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Appendix I

Exhibit 1

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[REDACTED]

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: KENNETH MELSON

Monday, July 4, 2001

Washington, D.C.

The interview in the above matter was held in Room

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2154, Rayburn House Office Building, commencing at 10:15
a.m.

Q And who has been your contact at the DAG's office.
I understand currently it's Matt Axelrod.

A Yes.

Q And prior to Matt, who was.

A Except for an intermediary that was there for a short period of time, it was Ed Siskel.

Q And when did Ed Siskel leave the DAG's office, if you recall.

A I don't remember the exact date, but it's got to be late last year, I think. Don't hold me to that, but it's --

Q It's been primarily Mr. Siskel and Mr. Axelrod.

A DAG Smith was in between, but he was there for a relatively short period of time before it was turned over to Matt Axelrod.

Q Is it fair to say that when management officials at ATF need to communicate with the DAG's office, they would do it through Mr. Siskel and now through Mr. Axelrod.

A And Billy Hoover who is my Deputy Director, actually an Acting Deputy Director communicating almost on a daily basis with them on one issue or another, and of recent, probably even more than a daily basis.

Q Are there any other senior officials at ATF that

realized that indeed this was a matter worthy of congressional interest.

A Well, I don't know that I can say precisely when they thought it was of congressional interest. I might characterize it, and I hope I'm not going too far abroad, but I think they were doing more damage control than anything.

My view is that the whole matter of the Department's response in this case was a disaster. That as a result, it came to fruition that the committee staff had to be more aggressive and assertive in attempting to get information from the Department, and as a result, there was more adverse publicity towards ATF than was warranted if we had cooperated from the very beginning. And a lot of what they did was damage control after a while. Their position on things changed weekly and it was hard for us to catch up on it, but it was very clear that they were running the show.

Mr. Castor. I'm going to mark an Exhibit.

[Exhibit No. 1 was for identification.]

BY MR. CASTOR:

Q Exhibit number 1 is marked, it's a letter dated February 4 from the Justice Department Assistant Attorney

in this letter, this February 4th letter to Senator Grassley, because I don't believe we can say that in light of the information that our agent was swearing to before a federal district court judge to get the wiretap.

There was also some conversation -- I tried to find the e-mail last night from home, but I couldn't access it. What I had printed out didn't seem to have printed out completely, but I think there was also conversation with Matt in that regarding -- because there was something I would say, well, look at page X, Y, and Z. But that was well after this fact right here.

With respect to the second sentence, "ATF makes every effort to interdict weapons." Of course, that is what our mission is in ATF, is to interdict weapons. And while in Fast and Furious, there were ways that they could have slowed down the number of guns being purchased or perhaps dissuaded straw purchasers to purchase weapons, they, I think -- and I think the people who drafted this would have thought that under the investigative strategy, they did try to interdict weapons, even though they didn't take them between the store and a defendant's home, they knew they went to the home, but had, according to the U.S. Attorney,

no authorization to get a search warrant for those weapons, or to seize those weapons.

And, so while the point that you made the other day, they could have gone and done knock and talks to everybody and they could have perhaps stopped it, when they had the opportunity in most cases to interdict, hopefully they did that.

Now, I know there are a number of cases in which transfers were made in parking lots to people, and I myself question why they didn't stop those individuals. I was not on the ground. I don't know whether it was because of officer safety or because of citizen safety when you stop people that have a lot of weapons in their car, I don't know. But certainly there are instances in which stops could have been made.

And in reality, there were a number of times that stops were made by local police and guns were seized. In fact, there was one in which they stopped one of our prime suspects and they talked about the guns and they said, oh, they are my guns, I'm going home with them. And the police had no choice but to let them go. That's how frustrating and aggravating it is to try and enforce these laws.

Q I gather from your review of the wiretap applications, you saw that some of the suspects in this case were buying weapons that the ATF knew they were going to make a purchase before they actually did it.

A Absolutely.

Q And many of these weapons were being traced back from Mexico in relatively short order --

A Yes.

Q Time to crime with some of the weapons, especially some of the weapons that Patino bought, were as little as eight days, and this type of information was unfolding in 2009.

A Uh-huh.

Q What was your initial reaction when you saw that amount of rich information going back to 2009.

A I think I became fully aware of what was going on in Fast and Furious when I was reading the ROIs. And I remember sitting at my kitchen table reading the ROIs, one after another after another, I had pulled out all Patino's -- and ROIs is, I'm sorry, report of investigation -- and you know, my stomach being in knots reading the number of times he went in and the amount of guns that he bought.

Q When did you first become aware of operation Fast and Furious, previously named the Jacob Chambers case.

A Well, that's hard to say, because it could have come up in conversation at any point in time, but there was a briefing on the Fast and Furious case on December 9, 2009. That's when our office -- our OSII which is the intelligence branch put together a briefing for us on the -- primarily the seizures that were occurring in Mexico, somewhat unclear to us was that many of the seizures had weapons coming from Fast and Furious.

But I had e-mailed Lanny Breuer, on December 6, 2009, the day that Voth came on the job in Mexico -- I mean, in Phoenix, and asked him to come over and be briefed on some of these cases, so that perhaps his people, his prosecutors could help us develop a case. Because this is my view, we have got all these seizures across the border, and in each of these seizures, there are guns from different sources in the United States. So there's got to be some connection. If you have three different seizures and Fast and Furious is here and here and John Doe is here and here and there, there's got to be some connection with these people.

So we ought to be developing a multi-division, multi-

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U.S. Attorney district case on all this. Get the intel from all these seizures, bring it together, develop the case and take it down. So I obviously couldn't do it, so I wanted Lanny Breuer to do it. Lanny Breuer became very active in the Southwest border plans and implementation. He worked on the Merida initiative, with the four pillars of the Merida initiative. We briefed him on what we were doing in Mexico. We have briefed him on Fast and Furious. So he was a partner with us in a lot of what we were doing along the Southwest border as well as in Mexico.

And there were one or two times that he and I went down there together. So on that date that I mentioned previously in December 6 -- I should remember that, it's a significant date for me -- I e-mailed him and on December 9, I had the first briefing on Fast and Furious. And these were primarily, though, surrounding the Douglas, what we call the Douglas seizure.

Then on December 17th, there was a briefing again by our intel section on the Reynoso seizure and the Phoenix Fast and Furious case. Now, this was just December 17, so it was early in the investigation. But Kevin Carlisle, who is the supervisor in the Criminal Division, I think he was

in charge of gang cases, I think -- I'm not 100 percent sure and Joe Cooley who was one of the trial attorneys came over to be briefed on it as well, in anticipation of them working this whole spectrum of seizures that were across the border.

Q So at that time, with respect to Fast and Furious only, what did you understand the strategy to be? This is December of 2009.

A Well, it wasn't so much what we understood as a strategy. Because I don't believe -- and you know, this is a long time ago -- that the purpose of it was the strategy as much as the linking of various seizures in Mexico to the gun trafficking groups in the U.S.

So there was not a discussion, I don't recall, that talked about how the case was going to be investigated -- Fast and Furious in particular with respect to, were guns going to be observed being purchased and so forth. As I said, this was early on.

Nevertheless, we had the participation of the Criminal Division in that briefing, and what I hoped to be in that whole case. In fact, they did send a prosecutor to Phoenix who worked on other ATF gun cases concurrently with what was going on in Fast and Furious. And as you recall, the press

Q Correct.

A That was not a specific strategy that I have ever seen adopted or promulgated by the Department. But they did tell us to, A, go after people other than straw purchasers, to use more sophisticated techniques and to try to get the cartel plaza -- the cartel members and the money transferors, and the people who had taken the guns to Mexico.

Now, I don't know whether agent Voth read those memos and said, oh, they opened the door for me, I can go through it now or not. I don't know. But that was the direction of the Department. And I don't disagree with that, because I worked with DAG Ogden to provide some direction and leadership for the Southwest border activity. And he did.

In fact, on the way back from Phoenix after the strike force office was open, and he went down there for the press conference, I sat next to him for a while and I talked to him about the failure of the Department to give clear guidance and coordinated, collaborative effort along the Southwest border. And I think in part because of that, he did create the Southwest border strategy group and came up with policies which were good policies. In this case, it

approach to it. I think there could have been accommodations made between the Hill and ATF and DOJ has to how information was shared. It was very frustrating to all of us, and it appears thoroughly to us that the Department is really trying to figure out a way to push the information away from their political appointees at the Department.

Q Do you have any knowledge whether and when, if you do have knowledge, this significant information was knowable by the Department.

A Which significant information.

Q The fact that this firearms trafficking network may have been funded by the FBI informants.

A I don't know when they could have known about it. I don't have that information. All I know is when I first alerted them to the fact, and that was after we learned about it.

Q You had expressed some frustration earlier this morning when we were speaking about the Office of Legislative Affairs, that you wanted to brief Senator Grassley as soon as possible but they wouldn't permit you.

A Right.

Q Could you walk us through what happened?

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Q -- as to how McMahon got the affidavit.

A I would assume that the authority to authorize these types of things should be pushed down to the DAD because everything can't come up to Chait, and certainly Hoover can't handle another thing. I mean, he is just overwhelmed with things that are going on in the agency. So whether -- so I wouldn't be surprised either if it should stay at the DAD level unless there is something extraordinary about it that raises a question that you need the Assistant Director's approval on.

Q Okay. And then the Exhibit 10 was just the exhibit that referenced Voth and that had to go through the DAG's office.

A Well, and let me say this. Again, I don't know of any provision that requires these to go to the DAG. I wouldn't be surprised if Voth who is a new supervisor, hadn't been involved in this process before, got the DAG confused with the AAG, which would be the Assistant Attorney General for the Criminal Division. So, if he is saying that, I would make sure first that he understands the difference between the DAG and the AAG. Because I still don't think that's the normal process, but I may be wrong.

Exhibit 2

From: Schmalzer, Tracy
To: Ogden, David W. (ODAG)
Sent: 6/29/2009 11:25:47 PM
Subject: Opening Remarks

Here is final. I'm printing out and writing your presser points now (had to find ATF command center as computer didn't work). Will bring by in about 20.

What's the room #, again?

From: Tracy Schmalzer <RC-1>
To: Schmalzer, Tracy
Sent: Mon Jun 29 23:23:33 2009

DAG REMARKS FOR ATF FIREARMS TRAFFICKING SUMMIT

**Albuquerque, New Mexico
June 30, 2009**

Thank you, Lanny for that kind introduction and to Ken Melson and ATF for inviting me to speak with you this morning. I want to commend Ken and his staff at ATF for organizing this excellent program on one of the most important sets of issues facing the Department and the country today -- it is an honor to help kick it off.

Let me begin my welcoming all the law enforcement officers, agents and prosecutors. Thank you for taking the time to come from across the country to participate in this conference. You are on the frontlines of our fight against violent crime and firearms trafficking. By coming together here in forums like this, you help bring the coordinate and combined force of your agencies to bear on this vital task of making our streets and neighborhoods safe. Thank you for your personal contributions and commitment.

I am very pleased to be joined here on stage by four fine colleagues and leaders. Ken, Marshall, and Lanny represent and lead

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essential components of what is a unified effort, cutting across the entire Department of Justice, to address illegal firearms trafficking. It is only through the combined efforts of ATF, the U.S. Attorney's Offices and the Criminal Division - working together in a coordinated strategy - that we can be truly effective in intercepting, prosecuting and shutting down gun trafficking networks.

John Morton - a fine former colleague at DOJ – also represents and leads a key component of our unified effort. When we learned that John was leaving us for DHS, we were, of course, sorry to lose such a valued colleague and a gifted lawyer, but we were also thrilled to know that we would have a great partner at ICE. In the short time that John has been at DHS, it is clear that he is an asset to our common cause. With these fine leaders working together and with each of you, we will prevent the flow of guns that is fueling the escalating violence and drug trafficking that threatens our safety and the safety of the Mexican people.

I wish I could participate in the entire program.

The Southwest Border is the Front Line of the Fight Against Illegal Gun Trafficking

I'd like to take a moment to say a few words about our efforts to prevent firearms from traveling across the border to Mexico and contributing to the alarming rise of drug cartel violence there. Keeping guns out of the hands of the Mexican drug warlords is a top priority for the Department, and a key element of our campaign against them. It is one that the President and the Attorney General have promised to address quickly and aggressively.

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For the past three months, I've been leading the Department's efforts against the Mexican cartels. All of the Department's law enforcement agencies – ATF, DEA, FBI, and U.S. Marshals Service, together with our partners at DHS and Treasury – are central players in our strategy which utilizes multi-agency, intelligence-based, prosecutor-led task forces. The federal law enforcement components are joined by attorneys from the 94 United States Attorney's Offices and the Department's Criminal Division as well as our hundreds of partners in state, local, tribal, and international law enforcement agencies. Interdiction and border security are central to our task. But our partnership also uses shared intelligence and law enforcement tools including prosecution to directly attack the powerful criminal drug trafficking organizations. Our efforts have resulted in extraordinary recent enforcement successes like Project Reckoning and Operation Xcelerator.

Stepping up the fight requires new resources and we've already jumpstarted the process. For example, ATF has reassigned 100 agents to the Southwest Border to focus on these very issues. I want to thank Ken and all the ATF field offices represented here for answering the call and picking up the slack that must follow from pulling that many agents from your offices. To assist this effort, we have obtained additional funding for Project Gunrunner. These funds will allow ATF to open five new field offices and support their efforts to better detect, deter and combat firearms trafficking offenses. DEA, the Marshal's Service, the US Attorneys offices and the FBI have also added resources and sharpened their focus.

Increased Cooperation between the Department and DHS

But folks, we will be successful only if we take a cooperative,

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coordinated approach – across all levels of government, both domestically and internationally -- to communicate to illegal firearms traffickers that their activities will no longer be tolerated. When we work together, we have a substantial impact.

The Departments of Justice and Homeland Security know that our success depends on working closely together and together we are laying the groundwork for greater success. Last week, DOJ and DHS signed a new Memorandum of Understanding to make sure that our law enforcement components are fully coordinated on investigations involving firearms trafficking, drug trafficking and other serious crimes. The two agencies announced that ICE would participate fully in the key Fusion Centers that coordinate cases on a national and international scale. This marks a significant milestone. From now on, an ATF agent in Las Cruces, an ICE agent in El Paso, an FBI agent in Laredo or a DEA agent in Tuscon can “connect the dots” when working on seemingly disparate investigations that are actually part of a larger firearms trafficking enterprise.

In addition, today ATF and ICE are signing another agreement to ensure coordination between the Departments on firearms investigations. This new agreement will help ensure seamless cooperation by maximizing the agencies’ ability to work closely together to stem the illegal flow of arms in and out of the United States. This means more integrated and efficient investigations into breaking up illegal firearms trafficking networks. Now ATF agents and ICE agents who are tracking separate leads concerning the same illegal firearms trafficking organization will more effectively share their intelligence, avoid conflicts and potentially pool their efforts.

These are just two recent examples of a new era of partnership between the Departments which the Attorney General and I are deeply

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committed to -- like Secretary Napalitano and Deputy Secretary Lute.

Increased Cooperation with Mexico

We also know our partnership can't stop at the border. Victory in this fight requires that we forge a closer working relationship with our Mexican partners across the border. The Calderon Administration has shown extraordinary courage and resolve in attacking the cartels head-on and we are working with them in this initiative.

To that end, the Attorney General was in Mexico earlier this year to express his personal commitment to using all available resources to stem the southbound tide of firearms and bulk cash. The Department is undertaking a broad review of our firearms trafficking strategy to ensure that we have sufficient resources and coordination to be as effective as we can.

The Department also is fully committed to ATF's *eTrace* initiative with our Mexican counterparts. *eTrace* allows law enforcement agencies to identify trafficking trends of drug trafficking organizations and other criminal organizations funneling guns into Mexico and from the United States. *eTrace* also assists in developing investigative leads in order to stop firearms traffickers and straw purchasers before they cross the border.

Firearms Trafficking Is a Nationwide Problem that Requires a Nationwide Strategy

As Ken and others have mentioned this morning, the problem of firearms trafficking is more than a Southwest Border issue, it's a nationwide problem that requires a nationwide commitment. Firearms trafficking going on away from the border supports equally damaging

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gang violence and drug trafficking.

As you know, firearms trafficking cases take time to develop and are not always glamorous. Prosecuting individual straw purchasers may not seem in isolation to have a lot of jury appeal or to be making a dent in the trafficking problem. But that straw purchaser was not a victimless “paperwork” violation -- it was the action that provided the guns to the drug trafficker, who used them in horrific acts of violence. Pursing that seemingly unglamorous case each of you – as prosecutors and agents – help reduce violence outside your jurisdictions.

Teamwork, coordination and aggressive prosecution has a dramatic impact at home. The NIJ recently released an evaluation of programs that strive to reduce gun crimes. These Project Safe Neighborhoods programs were built on successful examples in the late 1990s like Boston’s Ceasefire, Richmond’s Project Exile, and the Strategic Approaches to Community Safety Initiative.

The research found that cities deploying a coordinated, multi-disciplinary approach of enforcement, deterrence, and prevention strategies experienced a 4.1 percent decrease in violent crime, compared with a decline of less than 1 percent elsewhere. Furthermore, in cities where federal prosecutors were most active in targeting gun crime, violent crime went down more than 13 percent, in contrast to an almost 8 percent increase where federal prosecution for firearms offenses was lower.

That’s important information for prosecutors and law enforcement officials to have. It can encourage jurisdictions to try new approaches centered on cooperation and coordination. Research shows that it works.

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Conclusion

Let me close by saying how grateful the Department is to the law enforcement officers, agents and prosecutors here today. We share your mission and will do everything in our power to support the important work you do every day for the cause of justice.

To that end, the Department is convening this summer at the National Advocacy Center the first-ever training conference on firearms trafficking across the Southwest Border. This conference will mark the first time we have brought together ATF, ICE, DEA, FBI and U.S. Attorneys to train agents and prosecutors on firearms trafficking investigations and prosecutions. I hope many of you can be there.

As vanguards in this work, you carry a heavy burden. The task is difficult, dangerous and vitally important. The Attorney General and I appreciate your efforts, and assure you that you have the full support of the Department of Justice.

Thank you.

HOCR DOJ 006613

Exhibit 3



U.S. Department of Justice

Criminal Division

Assistant Attorney General

Washington, D.C. 20530

August 19, 2009

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: Lanny A. Breuer *LAB by MR*
Assistant Attorney General

SUBJECT: Recommendations of the Firearms Trafficking Working Group

PURPOSE: To obtain the approval of the Attorney General to implement the recommendations of the Firearms Trafficking Working Group.

TIMELINE: As soon as practicable.

DISCUSSION:

Introduction

This memorandum presents the recommendations of the Firearms Trafficking Working Group (the "Working Group").

During an April 2009 meeting of the Attorney General, DHS Secretary Napolitano, and Mexican Attorney General Medina Mora in Cuernavaca, Mexico, the Attorney General and the Secretary committed to form a working group in order to study steps the United States could take to curb illegal firearms trafficking from the United States to Mexico – trafficking that is facilitating much of the violent drug cartel activity in Mexico. The Attorney General tasked the Working Group with exploring and recommending proposals to enhance the U.S. government's response to this firearms trafficking threat. The review focused on four areas: (1) investigation and interdiction; (2) training; (3) prosecution; and (4) intelligence-sharing.

The Working Group's recommendations address all four of these areas. As set forth below, the Working Group recommends the formation of a multi-agency umbrella strategy group to monitor and respond to emerging threats and challenges related to illegal firearms trafficking. Some of the proposals set forth below have already been initiated, and some have already been announced publicly; an "action item" under each proposal sets forth what approvals would be necessary if each recommendation were approved. A review of existing legislation or proposed

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new legislation was outside the scope of this review and therefore is not included in the range of available recommendations.

The Working Group was led by the Criminal Division with input from several Department of Justice (DOJ) components, including the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Federal Bureau of Investigation (FBI), the National Security Division (NSD), the Drug Enforcement Administration (DEA), the Executive Office of U.S. Attorneys (EOUSA), and the Office of Legal Policy (OLP), as well as several Department of Homeland Security (DHS) components, including U.S. Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the DHS Office of General Counsel.

Because these proposals impact both DOJ and DHS, and because we have developed these recommendations in coordination with each other, we recommend that any announcement regarding the Working Group's recommendations reflect that these are joint DOJ-DHS proposals.

Discussion and Recommendations

I. Interagency Southwest Border Firearms Trafficking Strategy Group

Issue: A substantial number of firearms recovered in connection with drug cartel-related violence in Mexico were purchased in and trafficked from the United States. Therefore, a coordinated, comprehensive multi-agency strategy is necessary to stem the illegal flow of firearms to Mexico. Emerging threats and vulnerabilities must be monitored and necessary federal resources must be leveraged to disrupt traffickers and dismantle their enterprises. ICE and ATF have established and implemented an Interagency Working Group (IWG) to direct their respective investigative and intelligence resources in a unified manner, both in Mexico and the United States, to more effectively combat gun trafficking and smuggling. In addition, on August 13, 2009, ICE and ATF entered into a letter of intent with the Procurador General de la Republica of Mexico (PGR) to improve intelligence-sharing and cooperation in the investigation of smuggling and trafficking of weapons and ammunition.

Recommendation: The Attorney General and Secretary of Homeland Security should form an interagency Southwest Border (SWB) firearms trafficking strategy group (the "Firearms Trafficking Strategy Group").

- **Mission:** To regularly report to the Attorney General and Secretary on the current USG enforcement strategy and efforts to meaningfully disrupt firearms trafficking to Mexico. It shall also suggest resource enhancements for short term initiatives, as well as improvements to the enforcement strategy.

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- Leadership: Co-chaired by Assistant Attorney General for the Criminal Division, ATF Director, DHS Assistant Secretary for ICE, and DHS Commissioner of Customs and Border Protection.
- Operation: Through monthly meetings, the Firearms Trafficking Strategy Group would monitor, through subgroups, all USG SWB firearms trafficking efforts. Subgroups would include: (1) investigation and interdiction; (2) training; (3) prosecution; (4) and intelligence-sharing. Subgroups would meet monthly, examine progress made in each area, and identify ways to enhance the USG enforcement strategy and make bi-monthly reports and recommendations to the Firearms Trafficking Strategy Group and ultimately to the Attorney General and Secretary of DHS.
- Participation: Subgroup participants would include CRM, ATF, FBI, EOUSA, USAOs, DEA, ICE, CBP, and potentially State, local, and tribal groups. Other agency participants could include the National Security Division, U.S. Marshals Service (USMS), State Department, and Mexico City U.S. Embassy personnel. ATF and ICE will take leading roles in the work of the Firearms Trafficking Strategy Group and its subgroups.
- Liaison with Mexico: Embassy Attachés from ICE and ATF already work closely on firearms trafficking issues with U.S. embassy personnel in Mexico and with representatives of the Mexican military, federal police, and Attorney General's office. ICE will increase its attaché program in Mexico by 21 additional agents, bringing the total number of ICE attachés to 54 by October 1, 2009. An individual from the Criminal Division should also be designated to participate with ATF and ICE in the liaison activities between the Firearms Trafficking Strategy Group and the U.S. embassy personnel in Mexico for purposes of implementing ongoing recommendations. Representatives from the State Department should also be invited to participate.

Action Item: The AG or DAG, in coordination with his counterpart at DHS, should issue a memorandum establishing the Firearms Trafficking Strategy Group under the leadership of the CRM AAG, ATF, ICE, and CBP.

II. Investigation and Interdiction

Issue: Aggressively investigating suspected illegal firearms trafficking, including straw and prohibited purchasers, and interdicting such firearms, are critical to deterring this criminal activity. Increased resources along the SWB and robust coordination among law enforcement partners are key components of this strategy.

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Recommendations:

- I. To enhance investigations of suspected firearms trafficking to Mexico, DOJ and DHS should increase the federal law enforcement resources of ATF, DEA, ICE, CBP, and FBI along the SWB.

- a. CRM

- Upon request, Criminal Division Gang Unit trial attorneys are prepared to work with SWB USAOs to focus on firearms trafficking prosecutions.

Action Item: CRM AAG, in consultation with the DAG, should approve this resource shift.

- b. ATF

- The ATF will enhance staff at ATF field offices along the SWB and in Mexico. ATF will staff each office with approximately 10 new and redirected agents, industry operations investigators, and support staff. This enhancement will complement the more than 100 agents, investigators, and other personnel that ATF deployed to southern Texas for 120 days to investigate leads associated with recovered firearms and will enhance ATF efforts to combat gangs and violent crime through the Violent Crime Impact Team (VCIT) program and other initiatives. This enhanced staffing will allow ATF to increase the number of Federal Firearms Licensee (FFL) inspections along the SWB and more thoroughly investigate firearms-related border violence.

Action Item: No action required. The 100 additional agents have already been the subject of a public announcement. ATF is in the process of opening new field offices along the border and hiring new personnel using the SWB supplemental appropriation.

- c. DEA

- The DEA will add 16 new agents and two new Mobile Enforcement Teams (MET) to DEA SWB field offices. MET teams respond quickly alongside local police to identify and remove violent drug offenders from the community. These additional resources will enhance DEA's ability to focus on violent crime as well as drug and gun trafficking targets along the SWB.

Action Item: No action required. The new agents and MET Teams have already been the subject of a public announcement.

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d. FBI

- The FBI will re-program existing resources along the SWB to increase the number of agents focused on violent crime, gangs and firearms offenses. The FBI is already a contributing member at the El Paso Intelligence Center (EPIC), and it has recently increased its participation there by creating its Southwest Intelligence Group (SWIG). The SWIG will be used to coordinate information and intelligence relating to the SWB and to better disrupt ongoing violent criminal activity. The SWIG head will also serve as an Associate Deputy Director of EPIC.

Action Item: The AG or DAG, in coordination with the FBI Director, should issue a memorandum announcing the re-programming of these resources, which has not yet been made public.

e. ICE

- Simultaneous with the meetings in Cuernavaca, Mexico, ICE added 110 agents to its Border Enforcement Security Task Forces (BEST) located in Mexico and along the SWB. In addition, ICE added 25 intelligence officers in these same areas to support the BESTs. In addition, ICE added over 100 agents along the SWB to focus on violent crimes and aliens and will increase to 54 its number of attachés in Mexico by October 1, 2009.

Action Item: No action required. The new agents and intelligence officers have already been the subject of a public announcement.

f. CBP

- CBP deployed an additional 100 Border Patrol agents to the SWB.

Action Item: No action required. The new agents have already been the subject of a public announcement.

2. Augment existing task force participation and interagency cooperation.

- a. ATF has redirected resources to expand its participation at ICE's SWB Border Enforcement Security Task Forces (BEST) by designating a regular participant at each to improve information flow and ensure deconfliction. BESTs bring together state and local law enforcement officials, as well as various federal law enforcement and intelligence resources, to identify, disrupt, and dismantle criminal organizations in their region of operation.

Action Item: No action required. ATF is working with ICE to establish participation on BESTs.

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- b. ICE will designate participants to established ATF Gunrunner Task Forces in order to accomplish the same goals as set forth in subparagraph (a), above.

Action Item: No action required. ICE is working with ATF to establish participation on Gunrunner Task Forces.

- c. ICE is establishing a Vetted Arms Trafficking Unit in Mexico City, which will target transnational smuggling and firearms trafficking organizations operating in Mexico. The establishment of this unit requires the thorough background investigation by ICE of individual members, including the administration by ICE of polygraph examinations. The unit will consist of approximately 10 Mexican law enforcement agents and prosecutors, partnered with ICE agents, and it should be operational within three months. ATF will participate in this vetted unit.

Action Item: No action required. ICE is already in the process of standing up the unit, and ATF has agreed to participate. The unit has already been the subject of a public announcement.

- d. CBP will assign a Border Patrol agent to each ATF Gunrunner Task Force along the SWB and to each ICE BEST.

Action Item: No action required. ATF is working with CBP to facilitate its participation on the Gunrunner Task Forces and ICE is working with CBP to facilitate its participation in the BESTs.

- e. DHS and DOJ should establish an information-sharing protocol for grant applicants and approved grantees to ensure that resources are most efficiently flowing to State, local, and tribal law enforcement, and to avoid grant duplication.

Action Item: The AG or DAG, in coordination with his counterpart at DHS, should issue a memorandum directing such coordination.

- 3. ICE and ATF will continue to engage in high-level talks with Mexican authorities to ensure that firearms seized by Mexican law enforcement and the Mexican military are made available to all U.S. law enforcement agencies. Procedures should be established to ensure that weapons seized by the Government of Mexico, and investigative material related to seizures, are made available for inspection and tracing by ATF and ICE and that the weapons themselves are available as evidence in U.S. courts when applicable. Such discussions will also include the possibility of controlled deliveries of firearms that have been seized during southbound interceptions. The Criminal Division's Office of International Affairs will also be involved in these discussions.

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 Subject: Recommendations of the Firearms Trafficking Working Group

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***Action Item:** No action required. ICE and ATF have developed working relationships with the Government of Mexico to coordinate and provide mutual support on the identification of seized firearms and related investigations. More generally, as reflected in the August 13, 2009, letter of intent with the PGR, ICE and ATF are committed to working closely with the Government of Mexico to improve coordination and cooperation in firearms investigations.*

III. Training

Issue: In order to address meaningfully the firearms trafficking challenge both domestically and in Mexico, Federal, State, local, and tribal law enforcement, along with Mexican law enforcement, must be properly trained to identify, disrupt, and dismantle firearms trafficking networks.

Recommendations:

1. DOJ and DHS should train foreign prosecutors and law enforcement.
 - a. The Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) will conduct two working-level training sessions – one on Mexico's Southern border and one on its Northern border, both scheduled for this fall. The Merida initiative will fund both training sessions. The Southern border conference will include law enforcement officers and prosecutors from Mexico and Central America while the Northern border conference will include Mexican and U.S. prosecutors and investigators. Topics will include basic firearms and explosives identification and handling; e-Trace data input; chain of custody issues; investigative interview techniques; basic investigation and prosecution of firearms cases; identifying firearms traffickers and criminal organizations that enable firearms traffickers; and border security. This course, coordinated by OPDAT, will place special emphasis on border enforcement issues, and the agenda will be developed in coordination with ATF, ICE, INL, FBI, EOUSA, CBP, and State and local officials, and the training will be conducted at least in part by representatives from those agencies.
 - Action Item:** No action required. This has not been announced but is in progress.*
 - b. DOJ (ATF, FBI, DEA, USMS, ICITAP, OPDAT) and DHS (ICE, CBP) are actively engaged in the INL-led Federal Police Force (SSP) training in Mexico. With U.S. and foreign assistance, the SSP is engaged in a robust

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12-week training program for 1,500 new recruits. The SSP specifically requested U.S. assistance in developing and implementing this training. DOJ and DHS are beginning the first round of training for these recruits, including courses in criminology, investigative techniques, interview techniques, surveillance, police intelligence, and trial testimony.

***Action Item:** No action required. This has not been announced but is in progress.*

- c. With Merida funding, OPDAT will develop and coordinate a series of training programs for Mexican prosecutors and police officers on investigating and prosecuting firearms cases. Mexico is currently working in conjunction with ICE, ATF, and others to develop protocols for seizing, identifying, and storing firearms in criminal cases. The OPDAT training will include topics such as securing firearms crime scenes, identifying and storing firearms, establishing firearms protocols in Mexico and the U.S., and implementing successful prosecution models in Mexico and the U.S. This training is designed to increase the successful prosecution of firearms cases on both sides of the border by increasing the likelihood that firearms evidence seized in Mexico will be admissible in cases in either country.

***Action Item:** No action required. This has not been announced but is in progress.*

- 2. DOJ and DHS should initiate no fewer than two training sessions that focus on training U.S. prosecutors and law enforcement, including State, local, and tribal officials.
 - a. In June 2009, ATF led a firearms prosecution training session for ATF agents and U.S. Attorneys along the SWB in Albuquerque, NM.
 - b. During the week of August 3, 2009, DOJ's Office of Legal Education (OLE), in coordination with EOUSA, ATF, CBP, and ICE, conducted firearms prosecution training for junior and mid-level AUSAs in the federal districts along the SWB, using the OLE's newly published Firearms Manual (4/09) as a guide for the course. This training, which was a hands-on trial advocacy training course for new prosecutors handling firearms cases along the SWB, taught new AUSAs (and representatives of other interested law enforcement agencies) the techniques to successfully identify, investigate, and prosecute firearms traffickers. It also included training on detecting, investigating, and prosecuting outbound smuggling cases; straw purchasers; export violations; aliens in possession of firearms cases; and other border and firearms-related offenses.

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Action Item: No action required. This event has occurred.

- c. EOUSA and ATF, in consultation with ICE and CBP, will create a briefing and training for tribal law enforcement and the Bureau of Indian Affairs (BIA) on SWB issues. This briefing/training will focus on the nature of the firearms trafficking problem specific to Indian country and the ways tribal and federal law enforcement can impact the southbound flow of firearms in this region. Tribal leaders and law enforcement should be consulted in developing the agenda for this training.

Action Item: The AG or DAG should direct EOUSA to partner with ATF, ICE, and CBP to develop and initiate this training.

- 3. DOJ should conduct joint training for U.S. and foreign prosecutors and law enforcement.
 - a. As indicated above, during the week of August 3, 2009, OLE hosted a training course at the National Advocacy Center (NAC) for U.S. and Mexican federal prosecutors to enhance their ability to successfully prosecute firearms offenses within their respective jurisdictions. The course was sponsored by Project Safe Neighborhoods (PSN) and OLE. This same training should also be brought to SWB districts to maximize participation.

Action Item: No action required. The first NAC training has occurred and it will reoccur throughout the year. The AG or DAG should consider directing that the training be expanded to SWB districts.

IV. Prosecution

Issue: While each USAO has a unique set of law enforcement challenges and each may need to employ different techniques to address firearms trafficking, the Department must establish a coordinated firearms trafficking prosecution strategy. Equally important is the need for U.S. and Mexican law enforcement officials to understand each country's firearms laws and to establish a clear protocol for collecting, analyzing, and disseminating evidence that would be admissible in cases brought in either country.

Recommendations:

- 1. Given the nexus of these districts to the international border where many illegally exported firearms cross into Mexico, the prosecution of firearms trafficking should be a southwest regional priority for the border districts (*SDTX, WDTX, DNM, DAZ, SDCA*). These districts should consider a range of options, including modifying their intake criteria if necessary, in order to ensure aggressive prosecution of individuals

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and organizations that illegally traffic in firearms. These districts should continue to support and encourage prosecution efforts related to firearms trafficking.

***Action Item:** The AG or DAG, in consultation with EOUSA and the AGAC, should issue a memorandum to the five USAOs along the SWB, indicating that prosecuting firearms trafficking should be a southwest regional priority.*

2. Based upon the work done in June 2009 at ATF's Firearms Trafficking Summit in Albuquerque, NM, each SWB USAO, in consultation with ATF and other law enforcement partners, should continue to review its existing strategy to target illegal firearms trafficking in its district. In doing so, each district should ensure appropriate USAO support for, and coordination with, the efforts of the BEST and Gunrunner Task Forces. In addition, each district should consider a range of other approaches based on the specific needs and challenges of the district, including whether a new task force is needed to coordinate federal, State, local, and tribal efforts. While each district's approach to this problem may necessarily differ, in order to ensure a coordinated approach to firearms trafficking, each SWB district should appoint a representative (perhaps the existing PSN Coordinator) to the Firearms Trafficking Strategy Group. Each SWB USAO, through the appointed representative, should report to the Firearms Trafficking Strategy Group within 90 days regarding the district's comprehensive, multi-agency plan for combating firearms trafficking. The Firearms Trafficking Strategy Group will ensure effective coordination between Main Justice and the field, among USAOs around the country, and among State, local, tribal, and other federal partners.

***Action Item:** The AG or DAG should include this directive in the memorandum described above.*

3. DOJ and DHS should create a working group of Mexican and U.S. prosecutors, along with representatives of ATF, FBI, DEA, and ICE, for the purpose of developing and implementing a standardized protocol for the collection and maintenance of evidence gathered in Mexico for use in U.S. and Mexican cases. This protocol will help standardize methods used to collect evidence in order to increase the likelihood that evidence gathered in Mexico and the U.S. is admissible at trial in the other country.

***Action Item:** The AG or DAG should include this directive in the memorandum establishing the Firearms Trafficking Strategy Group and note the work already being done by ATF and ICE to accomplish this task. ICE seeks to announce the creation of this working group, which would be a subgroup of the Firearms Trafficking Strategy Group, in connection with meetings in Mexico during the week of August 24, 2009.*

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4. CBP should erect explicit firearms export warnings along the Mexican-American border, and ATF should revise its Form 4473 to include a clear attestation of the firearms purchaser's knowledge that exporting a firearm without a license is a federal offense. ICE has already created and posted bilingual notifications of rewards programs it has in place for information about smuggling of contraband.

Action Item: The AG or DAG should direct the ATF Director to implement this reform. In addition, a DHS counterpart should direct CBP personnel to erect firearms export warnings.

5. The "Don't Lie for the Other Guy" public relations campaign is being actively implemented along the SWB. This program seeks to reduce illegal firearms trafficking facilitated by straw purchasers. The campaign focuses on educating licensed gun dealers in identifying persons who may be straw purchasers and publicizes that anyone caught illegally purchasing a firearm for another person can face up to 10 years in prison and a \$250,000 fine.

Action Item: The ATF Director will implement a full review of this program and determine where and how it can be expanded, and what additional resources, if any, such expansion would require.

V. Intelligence Sharing

Issue: The free flow of, and access to, information and intelligence is critical to leveraging all available resources to impact illegal firearms trafficking. Information-sharing should continually be encouraged across and within federal agencies, with our partners at the State, local and tribal level, and with our Mexican counterparts.

Recommendations:

1. On June 18, 2009, DEA and ICE entered into a Memorandum of Understanding (MOU) that memorializes both agencies' commitment to information-sharing. ICE will participate fully in the OCDETF Fusion Center (OFC) and the International Organized Crime Intelligence and Operations Center. ICE will provide investigative reports, records, and subject-indexing records from open and closed investigations, including those related to weapons. In addition, ICE will provide access to data related to all seizures of money, drugs, and firearms at EPIC. On June 30, 2009, ICE and ATF signed an MOU that sets forth mutual information-sharing responsibilities.

Action Item: No action required. ICE, DEA, and ATF have signed MOUs detailing the information-sharing agreements.

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2. By the end of December 2009, ATF should finalize distribution of a Spanish language version of e-Trace to Mexican authorities, accompanied by training sessions for all relevant Mexican law enforcement entities.

***Action Item:** No action required. ATF has developed and implemented a timeline to ensure timely delivery of the Spanish e-Trace program.*

3. DOJ and ATF should integrate Mexican firearms information into the U.S. Integrated Ballistics Identification Systems (IBIS) so that law enforcement agencies from both countries can more effectively investigate cross-border crimes. IBIS is a ballistic imaging system that is the backbone of the United States National Integrated Ballistic Information Network (NIBIN). Law enforcement agencies nationwide use ballistic imaging to establish connections between crime scenes and specific firearms used at these scenes. Currently, Mexico has 7 IBIS systems and the United States has 214 systems, with 19 of these located along the SWB. ATF is in the process of upgrading the NIBIN system to allow increased sharing of ballistics data between our countries.

***Action Item:** Additional funding is necessary to complete upgrades on the current system in order to implement this recommendation. Asset forfeiture fund money has helped to pay for upgrades along the SWB. ATF will develop and implement a timetable to integrate existing IBIS systems in Mexico with the NIBIN Program. Further, ATF will work with DOJ to identify a funding source for the required system upgrades for the remaining parts of the network in order to fully incorporate IBIS integration.*

RECOMMENDATION: The Criminal Division recommends that the above recommendations be adopted.

APPROVE: _____

Concurring Components:
ATF, DEA, FBI, ICE, DHS, EOUSA

DISAPPROVE: _____

Nonconcurring Components:
None

OTHER: _____

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Exhibit 4

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: WILLIAM J. HOOVER

Thursday, July 21, 2011

Washington, D.C.

The interview in the above matter was held in Room 2247, Rayburn
House Office Building, commencing at 10:00 a.m.

VII and that strike force was getting. And I believe, for a bit, they were overwhelmed with all the information that was flowing and coming in, and they were trying to wrap their arms around all that information.

And I don't think anybody envisioned the Jacob Chambers case, when it was initiated, I don't think they envisioned Fast and Furious and us sitting where we are sitting today.

Q In March, you called for an exit strategy.

A Yes, sir.

Q Walk me through that, will you? What specifically triggered your belief that the case had gone far enough and needed to start to wind down?

A There had been a briefing in ATF headquarters sometime in early March. The director and I were unable to attend that briefing that was held, and I asked field ops to provide a briefing to the director and I, mid to late March, on what was said in the earlier briefing. I wanted to have a handle of what was going on.

During that briefing, there was a slide that popped up about our headquarters' Intelligence Division, and it listed the straw purchasers, the amount of firearms that they had purchased, and, I believe, the value of money that would have been placed on each one of those firearms. And I was concerned about the top echelon of that chart and the number of firearms that they had purchased and the fact that we had not stepped to them.

And I felt like -- I felt like, in my experience, that we should perfect that case and perfect it as quickly as possible. I knew that

not -- we may assist in drafting indictments, but that's all. Once it gets to that point, then it's in the control of the U.S. Attorney's Office for ultimately bringing that indictment to the grand jury and getting that rolling toward prosecution.

Q Did you ever put any pressure on the U.S. Attorney's Office or Department of Justice to get this going?

A We had conversations with -- I had field ops have conversations with Bill Newell to get to the U.S. Attorney's Office to imply the importance of this. There were -- I'm trying to think -- there were conversations -- we had conversations with Ed Siskel, I had conversations with Ed, speaking to the possible delay of the indictment. I do not recall that I ever called the Phoenix U.S. Attorney's Office directly.

[REDACTED]
[REDACTED]
[12:05 p.m.]

EXAMINATION

BY MR. LINDSAY:

Q Ed Siskel was the associate deputy attorney general handling ATF matters?

A Yes.

Q Did he take any action?

A I don't recall right now.

Q What did you tell him?

A I just told him that we were hoping to have this case indicted much more quickly than it is being indicted. The information we were getting back through field ops was that it's the normal process through the indictment stage, and that they needed this to be able to run, or draft the indictments on 20 individuals, and we were obviously concerned about the time it was taking.

Q Did you ask Ed Siskel to take action within the Department of Justice to expedite this?

A No.

Q Put command pressure down that chain?

A I don't recall asking Ed specifically to do that, no.

Q So you were --

A Just gave him my concerns.

Q You were providing almost an excuse for the delay but not

[1:02 p.m.]

Mr. Castor. It's 1:02. Jason is going to ask some questions.

EXAMINATION

BY MR. FOSTER:

Q Do you have Exhibit 2? Can you take a look at that again? This is the October 2009 draft cartel strategy that was sent from the deputy attorney general's office and then eventually to a couple of people through Ray Rowley and then eventually through Mr. Newell. So this strategy was put on paper in October of -- October 27, 2009.

Did you have any discussions with anyone in the Justice Department in the weeks and months leading up to this time frame about the preparation of this document?

A I'm confident I know I did. I'm trying to remember who exactly I had those conversations with. I'm not sure I can recall everybody I maybe talked to about this. We had some --

Q Who can you recall?

A I believe Jason Weinstein, Ed Siskel.

Q And what can you recall about your conversations with Mr. Weinstein?

A Just talking about the -- you know, ATF was charged with putting together the firearms trafficking piece of this. Just talking about --

Q So page 7, for example, the attacking the southbound flow of firearms, that would have been prepared by someone at ATF?

A Yes. We would have provided language to the Department and obviously the Department would have edits, and it would have been a document that would go between us and we would get edits back and forth. I don't recall exactly who originally drafted the strategy right now, or the language.

Q Section 3 on page 7, attacking the southbound flow of firearms?

A Yes.

Q You don't know who drafted that?

A I do not recall exactly who wrote it. I would have provided edits.

Q But it would be somebody within ATF, not somebody within DOJ?

A Yes.

Q It would be somebody in ATF headquarters?

A Yes. It may have been Ray Rowley. I just don't recall specifically who would have drafted that language. And then we would have provided it to the Department, obviously. They would wordsmith and make changes that they thought appropriate.

Q How long before the end of October 2009 was it when this document was in progress and drafts were going back and forth; are we talking about weeks, months?

A The best of my recollection was weeks, not months. I don't recall exactly. But I do not believe it was an extended period of time.

Q And so I believe I interrupted you. You were going to tell me what you recall about your conversations with Mr. Weinstein.

A I think we were discussing just -- or my discussions with Jason is if what we were contemplating as a draft, we were on the right track. That that would not -- you know, obviously we provided Jason with where we thought we needed to go, as I recall. And he said, now I think you're on point, and that was pretty much it.

Q So you just recall the one conversation with him about it?

A That's all that I recall right now. I probably would have had the exact same conversation with maybe Ed Siskel.

Q So this would have been after a first draft had come over from ATF to DOJ?

A No. I think it was before we actually even submitted the first draft. There was a meeting at DOJ with the DAG Ogden had, and I back chaired. The director was there. We had a meeting about this and they laid out who was going to be responsible for what. We were responsible for the chapter for firearms, or ultimately it's just one paragraph, I believe. Yes, it's one paragraph. And I just was trying to ensure that what ATF was going to provide would be responsive to their request.

Q So when was this pre-meeting where it was first discussed?

A I really don't remember. It was probably August-September time frame, if this came out October 29th. I don't recall exactly when it was. It could have been earlier than that. I don't recall exactly when that meeting was held.

Q And were there discussions about the general direction, the paragraph that you would be providing would take? Was there any

A He was present when I discussed the investigation that was ongoing.

Q When was that?

A Oh, wow. It was in 2010. I don't recall the exact date of that, that meeting. It was in the Criminal Division conference room. All the southwest border U.S. attorneys came in and different components from DOJ came in and we were talking about the southwest border and southwest border strategy. And I gave a brief overview of what ATF was doing. And one of the cases that I highlighted at a very high level would have been this case out of Phoenix.

Q Jason Weinstein was part of the briefing team that went over to the Senate. He's a Criminal Division official.

A I know Jason, yes.

Q What's his role with respect to ATF? Is he a conduit?

A He's certainly a contact for me within the Criminal Division. He has prosecuted -- he's a former AUSA out of the Baltimore office -- prosecuted numerous ATF cases, understands what we do and understands the difficulty of firearms trafficking investigations, but has probably more predominantly been involved with gang investigations in and around Baltimore.

I had -- there was -- at one point I became aware of the concern about the length of time it was taking to get the title 3 affidavits approved in OEO. I went to Jason and expressed my concern, and he said let me find out what I can do. And basically all those title 3 affidavits were then reviewed by the same individual to try to pick

up the pace, because I did not want that to be stretched out. I believe that they, because of Jason's -- he is a tremendous prosecutor, and I think they called on Jason to help explain during that briefing the difficulties we face in prosecuting those cases and why we have to do -- why it's not so easy to determine when a firearm moves from legal commerce to illegal commerce, and the challenges we face with straw purchasers and how they're -- all the things that we've discussed, the issues we have.

I believe that's why they asked Jason to brief the Senate committee on that point. And Jason had also been involved in briefings in Mexico. Jason briefed, I believe it was the bilateral conference we had in Mexico City where Jason briefed on the challenges with firearms trafficking cases and straw purchases, the same type of briefing down there.

Q And he's a deputy assistant attorney general for the Criminal Division?

A Yes, sir.

Q He's sort of the same level as Matt Axelrod but over in the Criminal Division, is that roughly about --

A Roughly, yes.

Q Can you tell us about the Castaway allegations?

A Can I borrow a phrase from you? Can we go off the record a second?

Q Okay.

[Discussion was held off the record.]

Exhibit 5

From: Newell, William D.
Sent: Tuesday, October 27, 2009 12:00 PM
To: Gillett, George T. Jr.; Cook, Nancy F.; Needlas, James R.
Subject: FW: Southwest Border Strategy Group Meeting
Attachments: cartel.strategy2.wpd
Importance: High

Please read and we will discuss. I have a conference call with HQ on this.

Bill Newell
 Bureau of ATF
 Special Agent in Charge
 Phoenix Field Division
 Office [REDACTED]

From: Rowley, Raymond G.
Sent: Tuesday, October 27, 2009 8:22 AM
To: Torres, John A.; Webb, J. Dewey; Newell, William D.; Golson Sr., Michael A.; Champlon, Robert R.
Subject: FW: Southwest Border Strategy Group Meeting
Importance: High

FYI. Not sure anyone forwarded this document to you. It is the Department's new strategy for combating Mexican drug cartels. A component of the strategy is the reduction of the flow of firearms from the U.S. to Mexico. You may want to take a look prior to our conference call. It is my belief that our enforcement strategies should be aligned with this DOJ strategy.

Thanks,

Ray

From: Kaplan, P. Sam
Sent: Monday, October 26, 2009 1:50 PM
To: Chait, Mark R.; McMahon, William G.; Kumor, Daniel J.; Stucko, Audrey M.; McDermond, James E.; O'Keefe, Kevin C.; Rowley, Raymond G.; Ford, Larry W.; Goddard, Valerie J.
Cc: Michalic, Vivian B.; Hoover, William J.
Subject: FW: Southwest Border Strategy Group Meeting

As discussed at staff. Please find attached the proposed DOJ Cartel Strategy, which will be run by the DAG's Southwest Border Strategy Group. Please let me know if you have any comments or questions.

From: Brinkley, Winnie [mailto:[REDACTED]@usdoj.gov] **On Behalf Of** Ogden, David W. (ODAG)
Sent: Friday, October 23, 2009 6:03 PM
To: Ruemmler, Kathryn (ODAG); Delery, Stuart F. (ODAG); Siskel, Edward N. (ODAG); Osuna, Juan (CIV); Torrez, Raul; Breuer, Lanny A. (CRM); Raman, Mythili (CRM); Melson, Kenneth E.; Kaplan, P. Sam; Hoover, William J.; Leonhart, Michele M. (DEA-US); Mueller, Robert S. III (FBI); Harrington, T. J. (FBI); Perkins, Kevin L. (FBI); Carlin, John (FBI); Clark, John (USMS) DIR; Fahey, Sean (USMS); Lappin, Harley G. (BOP); Dalius, William (BOP); Dodrill, D. Scott (BOP); Jarrett, Marshall (USAE0); Derden, Terry (USAE0); Nash, Stuart (ODAG); Burke, Dennis (USAAZ); Hewitt, Karen

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(USACAS); Fouratt, Greg (USANM); Johnson, Tim (USATXS) 7; Murphy, John E. (USATXW); Jones, Todd (USMS)
Cc: Blanco, Kenneth (CRM); Weinstein, Jason (CRM); Swartz, Bruce (CRM)
Subject: RE: Southwest Border Strategy Group Meeting

On behalf of DAG Ogden,
 Earlier today you received notice from Ed Siskel of the inaugural meeting of the Southwest Border Strategy Group next Monday. One of the items that will be on the agenda for that meeting is discussion, and, if possible, adoption, of the Department's Strategy for Combating the Mexican Cartels. I am attaching hereto a draft copy of the strategy. It reflects a great deal of discussion with, and contributions from, many of your components over the past several months. The DAG asks that you come prepared with any specific suggestions or recommendations you may have related to this document.

And here is the document to attach:
 <<cartel.strategy2.wpd>>

Winnie Brinkley

From: Brinkley, Winnie **On Behalf Of** Ogden, David W. (ODAG)
Sent: Thursday, October 22, 2009 6:32 PM
To: Ruemmler, Kathryn (ODAG); Delery, Stuart F. (ODAG); Siskel, Edward N. (ODAG); Osuna, Juan (CIV); Torrez, Raul; Breuer, Lanny A. (CRM); Raman, Mythili (CRM); Melson, Kenneth E. (ATF); Kaplan, P. Sam (ATF); Hoover, William J. (ATF); Leonhart, Michele M. (DEA-US); Mueller, Robert S. III (FBI); Harrington, T. J. (FBI); Perkins, Kevin L. (FBI); Carlin, John (FBI); Clark, John (USMS) DIR; Fahey, Sean (USMS); Lappin, Harley G. (BOP); Dalius, William (BOP); Dodrill, D. Scott (BOP); Jarrett, Marshall (USAEO); Derden, Terry (USAEO); Nash, Stuart (ODAG); Burke, Dennis (USAAZ); Hewitt, Karen (USACAS); Fouratt, Greg (USANM); Johnson, Tim (USATXS) 7; Murphy, John E. (USATXW); Jones, Todd (USMS)
Cc: Blanco, Kenneth (CRM); Weinstein, Jason (CRM); Swartz, Bruce (CRM)
Subject: Southwest Border Strategy Group Meeting
When: Monday, October 26, 2009 11:30 AM-12:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Main RFK Bldg., Room 4111

Call in telephone # [REDACTED] **and Pass Code #:** [REDACTED]

Briefing materials in binder – Tab #3.

Attendees: Kathryn Ruemmler, Stuart Delery, Ed Siskel, Juan Osuna, Raul Torrez, AAG Lanny Breuer/CRM, Mythili Raman/CRM

- Ken Melson, Director, ATF, Sam Kaplan, William Hoover
- Michelle Leonhart, Administrator, DEA
- Robert Mueller, Director, FBI, T.J. Harrington, Kevin Perkins, John Carlin
- John Clark, Director, USMS, Sean Fahey
- Harley Lappin, Director, BOP, William Dalius, Scott Dodrill attending on behalf of Mr. Lappin
- Marshall Jarrett, Director, EOUSA, Terry Derden
- Stuart Nash, Director, OCEDET
- Dennis Burke, U.S. Attorney, District of Arizona by telephone
- Karen Hewitt, U.S. Attorney, Southern District of California
- Greg Fouratt, U.S. Attorney, District of New Mexico
- Tim Johnson, U.S. Attorney, Southern District of Texas by telephone
- John Murphy, U.S. Attorney, Western District of Texas
- Todd Jones, Chair, Attorney General's Advisory Committee ("AGAC")

DEPARTMENT OF JUSTICE STRATEGY FOR COMBATING THE MEXICAN CARTELS

It is a priority of the Department of Justice to stem the growing violence and associated criminal activity perpetrated by the Mexican drug cartels, along the Southwest Border and throughout the nation. In order to maximize the efficacy of its limited resources, which are spread through numerous components of the Department, it is necessary that the Department deploy those resources pursuant to a single, coherent strategic plan.

An essential aspect of the DOJ plan must be ensuring a productive partnership with the government of Mexico, as well as with our state and local law enforcement counterparts. Equally important, we must avoid wasteful overlap and duplication with the activities of our other federal partners, particularly the law enforcement agencies at the Department of Homeland Security.

