

## MEMORANDUM

**To:** Republican Members, Committee on Oversight and Government Reform

**From:** Committee Staff for Chairman Darrell Issa and Senator Charles Grassley, Ranking Member, Senate Judiciary Committee

**Date:** February 1, 2012

**Re:** Main Justice: Extensive Involvement in Operation Fast and Furious

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This memorandum provides supplemental information detailing Main Justice's involvement in Operation Fast and Furious. For months, the Department blamed Fast and Furious on the U.S. Attorney's Office for the District of Arizona and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) – notwithstanding the fact that they are both components of the Department of Justice. In fact, Main Justice had much greater knowledge of, and involvement in, Fast and Furious than it has previously acknowledged. A discussion of the key issues follows.

### **I. The Fast and Furious Investigation Failed in its Goal**

From the beginning of the congressional investigation, ATF officials claimed that the goal of Operation Fast and Furious was to identify and take down an entire gun trafficking operation. Former Special Agent in Charge (SAC) William Newell, who served as head of ATF's Phoenix Field Division during Fast and Furious, aimed to reach the highest levels of the criminal organization:

**The goal of the investigation . . . was to identify the whole network,** knowing that if we took off a group of straw purchasers this, as is the case in hundreds of firearms trafficking investigations, some that I personally worked as a case agent, you take off the low level straw purchaser, all you're doing is one of – you're doing one of two things, one of several things. You're alerting the actual string puller that you're on to them, one, and, two, all they are going to do is go out and get more straw purchasers.

**Our goal in this case is to go after the decision maker, the person at the head of the organization,** knowing that if we remove that person, in the sense of prosecute that person, successfully, hopefully, that we would have much more impact than just going after the low level straw purchaser.<sup>1</sup>

With this goal in mind, ATF purposefully failed to confront straw purchasers and interdict guns. Disrupting and deterring the illegal activity took a backseat to the lofty goal of dismantling the entire organization. SAC Newell believed the straw purchasers were only the bottom rung of a complex organization:

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<sup>1</sup> Transcribed Interview of William Newell, at 91-92 (June 8, 2011) (emphasis added) [hereinafter Newell Tr.].

- Q. Right, and in order to achieve that goal, if in order to not tip them, if agents wanted to be more aggressive about attempting to interdict and discourage . . . the straw purchasing that was going on right in front of them that that would have been not consistent with the goal of the strategy as outlined in this paper, right?
- A. The goal of the investigation . . . is using the straw purchasers, identifying the straw purchasers, to get, using information we gleaned from them in a sense of where they're going, where they're dropping the guns off, to **identify the middlemen, to identify the decision makers and seize assets when appropriate**, and we have the ability to do that, identify bank accounts, **identify transporters, identify anything so that when we make the arrests, do the takedown, that we take down the whole organization.**<sup>2</sup>

ATF insisted that the techniques and strategies used in Operation Fast and Furious were necessary to take down a complicated gun trafficking operation. In reality, however, the network was not complex. Once believed to be an intricate web, it actually included a small cadre of about 40 straw purchasers – only five of whom purchased 70% of the weapons – one ringleader, and two cartel associates who were the link to the Sinaloa Cartel. The whole point of Fast and Furious – an operation that allowed nearly 2,000 guns to get into the hands of the Mexican drug cartels – was to identify this ringleader and these two cartel associates.

To make matters worse, federal law enforcement officials had identified this ringleader as early as December 2009. On December 14, 2009, the Drug Enforcement Administration (DEA) contacted the ATF case agents in charge of Fast and Furious and alerted them that one of the telephone numbers ATF had submitted for de-confliction was related to an ongoing investigation in which DEA had obtained a state wiretap. A December 14, 2009 internal DEA e-mail confirms this contact: “We checked with ATF and they have the gun source and the courier identified. They have a pole cam on the gun source’s house. We scheduled a meeting tomorrow with the case agent to make sure we don’t inadvertently step on each other.”<sup>3</sup>

ATF Group Supervisor David Voth and the case agents attended a December 15, 2009 meeting in which DEA shared with ATF the information they had thus far acquired on the ringleader, Manuel Celis-Acosta.<sup>4</sup> ATF investigators also received access to a DEA wire room, used to monitor live wiretap intercepts, and the resulting information gleaned from the wires. A December 16, 2009, internal DEA e-mail recounting the meeting said: “They are going to OCDEF [Organized Crime Drug Enforcement Task Force] the case and work with us if a gun load moves. They said the best way is to try to stop the load as it goes across into Mexico which

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<sup>2</sup> Newell Tr. at 92-93 (emphasis added).

<sup>3</sup> E-mail from [DEA] to [DEA] (Dec. 14, 2009).

<sup>4</sup> DEA Report of Investigation (ROI) 50, “Deconfliction Meeting with DEA Personnel on December 15, 2009.”

adds a whole bunch of charges. . . [W]e have the conspiracy through the wire which will help significantly with charging down the road.”<sup>5</sup>

By December 18, 2009, the case that became Fast and Furious had expanded to include 15 interconnected straw purchasers known to have purchased 500 firearms.<sup>6</sup> These guns had a “time-to-crime,” the amount of time between purchase and use to commit a crime, of as little as one day, a typical indicator of trafficking. Such data illustrates that ATF was fully aware that the guns being regularly purchased by the straw buyers – transactions which ATF allowed to proceed – were flowing to violent criminals.

Intercepts from the DEA wiretap provided the probable cause necessary for ATF to make arrests at least as early as December 2009, or, at the very least, supplied the necessary predicate to use other investigative techniques to disrupt the illegal activity and seize the weapons.<sup>7</sup> For instance, the intercepts contained information showing that Celis-Acosta was to receive money to traffic the weapons. Although they were destined for Juarez, Mexico, he didn’t want to take them there in person.<sup>8</sup>

ATF, however, did not act on this information. Agents could have arrested Celis-Acosta in December 2009 and used his arrest to work their way up the ladder to the two cartel associates.<sup>9</sup> Instead, ATF wanted to get its own federal wiretaps and create its own big case. This decision ensured that Fast and Furious lasted nearly a year longer, with 1,500 more guns being purchased – *including* the guns bought by Jaime Avila in January 2010 that were found at the murder scene of Border Patrol Agent Brian Terry.

When ATF finally brought the ringleader, Celis-Acosta, in for his proffer after his indictment in January 2011, ATF learned the names of the two cartel associates.<sup>10</sup> These were the “big fish” that Newell had hoped to catch as a result of Fast and Furious and the federal wiretaps. Because the ATF wiretaps and ATF agent surveillance had thus far failed to identify these associates, the proffer was the first time ATF identified these individuals.

