjudication to suspend a clearance. According to Whaley, he was concerned that Stentsen's clearance would ultimately be revoked and Stentsen would lose his job. Thus, Whaley not only substituted his judgment for that of Security Programs, but he also effectively substituted his judgment for those the Department has designated to review security clearance revocations as part of its robust appeals process. The several layers of appeal in place safeguard against unsupported or retaliatory revocations of security clearances. The appeal process allows the agent to appeal to the initial decision maker, the OIG (if retaliatory), and the ARC. The process does not include a role for the Acting Chief Inspector or the Deputy Chief Inspector of DEA OPR.

We were also troubled by Whaley's instruction to Cone not to inform the Office of Chief Counsel of the decision to reinstate Stentsen's clearance. Whaley said that he knew everything he needed to know, "legally wise," and that he was concerned that if the attorneys reviewed the matter the suspension memorandum would go out and it would look unprofessional if that decision were rescinded a few days later. These reasons Whaley gave for this instruction were unpersuasive. The Office of Chief Counsel had reviewed the memorandum supporting the suspension of Stentsen's clearance; it made sense for them to be alerted to the reversal of that decision. If Whaley was concerned about the suspension memorandum going out, he could have asked Cone to determine the status of the memorandum and whether its release could be postponed while the attorneys reviewed the matter. (Ironically, had he done that, he would have learned that the memorandum had already been issued, and by his own account, would not have reversed the decision.) In any event, by instructing Cone not to inform the Office of Chief Counsel, Whaley created the appearance that he was trying to circumvent appropriate channels and avoid legal review. We believe that it was bad judgment for Whaley not just to intervene in the matter, but to instruct Cone to conceal that decision from the Office of Chief Counsel.

B. Leonhart

We found that Leonhart at the very least allowed Whaley to determine whether Stentsen's security clearance would be suspended, and in so doing shares in the responsibility for Whaley's flawed decision. Although Whaley and Leonhart gave differing accounts of their discussions regarding Stentsen's clearance, they agreed on several essential points.

According to Leonhart, after reviewing her contemporaneous notes, in one conversation in late March, Whaley briefly described Stentsen's misconduct and said that his security clearance had been suspended, but she did not recall a discussion about whether the suspension decision was right or wrong. Leonhart described another conversation, which she placed in mid-April, in which Whaley told her that he was having discussions with Security Programs and had "pulled back" or was considering or planning to "pull back" a case that Whaley did not believe merited the suspension of the agent's security clearance since it did not rise to the level of Cartagena. Leonhart said she knew the matter involved the agent having sex in the DEA office and disclosing DEA case information and that Whaley and Cone disagreed about whether the DEA OPR matter should be referred to Security Programs. Leonhart said that she told Whaley that if he had concerns about the matter he should talk to Cone, but that Whaley had the authority to decide whether to refer the DEA OPR matter to Security Programs for adjudication. Based on Leonhart's testimony alone, she understood at some point that Whaley had made or was planning to make the determination that an employee's misconduct did not merit the suspension of his security clearance, and she did not object.

According to Whaley, he told Leonhart in late March that Security Programs was lined up to or had proposed to suspend an agent's clearance and, because the matter did not rise to the level of Cartagena, he wanted to pursue a different option. Whaley told us that at the time of his conversation with Leonhart, Whaley was unaware that the suspension memorandum had already been sent to Stentsen's supervisors and served on Stentsen. According to Whaley, Leonhart told him that it was his decision to make and verified that the agent was still going to go through the disciplinary process. Whaley said that he spoke to Leonhart about Whaley a second time in mid-April to inform her that the Office of the Deputy Attorney General had inquired about the reinstatement of Stentsen's clearance and that Whaley clarified that it was he who made the reinstatement decision.

Under either Leonhart's or Whaley's version of events, Leonhart learned by no later than mid-April that Whaley opposed suspending Stentsen's clearance and that he ultimately intended to make the critical decision as to how to handle the matter himself. It does not matter if the decision was to "pull back" a referral from DEA OPR to Security Programs or to overrule Security Programs' decision on the clearance – either way, the effect was that Whaley would decide whether Stentsen's clearance would be suspended.

