

REP. STEPHEN F. LYNCH
Committee on Oversight and Government Reform
"Use of Confidential Informants at ATF and DEA"
Opening Statement
April 4, 2017 at 10:00am; 2154RHOB

I THANK THE RANKING MEMBER FOR YIELDING ME THE REMAINDER OF HIS TIME. I'D LIKE TO COMMEND CHAIRMAN CHAFFETZ AND RANKING MEMBER CUMMINGS FOR THEIR BIPARTISAN LEADERSHIP IN EXAMINING WASTE, FRAUD, AND ABUSE IN THE USE OF CONFIDENTIAL INFORMANTS BY OUR FEDERAL LAW ENFORCEMENT AGENCIES. I'D ALSO LIKE TO THANK TODAY'S WITNESSES FOR HELPING THIS COMMITTEE WITH ITS WORK.

THE USE OF CONFIDENTIAL INFORMANTS IS AN ESSENTIAL INVESTIGATORY TOOL THAT OFTEN TIMES PROVIDES LAW ENFORCEMENT WITH VALUABLE AND OTHERWISE UNATTAINABLE CRIMINAL INTELLIGENCE. HOWEVER, THE CRITICAL LAW ENFORCEMENT MISSIONS OF THE DRUG ENFORCEMENT ADMINISTRATION, THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, AND OTHER FEDERAL AGENCIES ARE SEVERELY IMPAIRED IN THE ABSENCE OF

MEANINGFUL OVERSIGHT OVER THEIR CONFIDENTIAL INFORMANT PROGRAMS.

IN SEPTEMBER OF 2016, DEPARTMENT OF JUSTICE INSPECTOR GENERAL MICHAEL HOROWITZ RELEASED AN AUDIT REPORT ON THE INFORMANT PROGRAM ADMINISTERED BY THE DRUG ENFORCEMENT ADMINISTRATION, ALSO KNOWN AS THE D.E.A. ACCORDING TO THE REPORT, THE D.E.A. OPERATED AN ESTIMATED 18,000 ACTIVE INFORMANTS BETWEEN 2010 AND 2015. WHILE OVER 9,500 OF THESE INDIVIDUALS RECEIVED APPROXIMATELY \$237 MILLION IN PAYMENTS IN EXCHANGE FOR INFORMATION, THE D.E.A. COULD NOT PROPERLY TRACK THEIR ACTIVITIES OR FULLY DOCUMENT THEIR PAYMENTS. THE INSPECTOR GENERAL'S OFFICE ALSO FOUND THAT THE D.E.A. RELIES HEAVILY ON INDEPENDENT TIPSTERS KNOWN AS "*LIMITED USE*" INFORMANTS WHO RECEIVE LITTLE-TO-NO AGENCY SUPERVISION AND WHOSE RELIABILITY IS HIGHLY-QUESTIONABLE. THESE "*LIMITED USE*" INFORMANTS REMAIN SOME OF THE D.E.A.'S HIGHEST-PAID SOURCES.

SIMILARLY, THE *NEW YORK TIMES* RECENTLY REPORTED THAT FEDERAL AGENTS FROM THE BUREAU OF ALCOHOL, TOBACCO,

FIREARMS, AND EXPLOSIVES, OR THE A.T.F., DIRECTED THEIR INFORMANTS TO ENGAGE IN SHAM TRANSACTIONS WITH A COLLECTIVE OF TOBACCO FARMERS AS *"AN OFF THE BOOKS WAY TO FINANCE UNDERCOVER INVESTIGATIONS AND PAY INFORMANTS WITHOUT THE USUAL CUMBERSOME PAPERWORK AND CLOSE OVERSIGHT."* IN HIS ONGOING REVIEW OF THESE INCOME-GENERATING UNDERCOVER OPERATIONS, ALSO KNOWN AS *"CHURNING"* INVESTIGATIONS, INSPECTOR GENERAL HOROWITZ HAS ALREADY FOUND A *"SERIOUS LACK OF OVERSIGHT BY A.T.F.,"* INCLUDING ONE INSTANCE IN WHICH A CONFIDENTIAL INFORMANT WAS PERMITTED TO KEEP MORE THAN \$4.9 MILLION OUT OF \$5.2 MILLION OF GROSS PROFIT GENERATED FROM TOBACCO SALES WITHOUT EVEN SUBMITTING ADEQUATE EXPENSE REPORTS.