Shockingly, though, other federal law enforcement components of the Department of Justice *were already aware* of the two cartel associates that ATF had finally identified. Their names appeared frequently in DEA call logs provided to ATF – in December 2009.<sup>11</sup> Inexplicably, ATF failed to review all the materials DEA had provided, missing these prime investigative targets.

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<sup>5</sup> E-mail from [DEA] to [DEA] (Dec. 16, 2009).

<sup>6</sup> E-mail from Kevin Simpson, Intelligence Officer, Phoenix Field Intelligence Group (FIG), ATF, to David Voth (Dec. 18, 2009).

<sup>7</sup> Meeting with Drug Enforcement Administration and Congressional Staff (Oct. 20, 2011) [hereinafter DEA meeting].

<sup>8</sup> Federal Bureau of Investigation FD-302 281C-AQ-63002 1-6 (Jan. 17, 2010) [hereinafter FD-302].

<sup>9</sup> DEA Meeting, *supra* note 7.

<sup>10</sup> Transcribed Interview with David Voth at 126-127 (June 30, 2011).

<sup>11</sup> DEA Meeting, *supra* note 7.

Additionally, DEA and the Federal Bureau of Investigation (FBI) had jointly opened a separate investigation specifically targeting these two cartel associates.<sup>12</sup> As early as mid-January 2010, both agencies had collected a wealth of information on these associates.<sup>13</sup> Yet, ATF spent the next year engaging in the reckless tactics of Fast and Furious in attempting to identify them.

During the course of this separate investigation, the FBI designated these two cartel associates as national security assets.<sup>14</sup> In exchange for one individual's guilty plea to a minor count of "Alien in Possession of a Firearm," both became FBI informants and are now considered to be unindictable.<sup>15</sup> This means that the entire goal of Fast and Furious – to target these two individuals and bring them to justice – was a failure. ATF's discovery that the primary targets of their investigation were not indictable was "a major disappointment."<sup>16</sup>

Nevertheless, other ATF officials have tried to claim that the cartel associates are not necessarily untouchable. For example, Acting Deputy ATF Director Billy Hoover expressed his belief that any such status was not final:

Q. In this ongoing investigation we've learned that some of these guys may be unindictable. Have you learned that as well?

A. No, sir, I'm not sure that's the final answer, and I'm not sure there is a final answer.

Q. So if they're paid [informants] and they're on the payroll that they're indictable? Hypothetically?

A. Hypothetically, no one is unindictable. That's the way I perceive this, no one is unindictable.<sup>17</sup>

The Department of Justice has shown little concern for these troubling facts. In June 2011, when the Deputy Attorney General became aware of the lack of information-sharing among these three Department components – ATF, DEA, and the FBI – and the fact that the FBI viewed the targets of Fast and Furious as assets, his response was simply, "We will look into it. . . All he said was we will have to look into it. There was very little expression."<sup>18</sup> This reaction and lack of follow-through typify the serious management failures that occurred throughout all levels of the Department during Fast and Furious.

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<sup>12</sup> Meeting with Federal Bureau of Investigation, Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms, and Explosives, and Congressional Staff at Robert F. Kennedy Building, Justice Command Center, Oct. 5, 2011 10:00 AM [hereinafter FBI Meeting]. See also Head Shot, Organized Crime Drug Enforcement Task Forces [hereinafter Head Shot].

<sup>13</sup> FBI Meeting, *supra* note 7. See also FD-302 *supra* note 8.

<sup>14</sup> FBI Meeting, *supra* note 7.

<sup>15</sup> Head Shot, *supra* note 12.

<sup>16</sup> Transcribed Interview of James Needles, at 30 (Nov. 4, 2011) (going on to describe it as "very" frustrating) [hereinafter Needles Tr.].

<sup>17</sup> Transcribed Interview of William J. Hoover, at 31 (July 21, 2011) [hereinafter Hoover Tr.].

<sup>18</sup> Transcribed Interview of Kenneth Melson, at 184-185 (July 4, 2011) [hereinafter Melson Tr.].

## **II. Main Justice Should Have Known Key Investigative Details**

The Department of Justice constantly references parallels between Fast and Furious and Operation Wide Receiver, an earlier operation conducted during the previous administration. Indeed, both were run out of ATF's Phoenix Field Division, both involved cooperating gun dealers, and thus both provided ATF with contemporaneous notice of gun purchases. In addition, in both cases, the Justice Department's Criminal Division—including Deputy Assistant Attorney General Jason Weinstein and Assistant Attorney General Lanny Breuer—was in a position to know the key investigative techniques employed. The Criminal Division briefed ATF headquarters on gunwalking in Operation Wide Receiver, and the Criminal Division should have known about the misguided tactics used in Operation Fast and Furious, outlined in documents the Criminal Division approved. One reason Main Justice was involved in Fast and Furious was new coordination between the Criminal Division and ATF. A second reason was the use of federal wiretaps in the case. Both of these factors are explained in more detail below.

### **A. Coordination Between the Justice Department's Criminal Division and ATF**

In early September 2009, ATF and the Criminal Division began discussions “to talk about ways CRM [Criminal Division] and ATF can coordinate on gun trafficking and gang-related initiatives.”<sup>19</sup> Early on in these discussions, Lanny Breuer, Assistant Attorney General for the Criminal Division, sent a Criminal Division prosecutor to Arizona to help the U.S. Attorney's Office there to prosecute ATF cases. The first case chosen for prosecution was Operation Wide Receiver. E-mails produced by the Justice Department reveal that Breuer was “VERY interested in the Arizona gun trafficking case, and he is traveling out [to Arizona] around 9/21. Consequently, he asked us for a ‘briefing’ on that case before the 21<sup>st</sup> rolls around.”<sup>20</sup> The next day, Breuer's chief of staff “mentioned the case again, so there is clearly great attention/interest from the front office.”<sup>21</sup>

When the Criminal Division prosecutor first arrived in Arizona, she gave a senior official in the Criminal Division's Gang Unit her impressions of the case which Breuer was so interested in prosecuting:

I believe the ffl [sic][Federal Firearms Licensee] has a business but was selling the guns to the targets from his house. There are tapes which I am told have been translated. Case involves 300 to 500 guns (unclear to me why we have such a wide range; doesn't someone know exact number?). **It is my understanding that a lot of these guns “walked”**. Whether some or all of that was intentional is not know. The ausa [sic] seemed to think ATF screwed up by not having mechanism in place to seize weapons once they crossed the border. In any event I believe a small number of the

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<sup>19</sup> E-mail from Jason Weinstein to Lanny Breuer (Sept. 10, 2009) [HOGR 003378].