The following document sets forth the policy considerations that will guide the Department in this process.

The Strategy

The Department will implement its Strategy for Combating the Mexican Cartels under the supervision of the newly-created Southwest Border Strategy Group.

Operationally, the strategy will be executed through the proven mechanism of prosecutor-led, multi-agency task forces, using the Organized Crime Drug Enforcement Task Forces (OCDETF) Program as the primary coordinating platform. The Strategy's key objectives are to:

- Increase the safety and security of U.S. citizens throughout the United States by enforcing violations of federal law along the Southwest Border.
- Reduce the flow of narcotics and other contraband entering the United States.
- Reduce the flow of illegal weapons, ammunition, explosives, and currency exiting the United States and entering Mexico.
- Strengthen Mexico's operational capacities and enhance its law enforcement institutions.
- Increase bilateral cooperation between Mexico and the United States on fugitive capture and extradition activities.
- Increase intelligence and information sharing to achieve focused targeting of the most significant criminal organizations.

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- Improve case building through interagency coordination, leveraging the expertise and authority of each investigative and prosecutorial agency.
- Maximize the effectiveness of prosecution by locating, arresting, extraditing, and trying all levels, including most importantly the leadership, of these criminal organizations, and disrupting and dismantling the organizations' domestic transportation and distribution cells.

Division of Responsibilities with DHS

Addressing the Southwest Border threat has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband goods, and confronting the large criminal organizations operating simultaneously on both sides of the border.

Given its statutory mission and the resources it can bring to bear at the border, DHS clearly bears primary responsibility for the policing function. DOJ fully supports DHS in that endeavor by sharing relevant intelligence and by prosecuting the most egregious offenders DHS arrests in the course of its policing function. The Department of Justice prosecutes tens of thousands of these reactive law enforcement cases in federal court every year.

However, the root cause of the explosion of violence along the Southwest Border is the conflicts within and among a limited number of sophisticated, transnational criminal organizations. These hierarchical, Mexico-based cartels are responsible for smuggling into the United States most of our nation's illegal drug supply. While the cartels' primary business is drug trafficking, they also sponsor a panoply of other crimes that support their illegal operations. These other crimes include extortion, torture, murder, corruption of public officials, sheltering of wanted fugitives, kidnapping and human smuggling, laundering of illicit criminal proceeds through the existing financial system and through bulk cash smuggling, and the illegal acquisition, trafficking, and use of firearms and explosives.

It is in taking down these organized, multi-faceted criminal enterprises that DOJ plays the primary role and brings to bear its special expertise. DOJ's success in this endeavor assists, in turn, DHS in the performance of its policing and enforcement function, by disrupting the operations of the cartels, thereby decreasing the pressure on the border. For its part, DHS, and in particular ICE, provides invaluable assistance to the attack on these criminal organizations, by bringing to bear its unique expertise on cross-border transit of contraband.

Border policing and interdiction, and the resulting prosecutions, are key elements of the U.S. government's overall border security strategy. However, the investigation, apprehension, extradition, and prosecution of key cartel leaders and their associates, and the deprivation through forfeiture of their ill-gotten gains, is the most effective means by

which we can move past merely addressing the symptoms of our problems along the Southwest Border and attack, instead, the underlying causes.

Deployment of Resources

The Department's view – based on its decades of experience in investigating, prosecuting, and dismantling organized criminal groups, such as the Mafia, international terrorist groups, and domestic and transnational gangs – is that the best way to fight large scale criminal organizations is through intelligence-based, prosecutor-led, multi-agency task forces that blend the strengths, resources, and expertise of the complete spectrum of federal, state, local, and international investigative and prosecutorial agencies. Through their participation in such task forces, the Department's prosecutors, together with its component law enforcement agencies – DEA, ATF, FBI, and USMS – give the Department the capacity to carry out the full range of activities necessary to succeed against these organizations.

The Department has embraced a model to achieve these comprehensive goals that is proactive, in which we develop priority targets through the extensive use of intelligence. This intelligence is obtained from law enforcement sources, as well as through the careful and disciplined use of classified information from intelligence community agencies to provide unclassified leads. Sharing information, we build cases, coordinating long-term, extensive investigations to identify all the tentacles of a particular organization. Through sustained coordination of these operations, we are able to execute a coordinated enforcement action, arresting as many high-level members of the organization as possible, disrupting and dismantling the domestic transportation and distribution cells of the organization, and seizing as many of the organization's assets as possible, whether those assets be in the form of bank accounts, real property, cash, drugs, or weapons. Finally, we prosecute the leaders of the cartels and their principal facilitators, locating, arresting, and extraditing them from abroad as necessary. In this effort, we coordinate closely with our Mexican counterparts to achieve the goal: destruction or weakening of the drug cartels to the point that they no longer pose a viable threat to U.S. interests and can be dealt with by Mexican law enforcement in conjunction with a strengthened judicial system and an improved legal framework for fighting organized crime.

The principal platform for the support and oversight of these prosecutor-led, multi-agency task forces is the OCDETF Program. In most places, along the border and throughout the country, OCDETF provides an effective mechanism for law enforcement agencies from within DOJ, from elsewhere in the federal government (including DHS and Treasury), and state and local law enforcement, to combine with federal prosecutors to form a "virtual task force" for the purpose of investigating and prosecuting a particular high-value drug trafficking organization. In certain key locales, OCDETF has established actual, brick-and-mortar Co-Located Strike Forces, for the pursuit of the highest level traffickers of drugs, guns, and money. For instance, the San Diego Major Mexican Traffickers Task Force has been responsible for coordinating the U.S. government's successful efforts against the Arellano-Felix Organization. The Houston

OCDETF Strike Force has directed our most damaging blows against the Gulf Cartel. And in the first several months of its existence, the Arizona OCDETF Strike Force has been responsible for the indictment of a leader and other members of a major Mexican cartel and the seizure of over \$43 million in cartel assets.

The Department will use the OCDETF Strike Force concept to target all the organized crime activities of the drug cartels – not just those crimes directly related to the drug trade. By further leveraging and coordinating the investigative expertise and jurisdiction of law enforcement agencies outside the drug enforcement area, the Department will task the Strike Forces to disrupt and dismantle every area of the cartels' infrastructure and undermine their ability to operate successfully in any illegal activity.

On a local level, each Strike Force co-locates law enforcement resources that are supplemented by one or more on-site Assistant United States Attorneys. Retaining the current Strike Force structure, specifically the co-location and intensive and early prosecutorial involvement, ensures that the Department capitalizes upon the proven synergy of these Strike Forces to maximize the effectiveness of long-term investigations of these organizations.

In those locations where they currently exist, DOJ will make the OCDETF Co-Located Strike Forces the focal point for interagency efforts against the Mexican criminal organizations.¹ Elsewhere along the border, and throughout the nation, DOJ will seek to replicate, to the extent possible, the OCDETF Strike Force model, in particular the characteristics of interagency cooperation, information sharing, and strategic, intelligence-based targeting that have been embodied in these Strike Forces. Depending on local conditions, existing institutions, such as HIDTA task forces, Southwest Border Initiative Groups, VICIT teams, or Safe Streets Task forces may serve as the appropriate focal point for this interagency cooperation in locations that do not have OCDETF Strike Forces.

The OCDETF Strike Force is a proven law enforcement strategy with a proven history of success in combating the major drug trafficking organizations. The synergy created by co-locating the diverse expertise of federal, state, and local law enforcement agencies with prosecutors from the U.S. Attorney's Office, has had demonstrable success against major criminal organizations operating throughout the country.

Supplementing the regional operations of the Strike Forces with a comprehensive national policy and coordination body run out of the Office of the Deputy Attorney General, will give the Department a unified and comprehensive vehicle through which the United States government can disrupt the influence of the cartels. This unified and coordinated approach to law enforcement is not only the best way to use the formidable resources of the United States government, but also the most effective way to decrease the influence of these violent criminal enterprises while enhancing the public safety.

¹ OCDETF Co-Located Strike Forces are currently located in San Diego, Phoenix, El Paso, Houston (with satellites in Laredo and McAllen), Tampa, San Juan, Atlanta, New York, and Boston.

While the prosecutor-led, intelligence-driven, multi-agency task force model is a key component of the Department's Southwest Border Strategy, it will not be the only component. We must also recognize and support the important daily work performed by our investigators and prosecutors in stopping and seizing the flow of massive amounts of narcotics, firearms, and bulk cash from flowing across the border in both directions. These more reactive narcotics cases are important to the overall cartel strategy, because in the process we are seizing millions of pounds of drugs, thousands of firearms, and millions of dollars in bulk cash as they enter and exit the country. In addition, these commodity-focused cases yield significant intelligence that is then fed into the Special Operations Division (SOD), the OCDETF Fusion Center (OFC), and the El Paso Intelligence Center (EPIC) for use in supporting more proactive, intelligence-driven investigations that are designed to attack all of the cartels' diverse lines of illegal business. Therefore, the Department's Strategy for Combating the Mexican Cartels must include an assessment of the resource needs of all our components, and a plan for how they intend to achieve the stated goals of the Strategy in light of the specific cartel activity impacting their jurisdictions.

Intelligence

Law enforcement agencies must have the ability to access, link, and interpret voluminous intelligence information from as wide a community as possible. We use this shared information to identify and target the most significant organizations, so that we can achieve the greatest impact with our finite resources. We also use shared information to develop coordinated, multi-jurisdictional investigations of those high-impact targets, making sure that investigations are mutually reinforcing, without duplicating or jeopardizing other investigations targeting overlapping organizations.

Several multi-agency endeavors are particularly important to the provision of tactical intelligence and operational support in targeting the largest and most dangerous Mexican cartels.

The Attorney General's Consolidated Priority Organization Target (CPOT) List

The CPOT list of international "Most Wanted" drug kingpins will be used to help focus our critical resources on the greatest threats from the Mexican cartels. Of the 59 worldwide cartels currently on the list, 25 of them are Mexico-based.

The El Paso Intelligence Center (EPIC)

EPIC is a DEA-led multi-agency organization that provides case-specific tactical intelligence, focusing specifically on the Southwest Border. The ATF Firearms Intelligence Analysis Team is a specialized component of EPIC that serves as a central point of analysis and repository for all Southwest Border firearms-related intelligence. FBI recently created the Southwest Intelligence Group (SWIG), a clearinghouse of all FBI activities involving Mexico, and it is in the process of moving that clearinghouse to

EPIC. EPIC houses the National Seizure System, which collects and maintains data on seizures of drugs, guns, and money by law enforcement agencies throughout the nation.

The Special Operations Division (SOD)

SOD is a DEA-led multi-agency coordination center that targets the communication devices the criminal organizations' leaders use to communicate with each other. SOD actively supports multi-jurisdictional, multi-national, and multi-agency electronic surveillance investigations, coordinating overlapping investigations and ensuring that tactical and operational intelligence is shared between law enforcement agencies.

The OCDETF Fusion Center (OFC)

The OFC is a comprehensive, multi-agency data center containing drug and related financial data from DEA, ATF, FBI, ICE, CBP, IRS, USMS, EPIC, USMS, the U.S. Coast Guard, the Financial Crimes Enforcement Network, the State Department's Bureau of Consular Affairs, and other key agencies. It conducts cross-agency and cross-jurisdictional integration and analyses to create comprehensive pictures of targeted organizations and to pass usable leads through SOD to participants in the field.

Current Areas of Focus

Pursuant to the principles articulated above, DOJ is pursuing initiatives in the following areas:

1. Ramping up Establishment and Use of Vetted Units in Mexico

An important aspect of case building in Mexico involves U.S. cooperation with specially vetted Mexican law enforcement units. DOJ law enforcement agents work in an advisory capacity to develop elite vetted units of Mexican federal police officers, training them to conduct law enforcement operations that lead to the discovery and seizure of drugs, guns, explosives, money, and documentary evidence to support bilateral investigations and prosecutions. The Mexican units also arrest active members of the cartels, who may eventually become either cooperating witnesses, defendants, or both. These units are essential to our operations. In order to properly leverage and support these crucial operations, the Department must expand their number, to include more drug trafficking units, a firearms trafficking unit, a money-laundering/financial unit, and a fugitive apprehension unit.

2. Continued Focus on Attacking Cartel Finances

A particular point of emphasis in recent years has been the dismantlement of the financial infrastructure of the drug trafficking organizations. These efforts have been hampered by the fact that financial cases are complex and time-consuming, and the pool of experienced financial investigators is finite. Since the curtailment of IRS involvement

in drug investigations in 2005, ATF, DEA, FBI, and USMS have hired additional financial investigators and forfeiture specialists. OCDETF has established the Financial Investigative Contractor (FIC) Program to bring additional experienced financial investigators to bear on the largest cartels, and has buttressed the analytical and document exploitation capabilities of its Co-Located Strike Forces in San Diego, Phoenix, El Paso, Houston, and Atlanta. DEA has implemented Financial Investigation Teams (FITs) in its field divisions to target the financial assets of drug traffickers. Analysts and attorneys in the U.S. Attorney's Offices and in the Department's Asset Forfeiture and Money Laundering Section have also stepped up their efforts to assist. In addition, Southwest Region federal agencies are working with state and local law enforcement agencies on an OCDETF bulk currency initiative that targets the highest level drug cartels and their transportation routes in the Southwest. These efforts must be supported and expanded.

3. Attacking the Southbound Flow of Firearms

Addressing the flow of weapons into Mexico from the United States is also a primary focus of our efforts. ATF's intelligence has shown that the prevalence of firearms and explosives trafficking into Mexico has a direct nexus to the cartels' national domestic drug distribution network. Thus, given the national scope of this issue, merely 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. Since 2006, Project Gunrunner has been ATF's comprehensive strategy to combat firearms-related violence perpetrated by the drug cartels along the Southwest Border. Increasingly close collaboration between ATF and the efforts of the multi-agency drug task forces along the border, including, most particularly, the OCDETF co-located Strike Forces, ensures that scarce ATF resources are directed at the most important targets.

4. Increased Focus on Locating and Apprehending Fugitives



Department maintain its commitment to support and expand these international fugitive apprehension efforts.

5. Expanded Use of the Extradition Process

[REDACTED]

6. Continued Pursuit of Corrupt Public Officials Who Facilitate the Drug Trade

[REDACTED]

7. Merida

[REDACTED]



Exhibit 6

GEORGE THOMAS GILLETT

05/17/2011

1

U.S. HOUSE OF REPRESENTATIVES

HOUSE COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM

IN THE MATTER OF:

ATF'S PROJECT GUNRUNNER AND
OPERATION FAST AND FURIOUS.INTERVIEW OF GEORGE THOMAS GILLETTPhoenix, Arizona
May 17, 2011**ARIZONA REPORTING SERVICE, INC.**Court Reporting
Suite 502
2200 North Central Avenue
Phoenix, Arizona 85004-1481

Prepared for:

By: [REDACTED]
Certified Reporter
Certificate No. 50658ARIZONA REPORTING SERVICE, INC.
www.az-reporting.com[REDACTED]
Phoenix, AZ

GEORGE THOMAS GILLETT

05/17/2011

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1 this document attached outlined a conference call that
2 the DAG's office requested with all the agency heads,
3 Mr. Mueller from the FBI, Ms. Leonard from DEA,
4 Mr. Melson from ATF, and it scheduled a conference call
5 to discuss the specifics.

6 Q. And was that part of the overall Project
7 Gunrunner?

8 A. ATF's Project Gunrunner was directly affected by
9 that proposed strategy, yes, sir.

10 Q. Do you know if the U.S. Attorney's Office,
11 District of Arizona, was involved in that communication?

12 A. Yes, sir. Also requested to be included in that
13 conference call was Mr. Burke, B-u-r-k-e, who was the
14 U.S. Attorney for the District of Arizona.

15 Q. Was it your understanding that at that time DOJ
16 was looking to ATF to focus on cartels and more of an
17 organized crime level rather than straw purchasers?

18 A. Yes, sir. The content of that plan specifically
19 addressed wanting ATF not to focus on straw purchasers,
20 but to focus on cartels and larger complex conspiracy
21 type investigations.

22 Q. How did that initiative trickle down to the
23 agents in the Phoenix field office?

24 A. Well, to kind of paint the picture, there was
25 the IG reports that addressed the ineffective nature of

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1 straw purchasers. The drug enforcement for the office
2 here in Phoenix was looking to stand up an organized
3 crime drug enforcement task force strike force, OCDEF.
4 And the special agent in charge of the DEA office was
5 asking for ATF's participation in this joint
6 multi-agency strike force.

7 ATF here was not able to get any straw purchase
8 prosecutions at the time because of an interpretation of
9 the law by the U.S. Attorney's Office here in the
10 District of Arizona. So this strategy in October 2009
11 handed down by the DAG's office, actually from the
12 Phoenix perspective, was well timed and provided us with
13 direction on how to proceed in these types of firearms
14 trafficking investigations.

15 Q. And how long were you in Phoenix at this time as
16 of October '09 as the ASAC?

17 A. I arrived in early June of '08, so that would
18 have been approximately 16 months.

19 Q. And was it your experience that the prosecution
20 of straw purchasers was a challenge?

21 A. In the best terms. And the U.S. Attorney's
22 Office had issue with, in their opinion, in prosecuting
23 straw purchasers. It was the U.S. Attorney's Office's
24 position that they needed the guns for prosecutions in
25 the courtroom. And because the guns, a majority of the

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1 of this Phoenix Group 7.

2 A. Yes, sir.

3 Q. So the cover e-mail, tab 30, says, you know, can
4 you put this in briefing paper format?

5 A. Yes, sir, it does. I have it in front of me.

6 Q. Starting at the, I guess there is three e-mails
7 on the first page, I guess there is a fourth one, but
8 starting with the e-mail from you to Mr. Newell dated
9 Tuesday October 5th at 14:50 --

10 A. Yes, sir.

11 Q. -- it appears that you are forwarding this
12 briefing paper along to the special agent in charge.

13 A. Yes, sir, I am, William Newell, my boss.

14 Q. And it was prepared by Mr. Voth?

15 A. It was, yes, sir.

16 Q. And Mr. Newell responds to you, have him put it
17 in BP format, will most likely go to the DAG.

18 A. Yes, sir.

19 Q. Do you know whether that was the actual DAG, you
20 know, the deputy attorney general, or do you know if
21 that was the DAG's office?

22 A. I do not know. However, I don't know
23 specifically in this case if it was either. However, I
24 do know that Mr. Newell was personal friends with an
25 attorney in the DAG's office. I want to say his name

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1 was Jason Weinstein, if I am not mistaken, and they
2 would have regular telephone conversations because of
3 their friendship. And I do know from past experience
4 that Mr. Melson would deal with the deputy attorney
5 general directly, and not just his office.

6 Q. So it was your understanding that the director
7 was communicating one on one with the DAG?

8 A. Yes, sir.

9 Q. If you flip back a couple pages to paragraph 13
10 of that document, I am sorry, not tab 13, same tab, tab
11 30, paragraph 13.

12 A. Okay, sir, I have it in front of me.

13 Q. Paragraph 13 in the October version of this
14 briefing paper is a little bit different than the
15 paragraph 13 in the January version. The
16 January version, the one that was used, I think, at the
17 Fast and Furious presentation, said that the strategy
18 was to allow firearms to continue to take place, albeit
19 it at a slower pace.

20 A. Yes, sir.

21 Q. We can flip back to the tab if you want, but
22 this paragraph 13 doesn't have that language in it. Do
23 you know if anything changed during the course from
24 January to October?

25 A. Well, yes, sir. Let me go back to January with

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Exhibit 7

From: Newell, William D.
Sent: Tuesday, October 27, 2009 9:00 AM
To: Gillett, George T. Jr.; Cook, Nancy F.; Needles, James R.
Subject: FW: Southwest Border Strategy Group Meeting
Attachments: cartel.strategy2.wpd
Importance: High

Please read and we will discuss. I have a conference call with HQ on this.

Bill Newell
 Bureau of ATF
 Special Agent in Charge
 Phoenix Field Division
 Office - (602) [REDACTED]

From: Rowley, Raymond G.
Sent: Tuesday, October 27, 2009 8:22 AM
To: Torres, John A.; Webb, J. Dewey; Newell, William D.; Golson Sr., Michael A.; Champion, Robert R.
Subject: FW: Southwest Border Strategy Group Meeting
Importance: High

FYI. Not sure anyone forwarded this document to you. It is the Department's new strategy for combating Mexican drug cartels. A component of the strategy is the reduction of the flow of firearms from the U.S. to Mexico. You may want to take a look prior to our conference call. It is my belief that our enforcement strategies should be aligned with this DOJ strategy.

Thanks,

Ray

From: Kaplan, P. Sam
Sent: Monday, October 26, 2009 1:50 PM
To: Chait, Mark R.; McMahon, William G.; Kumor, Daniel J.; Stucko, Audrey M.; McDermond, James E.; O'Keefe, Kevin C.; Rowley, Raymond G.; Ford, Larry W.; Goddard, Valerie J.
Cc: Michalic, Vivian B.; Hoover, William J.
Subject: FW: Southwest Border Strategy Group Meeting

As discussed at staff. Please find attached the proposed DOJ Cartel Strategy, which will be run by the DAG's Southwest Border Strategy Group. Please let me know if you have any comments or questions.

From: Brinkley, Winnie [mailto:[REDACTED]@usdoj.gov] **On Behalf Of** Ogden, David W. (ODAG)
Sent: Friday, October 23, 2009 6:03 PM
To: Ruemmler, Kathryn (ODAG); Delery, Stuart F. (ODAG); Siskel, Edward N. (ODAG); Osuna, Juan (CIV); Torrez, Raul; Breuer, Lanny A. (CRM); Raman, Mythili (CRM); Melson, Kenneth E.; Kaplan, P. Sam; Hoover, William J.; Leonhart, Michele M. (DEA-US); Mueller, Robert S. III (FBI); Harrington, T. J. (FBI); Perkins, Kevin L. (FBI); Carlin, John (FBI); Clark, John (USMS) DIR; Fahey, Sean (USMS); Lappin, Harley G. (BOP); Dalius, William (BOP); Dodrill, D. Scott (BOP); Jarrett, Marshall (USAE0); Derden, Terry (USAE0); Nash, Stuart (ODAG); Burke, Dennis (USAAZ); Hewitt, Karen (USACAS); Fouratt, Greg (USANM); Johnson, Tim (USATXS) 7; Murphy, John E. (USATXW); Jones, Todd (USMS)

Cc: Blanco, Kenneth (CRM); Weinstein, Jason (CRM); Swartz, Bruce (CRM)
Subject: RE: Southwest Border Strategy Group Meeting

On behalf of DAG Ogden,

Earlier today you received notice from Ed Siskel of the inaugural meeting of the Southwest Border Strategy Group next Monday. One of the items that will be on the agenda for that meeting is discussion, and, if possible, adoption, of the Department's Strategy for Combating the Mexican Cartels. I am attaching hereto a draft copy of the strategy. It reflects a great deal of discussion with, and contributions from, many of your components over the past several months. The DAG asks that you come prepared with any specific suggestions or recommendations you may have related to this document.

And here is the document to attach:

<<cartel.strategy2.wpd>>

Winnie Brinkley

From: Brinkley, Winnie **On Behalf Of** Ogden, David W. (ODAG)

Sent: Thursday, October 22, 2009 6:32 PM

To: Ruemmler, Kathryn (ODAG); Delery, Stuart F. (ODAG); Siskel, Edward N. (ODAG); Osuna, Juan (CIV); Torrez, Raul; Breuer, Lanny A. (CRM); Raman, Mythili (CRM); Melson, Kenneth E. (ATF); Kaplan, P. Sam (ATF); Hoover, William J. (ATF); Leonhart, Michele M. (DEA-US); Mueller, Robert S. III (FBI); Harrington, T. J. (FBI); Perkins, Kevin L. (FBI); Carlin, John (FBI); Clark, John (USMS) DIR; Fahey, Sean (USMS); Lappin, Harley G. (BOP); Dalius, William (BOP); Dodrill, D. Scott (BOP); Jarrett, Marshall (USAE0); Derden, Terry (USAE0); Nash, Stuart (ODAG); Burke, Dennis (USAAZ); Hewitt, Karen (USACAS); Fouratt, Greg (USANM); Johnson, Tim (USATXS) 7; Murphy, John E. (USATXW); Jones, Todd (USMS)

Cc: Blanco, Kenneth (CRM); Weinstein, Jason (CRM); Swartz, Bruce (CRM)

Subject: Southwest Border Strategy Group Meeting

When: Monday, October 26, 2009 11:30 AM-12:30 PM (GMT-05:00) Eastern Time (US & Canada).

Where: Main RFK Bldg., Room 4111

Call in telephone #: (202) [REDACTED] and Pass Code #: 8900

Briefing materials in binder -- Tab #3.

Attendees: Kathryn Ruemmler, Stuart Delery, Ed Siskel, Juan Osuna, Raul Torrez, AAG Lanny Breuer/CRM, Mythili Raman/CRM

- Ken Melson, Director, ATF, Sam Kaplan, William Hoover
- Michelle Leonhart, Administrator, DEA
- Robert Mueller, Director, FBI, T.J. Harrington, Kevin Perkins, John Carlin
- John Clark, Director, USMS, Sean Fahey
- Harley Lappin, Director, BOP, William Dalius, Scott Dodrill attending on behalf of Mr. Lappin
- Marshall Jarrett, Director, EOUSA, Terry Derden
- Stuart Nash, Director, OCDETF
- Dennis Burke, U.S. Attorney, District of Arizona by telephone
- Karen Hewitt, U.S. Attorney, Southern District of California
- Greg Fouratt, U.S. Attorney, District of New Mexico
- Tim Johnson, U.S. Attorney, Southern District of Texas by telephone
- John Murphy, U.S. Attorney, Western District of Texas
- Todd Jones, Chair, Attorney General's Advisory Committee ("AGAC")

DEPARTMENT OF JUSTICE STRATEGY FOR COMBATING THE MEXICAN
CARTELS

It is a priority of the Department of Justice to stem the growing violence and associated criminal activity perpetrated by the Mexican drug cartels, along the Southwest Border and throughout the nation. In order to maximize the efficacy of its limited resources, which are spread through numerous components of the Department, it is necessary that the Department deploy those resources pursuant to a single, coherent strategic plan.

An essential aspect of the DOJ plan must be ensuring a productive partnership with the government of Mexico, as well as with our state and local law enforcement counterparts. Equally important, we must avoid wasteful overlap and duplication with the activities of our other federal partners, particularly the law enforcement agencies at the Department of Homeland Security.

The following document sets forth the policy considerations that will guide the Department in this process.

The Strategy

The Department will implement its Strategy for Combating the Mexican Cartels under the supervision of the newly-created Southwest Border Strategy Group.

Operationally, the strategy will be executed through the proven mechanism of prosecutor-led, multi-agency task forces, using the Organized Crime Drug Enforcement Task Forces (OCDETF) Program as the primary coordinating platform. The Strategy's key objectives are to:

- Increase the safety and security of U.S. citizens throughout the United States by enforcing violations of federal law along the Southwest Border.
- Reduce the flow of narcotics and other contraband entering the United States.
- Reduce the flow of illegal weapons, ammunition, explosives, and currency exiting the United States and entering Mexico.
- Strengthen Mexico's operational capacities and enhance its law enforcement institutions.
- Increase bilateral cooperation between Mexico and the United States on fugitive capture and extradition activities.

- Increase intelligence and information sharing to achieve focused targeting of the most significant criminal organizations.
- Improve case building through interagency coordination, leveraging the expertise and authority of each investigative and prosecutorial agency.
- Maximize the effectiveness of prosecution by locating, arresting, extraditing, and trying all levels, including most importantly the leadership, of these criminal organizations, and disrupting and dismantling the organizations' domestic transportation and distribution cells.

Division of Responsibilities with DHS

Addressing the Southwest Border threat has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband goods, and confronting the large criminal organizations operating simultaneously on both sides of the border.

Given its statutory mission and the resources it can bring to bear at the border, DHS clearly bears primary responsibility for the policing function. DOJ fully supports DHS in that endeavor by sharing relevant intelligence and by prosecuting the most egregious offenders DHS arrests in the course of its policing function. The Department of Justice prosecutes tens of thousands of these reactive law enforcement cases in federal court every year.

However, the root cause of the explosion of violence along the Southwest Border is the conflicts within and among a limited number of sophisticated, transnational criminal organizations. These hierarchical, Mexico-based cartels are responsible for smuggling into the United States most of our nation's illegal drug supply. While the cartels' primary business is drug trafficking, they also sponsor a panoply of other crimes that support their illegal operations. These other crimes include extortion, torture, murder, corruption of public officials, sheltering of wanted fugitives, kidnapping and human smuggling, laundering of illicit criminal proceeds through the existing financial system and through bulk cash smuggling, and the illegal acquisition, trafficking, and use of firearms and explosives.

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The Department's view – based on its decades of experience in investigating, prosecuting, and dismantling organized criminal groups, such as the Mafia, international terrorist groups, and domestic and transnational gangs – is that the best way to fight large scale criminal organizations is through intelligence-based, prosecutor-led, multi-agency task forces that blend the strengths, resources, and expertise of the complete spectrum of federal, state, local, and international investigative and prosecutorial agencies. Through their participation in such task forces, the Department's prosecutors, together with its component law enforcement agencies – DEA, ATF, FBI, and USMS – give the Department the capacity to carry out the full range of activities necessary to succeed against these organizations.

The Department has embraced a model to achieve these comprehensive goals that is proactive, in which we develop priority targets through the extensive use of intelligence. This intelligence is obtained from law enforcement sources, as well as through the careful and disciplined use of classified information from intelligence community agencies to provide unclassified leads. Sharing information, we build cases, coordinating long-term, extensive investigations to identify all the tentacles of a particular organization. Through sustained coordination of these operations, we are able to execute a coordinated enforcement action, arresting as many high-level members of the organization as possible, disrupting and dismantling the domestic transportation and distribution cells of the organization, and seizing as many of the organization's assets as possible, whether those assets be in the form of bank accounts, real property, cash, drugs, or weapons. Finally, we prosecute the leaders of the cartels and their principal facilitators, locating, arresting, and extraditing them from abroad as necessary. In this effort, we coordinate closely with our Mexican counterparts to achieve the goal: destruction or weakening of the drug cartels to the point that they no longer pose a viable threat to U.S. interests and can be dealt with by Mexican law enforcement in conjunction with a strengthened judicial system and an improved legal framework for fighting organized crime.

The principal platform for the support and oversight of these prosecutor-led, multi-agency task forces is the OCDETF Program. In most places, along the border and throughout the country, OCDETF provides an effective mechanism for law

enforcement agencies from within DOJ, from elsewhere in the federal government (including DHS and Treasury), and state and local law enforcement, to combine with federal prosecutors to form a “virtual task force” for the purpose of investigating and prosecuting a particular high-value drug trafficking organization. In certain key locales, OCDETF has established actual, brick-and-mortar Co-Located Strike Forces, for the pursuit of the highest level traffickers of drugs, guns, and money. For instance, the San Diego Major Mexican Traffickers Task Force has been responsible for coordinating the U.S. government's successful efforts against the Arellano-Felix Organization. The Houston OCDETF Strike Force has directed our most damaging blows against the Gulf Cartel. And in the first several months of its existence, the Arizona OCDETF Strike Force has been responsible for the indictment of a leader and other members of a major Mexican cartel and the seizure of over \$43 million in cartel assets.

The Department will use the OCDETF Strike Force concept to target all the organized crime activities of the drug cartels – not just those crimes directly related to the drug trade. By further leveraging and coordinating the investigative expertise and jurisdiction of law enforcement agencies outside the drug enforcement area, the Department will task the Strike Forces to disrupt and dismantle every area of the cartels’ infrastructure and undermine their ability to operate successfully in any illegal activity.

On a local level, each Strike Force co-locates law enforcement resources that are supplemented by one or more on-site Assistant United States Attorneys. Retaining the current Strike Force structure, specifically the co-location and intensive and early prosecutorial involvement, ensures that the Department capitalizes upon the proven synergy of these Strike Forces to maximize the effectiveness of long-term investigations of these organizations.

In those locations where they currently exist, DOJ will make the OCDETF Co-Located Strike Forces the focal point for interagency efforts against the Mexican criminal organizations.¹ Elsewhere along the border, and throughout the nation, DOJ will seek to replicate, to the extent possible, the OCDETF Strike Force model, in particular the characteristics of interagency cooperation, information sharing, and strategic, intelligence-based targeting that have been embodied in these Strike Forces. Depending on local conditions, existing institutions, such as HIDTA task forces, Southwest Border Initiative Groups, VICIT teams, or Safe Streets Task forces may serve as the appropriate focal point for this interagency cooperation in locations that do not have OCDETF Strike Forces.

The OCDETF Strike Force is a proven law enforcement strategy with a proven history of success in combating the major drug trafficking organizations. The synergy

¹ OCDETF Co-Located Strike Forces are currently located in San Diego, Phoenix, El Paso, Houston (with satellites in Laredo and McAllen), Tampa, San Juan, Atlanta, New York, and Boston.

created by co-locating the diverse expertise of federal, state, and local law enforcement agencies with prosecutors from the U.S. Attorney's Office, has had demonstrable success against major criminal organizations operating throughout the country.

Supplementing the regional operations of the Strike Forces with a comprehensive national policy and coordination body run out of the Office of the Deputy Attorney General, will give the Department a unified and comprehensive vehicle through which the United States government can disrupt the influence of the cartels. This unified and coordinated approach to law enforcement is not only the best way to use the formidable resources of the United States government, but also the most effective way to decrease the influence of these violent criminal enterprises while enhancing the public safety.

While the prosecutor-led, intelligence-driven, multi-agency task force model is a key component of the Department's Southwest Border Strategy, it will not be the only component. We must also recognize and support the important daily work performed by our investigators and prosecutors in stopping and seizing the flow of massive amounts of narcotics, firearms, and bulk cash from flowing across the border in both directions. These more reactive narcotics cases are important to the overall cartel strategy, because in the process we are seizing millions of pounds of drugs, thousands of firearms, and millions of dollars in bulk cash as they enter and exit the country. In addition, these commodity-focused cases yield significant intelligence that is then fed into the Special Operations Division (SOD), the OCDETF Fusion Center (OFC), and the El Paso Intelligence Center (EPIC) for use in supporting more proactive, intelligence-driven investigations that are designed to attack all of the cartels' diverse lines of illegal business. Therefore, the Department's Strategy for Combating the Mexican Cartels must include an assessment of the resource needs of all our components, and a plan for how they intend to achieve the stated goals of the Strategy in light of the specific cartel activity impacting their jurisdictions.

Intelligence

Law enforcement agencies must have the ability to access, link, and interpret voluminous intelligence information from as wide a community as possible. We use this shared information to identify and target the most significant organizations, so that we can achieve the greatest impact with our finite resources. We also use shared information to develop coordinated, multi-jurisdictional investigations of those high-impact targets, making sure that investigations are mutually reinforcing, without duplicating or jeopardizing other investigations targeting overlapping organizations.

Several multi-agency endeavors are particularly important to the provision of tactical intelligence and operational support in targeting the largest and most dangerous Mexican cartels.

The Attorney General's Consolidated Priority Organization Target (CPOT) List

The CPOT list of international "Most Wanted" drug kingpins will be used to help focus our critical resources on the greatest threats from the Mexican cartels. Of the 59 worldwide cartels currently on the list, 25 of them are Mexico-based.

The El Paso Intelligence Center (EPIC)

EPIC is a DEA-led multi-agency organization that provides case-specific tactical intelligence, focusing specifically on the Southwest Border. The ATF Firearms Intelligence Analysis Team is a specialized component of EPIC that serves as a central point of analysis and repository for all Southwest Border firearms-related intelligence. FBI recently created the Southwest Intelligence Group (SWIG), a clearinghouse of all FBI activities involving Mexico, and it is in the process of moving that clearinghouse to EPIC. EPIC houses the National Seizure System, which collects and maintains data on seizures of drugs, guns, and money by law enforcement agencies throughout the nation.

The Special Operations Division (SOD)

SOD is a DEA-led multi-agency coordination center that targets the communication devices the criminal organizations' leaders use to communicate with each other. SOD actively supports multi-jurisdictional, multi-national, and multi-agency electronic surveillance investigations, coordinating overlapping investigations and ensuring that tactical and operational intelligence is shared between law enforcement agencies.

The OCDETF Fusion Center (OFC)

The OFC is a comprehensive, multi-agency data center containing drug and related financial data from DEA, ATF, FBI, ICE, CBP, IRS, USMS, EPIC, USMS, the U.S. Coast Guard, the Financial Crimes Enforcement Network, the State Department's Bureau of Consular Affairs, and other key agencies. It conducts cross-agency and cross-jurisdictional integration and analyses to create comprehensive pictures of targeted organizations and to pass usable leads through SOD to participants in the field.

Current Areas of Focus

Pursuant to the principles articulated above, DOJ is pursuing initiatives in the following areas:

1. Ramping up Establishment and Use of Vetted Units in Mexico

An important aspect of case building in Mexico involves U.S. cooperation with specially vetted Mexican law enforcement units. DOJ law enforcement agents work in an advisory capacity to develop elite vetted units of Mexican federal police officers, training them to conduct law enforcement operations that lead to the discovery and seizure of drugs, guns, explosives, money, and documentary evidence to support bilateral investigations and prosecutions. The Mexican units also arrest active members of the cartels, who may eventually become either cooperating witnesses, defendants, or both. These units are essential to our operations. In order to properly leverage and support these crucial operations, the Department must expand their number, to include more drug trafficking units, a firearms trafficking unit, a money-laundering/financial unit, and a fugitive apprehension unit.

2. Continued Focus on Attacking Cartel Finances

A particular point of emphasis in recent years has been the dismantlement of the financial infrastructure of the drug trafficking organizations. These efforts have been hampered by the fact that financial cases are complex and time-consuming, and the pool of experienced financial investigators is finite. Since the curtailment of IRS involvement in drug investigations in 2005, ATF, DEA, FBI, and USMS have hired additional financial investigators and forfeiture specialists. OCDETF has established the Financial Investigative Contractor (FIC) Program to bring additional experienced financial investigators to bear on the largest cartels, and has buttressed the analytical and document exploitation capabilities of its Co-Located Strike Forces in San Diego, Phoenix, El Paso, Houston, and Atlanta. DEA has implemented Financial Investigation Teams (FITs) in its field divisions to target the financial assets of drug traffickers. Analysts and attorneys in the U.S. Attorney's Offices and in the Department's Asset Forfeiture and Money Laundering Section have also stepped up their efforts to assist. In addition, Southwest Region federal agencies are working with state and local law enforcement agencies on an OCDETF bulk currency initiative that targets the highest level drug cartels and their transportation routes in the Southwest. These efforts must be supported and expanded.

3. Attacking the Southbound Flow of Firearms

Addressing the flow of weapons into Mexico from the United States is also a primary focus of our efforts. ATF's intelligence has shown that the prevalence of firearms and explosives trafficking into Mexico has a direct nexus to the cartels' national domestic drug distribution network. Thus, given the national scope of this issue, merely 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. Since 2006, Project Gunrunner has been ATF's comprehensive strategy to combat firearms-related violence perpetrated by the drug cartels along the Southwest Border. Increasingly close collaboration between ATF and the efforts of the multi-agency drug task forces along the border, including, most particularly,

the OCDETF co-located Strike Forces, ensures that scarce ATF resources are directed at the most important targets.

4. Increased Focus on Locating and Apprehending Fugitives

Similarly, investigating and indicting traffickers will not dismantle the cartels unless the targets are actually located, arrested, and brought to justice. Even when charged in U.S. courts, cartel fugitives will continue their illegal operations while taking refuge outside our borders, primarily in Mexico or Colombia. With virtually limitless resources at their command, they are able to deploy the most technically advanced equipment to avoid detection and further their criminal enterprises. Thus, an important component of the overall Strategy is the location, apprehension and extradition of fugitives. The USMS is the U.S. government's primary agency for apprehending fugitives. Through its regional fugitive task forces, district-based violent offender task forces, and Technical Operations Group, the USMS works with state and local police agencies on both sides of the border to locate and arrest offenders who have committed drug crimes or drug-related crimes of violence in the United States and subsequently fled abroad, as well as those who have been charged in the United States but remain resident in other countries. These units, particularly when co-located within the OCDETF Strike Forces or similar multi-agency institutions, place a high priority on apprehending cartel-related fugitives, both domestically and internationally. It is critical that the Department maintain its commitment to support and expand these international fugitive apprehension efforts.

5. Expanded Use of the Extradition Process

During the past three years, Mexico has extradited fugitives to the United States in unprecedented numbers. Many were significant cartel leaders, including leaders of the notorious Tijuana and Gulf Cartels. To build on these successes, and to handle more effectively the growing number of cases involving extraditions and securing foreign evidence from Mexico in cartel-level drug cases, the Department is establishing a new, dedicated Mexican OCDETF unit in the Criminal Division's Office of International Affairs (OIA). We anticipate that this unit will work proactively with, among others, the U.S. Attorney's Offices and the USMS, to prioritize fugitives and defendants in Mexico, ensuring that the time-consuming and resource-intensive extradition process is brought to bear against the most significant cartel leaders.

6. Continued Pursuit of Corrupt Public Officials Who Facilitate the Drug Trade

NDIC's *2009 National Drug Threat Assessment* estimates that Mexican and Colombian cartels generate, remove, and launder between \$18 billion and \$39 billion in wholesale drug proceeds annually. With access to such vast sums of money, it is not surprising that the cartels are able to facilitate their illegal objectives through intimidation, extortion, and corruption of public officials and law enforcement officers on both sides of the border. The FBI's expertise in complex, sensitive public corruption investigations is a key component of the Department's overall anti-cartel Strategy. Using intelligence from the OFC, the SWIG, and FBI's own comprehensive intelligence networks, its agents work with experienced U.S. prosecutors, as well as their foreign counterparts, to root out public corruption that undermines our nation's defenses and the rule of law along the Southwest Border. It is imperative that the Department's Strategy support these efforts to vigorously investigate and prosecute corruption, and to seek substantial prison terms for persons convicted of these crimes. Aggressive and effective prosecutions, followed by long sentences, send a clear message that these crimes will not be tolerated and that those engaging in them do so at their peril.

7. Merida

It is crucial to this Strategy that the Department continue its role under the Merida Initiative in working with our Mexican counterparts to enhance and strengthen Mexico's operational capacities to effectively combat the power of the cartels. This involves a broad range of capacity building and rule of law issues, including such topics as prosecutorial capacity building, evidence collection, fugitive apprehension, extradition, asset forfeiture, police professionalization, judicial security, witness protection, prison management, and corrections strategies. These efforts are crucial as a means of putting Mexico in the position to handle investigation and prosecution of these organizations as a domestic criminal matter.

This last pillar of the Strategy seeks to take full advantage of the substantial Department assets stationed in Mexico, including the Department's Prosecutorial and Rule of Law Attaches, and each law enforcement component's resources stationed throughout Mexico. These vital positions will help facilitate the Department's Mexican Cartel Strategy by delivering crucial training to our law enforcement counterparts, lending investigative expertise and intelligence support to Mexican operations, helping bolster civil institution building in Mexico, training Mexican prosecutors on best practices and trial techniques, and assisting the Mexican judicial system in promoting the rule of law. Additionally, the Department will actively participate in Embassy initiatives such as the GC Armas Policy Committee.

Exhibit 8

[REDACTED]
[REDACTED]
COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: EDWARD SISKEL

Wednesday, February 29, 2012

Washington, D.C.

The interview in the above matter was held in 2203, Rayburn House
Office Building, commencing at 9:00 a.m.

A I did not have any issues or problems with them.

Q So after 3-1/2 years, so that puts us about 2008 and a half or so, where did you go from there?

A In January of 2009, I took a job, still with the Department of Justice, but in Washington, D.C. in the Office of the Deputy Attorney General.

Q That would have been Mr. Ogden?

A He wasn't on board right when I started in January, but he joined eventually.

Q Did you know Mr. Ogden previously?

A I did.

Q Is that why you took the job?

A It was part of it, certainly.

Q And you knew Mr. Ogden from your private practice days?

A That is correct.

Q So Mr. Ogden takes over as the DAG, and then you are working directly for him?

A Yes.

Q I guess the title I read somewhere said Senior Counsel to the Deputy Attorney General, Office of the Deputy Attorney General. Can you describe to us what a senior counsel to the DAG does?

A Well, that was the position that I held when I first joined the Office of the Deputy Attorney General, and as a senior counsel, I worked with the Deputy Attorney General and an Associate Deputy Attorney General in the office on a variety of policy issues related

to criminal justice policy across a number of law enforcement agencies and criminal litigating components.

Q Okay. And so the associate DAG would have been somebody like Mr. Reich?

Mr. Reich. Much better than Mr. Reich.

BY MR. KERNER:

Q But the same position, correct?

A Yes, had the same title.

Q Who was that actually?

A At that time it was Neil McBride. There were other Associate Deputy Attorneys General that I worked with on occasion, but primarily with Neil McBride.

Q So did you remain a senior counsel throughout your 2 years there, or did you move up to some other position?

A I did not remain a senior counsel. I became an Associate Deputy Attorney General at some point during my time in the office.

Q So you became Mr. Reich.

Mr. Reich. Better than Mr. Reich.

BY MR. KERNER:

Q How many ADAGs are there? Let me rephrase that. How many ADAGs were there at that time between '09 and '11 when you left?

A Approximately eight. It might have been seven, it might have been nine. Around that.

Q So we will say, ballpark eight. Now, when did you become the ADAG? How long did it take to move from senior counsel to this

position?

A I became an Associate Deputy Attorney General in approximately mid-October of 2009.

Q Got it. And Mr. Ogden was obviously there already at that point?

A Yes.

Q Now, Mr. Ogden left roughly around January of '10 or so?

A I think it might have been into February of '10, but it was definitely into 2010.

Q Okay. So roughly the end of January, early February, Mr. Ogden leaves and Mr. Grindler is the acting DAG, correct?

A That is correct.

Q Did your position change in any way as a result of this changeover?

A Which changeover?

Q Mr. Ogden leaving and Mr. Grindler taking over the position, you had had both a previous relationship with Mr. Ogden and you were working closely with him as the senior counsel and then ADAG. So I was asking when Mr. Grindler took over, did your role vis-a-vis the Deputy Attorney General, did it change in any way?

A No, not that I am aware of.

Q Okay. When Mr. Grindler came in, did you shuffle any of the portfolios, any of the assignments, anything like that?

A There was a certain amount of shifting portfolios. I don't remember if that happened right away or if it took a little bit of time

information flow was in both directions.

Q Would you say it was more from you to him or from him to you?

A Well, this is how I would describe it. I don't know that I would characterize it as more one way or the other, but certainly given the many issues that were on the Deputy Attorney General's plate at any given time, that it was likely more often that I would be bringing something to his attention.

Q Did you bring to Mr., I guess, Ogden, and then later, obviously Mr. Grindler's attention any issues regarding Fast and Furious? Any problems, any concerns?

A No, not that I recall. And to be clear, during the time that I was in the Department of Justice, I was not aware of any of the inappropriate tactics that have been publicly reported related to Fast and Furious.

Q When did you first learn of Fast and Furious or the Jacob Chambers case or that big case down in Phoenix? In other words, I am not talking about the title, but the actual case itself. When did you first find out about it as part of your duties?

A So I don't recall the specific moment when I learned of it. I have a general sense that it was in the spring of 2010.

Q Do you remember the circumstances of how you learned about it?

A I don't.

Q Okay. So when you say you have a sense of spring 2010, what gives you that sense? Like what makes you think that that is when it

occurred?

A In trying to recall when I would have first heard of it, I have a general sense that it was in that time frame, but I don't remember what the context was.

Q Did you attend a briefing on March 12th that was with Mr. Grindler as well where there was a PowerPoint conducted on Fast and Furious? Do you remember that briefing?

A So I don't remember the briefing. I have since, in preparation for today, seen notes, handwritten notes of mine that indicate that I was at that briefing, so I am not suggesting that I wasn't. But I don't remember the briefing.

Q I will mark a document which was part of the packet we sent over yesterday, several pages, starting with the bates number of 002819. I will mark this and distribute it as Exhibit 1. Take a brief look at that.

Mr. Reich. Henry, just to be clear, I don't think this is what we produced yesterday.

[Siskel Exhibit No. 1

was marked for identification.]

BY MR. KERNER:

Q It is not. This has been previously produced. It has some handwriting on it that has been identified by Mr. Grindler as being his. Have you seen this document before?

A In preparation for this meeting today, when this document was shown to me and we realized that it had handwritten notes on it,

one of the agencies you are responsible for. And yet when this briefing occurs, you are telling us today you have no recollection of any of this. Am I correct in my assertion here or my understanding of what you just said?

A Well, again, there are a number of sort of premises in your question that lead up to your question that I disagree with and would not characterize that way.

Mr. Castor. Which ones?

Mr. Siskel. So you indicated that this was the agency that I was responsible for, and I would disagree with that characterization. There are a number of assumptions in your question about what this PowerPoint indicates, and I am happy to go through and talk about them, but I think I wouldn't characterize it in the way that you have characterized it.

BY MR. KERNER:

Q Okay. But so far you haven't said anything that was wrong. In other words, was ATF not one of your components?

A ATF was one of the components within my portfolio, but that is not what you said in your question to me. You also indicated that there were seizures in Mexico. From looking at this, and I assume you are referring to the map part of this. First of all it doesn't indicate to me that this is seizures, and even if it does, there are some that show places within the United States. So I am trying to answer your question. But there was a lot of sort of aspects built into it that I would not characterize that way.

Q Okay. I am going to keep the characterizations to a minimum. So why don't you go to page 2, please, page 2 of Exhibit 1. If you notice under Uriel Patino, 313 guns; Sean Steward, 241 guns; Joshua Moore, 116 guns. Do you see that?

A I do.

Q When you are hearing about Fast and Furious presumably for the first time, or at least you haven't told us you heard about Fast and Furious prior to this, did the fact that a man named Uriel Patino is purchasing 313 firearms raise any caution flags in your mind?

A So I don't remember the briefing and I don't remember this PowerPoint presentation, but if you are asking me does the information here that someone purchased 313 firearms raise concerns, certainly the issue of firearms trafficking is a concern. But there is nothing on this PowerPoint slide that you are asking me about that indicates when these firearms were purchased, what the circumstances were under which they were purchased or what tactics were used in the investigation.

Q Outstanding questions, and I am sure you raised all those questions with the briefers after the meeting, did you not?

A Again, I don't remember the briefing and I don't remember the slide. What I am trying to answer is your question about whether that figure alone raises concerns, and my response was that that figure alone doesn't because it is not clear whether the purchases happened historically and have been linked to this investigation through historical trace data, for example.

Q Correct. Based on these excellent questions you just

raised, my natural follow-up question is, why didn't you ask a single one of those of anybody following this briefing?

A Well, I don't remember the briefing, I don't remember what questions were asked during it. So what I have tried to do is, to answer your question, based on what, as I sit here today, this information indicates to me.

Q Mr. Grindler told us that he had one person specifically assigned to the ATF portfolio, and by name he mentioned you. If ATF is your responsibility, as Mr. Grindler told us it was, wouldn't you agree that not asking any questions about why there is 1,000 firearms that are collected, why they are giving this big briefing, why they have spent over half a million dollars on these firearms and why there are all these seizures in Mexico, and by the way, there are some handwritten notes which Mr. Grindler indicated came from the briefing which indicates all this was paid in cash. In other words, more sort of evidence of straw purchasing, trafficking, firearms trafficking, why didn't this -- to the extent you have no recollection, why wasn't this, in your mind, a seminal moment, an important moment in your job of overseeing ATF?

A So in your question, you describe Mr. Grindler's characterization of things. As I said earlier, I haven't seen Mr. Grindler's testimony, so I can't speak to how he was characterized things. All I can speak to is sort of what I remember, and what I have told you is that I don't remember the meeting. What I will say, though, is that ATF was working hard on investigating firearms trafficking,

and what this indicates to me is that they are investigating potential firearms trafficking and does not suggest anything about inappropriate tactics being used.

Q Okay. But that is your characterization. You are characterizing the evidence. You don't have any recollection of even thinking that at the time, do you?

A Let me be very clear. I am not characterizing what went on in the meeting because I don't recall the meeting. I am trying to answer you based on my review of this document as we sit here today.

Q Okay. And then based on your review of the document as we sit here today, do you wish you had followed up on this?

A Again, this slide that we are looking at in the PowerPoint presentation does not indicate anything to me about inappropriate tactics being used in the investigation. Had I known about the inappropriate tactics that I understand ATF was using in this investigation, then I certainly would have followed up on that. But I was not aware of that at any point during my time in the Department of Justice.

Q Okay. Now, the fact that -- of course, these documents and the PowerPoint itself isn't talking about any tactics, so given your responsibilities for ATF, do you wish today, sitting here today, that you had simply done some follow-up investigation on what the -- how do we know this, how do we get to these numbers, where do we get this evidence, et cetera. Do you wish, given your responsibilities for ATF, and given the scandal that has come, to what extent do you feel like,

Q Okay. And that was in the White House, this new job?

A That's correct.

Q After you left -- okay, so December 10 was your last day. Did you still hear -- did you still stay in touch with folks, for example, about the Terry killing, the murder, did you learn about that when it occurred, which would have been December 14, 15?

A I don't believe that I learned about that until 2011.

Q Do you recall the circumstances of how you learned about that?

A It was -- I believe it was in the context of sort of public reporting once the congressional oversight investigation started.

Q So you did not know that border agent Brian Terry was murdered until the congressional investigation?

A Yes, I believe so.

Q Okay. So let me understand that, then. So you're the ATF contact. On December 10th you leave. Four or five days -- midnight, 5 days later, Mr. Terry is killed by, you know -- and then there are weapons tied specifically to this Fast and Furious program found at the crime scene, and nobody told you this? Nobody called you? You didn't talk to anyone at ATF?

A No, not that I recall.

Q When you left on December 10, did you leave on good terms?

A Yes, I believe so.

Q So you weren't basically -- well, let me phrase it this way: Did you maintain any contact with your former colleagues after you went

to the White House?

A I maintained sort of social contact with them, and -- but I had moved on to another job.

Q Well, who took over your job when you left, do you know?

A So my understanding is that Brad Smith was dealing with the issues until they hired or detailed somebody to fill my slot.

Q And who was that?

A Well, eventually, I believe, it was Matt Axelrod. The portfolios may have changed, once he came on board, of exactly how things were divided up between the ADAGs, but I believe it was Matt Axelrod.

Q And do you know when Matt Axelrod took over, roughly?

A I have -- you know, I think it was like around February of 2011. It might have been January, it might have been end of February, but --

Q Now, Mr. Brad Smith, did you know him when you were working there?