THIS PAST MONTH, INSPECTOR GENERAL HOROWITZ RELEASED A FOLLOW-UP AUDIT REPORT DETAILING HOW THE A.T.F. MAINTAINED ITS INFORMANT RECORDS IN HARD-COPY FILES AND AN ANTIQUATED AUTOMATED FILING SYSTEM THAT PREVENTED THE AGENCY FROM TRACKING AND REPORTING EVEN THE MOST BASIC INFORMATION

RELATING TO A PROGRAM THAT INCLUDES AN ESTIMATED 1,855 ACTIVE INFORMANTS AT AN ANNUAL EXPENDITURE OF \$4.3 MILLION DOLLARS. OVERSIGHT IS ALSO LACKING AT THE D.E.A. WHEN IT COMES TO PROPERLY VETTING INFORMANTS THAT ARE CATEGORIZED AS “*HIGH-RISK*” BASED ON THEIR CRIMINAL HISTORY OR ONGOING INVOLVEMENT WITH CRIMINAL ORGANIZATIONS.

IN ORDER TO IMPLEMENT ADDITIONAL OVERSIGHT INTO THE SELECTION AND USE OF CONFIDENTIAL INFORMANTS BY THE D.E.A., THE A.T.F., AND OTHER FEDERAL LAW ENFORCEMENT AGENCIES, I HAVE INTRODUCED THE CONFIDENTIAL INFORMANT ACCOUNTABILITY ACT OF 2017 - WITH RANKING MEMBER CUMMINGS AS AN ORIGINAL COSPONSOR. THIS LEGISLATION WOULD REQUIRE FEDERAL LAW ENFORCEMENT AGENCIES TO FULLY REPORT TO CONGRESS ON THEIR PAYMENTS TO CONFIDENTIAL INFORMANTS AS WELL AS THE AMOUNTS THEY HAVE RECEIVED THROUGH THEIR WORK OR COOPERATION WITH INFORMANTS. THE BILL WOULD ALSO REQUIRE LAW ENFORCEMENT AGENCIES TO REPORT ALL SERIOUS CRIMES COMMITTED BY THEIR CONFIDENTIAL INFORMANTS INCLUDING AN ACCOUNTING OF THE

TOTAL NUMBER OF EACH TYPE AND CATEGORY OF CRIME; AN ATTESTATION OF WHETHER THE CRIME WAS AUTHORIZED OR UNAUTHORIZED; AND A LISTING OF THE STATE IN WHICH EACH CRIME TOOK PLACE. IN THE INTEREST OF SAFEGUARDING THE INTEGRITY OF ONGOING CRIMINAL INVESTIGATIONS, THE BILL WOULD PROHIBIT THE REPORTING OF INFORMANT NAMES, CONTROL NUMBERS, OR OTHER PERSONAL IDENTIFICATION THAT COULD REVEAL INFORMANT IDENTITIES.

THIS LEGISLATION HAS RECEIVED THE ENDORSEMENT OF THE PROJECT ON GOVERNMENT OVERSIGHT AND I URGE MY COLLEAGUES ON BOTH SIDES OF THE AISLE TO JOIN ME IN THIS EFFORT. I'D ALSO LIKE TO RECOGNIZE PROFESSOR ALEXANDRA NATAPOFF (*NAH-tah-pawff*) OF LOYOLA LAW SCHOOL FOR HER CONTRIBUTIONS TO THIS LEGISLATION AND HER CONTINUING WORK IN THE AREA OF CONFIDENTIAL INFORMANT OVERSIGHT. THANK YOU, MR. CHAIRMAN – I YIELD BACK THE BALANCE OF MY TIME TO OUR RANKING MEMBER.