<sup>20</sup> E-mail from James Trusty to Laura Gwinn (Sept. 2, 2009) [HOGR 003375].

<sup>21</sup> E-mail from James Trusty to Laura Gwinn (Sept. 3, 2009) [HOGR 003376].

guns have been recovered in connection with police action in Mexico [sic].<sup>22</sup>

This exchange indicates that federal prosecutors in Arizona did not prosecute the case because they disagreed with the misguided and unacceptable tactics used by ATF. This is consistent with documents provided to the Committee. Former U.S. Attorney Paul Charlton received a memo proposing controversial tactics during Operation Wide Receiver. Charlton has emphasized that he never approved the tactics.<sup>23</sup> Subsequently, the case was never prosecuted. Breuer's order to resurrect the case, however, signaled that the new leadership in the Department of Justice was willing to prosecute the case despite the use of these reckless tactics. As head of the Phoenix Field Division, SAC Newell saw this development – as with Operation Wide Receiver – as an opportunity to make a name for himself by overseeing a big case.

Kevin Carwile, Chief of the Criminal Division's Gang Unit, told Newell later in September 2009 that:

I had one of my attys in Tucson last week reviewing the semi-dormant ATF gun trafficking investigation being handled out of that office. After our review, we have decided to take the case and the USAO has agreed.<sup>24</sup>

Newell responded favorably to Carwile: "I was informed of this yesterday. I appreciate your interest in the case and the assistance."<sup>25</sup> With the support of the Criminal Division for prosecuting cases that used gunwalking tactics like those in Wide Receiver, Newell began his work on Operation Fast and Furious.

Discussions at the staff level over coordinating and prosecuting gun seizures in Mexico continued between the Criminal Division and ATF. On December 3, 2009, the Acting ATF Director reached out to Breuer about this cooperation:

Lanny: We have decided to take a little different approach with regard to seizures of multiple weapons in Mexico. Assuming the guns are traced, instead of working each trace almost independently of the other traces from the seizure, I want to coordinate and monitor the work on all of them collectively as if the seizure was one case. . . We should meet again just to catch up on where we are in our gun trafficking issues and we could talk about the above idea as well. Let me know what you think.<sup>26</sup>

With the awareness of the Office of the Deputy Attorney General, Breuer responded:

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<sup>22</sup> E-mail from Laura Gwinn to James Trusty (Sept. 3, 2009) (emphasis added) [HOGR 003377].

<sup>23</sup> Michel Marizco, *Lawyer Leaves Case of Slain Border Patrol Agent*, FRONTERAS, Nov. 7, 2011, available at <http://www.fronterasdesk.org/news/2011/nov/07/wide-receiver-fast-furious-gun-walking/>.

<sup>24</sup> E-mail from Kevin Carwile to William Newell (Sept. 30, 2009) [HOGR 003389].

<sup>25</sup> E-mail from William Newell to Kevin Carwile (Sept. 30, 2009) [HOGR 003389].

<sup>26</sup> E-mail from Kenneth Melson to Lanny Breuer (Dec. 3, 2009) [HOGR 003403].

We think this is a terrific idea and a great way to approach the investigations of these seizures. Our Gang Unit will be assigning an attorney to help you coordinate this effort.<sup>27</sup>

The Criminal Division did assign an attorney, Joe Cooley, to assist with this effort. The case chosen for this assistance was Operation Fast and Furious. In fact, this initiative was so paramount to the Criminal Division that Cooley had to rearrange his holiday plans to attend an important briefing on Fast and Furious.<sup>28</sup>

For the next three months, until mid-March 2010, Joe Cooley was involved with Fast and Furious, suggesting prosecutorial strategy to the lead federal prosecutor in Arizona, Emory Hurley, and receiving briefings on operational details. Cooley, though, was not the only Criminal Division attorney involved with Fast and Furious during this time period. The head of the division, Lanny Breuer, was also drawn in through meetings with ATF officials.

The Criminal Division should have been far more alarmed about what it learned about Fast and Furious and should have halted the program in its early stages, especially in light of the gunwalking in Wide Receiver. Two pivotal briefings at the beginning of 2010 revealed concerning details about Fast and Furious. The first of these briefings occurred on January 5, 2010, after which Assistant Director for Field Operations Mark Chait fielded questions within ATF on his plan for shutting down the program. Chait, however, failed to pay this audience much heed, because he had a more important audience than ATF; he had just come to the briefing from a meeting with Lanny Breuer where they focused on weapons seizures in Mexico – seizures subsequently discussed in detail at the ATF meeting.<sup>29</sup>

The second detailed briefing on Fast and Furious was held at ATF headquarters on March 5, 2010. Joe Cooley from the Criminal Division was in attendance. He had been working on Fast and Furious for months, serving as a constant link between ATF in Phoenix and the Criminal Division for Fast and Furious – a link that bypassed ATF leadership.

Two weeks later, in mid-March 2010, the Criminal Division pulled Joe Cooley off Fast and Furious. Satisfied with how the U.S. Attorney's Office was handling the prosecutor-led OCDETF case, the Criminal Division believed the case was in good hands. **Strangely, Main Justice has consistently blamed the U.S. Attorney's Office for mismanaging Fast and Furious. The congressional investigation has shown, though, that at the time, Main Justice was confident enough in the U.S. Attorney's Office that it removed its assigned prosecutor from the case.**

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<sup>27</sup> E-mail from Lanny Breuer to Kenneth Melson (Dec. 4, 2009) [HOGR 003403].

<sup>28</sup> E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) [HOGR 002832].

<sup>29</sup> Meeting on "Weapons Seizures in Mexico w/ Lanny Breuer" at Robert F. Kennedy Building, Room 2107, Jan. 5, 2010, 10:00 AM [HOGR 001987].

## **B. Use of Federal Wiretaps**

Around this same time, and continuing through the summer of 2010, the Criminal Division remained involved in Fast and Furious through its authorization of seven federal wiretaps. Federal wiretaps are rare in gun trafficking cases, and they are rare for ATF cases in general. They require the approval of the Office of Enforcement Operations, which is part of the Criminal Division. A Deputy Assistant Attorney General within the Criminal Division is the official who typically reviews an Affidavit in Support of an Application for the Interception of Wire Communication (Wiretap Affidavit), then signs an Authorization for Interception Order Application (Wiretap Authorization) which allows the agency making the application to move forward.