A I did, yes.

Q Did you -- when you were leaving, did you give notice, did you give 2 weeks notice before you left?

A I think it might have been more than 2 weeks, but yes.

Q Okay. And then did Mr. Smith sit down with you to sort of get like some transfer memos, or did you indicate to him, you know, the issues you were working on?

A We did do some of that, yes.

Q Did you mention Fast and Furious to him?

A No, not that I recall.

Q So even as late as, you know, late November, early December of 2010, Fast and Furious wasn't on your mind?

A No, it wasn't. I mean -- and you have to understand that there are a number of law enforcement investigations that are going on in ATF around the country at any given time, and the -- I was not briefing him on individual investigations going on within ATF.

Q Okay, but let me ask you this: In Fast and Furious, are you aware that ATF obtained a firearms trafficking wiretap, actually a number of them? Are you aware of that?

A I have a sort of general memory that at some point someone indicated that there might be wiretaps in that case, but that was the extent of my understanding.

Q So you didn't know that at the time?

A No, no, I'm saying while I was in the Department of Justice --

Q Yes.

A -- I had a general sense that there was a wiretap involved in this investigation.

Q Doesn't the DAG's office have to sign off on wiretaps?

A No, the DAG's office does not.

Mr. Kerner. Okay. I know my time is up so we'll have to pick that up later. Thank you.

Mr. Reich. Let's do a short break, okay?

[Recess.]

EXAMINATION

BY MS. SACHSMAN GROOMS:

Q Thank you, Mr. Siskel. My name, again, is Susanne Grooms. I'm the chief counsel for the minority staff, and I'll be asking you the questions during this round.

I think you went over this, I think, quite a lot of times during the last round, but I just want to be clear. Did ATF report up to you?

A No, I wouldn't say that they reported to me. I mean, in the sense that the sort of chain of command is that they reported to the Deputy Attorney General and through the Deputy Attorney General to the Attorney General. But I did work closely with them and tried to work with them and the Deputy Attorney General to help ATF achieve its mission and through various issues.

Q And so if they -- if ATF management had an issue of concern that they wanted to raise, they could take it to you or they could take it directly to the DAG; is that correct?

A That's correct.

Q And were there instances where they took issues directly to the DAG?

A Yes. I mean, I think there were probably incidents where if they were at an event together or at a meeting together, where they might raise an issue directly with the DAG. But as I indicated before, I think more often they would raise it with me, but there were certainly opportunities for them to raise it with the DAG.

Q But when we're talking about Fast and Furious, we're talking

about an area where nobody raised any issues of concern to you at all; is that correct?

A That is correct.

Q So the entire time you were at the Department of Justice, when people discussed, to the extent that they discussed Fast and Furious with you, nobody ever told you that there was a matter that needed to be dealt with in that case; is that correct?

A Well, I don't remember much of the discussion or I don't remember the meeting that we talked about earlier, but I also don't remember anyone raising concerns or issues about Fast and Furious.

Q If someone -- the head of ATF or anyone else in ATF -- had raised to you a concern with or even the fact that they were -- there was a practice of not interdicting weapons when they had the legal authority to do so in order to build a larger case, if someone had raised that to you, would that be something that you would remember?

A I think that if someone had raised and described the types of inappropriate tactics that I understand were used in that case, and understand that from public reporting after I left the Department, if someone had raised that with me I think I would have remembered it, and it would have been something that would have raised concerns for me.

Q And what would you have done at that point?

A Well, I think I would have raised the issue to the Deputy Attorney General and with the leadership of ATF.

Q Let me just start with sort of a very big picture, just so

high-profile cases at the different agencies that you were working with, to have called up the agents in the field to ask them detailed questions about their operational tactics?

A So if I understand your question correctly, not only would I not have kind of gone around the leadership of the ATF and started talking to agents in one of their field divisions about an investigation, but I would think it's inappropriate for me to do so or it would raise some significant concerns for me to have someone from Washington getting involved in circumventing the leadership of the law enforcement agency and starting to delve into the operational details with line agents.

Q I would assume, especially in a case when nobody had raised any issue of concern with you -- to you, I mean.

A Yes.

Q How -- can you explain how involved you were in specific operations going on at specific agencies when you were in your position?

A So as I described --

Q As a DAG, sir.

A As I described earlier, my position as an Associate Deputy Attorney General was largely a policy position and one where I worked with the leadership of the law enforcement components on issues that they had that needed to be, for example, elevated to the level of the Deputy Attorney General for a decision. And that did not involve getting into the operational details of particular investigations, so --

Q And that was not only true for Fast and Furious but for, I assume, then, essentially all of the different components in all of the different investigations?

A Yes, that's accurate.

Q Now, if one of the components raised an issue with a specific investigation -- I guess here's my question: Why would it be that you would receive any information, then, about a specific investigation or a specific ongoing operation from one of the components? What would be those circumstances?

A So there were times when law enforcement components would share information about successes, so if there was a significant takedown in a case, significant seizures of narcotics, firearms, those would sometimes be reported to the DAG's office to let us know about the work that they were doing, the successes that they were achieving in carrying out the mission, and sometimes that that was tied to questions about budget issues and resources to determine whether additional resources devoted to an effort were achieving measurable success or not, and there were times where cases involved conflict between law enforcement components or certainly issues about coordination between law enforcement components that would sometimes get raised to the DAG's office.

Q But you didn't see your role as one of essentially managing the ongoing cases that were going on in any of the components; is that correct?

A The way I would describe it is that there is the leadership

of the law enforcement component who, through their organizational structure, are responsible for managing the day-to-day affairs of that law enforcement entity and investigations within that entity. That is not the role of the Deputy Attorney General's office.

Q Did Billy Hoover or anyone else at ATF tell you that in late March of 2010, Mr. Hoover asked for an exit strategy in Fast and Furious because he was concerned about the number of firearms that were involved?

A Not that I recall.

Q Do you recall ever seeing the exit strategy for the case?

A No, I don't recall seeing an exit strategy.

Q If Mr. Hoover had had serious concerns about the number of guns in Fast and Furious, would that have been something that you would have expected for him to raise with you either at the briefing or in a separate capacity?

A I mean, I would have to understand more about what his concern would have been. It's a little hard to answer that in the purely hypothetical, but if there was something that he had real concerns about related to that, then I would expect him to raise it with the director or acting director of ATF, and then possibly to me.

Q Were you aware at the time that after the ATF agents took the case to the prosecutor's office in the Phoenix U.S. attorney's office to prepare the indictments, there were significant delays that occurred at the U.S. Attorney's office?

A I don't recall hearing anything about that.

Q Do you recall whether anyone asked for you to intervene with the U.S. attorney's office to see if you could help speed up the indictments?

A Not that I recall.

Q What was your involvement in the creation of the Southwest Border Strategy Group?

A So my role was primarily to help pull together the members of the group to make sure that there was a clear agenda for the meetings that were held, to work with the members on creating -- to the extent there were sort of sub-working groups, to work on creating that and making sure folks understood what their respective roles were.

Ms. Sachsman Grooms. I'm going to mark this as Exhibit 2.

[Siskel Exhibit No. 2

was marked for identification.]

Ms. Sachsman Grooms. It's HOGD0J6265 through 6267.

Mr. Kerner. Is that the Southwest Border?

Ms. Sachsman Grooms. Yeah. It's the initial meeting set-up.

Mr. Siskel. Okay.

BY MS. SACHSMAN GROOMS:

Q So I just want to call your attention to the last page, that's 6267, to the agenda for a meeting on the Southwest Border Strategy Group, October 26, 2009. Do you ever recall -- it looks like this was sort of the kick-off meeting. I think it was like a conference call, it looks like.

A I remember generally that we had a kick-off meeting, so, yes.

Q So on the fourth point it says that David Ogden was going to explain the DOJ strategy for combating the Mexican cartels. Do you remember what he talked about during that meeting?

A I don't. I would suspect, given that there was a draft strategy document that was circulated, that he went through sort of the -- a quick rundown of it, but I don't specifically remember.

Q Did Mr. Ogden say during that meeting that it was permissible for law enforcement to watch straw purchasers purchase weapons and then regularly drop off surveillance?

A I think that's the kind of thing that I would remember, and I don't remember him saying that.

Q How about saying that it was okay, or a new strategy to not interdict weapons when law enforcement had the legal authority to do so in order to build a larger conspiracy case? Was that part of his discussion with the group?

A Again, I don't have memory of the details of the meeting, but that's the kind of thing that I would expect I would remember, and I don't remember that.

Q So, as you know, is it fair to say that those things were not part of the strategy that was being developed and spread around?

A Yes, I think that's accurate.

Mr. Foster. But not based on your affirmative memory?

Mr. Siskel. I don't have a specific memory of the meeting. I am familiar with the strategy document and would -- am confident based on that, that the description in the question is not consistent with

the strategy document.

Ms. Sachsman Grooms. Let's pull out the strategy document. I'll mark this Exhibit 3.

[Siskel Exhibit No. 3

was marked for identification.]

Ms. Sachsman Grooms. It's H0GRATF1449 through 1459. I'm sorry, the beginning of it is sort of an email chain, but the part that I want to ask you about is irrelevant. That is just the actual document.

Mr. Siskel. So, I've looked at the document in Exhibit 3, and just to be clear, the transmittal email is not one that I, at least the last few parts of the chain, I'm not on the email chain.

Ms. Sachsman Grooms. Yes.

BY MS. SACHSMAN GROOMS:

Q But have you seen the -- and I apologize for that. We just get our documents through the course that we get them, and this one happened to be from ATF, so we have the extra transmittal chain from ATF; but what I wanted to call your attention to is the actual strategy document that starts on page 1451 and appears to have been sent around on October 22, 2009. Do you remember seeing that document before?

A Yes, I'm familiar with this document. I think this is a draft of it, of the strategy.

Q A draft of what later became a final document?

A Yes.

Q And what was your involvement in the creation of this document in the strategy?

A So I don't think that I prepared the first draft of this, or even maybe the first couple of drafts, but I was involved in the revision process even before, I think, this version was circulated around.

Q The strategy includes goals to reduce the flow of narcotics and other contraband entering the United States and to reduce the flow of illegal weapons, ammunition, explosives, and currency exiting the United States and entering Mexico.

How did the strategy, and I guess those who were developing the strategy, anticipate that those goals would be accomplished?

A I think, on a big-picture level, I think what the strategy document lays out is that across a number of different areas of issues along the southwest border, we needed to be smart about the way that we went about addressing the serious problem of drug trafficking, firearms trafficking, and increased violence in Mexico, and that we should make sure that we were coordinating effectively together and using intelligence resources as effectively as possible.

Q And so that would involve things like sharing information between agencies, how you were allocating resources, that kind of thing?

A Yes.

Q If you turn to the page, its Bates stamp is 1457, and it's point 3, Attacking the Southbound Flow of Firearms. There's a piece here that has had some amount of interest from the committee before. First it explains that it's a serious problem and that U.S. guns are

entering Mexico, and it says, "Thus, given the national scope of this issue, merely 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." Do you remember where that language came from?

A I don't. It may very well have been in sort of earlier drafts, so I'm not sure who put that language in.

Q Did you understand that that language authorized forgoing the interdiction of firearms when law enforcement had the legal authority to do so, in order to build a bigger firearms trafficking case?

A No, that's not what I understand this to mean.

Q What did you understand this to mean?

A Well, what I understand this to mean is that we need to be interdicting firearms, prosecuting cases against people who are part of the trafficking networks, whether they're straw purchasers or not, and then moving up the chain to build cases against the trafficking networks and their leadership as well.

Q And was that your understanding at the time when this was being developed?

A Yes.

Q And to the extent that you know it, was that the understanding, the mutual understanding of those who were developing the strategy?

A Yeah, it's hard for me to say with certainty what is in

somebody else's mind, but I think that the language is clear that this is emphasizing to folks involved in the working group and the various components in this effort that we need to be both interdicting and building cases against the leadership of the firearms trafficking networks.

Q Let me move you just a little bit earlier in the document to Bates stamp 1452, and specifically to the last bullet point before the section heading.

A Uh-huh.

Q So that one reads, and it's in the context of the strategy's key objectives are to "maximize the effectiveness of prosecution by locating, arresting, extraditing, and trying all levels, including most importantly the leadership of these criminal organizations, and disrupting and dismantling the organizations' domestic transportation and distribution cells."

I guess my question is, Does the explanation here, where it describes the sort of prosecution of all levels, corroborate your sort of previous understanding that that would involve not only the people being identified here as "most importantly the leadership," but also other levels of the organization?

A This is consistent with the description that I just gave of the other passage that we were talking about.

Ms. Sachsman Grooms. I'm just going to mark this document Exhibit 4. I think the copying is pretty poor on this, but it's H0GRD0J4060, I believe.

time that I was in the Department.

Q So no one ever communicated that to you, either at the March briefing or on any other occasion, that they were working with a gun dealer who was providing them with contemporaneous notice of the sales to the straw buyers?

A I don't recall anyone ever telling me that while I was in the Department.

Q Do you think you would recall it if they told you that?

A I might recall it. I just don't know. I mean, the notion that Federal firearms licensees might cooperate in a criminal investigation wouldn't strike me as unusual, but I don't recall.

Q Would it strike you as unusual if the vast majority of the guns that were on that chart that were shown to you weren't historical purchases but were, rather, purchases that were made with contemporaneous notice to the ATF from a cooperating gun dealer?

A You know, based on the public reporting about the sort of inappropriate tactics that were used in this case, it does surprise me that those tactics were used. But I was not aware of any of that when I was in the Department.

Q Okay. So I just want to be clear here. You are now adding -- before when I asked you what you meant by inappropriate tactics, you said it was the failure to interdict when there was a legal authority to interdict, cutting off surveillance from straw purchasers.

Now we are talking about something slightly different and you seem

Q So no one at ATF ever explained to you what the suspect gun database is and the way that it interoperates with the tracing system to allow them to have immediate notice when a gun has been put on the front end, when the FFL gives the notice at the time of the sale that it's been bought by one of the known straw purchasers, they put it in the suspect gun database, and then when a trace is run later, it shortcuts the normal cumbersome trace process that takes many weeks and takes a long period of time, and it goes ahead and it pings the case agent who had that serial number put into the suspect gun database and gives them an immediate hit when the recovery occurs rather than the longer, more cumbersome trace process, that nobody at ATF ever explained that to you? Do you have any knowledge of that before I explained it to you just now?

A I'm fairly confident that nobody at ATF ever explained that to me.

Q Did you understand it before I explained it to you just now?

A No.

Q Okay. Do you have any reason to think that the way I characterized the suspect gun database is inaccurate, the way it works and interoperates with the tracing system?

A I don't have a basis for saying one way or the other whether it's accurate or not.

Mr. Leavitt. Can I ask one more follow-up as well?

BY MR. LEAVITT:

Q From the time, again, the date of this on March 12, 2010,

A I don't. I don't recall seeing this.

Q Either in your time at the Justice Department or since in your perusal of the public record and the news accounts, et cetera?

A I feel like that language in bullet point 13 I may have seen or read in some of the public reporting about the investigation, but I don't think I have actually looked at this document. I feel like it was just that passage quoted.

Q The quote?

A Yes.

Ms. Sachsman Grooms. I am sorry, just to clarify, during your time at the Department of Justice, did you ever receive this document, to your recollection?

Mr. Siskel. To my recollection, no, I did not.

BY MR. FOSTER:

Q Okay. Sitting here today reading the language, "Currently our strategy is to allow the transfer of firearms to continue to take place in order to further the investigation and to allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexican DTO's which are perpetrating armed violence along the southwest border. This is all in compliance with," and there is a citation to an ATF order. Sitting here today, are you familiar with the ATF order?

A No.

Q Do you recall anyone at ATF ever discussing that ATF order with you or its role in Fast and Furious in justifying the tactics used

in operation Fast and Furious?

A No, I don't recall anyone from ATF discussing that order with me in any context, and I don't recall anyone talking about the inappropriate tactics being used in this investigation.

Q Do you agree sitting here today that this bullet point is a reference to the inappropriate tactic of allowing the transfer of firearms to continue to take place in order to further the investigation and identify more co-conspirators?

Mr. Reich. He can answer the question. Do you think in fairness you should direct him to paragraph 8?

Mr. Foster. Do you want a round after me?

Mr. Reich. No, I was just asking whether you were concerned about having context so he can appropriately answer your question.

Mr. Foster. Well, let him answer with regard to bullet point 13.

Mr. Kerner. It is just lawyer 101.

Mr. Siskel. I don't really have a basis for saying one way or the other whether this is a reference to inappropriate tactics. I mean, the one thing I would note is we have talked about the additional element of having sufficient probable cause or legal basis to interdict the firearms, and this doesn't -- this paragraph 13 doesn't quite get at this, and paragraph 8 seems to --

Mr. Foster. You take coaching well. Good job.

Mr. Reich. He actually knows what the facts are, surprisingly, based on what is in this memo when you show him the whole thing.

Mr. Kerner. Very surprisingly.

Exhibit 9

RC-2

From: Shappert, Gretchen (USAEO) [mailto:RC-1]
Sent: Wednesday, July 22, 2009 3:05 PM
To: Trusty, James (CRM)
Subject: FW: Prosecutorial Assistance: SWB Gun Trafficking Cases

Jim:

See below. Does Laura have a resume that you care to pass along?

Also, I heard from Karen Hewitt, who is reviewing her office situation and will get back to me.

Many thanks,
 Gretchen

-----Original Message-----

From: Humetewa, Diane (USAAZ)
Sent: Wednesday, July 22, 2009 11:27 AM
To: Shappert, Gretchen (USAEO); Hewitt, Karen (USACAS); Fouratt, Greg (USANM)
Subject: RE: Prosecutorial Assistance: SWB Gun Trafficking Cases

Gretchen-it may be useful to send her resume. Thanks.

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----

From: Shappert, Gretchen (USAEO)
Sent: Wednesday, July 22, 2009 09:57 AM Eastern Standard Time
To: Humetewa, Diane (USAAZ); Hewitt, Karen (USACAS); Fouratt, Greg (USANM)
Cc: Trusty, James (CRM); Smith, David L. (USAEO)
Subject: Prosecutorial Assistance: SWB Gun Trafficking Cases

Diane, Karen & Greg:

Laura Gwinn, an experienced violent crime prosecutor with the Gang Unit, has expressed an interest in assisting with the prosecution of gun trafficking cases on the SWB, either as lead or co-counsel. Her schedule is somewhat flexible and she is available to begin now, with general availability through the remainder of 2009, although she does have a capital murder trial starting in January. That trial is expected to last about 10 weeks. Once the trial is over, she would be able to return to her SWB duties.

This is part of the Department's SWB gun trafficking strategy, so Laura would be prosecuting gun trafficking cases (not simply 922(g) or 924(c) cases), whether or not the case has any gang connection.

If you believe that Laura's assistance would be of benefit to your district, please give me a call and let's discuss.

Thank-you,
Gretchen

Exhibit 10

From: Gillett, George T. Jr.
To: Miskell, Robert (USAAZ)
Sent: 8/5/2009 5:58:37 PM
Subject: FW: Lingerin Prosecutions

Hello Bob –

Lynnette told me you were the only one at the breakfast last month. Sorry. I'd have been there but didn't get any notification. See you at the next one.

On another note, thanks for assisting with some of our lingering prosecutions. Kudos to you and your office. Can you please take a look at the below e-mail and let me know if we can get this moving. It may be a dead issue, but....

Thanks,

George T. Gillett

Assistant Special Agent in Charge
 ATF - Phoenix Field Division
 Office: RC-1

From: Small, James K.
Sent: Monday, August 03, 2009 3:11 PM
To: Gillett, George T. Jr.
Subject: RE: Lingerin Prosecutions

George

The only major investigation that is lingering -

UI#/Case Title	Case Agent	AUSA	Date submitted to USAO Tucson
785085-06-0051 Wide Receiver	Bayer	Tsethlikai	2/13/2008

Here is the latest that I know about Wide Receiver. AUSA and SA are the second assigned to this case. I do not know exactly when AUSA Tsethlikai came on this case. RC-3

RC-3 AUSA was also pushing back w/ moral dilemma w/ the G allowing the targets to traffic 300+ firearms to Mexico. I advised AUSA that the case was investigated within ATF Trafficking guidelines and in furtherance of attempting to identify and secure evidence on targets inside Mexico receiving the firearms for the drug cartels. The case stands on its own merit and a prosecution decision should be made.

There may be other cases but I did not get any responses from the group. I will push on the SAS to pound NF and move all open investigations along to resolution (decline / prosecute).

Call if you have any questions

Jim

From: Gillett, George T. Jr.
Sent: Tuesday, July 28, 2009 1:16 PM
To: Small, James K.; Celaya, Sigberto F.
Subject: Lingerin Prosecutions

Gentlemen –

Please compile a list of those cases that have been submitted to the USAO in Tucson, and which continue to linger. In your list, please provide the Case title, Case agent, assigned AUSA, and date accepted for prosecution. HOCR WR 005433

I will forward to the USAO for follow-up.

Thanks,

George T. Gillett

Assistant Special Agent in Charge

ATF - Phoenix Field Division

Office: 

HOCR WR 005434

Exhibit 11

RC-1

From: Trusty, James
Sent: Wednesday, August 12, 2009 5:39 PM
To: Carwile, Kevin
Subject: RE: S.W. Border Firearms Case

Maybe she can get some reading materials, talk to the agents, and then visit AZ on the backend of Mexico.

From: Carwile, Kevin
Sent: Wednesday, August 12, 2009 5:37 PM
To: Trusty, James
Subject: Re: S.W. Border Firearms Case

Yes, good news. We need to jump on this fast. Also need to determine if it can wait a month for Laura

From: Trusty, James
To: Gwinn, Laura; Carwile, Kevin
Sent: Wed Aug 12 17:32:08 2009
Subject: FW: S.W. Border Firearms Case
 Good news, potentially!

See below, but Arizona has a case of gun trafficking involving 300-500 guns heading to Mexico. Don't know if there is any gang involvement or how solid the case is. It apparently involves about 4-5 targets and has a little age to it, but that may not be reflective of any problems with the case. There was apparently a little turf war between ATF and ICE, now resolved, and the assigned AUSA just got appointed magistrate. As of today, AZ has not reassigned it within their shop. Their crim chief, Robert Miskell, talked to Gretchen and is enthusiastic about our involvement. He is at RC-1

Laura, why don't we call him together tomorrow at some point?

Kevin, weigh in if you'd rather be in the mix on calling Miskell.

Jim

From: Shappert, Gretchen (USAEO) [mailto:RC-1]
Sent: Wednesday, August 12, 2009 5:05 PM
To: Trusty, James
Subject: S.W. Border Firearms Case

Jim:

AZ has a case, Operation Wide Receiver, 300-500 guns.
 ATF, with some ICE assistance.
 Has not yet been indicted.
 They need a prosecutor.
 Give me a call at your convenience.

Gretchen C.F. Shappert
 Anti-Gang National Coordinator,
 CAGI National Gang Coordinator,
 Legal Initiatives Staff
 EOUSA

Phone: RC-1

BB: RC-1

Email: RC-1

Exhibit 12



U.S. Department of Justice

Criminal Division

Gang Unit

Washington, D.C. 20530

October 1, 2009

MEMORANDUM**TO:** Jason Weinstein, Deputy Assistant Attorney General**CC:** Kevin Carwile, Chief Gang Unit
James Trusty, Deputy Chief Gang Unit**FROM:** Laura Gwinn
Trial Attorney, Gang Unit**SUBJECT:** Operation Wide Receiver (Tucson, AZ USAO)

During the week of September 21, 2009, I travelled to Tucson, AZ to review and evaluate a firearms trafficking case which was investigated by ATF (with ICE support) as Operation Wide Receiver. This memorandum is written to provide you with an outline of the investigation and potential charges. Given the large amount of paperwork associated with the case, an in-depth review of every transaction, target, or potential charge was not possible in such a short time. It quickly became very clear, however, that Operation Wide Receiver involves two conspiracies, with one common target.

This investigation began in March of 2006 when ATF was contacted by an FFL concerning suspicious firearms transactions. It is believed the FFL had worked with ATF in the past, although details concerning prior cases were not available. The FFL primarily sells weapons at gun shows, but the transactions at issue were conducted at his house. Over the course of the subsequent months, the FFL, under the direction of ATF, sold 322¹ firearms (primarily receivers of assault weapons) to Gregory Gonzalez, Jonathan Horowitz, Ismael Betancourt, and [REDACTED]. Sometimes these persons filled out the 4473, other times they were the actual purchaser. It appeared to the FFL from conversations during the transactions and/or phone calls (some of which were consensually recorded) that these targets were working in conjunction with another party who was ordering the remaining firearms components from the internet. This was confirmed when a suspicious package from Betancourt to a person in California was opened by UPS and found to contain receivers. The store owner was not sure a violation had occurred and shipped the package, but notified ATF, which intercepted the package in San Diego. The serial numbers of the receivers corresponded to those purchased by Horowitz several weeks previously. Subsequent investigation revealed additional packages that had been

¹ The numbers of firearms sold is taken from a chart prepared by ATF agents. It is unclear whether there is any "double-counting": that is the firearm is counted for the person who paid the money as well as the person who completed the 4473. This caution also applies to the purchases in the second part of Wide Receiver, below.

HOCR WR 003391

sent to the same address from by Betancourt. Thus far, eleven of the firearms purchased by this group have been recovered in Mexico.

Gonzalez participated in two or three transactions. According to Horowitz, Gonzalez missed a deadline and was no longer trusted, therefore, Horowitz and Betancourt began dealing with the FFL. Their association with the FFL continued through approximately November 2006.

In early February 2007, Gonzalez again contacted the FFL to purchase weapons. At that time, he introduced [REDACTED]. At that time, Gonzalez completed the 4473s for several weapons on behalf of Celaya who paid for them. Several days later, Gonzalez introduced Carlos Celaya to the FFL. Over the next several months, approximately 500 pistols and assault weapons were purchased by Gonzalez, Carlos Celaya, or other associates. Most of the transactions and telephone calls associated with them were voice-recorded, and I was able to review some of the transcripts². In several transcripts Gonzalez and Celaya speak openly of their intent to send the guns to Mexico for Celaya's uncle, Jose Celaya. In one transcript there is a brief description of smuggling methods, including placing the guns in gas tanks. All of the weapons were purchased with cash, amounting to tens of thousands over the several month period. According to a chart prepared by ATF agents, 18 of these guns have been recovered: 15 in the United States and 3 in Mexico.

At some point, Celaya began to purchase the weapons himself, and he continued to purchase weapons through September 2007. He may have discontinued when one of his associates was arrested and 15 of the guns seized. Celaya also introduced other persons who began to purchase firearms. The most important of these is Israel Egurrola. I do not believe Egurrola ever purchased firearms himself, but always through Siria Valencia, since Egurrola apparently is an illegal alien. However, during one interesting purchase, he did not have sufficient cash and had to go to another location for it. He came back with approximately \$5000 in a heat-sealed baggie marked "\$5000"; the bills were all 5s, 10s, and 20s.

The agents believe that all of the money used to purchase the guns is derived from drug distribution. According to the agents, Jose Celaya, Carlos' uncle, has ties to a drug cartel headed by Nacho Paez-Soto (who was recently arrested in Mexico); Egurrola allegedly has ties to the Sinaloa cartel. I recall one transcript in which there is a reference to Nacho Paez, however, thus far, I have not seen any evidence supporting an association with drug cartels.

Some time after the agents associated the guns and money with drug cartels, ATF and ICE apparently came to an understanding that ATF would handle the firearms trafficking and ICE would continue to investigate any drug leads. It is my understanding that, since that time, there has been no sharing of information between ATF and ICE. I have spoken briefly with the ODETF-designated AUSA handling the drug investigation and provided him with the names of our potential targets.

² As a result of several months of consensually recorded phone calls with the FFL, recorded transactions, and wiretaps on four telephones, there are over a thousand pages of transcripts. At best, I was able to scan through as many as I could to ascertain whether there was any conversation about smuggling or for whom the weapons were intended. The discussion in this memo about conversations is to the best of my recollection and may not be target-specific.

This investigation presents a number of challenges to be overcome prior to indictment: simply determining whether there is sufficient evidence against each of the possible targets (and the appropriate charges) will involve a great deal of time. RC-3

RC-3. I do not believe any type of phone analysis has been undertaken; it is unclear whether any financial analysis/study of the potential targets has been done. In addition to possible firearms offenses, I am also considering whether money laundering charges would be appropriate. It is likely that if there is evidence to support such charges, it is intertwined with the ICE-led drug investigation.

The original lead investigator has been re-assigned to Albuquerque, NM. The newly assigned lead agent has met with me about the case, but he was unable to answer most questions I had about various aspects of the investigation. Although he states a willingness to assist, it is clear he believes this investigation complete and the original agent should handle significant follow-up. In fact, there are several avenues of investigation that may not have been pursued (it is unclear from the ROIs).

In summary, this investigation is likely to lead to two sets of indictments: one for the Gonzalez-Horowitz-Betencourt transactions (and possibly one or two associates), and one for the Gonzalez-Celaya-Egurrola (and several associates) transactions. I am not in a position yet to predict when indictments might be sought.

Exhibit 13

From: Higman, Chuck
To: Lt. Stiso TPD SID
CC: Sgt. Fuller TPD SID
Sent: 6/26/2007 10:08:18 PM
Subject: FW: Funds

From: Petermann, David (USAAZ) [RC-1]
Sent: Tuesday, June 26, 2007 2:59 PM
To: Higman, Chuck
Subject: RE: Funds

Looks good....

From: Higman, Chuck
Sent: Tuesday, June 26, 2007 2:44 PM
To: Petermann, David (USAAZ)
Cc: Garcia, Brandon M.; Vlahoulis, Athanasio P.; Small, James K.; Arellano, Bernardo
Subject: FW: Funds

From: Higman, Chuck
Sent: Tuesday, June 26, 2007 2:13 PM
To: 'Shiver, Larry (USATXS)'
Subject: RE: Funds

Larry; thanks for the below for your continued guidance and support; I think that our mtg of Thurs last was very productive. In the interim between then and now, the southbound firearms trafficking investigation has gathered even more steam. We anticipate surveillance this evening where the subject(s) of interest are scheduled to purchase approx. \$20K of assorted firearms for further shipment to Caborca, Mx, and we are coordinating with the Mexican authorities in the event that the surveillance is successful. We have reached that stage where I am no longer comfortable allowing additional firearms to "walk," without a more defined purpose.

RC-3

As we have initiated and conducted the firearms investigation we did not know or have reason to believe that it was associated with the OCDETF matter, but developed evidence has led us in that direction. Accordingly, to fund Wide Receiver we submitted an ATF Major Case funding request which was approved (ATF MC 126) and supported by funding. Currently, we are sitting on approximately \$14,000. Major Case AC funds that we can use in the near term.

RC-3

regards

HOCR WR 005412

From: Shiver, Larry (USATXS) [RC-1]
Sent: Monday, June 25, 2007 9:11 AM
To: Higman, Chuck
Subject: Funds

Chuck,

You will be receiving some funds in the near future. Because Iron River is so active, I have asked the Acting OCDETF Program Manager to expedite all future requests. He has agreed to this.

Let me know what it will cost to rent the office space that Bernie informed me could be used as a wire room. I will be putting another request through this week asking for additional funds for car rentals, cell phones, pen register operation and lease of the wire room space. These funds will follow the supplemental funding referenced earlier.

Take care Chuck,

Larry

ATF OCDETF Coordinator-Southwest Region

Arizona, New Mexico, Oklahoma, Southern California, Texas

Office Phone: [RC-1]

Cellular Phone: [RC-1]

HOCR WR 005413

Exhibit 14

From: Tsethlikai, Serra (USAAZ)
To: Kleiner, Al (USAAZ)
Sent: 12/19/2008 12:38:07 AM
Subject: RE: Wide Receiver RC-3 deadlines

I reviewed Tom's prosecutor's memo. I don't like the case. I think it is wrong for us to allow 100s of guns to go into Mexico to drug people knowing that is where they are going.

From: Kleiner, Al (USAAZ)
Sent: Thursday, December 18, 2008 5:35 PM
To: Tsethlikai, Serra (USAAZ)
Subject: RE: Wide Receiver RC-3 deadlines

Iron River went to MDL. To the extent what RSH is talking about is Iron River-related, then we'll need to talk with Mike. Have you gotten to review any of the reports, etc, in your part of this thing?

From: Tsethlikai, Serra (USAAZ)
Sent: Thursday, December 18, 2008 5:29 PM
To: Kleiner, Al (USAAZ)
Subject: RE: Wide Receiver RC-3 deadlines

Sure. I thought Wide Receiver went to Mike LoGalbo as such his legal assistant should be dealing with this.

From: Kleiner, Al (USAAZ)
Sent: Thursday, December 18, 2008 5:28 PM
To: Tsethlikai, Serra (USAAZ)
Cc: [REDACTED] (USAAZ)
Subject: FW: Wide Receiver RC-3 deadlines

Serra - Can we meet with Rachel tomorrow regarding this?

From: [REDACTED] (USAAZ)
Sent: Thursday, December 18, 2008 5:15 PM
To: Kleiner, Al (USAAZ)
Cc: Dolph, Wendy (USAAZ); Tsethlikai, Serra (USAAZ)
Subject: Wide Receiver RC-3 deadlines

Al,
 A couple of deadlines are notated on my calendar that will need to be dealt with while I am away on the Wide Receiver investigation. I'm not sure of the status of the Indictment since it has been reassigned to Serra, but I assume it's not happening before these deadlines.

RC-3

HOCR WR 005430

RC-3


Let me know what you want me to do.

Thanks.

R



Legal Assistant

U.S. Attorney's Office

RC-1



tel

fax


HOCR WR 005431

Exhibit 15

RC-1

From: Gwinn, Laura
 Sent: Thursday, August 13, 2009 4:04 PM
 To: Tsethlikai, Serra (USAEO)
 Cc: Miskell, Robert (USAAZ); Trusty, James
 Subject: Operation Wide Receiver

Serra,

Today, Jim (my supervisor) and I talked to Bob about the above-captioned case, and the possibility of me getting involved in it. If there are any documents, particularly a pros memo or ROIs, that you could send so I could familiarize myself with by the case as well as any challenges it may present (as mentioned by Bob).

I am leaving for Mexico on Mon and will be gone 3 weeks (business). Anything you could send me tonite or tomorrow would be a boon. That way, Jim & I could perhaps review tomorrow, and I could schedule a trip out there for when I return from Mexico. If you are able to call me tonite (cell phone below) please do so; I would appreciate an opportunity to speak with you.

Laura Gwinn
 430 Pennsylvania Ave. NW
 Room **RC-1**
 Washington, DC 20530

RC-1

(U)

(G)

(fax)

Exhibit 16

RC-1

From: Weinstein, Jason
Sent: Thursday, September 10, 2009 4:10 PM
To: Breuer, Lanny A.
Cc: Raman, Mythili; Fagell, Steven
Subject: Good meeting with ATF

FYI, as a follow-up to a suggestion Ken and Billy made during their recent meeting with you and me, Trusty and I met this afternoon with ATF brass to talk about ways CRM and ATF can coordinate on gun trafficking and gang-related initiatives, and Jim and I also offered some ideas about ways ATF can beef up some of its existing violent crime programs, like the Violent Crime Impact Team (VCIT) program. The ideas were well-received, and we'll be following up with Ken's assistant, Sam Kaplan, to move them forward.

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC-1
Fax: RC-1
Cell: [REDACTED]

Exhibit 17

RC-1

From: Trusty, James
Sent: Wednesday, September 02, 2009 2:48 PM
To: Carwile, Kevin
Subject: FW: request

fyi

From: Gwinn, Laura
Sent: Wednesday, September 02, 2009 2:31 PM
To: Trusty, James
Subject: Re: request

I am travelling out there on the 21st. I know very little about the case but will get you a couple paragraphs tomorrow. I will shoot for before noon
 Sent from Blackberry
 Laura Gwinn
 US Dept of Justice Gang Unit
 RC-1 (c)

From: Trusty, James
To: Gwinn, Laura
Sent: Wed Sep 02 14:28:01 2009
Subject: request

Kevin and I had a long chat with Lanny today about GU cases, investigations, etc. He is VERY interested in the Arizona gun trafficking case, and he is traveling out there around 9/21. Consequently, he asked us for a "briefing" on that case before the 21st rolls around. My recollection is that you aren't going to be out there until the 28th or so, which is fine. But, could you send me an email write up (no more than a page or two) describing what you know about this case at this point? (# of guns, types – if any are sexy—target(s), whether an FFL is involved, basics on evidence, i.e., "there was a cooperator who made numerous consensual calls..." That kind of thing. By week's end would be fine, and thanks mucho.

Jim

Exhibit 18

RC-1

From: Trusty, James
 Sent: Thursday, September 03, 2009 10:31 PM
 To: Gwinn, Laura
 Subject: RE: Tucson

I'm simply suggesting you ask her what would help you get up to speed, rather than waiting to learn from complete scratch when you go out there - you could ask her whether there might be a few broad ROI's or a wire affidavit or a search warrant aff or something that could help get you informed.

-----Original Message-----

From: Gwinn, Laura
 Sent: Thursday, September 03, 2009 10:22 PM
 To: Trusty, James
 Subject: Re: Tucson

I realize the front office is very interested in this case but wouldn't it be better for us to be able to paint a complete picture? Without knowing what docs there are other than ROIs and tape transcripts I don't know how to identify for her what is significant.

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 (c)

----- Original Message -----

From: Trusty, James
 To: Gwinn, Laura
 Sent: Thu Sep 03 22:19:10 2009
 Subject: RE: Tucson

Maybe she could scan some significant doc's?

-----Original Message-----

From: Gwinn, Laura
 Sent: Thursday, September 03, 2009 10:18 PM
 To: Trusty, James
 Subject: Re: Tucson

No there was nothing to send. No pros memo no online ROIs only hard copies.

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 (c)

----- Original Message -----

From: Trusty, James
 To: Gwinn, Laura
 Sent: Thu Sep 03 22:16:24 2009
 Subject: RE: Tucson

Has the AUSA sent you anything? It would definitely be better to get some more details before submitting this info to Lanny. Mythili mentioned the case again today, so there is clearly great attention/interest from the front office. If she sent you materials, maybe we should wait until Tuesday for a more detailed report from you.

-----Original Message-----

From: Gwinn, Laura

Sent: Thursday, September 03, 2009 11:51 AM

To: Trusty, James

Subject: Tucson

I will try to pound this out before yet another disaster arises this morning. As you know it has been several weeks since I spoke to the aUSA so I am going off limited memory.

I believe the investigation of this case wrapped up about a year ago. It is an ATF led case
 RC-5

[REDACTED] I believe the ffl has a business but was selling the guns to the targets from his house. There are tapes which I am told have been translated. Cas involves 300 to 500 guns (unclear to me why we have such a wide range; doesn't someone know exact numbers?). It is my understanding that a lot of those guns "walked". Whether some or all of that was intentional is not known. The aUSA seemed to think ATF screwed up by not having a mechanism in place to seize weapons once they crossed the border. In any event I believe a small number of the guns have been recovered in connection with police action in Mexico. I do not know if they have been traced to crimes. If you have other specific Qs I will try to answer but I think I have told you everything I know.

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 [REDACTED] (c)

Exhibit 19

RC-1

From: Carwile, Kevin
 Sent: Tuesday, September 22, 2009 7:32 PM
 To: Trusty, James; Gwinn, Laura
 Subject: Re: Tucson

Remember, there is no gun trafficking statute. Laura will need to check to see if any of the lying and buying offenses are SUA's

----- Original Message -----

From: Trusty, James
 To: Gwinn, Laura; Carwile, Kevin
 Sent: Tue Sep 22 19:30:02 2009
 Subject: RE: Tucson

If guns getting across is the only problem (and the AUSAs are too busy) we're in good shape. Drug cases learn that hundreds of kilos have gone across into the US, so I don't think missing some seizures is anything fatal. Is gun trafficking a specified unlawful activity (or whatever predicates are called) for money laundering? I honestly don't recall, it's been so long since I dabbled in money laundering cases.

-----Original Message-----

From: Gwinn, Laura
 Sent: Tuesday, September 22, 2009 7:23 PM
 To: Trusty, James; Carwile, Kevin
 Subject: Re: Tucson

Not sure I'll be able to figure out what's wrong with it in the time I have. The story line is that they are very busy. I just found a sort of pros memo that starts out saying the internal procedure is sort of convoluted and should be memorialized. The case agent is no longer here so I will meet with the replacement Thurs. Will see if I can figure out what the problems are (other than ATF letting 300 or 400 guns get across the border). BTW no one appears to have considered money laundering charges. All transactions done in cash: gotta be over 250K.

Sent from BlackBerry
 Laura Gwinn
 US Dept of Justice Gang Unit
 RC-1 (c)

----- Original Message -----

From: Trusty, James
 To: Gwinn, Laura; Carwile, Kevin
 Sent: Tue Sep 22 19:15:27 2009
 Subject: RE: Tucson

Big question is what's wrong with it, basically. Why wasn't it charged earlier if there are various identified guys getting tons of guns. I'm not really sure how to answer your question - can people out there give you disks to take home?

-----Original Message-----

From: Gwinn, Laura
 Sent: Tuesday, September 22, 2009 6:29 PM
 To: Trusty, James; Carwile, Kevin
 Subject: Tucson

If one of you could let me know what specific info you will want re: this case it would be helpful. There is WAY more paperwork than I expected; I have been reviewing all day and am maybe thru a third of it. There are potentially 12 or so targets but maybe only 6 or 7 good ones; looks like there wre RC-3 (I'm just starting on that). The only ppwk I'll bring back is ROIs; its too voluminous.

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 (c)

Exhibit 20

RC-1

From: Carwile, Kevin
 Sent: Wednesday, September 23, 2009 6:09 PM
 To: Gwinn, Laura; Trusty, James
 Subject: Re: Tucson case

Great!

----- Original Message -----

From: Gwinn, Laura
 To: Carwile, Kevin; Trusty, James
 Sent: Wed Sep 23 18:01:33 2009
 Subject: Re: Tucson case

FYI: I'm also supposed to meet with an agent re Arizona MexMafia.
 Sent from Blackberry
 Laura Gwinn
 US Dept of Justice Gang Unit

RC-1 (c)

----- Original Message -----

From: Carwile, Kevin
 To: Gwinn, Laura; Trusty, James
 Sent: Wed Sep 23 17:49:31 2009
 Subject: Re: Tucson case

I am with the AYP SAC currently. He also promises he will get me an assessment of the case, pros and cons, by the end of the week. We can talk monday.

----- Original Message -----

From: Gwinn, Laura
 To: Carwile, Kevin; Trusty, James
 Sent: Wed Sep 23 17:46:07 2009
 Subject: Tucson case

I still, obviously, haven't reviewed everything (there are simply tons of transcripts) but I can give you an analysis of the case generally so you can make a decision about whether we will take it.

Altho the case is presented as one there would probably be two indictments: there were a series of transactions that occurred in 2006 where it appears the guns were shipped to San Diego. From there they probably went to Mexico but not sure you could ever prove that. Possibly 3 people could be indicted on a variety of straw purchase type charges. One of the suspects, Gonzales, was cut out after one or two transactions but completely confesses on tape about a year later.

The 2d series of transactions starts in 2007 when Gonzales introduces some more friends to the FFL and initially buys for those friends. FFL consensually records and there is some conversation early on about the guns going to Mexico. RC-3

RC-3 Up to 10 people including the guy in Mexico the guns were going to could be indicted but needs a thorough analysis. Not sure of ties to cartel. Was hoping to speak to aUSA who has the related drug case but not sure if that got arranged (the aUSA currently assigned to the gun case hasn't got back to me on it as well as on a couple other things).

In short it appears that the biggest problem with the case is its old should have been taken down last year AND a lot of guns seem to have gone to Mexico. I recommend we get our feet wet and take the case. I don't know how those discussions go but I guess you would be

talking to the crim chief Bob Miskell. If so I would ask that I be assured of the following (during the course of your negotiations/talks): an office with a computer that I can remote access (a window would be super nice but I won't push it!), an experienced legal assistant/paralegal who can help me with discovery pleadings etc, a criminal code and sent guidelines (so I don't have to schlep mine back and forth) a specific aUSA that would assist me procedurally (how do they do things in Tucson) and substantively if necessary while in trial in GB. Finally, in chatting with Bob he seems to think they have lots of cases we might be interested in so you might want to chat him up on that.

Until you let me know for sure that we will take the case I will continue to review/ask for info vs directing agents in gathering additional info taking further investigative steps, or breaking case down by suspect to figure out what charges might be appropriate (if that makes sense).

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 [REDACTED] (c)

Exhibit 21

RC-1

From: Carwile, Kevin
Sent: Wednesday, September 30, 2009 8:41 AM
To: Trusty, James
Subject: FW: gun trafficking case

P. Kevin Carwile
 Chief, Gang Unit
 Criminal Division
 U.S. Department of Justice

From: Newell, William D. [mailto:RC-1]
Sent: Wednesday, September 30, 2009 8:40 AM
To: Carwile, Kevin
Subject: Re: gun trafficking case

I was informed of this yesterday. I appreciate your interest in the case and the assistance. Please don't hesitate to contact me should you need any additional information regarding the case. Take care.

Bill Newell
 Special Agent in Charge
 ATF Phoenix Field Division (AZ and NM)
 Cell: RC-1

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Carwile, Kevin
To: Newell, William D.
Sent: Wed Sep 30 08:04:32 2009
Subject: gun trafficking case
 Bill,

FYI - as I mentioned to you in Phoenix, 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. If you have any input/suggestions re: this matter, please feel free to send me an email or give me a call at RC-1. Thanks and I look forward to seeing you again soon.

P. Kevin Carwile
 Chief, Gang Unit
 Criminal Division
 U.S. Department of Justice

Exhibit 22

From: Newell, William D.
To: Gillett, George T. Jr.
Sent: 9/26/2009 2:06:20 PM
Subject: Re: Wide Receiver Summary for Kevin Carwile

That's what I'm afraid of. I'll give him a heads-up anyway as a courtesy. I'm trying to establish a straight-forward relationship with this guy.

Bill Newell
 Special Agent in Charge
 ATF Phoenix Field Division (AZ and NM)
 Cell: RC-1

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Gillett, George T. Jr.
To: Newell, William D.
Sent: Sat Sep 26 10:01:40 2009
Subject: Re: Wide Receiver Summary for Kevin Carwile

One of Kevin's attorney's spent most of this past week in Tucson reviewing our case. This was at the request of the USAO in Tucson that wanted an objective, fresh set of eyes to review the case..

The attorney reviewing Wide Receiver had discussions with Bayer and Maynard in person. I think (reading between the lines) when Kevin spoke with Bill McMahon and I, he asked for the executive summary to see if they were missing something. Kevin's comments were that his attorney felt the case, while not perfect, was prosecutable and straight forward.

Unless I'm missing something, if Dennis Burke doesn't already know about this, it's because Tucson didn't keep him in the loop.

George T. Gillett
 Assistant Special Agent in Charge
 ATF - Phoenix Field Division
 Cell: RC-1

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Newell, William D.
To: Gillett, George T. Jr.
Sent: Sat Sep 26 09:48:07 2009
Subject: Fw: Wide Receiver Summary for Kevin Carwile

Before I give this to Kevin today I want Dennis Burke to be aware of what we've done to try to get this case prosecuted. Can you e-mail me some bullets on the meetings we've had (quantity and date - approx), with whom at the USAO, and what was said. Thanks

Bill Newell
 Special Agent in Charge
 ATF Phoenix Field Division (AZ and NM)
 Cell: RC-1

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have

HQCB-WB-005441

received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Gillett, George T. Jr.
To: Newell, William D.
Sent: Fri Sep 25 12:18:10 2009
Subject: Wide Receiver Summary for Kevin Carwile

George T. Gillett
Assistant Special Agent in Charge
ATF - Phoenix Field Division
Office: RC-1

HOCR WR 005442

Exhibit 23

RC-1

From: Hoover, William J. RC-1
 Sent: Thursday, November 12, 2009 9:47 AM
 To: Weinstein, Jason
 Subject: Re: Firearms protocols/trafficking cases

Thank you Jason!!!
 William J. Hoover
 Acting Deputy Director
 Bureau of ATF

(O RC-1
 (C RC-1

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

----- Original Message -----

From: Weinstein, Jason RC-1
 To: Kaplan, P. Sam; Hoover, William J.
 Cc: Rosen, Paul RC-1
 Sent: Wed Nov 11 21:47:00 2009
 Subject: Firearms protocols/trafficking cases

Just wanted to let you know that we had a very productive first meeting with CRM, ATF (Ann Marie), DHS, and CRM's Legal Attache in MX to prepare draft evidence-sharing protocols in firearms cases. A draft is forthcoming, which we'll also be circulating to the relevant USAOs for comment/input.

Also, I wanted to make sure you know CRM stands ready to help with any firearms trafficking cases that are generated by ATF in the border region, particularly those that are multi-district in nature. Just let us know how we can help.

Jason

Jason M. Weinstein
 Deputy Assistant Attorney General
 Criminal Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530
 Office RC-1
 Fax: RC-1
 Cell: RC-1

Exhibit 24

RC-1

From: Breuer, Lanny A.
Sent: Friday, December 04, 2009 10:18 AM
To: Melson, Kenneth E. (ATF)
Cc: 'Siskel, Edward N. (ODAG) (SMO)'; 'Hoover, William J.'; Weinstein, Jason; Rosen, Paul; Raman, Mythili; Fagell, Steven
Subject: RE: Weapons seizures in Mexico

Ken,

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. Please let us know who will be the POC at ATF on this, and we'll have the Gang Unit folks reach out to that person. I would love to see you to discuss this further and other issues or common interest. I hope you are well.

Best,

Lanny

From: Melson, Kenneth E. [mailto:[RC-1](#)]
Sent: Thursday, December 03, 2009 5:46 PM
To: Breuer, Lanny A.
Cc: Siskel, Edward N. (ODAG) (SMO); Hoover, William J.
Subject: Weapons seizures in Mexico

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. Using the traces as intelligence, and compiling the information from each trace investigation, we can connect the purchases, identify the traffickers and use more serious charges against them. The intelligence analysis and linking of trace data and investigation results will be done at HQ out of our intelligence directorate. I would like to see if you have any interest in assigning a criminal division attorney to work with that group to develop multi-division/district cases and perhaps go to the district with the best venue to indict the case. The level of activity will depend on the number of Mexican seizures, and whether they will trace the guns, or allow us to do it. We do seem to be making progress with our Mexican partners. We are currently working on a case with SSP which might lead us to the first joint arrest in Mexico of a person connect to US arms trafficking. 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. Thanks. Ken.

Exhibit 25

RC-1

From: Weinstein, Jason
Sent: Sunday, December 06, 2009 11:03 PM
To: Carwile, Kevin; Trusty, James
Subject: ATF idea on weapons seizure investigations

AD Mark Chait will be the POC on the ATF request to have a CRM atty help coordinate weapons seizure investigations. Lanny is very eager to have a GU person hook up with him on this initiative. Thx

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC-1
Cell: RC-1

Exhibit 26

From: Back, Michelle A.
Sent: Friday, December 04, 2009 2:08 PM
To: Chait, Mark R.; Hoover, William J.
Subject: FW: Weapons seizures in Mexico

FYI – I have a call into Lanny Breuer's office and I'm looking at Wednesday, 12/16 at 11:30 a.m. I will keep everyone posted. Thank you.

From: Melson, Kenneth E.
Sent: Friday, December 04, 2009 12:27 PM
To: Back, Michelle A.
Subject: FW: Weapons seizures in Mexico

Would you set up a meeting with Mr. Breuer. Billy, Mark, and Sam should go too. Thanks.

From: Breuer, Lanny A. [REDACTED]
Sent: Friday, December 04, 2009 10:18 AM
To: Melson, Kenneth E.
Cc: Siskel, Edward N. (ODAG) (SMO); Hoover, William J.; Weinstein, Jason; Rosen, Paul; Raman, Mythili; Fagell, Steven
Subject: RE: Weapons seizures in Mexico

Ken,

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. Please let us know who will be the POC at ATF on this, and we'll have the Gang Unit folks reach out to that person. I would love to see you to discuss this further and other issues or common interest. I hope you are well.

Best,

Lanny

From: Melson, Kenneth E. [REDACTED]
Sent: Thursday, December 03, 2009 5:46 PM
To: Breuer, Lanny A.
Cc: Siskel, Edward N. (ODAG) (SMO); Hoover, William J.
Subject: Weapons seizures in Mexico

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. Using the traces as intelligence, and compiling the information from each trace investigation, we can connect the purchases, identify the traffickers and use more serious charges against them. The intelligence analysis and linking of trace data and investigation results will be done at HQ out of our intelligence directorate. I would like to see if you have any interest in assigning a criminal division attorney to work with that group to develop multi-division/district cases and perhaps go to the district with the best venue to indict the case. The level of activity will depend on the number of Mexican seizures, and whether they will trace the guns, or allow us to do it. We do seem to be making progress with our Mexican partners. We are currently working on a case with SSP which might lead us to the first joint arrest in Mexico of a person connect to US arms trafficking. 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. Thanks. Ken.

Exhibit 27

RC-1

From: Carwile, Kevin
Sent: Wednesday, December 09, 2009 4:35 PM
To: Weinstein, Jason
Subject: FYI

I got up with ATF re: the Mexican firearms operational effort described in your prior emails. We chatted and have agreed to meet early next week (they want to pull together some of the analytical info which got Ken Melson and others excited about this approach). Sounds like we have gotten the ball rolling...I will keep you posted as things develop.

P. Kevin Carwile
Chief, Gang Unit
Criminal Division
U.S. Department of Justice

Exhibit 28

[REDACTED]
[REDACTED]
COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: STEPHEN MARTIN

Wednesday, July 6, 2011

Washington, D.C.

The interview in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 10:00 a.m.

was marked for identification.]

BY MR. DAVIS:

Q I will give you a second to read it. There's a lot of text down there.

So at the beginning of Mr. Gillett's email, it says that "OSII has not yet finished a link-diagram on this investigation; therefore, there is no chart in existence diagramming this investigation. Lorren Leadmon and crew are currently working on such a link-diagram chart, but it is not yet complete."

So the link-diagram chart, is that something that you ordered to occur? Or how did that come into existence?

A I know that sometime around December the 17th I think we did a briefing, and it had to do with -- somebody wanted a briefing, so I arranged it. I don't know if it was my boss, if it was Mr. Newell, or if it was the field ops, but we had a briefing. And I think they were trying to tie the Reynosa seizure in with what was going on with Fast and Furious.

So I think it was about this date is when the briefing happened. And it was on -- I believe it was on the 7th floor conference room.

