

From: Breuer, Lanny A.
To: Weinstein, Jason; Raman, Mythili
Sent: 2/26/2011 10:45:10 PM
Subject: Re: Draft

Okay. Thanks

----- Original Message -----
From: Weinstein, Jason
To: Breuer, Lanny A.; Raman, Mythili
Sent: Sat Feb 26 16:52:41 2011
Subject: Re: Draft

Lanny,
Once this goes up, and I'll cc you on the final one, that should provide a vehicle for you to communicate the message up the chain that we should be out of this going fwd.

Jason

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----- Original Message -----
From: Weinstein, Jason
To: Breuer, Lanny A.; Raman, Mythili
Sent: Sat Feb 26 14:12:51 2011
Subject: Draft

Stuart/Monty,
As you know, the DAG asked me to obtain more information about the manner in which the Arizona gun trafficking investigation known as "Fast and Furious" was put together.

The investigation spanned well over a year and included 7 wiretaps and an enormous number of surveillances and investigative reports. Needless to say, given the scope and complexity of the investigation, it is not possible for anyone to develop a sufficiently granular understanding of the facts and the day-to-day conduct of the investigation in 24 hours. But I had a lengthy discussion with the lead AUSA, Emory Hurley, and the AZ Criminal Chief, Pat Cunningham, in an effort to get you more information about the development of the case, including the strategies employed, the tactics used, and the investigative team's approach to handling suspicious purchases and purchasers.

I will attempt to capture as much of the relevant information as possible in this email, but am happy to discuss further. Unrelated
Unrelated but am free after 2:30 and the rest of the weekend on berry (202-330-1514).

The information that follows was provided by Emory and Pat during our call.

BACKGROUND

A little background on the players may be instructive:

- The lead case agent is a very experienced and skilled agent who,

according to Emory, has been doing almost nothing but firearms trafficking cases for at least the last 9 years.

· Emory himself is regarded as the District's preeminent expert on federal gun laws and gun prosecutions. Like the case agent, Emory has a lot of experience pursuing straw purchasers and building firearms trafficking cases. I would add parenthetically that both yesterday and in my prior dealings with him, I have found him to be a very sharp and impressive AUSA, exactly the kind of AUSA you would want handling a case of this magnitude and complexity.

· **DP**, the FFL involved in many of the sales at issue here (including the sales of the guns found at or near the scene of the Terry murder), has cooperated with ATF for years, even before the Fast & Furious case began, providing voluntary reports of multiple sales of long guns.

· The District of Arizona is a place where guns, including long guns, are prevalent. It is not at all uncommon - nor is it illegal - for people to have guns in their vehicles in Arizona.

THE INVESTIGATION

In a nutshell, the investigation grew out of intercepts from a DEA-run state wiretap on a drug crew. **DP**

DP

In pursuing the investigation, the following were some of the important components of the investigative strategy:

· Trying to flip straw purchasers was considered to be an extremely low-percentage, and highly risky, move: As you know, straw purchasers face absurdly low penalties for what is a serious crime with serious consequences. The AUSA and case agent have extensive experience with straw purchasers in cases

like this, and based on that experience, they know that these straws are typically well-coached on how to answer questions from law enforcement so as to avoid arrest and stifle further investigation. For instance, straws who buy multiple AK-47s often say that they bought the guns because they heard that President Obama was going to re-institute the assault weapons ban, and purchased the guns as investments. Others say that they are collectors and bought or resold the guns to improve their collections. Historically, it is a low percentage move in cases like this to try to flip straws, who have little incentive to cooperate against others in the organization (even if, as sometimes occurs, they implicate themselves). That was especially true here - unlike in many trafficking rings, the straws here were not disposable, but rather made repeated purchases of guns, although new buyers were recruited over time. Moreover, the straws here were also unusual because they were connected to each other and to higher-level members of the organization. Many of the straws were cousins or other relatives of higher-level conspirators, they lived in close proximity to each others, and there were indications of personal relationships (e.g., many were on each other's Facebook pages). For all of those reasons, the team made the tactical judgment that trying to flip any of these straws during the course of the conspiracy was extremely unlikely to succeed and was extremely likely to tip off the other straws and the higher-level targets that they were under investigation.

· FFLs were asked to cooperate but were told NOT to complete suspicious or potentially illegal sales: FFLs were never pressured, coerced, or even encouraged to complete illegal sales. On the contrary, FFLs were told that they had no legal protection if they completed sales they knew or had reason to believe were illegal, even if they were otherwise cooperating with ATF. For instance, when the owner of DP expressed concern to ATF about whether he was doing anything illegal, two AUSAs and two ATF agents, including a Group Supervisor, met with him in his offices. The AUSAs and agents told him expressly that ATF could not tell him or give him permission to complete an unlawful sale and that he had no legal authority from ATF to complete any sale he knew or had reason to believe was illegal (e.g., if he knew/had reason to believe the purchaser was a straw or prohibited person).