We found Leonhart's acquiescence to Whaley troubling given that Leonhart testified to Congress that she understood that the Department Security Officer's delegation only went to the "security people," not to others higher in the DEA chain

of command such as herself or Whaley. This awareness should have set off warning bells for her when Whaley informed her that he had “pulled back” or intended to prevent or reverse or “pull back” a clearance suspension decision by these same “security people.” Herself a former Inspector in the Office of Professional Responsibility, she knew that the expertise for adjudicating security clearances resided in Security Programs, and testified contemporaneously that she believed that the sole authority within DEA for such decisions resided there as well.

Leonhart indicated that she did not tell Whaley to defer to Cone because she thought that the matter arose from an OPR misconduct investigation as opposed to a periodic security clearance re-investigation. She stated that for at least a few more days, until the effective date of the April 21 order, Whaley retained the authority to determine which OPR misconduct investigations were referred to Security Programs for adjudication.

Leonhart’s understanding of the procedural posture of the matter, as she described it to us, was erroneous. The Stentsen matter arose not as a result of a referral from DEA OPR but rather as a result of a periodic re-investigation of Stentsen’s clearance.

Even if Leonhart’s understanding had been accurate, her explanation is unconvincing. First, nothing in the April 21, 2015 order actually addressed a situation where the Chief Inspector or DEA OPR disagreed with Security Programs on the issue of whether a DEA OPR misconduct investigation raised security concerns meriting adjudication by Security Programs. Leonhart’s statement that until the order was issued Whaley retained the ultimate authority to resolve such disputes was a non sequitur. And even if the order had clearly curtailed Whaley’s authority over such disputes, nothing would have precluded Leonhart from following this guidance in advance of its issuance, knowing that it was coming out soon and that it was consistent with the separation of the security clearance adjudication process with which she was very familiar.

Second, and of critical importance, at the time of her conversations with Whaley about Stentsen, Leonhart was familiar with the OIG Report (which Leonhart had seen previously in draft form as well) and had discussed with Whaley changes to DEA policies to address the issues identified by the OIG. The OIG report contained a finding that DEA OPR had failed to refer allegations involving sexual behavior that raised security concerns to Security Programs, potentially exposing DEA employees to coercion, extortion, and blackmail, all of which create security risks. The OIG found – and Leonhart did not dispute in reviewing the OIG’s report – that when referrals of misconduct findings occur at DEA OPR’s discretion, there is a risk that DEA OPR may not identify misconduct raising potential security concerns, which is neither DEA OPR’s function nor its area of expertise. Therefore, even if Leonhart had been correct about the procedural posture of the matter, she should have recognized that Whaley’s intent to intervene and pull back the referral created precisely the kind of risk that the OIG had identified. Instead, Leonhart, by her and his accounts, simply deferred to Whaley. The context of the issue having been highlighted in the OIG’s report made it particularly inappropriate for Leonhart

to allow Whaley to overrule Cone, the Security Programs Manager, on such a decision.

Given the circumstances, we believe that Leonhart should have told Whaley to permit Security Programs (the persons trained on the Guidelines) to adjudicate Stentsen's security clearance or, at minimum, recognized the need to learn more about how the Stentsen matter was going to be (or had been) resolved and by whom. Had Leonhart obtained more information, she would have learned that the matter arose out of a periodic security re-investigation, not out of a referral from DEA OPR, and that there was no actual dispute over whether Security Programs was entitled to review materials from the DEA OPR investigative file and the fact that there was additional information supporting the suspension. She also would have learned that Stentsen had already received notice that his clearance was suspended. By her own account, had she understood that the Stentsen matter arose from a re-investigation, she would have known that Whaley did not have authority to overrule or rescind a suspension that had been ordered under such circumstances. Moreover, Leonhart would have learned more of the troubling details of Stentsen's misconduct, which should have alerted her to the importance of ensuring that the decision was made properly. We believe that Leonhart should have acted to ensure that the decision was made by the right personnel applying the right criteria.

II. Leonhart's Testimony to Congress

Cone's statement that Leonhart ordered the March 27 reinstatement of Stentsen's security clearance called into question Leonhart's April 14 testimony. When asked if she had any impact over whether an agent had a security clearance, she said that she did not, and that this had to be adjudicated by the security personnel. If Cone's belief that Leonhart gave the order to reinstate Stentsen's clearance was correct, then Leonhart's statement to Congress about her lack of involvement in such matters would be false.