Q Uh-huh.

A And I'm trying to think if Mr. Melson was there. I know at least Billy Hoover was there, the deputy.

But we had two charts. And I think some people from DOJ were there, also. And the names Kevin Carlisle and Joe Cooley came up. And those names came up because I asked Kevin O'Keefe, who had been in

contact with them.

But we had two charts; I think Lorren had two charts. One was a link chart with the Reynosa seizure, which had nothing to do with Fast and Furious. That was a separate area. And then it had the -- I don't know if it was a couple of seizures. And it had pictures of people. And it had to do with Fast and Furious. I don't know if it was the Nogales, the Naco seizures. But it showed, I think, players, people who were recurring buyers.

Q Uh-huh.

A So those were briefed by, I think, Lorren to members of the executive staff on the 7th floor on or about the 17th.

Q Okay. And you were at that briefing?

A Yes, I was.

Q Okay. And can you recall what was mentioned, what was discussed, what the mood was in the room?

A I know the link chart, the one with the Reynosa seizure, was confusing. I think they were looking -- speaking with DOJ to see what kind of prosecution we could get in that area. Because I think, in the past, not having worked in those areas, that the prosecution may not have been coming along like they wanted to with the straw purchasers. So I think there was some discussion on that.

Q Okay. It's my understanding that there were some difficulties between your group, OSII, and the folks in Phoenix with regards to information sharing. Folks from your group were locked out of NFORCE. Are you familiar with that?

Q So you said you were writing down the number of guns that Mr. Patino bought, Mr. Steward had bought, and Mr. Moore had bought. Do you remember at this point how many guns had been purchased total?

A 685-ish.

Q 685.

A Something like that.

Q Okay. This seems like a fairly high number, is that fair to say?

A That's quite a few. That's fair.

Q Okay. So Mr. Leadmon and everybody left the room?

A Yes.

Q What happened next? What was the discussion that ensued?

A From my notes, I asked Mr. Chait and Mr. McMahon, I said, what's your plan? I said, what's your plan? And I said, hearing none -- and I don't know if they had one -- I said, well, you know, there are some things that we can do. Ray Rowley, who was the southwest border czar at the time, asked, how long are you going to let this go on?

BY MR. CASTOR:

Q This is in January 2010?

A January 5th, that meeting, that's correct. Ray has since retired.

So I said, well, here are some things that, you know, we might think of doing. And we had talked about this before, we'd brainstormed stuff, too, with Lorren. Lorren even talked about it. Kevin talked

about it. Kevin O'Keefe had done a lot of trafficking investigations in south Florida -- about identifying some weak straw purchasers, let's see who the weak links are, maybe the super young ones, the super old ones. Pole cameras, you know, put them up to see who is coming and going, to help you with surveillance. The aerial surveillance, the mobile surveillance, trackers. I said, you know, one of the first things I would do is think about putting trackers, to help me keep track of where they're going.

And I said, as far as going into Mexico, I said, have we thought about putting trackers on them and let them -- follow them into Mexico? Dan Kumor said, the Ambassador would never go for that. I said, okay, fine. I said, I'm not going to pursue that anymore, assuming that.

Had we thought about putting trackers on them and following them down to see where they're going across, to see where they go, who they're in contact with, and where they cross the border, we might find out something new and then, you know, interdict. And I got no response. And I wasn't asking for one. I was just, you know, throwing this stuff out.

Q You said this to who again, Mr. Chait?

A Mr. Chait, Mr. McMahon, Mr. Kumor. My boss was there, Jim McDermond, who agreed with me because we talked probably daily.

Q Did any of those folks step up at that time and say, "Oh, no, no, no. We've got another great plan in place"?

A No. No.

Mr. Davis. They were silent?

Mr. Martin. Yes. And I don't know if they had one. I mean, they could have. I don't know.

BY MR. CASTOR:

Q Do you remember if they were nodding their head, giving you any nonverbal cues that, you know, this sounds like a bright idea that you're suggesting?

A Not that I recall, no.

Q Or was it just like a blank look on their face?

A Just listening.

Mr. Kerner. Did you mention Hoover? Was he there, as well?

Mr. Martin. He was not.

So that continued. The tracker was a big thing because, you know, we had talked about trackers before, maybe a month prior, when I found out -- because, to me, that would be a common thing to do, try to put some trackers on stuff, especially if you have .50-cals going.

And I was trying to work with Kevin O'Keefe, and Kevin O'Keefe was trying to work with the ASACs through a side channel to try to get them to contact the people that we could get the trackers from to put on.

Somewhere during the meeting, Mr. Chait said that he had to go to another meeting, and he left. Mr. McMahon said that he had to go check some emails in a classified system, and he left. And then it was just the rest of us talking.

BY MR. DAVIS:

Q Do you feel that the other meeting, checking the emails on

Exhibit 29

[REDACTED]

From: Carwile, Kevin
 Sent: Tuesday, March 16, 2010 9:12 PM
 To: Weinstein, Jason
 Subject: Re: Reminder

I agree that we should not make a big deal out of X-Caliber. I think they knew he was on the fast and furious case because I got him to alter his holiday plans to get briefed. My assumption is they got impatient because he was tied up on his Latin Kings trial in Texas.

----- Original Message -----

From: Weinstein, Jason
 To: Carwile, Kevin
 Sent: Tue Mar 16 20:49:03 2010
 Subject: RE: Reminder...

Fast and Furious seems a little different from X-Caliber, because we actually assigned someone to the case -- I assume that ATF HQ knew from you or Joe that Joe would be on the case, or is it possible they thought he would be playing more of a coordinating rather than a litigating role?

-----Original Message-----

From: Carwile, Kevin
 Sent: Tuesday, March 16, 2010 9:00 AM
 To: Weinstein, Jason
 Subject: RE: Reminder...

There are two investigations: the first is Operation Fast and Furious (a number of the straw purchasers are in a car club). It is being worked out of the USAO in Phoenix, AZ. This was one of the two cases we were briefed on at the end of December immediately after the meetings with Ken Melson. I assigned Joe Cooley to the investigation, he got briefed and then started his Latin Kings trial. He just turned his attention back to the case and went to SOD for a briefing on the matter. That is when he learned the USAO now had the case RC-3 [REDACTED]. We offered to help but they said they had it under control. The second matter was the X-Caliber case. RC-2 [REDACTED]
 RC-2 [REDACTED]

P. Kevin Carwile
 Chief, Gang Unit
 Criminal Division
 U.S. Department of Justice

-----Original Message-----

From: Weinstein, Jason
 Sent: Monday, March 15, 2010 9:59 PM
 To: Carwile, Kevin

HOCR DOJ 002832

Subject: Reminder...

...to send me the names of the cases ATF HQ asked us to get involved in but which had in fact been shopped to the field.

RC-2

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC-1
Cell: RC-1

HOCR DOJ 002833

Exhibit 30

From: Gillett, George T. Jr.
Sent: Monday, December 14, 2009 6:39 AM
To: Newell, William D.
Subject: Fw: Latest Trafficking Case

Importance: High

Who's supporting who??

George T. Gillett
 Assistant Special Agent in Charge
 ATF - Phoenix Field Division
 Cell: (602) [REDACTED]

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: O'Keefe, Kevin C.
To: Gillett, George T. Jr.
Sent: Mon Dec 14 08:03:51 2009
Subject: Latest Trafficking Case

George - I know my folks made contact last week while I was away from the office. DAD McMahon has tasked us with doing a link analysis on Hope's case, in order for him to brief AD Chait, who will in turn brief a DOJ Attorney on new SWB operational plans and use this case as an example. Sorry, if this word did not come down the field ops chain to you all.

My folks are under a time crunch, need to print out link analysis by tomorrow (Tuesday). They still need the Suspect Gun List that NTC provided Hope at the end of last week, in order to complete their chart. Can you please remind her to send it to Lorren Leadmon, Alex Kruthaupt and Kristen Lauffer? Much appreciated.

Call me if you have questions or concerns. 202 [REDACTED] is cell.

Kevin O'Keefe
 Chief, Criminal Intel Div
 202 [REDACTED]

From: Leadmon, Lorren D.
Sent: Sunday, December 13, 2009 11:53 PM
To: O'Keefe, Kevin C.
Subject:

I HAVE NOT RECEIVED THE SUSPECT GUN LIST FROM PHOENIX WITH THE PURCHASERS NAMES IN ORDER TO COMPLETE YOUR REQUEST.

LORREN D. LEADMON
TEAM LEADER

Field Intelligence Support Team - Southwest Border
 Bureau of Alcohol, Tobacco, Firearms and Explosives
 Intelligence Operations Specialist
 Office: 202 [REDACTED]
 Cell: 202 [REDACTED]

Exhibit 31

Subject: Weapons Seizures in Mexico w/Lanny Breuer
Location: Main DOJ - Room 2107

Start: 1/5/2010 10:00 AM
End: 1/5/2010 10:45 AM
Show Time As: Busy

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Breuer, Lanny A. (CRM); Hoover, William J.;
Chait, Mark R.; Kaplan, P. Sam
Optional Attendees: Beard, Jane (CRM); Zammillo, Theresa A.;
Graham-Wyatt, Nina
Resources: Main DOJ - Room 2107

UPDATED TIME CHANGE FROM 11:00 A.M TO 10:00 A.M. THANK YOU.

HQGR ATF - 001987

Exhibit 32

RC-1

m: Burke, Dennis (USAAZ)
cc: Thursday, January 07, 2010 5:08 PM
to: Morrissey, Mike (USAAZ)
cc: Lodge, Joe (USAAZ); Hurley, Emory (USAAZ)
Subject: RE: heads up on gun trafficking case

Hold out for bigger. Let me know whenever and w/ whomever I need to weigh-in.

From: Morrissey, Mike (USAAZ)
Sent: Tuesday, January 05, 2010 5:13 PM
To: Burke, Dennis (USAAZ)
Cc: Lodge, Joe (USAAZ); Hurley, Emory (USAAZ)
Subject: heads up on gun trafficking case

Dennis – Joe Lodge has been briefed on this but wanted to get you a memo for your review. Bottom line – we have a promising guns to Mexico case (some weapons already seized and accounted for), local ATF is on board with our strategy but ATF headquarters may want to do a smaller straw purchaser case. We should hold out for the bigger case, try to get a wire, and if fails, we can always do the straw buyers. Emory's memo references that this is the "Naco, Mexico seizure case" – you may have seen photos of that a few months ago. << File: Emory trafficking case.wpd >>

HOCR USAO 002960

Exhibit 33

RC-1

From: O'Keefe, Kevin C. RC-1
Sent: Friday, January 15, 2010 2:47 PM
To: Cooley, Joseph
Subject: RE: Mexican Firearms Trafficking
Attachments: RC-2
Importance: High

Joe — again sorry for the delay on this.

RC-2

Sorry we don't have the

District Court case number in our case management system — our ops office is getting you those numbers separately. Hope this helps.

RC-2

On a separate note, a lot of activity has recently taken place in our Phoenix case targeting the Sinaloa Cartel, to include a seizure of 40 rifles in a stash house in El Paso, TX (yes, all the way over there), which were purchased by STEWARD (the biggest straw purchaser on the link chart we gave you) on 24 December. As I understand it, sometime next week our Phoenix SAC and case agent are supposed to brief you and/or Kevin C. when they come here to HQ.

Again, hope this all helps.

Kevin O'Keefe
 Chief, Criminal Intel Div

RC-1

From: Cooley, Joseph [mailto:RC-1]
Sent: Friday, January 15, 2010 11:30 AM
To: O'Keefe, Kevin C.
Subject: Re: Mexican Firearms Trafficking

Kevin,
 I am going to Houston the early part of the week of 1-25. I will be doing trial prep with LE including agents from ATF. If possible, I would like to also get acquainted with those working on the firearms trafficking involving the Mexican seizures. Can you reach out to those agents and give them a heads up?

Joseph A. Cooley

Gang Unit, DOJ

Cell RC-1

This message is via my blackberry. Please excuse any typos.

From: O'Keefe, Kevin C. <RC-1>

To: Cooley, Joseph

Sent: Mon Jan 11 16:52:43 2010

Subject: RE: Mexican Firearms Trafficking

Joe — sorry the delay in getting back to you. I have briefly discussed the below with Ray Rowley, and here are some quick statuses:

1. My folks in Intel will have the case agents/office locations for all the open cases listed in the large link analysis shortly

2. **RC-2**

3. Ray will go thru operations and get copies of the blue jackets on the cases recommended to the USAO for prosecution; but just FYI, these are only hardcopy – they are not transmitted electronically (sorry)

Quite honestly, we here in ATF HQ are still trying to hash out a viable enforcement strategy to target the DTOs, and more specifically Sinaloa and Gulf/Zetas. We will keep you apprised of any developments. **RC-5**

RC-5

The Arizona case continues to progress – info coming in from the investigation **RC-3** a common player, and from the intel community (at the classified level). An AUSA is on board; I will get the name for you shortly.

Safe travels.

Kevin O'Keefe
Chief, Criminal Intel Div

RC-1

From: Cooley, Joseph [mailto:**RC-1**]
Sent: Friday, January 08, 2010 5:57 PM
To: O'Keefe, Kevin C.
Cc: Rowley, Raymond G.
Subject: Mexican Firearms Trafficking

Kevin,

I want to follow-up on our telephone conversation on Monday afternoon. Kevin Carwile and I spoke with Anthony Garcia in the U.S. Embassy in Mexico yesterday. During our discussion, we brought up the issue with the firearms recoveries and the procedures the Mexican authorities use to document the seizures. We also mentioned the DEA and other agencies in country will need to collect as much information as possible regarding firearms seizures. Tony was very encouraging that the various U.S. agencies will be cooperative. However, he did suggest that the individual case agents in the U.S. may present a problem with the exchange of information. We will address those issues when then arise. Finally, Tony is going to see what information has been obtained from the U.S. citizen that was arrested during the firearms seizure connected with the AZ straw purchases.

From my review of the material you provided me during our meeting, I see that the AZ straw purchases may very well work as one case. The TX straw purchases are obviously much more complex. As I suggested in our telephone conversation, I will need some additional information from ATF that I have listed below:

- 1) The names of the ATF case agents for all of the open cases;
- 2) The names of the ATF case agents and judicial docket numbers for the six convicted defendants related to the TX-related seizures; and
- 3) Copies of the blue jackets (electronic version preferable) for cases that have been referred to the USAOs.

I would like to start with initially focusing on the AZ case. Clearly this is more of a pro-active investigation. I would like to contact that case agent(s) as soon as possible.

As I stated during our meeting, I believe connecting these firearm purchases and seizures with drug trafficking could provide tremendous leverage on our targets. That being said, I will insist that any defendant, cooperating or otherwise, plead to firearms violations in addition to any other potential charges. I realized that I gave "short shrift" to potential tax charges during our meeting. The problem with tax charges is that they are driven by the value of the unreported income. Typically in these cases the criminal exposure for tax evasion violations would not be that significant. In addition, any tax charges require prior approval from the DOJ Tax Division. This would add substantial delays in charging our targets. However, I do believe that IRS assistance would be very useful in tracking the money and would likely lead to money laundering charges. We certainly would consider tax evasion violations if IRS finds that such charges were essential for a successful prosecution.

I will be in TX for the next two weeks getting ready for a trial that starts next month. I will have access to my emails and computer files.

Again, I want to thank you and the others for their time. I am looking forward to working with ATF to address this serious increase in firearms trafficking. Let me know if there is anything you need from me.

Joseph A. Cooley

Trial Attorney

Gang Unit

Department of Justice

950 Pennsylvania Ave. N.W., Suite RC-1

Washington, DC 20530

Cell RC-1

Office RC-1

Fax RC-1

Exhibit 34

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: DENNIS K. BURKE

Thursday, August 18, 2011

Washington, D.C.

The interview in the above matter was held in Room 2247, Rayburn
House Office Building, commencing at 10:07 a.m.

plus there's an indication you were involved in some of these decisions previously, so this is not completely new to you.

A Right.

Q Before I get to my sort of prepared questions, I did appreciate you saying that you're not going to say something like mistakes were made by others, but I take responsibility, I am the -- I meaning you -- I am the chief law enforcement officer, Federal law enforcement officer for the District of Arizona. This was not the way a case should be done.

A Correct.

Q And so before we get into all the details, I would like to get your understanding of what it is that you feel that these mistakes that you take responsibility for were. What do you take responsibility for more specifically?

A Sure. Sure. You know, in retrospect, in looking at how we handled this case, we could have done a better, much better job of supervising it. This was a large Title III case that at one point ATF was interested, and we're still pursuing that, but at one point ATF was interested in as many as 40 defendants being indicted, and in a Federal case that's a huge case, and it was, you know, not only Title III, but several spinoffs, so lots and lots of logs, and this is a case that should have been handled by more than one prosecutor, and should have been supervised more. We have several prosecutors on the case now.

I take fault also in the sense that, you know, at numerous times

the SAC for ATF would indicate to me, would give me kind of updates on activity of gun trafficking from the Southwest to Mexico, either directly -- either in some kind of anecdote that he was passing information on to me or some reference in the anecdote or in the email to Fast and Furious, and in retrospect I should have spent more time on that. I think my problem was --

Q Some more time on "that." What is "that"?

A In that if the SAC is sending you, here's an update on our case, I wasn't drilling down to say, well, if there's this much activity on this case, you know, I need more, I need to be in a position where I actually focus on it as opposed to getting an FYI or here's updates from the SAC on it.

Q Is this a resource issue where you didn't spend enough resources on it? You mentioned you only assigned one prosecutor?

A I'm sorry, let me divide them up then. The first one is, we didn't dedicate enough prosecutorial resources to the case, to a Title III of that magnitude; number two, we didn't supervise it enough to keep an eye on what it was doing and where it was going; and, number three, I was putting directly on me not just as the U.S. Attorney taking responsibility for everything, but literally Dennis Burke, the U.S. Attorney, which is my knowledge of the case had many points or what Newell would characterize as briefings or that he had talked to me when it was -- and I never drilled down. He would send me information on email, I would see him at a Fed head meeting, I would see him at a HIDTA meeting or a memorial or a funeral, and he would say, oh, the case is

going real well, really good, we're really happy with it, we're really happy with how everything's going.

And I think the management lesson I learned from that is on your dashboard don't just look at the problems. You need to also realize that if you still have a big case in your office and someone keeps telling you, oh, it's great, it's great, we love what you're doing, we're making all this activity, you can't just take that off the dashboard and say, all right, well, I'm not going to worry about that because it's not a squeaky wheel, and this case was never -- I don't want to say never because I can't fully, but at least my recollection is and my perception was the case was never presented to me as a problem. I don't recall ever ATF ever coming to me and saying we need to have a sit-down because we have issues with it. Yet they did on several other cases during that time.

Q Unrelated to Fast and Furious?

A Totally unrelated to Fast and Furious.

Q And they also had concerns about their relationship with your office?

A Absolutely.

Q In terms of probable cause determinations and that sort of stuff?

A Yeah, and I'm not -- I don't know through your investigation how much information you've gotten on that, but my office had a very tense relationship with ATF when I came into office relating to a Hell's Angels case which I think that they called Black Biscuit. But in any

event, it was the Hell's Angels case. And there were huge discovery issues there that led to sanctions by a judge and a lot of, lot of consternation between ATF and the U.S. Attorney's Office for the District of Arizona. When I came into office in September '09, they made it very clear to me that the office does not have a very good relationship with ATF because of that, and there was a lot of distrust, and it had been lingering still.

Q Because of the Black Biscuit case or also other cases? There was an Iscandarian case, there was a corrupt FFL that basically the ATF wanted your office before you to prosecute. You didn't. So they took it to State court where it got thrown out and they were very upset about this?

A The Excalibur case?

Q Yes.

A Yeah, I'll touch upon that because we reviewed Excalibur after it got thrown out of State court extensively and had a sit-down with Bill and his top people after reviewing thousands of documents.

Q And by "we" you mean you?

A Oh, our office, I was involved.

Q Under your leadership already?

A Yeah, I apologize. Let me go back so I do this chronologically. So I come in. My office makes it clear that, you know, look, we do not have a good relationship with them. Newell says, look, we've got to get that behind us, and makes passing references to it the first time, we need to have a better relationship, we need

to stay in better communication, I think that's part of the problem.

And so looking back in retrospect, because he would send me, you know, updates on certain things kind of out of the blue, not just on Fast and Furious, but just in general, and now in retrospect, I think part of that was his ability to say, you know, look, it's a new leaf, you know, we've turned a leaf here, we have a new relationship with the U.S. Attorney's Office, and I'm staying in contact with him because in the scale of what we work on, you know, I've got, we've got national security FBI, we have a huge docket with CBP, I mean it's driven by the Border Patrol and ICE. I mean, our biggest client is DHS. I would say without -- just off the top of my head, back of an envelope that, you know, 70, 75 percent of all our work at least is driven by DHS. So, you know --

Q Border issues?

A Yes, border issues, immigration, smuggling, human smuggling cases. So most of my work and attention is CBP, followed by obviously the top priority for the Department, which is national security and FBI, and we do a lot of work on national security in Arizona, a lot, a lot more than I fully appreciated until I got in the job. DEA, we do a ton of work with them. We do a lot of wires with them. I would say, you know, on that scale of Federal agencies we do work with, ATF is near, closer to the bottom.

Q And that's how they feel a lot of times, too?

A Yeah, yeah.

Q So they feel a little bit neglected?

A Yeah.

Q Now taking liberties, then, so what you're saying is, taking responsibility, part of the mistake is you weren't -- when Newell would ping you or communicate with you, it wasn't a very high priority? I mean, he would never tell you there was a problem anyway, he would basically tell you here's a little update. You kind of heard it but you didn't really do much with it; is that correct?

A Yeah, and also because at times he made it -- you know, the way any of us communicate, especially in those kind of jobs, where he would send you a document and sometimes he would just say FYI or sometimes he would say, hey, here's an update, and so one issue for me is he's not identifying a problem, he's not saying he needs to see me, he's not asking even for a response, so I'm taking that off of the dashboard and saying, that's not something I need to worry about.

Q It's not an action item?

A It's not an action item. But there is definitely a lot of contact between Bill and I, a lot, I mean because you have a lot of contact with your Fed head, period, and Bill, I think in fairness to him, wanted to make it clear to his office and to his agency that, you know, we enjoy a good working relationship with the U.S. Attorney's Office, we did not in the past, and they're trying to do our cases and they're trying to do more of our cases.

Q What about assigning Mr. Hurley to ATF, specifically to that case?

A Right.

A They can prevent you from going forward.

Q They can? So you need OEO approval?

A Absolutely.

Q Now, by OEO we're talking about a line attorney at OEO or does it go up the chain at OEO?

A I don't know the internal structures at OEO. I do know that for a U.S. Attorney's Office and when you're working on it, you're assigned a line attorney, and at some point or another they will tell you, you know, it's good to go, and then you get it back.

Q Okay. In this case there was some discussion that Mr. Newell may have been frustrated or other folks at ATF about the speed of getting this OEO to move, I guess?

A Right.

Q Were you aware of that?

A You know --

Q I'm concerned about the process, that they weren't getting this wire up speedily?

A Yeah, yeah. I paused for a minute because my recollection is throughout that period of time there was general consternation within the U.S. Attorneys community about the timing of OEO on wires in general, and the issue became for a Federal agency that it had an option of going federally or state. If the Federal process was that much longer and it's being delayed, and I can't get up on the line, I'm going to go state, and this has been a recurring issue at the Department.

Q At which department?

A The Justice Department. Long before -- I mean, this is just for years, it's been an issue with complaints in the field that OEO's review process takes too long, and I would say that was an issue I spent a lot of time, and not in particular with regards to Fast and Furious, just in general, because we do a lot of wire cases.

Q Did you recall Mr. Newell -- I guess your primary contact at the ATF was Mr. Newell, right? You didn't talk to Mr. Voth that much or some of the ASACs or anyone like that?

A No. I talked to no one other than Mr. Newell, and my recollection is a couple -- I mean, there would be times when we would have meetings and he would bring someone else over.

Q Sure.

A Or sometimes Jim Needles, but my contact was overwhelmingly just Bill Newell.

Q And do you have any specific recollection or can you try to remember whether Mr. Newell had a conversation with you where he said, hey, we're trying to get this wire? Did you know they were trying to get up on the wire?

A Oh, yeah, yeah. In fact, my memory of the case was this was the gun trafficking case that they wanted to do a wire on, and --

Q Now, how did that come to your attention, through Mr. Newell or somebody in your office?

A Both. I remember Bill would always say -- because he would say something about the case, and I would say which case is that? And

he would say, oh, that's the one we're trying to get the -- you know, we're going to want to do a wire on, we're going to do a wire, or we're doing a wire on or we have a wire. That was literally, for that whole period of time, my recollection of how to remember this case. I mean, it was obviously identified to me as Fast and Furious, it was communicated to me that way, but my memory always was, where is the gun trafficking case that they're doing a wire on.

Q And interestingly, if you had a drug trafficking case, they couldn't say that's the one we're trying to get a wire on because there's so many, correct?

A Exactly.

Q But for a firearms and an ATF case, getting a wire is pretty unusual?

A You're right.

Q You probably don't have any other ones?

A I don't think so.

Q Okay. So you remember this one by that's the gun trafficking case with the wire. And so did Mr. Newell have conversations with you saying, hey, we're trying to get this wire, it's not happening, can you help me?

A I would not say --

Q Or words to that effect?

A Yeah, I would not say in that way. He would say whatever you can do to help out with this, whatever you can do to help out with this, in a very kind of positive way. And could I go back on the OEO

process?

Q Yes, please.

A Because this is critical. The current leadership overseeing OEO has done drastic improvements to the process, drastic, and the feedback from FBI and DEA and all the other agencies, DEA predominantly because they do the most wires, has been unbelievably positive.

Q Did they hire more people?

A They hired more people, they took out some of their procedures and regs, and they expedited it. It streamlined it. Which puts us in a better position that Federal agencies will actually come to us to do wires as opposed to go statewide. I mean, we will never get over the fact that there are easier ways for a State to give wire approval, but we're in a much, much better position, and so when you ask me about, you know, was I trying to help with OEO, yeah, a lot, but I wouldn't say I was just calling or there were ever conversations just about, you know, the gun trafficking case that ATF is doing. It was literally a push to get OEO to change their procedures.

Q Okay. So there was no -- you don't recall or perhaps there wasn't a specific instance where you would call somebody at DOJ, be it OEO or someplace else, saying, hey, something to the effect that ATF's got this gun trafficking case they're trying to get on the wire and it's very slow to develop?

A I might have. I just don't recall that. I just -- the only reason why I'm hesitant on that is that I just know I had a lot of

conversations about OEO and the process and how it worked, and so at one juncture or another during that I might have used this as an example with OEO that, you know, how to get things done quicker.

Q When you had these discussions about the OEO process, were they with folks in OEO or were they other Justice Department officials?

A It was Paul -- this is embarrassing, I can't remember Paul's last name, Paul who runs OEO. Can we go off the record?

Mr. Castor. Sure.

[Discussion off the record.]

Mr. Kerner. Back on the record. Now you were talking about --

Mr. Burke. Could I follow up on that?

Mr. Kerner. Please go ahead.

BY MR. KERNER:

Q I was asking you who you were talking with --

A Right, right.

Q -- and you said you talked to the head of OEO?

A I definitely did. I talked to Paul at length, several times Paul came and spoke to the AGAC, which I'm a member of, the Attorney General's Advisory Committee, and my recollection is that I had a list of seven issues that our district had identified of how OEO could expedite Title IIIs, and that Paul came and spoke to the AGAC and gave, you know, remarks at the beginning of the meeting.

Q I'm sorry, he came to where?

A The Attorney General's Advisory Committee, which I'm a member of. And Paul, in his opening remarks, basically went through

all seven of the things we were going to ask for. That was my recollection of it.

Q Did you think that was a coincidence?

A No. I think he had nine, I only had seven.

Q Okay. But he incorporated your seven?

A I think it was the fact that some of them were so obvious.

Q Do you remember some of them?

A Not right now. If I thought about it I could. Right off the top of my head I can't think of it.

Q Did you talk to people at DOJ about OEO? In fact, let me back up for a second. You're obviously a presidentially appointed, Senate confirmed U.S. Attorney, so do you even have a boss? I know we talked about the administrative agency that sort of controls some of the finances, but you basically, I mean, do you report to somebody at DOJ who is your boss?

A Yes, technically I report to the Deputy.

Q Okay. And who was that? Who is it now?

A It's David Ogden.

Q Then?

A Yeah. And then it was Gary Grindler and now it's James Cole. I got all the last names right.

Q Very good. Is that your relationship with them then, are they really your boss? Do you have to give reports to them?

A No, no. It's org chart. I don't mean to diminish the role that I report to the Deputy at all, but I think what you were saying

earlier in your lead-up to your question, you're pretty independent as a U.S. Attorney in making decisions, and I think that's accurate. But on an org chart and for reporting requirements the U.S. Attorneys report to the Deputy on the org chart.

Q And if the Attorney General puts out a directive, you're bound by it?

A Yes.

Q Okay. So as independent as you obviously are in the policies, there is a connection between you and the Department of Justice? You're not a free floating atom?

A Absolutely.

Q Okay.

A It's a debatable proposition as to how much.

Q Right. Does it differ?

A I think it differs amongst U.S. Attorneys, yeah. Yeah. I think it differs between the -- I mean, there is a built-in back and forth tension between the U.S. Attorneys and the Department, yes.

Q Do you, during your almost 2 years now I guess --

A Correct.

Q Did you have a lot of contact with Mr. Ogden, Messrs. Ogden, Grindler, and now Cole?

A No, I would not say a lot. It depends. It depends on the issue. In other words, you know, recently we've been working on this issue of medical marijuana, and that is an issue the Department wants to make sure that it's a coordinated policy, even though several U.S.

Attorneys have written, you know, separate letters out there that the Department wanted to coordinate it. So there is an attorney in the DAG's office who, you know, can call a meeting or, you know, or ask to review your letter before it goes out, and you don't, you know -- you and I have been talking for the last few minutes about the independence of U.S. Attorneys' offices, but if the DAG's office says, you know, you're not sending a letter out on this issue unless we review it, then they're obviously going to review it.

Q Got it. And specifically talking about, we've talked about it more generally, but the Fast and Furious case, did you have any conversations with people at DOJ about the case?

A They would have been conversations to the effect of talking generally about the issue of southwest border and gun trafficking into Mexico, and that we had a lot of activity on that, and that we even had a Title III case of a large gun trafficking organization, and that's what it would have been like. So, in other words, yeah, I mean, I would have -- if I were at the Department at a meeting and they said what's going on in Arizona, I would say we're focusing on southbound traffic. We're not just focusing on the northbound. We're not just focusing on the drugs and the humans, we're focusing on the guns and the money, and that was a mantra I was often using, you know, we're going to focus at port of entries and with the agencies on guns and money heading to Mexico, and so I would definitely have a lot of conversations with people in the Department about that because that was kind of how we wanted to be viewed, and then I would pivot that to say, and we have

a big Title III case.

Q Did you ever get any questions about the details on this case or any other cases?

A Not that I can recall at all.

Q Okay. How many conversations would you say you had with -- now this would be the DAG, so either Ogden, Grindler or Cole, but this would have been the DAG that you discussed this with, correct?

A Not any kind of personal conversation where it would just be me, myself, and the DAG. What would happen is, during this period of time there were conference calls --

Q I'm sorry, when you say during this period of time, Mr. Reich wants us to be accurate?

A I apologize.

Q So what time are we talking about?

A You know, the first couple months of the office. I was just getting adjusted.

Q So the fall of '09?

A So I would say more, you know, winter, late winter '09 into '10 maybe. You know, after I kind of got adjusted in the office, figured out what I was doing. My recollection is, and I would have to go back and check on this, but there were -- Deputy Attorney General Ogden would have southwest border conference calls, and he would chair them, and I think my recollection was Lanny was the cochair, Lanny Breuer, the Chief of the Criminal Division, the Assistant Attorney General for the Criminal Division, that they would -- they were

cochairing these, and they would have all the DOJ, law enforcement components on the call or in the room with them, more likely in the room, and then they would have the five southwest border U.S. Attorneys on the call, too, and then we would have to report up at some point in the call what was going on in our districts.

Q "Report up" means?

A Meaning that this was a conference call, David Ogden would say the southwest border is important to us, you know, we really want to focus on the cartels, we have a cartel strategy, this is what we're doing. Okay, DEA, what are you doing? Okay, ATF, what are you doing? FBI? And then they would give updates. Then at the end of the call they would say now we're going to hear from our U.S. Attorneys, and then they would go through the U.S. Attorneys. So I would give an update to this call of what was going on.

Q So "up" didn't mean up the chain, it just meant you were going to report, you were going to tell them what was happening in the district?

A Exactly.

Q Now, after the, obviously, the letter from Senator Grassley that started this whole thing --

A Right.

Q Obviously when Operation Fast and Furious became part of the congressional investigation after all this happened, have you had any conversations with folks in DOJ subsequent to this, so this year?

A About this case?

Q Had you ever seen or worked or heard of a firearms prosecution that had a large scale T-III app?

A I did not work one myself, and I can't say I was aware of one at the time. You know, I think -- part of my recollection was that anyone who was doing a wire outside of DEA was not a typical procedure. The FBI obviously does wires. They do a lot of FISAs and other -- but an actual wiretap like this, my recollection at the time, I did think that ATF was not an agency that had a lot of history with doing T-IIIs.

Q And the logic behind a wire, as you said, was it would help build the case up the chain, identify recruiters, financiers, and organizers?

A Correct. The impression I was left with, my memory at that time as to what I was being told and what was left in my head as to why they were doing this was that they were identifying straw purchasers, that there was an historic sense that the straw purchasers were celled off. Celled in the sense of C-E-L-L-E-D, celled off, and didn't have much knowledge or help for at times or coached very well in not admitting the Federal sense they violated or they were just not very effective cases to actually get past that stage into the recruiters and organizers.

And my recollection was the point they were making was they wanted to do a Title III to get a sense of who was actually running this operation and where the guns were going to.

Q So simply arresting the lowest rung, in the view of your line prosecutors, and trying to flip them up the chain was insufficient?

A Yeah. My understanding, my recollection and understanding was that it was obviously a practice that is done a lot but wasn't necessarily always very fruitful because they didn't get much past the straw purchaser and one level, at best. And I do recall at some point remarks being made that the straw purchasers were being coached better to not admit their involvement or why they were buying the guns and they were difficult cases because, as we know, the commodity we are talking about is inherently legal, unlike a drug case where the drugs are inherently illegal. And at times they had communicated that there were situations where straw purchasers would not be cooperative and the case didn't get very far. That was kind of my recollection.

Q The committee received testimony from Special Agent Forcelli, who is a group supervisor with the ATF, that the U.S. Attorney's Office refused to use defendant proffers to flip witnesses in gun cases; is that true to your knowledge?

A No, it is not true. And that is an area I would like to come back to you on at a later time because I would like to provide you statistical information with regards to how many proffers we do. We do a lot of proffers. We are not reluctant at all, and I'm not sure why he said that.

Q Was there any historic practice prior to your arrival that you are aware of not using defendant proffers across the board or in gun cases specifically?

A Not that I'm aware of. And I recall conversations in my office with people who indicated just the opposite, that they have

always been willing to do proffers.

Q Do you have any experience specifically with Mr. Hurley and his willingness to use proffers?

A I can't personally talk about his particular history.

Q Mr. Burke, are you aware of any proffers that were provided in the Fast and Furious case? Any attempts to work with a witness, interview a witness, flip them up the chain using proffers?

A Sitting here today, I can't recall whether I was ever told one way or another whether there were proffers in that case or at what stage.

Q But using a proffer and flipping a witness if you are not using a T-III and you want to build a case up the chain, that would be standard technique for how you do so; correct?

A Yes.

Q Are there other alternatives means besides a T-III or the use of a proffer to build a bigger case?

A Absolutely. There is a whole series of techniques. Obviously one is surveillance. Patterns and practices of what people are doing and -- but I wasn't aware or been told that, you know, there was any direction from our office not to be using any of those tactics or that in a lot of these cases whether an agency would necessarily be even communicating to our office whether they are going to do those or a knock and talk or other methods of -- investigative methods. A lot of those are tactical decisions determined by the law enforcement agency.

Q So you never had discussions with Mr. Hurley about what investigative techniques specifically besides the T-III were being employed in Fast and Furious?

A I never had a personal conversation with him about it, no.

Q And what about Mr. Morrissey or Mr. Cunningham?

A I have talked to them before about what had gone down in this case and what had happened with regards to what later came out about called off surveillance. And at least the prosecutors in my office, the people you mentioned, have said that they were not aware of that at all, that there had been some reference or accusation at some point that Mr. Hurley was -- they were having to get legal approval for him to do knock and talks, and he says that's not the case at all.

Q Mr. Hurley has represented to you that ATF, the Fast and Furious case agents, group supervisor, line agents, did not come to him for specific tactical authorization to use a knock and talk, to pull someone over or go to their home and ask them about guns that they had purchased?

A Correct. Although that was not communicated to me by Mr. Hurley; it was communicated to me by Mr. Morrissey.

Q Did SAC Newell ever come to you and discuss the specific tactics, surveillance tactics or interdiction tactics being employed in Operation Fast and Furious?

A I don't recall. I don't recall any actual conversation between Mr. Newell and myself where they actually talked about the tactics they were using other than the fact that justifications as to

why they had an interest in doing a Title III, which as you know, you need to show even in your Title III a necessity, which is a requirement that you have tried or exhausted other methods of investigation and thereby put you in a position for a need to do a Title III.

Q Did SAC Newell ever complain to you about restrictions being put on his agents by the AUSA in charge of this case?

A I don't recall any. My recollection of any communication on this particular case between Mr. Newell and myself with regards to Mr. Hurley were all positive.

Q That Mr. Newell was saying that AUSA Hurley was doing a good job as a prosecutor working with his line agents?

A That is the impression I was getting from any communications I was having with Mr. Newell during that period of time.

Q And as a general matter, you don't recall discussing again tactical details?

A I have no recollection of talking tactical details with Mr. Newell. As I said, though, only with the sense that -- his points as to why they would need to do a Title III.

Q We've heard testimony from line agents of ATF that surveillance of suspected straw purchasers was cut short and that they were prevented from making interdictions or knock and talks, and many of them believed that that was in part due to restrictions put on them by Assistant United States Attorney Emory Hurley, but that is inconsistent with your understanding of Hurley's role in the case; is that correct?

was marked for identification.]

BY MR. LINDSAY:

Q I will give you a chance to familiarize yourself with the document, but I'm not asking you to read the whole thing. And to clarify for the record, I don't know if Mr. Burke has or has not seen this document. I will ask that momentarily.

Mr. Burke, you've had a second to just skim the document. Do you recall ever receiving or seeing a copy of this document during -- around January 8, 2010, or any time thereafter in 2010 as a part of your supervision of this case?

Mr. Reich. Respectfully, have you had a chance to look at it sufficiently to answer that question?

Mr. Burke. I have had it. I would like to spend a little more time reading it, but I know I can answer that question, which is that I have no recollection of receiving this memo any time around January 8th.

BY MR. LINDSAY:

Q Thank you. There is a lot of extraneous material in this memo, this briefing paper for these purposes, but I want to ask you about a specific paragraph in particular. It is paragraph 8 on page 2.

A Okay.

Q I'm going to let you review it and also read relevant portions of that paragraph into the record.

"On January 5, 2010, ASAC Gillett, Group Supervisor Voth, and Case

Agent MacAllister met with AUSA Emory Hurley, who is the lead federal prosecutor on this matter. Investigative and prosecution strategies were discussed and a determination was made that there was minimal evidence at this time to support any type of prosecution; therefore, additional firearms purchases should be monitored and additional evidence continued to be gathered. This investigation was briefed to United States Attorney Dennis Burke, who concurs with the assessment of his line prosecutors and fully supports the continuation of this investigation. Furthermore, Phoenix Special Agent in Charge Newell has repeatedly met with U.S. Attorney Burke regarding the ongoing status of this investigation and both are in full agreement with the current investigative strategy."

First, do you recall being briefed on or about January 2010 about this investigation and the investigative strategy being employed?

A I don't recall today; but I do know that at times during that period of time, that Agent Newell would speak to me about this investigation. I would, just for the record, distinguish the first and second part of that paragraph. I have no recollection whatsoever of being in any kind of briefing with Gillett, Voth and MacAllister, so I assume that is a reference to some other meeting that occurred.

My recollection sitting here today is there were times then when Newell would briefly talk to me about the case and about the overall strategy which goes back to my earlier testimony which was they believed they had a gun trafficking ring or rings that needed to employ other investigative techniques beyond the typical ones in a straw purchase

case that would lead to a Title III case.

Q This document says that you were in full agreement with the current investigative strategy. Was that a fair statement?

A I don't think it is necessarily a fair statement in the sense that the author of this -- who is the author of this?

Q It doesn't state.

A The author of this is characterizing Mr. Newell's representation as to what he told me at the time as to what constituted the investigation. So whether I was in full agreement would only reflect Mr. Newell's belief or characterization of what he told me and how I responded.

Q Paragraph 8 also says that "there was minimal evidence at this time to support any type of prosecution." Do you recall whether you were in agreement with that statement at that time?

A I don't recall. I don't dispute it. I just sitting here today don't recall.

Q And what did Newell tell you about the investigative strategy being employed; do you recall?

A I recall that their interest was they believed that they were on to a large and prolific gun trafficking ring or potentially rings, and that they needed to go beyond the straw purchasers on it. But I don't recall -- in fairness to him and it is just a reflection of my memory, he must have provided more details than that, but I don't ever recall any conversation where he discussed with me what tactical steps they would take in that process.

Q So paragraph 13, if you would turn there, I want to read a portion of that into the record regarding the investigative strategy.

Paragraph 13 starts: "Currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the southwest border."

Did your discussions with SAC Newell encompass that statement there, that the strategy included continuing to allow the transfer of firearms to take place?

A I don't recall. Just reading that, I would also just -- I don't think it is indicative of some of the issues that ended up in this case, which was breaking off surveillance or the magnitude of the accumulation of weapons. Just by reading that, I think it would be fair to say that even if you are allowing the transfer to take place, you are still surveiling and still seeking the goal of seizing the weapons at some juncture when you have them in sight or know where they are as opposed to allowing them to proceed throughout their path.

Q So did you ever understand that as a part of your involvement with this case, that ATF simply was not seizing the weapons, that they were not, in almost all cases, and the weapons were arriving in very large quantities in Mexico?

A I was under the impression that, reflected by Bill's communications to me, where he would often tout a seizure, that that

was the normal process, that they were seizing weapons and also working with Mexico. I mean, I recall being at Bill's office at one point and him introducing me to an embedded PGR official who was in the ATF field office, and I was left with the impression that the ATF were working with him and coordinating cross border efforts that would be reflected in this case and other cases.

Q Do you now understand that in fact they were not working with Mexican authorities?

A My understanding now is that their coordination work or efforts with any Mexican officials was less, much less, much less than any belief I had or was led to believe.

Q So when you got an email notice or saw Bill Newell at an event and he said there was a major seizure in Naco or Mexicali or Sonora, 42 guns, a bunch of them Fast and Furious guns, you were under the impression that that was a coordinated event, ATF working with the Mexican Attorney General's Office?

A Yeah. My assumption was, from the portrayal by Bill, that their work on this case and other cases, was being assisted, coordinated or communicated with their Mexican counterparts. That being the reason why they had the embedded PGR official. And also, Bill's position of strength, as he would communicate it, was that he had developed very good working relationships in Mexico with Mexican law enforcement and was working with them on a regular basis.

Q This is Bill Newell, and he speaks fluent Spanish, and he is known, or I understand he is known as an expert on southwest border

trafficking issues generally; was that your impression of who he was when you took your position in 2009?

A Yeah. In fact, the first time I met Bill Newell was in Cuernavaca, Mexico, in 2009 when I was working at the Department of Homeland Security, and there was a gun trafficking conference that Attorney General -- the Attorney General of Mexico and the Attorney General of the United States attended. At one point earlier, Bill gave a presentation of gun trafficking, and he gave it in Spanish, fluently in Spanish. I couldn't tell you what he said.

Q You arrived in September 2009, correct, in your U.S. Attorney's position?

A Correct. This was some time around April 2009 when I was working at the Department of Homeland Security. I went to a conference. That was the first time I met him. It must have already at that point been at least publicly discussed or some indication that I was under consideration to be U.S. Attorney because he came up and introduced himself and said that he was the SAC, ATF SAC in the District of Arizona. As I recall, at a later point, he literally gave a presentation on gun trafficking, and it was all in Spanish.

Q Did you ever discuss with him a deliberate tactic of noninterdiction to see where the weapons ended up? To see if they ended up with the DTO in Mexico?

A I do not recall that at all.

Q Would that stick out in your mind at this point if he had said we're going to let the guns go, find them in crime scenes in Mexico,

change what you're describing in terms of your view of the case and the criticisms of it.

A Well, yeah. I would say also that what I'm apologetic for and regret is that I was so defensive and strident about the case without, you know, knowing more than I knew about the case myself.

Q Right. So what I'm trying to get at is what specifically did you learn that changed your view?

A I think aspects of how we could have conducted the case, I think aspects of how ATF conducted the case.

Q Right, such as what?

A Such as the length of time this case took, how the agents --

Q You weren't aware of that in January of 2011?

A I was aware how long the case took. In fact at times I had said we need to hurry the case up, but in retrospect now, as much analysis as we've done of the case, I have a greater appreciation for maybe ways we could have sped it up. You know, our communication within the office, what I was learning from Bill Newell and when I learned it. As I said this morning, I think there were opportunities where I could have been asking more questions. That's all the kind of stuff in retrospect.

Q How did you learn that there were questions you should have -- like what's an example of a question that you should have asked but didn't?

A There were times when Bill Newell was giving me updates on the case, and he would give some kind of anecdote that occurred in Mexico

and make some reference to Fast and Furious, and I would just read it or hear him say it, and I didn't spend the time to sit down with the folks in our office and say, you know, what is going on in that case and what are we doing on that case and asking questions.

Q And if you had done that, looking with hindsight now, what do you think you might have learned earlier that would have changed the way you handled your responsibilities at the time?

A I think we would have put more prosecutors on the case, I think --

Q But what would you have learned in terms of actual representations from Newell?

A Like this morning when I discussed, as an example, Patino, I mean, the fact that there was an individual in here who had accumulated that many weapons.

Q Okay, so you didn't know that in January of 2011?

A I do not recall knowing that in January of 2011, no.

Q Okay. Is there anything else specifically that you recall that you've learned since January of 2011, another fact like that that changes your perspective on things?

A I can get back to you on that. I just --

Q Nothing you can think of right now?

A No. I mean, I think there are reasons. I just don't want to -- I mean, I would like to be able to come back to you on that at some point. I think there are. I mean, I just --

Q You mean something you want to discuss off the record?

A No. I just want to give it more thought.

EXAMINATION

BY MR. LEAVITT:

Q You mentioned earlier having greater appreciation for ways you could have sped up the process. Can you elaborate more on that, what you would have done to speed things up?

A Yeah, although just to clarify, I think there was some testimony that the case was given to us in August. The case was actually given to us in October. We received over 3,000 documents.

Mr. Foster. I'm sorry, what year?

Mr. Leavitt. 2010.

Mr. Burke. 2010.

BY MR. FOSTER:

Q What do you mean when you say the case was given to us?

A There is a formal process when an agency gives us a case with their cover, and the actual full documentation of the case was given to us, our office in October 2010, and I believe it was represented that it was given to us in August 2010.

Q You mean today in some of the questioning?

A No, I thought there was testimony at one point.

Q Oh, at one of the hearings?

A Yeah, yeah. No, I'm sorry, I apologize, I didn't mean by anyone here. And so --

Q And why is that significant? You mean Mr. Hurley was working -- ATF, at least, has described it as a prosecutor-led strike

force case, they've pointed to documents where those words are written.

A Right.

Q And that it's specifically a prosecutor-led case, everyone talks about how Mr. Hurley was the supervising AUSA on the case, and so are you saying that there are things that you didn't know, that your office didn't know until October of 2010 because it hadn't been formally -- you hadn't formally been provided all of the case documents?

A I don't know that for an actual fact. I do know that in October 2010 our office was provided over 3,000 documents, and a lot of those documents were ROIs that our office had not seen before.

Q You mean Emory Hurley hadn't seen before?

A Correct.

Q Okay.

A He was not, it's my understanding that he was not reviewing all the ROIs, that there were -- I don't know if, of the 3,000 documents we received in October, whether there was a percentage there that he had seen, but I do know there was a huge data dump, file dump on our office in October of this case.

Q And can you explain to us why that happens when it happens, how is the timing worked out? Is that something that you work cooperatively with the ATF to determine when you want to receive that level of detailed information?

A Our perspective is the sooner the better, so the decision as to when the actual documents arrive is a decision made by the agency.

Q Was it something your office had sought earlier and were

denied?

A I don't have any knowledge to testify today whether Emory had made requests earlier, but I do think it's troubling that of a case of this size, that that many documents are given to the prosecution at that point in the process.

BY MR. LEAVITT:

Q Do you have any indication as to why the representation would have been made in the past that August was the handoff?

A I do not. I do not.

Q So there was no other maybe more informal handing over of information or no other milestone that might have been in August?

A I'm not aware -- well, I do recall we had a meeting in August, but it wasn't with regards to now you have everything you need, you know, start drafting the indictment. And I think our position in the office would be if you've got a case of this magnitude with 3,000 documents, then it's going to take a while, you know. I mean, there are judgment decisions that we should have learned from that that if one AUSA is working on a case of this size, is provided that many documents, are there additional prosecutors who should be assigned to the case.

BY MR. FOSTER:

Q So is Emory Hurley the only prosecutor that worked on gun cases? I mean, was he the gun prosecutor for your office?

A No. There are several prosecutors in our office who take gun cases, and in fact --

A I don't recall that. I just remember when I was asked to speak, I would say we're really focused on the guns and the money heading south, and we're doing -- and we're trying to do a lot with ATF, and I think even identified ICE because ICE had some cases that gave indications of gun trafficking.

Q Okay. So what was special about this ATF case, though? I mean, was it -- were you told that there was a reasonable expectation that they would be able to get a wire because they had a cooperating FFL, a cooperating gun dealer?

A I don't recall that at all.

Q You don't recall that there was a cooperating gun dealer?

A At that stage?

Q At any stage.

A Oh, yes, I do remember later.

Q When did you learn there was a cooperating gun dealer and how?

A I can't recall. I just remember references at some point, Bill Newell saying that they were working very closely with several dealers on a case, and actually my memory is the way he was telling me, I didn't necessarily know if it was a case or cases, whether he was saying we have developed -- my recollection as to what he said was, we've developed very close relationships with dealers, and they are working with us. I don't know if he used the word "working." I don't know if he used the word "cooperating," but he at least gave some indication that dealers were involved in their gun trafficking

investigations.

Q In a positive way? Not as targets? As helping?

A That was the impression that was left with me.

Q When? I know you don't know the exact date, but approximately?

A I would guess -- I don't know. I would guess that would be sometime in the first quarter of 2010. I really don't, I apologize, I just can't recall. I remember him talking about that, and it just stuck in my head.

Q Okay. So you think it was 2010, though, not 2009?

A I just -- I wouldn't want to hold myself to that. I just --

Q No, I understand, just your best recollection sitting here today.

A Yeah, yeah.

Q Okay. You've reviewed documents in preparation for this, though, right?

A I have reviewed some documents in preparation for this.

Q Okay. Approximately how many?

A Maybe over a hundred.

Q A hundred pages?

A Yeah, I would say. That's my estimate.

Q These were all documents that you were on, emails to or from you or memos to or from you?

A Yes.

Q Okay.

Q Mr. Voth.

A Mr. Voth? Just the two of them? But I can't recall, but I do know that there was a dispute as to what they said in the meeting.

Q And you don't know what the dispute is?

A I can't recall off the top of my head.

Q Okay. It's sort of a core issue that we have raised repeatedly throughout this inquiry is the notion that the gun dealers were cooperating with the ATF, were giving contemporaneous real-time information to the ATF about the purchasers, purchasers who were known to ATF through information from DEA, through their own investigative work to be straw purchasers, right? And so the core of this controversy is about the communications to -- the signals given to the gun dealers to go ahead and continue selling to people who were known straw purchasers, knowing that those people were, A, were straw purchasers and, B, that their previous straw purchases, straw-purchased weapons had ended up in Mexico. So I mean, those -- that's the core of what this dispute is about. I mean, you understand that today, right?

A I understand that today, and I would say that from my perspective, and I have recollections of it, that I was concerned about how ATF was having interaction with dealers.

Q Okay. When did you become concerned about that?

A Not around that time frame because I don't recall that I knew anything at that point. At later junctures when Bill Newell indicated, mentioned in conversations how they were working with dealers, I was kind of struck about how he would describe that. I was a little taken

aback that the ATF in general was conducting their work on gun trafficking with such a relationship with the dealers.

Q So did you ask Emory Hurley about it at that time?

A I did not ask him if he had had this meeting, these conversations.

Q No, did you ask him generally about whether he had had contact with gun dealers and to what extent he was aware of the gun dealers' cooperation?

A I don't recall ever having -- these were conversations between Bill Newell and I.

Q But what I'm asking is after this conversation you didn't go follow up with Mr. Hurley?

A I don't recall.

Q Or any of your subordinates?

A No.

Q Okay. So you didn't -- so when is it that you believe you learned about these concerns from gun dealers, and this gun dealer, this particular one is not the only one who expressed concerns, I'm sure you're aware of the emails that have been released and discussed publicly from another gun dealer expressing concerns about, you know, the level of being asked to continue to make suspicious sales and that they were concerned that a border patrol agent might be killed?

A Yeah, I only learned about that, I think --

Q And Emory Hurley had a meeting, at least according to the emails he had a meeting with them as well, with the other gun dealer

as well?

A Yes, that's information I would have only learned in early 2011. I would not have known that before that. I don't recall knowing that.

Q Is that one of the new facts that you've learned in the course of our investigation that sort of changes your perspective of how defensible your office's handling of the case is?

A I would like -- I would say yes, but I just need to figure out the chronology of when this memo was that Emory sent to me, as to whether that was after one of Senator Grassley's letters. Sitting here today, I do remember being informed about this meeting that Emory had long after that meeting and asking what was that about.

Q But that was before the controversy broke?

A Yeah. I don't know why I would have -- I can't recall what prompted me to say, someone tell me what that was about.

Mr. Leavitt. Can you reconcile at all -- obviously you might not have a specific recollection, but given that there are two different dates on the document you have, the front cover shows a date of January 28th, but then on the memo itself --

Mr. Foster. Which for the record is the day after Senator Grassley's first letter about this.