· ATF attempted to interdict every single gun they had the legal authority to seize, and attempted to interdict newly purchased guns at the first legally permissible moment: During most of the investigation, the team was getting only historical information about completed gun sales - that is, the multiple sales reports from the FFLs were coming in days after the sales had been completed and the guns were already in the hands of the trafficking organization. The team would only have been able to interdict those guns if they learned through physical surveillance, the pole camera at DP or the wiretaps that those guns were on the move, and when that information was obtained, ATF responded by attempting to seize the guns.

Later in the investigation, primarily through the wires, there were times when ATF had some prospective information that a purchase was going to be made. That information was not consistently available, but rather was sporadic. In those instances, ATF conducted physical surveillance, trying to follow the purchaser from the gun store to see where the guns went. If there was evidence from the wires that the purchase was a straw purchase, ATF could interdict the guns as soon as the purchaser left the store. In many instances, however, all they knew was that a particular suspect was going to make a gun purchase and had no evidence - as opposed to strong suspicions - that the purchase was going to be a straw purchase. The reality is that even if an individual conducts a straw purchase on Monday, that doesn't necessarily mean the purchase he conducts on Tuesday is also illegal. And of course, guns are per se legal to purchase and, at least in AZ, to transport in your vehicle. So in those instances, where the purchase was not provably criminal at the time the purchaser left the store, they had to see what happened to the gun(s) before they could try to seize them. The AUSAs' directives to the agents was that they could interdict the guns the minute they could show that these expensive guns were in the hands of someone other than purchaser, the premise being that no one was going to make such a expensive purchase as a gift for someone else. So in those instances, ATF surveilled the purchaser from the store and attempted to

follow him to the third party who would receive the guns. The minute the guns changed hands typically in parking lots or other neutral locations - the investigators attempted to seize them. In most cases, they used state or local officers to do those interdictions, in order to avoid revealing the federal investigation and jeopardizing the wires.

In order to improve their ability to track the purchased guns, they used tracking devices where possible. DP

DP

Of course, as you know, physical surveillance even aided by technology -- is never perfect, and is not always successful. That was the case here as well, so ATF was not always able to interdict those guns despite their best efforts to do so. Having said that, they were able to seize hundreds of guns.

· No guns being allowed to cross the border into Mexico, and no disputes between agents, AUSAs about whether particular guns could be interdicted: The team made it an imperative to try to seize any guns they knew were headed for the border. They say, categorically, that they never knowingly allowed any guns to go to Mexico.

Moreover, the AUSA reports that there were never any disputes between the agents and AUSAs about whether a particular load of guns could be interdicted. Over a period of months of surveillances, the agents would call the AUSAs to report their observations and ask if they had legal authority to seize a load of guns. The AUSAs authorized those seizures every time, with one exception. On one occasion, an agent intercepted an individual in possession of multiple guns the individual said he was the true buyer and had the receipt, and there was no evidence connecting him to the wire or the other targets, so the AUSA and agent agreed that there was no basis to seize the guns.

· No evidence on which to prosecute ATF until after Terry murder: As you may recall, the guns found at/near the Terry scene were purchased on January 16, 2010, and ATF was first notified of that purchase on January 19. At the time, ATF was believed to be a straw purchaser, but there was no evidence at that time, and as indicated above, the tactical judgment had been made that the straws in this case were particularly unlikely to flip. In May 2010, ATF learned that back in January 2010, CBP had stopped a car in New Mexico that contained guns purchased by ATF and another suspected straw. At the time, CBP did not seize the guns, because it was not unlawful for the occupants to possess those guns in their vehicle. CBP did not report the incident to ATF until May. These were the first guns purchased by ATF to be found in the hands of another person.

After the Terry shooting, ATF agents confronted ATF who admitted that he had used an invalid address during a purchase in June 2010. By the time of that June purchase, he had been evicted from his residence, but he continued to use that residence as his address in filling out Form 4473s. The former residence was the address listed on his car registration and MVA records, so ATF believed it at the time to be his correct address and did not learn about the eviction until well after the fact.

As indicated above, this was an extraordinarily complex case, and I can give you only a higher-altitude view of it, based on the information provided by the USAO and ATF. But based on my conversation yesterday with the AUSA and Crim Chief, and based on prior conversations with Dennis Burke and with the ATF SAC, this case certainly appears to have been in the hands of/overseen by some extremely thoughtful and thorough investigators and prosecutors who acted strategically and carefully in building the case.

I hope this is helpful.

Jason

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