The Wiretap Affidavits are the documents which establish the need for the wiretap and discuss why alternative investigative techniques are insufficient. Rich in detail, they provide a mother lode of information. No one in ATF leadership admitted to reading the Wiretap Affidavits. Similarly, political appointees at Main Justice denied reviewing the Wiretap Affidavits, despite being responsible for reading them in order to approve the Wiretap Authorization. Because of the Wiretap Affidavits, the Criminal Division at Main Justice was in a position to know as much about Fast and Furious as ATF. Both Justice Department and ATF leaders in Washington, D.C. claimed they were unaware of the gunwalking that occurred during Fast and Furious, yet both could have and should have reviewed the Wiretap Affidavits. Senior officials at Main Justice were aware of the tactics in Operation Wide Receiver and should have prevented them from being repeated in Fast and Furious.

In both operations, key information flowed straight to the Criminal Division. As previously discussed, the Criminal Division resurrected Wide Receiver in the fall of 2009 due to Lanny Breuer's keen interest in the case. The Criminal Division, and not ATF leadership, had the full complement of facts about Wide Receiver, since it had assumed primary responsibility for the case. Similarly, the Criminal Division possessed detailed information regarding Fast and Furious since it approved the Wiretap Authorizations. The Criminal Division failed to connect the cases and understand that the unacceptable tactics in Wide Receiver were being duplicated on a much larger scale in Fast and Furious.

Criminal Division officials claim they were concerned about Operation Wide Receiver and took action to inform ATF and prevent a repeat of these misguided tactics. Their actions at the time, however, belie these claims. The Criminal Division held exactly one meeting with ATF, in April 2010, to raise concerns about Wide Receiver. At the exact same time, the Criminal Division was approving multiple Wiretap Authorizations in Fast and Furious based on specific evidence in the Wiretap Affidavits indicating the continued use of these same misguided tactics.<sup>30</sup> Their failure to inform Department leadership or the Inspector General (IG) at the time undermines the claims that they were conscientious and dutiful upon learning that ATF had walked guns.

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<sup>30</sup> See 18 U.S.C. § 2510 *et seq.* (for wiretap application approval, requiring, “a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous”).



### **III. Jason Weinstein Knew About Illegal Activity Yet Failed To Stop It**

During his transcribed interview, Deputy Assistant Attorney General Jason Weinstein of the Criminal Division testified that he first became concerned about Operation Wide Receiver when he read a single word: “monitor.” In an attachment to a March 16, 2010, e-mail sent to Weinstein, a description of Operation Wide Receiver contained the following sentence:

With the help of a cooperating FFL, the operation has **monitored** the sales of over 450 weapons since 2006.<sup>31</sup>

As Weinstein explained about Operation Wide Receiver:

The piece of that that caused the greatest concern was the possibility that with the assistance of the cooperating FFL that they had actually monitored, and I took that to possibly mean that they had recorded in real time the sales of those guns. And so my question to Mr. Carwile is did they actually – was the FFL cooperating and were they monitoring the sales as they occurred, or did the sales happen and the FFL began cooperating after the fact; because the answer to that question would affect, at least potentially affect the analysis about whether they let guns go that they had the legal authority to have stopped.<sup>32</sup>

Messrs. Weinstein and Breuer have both expressed regret for failing to draw a connection between Operation Wide Receiver and Operation Fast and Furious. The two cases used similar investigative techniques, operated in the same ATF Field Division with the same Special Agent in Charge, and both received considerable attention from the Criminal Division in the spring of 2010.

Although a direct connection existed through a common suspect in the two investigations, Weinstein failed to realize that the two investigations also involved the exact same *tactics*. As Weinstein testified, “I believed Wide Receiver to be an aberration and to be a case from years earlier.”<sup>33</sup> Through the Wiretap Affidavits, however, Weinstein had information available to him indicating that guns *were* being walked in Fast and Furious. In fact, through these Wiretap Affidavits Weinstein had much more information available about gunwalking used in Fast and Furious than he ever did in Operation Wide Receiver. Further, this information was available to Weinstein in May 2010, a month *after* he expressed major concerns with Wide Receiver in April, and yet he *still* failed to recognize that the tactic was widely used in Fast and Furious.

ATF had pole cameras inside the stores of cooperating gun dealers. These cameras recorded, in real time, sales of weapons. Not only did ATF agents monitor these straw purchases

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<sup>31</sup> E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) (emphasis added) [HOCR 003434-003435].

<sup>32</sup> Transcribed Interview of Jason Weinstein, at 95 (Jan. 10, 2012) [hereinafter Weinstein Tr.].

<sup>33</sup> Weinstein Tr. at 157.

as they happened electronically, but they also monitored them in person. A March 3, 2011 CBS News interview with ATF Special Agent John Dodson contained footage of ATF agents watching known straw purchasers walk out of a gun store and load the weapons into their vehicles.<sup>34</sup>

Weinstein should have known from the Wiretap Affidavits that ATF agents were witnessing, monitoring, and recording not only these straw purchases but also the subsequent illegal transfer of the weapons. He also should have known from the Wiretap Affidavits that these weapons were being recovered in Mexico, sometimes only one day after they were purchased. Weinstein should have known from the Wiretap Affidavits who the straw purchasers were, where they met, and where they stored the guns they bought before they were transported to Mexico. Yet, he failed to raise the same concerns about Fast and Furious that he identified in Wide Receiver.

Weinstein did not admit to being aware of all this information in his transcribed interview. In his testimony, Weinstein attempted to explain why he failed to recognize any problems in the Fast and Furious Wiretap Affidavits:

My general practice . . . is to review the summary memo in the first instance and to go to the affidavit only if there are issues or questions that are not answered by the summary memo that I need to answer in order to make a probable cause determination. So my practice in every case, in every wiretap I reviewed since I came on the job, is to review the summary memo. And I can probably count on one hand the number of times when there's been something in the memo that was poorly written, that left me confused about the meaning of a dirty call or a legal issue that caused me to have to go to the affidavit.<sup>35</sup>

Weinstein admitted that he “reviewed what [he] believe[d] to be three of the wiretaps in Fast and Furious, in what [he] now knows to be Fast and Furious.”<sup>36</sup> He further explained that nothing in them concerned him:

What I can say is that had I seen anything in what I reviewed in connection with the wiretaps that gave me any reason to suspect that guns were walking in that case in Fast and Furious, I would have reacted very strongly to it. And you saw in the April 12th email, April 12, 2010 email, how strongly I reacted to guns that had walked 3 years earlier. If I thought that those guns were walking 3 weeks earlier or 3 days earlier or 3 hours earlier -- that is, that it was still ongoing -- my reaction would have been even stronger.<sup>37</sup>

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<sup>34</sup> *Agent: I was Ordered to Let U.S. Guns into Mexico*, CBSNEWS.COM, March 3, 2011, available at <http://www.cbsnews.com/stories/2011/03/03/eveningnews/main20039031.shtml>.