Mr. Reich. Can you identify for the record what the exhibit is you're asking about?

Mr. Leavitt. This is Exhibit 7. And the third page of that is the beginning of a memorandum which has -- is dated at the top there

January 28th. If you go to the fourth page, the next page in that memorandum, that is not dated.

So we've seen multiple versions of these, I will show you this and represent to you that other versions show March 18th, 2011.

Mr. Reich. Just so the record is clear, can you just say for the record what you've seen in the two versions of the document so we have it?

Mr. Foster. The first page of the memo is dated January 28th, and on other versions of this memo the header on the following pages is dated March 18th.

Mr. Reich. And just so the record's clear, on the version that the witness has, the header on all of the pages is dated January 28th?

Mr. Foster. Correct.

Mr. Leavitt. Yes. So we have been produced both of the versions of these documents. So given that there is about a 2-month gap in between, do you have any recollection as to whether this document might have been produced in January or in March to you?

Mr. Burke. I have no recollection at all.

BY MR. FOSTER:

Q Did you receive it twice?

A I have no recollection of that at all.

Q Did you ask Emory Hurley to update the document at any point?

A I don't recall that at all. Can I ask you a question?

Q Sure.

A So when was Senator Grassley's first letter?

Q January 27th.

A And he referenced in that the -- did he reference in that letter that the AUSA had gone to a gun dealer?

Q You know, I don't recall.

Mr. Castor. That was not the first letter.

Mr. Burke. That was not the first Grassley letter?

Mr. Foster. Probably the first letter in early February.

Mr. Burke. So the first Grassley letter did not reference --

Mr. Foster. The second one definitely did because we attached documents that referred to the meeting.

Mr. Burke. Okay. I just, sitting here today, I don't recall what prompted me to know it at that point, but I do know that --

BY MR. FOSTER:

Q I'm sorry, what prompted you to know what at what point?

A Good clarification. This is -- I am trying to respond to the issue of when I would have known or could have -- when I knew of the fact that Emory Hurley had gone to a gun dealer with ATF to meet with the gun dealer to talk to him. And I asked you if it was in a Grassley letter. I was trying to figure, recall what prompted me to ask someone at Mike Morrissey about this meeting, and it was at that time frame, my guess is, my assumption is I had asked for it and that is why it was put in the memo to me well over a year after. But, you know --

Q Have you ever asked Emory Hurley if he has contemporaneous notes?

A I have not.

Mr. Reich. Jason, we're at an hour and 5 minutes.

Ms. Grooms. Jason, if you don't mind, because I think there's a couple different versions of the document, can you just tell me the Bates stamp numbers so we just have it in the record in case we want to go back.

Mr. Foster. Yes.

Mr. Leavitt. So the Bates stamp numbers of the document with differing dates are 001665 through -67.

Ms. Grooms. And the Bates stamp numbers of the other document?

Mr. Leavitt. One is 002348 through -51, and it additionally has a document 002535 that shows further the email correspondence that was on the top document on 002348.

Ms. Grooms. Thank you.

Mr. Castor. What was the first set of Bates numbers?

Mr. Leavitt. 001665 through --

Mr. Castor. 0016 --

Mr. Leavitt. 65 through 67.

Mr. Foster. Can we do it off the record?

[Discussion off the record.]

[Recess.]

BY MR. LINDSAY:

Q It's 3:17, and we're back on the record. Mr. Burke, I want to return to Exhibit 7, the memorandum from Dennis Burke to Emory Hurley, subject Jaime Avila, Jr., dated January 28th, 2011.

Mr. Reich. Could you just do the to/from one more time for the record? I think you got it backwards.

BY MR. LINDSAY:

Q To Dennis Burke from Emory Hurley, subject Jaime Avila, dated January 28, 2011. Thank you?

At the bottom of this memorandum, it states that [REDACTED], who is the owner of [REDACTED], the FFL, was advised by the agents in this AUSA that they could not tell him who he could or could not sell to and that they could not instruct him to make a sale in violation of the law or to refuse to make a lawful sale. He was advised by the agents that as an FFL he has to comply with all of the statutes and regulations that govern the sale and transfer of firearms and cannot sell firearms unless the required paperwork and background check were completed. As long as the required forms were properly filled out and the FFL did not know or have a reason to know that the firearms were part of a straw purchase or intended to be used in a crime that he could complete the transfer. [REDACTED] was also told by the agents and this AUSA that the information he provided to ATF regarding large firearms transactions, particularly sales involving only long guns, was very important and useful to ongoing ATF investigations.

I will represent to you that [REDACTED] testified to us that he, in effect, was encouraged to continue to go forward with these sales, even though he was suspicious that these were straw purchasers, and in fact self-evidently, ATF was suspicious that they were straw purchasers, Jaime Avila was a straw purchaser, they had identified him

as such, they had identified him as such to [REDACTED], Jaime Avila, Uriel Patino, and others within this network continued to purchase hundreds of weapons, a significant number of which of those came from [REDACTED].

Is it extraordinary in your experience that an AUSA would sit down with an FFL to advise them how to deal with a suspected straw purchaser?

A I'm not aware of that being a common practice, and I'm not -- I cannot point to any other situations where that occurred.

Q Please continue.

A I was going to say my recollection of whoever -- and I don't think that's necessarily indicated in this section you read. Maybe I read that too quickly. That it was not an idea that originated by Emory, it was a request by ATF that he attend with them so he could give some indication of what the law is and they could hear it from a lawyer.

Q And you stated you were surprised when you heard that Mr. Hurley had been in contact with this FFL or with FFLs in this case; is that correct?

A Yes, I was surprised. I was surprised in the sense that I didn't know it, but then again I'm not necessarily sure I should have known it in that case, in a particular case, but when I did learn of it, I was trying to figure out why our AUSA would be meeting with a potential witness in a case and a discussion with agents and the potential witness.

Q And your surprise triggered a request for further

clarification to Mr. Morrissey, is that what you said?

A That's my recollection. I mean, my sense is that at some point in that period of time I was made aware of this and asked for the background on it.

Q Do you have any concerns about this memorandum, about what he stated he did here, given what you know now about the course of Fast and Furious?

A No. In the section that you read into the record, I don't have a problem with what he was telling this particular dealer. I just was struck by the fact that an AUSA was actually meeting with the dealer.

Q Now, if [REDACTED]'s testimony, which I'm simply representing to you, is that there was a wink and a nod, an encouragement, an emphasis on the last part of what I read, that it was very important and useful to ongoing ATF investigations, if that is correct, if in fact Mr. Hurley and Agent MacAllister and Group Supervisor Voth had encouraged an FFL to go forward with purchasers that he believed were illegal straw purchases or suspected to be illegal straw purchases, would that concern you?

A Yes.

Q Why?

A I don't think ATF or anyone else, whether it be an AUSA, would be in a position of encouraging sales by a dealer. I don't think that's the role. I don't think that's the way we need to be doing these cases. If these sales occur and we're provided information by the dealer, that's one thing, but I don't see a reason why ATF would be in a position

[Burke Exhibit No. 11

was marked for identification.]

BY MR. LINDSAY:

Q This email exchange does not include you on it. It is an email exchange between Bill Newell and Douglas Palmer, who is with ATF, but it references Bill Newell going to the airport on April 27 -- sorry, the subject line is "Exit Strategy Fast and Furious," and it references Mr. Newell going to the airport to meet with you before your departure for Mexico City. And then it says: "Among other things I discussed..." redacted "issue with him and he said he would get with Emory and Glen McCormick," who we have now identified as the AUSA in charge of OCDETF within your office?

A Correct, in the Phoenix office.

Q "... and also push..." redacted. "Have Dave get with Emory tomorrow, reference my talk with the U.S. Attorney to ensure we are pushing from both sides on this issue."

Does this refresh your recollection at all about meeting with Mr. Newell at the airport prior to your departure for Mexico?

A Yes.

Q Do you recall what you discussed during that meeting?

A My recollection was that I was already at the gate waiting for a flight to Mexico City and that Bill had called and said -- asked if he could come over to meet with me, and I told him I was already at the gate. He said that wouldn't be an issue. And he came to the gate and he had like a PowerPoint, but it was not case specific. It

was once again a PowerPoint that he often used which was just to show general gun trafficking from the southwest border, and in particular Arizona, to Mexico. So he wanted me to have that since I was going down to Mexico City in these meetings, and he thought that would be of help to me. If I have my timing right, I believe it was at that juncture where he was asking me to help out with OEO with regards to the approval of the wire.

That's my recollection sitting here today of what we talked about at that time. I'm not sure that even matches up with the wiretap application.

Q Do you recall discussing the exit strategy at all?

A Not at all.

Q And I'm referring to the exit strategy memorandum created by ATF for ATF headquarters discussing their timeline for securing grand jury indictments?

A I have no recollection of that. My recollection is of a PowerPoint that I could use with Mexican officials.

Q Under normal circumstances, is it fair to say that a large-scale investigation with dozens of defendants would take at the very least several weeks, if not months, to prepare and bring down indictments in normal circumstances?

A I believe that is accurate.

Q So again, to your recollection, nobody ever consulted with you about that? At least SAC Newell never did?

A I have no recollection of ever discussing that with SAC

getting OEO to speed up, and we talked a little bit about the wiretap affidavits. Did you review that application and those affidavits?

A No.

Q In the normal course of business, would you review a wiretap application as the U.S. Attorney?

A Not at all. Since I have been the U.S. Attorney, we have had over 120 T-III applications in our office. And that number doesn't even include all of the spin-offs. And I would be more than willing to provide that information at a later juncture to the committee staff.

Q 120 wiretaps and additional spin-offs from those within the last 2 years?

A That's correct.

Q And generally the affidavits and supporting documentation, it is quite lengthy?

A More likely than not.

Q Earlier in the first round of this discussion, we talked about the OEO review process and what you know about that. What is the purpose of the OEO review?

A There are department policies that are overseen by OEO with regards to what you need to provide in your application, one. And, two, my guess has always been to ensure some degree of commonality across the country in the Federal system on how United States Department of Justice is using Title III.

Q Is it fair to say because of the need to prove exhaustion as a constitutional matter?

A I would agree with that, and there are also requirements with regards to the information you are providing on toll records to prove how recent the target has used the phone and the connections, as we often refer to, as a dirty call.

Q In short, to make sure that local U.S. Attorneys' Offices are not abusing the process, to put a quality control check in place from headquarters?

A I would agree with that characterization.

Q And would it be or in your experience does OEO review these affidavits or the applications or the cover memoranda to examine the substance of a case, to make inquiries about what is the U.S. Attorney's Office in Phoenix doing down there? Would they provide substantive criticisms about the conduct of the case?

A I guess that would depend on the reviewer and depend on what exactly is in the application. But I think there is -- I'm operating more from my own memory of being a line AUSA working on Title III applications. And my recollection working with OEO on wiretap cases I worked on, the review was more targeted to ensure that the policies of the Department were being met with regards to necessity -- recent activity, and just overall how it is being drafted. I remember in particular that the OEO would go over with a pretty fine-toothed comb what is in there and what is being written, but more toward what I assume is sort of a checkoff sheet of what needs to be in there.

Q So let me finalize this. I haven't reviewed the T-III affidavits in this case. We have received some information about what

Exhibit 35

[REDACTED]

From: Newell, William D.
Sent: Friday, February 05, 2010 2:00 PM
To: Gillett, George T. Jr.
Subject: FW: Phoenix "Fast and Furious" OCDETF Strike Force F/As Traff - TIII Affidavit Memo
Attachments: 20100205134642944.pdf

FYI

Bill Newell
 Special Agent in Charge
 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - (602) [REDACTED]

-----Original Message-----

From: Newell, William D.
Sent: Friday, February 05, 2010 1:59 PM
To: McMahon, William G.
Cc: Vidoli, Marino F.
Subject: Phoenix "Fast and Furious" OCDETF Strike Force F/As Traff - TIII Affidavit Memo

Attached is the cover memo requesting authorization to conduct a T-III intercept on the main suspect in our on-going OCDETF Strike Force firearms trafficking case out of Phoenix entitled "The Fast and Furious", OCDETF SWB# SWAZP0496. I could not scan the actual affidavit due to its size so I am FedExing that to you along with the original memo.

Bill Newell
 Special Agent in Charge
 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - (602) [REDACTED]



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

201 E Washington St., Suite 940, Phoenix, AZ

February 5, 2010

www.atf.gov

785115: DJV
3264

MEMORANDUM TO: Deputy Assistant Director - West
Field Operations

THRU: Special Agent in Charge
Phoenix Field Division

FROM: Group Supervisor
Phoenix Group VII

SUBJECT: Request for authorization to seek Title III intercept of telephonic
communications.

This memorandum serves to request authorization to initiate a Title III cellular telephone intercept per ATF Order 3530.2, Electronic Surveillance Procedures. The case involved is ATF investigation 785115-10- [REDACTED] which is a Southwest Border Firearms Trafficking Investigation providing firearms to Mexican Drug Cartels. This is an approved Organized Crime Drug Enforcement Task Force investigation; OCDETF # SWAZP0496.

The attached affidavit is being prepared in cooperation with the United States Attorney's Office, who will vet this version through the DOJ Office of Enforcement Operations (OEO). Once the affidavit has been approved by Justice they will seek the ATF Agency approval memorandum to complete the approval process.

BACKGROUND AND SCOPE OF INVESTIGATION

The states of Texas, California, Arizona and New Mexico supply 75% of all firearms illegally trafficked into the Republic of Mexico. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has identified the Phoenix, Arizona area as being one of the top five metropolitan areas where firearms and ammunition are obtained for this purpose. The drug violence in Mexico has escalated with the expansion of the cartels' arsenals.

In October 2009, ATF Phoenix Field Division (PFD) Phoenix Group VII Strike Force initiated investigations involving approximately five possible straw purchasers of firearms pursuant to ATF's Southwest Border/Operation Gunrunner Initiative. ATF Special Agents (Agents) received information from a Source of Information (SOI) that Jacob CHAMBERS, [REDACTED], [REDACTED], and [REDACTED],

██████████ had purchased numerous AK-47 style rifles from the same Glendale, AZ, Federal Firearms Licensee (FFL) during the same approximate time period. ATF agents also received information that a subject identified as Uriel PATINO had purchased numerous AK-47 style rifles and pistols during a short time frame from two FFL's including the FFL utilized by the above mentioned purchasers.

In November 2009, ATF agents identified additional straw purchasers Joshua MOORE, ██████████, ██████████ Dejan HERCEGOVAC, Jaime AVILA, Jr., ██████████, and Jose POLANCO, through the SOI, FFL record checks, and surveillance operations. During the surveillance operations, ATF agents identified a Glendale, AZ, residence owned by a member of the CELIS-ACOSTA family, and a Phoenix automotive business that are being utilized as firearm drop locations. On November 20, 2009, some of the firearms purchased by the identified straw purchasers were recovered in a Naco, Sonora, Mexico seizure including firearms with a short time to crime. ██████████ and ██████████ were identified as additional straw purchasers from the Naco, Sonora, Mexico firearms seizure.

In December 2009, Alfredo CELIS, ██████████, ██████████, ██████████, were also identified as straw purchasers in December. On December 8, 2009, the SOI received a telephone call from a telephone number identified from Caller ID as belonging to Manuel Celis inquiring about AK-47 style firearms. On the same date, ATF agents identified additional straw purchaser Sean STEWARD through the SOI. During the subsequent surveillance operation, a traffic stop was initiated on a vehicle occupied by STEWARD. The occupants of the vehicle were identified as STEWARD, Manuel CELIS-ACOSTA and ██████████. On December 9, 2009, nine firearms purchased by STEWARD on December 8, 2009, were recovered by Douglas, Arizona PD. The firearms were traced by an ICE SAC Phoenix agent on December 10, 2009. ATF agents contacted the Phoenix ICE agents in reference to the seizure.

During a Deconfliction meeting with DEA on December 15, 2009, the DEA Operation FLACO FEO case agents advised that numerous telephone calls had been intercepted involving ██████████ and the Phoenix DEA/GPD Operation FLACO FEO targets. ██████████ is believed to be in Agua Prieta, Mexico, and has been intercepted orchestrating different amounts of US currency being illegally brought into the US for the purpose of purchasing firearms via the Phoenix DEA/GPD Operation FLACO FEO targets. Those targets were intercepted making arrangements with telephone numbers utilized by CELIS-ACOSTA, CHAMBERS and STEWARD to obtain the firearms for ██████████. On December 21, 2009, an intercepted telephone call between CELIS-ACOSTA and an Operation FLACO FEO target revealed that firearms recently purchased in Phoenix were going to be driven to El Paso, TX and trafficked into Mexico.

ATF agents believe that a Phoenix-based firearm trafficking group is actively purchasing firearms through straw purchasers using bulk narcotics proceeds. The firearms are then being trafficked into Mexico using non-factory compartments in various vehicles through various Ports of Entry (POE's) in Arizona and Texas.

Since the ATF case was initiated, ATF agents have identified approximately seventeen straw purchasers who have purchased a large amount of AK-47 style rifles and pistols from various FFL's in the Phoenix Metropolitan area and Prescott, AZ, since September 2009. There have been four firearms seizures in Arizona that were purchased by the identified straw purchasers including the above mentioned Douglas, AZ seizure. There have been two firearms seizures in El Paso, Texas, on January 13, 2010, involving firearms purchased by STEWARD. There have been five firearms seizures in Mexico involving firearms purchased by identified straw purchasers including the above mentioned Naco Seizure; a November 25, 2009, Agua Prieta, Sonora, seizure; a December 9, 2009, Mexicali, Baja California,

seizure that yielded a seizure of over \$2 million dollars in US Currency, firearms, cocaine and methamphetamine from inside a warehouse; a December 18, 2009, seizure in Tijuana, Baja California; and a January 8, 2010, Tijuana, Baja California, seizure.

NAMES AND BACKGROUND OF PROSPECTIVE SUBJECTS

1. Manuel Fabian CELIS-ACOSTA - Date of Birth: [REDACTED]
 Arizona Driver's License Number: [REDACTED]
 Social Security Number: [REDACTED]
 Alien Registration Number [REDACTED] (Permanent Resident Alien)
 ADDRESS: [REDACTED], Phoenix, Arizona [REDACTED]
 Alternate Address: [REDACTED] Phoenix, Arizona [REDACTED]
2. Manuel Alfredo MARQUEZ - Date of Birth: [REDACTED]
 Arizona Driver's License Number: [REDACTED]
 Social Security Number: [REDACTED]
 ADDRESS: [REDACTED], Phoenix, Arizona
3. [REDACTED] - Date of Birth: [REDACTED]
 Arizona Driver's License Number: [REDACTED]
 Social Security Number: [REDACTED]
 ADDRESS: [REDACTED], Avondale, Arizona
4. [REDACTED] Date of Birth: Unknown
 ADDRESS: Agua Prieta, Sonora, Mexico
 Mexican National
5. Uriel PATINO - Date of Birth: [REDACTED]
 Arizona Driver's License: [REDACTED]
 Social Security Number: [REDACTED]
 United States Citizen
 ADDRESS: [REDACTED], Phoenix, Arizona [REDACTED]
6. Sean Christopher STEWARD - Date of Birth: [REDACTED]
 Arizona Driver's License Number: [REDACTED]
 Social Security Number: [REDACTED]
 United states Citizen
 ADDRESS: [REDACTED], Phoenix, Arizona, [REDACTED]
7. Jacob Wayne CHAMBERS - Date of Birth: [REDACTED]
 Arizona Driver's License: [REDACTED]
 Social Security Number: [REDACTED]
 United States Citizen
 ADDRESS: [REDACTED], Buckeye, Arizona, [REDACTED]

SUPERVISING UNITED STATES ATTORNEYS/AGENTS/OFFICERS

1. Assistant United States Attorney Emory Hurley
2. ATF Special Agent Hope MacAllister
3. ATF Special Agent Tonya English

CERTIFICATION

The normal investigative procedures characteristic of those utilized in this type of criminal case and outlined in this section have proven insufficient to develop evidence that all parties associated with the target organization along with the scope of their involvement have been identified. These procedures have been tried and failed, appear unlikely to succeed if tried, and in certain circumstances are too dangerous to employ. They have failed to identify all significant members of the organization all of the co-conspirators transporting the firearms, and all of the co-conspirators distributing the firearms once in Mexico. It is unlikely that this information will be obtained without the interception of the wire communications over the *Target Telephone 1*.

It is our belief that the interception of wire communication is the only investigative technique that has a reasonable likeliness to success in securing evidence needed to prove beyond a reasonable doubt that the target subjects and other not yet identified are acting as part of a firearms trafficking organization, are engaged in the straw purchase of firearms, and are engaged in the possession and distribution of firearms to Mexican Drug Cartels and are supplying these firearms in furtherance of drug trafficking crimes, and the laundering of monetary proceeds.

The following investigative techniques, including the use of physical surveillance, pen analysis, and interviewing, have all provided valuable information to the investigators. They however have not provided investigators information relating to the organization as a whole and as such have hindered the investigators ability to successfully ascertain each of the participant's level of involvement within the conspiracy.

SUBSCRIBER TELEPHONE LINE

The focus of this investigation is the firearm trafficking organization of the target subjects. It is believed that conversations of the aforementioned persons and others yet to be identified are likely to be overheard through the interception of wire communications over target cellular telephone bearing the number 623-██████████, *Target Telephone 1*. *Target Telephone 1*, 623-██████████ is a T-Mobile cellular telephone, with International Mobile Subscriber Identifier (IMSI) ██████████, subscribed to and utilized by Manuel CELIS.

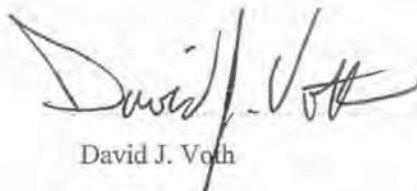
LOCATIONS

Residence of Manuel CELIS: ██████████ ██████████ Phoenix, AZ, ██████████

DURATION

This application to intercept wire communications is for a period of thirty (30) days. It is believed that the facts stated above establish that the target subjects are engaged in a continuing criminal enterprise and that the evidence sought will be intercepted on a continual basis following the first of the particular communications that are the object of this request. Therefore, it is requested that interception not

automatically terminate upon the first interception of wire communications determined to be relevant to the firearm offenses set forth above but be allowed to continue until the full scope of the enterprise is developed, including the identities of all participants, their places and methods of operation and the various activities in which they are engaged in furtherance of the enterprise or for thirty (30) days, whichever comes first. The thirty (30) days will be measured from either the day on which investigators or law enforcement officers first begin to conduct an interception under the Court's Order or ten (10) days after the Order is issued, whichever is earlier.



David J. Voth

Attachment: Affidavit of ATF Special Agent Hope MacAllister seeking T-III Order Authorizing Interception of Audio Communication.

Exhibit 36

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: MARK CHAIT

Wednesday, July 20, 2011

Washington, D.C.

The interview in the above matter was held in 2247 Rayburn House
Office Building, commencing at 10:00 a.m.

A The field works with the assistant U.S. attorney to prepare an affidavit for a Title III. It goes through -- I think it was dual tracked, and I think the process may have changed recently. We actually send one version through our house. We have an attorney that reviews it, a DAD. At the same time I believe --

Q Who is the DAD that reviewed that?

A Well, DAD in this case of the West, Bill McMahon.

Q He told us he had never seen the application, he never read a wiretap application, never even read a memo for authorization of the application. You're saying it's his job to review it?

A I don't know at what point the process changed. I believe that in most cases the DADs do get them. So at the same time there's a track from the U.S. Attorney's Office, and I'm probably not a hundred percent. I believe they do go through -- at some point they go to OEO, Office of Enforcement Operations, at the Department, and I think there's some consultation with the Criminal Division.

Q So in the ATF world, you're out of the loop, it's taken care of below you, generally Mr. McMahon would have taken care of it?

A Sure. I mean -- yes.

Q Okay. Did you ever see the Title III applications?

A Since after the fact. I've looked at them in reviewing documents for, really to prepare myself for two things. One, a way forward for my organization, and so that I have a better understanding of the case. I did review them fairly recently.

Q How successful was the wiretap in this case, or the wiretaps

in this case in terms of the information gleaned from the wiretaps? Were they as helpful as ATF had anticipated back in March when they went up?

A I think that's, you know, maybe an individual decision. I think they were helpful to an extent. You know, obviously the fact that they had to go up many times, you had individuals that were changing phones quite a bit. That makes it cumbersome. But I would say it was helpful in the investigation.

Q Okay. So if I give you a hypothetical and said when the wiretap -- when a wiretap went up there were, for example, 21 straw purchasers identified in this organization, and then after 3 months there were an additional four straw purchasers identified in the organization. To me it seems like that's not a very good use of time and energy.

A Although -- we're still in an open investigation and I am still hopeful that there's more to follow. I think there is.

Q The wiretaps are no longer up; is that right?

A No, no, they're no longer up. I'm just saying more to follow in the investigation. There may be more subjects indicted and what have you. I think it's an individual's preference whether they feel it was worthwhile.

Mr. Foster. Could you tell me -- just one second. Could you tell me more specifically if you recall when you read the Title III affidavit?

Mr. Chait. When did this all begin?

Exhibit 37

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: WILLIAM MCMAHON

Tuesday, June 28, 2011

Washington, D.C.

The interview in the above matter was held in Room 2247 Rayburn
House Office Building, commencing at 10:05 a.m.

A No, I never signed off on a memo for a wiretap application.

Mr. Davis. All right. I am going to introduce Exhibit 4 here. Hopefully, we can come to an agreement on what exactly occurred.

Here is Exhibit 4. I will give you the original. That is for you.

[McMahon Exhibit No. 4

was marked for identification.]

BY MR. DAVIS:

Q So this is dated February 5, 2010, a memorandum to Deputy Assistant Director, Westfield Operations. I assume that is you?

A That is. That is my title.

Q Through the Special Agent in Charge, Phoenix Field Division, from Group Supervisor, Phoenix Group 7.

Subject: Request for Authorization to Seek Title 3 Intercept of Telephonic Communications.

So this is a memo to you requesting authorization to seek Title 3 intercept. There is some good detail in here. Not as strong detail as the actual wiretap applications themselves. Are you saying that you never read this, that you just approved it and sent it up to the next level?

A If I -- if I -- if I had read this, I would have signed it and dated it. I don't believe I have ever read this.

Q You don't believe you have ever read this. So what is the point of even sending it to you then?

A I'm not sure if it was sent to me.

Q Memorandum to Deputy Assistant Director. This isn't you sending it on to somebody else. It is somebody sending it to you.

A Correct.

Q That's right. So do you sign everything that comes in your in box?

A I do.

Q Do you sign it immediately?

A Do I sign it immediately? I sign it when I review it.

Q You sign it when you review it.

A Then I would put "approved".

Q Okay. So, just to be clear, you never -- you've never seen this document before?

A Not that I recall, no.

Q Okay.

Mr. Foster. Feel free to take some time to review it, just to make sure.

Mr. McMahon. Sure.

Some of the facts in here I am familiar with, but, again, this memo does not -- I don't recall seeing this memo. I don't recall ever signing a memo of request for authorization to seek Title 3s in any of my divisions.

BY MR. DAVIS:

Q How does the Title 3 process work? Walk me through. If I'm Bill Newell, how do I get a Title 3 approved?

A Well, he doesn't.

Q If I am David Voth, how do I get a Title 3 approved?

A The case agent usually would be the one that prepares an affidavit with an assistant U.S. attorney. Then it gets reviewed by ATF counsel, and then it goes over to main Justice. For the life of me, I can't remember the unit in main Justice.

OEO. Thank you.

They are the approvers in this. Then it goes back to the U.S. Attorney's Office, and then they present it to a judge.

Q Okay. Just a last question before I hand over the questioning.

The first sentence here, "this memorandum serves to request authorization" -- the memorandum is to you -- "to initiate a Title 3 cellular telephone intercept." So if you never approved this, if you never saw it in the memorandum request authorization, how was this authorized?

A By a judge signing the order. I mean, that's how wiretaps work.

Q Mr. Voth can't simply sign it in -- sign it by himself and submit a wiretap application to a Federal judge.

A No. It has to go through the process I just described.

Q It seems as though you're a part of the process here.

A Not the process I described, no.

Mr. Davis. That's it.

EXAMINATION

BY MR. FOSTER:

Q So does that mean that you're saying that Mr. Voth is able to go directly to OEO without your approval? He doesn't need your approval?

A I am, yes. I mean, my approval -- yeah. No, it is -- I would be informed of things that are going on, but there is not a lot of approval on something like that. I approve things like spending over \$50,000 on a case, overtime, things like that.

Q So a group supervisor or case agent doesn't need your approval to submit an application to OEO?

A Electronic surveillance, using informants, all of these different techniques aren't approved at my level, no.

Mr. Castor. I just have one thing. Would it be common that people might write memos to you that you don't look at or you don't get a chance to see?

Mr. McMahon. Not that I know of, no.

Mr. Davis. Especially something this rich in detail?

Mr. McMahon. I mean, I don't know that the detail has anything to do with what kind of memos I get and don't get.

Mr. Castor. So if it was sent to you, most likely you would have looked at it?

Mr. McMahon. I would, yeah. I mean, there is -- I don't know where I was February of '10.

Mr. Castor. Fair enough.

Our hour is up, so we will --

[Discussion held off the record.]

Ms. Grooms. Mr. McMahon, as I said before, my name is Susanne Grooms.

EXAMINATION

BY MS. GROOMS:

Q How long have you been at ATF?

A Almost 24 years.

Q I just want to start by covering a couple of different areas that Mr. Davis went into, just to clarify a couple of different things.

You had said that you had a meeting with main Justice in order to get a prosecutor assigned to this case. Was that successful?

A No, it wasn't.

Q Do you recall why?

A I think they felt that -- or they may have had a conversation with the Phoenix U.S. Attorney's Office and Phoenix said that they could handle it.

The main Justice gang unit U.S. attorney was going to be -- they explained to us they weren't just going to come and take a case. They were going to discuss it with the U.S. Attorney's Office, ask them if they needed assistance, and leave it at that; and I guess Phoenix told them they didn't.

Q You had explained that -- I think you said something to the effect of -- that during the time period you had been in Arizona or you had been supervising cases in Arizona, you discovered that just taking down straw purchases wasn't working. Can you explain a little more context there?

A What we have seen over at least the 3 years I have been involved in Gunrunner and guns being trafficked to Mexico, that, as soon as we take off a straw, they just get replaced by another. Because the way these networks work is a plaza boss in Mexico will actually supply tens of thousands of dollars to an individual in the U.S. and say, okay, I want \$70,000 worth of guns. And so this person accepts that money and then they recruit a number of people to provide those \$70,000 worth of guns.

So if two or three people get knocked off with 5, 10, 15 guns, they just get replaced with somebody else. Because that person in the U.S. still owes that plaza boss \$70,000 worth of guns. He has just taken a loss if we knock off a few straws. But they are going to get replaced, and Mexico is going to get its \$70,000 worth of guns.

Q Let me just touch really quickly on the authorization. I thought that when you were explaining this Exhibit 4 you said something to the effect that you don't generally get this kind of a memo. Can you explain that?

A Well, in my position, I don't recall ever being sent a formal memo requesting authorization to seek a Title 3. It just has not happened. So that is why this memo is a little unusual.

Q And so if a group supervisor wants to seek a Title 3 and he is working with the U.S. Attorney's Office, who would you expect him to get approval from? Or no one?

A His chain of command. Because, obviously, wiretaps are going to be very labor intensive. They cost a lot of money. So there

are some budgetary reasons that the SAC will have to make those decisions.

Q So those budget decisions would go up to the SAC?

A Sure.

Q Would the SAC bring those up to you?

A We might discuss those, yeah. Because a lot of times it might require extra people to work the wire or overtime to -- depending on the hours they were going to work the wire. And I don't believe that ever came in this case because of the whole strike force concept. We were going to be using a DEA wire room, their contractors, that sort of thing.

Q So you don't recall them having a budgetary conversation with you about the wiretap?

A No.

Q But you were aware that the wiretap --

A Absolutely. We were discussing wires pretty early on, and it did take us a while to get our first wire. And there was actually -- there were some delays in the process of getting new wires, and I actually had to have a meeting with someone from the Criminal Division as well to see what we can do to help speed this along, to speed the process along. Because these wires are rolling over pretty quickly. They were up -- we were up on a phone for a day or two and then they would go down. So we needed to roll into our next phone.

Q And just on that, when you were having problems with the speed from the wires, was that a problem from -- where was the problem

generating from?

A OEO and main Justice.

Q Not from the U.S. Attorney's Office?

A Well, there may have been some delay there, but that wasn't something I could really deal with. What I was -- what was getting communicated to me was OEO was taking too long in the process. So myself and Deputy Director Hoover had a meeting with -- we had a scheduled meeting with Jason Weinstein on -- I forget what subject. But after the meeting we had a conversation with Jason about getting these wires approved quicker, and he made a commitment to assign one person to it so that it would speed the process.

Q And during that meeting, did you guys have specific conversations about the substance of the case?

A Not the substance, but Jason was aware of what was going on with this case.

Q And did the speed for the wires improve?

A They did. Very much so.

Q As part of Fast and Furious -- so we know that agents were conducting surveillance of the straw purchases?

A Okay.

Q But one of the allegations we have heard is that the agents would watch the purchase and then follow the weapons for a period of time and then they would stop and they would go back to the FFL to watch another purchase. When did you become aware of that allegation, about sort of stopping short the surveillance?

A The allegation that that was happening over and over again was very late after January -- after the January 11 take down. I did have a discussion with Bill Newell earlier in the case about what we were doing to figure out where these guns were going. There was discussion about how we did follow this one group of guns to some kind of, like, an auto body shop type of thing. And the car would pull in, they would go behind this gate, and then we wouldn't have any idea which car was going in and out, what was going on. So there was conversations like that.

Obviously, there was one case where we were actually able to put a transmitter in one of the firearms and follow that for I think it was a week and a half before the takedown in the Tohono O'odham Reservation. So there were conversations about those types of surveillance. But we didn't really get into specifics about what the surveillance plan was every day or that sort.

Q Did it surprise you when you learned about the allegations about sort of stopping short the surveillance?

A It did. It did. Especially the detail that I have heard about was going on and then the so-called arguing about what to do. That was a surprise.

Q And did it concern you?

A After the fact, it did. And I think that's what we talked about earlier, the mistakes that were made.

And I think that was one of the bigger mistakes, is that I don't think the communication was very good within that group to maybe explain

Exhibit 38

RC-1

From: Morrissey, Mike (USAAZ)
Sent: Wednesday, March 10, 2010 8:42 PM
To: Hurley, Emory (USAAZ)
Subject: FW: Celis-Acosta, RC-3

You've made the US Attorney happy. Read the chain below.

From: Burke, Dennis (USAAZ)
Sent: Wednesday, March 10, 2010 6:35 PM
To: Morrissey, Mike (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Subject: Re: Celis-Acosta, RC-3

Frickin' love it!!

From: Morrissey, Mike (USAAZ)
To: Burke, Dennis (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Sent: Wed Mar 10 20:34:24 2010
Subject: FW: Celis-Acosta, RC-3

RC-3

RC-3 Good job by Emory – a T-3 in a gun case is unusual, and aggressive. Hopefully we'll do it more in a future, but Emory is the trailblazer.

From: Hurley, Emory (USAAZ)
Sent: Wednesday, March 10, 2010 5:58 PM
To: Morrissey, Mike (USAAZ)
Subject: FW: Celis-Acosta, RC-3

Now we are just waiting on ATF.

RC-3

Exhibit 39

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JASON WEINSTEIN

Tuesday, January 10, 2012

Washington, D.C.

The interview in the above matter was held in Room 2247, Rayburn
House Office Building, commencing at 10:06 a.m.

2011. Had I known about gun-walking in Fast and Furious before the allegations became public, I would have sounded the alarm about it. That is precisely what I did when I learned of the gun-walking years earlier in Wide Receiver.

Indeed, I have devoted my career to keeping guns out of the hands of criminals, not helping to arm them. And to think that I suddenly would tolerate such inappropriate tactics is inconsistent with my record of these issues and, frankly, with common sense.

Let me turn now to the February 4th letter.

At the very end of January, 2011, and during the first few days of February, 2011, the Department was engaged in an effort to respond to letters from Senator Grassley regarding the allegations of gun-walking in the Fast and Furious case. Although I was supposed to be in Mexico that week I stayed behind for family reasons and to be helpful I offered to assist the Office of Legislative Affairs to prepare the Department's response.

As the Department prepared its response, I and others in Main Justice were repeatedly and emphatically assured by supervisors in the relevant components who were in position to know the case best -- that is the Arizona U.S. Attorney's Office and ATF leadership -- that no guns had been allowed to walk in connection with Fast and Furious; and it was on that basis that the Department provided inaccurate information to Congress in the February 4th letter.

Now much attention has been paid to the sentence in that letter that reads, "ATF makes every effort to interdict weapons that have been

purchased illegally and prevent their transportation to Mexico." As the documents you've received made clear, I and others at Main Justice received multiple assurances from the U.S. Attorney's Office and from ATF that this statement, like the other information in the letter, was true.

Now some have said that because I knew about Wide Receiver at the time I assisted with the February 4th letter I knew that statement to be untrue, and that is just not correct. Let me explain why.

Wide Receiver was an old case in which inappropriate tactics had been used in the investigative phase years earlier. This occurred under a prior administration, under a different U.S. Attorney's Office management and different ATF management. 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.

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 in fact ATF had not let guns walk in Fast

Q And you said you were stunned by these tactics. You had never seen anything like this before.

A That is correct.

Q How did you communicate your stunnedness?

A Well, on April 12th -- I think you have this email -- on April 12th, after reading a prosecution memo that was prepared in anticipation of the indictment in the case, that's when I learned for the first time that the tactics had been used. So I communicated my reaction in the email, and then I communicated it to Mr. Breuer. I was out of the country at the time. When I returned, I communicated to Mr. Breuer; and, ultimately, I communicated to ATF directly.

Q Okay. And the communications between you and ATF, have you ever seen any emails on that?

A Have I seen any emails? You mean other than the ones that I sent?

Q Well, no. The emails that were provided to us don't appear to show any communication between you and ATF directly showing how you were surprised about these tactics being used. You told me that there are no obvious emails missing earlier. I don't have any emails to that effect. So I am asking you, did you communicate your disapproval of three tactics via email to ATF?

A No, I communicated my disapproval of the tactics in person to ATF.

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.

Q Okay. And when was that meeting?

A I believe it was April 28th or late April.

Q At that meeting, did you speak with -- who did you speak with?

A My recollection today is that Mr. Hoover from ATF was there and one of his deputies -- I think it was Bill McMahon -- William McMahon -- were the two ATF reps who were there.

Q So you communicated to Mr. Hoover and Mr. McMahon at this meeting on April 28, 2010. Why don't you tell us what you communicated?

A Well, you can see if you look at the April 12th email --

Q I am asking about the April 28.

A I am. I understand. I am going to answer your question.

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.

Q Well, let me follow up on that. You said "different ATF management". This was done out of the Phoenix ATF office, correct?

A It was either -- I don't know if it was in Tucson or Phoenix, but I think it is all in the same -- Phoenix.

Q Tucson feeds into Phoenix?

A Yes, the same ATF office.

Q And do you know who the special agent in charge of Phoenix was at that time?

A I am now aware -- I was not aware at the time. I am now aware that William Newell was the special agent in charge at the time of Wide Receiver, but I didn't know that at the time.

Q Okay, but you just testified today that the reason you were -- well, you testified today that you said there was a different ATF leadership. Turns out it was not a different ATF leadership. It was the same SAC.

A No, when I say "different ATF leadership", I mean the headquarters level leadership of the agency, the headquarters level chain of command was different, the people who set the policies for the agency, the directors and the priorities for the agency were different.

Q Given your position in the Department of Justice, is it your feeling that you should only communicate with basically people in

headquarters?

A Um, I think for the most part I wouldn't say that there aren't circumstances in which there would be some reason for me to talk to a SAC. For example, in the consulate murder case which I am personally overseeing, I have dealt quite extensively with the FBI special agent in charge in that case because I am hands on overseeing that case. But other than a circumstance like that or a circumstance in which I am directed to this act by headquarters, for the most part my dealing with the agency are at the headquarters level.

Q Did you have any dealings with Mr. Newell at all?

A In what time frame?

Q At any point. You said you don't communicate with SAC very often. So did you speak directly with Mr. Newell?

A I met Mr. Newell in Mexico at a conference on gun trafficking and arms and money laundering in October, I think it was '09 -- I don't know if it was '09 or '10. I just remember it was in October. And I think that's the first time I've ever met him. But I think that's the only time I had a face-to-face conversation with him.

Q Did you have email communications with him?

A Um, not about Wide Receiver, not about Wide Receiver.

Q Did you form any opinion of him?

A I could tell you that, based on my observing him in Mexico, he was a fluent Spanish speaker. He gave a presentation. Part of the purpose of the conference was to try to figure out ways that the Mexicans -- the Mexican law enforcement and DOJ could work

collaboratively, more effectively to try to stop gun trafficking. And he did a presentation that was partly in Spanish and partly in English that was very effective and very powerful, and I walked away thinking he seemed like a pretty sharp guy.

Q And this was October of '09?

A Yeah, like I said, I am not sure of the year. I think it was '09. I just -- whatever reason -- I remember it was October.

Q And at that point when you were at that conference you knew he was the SAC in Phoenix, correct?

A Um, yes, I knew he was the SAC, and he had just been appointed to be the attache in Mexico City, but I knew he was coming from the Phoenix office.

Q But that was a little bit later?

A Yes.

Q That was in October. At the conference when you met him for the first time, he was the SAC in Phoenix.

A Right.

Q So you were aware of the fact that the Phoenix leadership that ran Wide Receiver had stayed intact through Fast and Furious?

A No, I knew that he was the SAC in October of '09, and I knew he was the SAC when Fast and Furious was done in 2010. What I didn't know is that he was the SAC in '06 and '07, which is when Wide Receiver was actually investigated.

Q Did you ask anybody?

A Did I ask anybody who the SAC was in '06 and '07?

Q Who was responsible for running the Wide Receiver program?

A In my view, the people who ran ATF are ultimately responsible for the Wide Receiver case, and those are the people that I dealt with. Instead of dealing with the SAC level, I dealt with the number two person, the top career person at the agency.

Q Just to finish with Mr. Newell, did you have any conversations with him about Fast and Furious?

A The only time I believe I ever communicated with Mr. Newell about Fast and Furious was after the allegations became public in 2011.

Q What did you talk to him about?

A There was a question in the week leading up to the briefing that I know we will talk about later about whether we might be able to provide an answer to a specific question that Senator Grassley had raised about the case. And I wanted to know the answer, and headquarters people directed me to Mr. Newell to get the answer.

Q What was the question?

Mr. Reich. I think since I don't know the answer and I don't know how this plays into the sort of concerns we have about the post February 4th period, if we could just defer this and let me talk to him during the break and see what we can do to get you an answer.

Mr. Foster. Post February 4?

Mr. Weinstein. No, I think I can clear it up.

It is post February 4, and the question was a specific question about the case that ultimately the judgment was made that, because it related to a pending matter, we wouldn't be able to answer a question

reviews he got from his own bosses.

Q What is your opinion of him today?

A You know, I don't -- I would say this. I don't know him well enough to have -- and I don't know all the facts about Fast and Furious. You guys know the case, I would think, probably much better than I do.

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. Putting aside that Wide Receiver happened in that same office, even if Wide Receiver had never existed, the Fast and Furious case by itself suggests that the chain of command in the ATF office in Phoenix was not functioning the way that any of us would expect it to. And he is the head of that chain of command. So I have concerns about that.

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.

Q So even though you don't know him too terribly well, would you describe him as fantastic in a memo if you sent it today?

April 12, 2010, you said ATF headquarters should, slash, will be embarrassed that they let this many guns walk. Why did you state that?

A You know, as the email reflects and as my testimony indicates, gun-walking is a pretty extraordinary thing and it's an extraordinarily bad tactic. And given ATF's mission, which is to prevent criminals from getting guns, I thought it would be something that would be tremendously embarrassing to ATF that this tactic was used. Frankly I thought it's something, as I indicate, that they should be embarrassed about. And I also -- my concern about embarrassment was sort of twofold. It was that ATF generally would be embarrassed, but also that the public embarrassment for ATF would be something that might negatively impact the case, because my highest priority was making sure that the case got prosecuted successfully and remained viable.

Q Some have suggested that this email and others about potential embarrassment for ATF would indicate that you thought of this as more of a PR concern rather than a real operational security concern. Is that accurate?

A I think that's completely inaccurate and unfair. And I think that there are undoubtedly emails, we'll probably see others during the course of the day, in which I make reference to press or messaging or media concerns in relation to this case. And there's no question that one of my concerns and one of the things that I raised with ATF was that there would be bad press about the case.

But my primary -- again, my primary concern was making sure that

If the Office of Enforcement Operations decides that the wiretap is legally sufficient and meets the statutory requirements, they will prepare a summary memo of the affidavit for higher level review. And they will send the memo and the supporting documentation to our front office where it will be assigned to whichever deputy AG is next available, with the goal of getting these reviewed as efficiently as possible. There are thousands of wiretaps every year. We want to get them reviewed and out to the field if they're approved so they can be used.

So my role is to review the wires that come in. They come to me when it's my turn in the rotation to review them.

Q And did you review wiretap applications in Operation Fast and Furious?

A I reviewed what I believe to be three of the wiretaps in Fast and Furious, in what I now know to be Fast and Furious.

Q Did those -- did you review the wiretaps themselves or the cover memo prepared by your staff?

Mr. Reich. Before we get into what you did in Fast and Furious, would you mind asking as just a predicate what his general practice is?

BY MR. LINDSAY:

Q Yeah, what is your general practice?

A My general practice, which I understand to be consistent with the way DAGs have done this across administrations, 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.

Q And how many applications have you reviewed over the course of your tenure within Main Justice?

A I couldn't count them. My understanding is that the aggregate number of wiretaps that the Criminal Division is in a position to review on a yearly basis is now something like 4,000. And that's not 4,000 phones, that's 4,000 applications, some of which involve many, many phones. I've reviewed wires with as many as 9 or 10 phones on one application. And I should say that in my career as an AUSA I've been in a position -- I have actually more experience submitting wiretap applications than I do reviewing them. I can't count the number I've submitted, either in my own cases or that I've reviewed on behalf of people who reported to me at the time.

Q Can you ballpark the number that you may have reviewed? Is it hundreds, is it dozens, a handful?

A If I was choosing between dozens and hundreds, I would have to go with hundreds. But I just couldn't -- I couldn't even begin to count, there are so many. There are days when I will do two or three,

Q And it's not the practice of AUSAs to raise issues to Main Justice through the vehicle of a wiretap application; raise issues, that is, about the conduct of a case that they are overseeing; is that fair to say?

A That is fair to say.

Q In Operation Fast and Furious you stated that you reviewed three -- the summary memos for three wiretap applications. Did any of those summary memos raise concerns to you about the conduct of Operation Fast and Furious?

Mr. Reich. Can you just pause for a second while I just ponder that question. May I hear the question back? I'm sorry.

[The reporter read back the record, as requested.]

[A discussion was held off the record.]

BY MR. LINDSAY:

Q Can you answer the question?

A Yes. And let me just be clear that I don't want to violate the legal restrictions that are created by the sealing, so I can't comment on what was or was not in the memo or the affidavit.

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.

Q And you stated that it's the, at least desire, the goal of OEO and the AAG's office to expedite the review of these wiretaps so that the cases and the wiretaps can go forward as quickly as possible; is that correct?

A Well, I don't know that I would characterize it as expedite. What I would say is that it's the goal to review them as efficiently as possible, not to sacrifice the quality or thoroughness of the review but just to have the review process be done as efficiently as possible.

One of the things that Mr. Breuer has done since he took over as the head of the Criminal Division is to, I think, triple or close to triple the number of reviewers that we have on staff so that AUSAs can get their applications reviewed more quickly. It means that there are more wires coming to me and my colleagues at any given time, since there are more reviewers submitting them at the same time. But I think the end result is a quicker turnaround time for wires, which is ultimately what everyone in law enforcement wants, because it allows us to use this incredibly powerful tool to go after criminals in the most efficient way possible.

Q Some have suggested that the AAG's office, or even you in particular, were somehow derelict in your duties for not spotting issues earlier through the wiretap review process. Is that a fair criticism?

A It's not a fair criticism. As I said earlier, I can't comment on the contents. What I can say is I obviously have a sensitive

radar to gun walking, since that's been the focus of my life, my professional life, is keeping guns out of the hands of criminals. So when I saw in Wide Receiver that an investigation, however well intentioned it may have been, was being conducted in a way that put guns in the hands of criminals, I reacted pretty strongly to it. Had I seen anything at any time during the investigation of Fast and Furious that raised the same concerns I would have reacted. And I would have reacted even more strongly because that would have meant it was still going on and that Wide Receiver was not in fact an isolated incidence as I believed it to be.

[Weinstein Exhibit No. 8

was marked for identification.]

BY MR. LINDSAY:

Q I want to introduce Exhibit 8. This is the email, original email that we discussed previously, and the attached firearms trafficking talking points. It's from -- the cover email is an exchange of emails between you and Kevin Carwile and then an email from you to Kevin Carwile and Amy Pope. Subject, forward, talking points. Bates stamped HOGW WR 003436. And the attachment to this on the next page is HOGW WR 003437.

If you will turn to the second page, are these the talking points that you were referencing in Mr. Kerner's round?

A Yes, this was the document I was referring to. And Mr. Kerner was asking me what prompted my question to Mr. Carwile. It was the second bullet that you see on page 3437.

Ms. Sachsman Grooms. And that was in relationship with Exhibit 5; is that correct?

Mr. Weinstein. Yes, that's correct.

BY MR. LINDSAY:

Q Can you identify the language within the Operation Wide Receiver bullet that specifically raised concerns to your mind?

A Yes. If you look at the second sentence, the one that -- and I'll just read it. "With the help of a cooperating FFL, the operation has monitored the sales of over 450 weapons since 2006, particularly lower receivers of AR-15 rifles."

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 realtime 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.

Q And can you return to Exhibit 5. And Kevin Carwile's response to your question about did ATF allow the guns to walk -- which you told us was prompted by your review of that sentence in the attached trafficking talking points -- is he states, "My recollection is they learned afterward the pros memo will be ready soon."

the suspects even though they knew that their previous attempts to interdict had failed.

A I think it's fair to say that they continued to engage in the same conduct, and didn't adapt their tactics in any way to achieve a different outcome. And when I refer to gun-walking in the communications you see from me in April 2010, I have a broader definition of gun-walking than I think most people in law enforcement do. I define gun-walking to include not just situations in which intentional, volitional acts to lose control of the guns, but I also include situations in which the agents are essentially reckless; that is that they don't want the guns to get away, they are trying to keep the guns from getting away, but the tactics they use are so repeatedly unsuccessful that the effect is that the guns just get away, and they don't change accordingly.

That second situation is what I understood to be going on in Wide Receiver at the time. And with that understanding, I don't think that conduct, as I understood it, does not rise to the level of a violation of the law. It most certainly is an inappropriate investigative tactic.

Q And did you ever take any steps to find out from Mr. Hoover or Mr. Melson whether or not anyone had been held accountable for engaging in that inappropriate tactic in Wide Receiver, either in the April time frame when you learned about it or later when the Fast and Furious' allegations came up?

A I don't recall one way or another whether I followed up with

Mr. Hoover on that question. I just don't recall.

Q So to your knowledge no one ever -- nothing you did necessarily caused anyone to address with the agents or the leadership of the Phoenix Field Division, specifically Mr. Newell, that this was an unacceptable tactic?

A I just don't know the answer to that.

Q I mean, how does that get communicated to the people who are doing it if you don't communicate it to them and there is no official inquiry about it?

A Well, I communicated to their boss. And he's everybody's boss except Mr. Melson's. So I communicated to him. He has the same reaction to it that I do. So I walk away, you know, with the understanding that he views it the same way I do.

It seems to me the one way -- and I don't run ATF, and I don't know exactly how ATF operates, but one way for it to get addressed internally is for the leadership at headquarters level to communicate to the field, just as the Attorney General did this in this case. You know, the Attorney General directed the DAG to issue a directive to AUSAs and agents in the field that you should not be involved in any investigation, and you should stop any tactic that involves guns intentionally going across the border. That is one way you can communicate things to the field. I don't know what Mr. Hoover did or didn't do. I just can't say.

Q And you didn't ask?

A As I said, I just don't recall -- I don't recall whether I

did or not.

BY MR. KERNER:

Q Are you disappointed in Mr. Hoover?

A You know, I don't like to be in the situation where I am making a judgment about somebody without knowing all the facts. It's a dangerous thing. You know, I have the greatest respect for your objectives here. I think that's what's happened to me in this situation publicly. And I think that I just don't know all the facts. So it's hard for me to say whether I am disappointed in Mr. Hoover or not.

Q What do you mean that's happened to you?

A I think there have been a number of allegations made about me and what I did or didn't know, or what I did or didn't do prior to the day that we are all meeting, and you're getting the facts from me directly. So without knowing what Mr. Hoover did or didn't do, or said or didn't say to his staff to follow up on my conversation with him, I just can't -- I can't --

Q Allegations by us?

A Allegations that have been made public.

Q By whom?

A By the people associated with the investigation.

BY MR. FOSTER:

Q I think our round is over, but one more?

A Sure.

Q One last question, because it relates to all this.

that either?

A Well, let me be clear. In drafting a letter on Fast and Furious, as I indicated in my opening, I just wasn't thinking about Wide Receiver. You know, I believed Wide Receiver to be an aberration and to be a case from years earlier. And I had not -- I had -- in the wake of the assurances by Mr. Burke and Mr. Hoover that Fast and Furious was not a gun-walking case, I continued to view Wide Receiver as an aberration.

When responding to the letter, I viewed the letter as about Fast and Furious, and so my focus was entirely on the merits of the allegations as to Fast and Furious. I wasn't thinking of Wide Receiver -- Wide Receiver wasn't, you know, if you will, in my consciousness. When we were putting a letter together for Fast and Furious, I was entirely focused on Fast and Furious.

Mr. Reich. Mr. Weinstein, in the interest of accuracy, and I could be wrong about this, I think you misspoke when you articulated your answer that had the dates in it. Are you able to read back the answer? Thank you.

The Reporter. "Answer: Let me be clear. In drafting a letter on Fast and Furious, as I indicated in my opening, I just wasn't thinking about Wide Receiver. I believed Wide Receiver to be an aberration and a case from years earlier."

Is that the answer? The one previous to that?