As discussed above, Cone received what he understood to be the directive from Leonhart secondhand, through Whaley. Cone indicated that Whaley told him the order came from Leonhart; Whaley said that he told Cone that he had talked with Leonhart and concluded that the suspension was not warranted.

In addition, Leonhart had limited independent recollection of her conversations with Whaley. Her notes of the March meeting referred to the suspension of Stenson's security clearance, but did not reference any mention of any discussion of stopping or reversing the decision to suspend the clearance. Leonhart told us that her conversation with Whaley about stopping or reversing the security clearance suspension occurred in April.

Because there was no one else present for any conversation about this matter between Whaley and Leonhart, and, because both Whaley and Leonhart stated that the decision was made by Whaley, we found did not find that there was

sufficient evidence to conclude that Leonhart ordered Whaley to reverse the SPM's decision to suspend Stentsen's security clearance.

Accordingly, we concluded that Leonhart did not testify untruthfully before the House Oversight and Government Reform Committee regarding her ability to "impact" a DEA employee's security clearance. Leonhart's response as to whether she had any impact on an agent's security clearance was consistent with the line of questioning at the hearing, which was focused on whether she, as the Administrator, had the ability to recommend discipline, terminate employment, or suspend a security clearance. Leonhart testified accurately that she was not the DEA employee designated by DEA policies and procedures to suspend or revoke a security clearance. She also expressed her understanding that it would be a violation of the Civil Service Laws for her to intervene in the disciplinary process.⁶⁹

When Leonhart was asked whether she had an impact on security clearances, she responded, "No. There [are] adjudicative guidelines and that has to be adjudicated by the security people." At the DEA, the "security people" are the Security Programs employees, specifically the Specialists who apply the Adjudicative Guidelines and the SPM who has the delegated authority to grant, deny, suspend, and revoke a security clearance. Leonhart's response indicated that she understood the question to ask whether she had a specified role in the adjudicative process, such as the roles of the "security people," the Specialists or SPM. She testified that she did not. And, as detailed above, we found that she deferred to Whaley regarding the handling of the Stentsen matter, not that she personally intervened in the adjudication decision.⁷⁰

For purposes of assessing the truthfulness of Leonhart's testimony, we did not find it necessary to resolve the difference between Whaley's account and Leonhart's account regarding their March and April conversations.

Moreover, Leonhart clarified her understanding of "impact" when she testified about her ability to impact agents' security clearances outside, and independent of, the adjudicative process. Leonhart told Congress that she could affect an agent's security clearance by ensuring that it was reviewed by Security Programs. As an example, Leonhart testified that she had a role in the removal of three agents because of their conduct in Cartagena, Colombia, when she ensured that DEA OPR informed Security Programs of the agents' misconduct which then allowed for Security Programs to adjudicate the agents' security clearances based on that

⁶⁹ As noted by Assistant Attorney General for Administration Lee J. Loftus after reviewing our draft report, Leonhart's testimony regarding her role in the discipline process reflected an incomplete understanding of her ability to have appropriate input as to how a disciplinary matter should be treated in a particular situation. See Memorandum attached as Appendix A.

⁷⁰ We acknowledge that an argument can be made that by acquiescing in Whaley making the decision, Leonhart had an "impact" on Stentsen's security clearance, calling into question the accuracy of her testimony. However, we believe that it was plausible or even likely that Leonhart interpreted "impact" more narrowly. We also believe that Leonhart adequately distinguished her ability to impact a security clearance by ensuring it was reviewed by Security Programs from her inability to make the adjudicative determination, a role delegated to the "security people." We therefore did not conclude that Leonhart testified untruthfully regarding her "impact" on Stentsen's clearance.

misconduct. As discussed throughout this report, at that time, DEA OPR decided when to refer employee misconduct to Security Programs.