<sup>35</sup> Weinstein Tr. at 87.

<sup>36</sup> Weinstein Tr. at 87.

<sup>37</sup> Weinstein Tr. at 92-93.

During prior testimony before Congress, Breuer and Attorney General Eric Holder have both gone to great lengths to explain that the Criminal Division reviews Wiretap Affidavits only for legal sufficiency and not to evaluate the appropriateness of the tactics.<sup>38</sup> It is now apparent why Breuer and the Attorney General have emphasized this point. That distinction is essential in order to avoid responsibility for knowing of the tactics described in the Wiretap Affidavits.

Congressional investigators have learned about the information contained in one Wiretap Authorization and Wiretap Affidavit from Fast and Furious that Jason Weinstein signed. The Wiretap Affidavit presented Weinstein with the details of at least two instances in which ATF agents had *witnessed illegal straw purchasing and the subsequent transfer* of the purchased weapons to other individuals. Considering that a single word, “monitor,” had made Weinstein so anxious in the description of Operation Wide Receiver, detailed eyewitness transactions in Fast and Furious should have caused Weinstein to sound the alarm immediately. The Wiretap Affidavit accompanying the Wiretap Authorization Weinstein signed described these two situations and several others in great detail. Yet, the straw purchasing ring continued to operate under the government’s nose for *seven more months* before indictments were finally handed down, thereby severely jeopardizing the safety of the citizens of Arizona, the American public, and the people of Mexico.

#### **IV. Main Justice: Failing to Ask Questions**

Through its investigation, Congress has learned that senior Department officials showed a serious lack of inquisitiveness when it came to discovering details about Operation Fast and Furious. They knew as early as April 2010 that ATF’s Phoenix Field Division – under the same SAC, Bill Newell – had previously used this same tactic of gunwalking. Still, these officials failed to ascertain the true scope of the program. Later, when whistleblowers came forward with information and supporting documents, these same officials provided false information to Congress and refused to get to the bottom of the matter.

Over the past year, Congress has exposed the dangers of Operation Fast and Furious to the public and has sought to bring accountability to the decision-makers responsible for its origin and implementation. Fast and Furious represents a breach of trust that, to date, has led to the tragic murder of Border Patrol Agent Brian Terry and the deaths of countless innocent Mexican citizens. Despite these tragedies, the Justice Department has obstructed the Committee’s investigation every step of the way.

On July 4, 2011, the former ATF Acting Director testified that the Justice Department was managing the congressional investigation in order to protect the political appointees at the Department.<sup>39</sup> This statement has proved prophetic, as the Department has blamed everyone except for its political appointees for Fast and Furious. This includes the U.S. Attorney’s Office in Arizona, the ATF Phoenix Field Division, and even ATF headquarters.

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<sup>38</sup> Test. of Asst Att’y Gen Lanny Breuer, Subcomm. on Crime and Terrorism, Senate Comm. on the Judiciary, “Combating International Organized Crime: Evaluating Current Authorities, Tools and Resources” (Nov. 1, 2011); Test. of Att’y Gen Eric Holder, Senate Judiciary Comm., “Oversight of the U.S. Department of Justice,” (Nov. 8, 2011).

<sup>39</sup> Transcribed Interview of Kenneth Melson, at 130 (July 4, 2011) [hereinafter Melson Tr.].

For months, the Department has stonewalled Committee document requests and refused to comply with Committee subpoenas. The Department has produced scores of blacked-out pages containing no information and many duplicate documents in order to bolster its page count. Recently, the IG's office disclosed that it has reviewed approximately 80,000 pages of documents related to Fast and Furious, and conducted approximately 70 interviews in its investigation. That investigation is not even close to completion. In comparison, the Department has produced just over 6,000 pages to Congress, representing only 8% of the materials available to the IG. The Department is withholding 92% of the documents it has given the IG. Also, Congress has conducted 22 interviews – only 31% of the total the IG has already conducted. If the Department granted Congress access to all the documents and witnesses available to the IG, it would be much closer to determining who was actually responsible for Fast and Furious.

The Department has set an arbitrary cut-off date of February 4, 2011, for the purpose of withholding documents pertaining to Fast and Furious – even with respect to documents directly responsive to the Committee's subpoenas. The Department simply cites a "constitutional privilege" of separation of powers as a basis for its decision, without providing any legal basis for doing so. Despite the Committee's emphasis on the importance of these documents to this investigation, the Department has declared that will not provide the Committee with any documents created after February 4, 2011.

In transcribed interviews, the Department has also instructed its witnesses from answering any questions that pertain to the post-February 4, 2011 period. This is unacceptable. The Department provided Congress undeniably false information in its February 4, 2011 letter, which it ultimately had to withdraw – an unprecedented action. It is therefore imperative to investigate when and how the Department learned that information was false and why it refused to acknowledge the information was false until nearly nine months later.

Just last week the Department provided a document showing that Lanny Breuer was *advocating* gunwalking on February 4, 2011.<sup>40</sup> This advocacy came the same day the Department told Congress that it "makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."<sup>41</sup> Breuer, who had forwarded a draft copy of the Department's letter to his private e-mail account the day before, suggested to the Attorney General of Mexico that they *allow* straw purchasers to enter Mexico. His advocacy of this new, sister plan to Fast and Furious demonstrates a critical lapse in judgment. Breuer's failure here stands in stark contrast to his public pronouncements.

## **V. Justice Department Blaming Everyone Else**

ATF witnesses pointed to a Department of Justice Cartel Strategy promulgated by the Deputy Attorney General in late 2009 as the impetus for Fast and Furious. The strategy encourages the utilization of OCDETF cases, and notes that:

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<sup>40</sup> E-mail from Anthony Garcia to Adam Lurie (Feb. 4, 2011) [HOG 005754].

<sup>41</sup> Letter from Asst Att'y Gen Ronald Weich to Senator Charles E. Grassley (Feb. 4, 2011).