"I don't. As a -- as a general matter it seems to me that that a case that was done 4 years ago in a way that arguably contradicts

is clearly incorrect that the gun was purchased before he became -- before the investigation began.

Q But you don't have a recollection of that fact sticking out to you the day after Burke very confidently asserts this to you, and I won't make these other exhibits, but you passed that information along to your boss, Mr. Breuer?

A Right.

Q So for that fact to have been incorrect the next day, you don't have a recollection of that sticking out as perhaps a red flag that Burke didn't know as much about this as he thought he did?

A I don't have a recollection of that sticking out.

BY MR. FOSTER:

Q You said earlier you didn't have any reason to believe that he didn't know what the facts were. Does this not constitute a reason to believe that he didn't know what the facts were?

A As I said, Mr. Foster, I don't have a recollection this sticking out in my mind as being an issue. I do think as a general matter, there's a difference between knowing the granular details of the dates that certain things happen in relation to each other and knowing the core facts of whether guns walked in the case. Even if Mr. Burke didn't know the specifics of the chronology of a particular defendant, I would still expect him to know the basics of whether guns were allowed to walk in the case, and on that point, he was unequivocal.

BY MR. LEAVITT:

Q But your specific question for him was the assertion that

one of the Fast and Furious guns that killed Terry is just false. And obviously, the issue of whether or not the guns that were recovered, a, whether they are the ones used to kill Terry, b, whether or not -- you know, to what extent ATF should have been aware at the time in January that he was. But for purposes of answer just simply purchased at [REDACTED] before the investigation began, I mean, you ask about a pretty central thing, not just in general about gun walking, isn't that right?

A It's fair to say the question I'm asking him on 3936 is a specific question. And I'm asking him whether one of the Fast and Furious guns was actually the murder weapon. And his answer we know now to be factually incorrect. As I said, if in the conversation with Mr. Hoover the next day, I got information that was contrary on that point, I don't remember whether it registered with me.

What I do know is that Mr. Hoover and Mr. Burke were entirely consistent on the fundamental question whether guns walked. And on that question, they were both consistent with each other that guns did not walk.

BY MR. FOSTER:

Q That's right. But when the purchase occurred is a key fact, isn't it? I mean, it's the fact that you identify -- it's what helped you identify that there was gun walking in Wide Receiver. I mean, the notion that the government is aware of the straw purchases at the time because they're being monitored is what was the red flag to you in Wide Receiver that there was gun walking. So isn't this a central point, a central factual issue? I mean, they're telling you that there's no

Exhibit 40

RC-1

From: Newell, William D. (ATF)
 Sent: Monday, February 22, 2010 10:18 AM
 To: Burke, Dennis (USAAZ)
 Subject: RE: TNW .50 caliber rifle

10-4, it's part of the "Fast and Furious" ODETF Strike Force case we are hoping to be up on a Federal T-III soon. This group is up to approx 800 "weapons of choice" mainly AK-47s, FN 5.7 pistols, etc. Emory is fully up to speed on it but if you want a more in-depth briefing we can do that over here at your earliest convenience. We have the charts showing the trafficking hierarchy, links due to purchases, phone tolls, intel from surveillance, etc.

Bill Newell
 Special Agent in Charge
 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - RC-1

-----Original Message-----

From: Burke, Dennis (USAAZ) RC-1
 Sent: Monday, February 22, 2010 8:13 AM
 To: Newell, William D.
 Cc: Hurley, Emory (USAAZ)
 Subject: RE: TNW .50 caliber rifle

What happened last Saturday w/ the 42 AK-47s? Do we have that case?

-----Original Message-----

From: Newell, William D. (ATF)
 Sent: Monday, February 22, 2010 7:34 AM
 To: Burke, Dennis (USAAZ)
 Cc: Hurley, Emory (USAAZ)
 Subject: TNW .50 caliber rifle

This is was seizure two weeks ago in Baja Norte, Mexico. In the picture ATF SA Jose Wall is inspecting the TNW, .50 caliber rifle. If you recall two years ago we seized 42 "weapons of choice" out of a storage locker in Yuma following a Phoenix gun show operation. Also seized was approx 500 rounds of linked .50 caliber ammo. All were headed to Mexico and all are still in our ATF vaults here in Phoenix. RC-5

RC-5

Since then several TNW, .50 caliber rifles have been seized in Mexico but not the one purchased in Kingman - not yet. So every time a TNW, .50 caliber rifle is seized in Mexico we immediately dispatch an agent to verify the information. TNW Firearms Inc., is based in Oregon. See more at www.tnwfirearms.com

One of the TNW, .50 caliber rifles seized was the one in April, 2009 in Sonora from the Iltan Leyva DTO (see second photo attachment). The pictures of this gun, mounted in the back of a pickup behind a man-made shooting platform, fed the rumor mill on the internet and the media of the people who believe that this gun, and many more like it, come from the Central/South American black market or are "stolen" from the Mexican military. Not true at

HOCR USAO 002968

least not in this case and from what we see on a daily basis - including the 42 AK-47 rifles we seized this past Saturday west of Tucson and a mile from the border. The Casa Grande Border Patrol folks assisted us in an outstanding manner with this. The two cars carrying these firearms were about to cross into Mexico. This is from the ATF "Fast and Furious"

DETF case. The suspects stopped at an address in Tucson before heading south and as it turns out this residence is a main target residence in our "Wide Receiver" OCDETF case out of Tucson.

Bill Newell

Special Agent in Charge

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - RC-1

HOCR USAO 002969

Exhibit 41

RC-1

From: Hurley, Emory (USAAZ)
 Sent: Monday, February 22, 2010 4:13 PM
 To: Cunningham, Patrick (USAAZ)
 Cc: Morrissey, Mike (USAAZ)
 Subject: FW: TNW .50 caliber rifle

Pat,

Bill Newell's email below regarding a seizure of 42 (now I understand it to be 41) AK-47s is linked to the Fast and Furious OCDETF case in which we are drafting a wire application. The AKs were being driven by people not yet identified as major targets and may just be mules for the gun traffickers. We had a GPS device inside one of the rifles and the shipment was going to be interdicted during and out-bound inspection. The drivers apparently saw the out-bound secondary inspection going on and turned around. The agent did not have much specific information about the stop and seizure of the firearms, but is optimistic that there was a pretext stop so the drivers and the traffickers are not too hinked up. Drivers were not arrested, one is showing willingness to be interviewed and/or cooperate.

I can further brief you and Dennis at your convenience.

Thank you
 Emory

-----Original Message-----

From: Burke, Dennis (USAAZ)
 Sent: Monday, February 22, 2010 9:24 AM
 To: Hurley, Emory (USAAZ)
 Subject: RE: TNW .50 caliber rifle

Talk to Cunningham. I would like a briefing from you and him on Fast and Furious when I get back to Phoenix.
 Thanks.

This is great stuff!

-----Original Message-----

From: Hurley, Emory (USAAZ)
 Sent: Monday, February 22, 2010 8:57 AM
 To: Burke, Dennis (USAAZ)
 Subject: RE: TNW .50 caliber rifle

I have a call in to the case agent. I have not yet heard about the 42 AKs, but if they are linked to Fast and Furious, or Wide Receiver, then the case is ours. I will let you know as soon as I know more.

-----Original Message-----

From: Burke, Dennis (USAAZ)
 Sent: Monday, February 22, 2010 8:13 AM
 To: Newell, William D. (ATF)

1

HOCR USAO 002970

Exhibit 42

From: Newell, William D.
Sent: Monday, February 22, 2010 11:56 AM
To: Voth, David J.; Gillett, George T. Jr.
Subject: RE: FYI photo from this weekend...

Mr. Gillett sent it to me yesterday but thank you. Also, I talked to the USA this morning about this case and advised him of the seizure and link to the Tucson OCDETF case. He was taken aback by some of the facts I informed him about (including the fact that we are up to approx 800 guns) so I am setting up a briefing for him (alone no USAO "posse") about this case and several other cases I feel his is being mislead about. Should be within the next couple of weeks so be prepared. Thanks.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
Office - [REDACTED]

From: Voth, David J.
Sent: Monday, February 22, 2010 9:53 AM
To: Gillett, George T. Jr.; Newell, William D.
Subject: FYI photo from this weekend...

David Voth
Group Supervisor
Phoenix Group VII
[REDACTED]

Exhibit 43

RC-1

From: Gwinn, Laura
Sent: Monday, February 22, 2010 7:11 PM
To: Bayer, Matthew B. (ATF)
Subject: Re: Seizure Info

I am likely to still be in trial till end of March. We should wrap up guilt/innocence witnesses this week go to jury next week. Assuming penalty phase it'll be end of March. But I can keep tabs on stuff if need be.

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 (c)

From: Bayer, Matthew B. <RC-1>
To: Gwinn, Laura
Sent: Mon Feb 22 19:06:23 2010
Subject: Re: Seizure Info

I believe he does. I will get the name of the AUSA. Their case is about twice as big.

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From: Gwinn, Laura
To: Bayer, Matthew B.
Sent: Mon Feb 22 19:04:47 2010
Subject: Re: Seizure Info

Does Carlos still live there? Who is AUSA assigned (if any)? Very very interesting!

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 (c)

From: Bayer, Matthew B. <RC-1>
To: Gwinn, Laura
Sent: Mon Feb 22 19:02:00 2010
Subject: RE: Seizure Info

That is correct. They saw the guns leave Celaya's residence and they arrested two girls at/near the border.

From: Gwinn, Laura [mailto:RC-1]
Sent: Monday, February 22, 2010 4:52 PM
To: Bayer, Matthew B.
Subject: Re: Seizure Info

Interesting. I wonder if this is the same case a guy in my office was just assigned to. Am I reading the info right: the location of the guns is Celaya's residence?

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit
 RC-1 (c)

From: Bayer, Matthew B. RC-1
To: Gwinn, Laura
Sent: Mon Feb 22 18:44:58 2010
Subject: Fw: Seizure Info

Hey Laura!

I'm sure you know about this, but here is a synopsis for you reading. We will probly need to coordinate with the ATF case agent on the OTHER ATF case.

Matt

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Arellano, Bernardo
To: Bayer, Matthew B.
Sent: Mon Feb 22 17:14:33 2010
Subject: FW: Seizure Info

Synopsis: On February 20, 2010, ATF Tucson is notified that firearms purchased in Phoenix are at a residence in Tucson, AZ. The Google Earth map indicates it is on Rayo Luna, Tucson, AZ. Agents familiar with Operation Wide Receiver recognize the location as being near the residence of Carlos Celaya at RC-1. A drive-by confirms that the locations are one and the same. Agents initiate surveillance and observe a 1996 Isuzu Rodeo leaving the residence and travel to other locations in Tucson. The vehicle eventually winds up in Sells, AZ and stops at a residence near Indian Route 19 where Border Patrol agents contact the occupants of the vehicle and see firearms in plain view. A total of 41 firearms was seized (AK-47 types, AK-47 type pistols, AR-15 pistol, .308 semi-auto rifles, and magazines.

The occupants of the vehicle were:

RC-5

Vehicle: 1996 Isuzu Rodeo with AZ Temp Tag RC-5 VIN: RC-5

RC-5
 RC-5

Owner of vehicle: RC-5

Seizure Location: RC-5 residence on San Miguel Road RC-5

Exhibit 44

RC-1

From: Cooley, Joseph
 Sent: Monday, February 22, 2010 7:17 PM
 To: Gwinn, Laura
 Subject: Re: Phoenix case

It likely is.
 Joseph A. Cooley
 Gang Unit, DOJ
 Cell: RC-1

This message is being sent via my blackberry. Please excuse any typos.

----- Original Message -----

From: Gwinn, Laura
 To: Cooley, Joseph
 Sent: Mon Feb 22 19:13:10 2010
 Subject: Re: Phoenix case

Yes but just got info of cross-over and am wondering if it is the case you are assigned to. Phoenix just traced some guns to the house of one of my targets watched two girls leave then took them off at the border.
 Sent from Blackberry
 Laura Gwinn

US Dept of Justice Gang Unit
 RC-1 (c)

----- Original Message -----

From: Cooley, Joseph
 To: Gwinn, Laura
 Sent: Mon Feb 22 19:09:55 2010
 Subject: Re: Phoenix case

Yes. My trial is winding down. I will jump on that when I'm done. Aren't you in trial?
 Joseph A. Cooley
 Gang Unit, DOJ
 Cell: RC-1

This message is being sent via my blackberry. Please excuse any typos.

----- Original Message -----

From: Gwinn, Laura
 To: Cooley, Joseph
 Sent: Mon Feb 22 18:53:34 2010
 Subject: Phoenix case

Did you get assigned to ATF case in Phoenix? Were guns that were sold recently located in Tucson? If so we might have some cross over.
 Sent from Blackberry
 Laura Gwinn
 US Dept of Justice Gang Unit
 RC-1 (c)

Exhibit 45

RC-1

From: Gwinn, Laura
 Wednesday, February 24, 2010 7:25 AM
 Bayer, Matthew B. (ATF)
Subject: RE: Other ausa

Thanks, Matt. I will try to shoot her an e-mail this weekend just to introduce myself. Things are really "hot & heavy" in my trial right now.

RC-2

Laura Gwinn
 US Dept of Justice Gang Unit
 (202) RC-1 (C)

From: Bayer, Matthew B. [RC-1]
Sent: Tuesday, February 23, 2010 4:21 PM
To: Gwinn, Laura
Subject: Other ausa

Hey Laura!

Here's the name and contact working the other case.

Looks like us agents are gonna meet next week to figure out the overlap.

Keep you in the loop.

Matt

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From: MacAllister, Hope A.
To: Bayer, Matthew B.
Sent: Tue Feb 23 16:15:38 2010
Subject:
 AUSA Emory Hurley 602 RC-1

Hope MacAllister
 Special Agent Phoenix Group VII
 602 RC-1

HOCR USAO 002973

Exhibit 46

RC-1

From: Cooley, Joseph
Sent: Wednesday, March 03, 2010 8:36 AM
To: Reeves, Bryan N.
Subject: Weekly Update

RC-2

South Border Firearms Initiative: On 3/01, GU met with ATF HQ to discuss the developments of Operation "Fast and Furious," and a firearms trafficking investigation based in Phoenix, AZ. Later in the day GU also spoke with the USAO/AZ and the Phoenix ATF Field Office. From 3/03-04, GU is attending Project Deliverance, the SOD Conference held in Fairfax, VA. The conference will include debriefings on the developments of numerous investigations into the Mexican DTOs.

Joseph A. Cooley

Gang Unit, DOJ

Cell: RC-1

This message is being sent via my blackberry. Please excuse any typos.

Exhibit 47

RC-1

From: Cooley, Joseph
 Sent: Thursday, March 04, 2010 5:56 PM
 To: O'Keefe, Kevin C. (ATF)
 Subject: RE: Debriefing at ATF Tomorrow

Will do. Thanks.

Joseph A. Cooley
 Trial Attorney
 Gang Unit
 Department of Justice
 950 Pennsylvania Ave. N.W., Suite
 Washington, DC 20530
 Cell
 Fax

RC-1

From: O'Keefe, Kevin C. [mailto:RC-1]
 Sent: Thursday, March 04, 2010 5:51 PM
 To: Cooley, Joseph
 Subject: RE: Debriefing at ATF Tomorrow
 Importance: High

Ide – my apologies for not reaching out to you personally on this, running in circles; I realize our Phoenix guys had talked to you. Yes, please stop by. Dave, along with my analysts here in HQ will be briefing. It will be much more detailed than what I gave you on Monday. We will also have VTC with our SAC in Phoenix, Dallas and Houston. It is set for 1 pm. Give me a buzz when you get here and I'll get you up to our 7th Floor Conf Room. See you tomorrow.

Kevin O'Keefe
 Chief, Criminal Intel Div

RC-1

From: Cooley, Joseph [mailto:RC-1]
 Sent: Thursday, March 04, 2010 5:07 PM
 To: O'Keefe, Kevin C.
 Subject: Debriefing at ATF Tomorrow

Kevin,

I spoke with Dave Voth who indicated that he was giving a briefing tomorrow on Operation Fast and Furious. He and George Gillett suggested that I attend. I wanted to run this past you to make sure it was okay. I believe it was set for 1 pm.

JAC

Joseph A. Cooley
 Trial Attorney
 Gang Unit
 Department of Justice
 950 Pennsylvania Ave. N.W., Suite
 Washington, DC 20530
 Cell
 Fax

RC-1

RC-1

HOCR DOJ 002806

Exhibit 48

From: Cooley, Joseph [REDACTED]
Sent: Monday, March 01, 2010 1:07 PM
To: Gillett, George T. Jr.; Voth, David J.
CC: O'Keefe, Kevin C.; MacAllister, Hope A.; Hurley, Emory (USAAZ)
Subject: RE: Firearms Investigation

Yes, that was operation name that Kevin mentioned to me. I will be available for the Friday meeting at ATF HQ.

Joseph A. Cooley
 Trial Attorney
 Gang Unit
 Department of Justice
 950 Pennsylvania Ave. N.W., [REDACTED]
 Washington, DC 20530
 [REDACTED]

From: Gillett, George T. Jr. [REDACTED]
Sent: Monday, March 01, 2010 12:59 PM
To: Cooley, Joseph; Voth, David J.
Cc: O'Keefe, Kevin C.; MacAllister, Hope A.; Hurley, Emory (USAAZ)
Subject: RE: Firearms Investigation

Mr. Cooley --

The investigation you are referring to has been dubbed, "The Fast and Furious." This is an approved OCDETF investigation. I will have group supervisor David Voth coordinate with you to meet on this investigation. There is a briefing scheduled at 1:00 PM on Friday, May 5, at ATF Headquarters on this and other active, southwest border investigations. It may be most effective (if your schedule permits) to attend this briefing. However, I will have Mr. Voth contact you on your cell phone to coordinate a meeting with you before the briefing so you can be completely up to speed.

Please don't hesitate to contact me if you have further questions/concerns.

George T. Gillett
 Assistant Special Agent in Charge
 ATF - Phoenix Field Division
 [REDACTED]

From: Cooley, Joseph [REDACTED]
Sent: Monday, March 01, 2010 10:43 AM
To: Gillett, George T. Jr.; Voth, David J.
Cc: O'Keefe, Kevin C.
Subject: Firearms Investigation

Gentlemen,

At the request of ATF Headquarters, Gang Unit has agreed to assist in the Firearms trafficking into Mexico investigations. Earlier this year, I was assigned to this task. I just finished up a trial last week and I am now available to provide any assistance needed. I understand that the case agent working out the Phoenix Office is Hope McAllister. I could not find her in the email directory. Please have her contact me at her earliest convenience.

JAC

Joseph A. Cooley
 Trial Attorney

HOCR ATF - 002155

Exhibit 49

From: Leadmon, Lorren D.

Sent: Friday, March 05, 2010 5:40 PM

To: Chait, Mark R.; McMahon, William G.; Martin, Steve K.; Newell, William D.; Champion, Robert R.; Torres, John A.; Webb, J. Dewey; Gillett, George T. Jr.; Needles, James R.; Golson Sr., Michael A.; Chisholm, Kenneth L.; Elder, Robert W.; Anglin, Karl G.; Shaefer, Christopher C.; Kumor, Daniel J.; Rowley, Raymond G.; Quinonez, Louis A.; Dwyer, Daniel J.; Cole-Bigelow, Delmaria; Bohan, Rich G.

CC: Martin, Steve K.; O'Keefe, Kevin C.; Bass, William F.; Feingold, Edward D.

Subject: FW: Presentation Slides and Case synopsis document

Attachments: Timeline for briefing 030410.docx; PHX presentation (final) draft presented on 030510.pdf

Attached is the timeline briefing handout and a PDF of the powerpoint presentation from today's briefing on Operation - The Fast and The Furious

LORREN D. LEADMON

TEAM LEADER

Field Intelligence Support Team - Southwest Border
Bureau of Alcohol, Tobacco, Firearms and Explosives
Intelligence Operations Specialist



HOCR ATF - 002091

OPERATION THE FAST AND THE FURIOUS



HOCR ATF - 002092

Exhibit 50

Briefing @ ATF

3/5/10

Fast + Furious A2

→ 1026

1000 guns since 9/89

Shawn Stewart

#1 purchase had El Paso

Douglas → no more guns since

→ 241

\$649, —

11/20/09

→ woman in MX

41 firearms seized

12/03/09 Nogales, A2

4 firearms
& ammo

12/09/09 Douglas, A2 - 7

Stewart purchase

HOCR DOJ 002807

12/9/09

Mexico, Baja Cal
12 tons of money (pair)
(Wendhouse)

41 guns seized

12/18/09

Lycuan, Baja

12/21/09 Phoenix, AZ

1/8/10

1/13/10 El Paso
againBelind the
Acosta
Stewart trip
to El Paso
Geran in state, down connected
w/ kidnapping crew

2/21/10 Lillo, AZ

HOCR DOJ 002808

Wide Receiver → Laura
Gordon
→ stark house
two firearms
(Epic provided GPS)

2/25/10 Tigrone Bay
→ all AKs converted to
full auto

HOCR DOJ 002809

Exhibit 51

[REDACTED]

From: Gillett, George T. Jr.
Sent: Friday, March 05, 2010 2:29 PM
To: Newell, William D.
Subject: Re: Fast and Furious case

10-4. Good to know. Dave is "rock solid" much like ATF's relationship with ICE, at least according to Director Melson.

George T. Gillett
ASAC - Phoenix Field Division
Cell: (602) [REDACTED]

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Newell, William D.
To: Gillett, George T. Jr.
Sent: Fri Mar 05 16:23:19 2010
Subject: Fast and Furious case

Dave did a great job on the conference call today. We can discuss more on Monday but one thing I want us to do asap is come up with a prosecution plan. I want our potential defendants listed out and what charges we hope to perfect against them. Karmgard, Jim and I discussed a potential 924(c) conspiracy along with the straw purchasing and 554 violations. I want us to have a good plan and then present to the DOJ rep, Joe Cooley, who was on line today and seems to have a good idea of what needs to be done. Since he's our detailed rep we should use him to get advice and guidance and then present our plans to the USAO. That way we'll already have Main Justice buy-in and they'll know it here. We can discuss more at Staff on Monday but wanted you to think about this and get with Dave and Tom to discuss as well.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
Office - (602) [REDACTED]

Exhibit 52

RC-1

From: Hurley, Emory (USAAZ) [RC-1]
Sent: Monday, March 15, 2010 12:21 PM
To: Gwinn, Laura
Subject: RE: Tucson gun case overlap

My case agent tells me that taking down your targets may cause some problems with our wire case. (We are anticipating going up this afternoon). Within the last two weeks she had spoken to one of your case agents and discussed delaying your takedown a bit so as not to spook our targets. Is this something you could do? Please give me a call at your convenience. Thank you,

Emory Hurley
 602-RC-1 direct
 602- cell

From: Gwinn, Laura (CRM)
Sent: Monday, March 15, 2010 7:25 AM
To: Hurley, Emory (USAAZ)
Subject: Tucson gun case overlap

I am handling a large gun trafficking case in Tucson, called Operation Wide Receiver. I have been tied up in a capital case in Maryland, since Jan, but learned a couple weeks ago that there appears to be overlap between a gun case you are handling in Phoenix, and my case. Specifically, I understand that two of your targets went to the house of one of my targets, Carlos Celaya, and a short time later were arrested trying to go over the border with guns. I am anticipating indicting my case, including Celaya by the end of April. Once I finish this capital case, probably this Friday, then await a verdict, I expect to go to AZ for a week or so (probably week of April 5), then hope to indict a couple weeks after that. Will this cause any problem/issues for your case?

Laura Gwinn

950 Pennsylvania Ave NW

Room 7649

Washington, DC 20530

(202) RC-1 (H)

(202) (G)

(202) (fax)

HOCR USAO 002991

Exhibit 53

RC-1

From: Gwinn, Laura
 Sent: Tuesday, March 16, 2010 2:48 PM
 To: Bayer, Matthew B. (ATF)
 Subject: large capacity magazines?

Matt, we are winding down our capital case, should go to the jury for sentence on Friday. I am starting to work on Tucson again, specifically, trying to figure out sentencing guidelines. RC-4

RC-4 Base level for guidelines are higher if the firearm is "a semiautomatic firearm that is capable of accepting a large capacity magazine." Do the AK-type and AR-type weapons that we have fit this description??

Also, I spoke with AUSA in Phoenix about their case. Apparently you spoke with the agent and agreed we would sit tight for a while. While I don't disagree with that, I would have preferred that you called me about it first (yes, I know I was in trial, but evenings & weekends work). In any event, I understand they just went up on a T-3, and the AUSA and I agreed to stay in contact to determine the right time to indict our case. I'm still hopeful that we might make an end of April, maybe early May, time period.

Laura Gwinn
 US Dept of Justice Gang Unit

RC-1 (C)

Exhibit 54

RC-1

From: Weinstein, Jason
 Sent: Tuesday, March 16, 2010 8:49 PM
 To: Carwile, Kevin
 Subject: RE: Reminder

Fast and Furious seems a little different from X-Caliber, because we actually assigned someone to the case -- I assume that ATF HQ knew from you or Joe that Joe would be on the case, or is it possible they thought he would be playing more of a coordinating rather than a litigating role?

-----Original Message-----

From: Carwile, Kevin
 Sent: Tuesday, March 16, 2010 9:00 AM
 To: Weinstein, Jason
 Subject: RE: Reminder...

There are two investigations: the first is Operation Fast and Furious (a number of the straw purchasers are in a car club). It is being worked out of the USAO in Phoenix, AZ. This was one of the two cases we were briefed on at the end of December immediately after the meetings with Ken Melson. I assigned Joe Cooley to the investigation, he got briefed and then started his Latin Kings trial. He just turned his attention back to the case and went to SOD for a briefing on the matter. That is when he learned the USAO now had the case RC-3. We offered to help but they said they had it under control. The second matter was the X-Caliber case. RC-2

RC-2

P. Kevin Carwile
 Chief, Gang Unit
 Criminal Division
 U.S. Department of Justice

-----Original Message-----

From: Weinstein, Jason
 Sent: Monday, March 15, 2010 9:59 PM
 To: Carwile, Kevin
 Subject: Reminder...

...to send me the names of the cases ATF HQ asked us to get involved in but which had in fact been shopped to the field.

RC-2

Jason M. Weinstein

Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC-1
Cell: RC-1

HOCR DOJ 002831

Exhibit 55

OPERATION THE FAST AND THE FURIOUS



HOCR DOJ 002819

Note: Two pages have been withheld from this seven page document because they included sensitive investigative details and information about targets/subjects.

Total Firearms
Purchased as of
Feb 27, 2010
785115-10-0004

Patino	Uriel	313
Steward	Sean	241
Moore	Joshua	116
Chambers	Jacob	68
Cellis	Alfredo	55
Hercogovich	Dejan	30
RC-4		
Montelongo	Jacob	18
Avila Jr	Jamie	17
RC-4		
Polanco	Jove	3
RC-4		
Cellis-Acorta	Manuel	1
RC-4		
TOTAL		1026

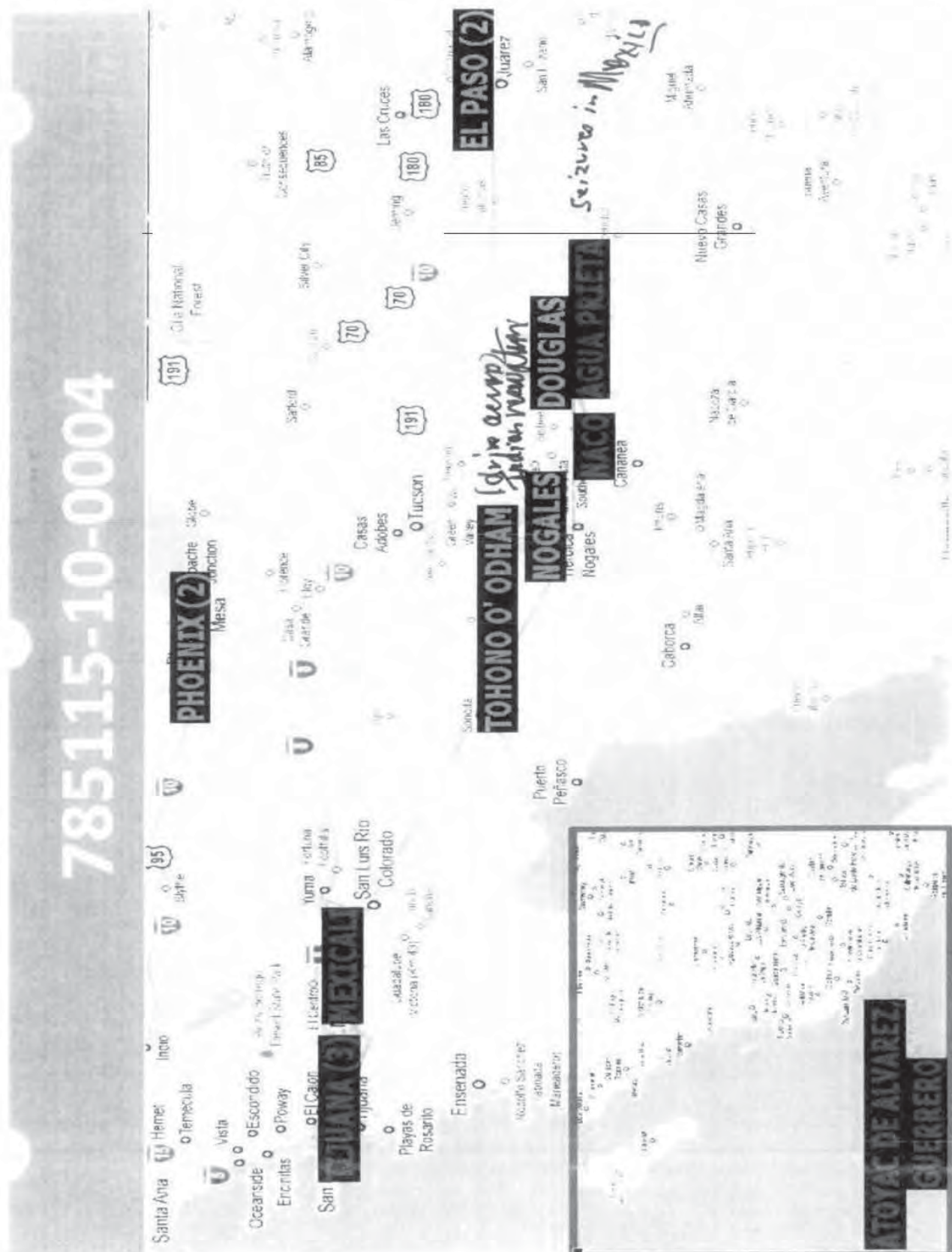
HOCR DOJ 002820

**Total Cost of
Firearms
Purchased as of
Feb 27, 2010
785115-10-0004**

*All cash -
Western Varsity
only*

PURCHASE SUMMARY		PURCHASE		INVOICE		NOTES	
RC-4	NAME	AMOUNT	TOTAL	AMOUNT	TOTAL		
	Jaime Avilar	11,984.00	13,002.64				
RC-4							
	Alfredo Celis	36,955.75	38,023.33				
	Jacob Chambers	36,541.73	38,003.98				
RC-4							
	Delian Herreroval	22,719.60	23,781.91				
RC-4							
	Jacob Montelongo	7,446.87	7,731.27				
	Joshua Moore	59,853.40	64,929.95				
RC-4							
	Uriel Padino	204,110.50	212,756.57				
RC-4							
	Joan Pollanco	1,739.00	1,951.92				
RC-4							
	Sean Steward	134,638.84	140,034.36				
RC-4							
	TOTAL PURCHASES	816,304.08	840,745.32				

HOCR DOJ 002821



HOCR DOJ 002822



HOCR DOJ 002823

Exhibit 56

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: GARY G. GRINDLER

Wednesday, December 14, 2011

Washington, D.C.

The interview in the above matter was held in 2247, commencing
at 10:00 a.m.

A Well, I can speak to it when I was the Acting Deputy, if that is what you would like.

Q Sure.

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.

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.

Q And who was the other person?

A Mark Michalic. He is not an Associate Deputy Attorney General, but he was detailed over to the Deputy's office from ATF, so he had the expertise of that law enforcement component.

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. But I had regular staff meetings. I also had some meetings in my office for individuals who had -- I mean, I had like a criminal meeting, so all the people that had components that were doing criminal prosecutions I would meet with, and then I would have a meeting with the national security people and people that had more civil type or maybe administrative issues.

So in addition to the staff meeting, those criminal meetings were meetings where people on my staff had an opportunity and an obligation to bring issues to my attention if they felt they should be brought to my attention.

Q Did Mr. Siskel ever call to your attention any issues with regard to the Fast and Furious program?

A I don't have a recollection, other than I reviewed all of the agendas of all of those meetings and Fast and Furious is not on any of those agendas.

Q And you attended monthly meetings with Mr. Melson and Mr.

suspects as of the end of February 2010. It is a big number. It is 1,000 guns. Would you agree that is a pretty big number?

A I mean, I am not sure I know how to judge that. I mean, leading up to this meeting, it was made clear to me that the numbers of guns that are being trafficked to Mexico is extraordinarily large and the number of guns that are found in Mexico is in the tens of thousands. I am not sure at this point of my tenure that I knew exactly what this was in terms of significance. It is what it says, 1,026 guns.

Q One of the disappointing aspects of the Fast and Furious case is that if you take out some of the big time gun buyers such as Patino, such as Stewart, such as Josh Moore, they are the leaders on the chart here, ATF would have made a significant dent in the Fast and Furious total number of guns. Is that something in retrospect that you are disappointed that nobody flagged at ATF or nobody flagged in the Deputy's office?

A I don't know that I agree with the premise of that question.

Q Okay. So you think that Uriel Patino, if he acquires 300 guns and he is a suspect in a case, what do you think ATF ought to be doing with a fellow like that?

A Well, I don't know the details of what ATF knew about that individual at this time. This was a very high level status report briefing. We did not discuss individual cases. This was a 45-minute meeting with seven agenda items. So in terms of what ATF should have done, it really depends upon what they knew about him and what case they had at what point in time.

BY MR. FOSTER:

Q How do you know those kind of details about what they knew about him weren't true?

A Well, it is just a belief of mine, because this was not -- this meeting was a status report and we allowed 45 minutes for these briefings. And to have gotten into details of each individual case, it would have taken hours.

Q That is a supposition on your part because you testified earlier you don't remember the meeting.

A I don't remember the details of the meeting, but I am just looking at what my normal practice is, that would lead me to that conclusion, including the fact that I have a habit, as you can see, of taking notes, and I didn't take notes with respect to this list of cases.

Q Just to be clear, that is a reconstruction based on your review of the record, not based on your current memory today?

A That is correct. That is correct.

Mr. Reich. With all due respect, can we just try and stay in rounds? Jason, you will get your round.

BY MR. CASTOR:

Q If you could flip to Exhibit 1, page 2823, the one with the picture.

A Yes.

Q Some of the operational details of the case were shared with you, based on our understanding, and you made notes that you say a

tracker followed to three stash houses.

A I made those notes, yes.

Q At any point, do you have a recollection of whether there was a discussion about what are we going to do with these guns so we make sure they don't get to Mexico?

A My recollection is that, I mean, based on -- as I said, my recollection is really based on this. These were guns they seized in the United States. This is a seizure in the United States reflected by this and the map that was provided. So I mean they were going to use them -- I mean, this is an assumption. But they seized these guns, so it is evidence.

Q Were you confident at that point that ATF was seizing the guns? Did they represent that to you?

A Based on this and my notes and the map that talks about a seizure of these guns in this Indian reservation, yes. If they had told me that they were not keeping these guns, I am confident that is something I would have taken notes on or asked about.

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.

Q Did Mr. Siskel --

A Let me say something. Just recall, I have looked at my agendas of the other ATF meetings, and at no time is there an agenda reference to Fast and Furious nor are there any notes of mine that will relate to Fast and Furious.

Q So according to your notes, this is the only time Fast and Furious was raised?

A At the ATF monthly meetings, yes, or the internal criminal meetings that I referenced.

Q Okay. Just for the record, the former Director, Melson, it is his recollection that Fast and Furious came up if not every month, on most months.

A Well, I don't have any recollection, and given my note taking habit, if it would have come up, I would have written it.

Mr. Reich. Are you going to share that portion of the Melson transcript with us, Steve?

Mr. Castor. The information I just shared with you wasn't from a Melson transcript.

Mr. Reich. So what is your good faith basis for making that representation?

Mr. Castor. I called him on the phone and he told me.

BY MR. CASTOR:

Q Now, at some point there were staff in the Criminal Division that started to be involved with some respect to Fast and Furious, Jason Weinstein, one of the Deputies in the Criminal Division, some of the lawyers in the Gang Unit. Did you have any knowledge of that when that

they get assigned to the responsible component and the Legislative Affairs Office is involved. But I felt like the Deputy Attorney General's office needed to be engaged and I sent that email. That is basically that week.

Q The volume of documents that were produced in conjunction with the Department's February 4th letter to Senator Grassley shows there were north of 50 DOJ folks working on the letter. It spanned eight or nine components. Is that a typical amount of folks to respond to a letter?

A I really don't know.

Q Is that surprising, if I represent to you it is like north of 50 folks?

A It would strike me that it means some people are taking these letters seriously. But other than that --

Q And at what point did you realize you had an issue that there were 2,000 guns that ATF let get away?

A I don't agree with the premise of what you said. I mean, if we are talking up to February 4th, I had no factual knowledge that they let 2,000 guns get away. If I had been told that, I would have done something about it.

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.

Q And what were some of the other flaws in the investigation -- I mean the Attorney General stated that the investigation suffered from fundamental flaws. What else were some of those?

A I just don't know. I don't know. Those are examples -- if there was ever an occasion where the ATF had the legal basis on which to seize guns or if they knew that guns were going to go across the border and they didn't take steps to stop them, then those are the flaws. If there are other flaws, I just don't know enough to put a list down. I really would have to dig into all of the information that you have and all the other details, intricate details about the investigation, which I just don't have.

Q Can you help us understand what has been done at the Department to make sure there aren't other Fast and Furious types of cases going on right now?

A Well, again, I can't tell you everything. I know that -- I will tell you what I can recall today. At the end of February, I believe February 28th, and you already know this, the Attorney General ordered the investigation by the Office of Inspector General. That is a process that can lead to addressing that issue. The Deputy Attorney General at the Attorney General's instruction made it clear to the law enforcement and U.S. Attorneys offices that not interdicting these guns, if you have a basis to do so, or not stopping them if they are

going to Mexico, was something that was wrong. So those things.

There has been some management changes at ATF, I guess which you know about, and the Attorney General selected someone who we feel can be and will be an effective manager, and he has done some management changes himself since he has been there. He also has issued new guidance with respect to these types of investigations, which really get into the details that would make it as clear as you possibly can that you cannot allow guns to be transferred when you have the legal basis to interdict them. You have got to watch them. You can't let them go outside of the country. Things like that.

I mean, it is more detailed than that. Just sitting here today, I can't recite it all, but these are all things that are steps that have been taken.

Q Have you worked with the Deputy to make sure that the Deputy Attorney General is conducting the proper supervision?

A Well, I believe the Deputy Attorney General is fully engaged on this issue. It is sort of a role issue here. As Chief of Staff, it is not really my role to be going down and saying hey, do this, do that. He is at a higher level than I am. But my belief is that he is fully engaged on it, from what I understand and what I have been told.

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 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.

Q Have you been part of any discussions with the Deputy about that?

A I have had some discussions with him about it, yes.

Q And do you know whether he has got -- I guess Matt Axelrod, does he have the portfolio in the Deputy's office right now?

A I believe Matt does. I don't have a portfolio list, but I think Matt has it.

Q Do you know if there has been any renewed sense of we have to make sure ATF is operating in a safe manner?

A Well, I have already tried to speak to that. The management change that has taken place and Todd Jones' subsequent management changes. I know that the Deputy Attorney General meets with Todd, similar to the monthly meetings I had, and I know the Attorney General also meets on a periodic basis with Todd.

Q In hindsight, are you alarmed that Mr. Siskel or Mr. Smith never brought some of these issues to you --

A These issues?

Q About Fast and Furious? Are you alarmed that perhaps these issues never got to them? I mean, have you sort of done a Monday morning quarterback job on what went wrong here, where the breakdowns were?

A Again, you have to understand, I am Chief of Staff to the Attorney General. I don't have the primary responsibility to be organizing all that. I give advice when I am asked for it, and sometimes when I am not. But my understanding -- my public understanding of what Lanny Breuer has said is that he regretted bringing the Wide Receiver matter to the attention of the leadership offices back in 2010 --

Mr. Reich. Of not bringing.

Mr. Grindler. What did I say, that he brought? That he regretted not bringing the Wide Receiver issues to my attention in 2010. So your question talked about Fast and Furious. That is the reason. I don't know what Lanny Breuer knew about Fast and Furious prior to the congressional investigation.

BY MR. CASTOR:

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.

Q Have you been part of that process as the former Deputy?

A I mean, I have been in discussions about it, discussions relating to some of the management changes that I have already pointed to.

Q Now, some of these -- we understand some of the memos that go to the Attorney General regarding the activities of the component, Fast and Furious, was identified on some of those memos. Can you give us your understanding of the purpose of the memos, the activity reports that go up to the Attorney General?

A Are you talking about the weekly reports?

Q Yes.

A Okay. Because I am not aware of any memoranda on Fast and Furious that went to me or the Attorney General.

Q Fast and Furious was listed on the weekly activity reports as part of ATF's activities. Is that not something you are familiar with?

A I have reviewed the weekly reports as part of preparing for this, and I have seen it mentioned on occasion in those reports.

Q And there are memos to the Attorney General, correct?

A They are directed to -- they are through the Deputy or to the Attorney General, that is correct. They are not memos. There is not a memorandum about Fast and Furious. This is a weekly report. If you look at them, they list a number of things.

Q I think there is like a to-from-date type of format at the

reports with respect to the components that they have responsibility for, and if they identify something that needs to be brought to the attention of the Attorney General, they do.

I would add, and you may have read them, that I have reviewed the weekly reports. None of them mention improper tactics in Fast and Furious. In fact, in July of 2010, the ATF memo that mentions ATF talks about the seizure of guns in the United States. So my experience with weekly reports is they really aren't the typical vehicle where components tell us about problems. I mean, I am not saying it never happens, but I have looked at enough of them, like I said, I tried to read some of them when I was acting, I didn't read them all, but they really are just mentioning things, and typically not problems.

Q How do problems make their way to the Attorney General, if there was a problem in an ATF case?

A Well, I can't speak about -- this is sort of an abstract response. With any component, they have a responsibility to bring significant problems to the attention of the leadership office. So it would be the heads of the law enforcement components, the United States Attorneys, the heads of the components all have that responsibility. And then, as I have already talked about, with Ed Siskel, for example, or Mark Michalic, if in their interaction with the law enforcement components they identify problems, they need to bring it to the leadership's attention so that something can be done about it.

Q Kevin Ohlson, your predecessor, told us that the most

Southwest Border U.S. Attorneys, subject line: Follow Up from Conference Call.

And the relevant portion reads, "As I said on the call, to avoid any potential confusion, I want to reiterate the Department's policy. We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation."

To your knowledge, is it accurate, as stated in this email from the Deputy Attorney General, that this was a reiteration of existing departmental policy?

A That was my understanding.

Q Stepping back from the policy, what is the basis for having a policy against walking guns, and how does that differentiate from the activities of other agencies, say, with respect to money or drugs?

A Well, because guns are dangerous weapons that, if allowed to get into the hands of criminals, they can be used to injure, harm, or, as we know, kill people. It's different than allowing a drug transaction to take place, although I will say even in that context I'm aware that risk analyses have to be brought to bear on those decisions as well.

Q I'd like to turn to your communications with the Attorney General over the course of 2010 during your tenure as the Acting Deputy Attorney General. You previously stated that you had no

Michalic. Mark Michalic worked at ATF before he came to the Deputy's office. So if any of those people had come to me with concerns, I would only be disappointed if they knew or appreciated the improper tactics and failed to come to me. Then, yes, I would be.

Q The Deputy's office has some supervisory responsibility of ATF, correct?

A Correct.

Q And that responsibility is delegated to Mr. Siskel at the time --

A Part of it, yes.

Q -- and Mr. Michalic. You rely on -- at that time you relied on those people to manage ATF, supervise ATF, to the greatest extent.

A Well, I mean, I rely on them for their responsibility. I rely on myself in terms of the meetings I have. I rely on United States Attorneys. If United States Attorneys have clashes with law enforcement agencies or disagreements that are serious or where there are concerns about tactics, it is incumbent on the U.S. Attorneys to report up, maybe to the Executive Office of United States Attorneys or directly. They have choices. So just as if ATF has concerns about the way a United States Attorney's Office is handling things, I would expect ATF or any other law enforcement agency to report up. And I have learned of disagreements and issues that have arisen between U.S. Attorneys offices and law enforcement on particular matters where it has been raised up.

Q But there is a responsibility of the Deputy's office to

conduct active, affirmative supervision of ATF, correct?

A I don't know that I would use all those words. I mean, they answer up through me at the time, and I did have a management responsibility. But as I have tried to explain, because of the magnitude of the issues and the number of components, national security issues that are confronting this Department, I necessarily have to rely on members of my staff to try to get more information. But I am also relying on the people that are running the law enforcement agency, whether it is Director Mueller or Ken Melson or Stacey Hilton or Todd Jones. You have to try to put people in these jobs that have experience in these law enforcement efforts and are going to bring good judgment to bear on what they are doing.

Q Going to Exhibit 3, the communication Brad Smith sent to you following the Terry killing. Attached is the document, the briefing paper related to Fast and Furious.

A Yes.

Q Do you know whether you looked at the attachment when he sent it to you?

A I am assuming I did.

Q And in the third paragraph, this is December of 2010 at this point --

Mr. Reich. Can you identify the Bates number?

Mr. Castor. It is 2876.

BY MR. CASTOR:

Q The firearms purchasing group was up to \$1.25 million worth

serial numbers of each of their suspect purchases, putting them into the suspect gun database, and that's how they knew the recoveries that you were getting briefed on in of March 2010, the recoveries in Mexico. The reason they knew about those recoveries is because they get a hit in the suspect gun database, which means that they had contemporaneous notice of the sale. Is that your understanding?

A I don't have an understanding. Like I said, I don't believe, based on my notes, that details like that were provided to me in March of 2010. And beyond that, I know what the allegations are, which are set forth in letters. And people have been looking into it in terms of this cooperating firearms dealer. But I don't know anything beyond that.

Q Were you aware contemporaneously with the fact that there was a Federal Title 3 wire in the Fast and Furious investigation?

A I don't recall being told that, but I certainly have heard that there were wires.

Q Since.

A Since.

Q But at the time, you didn't know in your March briefing, that was not something that came up?

A I didn't write it down, so I just don't recall it. Not saying it was mentioned, but I didn't write it down.

Q Outside the March briefing, you don't recall anyone telling you that?

A No.

Q Were you aware that the case began based on information from a previous DEA State wire in which Celis Acosta is recorded talking about trafficking guns across the border specifically and setting up a specific transaction?

Mr. Reich. Can you clarify where, when?

Mr. Foster. The DEA State wire would have been in November, December.

Mr. Reich. You said, "Were you aware?" Can you clarify --

Mr. Foster. Oh, I'm sorry.

BY MR. FOSTER:

Q Were you ever aware of that? Did you know it before I told you just now?

A I don't recall being aware of it back in 2010. I seem to recall, after your investigation began, hearing something like that.

Q So today, you understand that the ATF knew from -- ATF and DEA and FBI knew from the November-December 2009 time frame that the ring leader, Mr. Celis Acosta, had been recorded on DEA intercepts talking about trafficking guns to Mexico.

A I don't know that, nor do I know the details of that now.

Q So you don't know that now. You don't know that that's true.

A I don't know that that's true -- or false.

Q You mentioned White House meetings earlier, post-February 4?

A Right.

Exhibit 57



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

1813123 ET

MAR 26 2010

Washington, DC 20226

RECEIVED
DEPT OF JUSTICE
EXECUTIVE SECRETARIAT

2010 MAR 26 PM 5:06

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: Kenneth Melson
Deputy Director, Bureau of Alcohol, Tobacco, Firearms and
Explosives

SUBJECT: Issuing demand letters to Federal firearms licensees (FFLs) in selected
states requiring them to submit multiple sales information concerning
certain types of rifles.

PURPOSE: Obtain concurrence for ATF to issue demand letters to FFLs requiring
multiple sales information for certain rifles as a pilot project.

TIMETABLE: Concurrence is requested as soon as possible.

SYNOPSIS: ATF proposes a pilot project to issue demand letters to all FFLs in
selected states requiring them to provide ATF with a report of multiple
sales or other dispositions whenever the FFL sells or otherwise disposes of
two or more rifles within any five consecutive business days with the
following characteristics: (a) semi-automatic; (b) a caliber greater than
.22; and (c) the ability to accept a detachable magazine. These reports
would be submitted to ATF for a one-year period.

DISCUSSION:

ATF trace data, investigative experience and Mexican law enforcement officials indicate that a large number of certain types of rifles are being used in violent crimes in Mexico. These rifles typically include semi-automatic AR-15 variants with detachable magazines. Successful trace data from recovered rifles show they primarily come from the United States, and that many have been sold by Federal firearms licensees.

HOCR DOJ 004972

Memorandum for the Attorney General

Page 2

Subject: Issuing demand letters to Federal firearms licensees (FFLs) requiring multiple sales information concerning certain types of rifles

It is proposed that ATF issue demand letters to all FFLs in the top twelve source states¹ for firearms recovered in Mexico requiring the FFLs to provide ATF with an immediate report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of two or more rifles within any five consecutive business days exhibiting the following characteristics: (a) semi-automatic; (b) a caliber greater than .22; and (c) the ability to accept a detachable magazine. This pilot program would require the reports to be submitted to ATF for a one-year period.

The Gun Control Act of 1968 (GCA) at 18 U.S.C. § 923(g)(3)(A) requires licensees to submit multiple sales reports to ATF for handguns, but not rifles or shotguns. However, ATF has authority under 18 U.S.C. § 923(d)(5) to issue demand letters to licensees requiring them to submit "on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify." ATF has used this "demand letter" authority to require two groups of FFLs to submit to ATF certain firearm information in their required records: licensees who failed to respond to trace requests (Demand Letter 1) and licensees who had transferred ten or more secondhand firearms that were recovered in a crime ("time-to-crime") within a three-year period of the sale (Demand Letter 2). Demand Letter 1 required submission of the make, model, type, serial number, and caliber / gauge, and the purchaser's names, addresses, and federal firearms license numbers (if applicable). Demand Letter 2 included only descriptions of the firearms.

Licensees unsuccessfully challenged ATF's use of its demand letter authority in court. *RSM v. Buckles*, 254 F.3d 61 (4th Cir. 2001) upheld ATF's issuance of Demand Letter 1, and *Blaustein & Reich v. Buckles*, 365 F.3d 281 (4th Cir. 2004), and *J&G Sales v. Truscott*, 473 F.3d 1043 (9th Cir. 2007), upheld ATF's issuance of Demand Letter 2. In these cases, the petitioners alleged that ATF exceeded its authority because federal law, 18 U.S.C. § 926(a), and ATF's appropriations restrictions, otherwise prohibit ATF from consolidating or maintaining a registry of firearms record information. The courts disagreed with the petitioners and upheld ATF's use of the demand letters. The courts explained, however, that ATF's demand letter authority was not a limitless delegation of authority to ATF to request record information. The courts declined to specify the precise limits, but noted that the information requested in those demand letters was directed to a small number of licensees, was narrowly tailored in scope, and stemmed from reasoned decision-making. However, one court cautioned that "Congress intended to prohibit a large-scale enterprise to consolidate and centralize a substantial amount of FFL record information." *Blaustein*, 365 F.3d at 289 n.16.

The multiple-sales-reporting requirement would provide law enforcement with extremely valuable investigative information. These reports would give ATF real-time leads for the

¹ The top twelve source states for firearms seized in Mexico during CY 2009 and traced to firearms licensees in the U.S. are: Texas, California, Arizona, New Mexico, Florida, Colorado, Oklahoma, Illinois, Nevada, North Carolina, Georgia, and Washington.

Memorandum for the Attorney General

Page 3

Subject: Issuing demand letters to Federal firearms licensees (FFLs) requiring multiple sales information concerning certain types of rifles

investigation of gun trafficking. ATF's experience in the source states proves that multiple purchases of the described rifles are strong indicators of firearms trafficking to Mexico. By obtaining information about these multiple sales, ATF increases the likelihood of uncovering and disrupting trafficking schemes before the firearms make their way into Mexico.

The following cases involving the multiple sale of rifles illustrate the potential benefit of ATF collecting information regarding firearms trafficking using the demand letter program. ATF believes these cases represent a very small portion of the overall trafficking activity of these firearms that is occurring, and that multiple sales reports of the specified rifles will enable ATF to uncover more illegal activity and develop better intelligence about trafficking patterns:

- **Phoenix Field Division:** On or about November 1, 2009, individuals in the Phoenix, Arizona area began to illegally purchase firearms, firearm magazines and/or ammunition to be transported to Mexico. Case agents identified 25 individuals that purchased in excess of 1130 firearms in the Phoenix area with over-the-counter cash transactions. Twenty-two of these individuals purchased firearms that were recovered in Mexico in the possession of drug traffickers affiliated with the Sinaloa Cartel. Over 50 firearms purchased by two of these individuals were recovered in stash locations or during a crossing along the border in Arizona and Texas and were destined for delivery to DTO's in Mexico. There was an extremely short time span, ranging from one (1) day to less than a month, between all the purchases of all these firearms and the recoveries. The majority of the firearms were purchased at a FFL involving transactions of five to ten rifles at a time.
- **McAllen Field Office:** The target of this investigation purchased several hundred pistols, rifles and lower receivers. Scores of these firearms were recovered in Mexico. The majority of the target's purchases were rifles and lower receivers acquired through multiple sale transactions. Of these, the target purchased mostly lower receivers (which are designated firearms by law) and upper receivers. He combined the receivers and parts kits to make complete rifles. The target was in turn selling the firearms at gun shows and other secondary market venues.
- **Las Cruces Field Office:** The target of this investigation purchased 19 AK47 rifles through multiple sale transactions. The investigation shows that the firearms are being transported to El Paso Texas for entry into Mexico.
- **Phoenix Field Division:** In this case, three rifles were recovered in Mexico and traced to the target of this investigation. At this point, it has been determined that the target has purchased five rifles. There were two multiple sale transactions of two rifles from two FFLs.
- **McAllen Field Office:** In this case, the target purchased 69 firearms. He acquired 50 rifles through multiple sale purchases. Sixteen of these rifles were recovered and traced.