However, we also found that Leonhart's testimony about her role in the removal of the Cartagena agents undermined her testimony that as Administrator, her responsibility was to "ensure there is a mechanism in place for a review of the agent's security clearance." While Leonhart was referring to Security Programs as the "mechanism in place," the fact that she needed to play a role in the Cartagena matter, and bridge the gap between DEA OPR and Security Programs, evidenced DEA's failure to have an adequate mechanism in place at that time, as well as Leonhart's awareness of this failure. The only reason that Leonhart would have needed to intervene in the Cartagena matter was because she knew the DEA did not have an adequate mechanism in place that ensured that DEA OPR informed Security Programs of agent misconduct so that Security Programs could adjudicate that conduct under the Guidelines.

Leonhart testified that her role in the Cartagena matter was in 2012 and that it was not until November 2014 that the DEA first issued a formal policy that attempted to bridge the gap between DEA OPR and Security Programs. (As noted above, the November 2014 memorandum was the first of several policies issued by the DEA in its effort to adequately address the issue.) In essence, Leonhart testified that it was her job to ensure that there were mechanisms in place and that, although she was aware that adequate mechanisms were not in place in 2012, the DEA did not implement a formal policy to address and correct the situation until November 2014.

We also note that in both the Cartagena and Stentsen matters, Leonhart was in a position to ensure that Security Programs adjudicated agent misconduct. With regard to the agents in Cartagena, Leonhart ensured that DEA OPR referred the matter to Security Programs and thereby utilized the mechanism in place at Security Programs to adjudicate the agents' security clearances. In the Stentsen matter, she did not.

III. Additional Issues Identified During the OIG Review

The DEA and the Department have taken important steps to address many of the problems identified in the March 2015 OIG review. However, our review of the Stentsen matter revealed several areas that need additional clarification in DEA and Department policies.

A. Strengthening the Authority of DEA Security Programs

Our investigation revealed that there continues to be uncertainty within DEA regarding who should determine whether allegations or findings of misconduct should be referred to Security Programs for possible adjudication. Historically, discretion lay within DEA OPR to determine which misconduct findings were sufficiently serious to merit referral to Security Programs. The March 2015 OIG review revealed the risks created by such an approach.

The Attorney General-ordered DSO review required DEA OPR to provide Security Programs with greater access to information regarding allegations of misconduct. In response, the DEA has implemented policies requiring DEA OPR to provide multiple categories of information to Security Programs that DEA OPR did not previously provide, including expanding the scope of and access to DEA OPR investigative information in response to integrity checks, providing Security Programs with notification upon receipt of an allegation of misconduct, access to up-dated investigative information through participation in Comp/Stat meetings, and notification of arrests and off-duty misconduct self-reported by DEA employees.

The policy changes have been implemented gradually and their effectiveness will require the vigilance and expertise of both the DEA and Department Security Office. In the November 2014 memorandum, the DEA initially failed to provide greater information to Security Programs and cited the privacy interests of DEA OPR subjects and the lower GS series of the Security Program Specialists with respect to the DEA OPR Investigators. While the DEA policies have evolved, the DEA must recognize DEA OPR and Security Programs as distinct programs. Any rationale for limiting the release of information from DEA OPR misconduct investigations in situations such as personnel decisions is wholly incompatible with the analysis and purpose of security clearance adjudications. Withholding information prevents the trained and professional Specialists from identifying patterns of behavior that may identify security risks based on an employee's loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment. Security clearance adjudications are made to prevent "national security from going out the door" before it happens, and not just in response to a security breach.

Accordingly, we recommend that DEA policies be amended to make clear that Security Programs will have the final say within the DEA with regard to whether any misconduct matter requires a review and adjudication of the subject's security clearance. As a corollary, in order for this clarification to be effective, the DEA must ensure that Security Programs is fully apprised of DEA OPR misconduct investigations and has unfettered access to DEA OPR's investigative files for the purpose of security adjudications.⁷¹

B. Clarifying the Department Security Officer's Delegation of Authority to the SPM

During our review, we also identified a lack of clarity with respect to the Department Orders that address the Department Security Officer's delegation of authority to the SPMs and the role of the SPMs with respect to two separate chains of command.

⁷¹ SEPS should also review whether the other Department components to which the Department Security Officer has delegated the authority to conduct their own security programs require that the units charged with investigating employee misconduct report those matters to the units charged with adjudicating security clearances.