[M]erely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them.<sup>42</sup>

The Assistant SAC of the ATF Phoenix Field Division pointed to this Justice Department initiative as one of the reasons Fast and Furious came into being.<sup>43</sup> ATF Deputy Director William Hoover also used this strategy to create internal ATF guidelines “that, exactly, fit in with the Department of Justice cartel strategy.”<sup>44</sup> The ATF Phoenix Field Division, using both this Justice Department strategy and Breuer’s decision to pursue prosecutions in Operation Wide Receiver, believed it had the support of Main Justice to launch Operation Fast and Furious.

**A. Gary Grindler, former Acting Deputy Attorney General and current Chief of Staff to the Attorney General**

Gary Grindler was the Acting Deputy Attorney General during Fast and Furious from February 4, 2010 until the end of 2010. Currently, he is Chief of Staff and Counselor to the Attorney General. Grindler claims his staff was responsible for alerting him to any problems during Fast and Furious. He testified he knew incredibly little about Fast and Furious, and is aware of only scant details even to this day.

Grindler has made no attempt to find out what actually happened during Fast and Furious, despite having been second-in-command in the Department during the pendency of the operation, and in charge of the office with direct supervisory authority over ATF. Grindler said that during a very detailed March 12, 2010 briefing on Fast and Furious he did not fully appreciate the volume of guns that were being transported to Mexico under the program because he was new to the job.<sup>45</sup> Therefore, he was unable to make the necessary connections, ask the proper questions, and follow up with ATF after the briefing or have his staff monitor the program closely. If Grindler is to be believed, because he was new to the job, he let ATF operate in an uncontrolled manner.

Grindler’s management style made it highly unlikely that he would ever discover any wrongdoing. Grindler blames his staff:

- A. The way I organized the office was I had two individuals on my staff who had ATF as a component where they have responsibility. These individuals had other responsibilities, but that was one of their responsibilities. So from a management point of view, they had the responsibility to know more than I knew about ATF, and if there were issues that they believed needed to be brought to my attention, then **I expected them to bring it to my attention.**

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<sup>42</sup> E-mail from [DOJ] on behalf of David Ogden to Kathryn Ruemmler, et al. (Oct. 26, 2009).

<sup>43</sup> Transcribed Interview of George Gillett, at 11-12 (May 17, 2011).

<sup>44</sup> Transcribed Interview of William Hoover, at 139 (July 21, 2011).

<sup>45</sup> Transcribed Interview of Gary Grindler, at 15 (Dec. 14, 2011) [hereinafter Grindler Tr.].

Beyond that, ATF being a law enforcement component works with the United States Attorneys across the country, and if there are issues either way with those relationships, it would be my expectation that either the United States Attorneys would either directly or through the executive office of U.S. Attorneys bring issues to my attention that they thought warranted my attention, and if ATF similarly had issues with United States Attorneys, I would expect it to bring it to my attention. And obviously the head of ATF had a responsibility to bring issues to my attention.

Q. And who were your -- I guess they were associate deputies that had the ATF portfolio?

A. One.

Q. Mr. Siskel was one?

A. Mr. Siskel was an Associate Deputy Attorney and he had ATF as a portfolio.<sup>46</sup>

Ed Siskel now works in the White House Counsel's Office.

Grindler also failed to reach out proactively to Siskel to head off any problems.

Q. And did you have regular meetings with Messrs. Siskel and Michalic about ATF, or did you learn about ATF, manage ATF, only on an as-needed basis?

A. I don't recall a specific meeting with them solely about ATF. I said to my staff if there is an issue I really need to know, they need to come in and tell me.<sup>47</sup>

Grindler delegated responsibility to his subordinates and relied on them to bring any problems to his attention. Despite the disastrous results, he found no fault with this passive approach:

Q. What other types of management decisions have been made at the Department to make sure a case like this will never happen in the future?

A. I don't know whether there are other management decisions. I think to the extent that information comes in regarding this matter

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<sup>46</sup> Grindler Tr. at 10 (emphasis added).

<sup>47</sup> Grindler Tr. at 11.

and to the extent that it gives us a basis to do -- where we think we need to take a management decision. When I say we, again, I am not the decision-maker, but I believe that that is and will be an ongoing process to review that, consider that, in the context of management.<sup>48</sup>

The current Acting Director of ATF, a direct appointee by Attorney General Holder, however, disagrees with Grindler's management approach:

Anybody, including Mr. Melson, who waits for things to happen or waits for information to come to them, that is something I personally am not a believer in. I'm a believer in management by walking around. **If you're not hearing it, you seek it out. And there are a lot of ways to do that other than sitting in your corner office waiting for memos to come in.**<sup>49</sup>

Grindler frequently deflected all responsibility for learning the gunwalking tactics that ATF used:

Q. Did you assign Mr. Siskel to keep track of this case on a going forward basis?

A. I don't recall. **Again, ATF is his responsibility.**

Q. Do you recall any specific conversations with Mr. Siskel about the Fast and Furious case outside of this meeting and the other ATF monthly meetings?

A. No.<sup>50</sup>

To this day, Grindler maintains knowing little about Fast and Furious:

Q. So it is your position that ATF didn't let these guns walk?

A. I don't know all the details of the facts. I believe that there were serious flaws in their operational tactics. But it is a fairly high level understanding that it included dropping of surveillance, maybe not interdicting guns where they had a legal basis to interdict. Exactly how many of the guns fall into those categories and how many don't, **I don't know. I just don't know.**<sup>51</sup>

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<sup>48</sup> Grindler Tr. at 25-26.

<sup>49</sup> Richard Serrano, *Angry Former ATF Chief Blames Subordinates for Fast and Furious*, L.A. TIMES, Dec. 24, 2011 available at <http://articles.latimes.com/2011/dec/24/nation/la-na-fast-furious-20111225> (emphasis added).

<sup>50</sup> *Id.* at 17-18.

<sup>51</sup> *Id.* at 23-24.

Grindler appeared for a transcribed interview in December 2011 – almost a full year after the scandal broke, and a year after he was informed, in detail, about Fast and Furious and the connection to Brian Terry’s death. Amazingly, during the past year he failed to learn anything about the case and failed to re-examine the case in any meaningful way:

Q. So you haven’t done any retrospective work, given the fact that you were the Deputy at the time and now you are one of the principal advisers for the Attorney General?

A. I don’t know what you mean by retrospective work.

Q. Well, what the heck happened, and how can we make sure, since you were the Deputy at the time when the Fast and Furious case unfolded, really bad things happened, what can we learn from that to make sure it doesn’t happen again?