HOCR DOJ 004974

Memorandum for the Attorney General

Page 4

Subject: Issuing demand letters to Federal firearms licensees (FFLs) requiring multiple sales information concerning certain types of rifles

- McAllen Field Office: The target of this investigation purchased a rifle that was recovered in Mexico. To date, he has been identified as purchasing seven rifles, several of which were purchased in multiple sale transactions of two (2) rifles.
- Corpus Christi Field Office: The targets of this investigation are purchasing rifles and handguns for a drug trafficking organization in Mexico. The targets are purchasing several of the rifles through multiple sale transactions of two or more rifles.

In addition to the real-time intelligence the multiple sales forms provide, many of these reports would be for secondhand sales of the specified rifles. Firearms sold in secondhand sales cannot be traced from the manufacturer to the secondhand purchaser. Traces of firearms typically end after new firearms are manufactured and sold by licensees to their first retail purchasers. Multiple sales reports concerning secondhand sales of qualifying rifles by retail dealers would allow ATF to trace those firearms from secondhand retail dealers to purchasers because ATF would be able to search the multiple sales records, as it does with multiple sales records for handguns.

Although ATF clearly has authority to issue demand letters for FFL record information, there may be litigation risks in requiring these reports. The demand letters would be limited to all FFLs in the top twelve source states, and would be further limited to a one-year pilot program and to certain types of rifles. Nevertheless, there is a possibility, however unlikely, that a court could rule that the proposed demand letter would constitute "a large-scale enterprise to consolidate and centralize a substantial amount of FFL record information."

Also, as can be expected, there may be resistance from the firearms industry to any increased reporting requirement. They would argue that the requirement would impose too great a burden on FFLs who, among other obligations, already have the burden of reporting multiple sales of handguns (particularly when multiple employees handle such transactions), and responding to trace requests.

ATF believes that the benefit to law enforcement and the enhanced ability to trace these firearms to combat violence along the Southwest Border are worth the litigation risks and the displeasure of the firearms industry. Moreover, ATF may be able to refine the scope of the letter in the future based on the information learned in response to the initial demand letter.

HOCR DOJ 004975

Memorandum for the Attorney General
 Subject: Issuing demand letters to Federal firearms licensees (FFLs)
 requiring multiple sales information concerning certain types of rifles

Page 5

RECOMMENDATION:

That you concur in ATF's issuance of a demand letter to all FFLs in twelve selected states, requiring them to provide ATF with reports of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of two or more rifles within any five consecutive business days with the following characteristics: (a) semi-automatic; (b) a caliber greater than .22; and (c) the ability to accept a detachable magazine. These reports would be submitted to ATF for a one-year period.

APPROVE: _____

Concurring Components:

OLP _____
 OLC _____

DISAPPROVE: _____

Nonconcurring Components:

None

OTHER: _____

Exhibit 58

RC-1

From: Carwile, Kevin
Sent: Tuesday, March 16, 2010 10:47 AM
To: Weinstein, Jason
Subject: talking points
Attachments: FIREARMS TRAFFICKING TALKING POINTS - 031610.doc

Here is a quick page of talking points. You did not describe the intended audience. The two operations are pre-indictment so the info on these matters would need to be kept internal. See attached.

P. Kevin Carwile
Chief, Gang Unit
Criminal Division
U.S. Department of Justice

FIREARMS TRAFFICKING TALKING POINTS

RC-2

- Through an ongoing partnership, Gang Unit and ATF are developing strategies and pursuing joint operational opportunities targeting firearms trafficking organizations, as well as Mexican drug trafficking organizations possessing and using U.S.-sourced firearms. Two examples of this collaboration are the following:

 - Operation Fast & Furious* is an extensive firearms trafficking investigation involving ATF's Phoenix, Houston, and Dallas field offices. Gang Unit is closely assisting in advising the ongoing investigation and prosecuting cases derived from this investigation. One such case in S.D. Texas involves the recovery of approximately 550 weapons during two seizures in 2008 in Mexican border towns. Both caches of weapons are believed to be affiliated with the Gulf Coast Cartel DTO. ATF has successfully traced at least 300 of these weapons to straw purchases in Texas.
 - Operation Wide Receiver* is a firearms trafficking investigation involving ATF, Gang Unit and USAO Tucson. With the help of a cooperating FFL, the operation has monitored the sales of over 450 weapons since 2006, particularly lower-receivers of AR-15 rifles. The weapons are believed to have been transported to Mexico and, in fact several of the weapons have been recovered there. Gang Unit and ATF continue to monitor communications between the targets of this investigation and plan to return an indictment in the coming months.

HOCR WR 003435

Exhibit 59

RC-1

From: Weinstein, Jason
Sent: Tuesday, March 16, 2010 11:04 AM
To: Carwile, Kevin
Subject: RE: talking points

I'm looking forward to reading the pros memo on Wide Receiver but am curious—did ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?

From: Carwile, Kevin
Sent: Tuesday, March 16, 2010 10:47 AM
To: Weinstein, Jason
Subject: talking points

Here is a quick page of talking points. You did not describe the intended audience. The two operations are pre-indictment so the info on these matters would need to be kept internal. See attached.

P. Kevin Carwile
Chief, Gang Unit
Criminal Division
U.S. Department of Justice

Exhibit 60

RC-1

From: Trusty, James
Sent: Monday, April 12, 2010 8:19 AM
To: Weinstein, Jason; Carwile, Kevin
Subject: RE: My airplane reading, Part II

Makes sense - just let us know, Frenchie.

-----Original Message-----

From: Weinstein, Jason
Sent: Monday, April 12, 2010 5:30 AM
To: Carwile, Kevin; Trusty, James
Subject: My airplane reading, Part II

Been thinking more about "Wide Receiver I." ATF HQ should/will be embarrassed that they let this many guns walk - I'm stunned, based on what we've had to do to make sure not even a single operable weapon walked in UC operations I've been involved in planning - and there will be press about that. In addition, this diary that casts aspersions on one of the agents is a challenge for the case but also something that is likely to embarrass ATF publicly. For those reasons, I think we need to make sure we go over these issues with our front office and with Billy Hoover before we charge the case. Of course we should still go forward, but we owe it to ATF HQ to preview these issues before anything gets filed.

I'm not suggesting we need to send the memo further up the chain - it would take you or me a really long time to convert what Laura wrote into something we could send to Lanny - but we should schedule a time to brief Lanny and Mythili on the case next week (end of the week, bc he testifies on Wed and is jammed up before then) and then to brief Billy after that.

Jason M. Weinstein
 Deputy Assistant Attorney General
 Criminal Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530
 Office: RC-1
 Cell: RC-1

Exhibit 61

RC-1

Subject: Arizona Gun Trafficking Investigation
Location: OAAG Criminal (2107)
Start: Mon 4/19/2010 2:45 PM
End: Mon 4/19/2010 3:15 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: Breuer, Lanny A.
Required Attendees: Raman, Mythili; Fagell, Steven; Weinstein, Jason; Pope, Amy; Trusty, James; Carwile, Kevin

Participants: Lanny Breuer; Mythili Raman; Steve Fagell; Jason Weinstein; Amy Pope; Jim Trusty; Kevin Carwile

Exhibit 62

RC-1

From: Carwile, Kevin
Sent: Monday, April 19, 2010 6:42 PM
To: Trusty, James
Subject: Re: How did the

No problem. See you around noon.

----- Original Message -----

From: Trusty, James
To: Carwile, Kevin
Sent: Mon Apr 19 18:40:08 2010
Subject: Re: How did the

Went fine. You know how he is. Wants us to meet with Ken and Billy at some point so they know the bad stuff that could come out. I'm going to come in late tomorrow - probably near noon -- work from home in the am and then work til around 6.

----- Original Message -----

From: Carwile, Kevin
To: Trusty, James
Sent: Mon Apr 19 18:23:42 2010
Subject: How did the

Meeting go with lanny?

Exhibit 63

RC-1

From: Hoover, William J. RC-1
Sent: Tuesday, April 20, 2010 7:38 AM
To: Weinstein, Jason
Subject: RE: Calendar invite

Thank you Jason. Look forward to meeting with you! Will probably bring Larry Ford from our PGA.

William J. Hoover
 Executive Assistant Director
 O RC-1

-----Original Message-----

From: Weinstein, Jason RC-1
Sent: Tuesday, April 20, 2010 7:36 AM
To: Hoover, William J.
Subject: Calendar invite

Billy,

You and Ken will be receiving an invite for a meeting with Lanny, me, and some others next week on a soon-to-be-charged gun trafficking case we're doing with ATF in Tucson. (Your code name is Operation Wide Receiver.) The reason we wanted to meet with you before charging is that the case has 2 aspects that could create media challenges and we wanted to talk through them first. Happy to fill you in by phone whenever convenient. When you get the invite, feel free to include someone from your PIO (and anyone else you want).

Best,

Jason

Jason M. Weinstein
 Deputy Assistant Attorney General
 Criminal Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530
 Office RC-1
 Cell:

Exhibit 64

RC-1

From: Weinstein, Jason
Sent: Wednesday, April 28, 2010 9:58 AM
To: Sweeney, Laura (SMO)
Subject: Re: Meeting invite

Thx

Jason M. Weinstein
 Deputy Assistant Attorney General
 Criminal Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530
 Office: RC-1
 Cell: RC-1

----- Original Message -----

From: Sweeney, Laura <RC-1>
To: Weinstein, Jason
Sent: Wed Apr 28 09:28:48 2010
Subject: RE: Meeting invite

Sorry - been having email trouble and just getting up and running. We'll be there.

-----Original Message-----

From: Weinstein, Jason (CRM)
Sent: Wednesday, April 28, 2010 7:11 AM
To: Sweeney, Laura
Subject: Meeting invite

If you or Alisa (or both) are available at 11, can you meet with me, Trusty, and Billy Hoover to discuss an impending indictment in a gun trafficking case that has some rather significant (and I hope unique) press challenges? Sorry for short notice.

Jason M. Weinstein
 Deputy Assistant Attorney General
 Criminal Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530
 Office: RC-1
 Cell: RC-1

Exhibit 65

RC-1

From: Trusty, James
Sent: Wednesday, April 28, 2010 9:15 AM
To: Weinstein, Jason
Subject: RE: Wide Receiver ATF mtg

Sounds good

From: Weinstein, Jason
Sent: Wednesday, April 28, 2010 9:13 AM
To: Trusty, James
Subject: Wide Receiver ATF mtg

If ok with you, I figured you could do for Billy what you did for Lanny in terms of describing the case and the issues, and then we can spend the rest of the time talking messaging.

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC-1
Cell: RC-1

Exhibit 66

- * May 12 - 203 defendants
indictment 2006-01; 183 guns sold in
first conspiracy, 9R15's in bulk
vast majority of guns not recovered
- * 2nd conspiracy - same people but
bigger mix of weapons 200 some
purchased - 50 recovered - 5 in Mexico -
Feb 07, 10 defendants
- * gun trafficking, illegal aliens, straw purchase,
one overlap w/ investigation
- * Fast and Furious,

HOCR DOJ 006989

Exhibit 67

From: Chait, Mark R.
To: McMahon, William G.
Sent: 4/28/2010 7:49:13 PM
Subject: Re: Past Due Time Cards

Ok thanks
Mark R. Chait
Assistant Director
Field Operations

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: McMahon, William G.
To: Chait, Mark R.
Sent: Wed Apr 28 15:45:51 2010
Subject: Re: Past Due Time Cards

With the Director it when fine. We brief the House Members tomorrow morning.

The briefing with DOJ on Wide Receiver went ok. I will brief you tomorrow on the details. Some surprises but nothing terrible.

I am at a doctors appointment right now.

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RC-2



HOCR WR 005455

Exhibit 68

RC-1

From: Weinstein, Jason
Sent: Friday, April 30, 2010 7:03 PM
To: Breuer, Lanny A.
Subject: Re: Operation Wide Receiver

As you'll recall from Jim's briefing, ATF let a bunch of guns walk in effort to get upstream conspirators but only got straws, and didn't recover many guns. Some were recovered in MX after being used in crimes. Billy, Jim, Laura, Alisa and I all think the best way to announce the case without highlighting the negative part of the story and risking embarrassing ATF is as part of Deliverance.

Jason M. Weinstein
 Deputy Assistant Attorney General
 Criminal Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530
 Office: RC-1
 Cell: RC-1

----- Original Message -----

From: Breuer, Lanny A.
To: Weinstein, Jason
Sent: Fri Apr 30 18:39:45 2010
Subject: Re: Operation Wide Receiver

Anything I should know about thos?

----- Original Message -----

From: Weinstein, Jason
To: Breuer, Lanny A.; Raman, Mythili; Fagell, Steven
Sent: Wed Apr 28 18:59:27 2010
Subject: Operation Wide Receiver

Jim T and I met with Billy Hoover and with Laura and Alisa to talk about this gun trafficking case with the issues about the guns being allowed to walk for investigative purposes. Can fill you in tomorrow in more detail but we all think the best move is to indict both Wide Receiver I and Wide Receiver II under seal and then unseal as part of Project Deliverance, where focus will be on aggregate seizures and not on particulars of any one indictment.

Jason M. Weinstein
 Deputy Assistant Attorney General
 Criminal Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW

Washington, D.C. 20530

Office RC-1

Cell RC-1

Exhibit 69

Statement of Assistant Attorney General Lanny A. Breuer
Criminal Division, Department of Justice
October 31, 2011

“Throughout my tenure as Assistant Attorney General, one of my highest priorities, and one of the central missions that I have set for the Criminal Division, has been to work with our Mexican counterparts to fight the scourge of drug trafficking and violence in Mexico, and to address the public safety crisis along the Southwest Border of the United States. That is why, among many other steps, in 2009, I offered Southwest Border U.S. Attorneys’ Offices assistance from one of the Criminal Division’s experienced prosecutors to assist in gun trafficking prosecutions.

“In response to that offer, the Arizona U.S. Attorney’s Office asked the Criminal Division prosecutor to assume responsibility for Operation Wide Receiver, and the Criminal Division’s Gang Unit agreed to do so, despite not having been involved in the underlying flawed investigation of the matter by the Tucson Field Office of the ATF’s Phoenix Field Division in 2006 and 2007.

“As that prosecutor evaluated the case in the fall of 2009, she realized that ATF’s investigation - which had concluded two years earlier - had included the use of misguided tactics that had resulted in ATF losing control of numerous guns that then crossed the border into Mexico. This information was brought to my attention in April 2010.

“When I learned of the unacceptable tactics used in Operation Wide Receiver, I instructed one of my Deputy Assistant Attorneys General to schedule a meeting with ATF’s Acting Director and Deputy Director to bring these issues to their attention. The next day, my Deputy contacted ATF leadership to arrange a meeting, and approximately one week later, my Deputy met with the ATF Deputy Director and others to discuss this matter.

“In prosecuting the defendants in Operation Wide Receiver, the Criminal Division focused on how to ensure that those responsible for illegal firearms trafficking were brought to justice, despite the flaws in the investigation.

“Knowing what I now know was a pattern of unacceptable and misguided tactics used by the ATF, I regret that I did not alert others within the leadership of the Department of Justice to the tactics used in Operation Wide Receiver when they first came to my attention.

“When the allegations related to Operation Fast and Furious became public earlier this year, the leadership of ATF and the U.S. Attorney’s Office in Arizona repeatedly assured individuals in the Criminal Division and the leadership of the Department of Justice that those allegations were not true. As a result, I did not draw a connection between the unacceptable tactics used by the ATF years earlier in Operation Wide Receiver and the allegations made about Operation Fast and Furious, and therefore did not, at that time, alert others within Department leadership of any similarities between the two. That was a mistake, and I regret not having done so.

“I remain more committed than ever to the Criminal Division’s mission to fight violence in the United States and Mexico.”

Exhibit 70

RC-1

From: Siskel, Edward N. (ODAG)
Sent: Wednesday, July 14, 2010 6:38 PM
To: Chait, Mark R. (ATF)
Cc: Hoover, William J. (ATF)
Subject: RE: SIR

Thanks Mark. How much longer is the GRIT going to be operating in AZ? At what point after that will we know the total results of the operation and be in a position to do some public roll out along the lines of what we did in Texas?

From: Chait, Mark R. (ATF)
Sent: Wednesday, July 14, 2010 4:49 PM
To: Siskel, Edward N. (ODAG)
Cc: Hoover, William J. (ATF)
Subject: Fw: SIR

This is second significant seizure yesterday by our GRIT.
 Mark R. Chait
 Assistant Director
 Field Operations

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

— Original Message —

From: Significant Activity Report
To: SAR/SIR Message Delivery
Sent: Tue Jul 13 18:55:16 2010
Subject: FW: SIR

From: Voth, David J.
Sent: Tuesday, July 13, 2010 6:54:52 PM
To: Needles, James R.; Newell, William D.; Voth, David J.;
 Significant Activity Report
Subject: SIR
 Auto forwarded by a Rule

DEPARTMENT OF JUSTICE - BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
 SIGNIFICANT INFORMATION REPORT

DATE: July 13, 2010
FROM: Phoenix Field Division
FIELD OFFICE: Phoenix VII Field Office

CASE INFORMATION

CASE NUMBER: 785115-10 ■■■
CASE TITLE: CHAMBERS, Jacob, et al.

HOCR DOJ 002847

SPECIAL AGENT: Voith, David
TELEPHONE NUMBER RC-1

SYNOPSIS OF INCIDENT/ACTIVITY:

Recovery of 20 - 7.62 rifles as part of ongoing RC-3 investigation.

NARRATIVE OF INCIDENT/ACTIVITY

On July 12, 2010, Federal Parolee, Kenneth Thompson was arrested and charged on Arizona state charges of Hit and Run and Felon in Possession of a Firearm after fleeing from Peoria Police Department patrol units. ATF provided Peoria Police with information that Thompson was in possession of firearms as part of an active RC-3 case; Operation Fast & Furious; 785115-10-0004. Thompson fled from officers and crashed his vehicle into a cinder block wall after jumping the train tracks near the intersection of 67th Lane and Grand Avenue, Peoria, AZ. Both Thompson and the unidentified passenger fled the scene on foot and a short time later Peoria Police officers captured Thompson approximately 1/2 mile from the scene. Thompson suffered a broken leg and was transported to a local hospital for treatment, the passenger was never located. Thompson was released from Federal custody in September of 2009, after serving approximately 60 months after he entered a plea of guilty of 21 USC 846, Conspiracy to Possess Marijuana in February 2004.

During an inventory search of the vehicle, Peoria police officers recovered (20) ROMARM/CUGIR, 7.62x39 caliber rifles from the bed of the truck. The firearms had been purchased earlier that day by a subject identified as a straw purchaser in the coinciding ATF investigation. In addition, (2) pistols were recovered from the cab compartment of the vehicle. ATF agents took custody of the (20) ROMARM 7.62x39 caliber rifles as part of the ongoing ATF investigation. Peoria officer retained custody of the (2) pistols for further state prosecution.

This recovery adds to the total of 96 firearms recovered in the previous 24 days by Group VII agents and GRIT agents assigned to Group VII as part of Southwest Border Firearms Trafficking investigations.

HOCR DOJ 002848

Exhibit 71

BRIEFING PAPER

Phoenix Field Division
Phoenix Group VII (Gunrunner/Strike Force)
785115-10-[REDACTED]
January 8, 2010

Background

1. This investigation has currently identified more than 20 individual connected straw purchasers. More suspects are being identified as the scope of the investigation expands.

[REDACTED] [REDACTED]

To date (September 2009 – present) this group has purchased in excess of 650 firearms (mainly AK-47 variants) for which they have paid cash totaling more than \$350,000.00.

2. To date there have been five (5) notable seizure events connected with this group, and approximately 53 firearms originally purchased by this group have been recovered. Three of these seizures have been in the Country of Mexico, one recovery in Douglas, AZ, and one recovery in Nogales, AZ. The U.S. recoveries were both believed to be destined for Mexico. It should be noted however that there has been one seizure in the Phoenix area related to the ongoing DEA narcotics trafficking investigation.
3. The seizures referenced above were not from any member of the targeted group of straw purchasers identified in this investigation. Rather, they were from Hispanic individuals (both male and female) whose association with our target group is currently unknown. This is consistent with what ATF agents have observed thus far during surveillance: straw-purchase suspects delivering recently purchased firearms to Hispanic males. Two such transactions were observed to take place at auto shops/auto auctions.
4. At one of the Mexico seizures there were 45 firearms recovered in addition to 500 kilograms of cocaine, 85 pounds of methamphetamine, and over \$2,000,000.00 in U.S. currency. Of the 45 firearms recovered, 14 of those firearms (all AK-47 variants) were originally purchased by this target group. Our investigation has not produced any indication of drug trafficking or financial resources consistent with the seizures listed above.

5. [REDACTED] [REDACTED]

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[REDACTED] This is being coordinated out the Phoenix OCDETF Strike Force, of which Phoenix Group VII is a full-time member.

6. [REDACTED]

7. [REDACTED]

8. On January 5, 2010, ASAC Gillett, GS Voth, and case agent SA MacAllister met with AUSA Emory Hurley, who is the lead federal prosecutor on this matter. Investigative and prosecution strategies were discussed and a determination was made that there was minimal evidence at this time to support any type of prosecution; therefore, additional firearms purchases should be monitored and additional evidence continued to be gathered. This investigation was briefed to United States Attorney Dennis Burke, who concurs with the assessment of his line prosecutors and fully supports the continuation of this investigation. Furthermore, Phoenix Special Agent in Charge Newell has repeatedly met with USA Burke regarding the on-going status of this investigation and both are in full agreement with the current investigative strategy.

9. [REDACTED]

10. A joint strategy/deconfliction meeting is planned for Friday, January 15, 2010, with representatives from ICE, DEA, and ATF. This investigation, as well as other ongoing investigations, will be briefed to all present. It should be noted that deconfliction in the OCDETF Strike Force is not the issue, rather there are several Arizona ICE offices involved in this investigation due to the location of the firearms seizures and coordination between the various ICE offices has been problematic. Even though ICE has a group at

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the OCDETF Strike Force the other ICE offices in Arizona are under different ASACs and that has created a coordination issue amongst all parties involved. Phoenix SAC Newell has previously requested that ICE coordinate all their investigative activity out of the OCDETF Strike Force, of which ICE is a member, in order to eliminate the requirement of the ATF Strike Force to try to coordinate with several different ICE offices. This will be discussed at the January 15 meeting.

Investigative Techniques a/o Efforts Used to Date

11. To date in this investigation we have utilized numerous proactive, advanced investigative techniques:

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Investigative Strategy

12. This investigation is currently being conducted in conjunction with the Phoenix DEA OCDETF strike force. ATF Phoenix VII is the lead investigating enforcement group in the firearms trafficking portion of this investigation. A formal OCDETF proposal is completed and will be presented on January 26, 2009, in furtherance of this investigation. It is unknown at this time what direct connection exists between these straw-purchasers and the drug trafficking organizations (DTOs) of Mexico.

HOGRAF - 001917

13. Currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border. This all in compliance with ATF 3310.4(b) 148(a)(2). It should be noted that since early December efforts to "slow down" the pace of these firearms purchases have succeeded and will continue but not to the detriment of the larger goal of the investigation. It should also be noted that the pace of firearms procurement by this straw purchasing group from late September to early December, 2009 defied the "normal" pace of procurement by other firearms trafficking groups investigated by this and other field divisions. This "blitz" was extremely out of the ordinary and created a situation where measures had to be enacted in order to slow this pace down in order to perfect a criminal case.
14. The ultimate goal is to [REDACTED] identify and prosecute all co-conspirators of the DTO to include the 20 identified straw purchasers, the facilitators of the distribution cell centered here in Phoenix, the transportation cells taking firearms South, and ultimately to develop and provide prosecutable information to our Mexican law enforcement counterparts for actions. It should be noted that DEA has specifically requested, at the ASAC and SAC level, that ATF continue this investigative strategy in order to not adversely impact their on-going narcotics trafficking investigation, which to date has identified direct ties between their [REDACTED] targets and the Sinaloa DTO.

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Exhibit 72

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: ROBERT MONTAGUE WILKINSON

Friday, April 13, 2012

Washington, D.C.

The interview in the above matter was held in 2247 Rayburn House
Office Building, commencing at 10:00 a.m.

in 1990 following my clerkship with the Attorney General, and then when he became U.S. Attorney for the District of Columbia, he asked me to join his staff and I worked with him as a Special Counsel to the U.S. Attorney from 1993 until 1997 when he was U.S. Attorney, and then on his staff when he was Deputy Attorney General.

Q What was your role when you were on his staff when he was a DAG?

A I was an Associate Deputy Attorney General.

Q And then what did you do when you left the Deputy Attorney General's Office?

A I left the Deputy Attorney General's staff in the summer of 1998 and I worked for about 2 years at an agency -- it was a new Federal agency in the District of Columbia. It is called the Court Services and Offender Supervision Agency. I was there for about 2, 2-1/2 years, and then I rejoined the U.S. Attorney's Office in the District of Columbia and I worked there from January 2001 until September of 2006. I left for a year and then rejoined the office in September of 2007.

Q Okay. So you have worked with the Attorney General on four separate occasions as his law clerk, in the U.S. Attorney's Office, Deputy Attorney General's Office, and then when he was Attorney General?

A Correct.

Q So you have a pretty close relationship with him, is that fair to say?

A Yes.

Q You have, I presume, a great deal of respect and admiration for him?

A Yes.

Q Do you see each other or have you seen each other socially outside of the work setting? Does your relationship extend just beyond the office?

A Yes.

Q I want to talk about your role in the AG's Office when you were there before you moved on. Tell me about the structure of the Attorney General's Office in terms of how many folks are in your position as Counselor, how many other support staff there are, things like that.

A To the best of my recollection, there was a chief of staff, a deputy chief of staff who typically also holds the title as Counselor, and then initially when I was there there were approximately five attorneys on the staff, and then various support staff.

Q And all the attorneys are more senior people like yourself?

A No. There were a few attorneys on the staff who held the title Counsel who were less senior.

Q Were the counselors, were they lined up with the counselors in any way, or were there kind of separate jobs that they were performing?

A No. I mean it was just based more on the level of experience, but there really wasn't much difference in responsibility.

Q Okay. And in terms of support staff, are those like admin

appointments, or what do you mean by interviews?

A Yes.

Q Did you have a relatively close relationship with him Dennis Burke?

A I wouldn't say it was -- you know, it was a professional relationship. I liked Dennis. But I got to know -- I have gotten to know several of the U.S. Attorneys.

Q So Dennis was on the Attorney General's Advisory Committee, is that right, and that is something you liaised with in the Attorney General's Office?

A Right.

Q So you had more frequent interactions with him than most of the other 93 attorneys, is that fair to say?

A Well, there are a number of U.S. Attorneys on the AGAC as we refer to it, and I can't say that I had more contact with him than I had -- I mean, there were some U.S. Attorneys on the AGAC and who were not on the AGAC with whom I had contact and it was pretty much depending upon -- you know, and they would reach out to me for a variety of reasons.

Q What are the reasons that the U.S. Attorneys would reach out to you?

A For example, they may want the U.S. -- the Attorney General to visit their district, or, you know, that type of thing.

Q Did Dennis Burke ever reach out to requesting the Attorney General visit his district?

A I have a vague recollection of Mr. Burke -- a communication with Mr. Burke, and I don't recall exactly when it was, but expressing an interest in the Attorney General coming to Arizona to announce an indictment in a gun trafficking case.

Q Is that something that he reached out to you for, or you reached out to him about?

A I don't see why I would have reached out to him about it.

Q All right. Let me see if we are talking about the same thing here. I will mark Exhibit 4 and we can talk about this.

You are actually on this email, this series of emails between you and Mr. Burke. There are four pages, and I think there are three separate email conversations.

[Wilkinson Exhibit Nos. 4, 5, and 6
were marked for identification.]

Mr. Reich. Just so the record is clear, you have marked as one exhibit a compilation of emails?

Mr. Davis. Yes, sir. I will go ahead and confuse things and mark another exhibit as a compilation of emails and we can talk about it. Is that okay with you?

Ms. Whitney. Carlton, do you have another copy of Exhibit 4?

Mr. Davis. I have 10.

This is Exhibit 5. Again, that is a compilation of emails. I hate to do this to you, I will do one more and we will do three at once. So I will mark Exhibit 6.

Mr. Kerner. Just for the record, just tell what 4, 5 and 6 are.

Mr. Reich. You mean apart from what was in the weekly reports?

Mr. Davis. Right.

EXAMINATION

BY MR. LEAVITT:

Q Can I ask one question. We are about to get into I am sure some of these other things and obviously the timing of this is close to the date that agent Brian Terry was killed. Do you have any recollection of whether this conversation that you do recall with Burke about the firearms trafficking case, is there any kind of place marker in your mind as to whether that conversation would have taken place before you had found out about Agent Terry or after, so as to give context as to whether it might have been before or after these emails?

A I really don't.

Q These emails are before that took place, but you don't have any recollection of whether by the time you had that conversation with Burke you had found out about Agent Terry?

A I just don't remember.

BY MR. KERNER:

Q Just to follow up on one thing that Mr. Reich just said, so in these weekly memoranda, it references Fast and Furious?

A That is correct.

Q So when you received these, you were aware of an investigation named Fast and Furious. Is that a fair statement?

A Yes. If I read the weekly reports, I would have seen the reference to Fast and Furious. But I didn't know, other than what was

in the weekly reports, I didn't know anything about it.

Q But you did read the weekly reports, you said, right?

A I made it a practice to read them. I can't sit here today and say I absolutely read every weekly report. But I tried to read all of the weekly reports. I tried to read the weekly reports as they came.

Q Given what Carlton asked you, when was the first time, sitting today --

A Well, I would have seen the references to Fast and Furious in weekly reports that I read.

Q And so do you recall when the first reference was?

A It would have been around the timeframe of the fall of 2010, I guess.

Q And did you ask any questions about what that is or any follow-up?

A No. I mean, as I sit here today and read the missions, and you look at them, there is nothing in there that references the inappropriate tactics that were used in Operation Fast and Furious. So, no, I didn't ask questions about it.

BY MR. LEAVITT:

Q I am sorry, one more question. On Exhibit 6, it references the target dates for the press event at that time in their mind as being early January. Typically how far in advance would you be reached out to by someone for the Attorney General to come for an event? Is this the sort of thing you would get 2 weeks notice on, or 2 months notice

on?

A I mean, it really would vary, I think. Typically it would, you know, he would need -- sometimes you have to plan things quickly, but, I mean, something like this -- it really varied.

Q Right. I mean, is it fair to say that ideally it would have been more than 2 weeks in many circumstances?

A Yes.

Q And you don't have any recollection as to whether in the conversation that you do recall with Burke, whether there was any nature of rushing for an event so that there would have been a shorter time window, as opposed to just a normal request that would have come?

A No, I don't recall that.

BY MR. DAVIS:

Q Going back to Exhibit 4, turn to the last page of Exhibit 4. Dennis Burke emails you, "I would not recommend the AG announce this case. I can explain in detail at your convenience." And then you respond, "Okay, I will call tomorrow."

A Correct.

Q And again you have no recollection of having a phone conversation with Mr. Burke on this topic?

A No. I am sorry, I didn't mean to interrupt. No, I don't recall having a conversation with Mr. Burke on this.

Q Do you ever recall having a phone conversation with Dennis Burke in this time period in mid-December 2010?

A As I said, I don't recall when the conversation occurred that

I have indicated I have a vague recollection of, but other than that conversation, I don't recall having any conversations with Mr. Burke about this.

Q Okay. On the third page, flip up one page --

Mr. Reich. Which exhibit?

BY MR. DAVIS:

Q Exhibit 4. Right there at the very top, when Dennis Burke informs you that the guns found in the desert near the Border Patrol officer are traced back to the investigation we are going to talk about, again you say "I will call tomorrow." So these are two, at least in my mind, these are two pretty important events. Certainly this is a very important point.

A Yes.

Q The guns traced back to the investigation. And then on page 4 recommending the Attorney General would not announce the case. Your say on both occasions you will call tomorrow.

A Right.

Q I presume if you told him you would call tomorrow, that you did call tomorrow.

A Correct.

Q But you only have recollection of one phone conversation?

A Well, I mean, when people call me and leave messages, I make it a practice to return their calls. If I tell somebody that I am going to call them, I am very good about following up. So I can't say that I didn't attempt to reach Mr. Burke and just wasn't able to connect

with him or we played telephone tag. But I am telling you to the best of my recollection, I don't recall connecting with him and discussing this.

Q You do understand -- I presume you understand that the optics at least of Exhibit 4 give off the impression that the Attorney General wanted to come out to announce the Fast and Furious press conference. Those are the first two pages. Page 3 says that the investigation he was going to announce ties back to the murder of the Border Patrol officer. On page 4 is Dennis Burke saying "I don't think the Attorney General should announce this case anymore as a result." So those are negative optics I think of the Department of Justice, given that this a crucial timeframe in the Fast and Furious investigation. Is that fair to say, at least from an outside perspective?

Mr. Reich. I am sorry, what is the question, whether there are negative optics?

Mr. Davis. That is the question.

Mr. Reich. Whether you think there are negative optics? That is the question?

Mr. Kerner. It is fair to say that these are negative optics.

BY MR. DAVIS:

Q Yes.

A Well, I mean, you are asking me to make a bunch of connections here. First of all, with respect to the -- that was a pretty loaded question, so I need a second.

Q That is fine.

A All right.

Q Let me give you another exhibit to peruse. This is Exhibit 7. You are not on this email. This is an email between some folks in ATF. So I don't know if you know who these individuals are. I can tell you who they are if you want.

[Wilkinson Exhibit No. 7

was marked for identification.]

Mr. Reich. Just for the record, the witness currently has four exhibits in front of him, two of which are compilations and two of which the witness is not on at all. Just so the record is clear.

Mr. Wilkinson. Okay.

BY MR. DAVIS:

Q So this email takes place on December 21, 2010, at 11:20 in the afternoon from Bill Newell, who is the head of the ATF office in Phoenix, and William McMahon is his liaison in Washington, to headquarters. It says, "For what it is worth, and since I don't like the perception that we allowed guns to walk, I had David Booth pull the numbers of the guns recovered in Mexico as well as those we had a direct role in taking off here in the United States." That is in the middle paragraph.

A Right.

Q Later that day, on Exhibit 4, the last page of Exhibit 4, again Dennis Burke emails you and says, "I would not recommend the AG announce this case."

A Right.

Q At least from the documents that we have been given, this is the first time right there in Exhibit 7 that we see any reference to guns being walked in the investigation. Did Dennis Burke mention anything to you about guns being walked in Fast and Furious or around this timeframe? Does that ring a bell at all?

A No, it doesn't, and I have no recollection of having any conversations with Mr. Burke at any time regarding the tactics that were used in this operation.

Q Let's flip over to Exhibit 5. You can put the other three aside.

BY MR. FOSTER:

Q Carlton, you asked an open-ended question here. So do you recall having any conversations with Mr. Burke at any time about why he did not believe that it was a good idea for the Attorney General to announce the investigation?

A I did not -- I am sorry, I did not mean to interrupt you. I do not have any recollection of having any such conversation with Mr. Burke.

Q So other than the email where he says he doesn't think it is a good idea, you never had any indication from any source as to why he thought it wasn't a good idea?

A I don't have any recollection of having any conversation with him. The problems with the investigation came to light I guess in late January 2011, and that is when I became aware of the tactics that were used.

Q Right. I understand you don't recall any specific conversations with him. I asked you a slightly different question and my second question was slightly different. I asked if you had any idea or any indication from any source as to why Mr. Burke communicated to you his view that he didn't think the Attorney General should announce the investigation?

A Not that I recall, no.

Q From any source?

A No.

BY MR. DAVIS:

Q Let's go to Exhibit 5. You can put the other three away.
Mr. Reich. Give us a second. Take a minute and look at it.
Mr. Wilkinson. Okay.

BY MR. DAVIS:

Q These are emails that Dennis Burke forwarded to you regarding Brian Terry's death and that a Border Patrol agent had been shot. Just essentially keeping you in the loop I presume is what he is doing, right?

A Correct.

Q And you said, "Please provide any additional details as they become available," on page two.

A Right.

Q Do you have any specific recollection of any phone calls that you had with Dennis Burke about this particular topic, about the Border Patrol agent being shot?

A No.

Q Okay. When Dennis Burke sent you these emails, was this the first you had heard about a Border Patrol agent being shot?

A To the best of my recollection, yes.

Q So there was no type of urgent notice or anything that was sent out within the Department about an agent being shot?

A Not that I recall.

Q Okay. And when was the first time, to the best of your recollection, that you can remember that the guns being found at the scene where the Border Patrol agent was shot actually traced back to a current investigation? Did that come from Dennis Burke as well in

the emails that we had looked at earlier?

A My only knowledge of that is what is contained in these emails.

Q Okay. ATF conducted a trace of the weapons and they knew that day that the weapons had traced back. They sent a six-page memorandum to the Deputy Attorney General 2 days later, and the first you heard of it was from Dennis Burke, that the weapons traced back to the investigation that you were planning on announcing, you had discussed announcing?

A I am sorry, could you repeat the question?

Q Sure. So you are saying that the first time that you heard about this, the weapons being traced back to the investigation was from Dennis Burke?

A Correct.

Q Okay. Did you alert the Attorney General about that at all?

A I don't recall sharing that information with the Attorney General.

Q Should the information have been provided to you or to the Attorney General from Dennis Burke, or should it have occurred through a different mechanism within the Department, like an urgent alert that something had happened, that these weapons had traced back to an ongoing investigation?

A I don't -- I can't say how it should have -- I mean, Dennis Burke alerted me to the fact. But, I mean, information comes into the Department through a variety of sources.

Q All right. Let me just tell you where I am coming from. Kevin Olson told us, he said there is no doubt that some type of communication system within the Department failed here. He said that the link between the weapons in Fast and Furious and Agent Terry's murder should have been communicated up the chain in multiple ways, but it wasn't done that way. Do you share his assessment?

A It is a fair assessment.

Ms. Whitney. Carlton, can I ask you, Carl Olson, I don't remember, was that a transcribed interview? No?

Mr. Kerner. Kevin.

Mr. Wilkinson. And I --

Mr. Reich. There is no question.

Ms. Whitney. That is a question to you, Carlton.

Mr. Kerner. Why don't we take it up afterwards. We have 6 minutes remaining.

Mr. Reich. I actually have a question on the record just about process. So my understanding is that you guys, your position is that we shouldn't be sharing information with witnesses about what other witnesses have said, and we have honored that.

[11:00 a.m.]

Mr. Reich. And we've honored that. Is your further position that notwithstanding that, that the committee is free to say to witnesses whose testimony is being taken what other witnesses have said notwithstanding the fact that we can't do that.

Mr. Kerner. I think our position is we can ask this witness, we can make representations of what we have learned from other sources to get his opinion or his take or his response to that.

Mr. Foster. Speaking for myself, I think that it's fair for us to be free to provide context for a question based on information that we have learned so that the witness understands the perspective from which our questioning comes.

Mr. Reich. Can I respond to that?

Mr. Foster. Sure.

Mr. Reich. Here is my problem with it.

My sense is that the purpose of saying to a witness what another witness has said is to gain their agreement based on the source of the information, rather than just putting the question without sourcing it, that it's designed to gain agreement by saying, well, Kevin Olson with whom you have previously worked said, the sort of subtext being of course you wouldn't disagree with Kevin Olson. And it seems to me unfair to the extent that we don't have access to what Olson said and so we can't find out whether there is other context for it. But

secondly, unfair in the sense that you have made a specific request of us that we not share witness testimony, and so in honoring that to some degree we have tied our hands while at the same time you guys feel free to put on the record your interpretation of what other witnesses have said. And I'm raising the question of the unfairness of that.

Mr. Kerner. To briefly answer, I think we have been requested that your witness not share witness testimony of others because we don't want to influence what his recollection is. However, on our end it is not unfair. Carlton can state what his interpretation of what Mr. Olson told us is. Mr. Wilkinson doesn't have to accept that.

Mr. Reich. My question is why is it when I do it, it is influencing the witness' testimony but when you do it, it is not?

Mr. Kerner. Because we are not witnesses. We are just asking questions. Carlton is not providing information. He is saying that is what his interpretation of some one else, Mr. Wilkinson is free to say he was asking about our process. Mr. Olson told us that this process broke down according to what our understanding of the interview was or the discussion was. Mr. Wilkinson agreed that he thought the process had broken down. I don't think there is anything unfair about that.

Mr. Kerner. I'm not sure that is what he said. We can continue this discussion off the record. I think I made my point.

Mr. Davis. I just have one final question for you.

BY MR. DAVIS:

Q The exhibits you have in front of you 4, 5, 6 and 7, to the

best of your recollection is that the entire universe of emails you exchanged with Dennis Burke around that time period?

A To the best of my recollection, yes.

Mr. Kerner. I have a couple of quick questions.

BY MR. KERNER:

Q When you look at the circumstances surrounding the Brian Terry murder, do you remember this event at all, do you have any recollection as you sit here today that this occurred -- regardless of whether it was via email or phone call or however the mode of communication was? Do you recall someone telling you, hey, this border agent in Arizona died?

A Yes.

Q Do you remember the circumstances surrounding this information coming to you?

A As I sit here today it would have been through Mr. Burke.

Q Right, but you say it would have been. So my question is just trying to remember --

A I remember any time we lose a Federal law enforcement agent, it is a very tragic event. And I have a recollection of around that time frame independent of this of losing one of our agents.

Q And when you received this information, the email says that you were going to alert the AG. Did you speak to Mr. Holder about this?

A I don't remember how I communicated it to Mr. Holder but --

Mr. Sherman. Henry, can you be clear about what you mean when you say "this"?

Mr. Kerner. The information of Mr. Terry getting murdered.

BY MR. KERNER:

Q Did you communicate that -- the information reached you in advance of reaching the Attorney General. Would that be fair?

A I actually don't know for sure if he heard it first from me. All I can go on is the fact that I told Dennis that I had alerted the AG and some other folks that I did that. I don't remember how I did it.

Q So as you sit here today you don't have any recollection of a conversation, email or any other method?

A No, I don't.

Q Let me finish -- communication between you and Mr. Holder --

A Correct.

Q -- regarding the Terry murder?

A Correct.

Q But based on this email, looking at Exhibit 5, it suggests I have alerted the AG, so it suggests that you did at some point?

A Right, I think that is probably what I just said.

Q Now what form of communication did you have with the Attorney General? Did you talk on phone primarily, did you talk in person or did you email? What was the preferred way of communicating with him?

A It really varied. Sometimes it was through email, sometimes I would, if he had time I would try to get in to see him personally. It was rarely, it was rarely on the phone when we were in the office.

BY MR. DAVIS:

Q What would it have been in this case when you say you have alerted the AG?

A As I indicated, I don't recall.

BY MR. KERNER:

Q But in terms of your practice, how would you have alerted him?

A I don't know, because I don't know what, I just, I don't remember you know what was going on that day. I just, you told me at the beginning to be honest, if I don't remember to be honest and I'm being honest. I don't remember.

Mr. Leavitt. Mr. Wilkinson, if you turn to Exhibit 5.

Mr. Reich. Can we wrap this up?

Mr. Kerner. Let's do one more question.

BY MR. LEAVITT:

Q If you turn to exhibit 5.

A Yes.

Q Does the timing of these at all, it appears as though Dennis Burke sent the email at 9:41 a.m. and you responded at 10:04 a.m. What was the time? You mentioned before that each morning there was a senior staff meeting with the Attorney General? Does the timing of that meeting correspond at all with these? Was that a 9 a.m. meeting, a 10 a.m. meeting?

A Those meetings I believe began at 9:15.

Q So typically at 9:41 a.m., would you still have been in the middle of one of those meetings?

A It really varies. It depends on how much was discussed at the meeting, how quickly it would break up. Sometimes they could last 5 minutes, sometimes they could last longer.

BY MR. FOSTER:

Q So you don't recall whether you received this during the meeting or after the meeting?

A That's correct.

Mr. Kerner. Our time is up. So we will take a 5-minute break and then we are going to switch seats.

[Recess.]

Mr. Sherman. For the record the time is now 11:16.

EXAMINATION

BY MR. SHERMAN:

Q In the last round there was a representation made by the majority about statements from an individual named Kevin Olson. I just want to make clear for the record that --

Mr. Kerner. Don, please speak up.

Mr. Sherman. Sure.

BY MR. SHERMAN:

Q I just want to make clear for the record that the committee, as part of the investigation into operation Fast and Furious, has not conducted a transcribed interview of Mr. Olson and any conversations that have been had with Mr. Olson have not included the minority.

Ms. Sachsman Grooms. And therefore we do not consider to be part of the committee's investigation.

BY MR. SHERMAN:

Q And as I said, there were representations made during the last round about statements that Mr. Olson may have made. I have no way of knowing whether those representations were accurate or not. But you were specifically asked whether you believed that there was a breakdown in communication with respect to communications about the circumstances surrounding the murder of Agent Brian Terry, and I wanted to give you an opportunity to address that question.

A Well, yeah, just to clarify, I don't think there was a breakdown in communication. I received information from former U.S. Attorney Burke regarding the death of the agent. I don't know whether there were other sources of that information coming into the Department. So, I didn't mean to suggest there was a breakdown in communication.

Q I want to get back to a point that you mentioned earlier. Can you repeat for the record how many U.S. Attorney's offices there are in --

A Yes.

Q Under the Department of Justice's jurisdiction?

A There are 94 U.S. Attorney's offices and 93 U.S. Attorneys.

Q And as Deputy Chief of Staff you were the point of contact for all of them?

A I was a point of contact on U.S. Attorney issues, the Executive Office for U.S. Attorneys, which is, so I was a primary point of contact. I can't say I had regular contact with all 93 U.S.

Attorneys.

Q And I believe during the last round you also mentioned that on occasion U.S. Attorneys make requests or inquiries to your office regarding the Attorney General's availability to attend press conferences and other events relating to their cases?

A Right. I mean, the Attorney General has traveled to many of the districts for a variety of reasons, and U.S. Attorneys frequently will invite the Attorney General to visit their offices or to participate in events. Sometimes it wouldn't include a press conference but the investitures for some of the U.S. Attorneys when they come on board, that type of thing.

Q I can only assume that the Attorney General doesn't actually attend all of the events that he is invited to attend from the U.S. Attorney's offices?

A That's correct.

Q Specifically going back to December of 2010, was the Attorney General expressing an interest in going out to Arizona for a press conference or some other event at that time?

A I have no recollection of the Attorney General expressing an interest in traveling to Arizona.

Q Do you have a recollection of the Attorney General making a decision about whether or not to attend a press conference in January of 2011 in the District of Arizona?

A I don't recall raising the issue with the Attorney General so I don't -- there would be no reason for him to weigh in. But I don't

recall actually discussing the possibility of traveling to Arizona for a press conference with the Attorney General.

Q Can you explain why you wouldn't have raised that with him?

A Yes, I indicated it is not uncommon to get requests from U.S. Attorneys for the Attorney General either to travel to their district or participate in an event. And typically before we put it on the, bring it to the AG for a decision, we try to gather as much information as possible, and here before it got to that point, Dennis said he wouldn't, Dennis Burke suggested or said that he wouldn't recommend that the AG come. So that is my answer.

Q So it is not your practice to push back and have U.S. Attorneys explain why they asked for the AG to come out or why they were sending such a request?

A Again, I don't recall all of the specifics here, but if a U.S. Attorney were to initially express an interest in the Attorney General coming to their district for whatever reason and then either withdraw the request or say, you know, never mind, there would, I don't see a reason to push back on the U.S. Attorney.

Q Did Mr. Burke ever indicate to you that the reason that he rescinded his request for the Attorney General to come out and visit the District of Arizona was in any way related to the murder of Agent Brian Terry?

A Again I don't recall having any conversations or communications with Mr. Burke about this.

Q Did anyone else make any indications or provide any

information to you suggesting that U.S. Attorney Burke's decision to recommend that the Attorney General not come out for a press conference related to a firearms trafficking case in January, 2011, was in any way related to the murder of Agent Brian Terry?

A I don't recall having any communications with anybody about that, no.

Q Do you recall when you first became aware that the tactic known as gunwalking was used by ATF agents in Operation Fast and Furious?

A As I think I indicated previously, I don't believe it was until after the allegations were made about the improper tactics, which would have been in, at some point towards the end of January, 2011.

Q How did you become aware?

A Again, when the allegations became public. I don't recall specifically.

Q Now, what would you have done with that information had you become aware that these tactics were being used during the course of the investigation?

A I would have, I'm confident that I would have tried to get more information about what was done and brought it to the attention of the appropriate people.

Q Now the Attorney General has testified on several occasions that he was also unaware of the fact that ATF agents in Phoenix were using gunwalking in Operation Fast and Furious. Do you have any reason to believe that those statements are inaccurate?

Q And why did that occur?

A I'm not sure if it was a resource issue or just because of -- you know, to avoid any appearance of conflict or something. A decision was made to transfer it.

Q What about any other cases, the Hernandez case?

A I have seen references to the Hernandez case in the weekly reports.

Q And what do you recall about it?

A Actually it was the, just that it was, the references indicated there was a gun trafficking case. We didn't have any discussion of the tactics that were used.

Q There was no discussion of controlled deliveries, across border controlled deliveries or attempted cross border controlled deliveries?

A I don't recall seeing any of that, no.

Q In the beginning of your interview when you were talking sort of about process and your role in the Attorney General's Office, you were, you emphasized the point that you weren't responsible for supervising the components that were in your portfolio. Is that a fair statement?

A Right. It is accurate to say I didn't supervise or manage the components, correct.

Q And you also, I believe, said that you weren't responsible for overseeing them, is that accurate?

A That's right. Yes, correct.

Q So is anyone in the Attorney General's Office responsible for either overseeing, supervising or managing the components?

A The role of the staff in the Attorney General's Office is to be a liaison with the components, to try to have a grasp on what is going on in the components and on top of important issues. I did not get into the operations of the components.

Q So is the answer to my question no?

A Could you repeat the question?

Q My question was is anyone in the Attorney General's Office responsible for overseeing the components of the Justice Department, supervising the components of the Justice Department or managing the components of the Justice Department?

A I said the role is to try to be on top of the issues in those components, so that we aren't blindsided by issues, to have a relationship such that issues are, important issues are brought to our attention so that we can report them to the Attorney General, but it's not to manage or supervise.

Q So the answer is no?

A I think I have answered the question as best I can.

Q You mentioned John Bies as having your portfolio in, having responsibilities for ATF prior to your having responsibility to be the liaison to ATF, is that accurate?

A Yes.

Q And where is he now?

A He is in the Office of Legal Counsel at the Justice

sense of whose job within the Attorney General's org chart it is to manage or supervisor the individual components? Or is there such a person or position?

A The leadership of the components, they really report up to the -- through the Deputy Attorney General up to the Attorney General. And as I indicated, the role of the counselors in the -- the lawyers on the Attorney General's staff is to -- there are a lot of different responsibilities. You can work on policy issues. You know, you have liaison with the issues. You try to stay on top of what's going on in those components. You try to you know what the important issues are in those components. You can bring them to the attention of the Attorney General or to help work out problems. But it's really not a supervisory or management role. But there's a -- it's an obligation for the components to report up to the lawyers on the AG staff as to what's going on there. And the lawyers on the AG staff need to be diligent to try to keep on top of those issues.

BY MR. FOSTER:

Q So is it your view that the Deputy Attorney General is responsible for supervising, managing, and overseeing the components?

A What my -- what I said is that the -- the leadership of components, like ATF, report to the Deputy Attorney General. That's --

Q And is that because he supervises and manages or oversees them?

A He -- that's -- he does -- I mean they report to him.

BY MR. KERNER:

Q Let's ask it this way: If the ATF or any component was doing something that Mr. Holder didn't like, how would you communicate his not wanting them to do that to them? Like what would be the process for communicating --

Let's say the agency, through you or through some other mechanism, communicated a policy that they were following, and the AG didn't want them to do that. How would you go about telling them that? And who on the org chart would be responsible to tell Billy Hoover, Hey, don't do that?

A You know it could really depend on what the issue is. It could be from the Deputy Attorney General. It could be -- there could be communications from attorneys on the AG's staff to the components to --

Q Right. But Billy Hoover is going to look -- it's an org chart. It's like a pyramid. Billy Hoover isn't going to take orders from just any lawyer in the Justice Department. So it's got to be someone --

Just to finish, so Billy Hoover has to respect that the person who says, Don't do that, or do it differently or however you want to say it, that that's somebody in his chain of command, if you will, somebody that he -- that is above him, that can basically order him to do something. I think Jason was alluding to that. Is that the DAG's Office? So if the DAG said don't do that or do do that, is that -- I guess we get into the word "managing." Is that who Billy Hoover has

to take orders from?

A The DAG's Office does exercise management -- some management -- I mean over components.

Q So would it be fair to say that if there were inappropriate tactics and mistakes and breakdowns, they would relate from the communication between ATF and the DAG's Office? That would be the responsible agency.

Mr. Reich. I'm sorry. Can you try the question again?

BY MR. KERNER:

Q Sure. To the extent that there were mistakes made, that there were tactics used, that it was a fundamentally flawed program, et cetera, to the extent that there were mistakes made within the ATF structure, going into the Justice Department, it will be their interaction with the DAG's Office that would be responsible for ferreting them out or having some input in this regard?

A I don't know if I can answer your question.

Mr. Kerner. That's all I've got.

Mr. Foster. I'm just going to try one final big picture thing.

Mr. Kerner. I'm sorry. Just one more. Still on the IG.

BY MR. KERNER:

Q So you've been asked to be interviewed by the IG but it hasn't been scheduled. Do you have any anticipation of when that's going to occur?

A I don't -- I don't know exactly when it will be.

Q But do you think it will be within a month?

Exhibit 73

[REDACTED]

From: Voth, David J.
Sent: Wednesday, March 10, 2010 2:25 PM
To: MacAllister, Hope A.; Hall, Diane C.; Kenrick, Brian C.
Cc: Newell, William D.; Gillett, George T. Jr.
Subject: Things are moving fast (i.e. Fast and Furious)
Attachments: ACOSTA app and order March 9 2010.pdf; ACOSTA affidavit March 9 2010.pdf

To All (especially Diane),

You all are aware that our affidavit went to OEO, came back with some revisions and we were working on said revisions. We completed our revisions yesterday and they were sent back to OEO last night. Per the AUSA in this case the revision were good and OEO is ready to send our affidavit off to DAG for signature. That being said we need our agency memo to accompany it. I have attached the latest version of our affidavit (sorry I was in meetings all morning) to this e-mail. Please keep me up to date on the status.

Thanks again to everyone!