The first Department Order is the Employment Security Order which provides for the Department Security Officer's delegation of authority to the DEA SPM to grant, suspend, deny, and revoke DEA employees' security clearances. See, DOJ Order 2610.2B, Employment Security Order (August 19, 2009). The Order states that the delegation does not remove or diminish the Department Security Officer's ultimate authority to make these decisions and does not permit the SPM to further delegate the authority. The order establishes the direct line of authority between the Department Security Officer and the SPMs for the purpose of exercising the delegated authority. Notably, no other persons in the SPM's component (or primary) chain-of-command are involved in the exercise of the designated authority.

The majority of DEA employees that we interviewed did not understand that the Department Security Officer's delegation of authority was to the SPM and not to the Administrator or, more generally, to DEA executive management.⁷² Whaley, Cone, Deputy Chief Counsel, and the attorney assigned to the Stentsen matters told the OIG that they thought Cone's chain of command (Leonhart and/or Whaley) acted within their authority when they overruled Cone's decision to suspend Stentsen's security clearance. While that would be the case if the delegation of authority was made within a single chain of command, the delegation from the Department Security Officer came from outside the DEA chain of command and did not include DEA officials senior to the SPM. In this regard, the delegation from the Department Security Officer effectively created a second chain of command between the Department Security Officer and SPM with respect to the use of that specific authority.

The second Department Order at issue is the Security Programs and Responsibilities Order which provides that the DEA SPM is appointed by the DEA Administrator, DOJ Order 2600.2D. The order also states that "SPMs are responsible to the appointing authority and the Department Security Officer for the management and coordination of all Department security programs and plans within their respective organizations." The DOJ Order does not further clarify the roles of the Department Security Officer, Administrator, or SPM.

While this second order relates to responsibility for "the management and coordination" of security programs and plans and not the adjudication of individual clearances, the creation of a secondary chain of command, combined with the lack of clarity regarding the individual roles, can place the SPM in an untenable position. After all, Cone's career prospects as a DEA agent are dependent on his DEA chain of command and not the Department Security Officer. Cone told the OIG that he is required to follow the directives of his DEA chain of command unless those directives are "illegal or immoral." In the Stentsen matter, Cone disagreed with the directive to reinstate Stentsen's clearance but did not think it illegal or immoral, just a difference of opinion. As a result, Cone did not inform the Department Security Officer that he had been ordered to reinstate Stentsen's clearance until

⁷² However, as detailed above, Leonhart herself testified before Congress that she understood that the Department Security Officer's delegation only went to the "security people."

after the Attorney General called for the DSO review. Moreover, Cone stated that he believed that the Department Security Officer's April 24, 2015 memorandum regarding the delegation of authority to the SPM or "Stentsen rule" was intended to prevent the recurrence of a similar event, but failed to resolve the problem because it did not change Cone's responsibility to his DEA chain-of-command.

In contrast, the Department Security Officer stated that SPMs were expected to exercise their delegated authority independent of their component's chain of command. When we asked the Department Security Officer why there were no specific policies or memoranda informing the SPMs and their supervisors of the parameters of the delegated authority, the Department Security Officer acknowledged the lack of written instructions and said that he would discuss the matter with the Office of General Counsel.

In order to address this state of affairs, we recommend that the Department amend or supplement the Department Security Officer's delegation of authority to the SPMs in the various components to clarify that for the purpose of security adjudications, SPMs report solely to the Department Security Officer, and not to senior officials within the components. If a senior official objects to a particular adjudication decision by the component's SPM, the official should present such concerns to the Department Security Officer for consideration rather than overruling the component's SPM.

IV. Conclusion and Recommendations

Our review examined whether former-DEA Administrator Leonhart inappropriately intervened in a DEA Special Agent's security clearance adjudication, and whether she testified truthfully to Congress regarding whether she had any impact on agent security clearances. We found that Leonhart acquiesced, either before or after the fact, to the flawed decision of the Acting Chief Inspector to direct the reinstatement of the Special Agent's security decision, and that Leonhart thus shares in the responsibility for that improper intervention in the process. We also did not find sufficient evidence to conclude that Leonhart testified untruthfully to Congress regarding whether she had any impact on agent security clearances. Finally, we make two recommendations to clarify DEA and Department policies in this important area.