A. I believe that the Deputy Attorney General’s office is engaged in -- has been engaged in considering what steps need to be made and there has been consultation with the Attorney General. It has been taken very seriously.<sup>52</sup>

For nearly a year, Grindler held the number two position at the Department of Justice. Yet after all this time, he pleads ignorance on a number of critical issues:

Q. Fast and Furious was described by ATF during the pendency of the investigation as a complex firearms trafficking network. We now know it wasn’t that complex. There were -- there’s 19 indicted straw purchasers. We’re told there’s 40 more coming. But they all were reporting into Acosta, and Acosta was working with two -- one or two unnamed persons. Those two unnamed persons were working with the Sinaloa cartel. Is that your understanding of the network now?

A. I don’t have a detailed understanding now of the network.

\* \* \*

Q. Which presents the difficult question. ATF had this, what was described as a promising firearms trafficking case so they can better understand the network and find out who it was, the link to the Sinaloa cartel. And once they find out that link, turns out they are working with the FBI and can’t be prosecuted. Is that troubling to you?

A. I just don’t know what the facts are so it’s impossible for me to respond. I know that’s one of the inquiries that the committee has, and I know that people at the

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<sup>52</sup> Grindler Tr. at 26-28.



Department are trying -- either have or are trying to get the details of that. **But I just don't know what they are.**

Q. Is that a problem? Does that trouble you?

A. I really would have to sit here and go through the specific facts to understand them. There are a lot of moving parts here. **I just don't feel comfortable opining on it.**<sup>53</sup>

## **B. Jason Weinstein, Deputy Assistant Attorney General**

Even after learning about gunwalking in Wide Receiver, Jason Weinstein failed to ask key questions about Fast and Furious. Yet, Weinstein volunteered to help write the February 4, 2011, letter to Senator Grassley that denied the initial gunwalking allegations. He offered to help even though the Criminal Division has no supervisory authority over ATF and even though he claimed not to know about the tactics used in Fast and Furious. Though the Criminal Division had a prosecutor assigned to Fast and Furious, Weinstein deflected any accountability by blaming ATF and the U.S. Attorney's Office in Arizona for the false information contained in the letter:

Because of the repeated assurances I and others received in February, 2011, from the then current leadership of the U.S. Attorney's Office in ATF that guns had not walked in Fast and Furious and from ATF that it was making every effort to interdict guns, I did not make any connection between Wide Receiver and Fast and Furious. For that reason, I simply was not thinking about Wide Receiver as I assisted with the February 4th letter which I understood to be about Fast and Furious.<sup>54</sup>

The February 4, 2011 letter states that "ATF makes every effort to interdict weapons that have been purchased illegally. . . ."<sup>55</sup> Weinstein knew at that time that ATF in fact did not make every effort to interdict weapons purchased illegally. He knew about gunwalking tactics in Wide Receiver, and he should have been aware of the details in the Fast and Furious Wiretap Affidavits. Weinstein had access to a great deal of information, but rather than looking internally for answers, he chose instead to go outside his chain of command and accept the representation of the head of the U.S. Attorney's office in Arizona – an individual who was complicit in the failure of the program:

Given what I know now, of course, I wish I had not placed such faith in the assurances provided to me by the leadership of the U.S. Attorney's Office and ATF. But given what I knew then and given the strength of those assurances I believed at the time that it was entirely appropriate to do so. I trusted what was said to me and I firmly believed at that time that

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<sup>53</sup> *Id.* at 110-111 (emphasis added).

<sup>54</sup> Weinstein Tr. at 12.

<sup>55</sup> Letter from Ronald Weich to Senator Charles Grassley (Feb. 4, 2011).

in fact ATF had not let guns walk in Fast and Furious. Obviously, time has revealed the statements made to me and others to be inaccurate, and that is beyond disappointing to me.<sup>56</sup>

Weinstein went on to hold federal officials in Arizona responsible:

And it is important to note that I relied on inaccurate information from the U.S. Attorney's Office and ATF not only in assisting with the February 4th letter but also in my subsequent communications with my own chain of command. Just as I would never have intentionally participated in providing inaccurate information to Congress, I certainly would never have intentionally provided inaccurate information to my own chain of command.<sup>57</sup>

Weinstein clearly identified the sources of the so-called bad information he received:

A. Now, as it turns out, weeks later when I did receive information directly from the people you are talking about, people working with Mr. Burke, I got the same bad information.

Q. And that was Mr. Hurley and those folks?

A. It was Mr. Hurley and his criminal chief.

Q. Mr. Cunningham.

A. Mr. Cunningham.<sup>58</sup>

Weinstein further testified that he was very upset upon learning about gunwalking in Wide Receiver:

If you look at the April 12th email, you will get that my reaction was I stunned about the tactics. And one of the reasons I was stunned was because in my career as prosecutor we had -- I had always gone to great lengths and taught people to go to great lengths to avoid letting even a single operable firearm to get out of law enforcement's control. So that's the depth of my concern about it, and that's the way I communicated it to the folks from ATF at that meeting. I communicated as clearly as I could that those tactics were inappropriate, albeit under different ATF management and 3 years earlier, they were nevertheless inappropriate.<sup>59</sup>

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<sup>56</sup> Weinstein Tr. at 12.

<sup>57</sup> Weinstein Tr. at 13-14.

<sup>58</sup> *Id.* at 48.

<sup>59</sup> *Id.* at 20-21.

Yet, he never put these serious misgivings in writing. Indeed, not a single e-mail produced by the Justice Department to Congress corroborates his professed outrage. Instead, the congressional inquiry has found only one instance in which he communicated his disapproval – a single meeting with ATF Assistant Director Hoover, after which he considered the matter closed:

Q. So there is not a single email that shows -- in other words, there is no written record that shows that you were upset over these tactics?

A. No, there's just the meeting itself that I had in which I communicated it face to face.

Q. So there is a single meeting you had?

A. It was a single hour-long meeting in which I communicated my concerns about the tactics.<sup>60</sup>

Weinstein placed blame for Fast and Furious on ATF's Phoenix Field Division – specifically SAC William Newell:

A. I will say that I have significant concerns based on what I know now about the management, about what appeared to me to be some management issues in the Phoenix field office of ATF. . . .