David Voth
Group Supervisor
Phoenix Group VII
602 [REDACTED]

Exhibit 74

From: Kenrick, Brian C.
Sent: Wednesday, March 31, 2010 5:45 AM
To: Voth, David J.
Cc: Gillett, George T. Jr.; Hall, Diane C.; Kamgard, Thomas E.; Lee, Patria M.; Orlow, Barry S.
Subject: RE: PATINO TIII Affidavit revised 3-26-2010

David – every time I read this case I am amazed at the amount of firearms we are talking about, an incredible case. I have a couple of comments below but my biggest concern is the length and my recommendation is one that could only help you speed things along. OEO is currently swamped with T3 applications and as you know they need to read each affidavit a couple times (and so does the DAG) before approval. This affidavit could be cut down drastically merely by incorporating the prior affidavits facts through a FN saying something to the effect of "Affidavit dated XXXXXX which was used as the basis for the Order signed by Judge XXX on XXXXXX is incorporated by reference and attached." I would then recommend removing the following paragraphs which you do not need to get the pc for these two phones: 21-27,48-66, 76-108. This would remove at least 25 pages which has already been made part of the underlying pc and reviewed through the first affidavit. It will also make OEO and the Judge much happier.

For specific comments I do not have much, but here it is...

Caption We list 3 identifiers for TT3, I have been advised that OEO will only accept 2 identifiers per device, I would remove the UFMI

P14 Same comment, remove UFMI

P34 You may want to note PATINO does not have an FFL (assuming a check was done) since this affidavit primarily deals with him, or remove this paragraph as it was already in the last affidavit.

P74 I would update this purchase # through March for PATINO

P124 I do not see a paragraph anywhere showing we received a court order for the pen on TT3, I would put it here or before paragraph 143

P182 Need to include updated ELSUR check date and need to include these new numbers and any new potential interceptees

Great job on the necessity section, very specific in regards to PATINO.

I will be on travel status until Friday morning, if you need anything just call my cell. Let us know when our comments are addressed and when you hear back from OEO so we may provide our approval letter. I would seriously consider making it shorter for your benefit, thanks David.

Brian C. Kenrick
 Senior Attorney (Field Operations & Information)
 Bureau of Alcohol, Tobacco, Firearms and Explosives
 United States Department of Justice
 ATF Rockford Satellite Office

Rockford, IL 61114

Phone: (815)

Cell: (202)

Fax: (815)

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Exhibit 75

From: Gillett, George T. Jr.
Sent: Tuesday, October 05, 2010 3:36 PM
To: Voth, David J.
Subject: FW: Document1
Attachments: briefing paper II (3).docx; Doc1.docx

Can you put it in a BP format for me?

From: Newell, William D.
Sent: Tuesday, October 05, 2010 12:11 PM
To: Gillett, George T. Jr.
Subject: Re: Document1

Have him put into a BP format, will most likely go to DAG.
Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
Cell: [REDACTED]

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Gillett, George T. Jr.
To: Newell, William D.
Sent: Tue Oct 05 14:50:12 2010
Subject: Fw: Document1

I have not reviewed but don't want to stand in the way of progress.

George T. Gillett
ASAC, Phoenix Field Division
Cell: [REDACTED]

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Voth, David J.
To: Gillett, George T. Jr.
Sent: Tue Oct 05 14:46:43 2010
Subject: Document1
Here it is...

1

HOCR ATF - 001349

**Phoenix Field Division
Phoenix Group VII (SWB Group)
Briefing Paper on: 785115-10- [REDACTED]**

Background

1. This investigation has currently identified more than 20 individual connected straw purchasers. More suspects are being identified as the scope of the investigation expands. The straw-purchase suspects currently identified are associated with one another [REDACTED]

To date

(September 2009 – present) this group has purchased in excess of 650 firearms (mainly AK-47 variants) for which they have paid cash totaling more than \$350,000.00.

2. To date there have been five (5) notable seizure events connected with this group, and approximately 53 firearms originally purchased by this group have been recovered. Three of these seizures have been in the Country of Mexico, one recovery in Douglas, AZ, and one recovery in Nogales, AZ. The U.S. recoveries were both believed to be destined for Mexico.
3. The seizures referenced above were not from any member of the targeted group of straw purchasers identified in this investigation. Rather, they were from Hispanic individuals (both male and female) whose association with our target group is currently unknown. [REDACTED] Two such transactions were observed to take place at auto shops/auto auctions.
4. At one of the Mexico seizures there were 45 firearms recovered in addition to 500 kilograms of cocaine, 85 pounds of methamphetamine, and over \$2,000,000.00 in U.S. currency. Of the 45 firearms recovered, 14 of those firearms (all AK-47 variants) were originally purchased by this target group. Our investigation has not produced any indication of drug trafficking or financial resources consistent with the seizures listed above.

5. [REDACTED]

6. [REDACTED]

HOCR ATF - 001350

7. There have been three (3) recorded telephone calls since January 4, 2010, between the most prolific suspected straw-purchaser and the Federally Licensed Firearms Dealer (FFL #1 [REDACTED]). These conversations have been to schedule a future purchase of AK-47 variant rifles. The anticipated purchase is approximately forty (40) rifles.
8. On January 5, 2010, ASAC Gillett, GS Voth, and case agent SA MacAllister met with AUSA Emory Hurley, who is the lead, federal prosecutor on this matter. Investigative and prosecution strategies were discussed and a determination was made that there was minimal evidence at this time to support any type of prosecution; therefore, additional firearms purchases should be monitored and additional evidence continued to be gathered. This investigation was briefed to United States Attorney Dennis Burke, who concurs with the assessment of his line prosecutors and fully supports the continuation of this investigation.
9. [REDACTED]
[REDACTED] and the weapon(s) will be interdicted prior to their crossing of the Mexican border.
10. A joint strategy/de-confliction meeting is planned for Friday, January 15, 2010, with representatives from ICE, DEA, and ATF. This investigation, as well as other ongoing investigations, will be briefed to all present.

Investigative Techniques Used to Date

11. To date in this investigation we have utilized numerous proactive, advanced investigative techniques:

[REDACTED]

HOCR ATF - 001351



Strategy

12. This investigation is currently being conducted in conjunction with the Phoenix DEA OCDETF strike force. ATF Phoenix VII is the lead investigating enforcement group. A formal OCDETF proposal is completed and will be presented on January 26, 2009, in furtherance of this investigation. It is unknown at this time what connection exists between these straw-purchasers and the drug trafficking organizations (DTOs) of Mexico.
13. Currently our strategy is to allow the transfer of firearms to continue to take place in order to further the investigation and allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border. This all in compliance with ATF 3310.4(b) 148(a)(2).
14. The ultimate goal is [REDACTED] to identify and prosecute all co-conspirators of the DTO to include the 20 identified straw purchasers, the facilitators of the distribution cell centered here in Phoenix, the transportation cells taking firearms South, and ultimately to develop and provide prosecutable information to our Mexican law enforcement counterparts for actions.

HOCR ATF - 001352

Exhibit 76

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: CARLOS CANINO

Thursday, June 16, 2011

Washington, D.C.

The interview in the above matter was held in Room 2247, Rayburn
House Office Building, commencing at 10:15 a.m.

Q Would William, Billy Hoover, also have made visits to Mexico?

A Yeah Billy came down.

Q Did you form the impression that he was also aware of the Phoenix case?

A I didn't really think about it, you know, he is a deputy director, he has an agency to run. I'm sure he had been briefed, but, you know, I mean, in retrospect, Billy Hoover, guys, was a street agent who made it, you know, he made it all the way to the top. So, internally, I'm having a hard time believing that Billy Hoover knew that these guys were walking away from guns, because the guy was a hell of a street agent, he was a hell of a good supervisor he was a good ASAC, he was a good SAC, you know, Billy Hoover was, came from the street.

Q Did assistant attorney general Lanny Breuer visit Mexico?

A Yes.

Q Can you tell us approximately when, how many times?

A We got so many visitors coming down there it all seems like one big day.

Q Could it have been some time in the summer of 2010?

A Yeah, probably, I mean, like I said, we got guys coming in and out of there all the time.

Q And during meetings with Mr. Breuer, did this subject come up?

A I mean, I was in a meeting, it was a country team meeting, or it might have been a law enforcement team meeting, you know,

Ambassador, Mr. Breuer was there, Darren was there, Mr. Breuer, you know, the Ambassador was saying hey, you know what, you know, we need a big win we need some positive, some positive cases. And Lanny Breuer says, yeah, there is a good case, there is a good case out of Phoenix. And that is all he said.

Q When you say the Ambassador, you mean Carlos Pascual?

A Right.

Q I'm going to turn over the questioning to Mr. Kerner.

EXAMINATION

BY MR. KERNER:

Q Thanks. Just to follow up on this, so Lanny Breuer was, you said, several times in Mexico City?

A Mmh-hmm. Right.

Q But do you remember the specific incident with the Ambassador talking about the success stories?

A Right.

Q And that is when Breuer mentioned this large case in Phoenix?

A Yeah. He said we got, there is a good case out of Phoenix.

Q And is it your impression that the case he was referring to is what now what you now know to be Fast and Furious?

A Yeah, when he said, I thought, oh, okay, you know, he knows. He knows about this case.

Q And this was maybe roughly summer of 2010 sound about right?

A Yeah, like, I really, maybe.

Q But some time in 2010?

Exhibit 77

RC-1

From: Trusty, James
 Sent: Monday, October 18, 2010 9:21 AM
 To: Weinstein, Jason
 Subject: RE: OCGS Weekly Report

I think so, but the timing will be tricky, too. Looks like we'll be able to unseal the Tucson case sooner than the Fast and Furious (although this may be just the difference between Nov and Dec). It's not clear how much we're involved in the main F and F case, but we have Tucson and now a new, related case with RC-5 targets. It's not going to be any big surprise that a bunch of US guns are being used in MX, so I'm not sure how much grief we get for "guns walking." It may be more like, "Finally, they're going after people who sent guns down there..."

From: Weinstein, Jason
 Sent: Sunday, October 17, 2010 11:07 PM
 To: Trusty, James
 Subject: FW: OCGS Weekly Report

Do you think we should try to have Lanny participate in press when Fast and Furious and Laura's Tucson case are unsealed? It's a tricky case, given the number of guns that have walked, but it is a significant set of prosecutions.

From: Ott, Thomas
 Sent: Thursday, October 14, 2010 5:56 PM
 To: Ohr, Bruce; Crow, Douglas; Duvall, Deborah; Gray, Laurie; Henry, Wakeya; Keeney, John; Raman, Mythili; Tinsley, Mary; Mulkern, Patricia; Toner, Gerald; Weinstein, Jason; Andres, Greg; Trusty, James; Pope, Amy; Buretta, John
 Cc: Metz, Thomas R. (FBI); Stewart, Robert M. (FBI); LaPlante, Michael J. (FBI); Plichta, Michael F. (FBI); Phillips, Dean (FBI)
 Subject: OCGS Weekly Report

See attached. Thanks.

Thomas P. Ott
 Deputy Chief
 Organized Crime & Racketeering Section
 Criminal Division
 U.S. Department of Justice
 Washington, D.C.

RC-1 (desk)
 (cell)

HOCR DOJ 002864

Exhibit 78



United States Attorney's Office
District of Arizona

Memorandum

To: Carol Stachan-Noonan
From: Emory Hurley
Subject: Fast and Furious
Date: October 21, 2010

Operation Name: the Fast and Furious
Status: Active investigation, no lines currently up.
Case Agents: Primary Case Agent: Hope MacAllister, ATF
Co-Case Agents: Tonya English, ATF
Layne France, ICE

This is a T-III investigation into a large scale firearm trafficking organization supplying firearms to Mexican cartels. It was spun off of a state authorized RC-3 investigating drug trafficking. This investigation has included RC-3.

The gun trafficking conspiracy under investigation involves more than RC-5 participants. Many of the participants are "straw purchasers" who buy firearms from licensed gun dealers for the trafficking organization. Other participants direct the flow of firearms out of the United States. The organization appears to compartmentalize the acquisition and transportation of firearms. The two primary targets of the investigation have been the primary organizer of the conspiracy (who appears to have the greatest control over the flow of firearms) and the primary purchaser of firearms (who both purchases himself, as well as recruits others to purchase).

Investigating agents have pursued interdiction of the firearms transferred to the conspirators where possible. Agents have not purposely let guns "walk." Interdiction in some cases has been hampered by counter-surveillance used by the targets. By looking at firearms transaction records historically, it is believed that the organization has acquired more than 1800 firearms. Since the inception of this investigation, more than 200 firearms have been recovered. ATF has undertaken a very aggressive approach to seizing firearms tied to this conspiracy whenever a legal theory allowing for seizure can be developed. Agents are working closely with the asset forfeiture unit within the USAO to deprive the organization of many of the firearms it has purchased. Approximately 50 lbs of marijuana have been seized in connection with this investigation. The value of firearms recovered/seized exceeds \$100,000.

The case is currently moving towards indictment and agents continue to interdict firearms purchased by members of the conspiracy.

HOCR USAO 003047

Exhibit 79

RC-1

From: Trusty, James
Sent: Monday, November 08, 2010 4:50 PM
To: Gwinn, Laura
Subject: RE: Tucson gun-trafficking case/indictment

I'm sure she does — just email her and ask and that will also let her know you're working on it. If you have access to our S drive, I think there are some there, too. Thanks —

From: Gwinn, Laura
Sent: Monday, November 08, 2010 4:48 PM
To: Trusty, James
Subject: RE: Tucson gun-trafficking case/indictment

Do you think Laura Sweeney has a template? I've never written a press release (well, I wrote one for the DC case, but it was lousy and the press guy fixed it).

From: Trusty, James
Sent: Monday, November 08, 2010 4:45 PM
To: Gwinn, Laura
Subject: RE: Tucson gun-trafficking case/indictment

Sounds great — start drafting!

From: Gwinn, Laura
Sent: Monday, November 08, 2010 4:37 PM
To: Trusty, James
Subject: RE: Tucson gun-trafficking case/indictment

No, I don't think it would jeopardize anyone, assuming the primary 4 are arrested in the AM; the others are probably in Mexico. And, we just won't RC-1 (I'm at USAO now)

From: Trusty, James
Sent: Monday, November 08, 2010 3:44 PM
To: Gwinn, Laura
Subject: RE: Tucson gun-trafficking case/indictment

I'm deferring but not on the basis of "I'm not in the mood." It's whether a press release would somehow jeopardize the case in terms of arresting subjects or exposing cooperators. It's clearly a press-worthy case in the abstract. So, when you're off the plane, please let me know.

From: Gwinn, Laura
Sent: Monday, November 08, 2010 12:37 PM
To: Trusty, James
Subject: Re: Tucson gun-trafficking case/indictment

I thought you were deferring to whether I wanted to do a press release. Ok jumping on plane now
 Sent from Blackberry

Laura Gwinn
 US Dept of Justice Gang Unit
 RC-1 (c)

From: Trusty, James
To: Gwinn, Laura
Sent: Mon Nov 08 12:34:02 2010
Subject: Re: Tucson gun-trafficking case/indictment

That's not the standard.

From: Gwinn, Laura
To: Trusty, James
Sent: Mon Nov 08 11:50:16 2010
Subject: Re: Tucson gun-trafficking case/indictment

Honestly I could care less about doing a press release.
 Sent from Blackberry
 Laura Gwinn
 US Dept of Justice Gang Unit
 RC-1 (c)

From: Trusty, James
To: Gwinn, Laura
Sent: Mon Nov 08 09:20:39 2010
Subject: FW: Tucson gun-trafficking case/indictment

And I defer to you – let me know

From: Sweeney, Laura (SMO) [mailto:RC-1]
Sent: Monday, November 08, 2010 9:17 AM
To: Trusty, James; Gwinn, Laura
Cc: Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

I defer to you guys but if we think we're going to do a press release, we should work on a getting a draft today so we have time to go through the editing/approval process.

From: Trusty, James (CRM)
Sent: Friday, November 05, 2010 11:47 PM
To: Sweeney, Laura (SMO); Gwinn, Laura (CRM)
Cc: Finelli, Alisa (SMO)
Subject: Re: Tucson gun-trafficking case/indictment

Seems possible unless we think there are some fugitives that we have a chance of snatching up.

From: Sweeney, Laura (SMO) RC-1
To: Gwinn, Laura; Trusty, James
Cc: Finelli, Alisa (SMO) RC-1
Sent: Fri Nov 05 17:10:05 2010
Subject: RE: Tucson gun-trafficking case/indictment

So we're thinking press release on Tuesday?

From: Gwinn, Laura (CRM)
Sent: Friday, November 05, 2010 4:45 PM
To: Sweeney, Laura (SMO); Trusty, James (CRM)
Cc: Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

Looks like the arrests on this will occur Tuesday morning, so indictment should be unsealed Tues afternoon when they have initial appearance. It is unlikely everyone will be arrested, as we believe some of them are in Mexico, but we do think we will get the primary players.

From: Sweeney, Laura (SMO) [mailto:RC-1]
Sent: Friday, October 22, 2010 4:22 PM
To: Gwinn, Laura; Trusty, James
Cc: Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

Well done!! (Wonder if we can say that publicly?)

From: Gwinn, Laura (CRM)
Sent: Friday, October 22, 2010 1:24 PM
To: Sweeney, Laura (SMO); Trusty, James (CRM)
Cc: Finelli, Alisa (SMO)
Subject: Re: Tucson gun-trafficking case/indictment

We DID intercept some of the guns at or near the border I think the total on 2 different occasions was around 50.

Sent from Blackberry

Laura Gwinn

US Dept of Justice Gang Unit

RC-1 (c)

From: Sweeney, Laura (SMO) [mailto:RC-1]
To: Trusty, James; Gwinn, Laura
Cc: Finelli, Alisa (SMO) [mailto:RC-1]
Sent: Fri Oct 22 13:17:21 2010
Subject: RE: Tucson gun-trafficking case/indictment

Agree - just want to start thinking about the questions. Definitely agree it shouldn't deter us from doing press.

From: Trusty, James (CRM)
Sent: Friday, October 22, 2010 1:06 PM
To: Gwinn, Laura (CRM); Sweeney, Laura (SMO)
Cc: Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

I think we can navigate through this stuff fine - bottom line is bad guys who trafficked guns into MX are being targeted and indicted, so I don't see any of these questions as being so dreaded as to negate the good news component.

From: Gwinn, Laura
Sent: Friday, October 22, 2010 12:48 PM
To: Trusty, James; Sweeney, Laura (SMO)

Cc: 'Finelli, Alisa (SMO)'
Subject: RE: Tucson gun-trafficking case/indictment

Don't know if WE can answer questions on the guns walking; CrimDiv did not get involved in this case until September 2009; the investigation was long over. Might there be questions, tho, on why it took so long to indict?

From: Trusty, James
Sent: Friday, October 22, 2010 10:59 AM
To: Sweeney, Laura (SMO); Gwinn, Laura
Cc: Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

This particular one is not joint with USAO. Laura is in the mix on two other AZ cases involving gun trafficking ("Fast and Furious") with hopes that there will be a December takedown. We have discussed this case ("Wide Receiver") with ATF. Yes re: weapon numbers.

Jim

From: Sweeney, Laura (SMO) RC-1
Sent: Friday, October 22, 2010 10:57 AM
To: Gwinn, Laura
Cc: Trusty, James; Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

Thanks Laura - Jim, is this the case we discussed previously with ATF?

I did a quick look at the indictment - these people moved well over 200 weapons, right? Let's keep in touch on this one - its a good case but the only obstacle will be explaining why we let them continue to send guns to Mexico while we were investigating. I know that we have to make those calls all the time, but we'll just need to be ready to answer press questions on it.

Is it joint with the USAO?

From: Gwinn, Laura (CRM)
Sent: Friday, October 22, 2010 9:56 AM
To: Sweeney, Laura (SMO)
Cc: Trusty, James (CRM)
Subject: Tucson gun-trafficking case/indictment

I am anticipating indicting several people on a gun-trafficking case from 2007 on Wed Oct 27 in Tucson, AZ. The indictment will remain sealed until arrests, and I do not know at this time when ATF is planning the arrests. Jim (Trusty) thought I should give you a heads-up in case anyone wanted to do a press release once the majority of arrests are accomplished. Some of the indictees are probably in Mexico.

Laura Gwinn
 US Dept of Justice Gang Unit
 RC-1 (C)

Exhibit 80

From: Newell, William D.
 Sent: Friday, October 29, 2010 1:22:00 PM
 To: McMahon, William G.
 Subject: Fw: Fast and Furi.

FYI - before I left Orlando I asked Jim to verify what I told you and Mark earlier was correct, that being the purchases have slowed significantly. Several reasons for this main one being [REDACTED] (Acosta) is in some trouble with the Glendale PD [REDACTED]

[REDACTED] Also, we have been very successfully over the past several months in seizing guns before they head south by quickly responding to calls from cooperating FFLs as well as "flagging" our known straw purchasers via NICS.

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

----- Original Message -----

From: Needles, James R.
 To: Newell, William D.
 Sent: Fri Oct 29 12:46:19 2010
 Subject: RE: Fast and Furi.

Of the [REDACTED] individuals we know of who are supplying firearms to the organization, in the last 30 days one individual (Patino) purchased 5 firearms which we immediately seized, that was on Oct. 8. We have flagged these individuals in NICS and are notified if they make a purchase.

-----Original Message-----

From: Newell, William D.
 Sent: Friday, October 29, 2010 4:46 AM
 To: Needles, James R.
 Subject: Fw: Fast and Furi.

Get with Voth since you're together and give me a status on firearms purchase activity over the past 30 days of the suspects in this case. An e-mail will suffice.

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

----- Original Message -----

From: Chait, Mark R.
 To: Newell, William D.
 Cc: McMahon, William G.
 Sent: Fri Oct 29 07:39:08 2010
 Subject: Re: Fast and Furi.

I'm concerned that we are not shutting down the activity waiting on an indictment. Thanks
 Mark R. Chait
 Assistant Director

HOGRAF - 001912

Field Operations

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

----- Original Message -----

From: Newell, William D.
To: Chait, Mark R.
Cc: McMahon, William G.
Sent: Fri Oct 29 07:29:16 2010
Subject: Re: Fast and Furi.

No, they pushed it to December 7. I was supposed to meet with the USA this coming week to discuss the delay but he canceled due to an "unexpected" DC trip. I'm going to call him today.

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

----- Original Message -----

From: Chait, Mark R.
To: Newell, William D.
Cc: McMahon, William G.
Sent: Fri Oct 29 07:27:17 2010
Subject: Fast and Furi.

Any news on a quicker indictment?
Mark R. Chait
Assistant Director
Field Operations

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

HOCR ATF - 001913

Exhibit 81

RC-1

From: Weinstein, Jason
Sent: Monday, November 08, 2010 10:41 PM
To: Pope, Amy
Cc: Trusty, James; Raman, Mythili
Subject: RE: are you pulling together any materials

Based on my conversations with Billy, here is what the meeting with Ken and Mark Chait appears to be about:

1. Briefing on the follow-up to our Mexico trip

RC-2

2. Drop-off in U.S. prosecutions for firearms trafficking

- Ken apparently wants to discuss an apparent reduction in the number of straw purchaser/gun trafficking cases being pursued in certain USAOs (including at least SDTX) and the reluctance on the part of some offices (again, including at least SDTX) to be aggressive in charging conspiracies in such cases; he will apparently ask if we have any suggestions about how to get the numbers up
- What we can do here depends on whether the drop in cases/less aggressive approach is based on a lack of priority placed on such cases by the USAOs, a good faith concern about the quality of the evidence, or a lack of resources
 - If it's a lack of will/priority (unlikely), the only thing we can do is encourage the offices to pursue these cases vigorously

- If it's a good faith disagreement with the agents about the strength of a particular case, there's nothing we can or should do
- If it's a lack of resources, perhaps we can offer to provide assistance in the form of a Gang Unit prosecutor, as with Laura Gwinn in AZ
- Ken is also frustrated by the pace of the USAO in AZ in bringing charges in the "Fast and Furious" gun-trafficking case (multiple wires, huge # of guns) – the AUSA has apparently told the agents that it will take a couple of months to draft the indictment; it appears that the AUSA on the case is not the fastest worker, and Laura Gwinn, our prosecutor on the case, is going to try to push things along, including by offering to draft the indictment
- Ken is apparently going to address the USAs at the US Atty conference to emphasize the importance of pursuing gun trafficking, particularly with a SWB nexus – he may ask Lanny to help him get that message across

From: Pope, Amy
Sent: Monday, November 08, 2010 4:51 PM
To: Weinstein, Jason
Subject: are you pulling together any materials

On ATF mtg for tomorrow?

Amy E. Pope | U.S. Department of Justice | Deputy Chief of Staff and Counselor to the Assistant Attorney General | Criminal Division | 23

RC-1

Exhibit 82

From: Wilkinson, Monty (OAG) (SMO)
Sent: Tuesday, December 14, 2010 11:18 AM
To: Burke, Dennis (USAAZ)
Subject: You available for a call today?

Exhibit 83

RC-1

m: Cunningham, Patrick (USAAZ)
t: Tuesday, December 14, 2010 1:21 PM
cc: Burke, Dennis (USAAZ)
Cc: Scheel, Ann (USAAZ); Hernandez, Norma (USAAZ); Morrissey, Mike (USAAZ); Hurley, Emory (USAAZ)
Subject: Re: Fast and Furious

You bet. Good opportunity to see if January 6 and 7 are still our target dates for indictment and takedown-press event. Pjc

----- Original Message -----

From: Burke, Dennis (USAAZ)
Sent: Tuesday, December 14, 2010 12:28 PM
To: Cunningham, Patrick (USAAZ)
Cc: Scheel, Ann (USAAZ); Hernandez, Norma (USAAZ)
Subject: Fast and Furious

AG' office is now expressing interest in the AG coming out for it. Will you send me 4 or 5 lines abt it that I can brief Monty on it -- esp time window. Thx.

HOCR USAO 003070

Exhibit 84

[REDACTED]
[REDACTED]

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: DENNIS K. BURKE

Tuesday, December 13, 2011

Washington, D.C.

The interview in the above matter was held in Room 2247, Rayburn
House Office Building, commencing at 8:35 a.m.

A The whole assortment, yep.

Q You talked about mistakes. Let us go back a little bit to that. You also mentioned that last time, obviously, in your opening statement. Obviously, you have had some time to reflect on the case. Would you -- is there any particular mistakes that you think you made here that may be a lesson for somebody or something that you want to share?

A Yeah. I think, in retrospect, I believe I discussed this at the last turn in some respect, too, was that my supervising of the case and the line of command of who were working on the case and who they were reporting to, that I was getting information that was all positive, and at times, I would get updates. And in retrospect, I would have drilled down a little more and asked more questions than I did, not just accept things are going well. And realizing, you know, the size of the case, whether we had enough people on it or, like, as I think we discussed in the last one, I think we discussed it at the last one or at least mentioned it, that on a wire case of this magnitude, if -- there are times when you can be taking people down during the case as opposed to waiting until the end. So I think I learned some supervising skills that were lacking during that case.

Q Now, do you feel that you were misled at all?

A By whom?

Q Well, let's start with Mr. Newell.

A Considering the ways the case was being communicated to me, all on a positive sense, with no indications that there was any

2010 -- right. Also if you look at the December 17th meeting, [REDACTED] had expressed concern about the cooperation he was providing and was wondering if he was endangering himself or implicating himself in a criminal investigation and was essentially assured that that was not going to be the case.

On the next page, there is a note about the investigation is ongoing. Mr. Avila has purchased some more weapons on January 9th. This was also known when he was pulled over on January 14th and all of this predates the purchase on January 16, 2010, when he buys three of these AK-47 type weapons.

So, once again, given that this memorandum was sent to you, I guess we should ask again, did you read this?

A I assume I did. I mean, I'm familiar with the information in it. I just don't recall when I read it.

Q You're familiar with the information in it as you sit here today?

A No. But I'm also familiar with it because I have read it before.

Q Okay. But when you sent this email we were just discussing on March -- I'm sorry, on February 4th and you talked about -- and eventually indicted defendant bought guns traced to the Terry murder scene prior to your investigation without ATF knowledge and not discoverable until 3 days after the purchase, Grassley is wrong and at best imposing an unobtainable standard. Doesn't this memo clearly show that all these facts you cite are just wrong?

whether -- Mr. Hurley's assertion about when ATF became aware of the purchases on January 16th by Jaime Avila?

A No.

Q Do you recall any follow up with Mr. Hurley about the details of this memo?

A I just can't recall. There might have been. I just can't recall at this time.

Q Do you recall if that, the information provided in this memo, informed your responses to inquiries about Operation Fast and Furious in response to Senator Grassley's letters?

A I can only assume, and I just can't state, you know, based on memory, that I had reviewed this document when I got it and was knowledgeable after that, but I just -- based on the length of time it has been, I just can't recall. I just would assume that I would have read this when I got it, especially in light of its content.

Mr. Sherman. I want to provide you with a document that should be marked as Exhibit 4.

Actually, let's let him mark it before you take a look at it.

[Burke Exhibit No. 4

was marked for identification.]

BY MR. SHERMAN:

Q Let me know when you have read it.

A Yeah.

Q The first email, the bottom email is an email from Mike Morrissey to you copying Joe Lodge and Emory Hurley. The subject is

A No.

Q Now, when you were briefed about building a bigger case, were you aware of any sort of controls that were being put in place to prevent guns from getting into Mexico?

A I don't remember being briefed to that extent.

Q And so just to be clear, when you were briefed about building a bigger case, did you -- was it ever conveyed to you that ATF headquarters disagreed with that strategy?

A I remember one email at some point -- I think it might have been from Emory, where he had indicated that there was a -- there was some disagreement of opinion on the case, on doing a bigger case, and a discussion between ATF's Phoenix field office and the headquarters on whether they should be doing straw purchasing cases or trying to do a bigger case, but I don't recall I being a part of that discussion. I thought that was in -- I saw that reflected in some dialogue between ATF field office and the headquarters.

Q And when did you learn about that --

A I can't recall.

Q -- disagreement?

A I just can't recall at this stage.

Q Do you recall if it, whether it was in 2010 or 2011?

A Sitting here today, I just can't recall.

Q Do you recall having any communications with individuals in ATF headquarters, again, during the operational phase of Fast and Furious, about a disagreement about whether to pursue straw purchasers

interest in the AG coming out for it. Please send me four or five lines about it, and I can brief Monty on it, especially time window. I am going to guess that Monty here is Monty Wilkinson; is that correct?

A Correct.

Q And then there is an answer from Mr. Cunningham back to you, also cc'ing Miss Scheel and others, You bet, good opportunity to see if January 6 and 7 are still our target dates for indictment and take-down press event. The AG's office, was that Mr. Holder himself who was expressing interest in coming out?

A No, not to my knowledge. It was, I think when I said AG's office, I am indicating Monty.

Q Okay. So Monty, you indicated earlier that Monty Wilkinson sort of did travel-related things?

A Right.

Q Okay. So this would have been in his wheelhouse basically?

A Correct.

Q But who was Monty interested in having come out? It wasn't going to be Monty Wilkinson showing up at the press conference, right?

A No, it was the Attorney General.

Q Okay. So this email is specifically in regard to the Attorney General coming out to join you for the take-down of Fast and Furious?

A Correct.

Q Do you know -- and then the target dates were January 6th and 7th, but of course, that got delayed?

A Yeah.

Q Do you know if the Attorney General ever -- did you have any further plans of him coming out?

A Not that I can recall.

Mr. Kerner. Okay. I have another email, I believe this is a follow up. I am going to mark it before I hand it to you, so I don't have to do it upside down. This is No. 9.

[Burke Exhibit No. 9

was marked for identification.]

BY MR. KERNER:

Q Here you go, this is Exhibit 9. Take a look at it, please. It is an email chain. I would like to focus your attention on the bottom.

A Okay.

Q It's from you, Dennis Burke, to Monty Wilkinson, OAG. Sorry for going dark on you, I was at Navajo and Hopi all day and coverage was weak at best. I did get your voicemail. We have a major gun trafficking case connected to Mexico we are taking in January, 20-plus defendants. Will call today to explain in detail.

A Uh-huh.

Q And then there is some more sort of going back and forth, although I don't think it is between you and Mr. Wilkinson.

A Correct.

Q Do you remember this voicemail?

A Yeah, and I --

Q Tell us about that.

A I think it was just him calling saying I need to talk to you about something. I don't remember it being anything more than him calling me back.

Q Did you ever speak to him?

A Yeah, I spoke to him at one point.

Q What time relative to this?

A Sometime in that time frame. My recollection was that the impetus for the Attorney General to come out to a press conference was coming from ATF. And Monty asked me, is this a trip you recommend for the Attorney General. And my response was something to the effect that if the Attorney General is going to come out to our district, which you know is very limited opportunities, I would recommend that he do a border tour or we do something in Indian country instead of doing this case.

Q So you discouraged him from coming out to do this press conference?

A That was my recollection.

Q And --

A For the reasoning being that I just thought from where our -- what I thought was a best use of the Attorney General's time was to get him to actually do a border -- I had been advocating for some time that the Attorney General needed to do an actual border trip and that the fear was that if he did this, that --

Q This was your one shot?

A Exactly.

Q But this was a big deal? I mean, this was -- I believe there is an email here somewhere where you are talking to another United States Attorney talking about how great the case is, what a big deal the case is?

A Yeah.

Q I mean, this was a big deal, right?

A It was an important case on an important issue, from my perspective at that time.

Q Correct. And wouldn't the Attorney General coming have given it the publicity, the heft, the importance, I mean it would convey the good work, in quotation marks, that you are doing down there? I mean it would be conveyed a little bit more properly or certainly get some publicity out of it?

A But we would lose the opportunity of what I thought was a priority, which is the Attorney General making a visit to the actual border, which I was worried about, and I had been advocating up to this time with the department that the Attorney General needed to make a border tour, and I was -- and I wanted it to be in Arizona, and so my concern was that if he came out for this, then we wouldn't get the border tour.

Q So did you tell Mr. Wilkinson not to have him come out for this?

A No, I didn't -- I don't think I have the prerogative to say he can't come out. I think I was saying my recommendation is if he

is going to come out to Arizona, it is better that he comes for a border tour than for this case.

Q Then following that, were there any other conversations about him coming out?

A About this case or --

Q Sure.

A I don't recall. I just kind of remember having that one conversation where I laid out my priorities on an AG's trip.

Q Okay. Before the break we -- before our last, first round, I asked you about emailing folks, Ms. Napolitano or Secretary Napolitano, Attorney General Holder, and you indicated that you don't email with any of them; is that correct?

A That is correct.

Q What about Lanny Breuer, do you email with him?

A Infrequently.

Q Do you have his personal email address?

A No.

Q You know he used his personal email address as part of sending himself some documents in this case, are you aware of that?

A I vaguely heard that the other day.

Mr. Kerner. I have another document which I will mark No. 10.

[Burke Exhibit No. 10

was marked for identification.]

BY MR. KERNER:

Q Take a look at that, please. Specifically, these appear to

Exhibit 85

From: Wilkinson, Monty (OAG) (SMO)
To: Burke, Dennis (USAAZ)
Sent: 12/15/2010 10:04:52 AM
Subject: RE: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

Tragic. I've alerted the AG, the Acting DAG, Lisa, etc.

From: Burke, Dennis (USAAZ)
Sent: Wednesday, December 15, 2010 9:41 AM
To: Wilkinson, Monty (OAG)
Subject: Fw: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

Not good.

18 miles w/in.

From: LOPEZ, MARCO A (HQ) [RC-1]
Sent: Wednesday, December 15, 2010 03:31 AM
To: Burke, Dennis (USAAZ)
Subject: Fw: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

Our agent has passed away.

From: JAIGOBIND, CARL
To: OIOC-SIT SHOTS FIRED INJURY-DEATH
Cc: SITROOM
Sent: Wed Dec 15 02:31:32 2010
Subject: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

INITIAL TELEPHONIC

On December 14, 2010, a BORTAC agent working in the Nogales, AZ AOR was shot. The agent was conducting Border Patrol operations 18 miles north of the international boundary when he encountered RC-5 unidentified subjects. Shots were exchanged resulting in the agent being shot. At this time, the agent is being transported to an area where he can be air lifted to an emergency medical center. RC-5

Updates to follow.

HOCR DOJ 005872

Exhibit 86

From: Wilkinson, Monty (OAG) (SMO)
To: Burke, Dennis (USAAZ)
Sent: 12/15/2010 11:15:51 AM
Subject: RE: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

Please provide any additional details as they become available to you.

Thanks,

Monty

From: Burke, Dennis (USAAZ)
Sent: Wednesday, December 15, 2010 9:41 AM
To: Wilkinson, Monty (OAG)
Subject: Fw: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

Not good.

18 miles w/in.

From: LOPEZ, MARCO A (HQ) [RC-1]
Sent: Wednesday, December 15, 2010 03:31 AM
To: Burke, Dennis (USAAZ)
Subject: Fw: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

Our agent has passed away.

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To: OIOC-SIT SHOTS FIRED INJURY-DEATH
Cc: SITROOM
Sent: Wed Dec 15 02:31:32 2010
Subject: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

INITIAL TELEPHONIC

On December 14, 2010, a BORTAC agent working in the Nogales, AZ AOR was shot. The agent was conducting Border Patrol operations 18 miles north of the international boundary when he encountered [RC-5] unidentified subjects. Shots were exchanged resulting in the agent being shot. At this time, the agent is being transported to an area where he can be air lifted to an emergency medical center. [RC-5]

Updates to follow.

HOCR DOJ 005876

Exhibit 87

From: Wilkinson, Monty (OAG) (SMO)
To: Burke, Dennis (USAAZ)
Sent: 12/15/2010 1:55:07 PM
Subject: RE: Incident involving the Bortac Agent this morning

Thanks, Dennis. Terrible situation.

From: Burke, Dennis (USAAZ)
Sent: Wednesday, December 15, 2010 1:21 PM
To: Wilkinson, Monty (OAG)
Subject: Fw: Incident involving the Bortac Agent this morning

From: Evans, John (USAAZ) 3
Sent: Wednesday, December 15, 2010 11:45 AM
To: Hernandez, Rachel (USAAZ); Ruiz, Carol (USAAZ); Scheel, Ann (USAAZ); USAAZ-TUCADMIN; USAAZ-TUCAFU; USAAZ-TUCAUSA; USAAZ-TUCFLU; USAAZ-TUCLawclerks; USAAZ-TUCPARA; USAAZ-TUCSAUSA; USAAZ-TUCSECY; USAAZ-TUCStudents; USAAZ-TUCSupport; USAAZ-TUCVW
Subject: Incident involving the Bortac Agent this morning

Deputy Chief Richard A. Barlow provided the following information regarding the incident this morning that resulted in the death of an agent.

All Tucson Sector Employees,

It is with a heavy heart that I inform you of the death of Border Patrol Agent Brian A. Terry who was shot and killed during an encounter with armed subjects. Agent Terry was working in the "Peck Well" area near Rio Rico, Arizona when he was fatally injured.

During the encounter, one assailant was wounded and immediately taken into custody. Three additional suspects were apprehended shortly thereafter. Border Patrol agents are currently tracking a fifth suspect and I assure you that every effort will be expended to bring this remaining suspect into custody.

Agent Terry entered on duty with Academy Class 699 on July 23, 2007. He is survived by his parents and sister in Detroit, Michigan. Please keep Agent Terry and his family in your thoughts and prayers as they have made the ultimate sacrifice in service to our country.

This is a stark reminder of the realities we face in our mission to protect our borders and our communities. We will continue to stand firm in our commitment to that mission.

In difficult times like these it is important that we turn to and support one another. Peer Support members, the Tucson Sector Chaplaincy Program, and the Employee Assistance Program are all available to any employee who may need them. Updates will be provided about this tragic situation as soon as information becomes available.

Jesse will be the lead AUSA on any prosecution and is in contact with the investigators. Please forward any inquiries you receive to Jesse.

HOGH DOJ 005888

Exhibit 88

RC-1

From: Scheel, Ann (USAAZ)
Sent: Wednesday, December 15, 2010 7:24 PM
To: Burke, Dennis (USAAZ); Clemens, Shelley (USAAZ)
Subject: Re: FBI/CBP Presser

Wow! Timely.

From: Burke, Dennis (USAAZ)
Sent: Wednesday, December 15, 2010 07:21 PM
To: Clemens, Shelley (USAAZ); Scheel, Ann (USAAZ)
Subject: RE: FBI/CBP Presser

Thanks. I just talked to Bill Newell about it. The guns tie back to Emory's Fast and Furious case.

From: Clemens, Shelley (USAAZ)
Sent: Wednesday, December 15, 2010 5:19 PM
To: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ)
Subject: Fw: FBI/CBP Presser

BP decided to make a statement and not allow questions. RC-5 Based on that, we chose not to make a formal statement. RC-5
 RC-5 They referenced that John and I were there for the USAO and to support their office.

Nate Grey was here and advised that the 2 guns are tied to an on-going Phoenix ATF inv. You will probably get a call from Bill Newell.
 Shelley

From: Chandler, Matthew (DHS)
Sent: Wednesday, December 15, 2010 06:12 PM
To: Clemens, Shelley (USAAZ); ROE, MELANIE N. <RC-1@dhs.gov>
Subject: RE: FBI/CBP Presser

No worries at all. We really appreciate your support and assistance with this.

From: Clemens, Shelley (USAAZ) RC-1
Sent: Wednesday, December 15, 2010 6:11 PM
To: Chandler, Matthew (DHS); ROE, MELANIE N.
Subject: RE: FBI/CBP Presser

Sorry for the faux pas. I spoke with Agent Cantu, and was told 5:00 at Sector Headquarters on Swan.

From: Chandler, Matthew (DHS)
Sent: Wednesday, December 15, 2010 4:09 PM
To: Clemens, Shelley (USAAZ); ROE, MELANIE N.
Subject: RE: FBI/CBP Presser

Hi Shelley –

HOCR USAO 003076

Exhibit 89

From: Wilkinson, Monty (OAG) (SMO)
To: Burke, Dennis (USAAZ)
Sent: 12/15/2010 7:27:01 PM
Subject: Re: FBI/CBP Presser

I'll call tomorrow.

From: Burke, Dennis (USAAZ)
To: Wilkinson, Monty (OAG)
Sent: Wed Dec 15 19:22:26 2010
Subject: FW: FBI/CBP Presser

The guns found in the desert near the murder BP officer connect back to the investigation we were going to talk about – they were AK-47s purchased at a Phoenix gun store.

From: Clemens, Shelley (USAAZ)
Sent: Wednesday, December 15, 2010 5:19 PM
To: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ)
Subject: Fw: FBI/CBP Presser

BP decided to make a statement and not allow questions. RC-5 Based on that, we chose not to make a formal statement. RC-6
RC-6 They referenced that John and I were there for the USAO and to support their office.

Nate Grey was here and advised that the 2 guns are tied to an on-going Phoenix ATF inv. You will probably get a call from Bill Newell.
Shelley

HOCR DOJ 005917

Exhibit 90

From: Smith, Brad (ODAG) <RC-1 [REDACTED]>
Sent: Thursday, December 16, 2010 1:50 PM
To: Hoover, William J. (ATF) <RC-1 [REDACTED]>, Michalic, Mark (ODAG)
Subject: RE: New Microsoft Office Word Document

Thanks, Billy.

From: Hoover, William J. (ATF)
 Sent: Thursday, December 16, 2010 1:48 PM
 To: Smith, Brad (ODAG); Michalic, Mark (ODAG)
 Subject: FW: New Microsoft Office Word Document

Brad and Mark,

Here are two briefing papers re AZ. The first will give you an update on our Fast and Furious investigation. The second, labeled New Microsoft Word Document, gives you the information re the firearms recovered at the scene of the homicide of the CBP Officer.

Please call if you have any questions.

Billy

William J. Hoover
 Deputy Director
 Bureau of Alcohol, Tobacco, Firearms & Explosives
 O) RC-1 [REDACTED]

From: McMahon, William G.
 Sent: Thursday, December 16, 2010 1:25 PM
 To: Hoover, William J.; Chait, Mark R.
 Subject: FW: New Microsoft Office Word Document

Billy and Mark,

Attached are the following:

1. One pager regarding the Subject Jaime AVILA Jr. and

HOCR DOJ 002871

2. The December briefing paper regarding the Fast and Furious investigation.

Thanks,

Bill

HOCR DOJ 002872

Exhibit 91

From: Smith, Brad (ODAG) <RC-1 [REDACTED]>
Sent: Friday, December 17, 2010 11:58 AM
To: Grindler, Gary (ODAG) <RC-1 [REDACTED]>; Monaco, Lisa (ODAG) <RC-1 [REDACTED]>; Luck, Stacey (ODAG) <RC-1 [REDACTED]>
Cc: Michalic, Mark (ODAG) <RC-1 [REDACTED]>; Johnston, Deborah A. (ODAG) <RC-1 [REDACTED]>
Subject: ATF Update
Attach: RC-2 [REDACTED]; December Fast and Furious BP for SAC (2) (2).docx; December Fast and Furious BP Supplemental December 16 2010.docx

<<...>> G<<...>> a<<...>> r<<...>> y,

Mark and I just wanted to pass along a few quick ATF-related updates we received from Billy Hoover. We do not believe anything requires immediate action from our office, but we wanted to make sure you were aware of the issues.

RC-2 [REDACTED]

Second, you may recall that a CBP border agent was killed on Tuesday in a firefight in Arizona involving along the Mexican border. Two of the weapons recovered from the scene (AK-47 variants) have been linked to Jaime Avila Jr., a "straw firearms purchaser" that ATF and USAO for Arizona have been investigating since November 2009 as part of its larger "Fast and Furious" operation. (It is not clear if the shots that killed the CBP agent came from the weapons linked to Avila.) ATF agents, assisted by ICE, USMS, and Phoenix police, arrested Avila on Wednesday for falsification of ATF forms, and in a subsequent interview, he admitted to serving as a straw purchaser. The attached background papers, which ATF prepared, provide additional details on the case, if you are interested.

RC-2 [REDACTED]

Thanks,

Brad

HOCR DOJ 002875

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Briefing Paper

Phoenix Field Division

Phoenix Group VII (OCDETF Strike Force/Gunrunner)

ATF Investigation 785115-10-[REDACTED]

Operation: Fast & Furious, OCDETF No. SW-AZP-0496

Case Background

The Phoenix Group VII Field Office is leading an investigation entitled "Operation Fast & Furious" in conjunction with Immigration and Customs Enforcement (ICE), Drug Enforcement Administration (DEA), Internal Revenue Service (IRS) and the Phoenix Police Department (PPD). This operation was approved as an OCDETF case by the Southwest Region as SW-AZP-0496.

Since October 2009, ATF and the other partners listed above have been investigating a firearm trafficking organization that is being funded by the Sinaloa drug trafficking organization (DTO), a narcotics trafficking organization well known for violent criminal activity in Mexico. This organization is also involved in trafficking firearms to Mexico, and smuggling cocaine and marijuana into southern Arizona to be distributed throughout the United States. The OCDETF investigation of this organization is addressing violations of Federal Laws to include Firearms, Narcotics, Money Laundering, and Conspiracy Laws.

Agents believe that the Phoenix-based firearm trafficking group is actively purchasing firearms through "straw" purchasers using narcotics proceeds. From October 2009 to October 2010 agents have documented that this organization spent approximately 1.25 million dollars in cash at various Phoenix area Federal Firearms Licensees to acquire in excess of 1,900 firearms. The firearms are then being trafficked into Mexico using false compartments in various vehicles through various international Ports of Entry in Arizona and Texas.

RC-3

[REDACTED] and many other investigative techniques to further the investigation. Through these investigative techniques agents have been able to identify a large number of additional co-conspirators and disrupt the illegal activities of this firearms trafficking organization by seizing numerous firearms and narcotics. To date, over three hundred firearms and over fifty pounds of marijuana have been recovered by agents in addition to the numerous firearms and narcotic seizures in Mexico related to this investigation.

1

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Over the past several weeks agents, in conjunction with the investigative partners and the United States Attorney's Office (USAO) have been preparing for the indictment of ^{RC-3} individuals in this investigation. Agents initially anticipated a first wave of indictments on December 7, 2010. However, in light of additional evidence obtained in support of this investigation and investigative efforts on the part of IRS the first wave of approximately 20 indictments have been pushed back another 30 days. The reasons for this include the very proactive stance the IRS has taken during the past several weeks ^{RC-3}

^{RC-3} In addition the USAO has agreed to approve the inclusion of five Federal search warrants. The additional preparation for the search warrants and ^{RC-3} coupled with available Grand Jury time, has pushed the indictment date to the week of January 10, 2011.

On December 3rd SAC Newell and ASAC Needles met with USA Burke, Chief of Criminal Cunningham and the lead AUSA for this case and discussed all these matters.

It should be further noted that firearms purchasing and trafficking activity by this organization has subsided significantly since early October of this year. This is due to several factors not the least of which are the many proactive measures taken by the agents assigned to Phoenix Group VII. It should also be noted that throughout the course of the investigation numerous seizures were made by other State, local and Federal law enforcement agencies at the direction of Phoenix Group VII in order to ensure the seized firearms did not reach their intended destination but also to ensure the leadership of this firearms trafficking organization was not "tipped off" to the proactive measures taken while the larger conspiracy case was being prepared for the USAO.

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HOCR DOJ 002877

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List of Defendants Referred to USAO for Prosecution:

RC-4



3

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Proposed Charges:

1. Title 18, United States Code, Section 554, Smuggling Goods from the United States,
2. Title 18, United States Code, Section 922(a)(1), Dealing in Firearms without a License,
3. Title 18, United States Code, Section 922(a)(5), Transferring Firearms to a Non-Resident of the State;
4. Title 18, United States Code, Section 922(a)(6) Making a False Statement in Connection with the Acquisition of a Firearm;
5. Title 18, United States Code, Section 924(a)(1)(A) Making a False Statement in Connection with the Acquisition of a Firearm;
6. Title 18, United States Code, Section 924(n), Interstate/International Firearms Trafficking;
7. Title 18, United States Code, Sections 924(c) and 924(o), Use of a Firearm in Furtherance of a Drug Trafficking Offense/Conspiracy to Use a Firearm in Furtherance of a Drug Trafficking Offense;
8. Title 18, United States Code, Section 1343, Wire Fraud;
9. Title 18, United States Code, Section 1956, Money Laundering;
10. Title 18, United States Code, Section 371, Conspiracy to Commit any Offense Against the United States;
11. Title 21, United States Code, Sections 841 and 846, Possession/Conspiracy to Possess a Controlled Substance with Intent to Distribute;
12. Title 21, United States Code, Sections 960 and 963, Import/Conspiracy to Import a Controlled Substance;
13. Title 22, United States Code, Section 2778, Attempt/Export Munitions without a License;
14. Title 31, United States Code, Section 5324, Structuring Transactions to Evade Reporting Requirements; and
15. Title 31, United States Code, Section 5332, Bulk Cash Smuggling;

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HOCR DOJ 002879

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Briefing Paper

Phoenix Field Division

Phoenix Group VII (OCDETF Strike Force/Gunrunner)

ATF Investigation 785115-10- [REDACTED]

Operation: Fast & Furious, OCDETF No. SW-AZP-0496

Supplemental

On December 15/16, 2010, after the shooting death of U.S. Border Patrol Agent Brian Terry near Rio Rico, Arizona (approx 25 miles north of Nogales) Southern Arizona law enforcement officers/agents responded and conducted a search of the area. This search resulted in the arrest of four individuals. One of them, Manuel Osorio Arellances DOB: 8-4-76, was shot in the exchange of gunfire [REDACTED] RC-5 [REDACTED] RC-5

In addition and during the search of the area two RomArm/Cugir, Model GP WASR 10, 7.62x39mm AK-47 rifles, serial numbers 1983AH3977 and 1971CZ3775 were recovered near the scene of the shooting. An Urgent firearms trace requested by ATF agents on-scene determined that these firearms were in ATF's National Tracing Center's Suspect Gun Database due to their association to an ATF led OCDETF investigation out the Phoenix OCDETF Strike Force. This investigation, entitled "Fast and Furious", due to the very quick manner in which a complex firearms trafficking organization acquired several hundred firearms was initiated in October 2009 and is being conducted in conjunction with ICE/HSI, IRS, DEA and the Phoenix Police Department.

Due to the "hit" in the Suspect Gun Database the Phoenix Field Division's Field Intelligence Group was notified and confirmed that the two recovered firearms were part of a sale of three Romarm/Cugir AK-47 variant rifles purchased by Jaime AVILA Jr. on January 16, 2010 from [REDACTED] FFL #1 [REDACTED] in Glendale, Arizona. Jaime Avila Jr. is one of [REDACTED] RC-5 straw firearms purchasers identified in the "Fast and Furious" investigation and recommended by ATF for prosecution to the U.S. Attorney's Office in Phoenix, Arizona.

Jaime Avila Jr. is known to have purchased a total of 52 firearms beginning in late November 2009 and ending in mid-June 2010. He had purchased 13 firearms by the time he purchased the three AK-47 variant rifles on January 16, 2010, two of which were recovered near Rio Rico, Arizona on December 16th. The 52 firearms purchased by Jaime Avila Jr. included 17 AK-47 variant rifles, 11 Fabrique National "FN57" 5.7x28mm pistols, 10 9mm pistols, 5 .45 and .40 caliber pistols, 2 Barrett .50 caliber rifles and several other assorted firearms.

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On December 15, 2010, ATF agents, assisted by ICE, the USMS and the Phoenix Police Department located Jaime Avila Jr. and subsequently interviewed and arrested him on charges stemming from his falsifying ATF F 4473s by using a false address during his purchase of four (4) firearms on June 12, 2010, and another four (4) firearms on June 15, 2010. During his interview, Jaime Avila Jr. admitted to ATF agents that he straw purchased these firearms for an unidentified Hispanic male as well as admitted he had used an address of a residence he had not resided in for several years. This was confirmed by interviewing the current residents of the address he used along with verification via utility systems queries.

Jaime Avila Jr. was held overnight and ATF agents have prepared a Federal criminal complaint for him based on violations of Federal firearms laws specifically of Title 18, United State Code, Sections 924(a)(1)(A)

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HOCR DOJ 002881

Exhibit 92

From: Wilkinson, Monty (OAG) (SMO)
To: Burke, Dennis (USAAZ)
Sent: 12/21/2010 7:47:02 PM
Subject: Re: Gun Trafficking case in Az

Ok. Family obligation tonight. I'll call tomorrow. Thanks.

From: Burke, Dennis (USAAZ)
To: Wilkinson, Monty (OAG)
Sent: Tue Dec 21 19:43:19 2010
Subject: Gun Trafficking case in Az

I would not recommend the AG announce this case. I can explain in detail at your convenience. Thx.

HOCR DOJ 006614