Our investigation revealed that there is a lack of clarity within the DEA regarding who should determine whether allegations or findings of employee misconduct should be referred to Security Programs for adjudication. Accordingly, we recommend that DEA policies be amended to make clear that Security Programs has the final say within the DEA with regard to whether any misconduct matter requires a review and adjudication of the subject's security clearance.⁷³

⁷³ As noted above, SEPS should also review whether the other Department components to which the Department Security Officer has delegated the authority to conduct their own security

We also identified a lack of clarity with respect to the Department Orders that address the Department Security Officer's delegation of authority to the SPMs and the role of the SPMs with respect to two separate chains of command; one within the DEA (or relevant component) and a second to the Department Security Officer. Thus, we recommend that the Department amend or supplement the Department Security Officer's delegation of authority to clarify that for the purpose of security adjudications, SPMs report solely to the Department Security Officer, and not to senior officials within the components.

Lastly, we believe that this matter illustrates the need for DOJ to ensure that Department units that are responsible for security adjudications access and review information from misconduct investigations. We are sharing our analysis and recommendations regarding this issue in a separate management memorandum to the Department.

programs require that the units charged with investigating employee misconduct report those matters to the units charged with adjudicating security clearances.

APPENDIX

A



Washington, D.C. 20530

August 22, 2017

MEMORANDUM FOR DAN BECKHARD
ASSISTANT INSPECTOR GENERAL
FOR OVERSIGHT AND REVIEW

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration

A handwritten signature in blue ink, appearing to read "Lee J. Lofthus".

SUBJECT: Justice Management Division's Response to the OIG Draft on DEA
ROI on "Actions of Former DEA Leadership in Connection with
Reinstatement of a Security Clearance"

Thank you for the opportunity to review and comment on the draft report "Actions of Former DEA Leadership in Connection with Reinstatement of a Security Clearance" and the additional time requested. Our OCIO has confirmed that none of the JMD recipients received the original email requesting comments due to a problem during the OIG transition to Office365 email solution. The problem is now corrected.

The OIG draft, pp. 41-43 cites the transcript of the former DEA Administrator's testimony. In that testimony on p. 41, the former Administrator testified, excerpted here, that "I cannot recommend a punishment." And, "Under the civil service law, I cannot recommend a penalty. I can't intervene in the disciplinary process. I can't even make a recommendation to the deciding official." On p. 42, the former Administrator says "I don't recommend the sanction. I can't fire. I can't recommend a penalty." As you may recall, and as the transcript reveals, those answers received considerable attention as they made it appear that federal disciplinary procedures were inadequate to address the misconduct that was the subject of the Congressional hearing.

While JMD does not question OIG's conclusion that the former Administrator testified truthfully to Congress, we are concerned the draft report leaves unaddressed a significant misperception of the federal disciplinary process created by the testimony. We think it is important that OIG take note of the former Administrator's incomplete understanding of the limits of her ability to influence disciplinary action in a particular case. She was correct that she was outside the immediate group of officials directly involved with disciplinary action for the underlying misconduct. However, there may be instances of misconduct of such significant magnitude or importance that can indeed be worthy of a component head's attention and *limited* (but direct

Subject: Justice Management Division's Response to the OIG Draft on DEA
ROI on "Actions of Former DEA Leadership in Connection with
Reinstatement of a Security Clearance

nonetheless) action. In such instances (including the misconduct involved in this report), she would not have been required to withhold any and all opinion and/or direction on how the matter should be treated. For example, while taking care not to assume facts or assert undue influence on the deciding official or engage in an ex parte communication, a component head could make clear her desire that a matter of substantiated egregious misconduct be punished to the fullest extent allowable under applicable law, policy and procedure. While we understand this is a nuanced area of the law, we believe component heads can exert greater influence over specific cases than the former Administrator seemed to understand. We believe federal disciplinary rules could have permitted the Administrator or other senior official to participate as either a proposing or deciding official in the case(s).

While the former Administrator apparently believed her involvement in the disciplinary process had to be very limited, those limits were self-imposed within DEA and agencies can, in fact, take more assertive action, including the involvement of more senior management. While we understand this particular issue is not the main subject of your report, we believe the draft report should make note of this in an appropriate fashion in order to avoid perpetuating the misperceptions conveyed in the original testimony.

Our Security and Emergency Planning Staff (SEPS) will provide comments separately.

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