Q. What about approving the so-called misguided tactics? I mean, isn't that on the SAC as well?

A. Well, again, I don't know what he did, what he didn't do. I don't know if the facts of that have come out yet or will come out. But, ultimately, he is at the top of the management chain in an office, and to the extent that tactics were being used in that office that shouldn't have been used -- it is my view that it is not a terribly large office, but there are a number of levels of supervision between him and the line agent. But at the end of the day the SAC is responsible for what goes on in his office.<sup>61</sup>

Weinstein refuses to accept any responsibility for Fast and Furious. Despite the fact that he was in a unique position to stop the program because of the Intercept Order Applications he approved, he deflects all blame for not stopping it to ATF and the U.S. Attorney's Office. He admitted that **“gun-walking is a pretty extraordinary thing and it's an extraordinarily bad**

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<sup>60</sup> *Id.* at 19-20.

<sup>61</sup> *Id.* at 29.

**tactic.”**<sup>62</sup> Weinstein’s unique knowledge of both Wide Receiver and Fast and Furious put him in a position to sound the alarm, yet he did nothing.

### **C. Dennis Burke, former U.S. Attorney for the District of Arizona**

In late October, Attorney General Eric Holder followed up on a communication from Senator Grassley about whistleblower retaliation by implying that the Justice Department had held someone accountable for the leak of a document about one of the whistleblowers in Fast and Furious. However, that person turned out to be former U.S. Attorney for the District of Arizona Dennis Burke—who had already resigned of his own accord on August 30, 2011.<sup>63</sup> Burke’s lawyers publicly admitted on November 8, 2011 that he had had a role in leaking the document.

In a subsequent second interview with congressional investigators, Burke claimed he had been contacted by a reporter in Washington, D.C. who was apparently already familiar with the contents of the document and asked him for a copy of it.<sup>64</sup> When asked how he provided the document to the reporter, Burke he had a personal friend hand-deliver the document to the reporter instead of e-mailing it to him.<sup>65</sup> Questioned about why, Burke appeared unwilling to acknowledge that it signaled any consciousness of guilt:

Q. So that you wouldn’t -- I don’t understand. Why wouldn’t you just email it to him? That would be the simplest, easiest thing to do.

A. That would be the simplest, easiest way.

Q. Yeah.

A. And that’s when I said, “I can mail it to you,” as opposed to it being forwarded around the [reporter’s] office, I guess.

Q. So which one of you suggested that it not be emailed?

A. I think I did, but I can’t remember the conversation.

Q. So why did you just suggest that?

A. Because he was -- he had initially said something about, “You can email it to me or have it sent to me,” and I took the option of having it sent to him. And then he said, “I don’t have an address.” So I took the option of delivering it to him.

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<sup>63</sup> Mindy Blake, *U.S. Attorney for Arizona resigns*, KOLD/KSMB (Aug. 30, 2011), available at <http://www.tucsonnewsnow.com/story/15359994/us-attorney-for-az-resigns>.

<sup>63</sup> Mindy Blake, *U.S. Attorney for Arizona resigns*, KOLD/KSMB (Aug. 30, 2011), available at <http://www.tucsonnewsnow.com/story/15359994/us-attorney-for-az-resigns>.

<sup>64</sup> Transcribed Interview of Dennis Burke, at 191-192 (Dec. 13, 2011) [hereinafter Burke Tr.].

<sup>65</sup> Burke Tr. at 192-193.

- Q. So why did you prefer not to email it directly to him?
- A. Probably so it wouldn't be on the system there.
- Q. And why? But why? Why did you not want it on the system there?
- A. Just for circulation purposes.
- Q. What does that mean?
- A. What does it mean?
- Q. Yeah, what do you mean, "for circulation" -- I don't know what that means, "for circulation purposes."
- A. So that he had just a hard copy of the memo as opposed to an email version.
- Q. To prevent him from forwarding it as easily, is that what you mean?
- A. I guess. Yeah, yeah.
- Q. Did you have an arrangement with him that he agreed not to forward it?
- A. No.<sup>66</sup>

When asked directly about his motives, Burke denied that it was retaliation for the whistleblowing.<sup>67</sup>

- Q. So what was your motivation?
- A. That [the reporter] had asked for it, and I figured it was going to be going out anyway, and I would give him a time advantage in getting it.
- Q. Are you aware now that it was actually not provided to the Hill?
- A. I was told later, yeah.<sup>68</sup>

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<sup>66</sup> Burke Tr. at 192-195.

<sup>67</sup> Burke Tr. at 198.

<sup>68</sup> Burke Tr. at 198-199.

The seriousness of a U.S. attorney seeking to undermine a whistleblower was further underscored by the seriousness of why he had the document in the first place. Burke testified that he became aware of the document only because the Justice Department had provided it to him.<sup>69</sup> He also testified that the Department was providing such documents to other individuals in the Arizona U.S. Attorney's office under investigation, Patrick Cunningham and Mike Morrissey.<sup>70</sup> Although this was ostensibly for review of the documents, Burke testified that the Department never asked him anything about the documents it was providing to him.<sup>71</sup> The Justice Department has yet to provide a reasonable explanation as to why it was providing documents to the very individuals who are under investigation by Congress.

Until July 2011, the Department also maintained a shared drive with key documents that various ATF leadership under investigation had access to.<sup>72</sup> The Department's actions made it less likely that congressional investigators would be able to receive untainted testimony from the leadership of ATF and the Department being investigated, since individuals could consult the shared drive to figure out what Congress already knew from the documents produced under subpoena—and thus what they would have to admit in their congressional testimony.

## **VI. Conclusion**

ATF blames Main Justice for encouraging Fast and Furious. The Justice Department blames ATF and the Arizona U.S. Attorney's Office for the use of misguided tactics. Those who were in a position at Main Justice to stop the program blame their staffs for not bringing issues regarding Fast and Furious to their attention. U.S. Attorney's Office personnel have either taken the Fifth Amendment and refused to discuss the issue with Congress, or have been estopped by the Justice Department from talking to Congress altogether. As the former ATF Acting Director testified in July 2011, it appears very clearly that the Department is circling the wagons to protect its political appointees.

The family of Brian Terry, the families of countless citizens in Mexico slain by weapons purchased through Fast and Furious, and the American people deserve to know the truth. The Justice Department's failure to be forthcoming and cooperate with the Committee's investigation is unacceptable. The Justice Department's failure to fully comply with congressional subpoenas only prolongs the inquiry and damages the public's trust in the Department's leadership.

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<sup>69</sup> Burke Tr. at 195-196, 200.

<sup>70</sup> Burke Tr. at 196.

<sup>71</sup> Burke Tr. at 200.

<sup>72</sup> Letter from Department of Justice to Chairman Issa and Ranking Member Grassley, Sep. 19, 2011, at 2.