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MEMORANDUM

July 25, 2011

**To: Democratic Members of the House Committee on Oversight and Government Reform**

**Fr: Democratic Staff**

**Re: Full Committee Hearing on “Operation Fast and Furious: The Other Side of the Border”**

On Tuesday, July 26, 2011, at 10:00 a.m., in room 2154 of the Rayburn House Office Building, the Committee will hold a hearing entitled “Operation Fast and Furious: The Other Side of the Border.” The hearing will feature testimony from six ATF officials operating in Phoenix, Mexico, and Washington, DC.

This memo does not offer conclusions, but presents an update for Members on the status of evidence collected to date by the Committee. The Committee has now conducted transcribed interviews of 16 witnesses, including ATF line agents and supervisors in the Phoenix Field Division, ATF agents and supervisors based in Mexico, and senior ATF management officials in Washington, DC. The Committee has also received and reviewed more than two thousand pages of documents responsive to the Chairman’s subpoena to the Department of Justice.

**I. ALLEGATIONS BY ATF LINE AGENTS**

On Wednesday, June 15, 2011, the Committee held a hearing entitled “Operation Fast and Furious: Reckless Decisions, Tragic Outcomes.” The witnesses included three ATF line agents from the Phoenix Field Division: Special Agent John Dodson, Special Agent Olindo “Lee” Casa, and Special Agent Peter Forcelli.

These line agents raised three primary allegations at the hearing. First, they testified that they were instructed to cut off surveillance of suspected straw purchasers after following them from firearms stores to stash houses. Second, they testified that they were ordered to forgo arrests of straw purchasers even when the agents believed they had lawful authority to do so. Third, they testified that they were prohibited from seizing or interdicting weapons from straw purchasers on several occasions when they believed they had lawful authority to do so.

The line agents testified that they made their concerns known to their superiors. Agent Dodson and Agent Casa testified that they alerted their immediate supervisor, Group Supervisor David Voth. Agent Dodson also testified that when the Assistant Special Agent-in-Charge for the Phoenix Field Division, George Gillett, was made aware of their concerns about these tactics, “it was relayed to me that they didn’t have to explain anything to me. I was to do as I was told.”<sup>1</sup>

Since the Committee’s June 15 hearing, officials interviewed by Committee staff have stated that they were not aware of these allegations made by the ATF line agents.

In a transcribed interview on July 4, 2011, Acting ATF Director Ken Melson stated that he did not become aware of the line agents’ allegations until they were disclosed in the media.<sup>2</sup> Acting Director Melson stated that he had been briefed on at least three occasions about Operation Fast and Furious, but that “the general assumption among the people that were briefed on this case was that this was like any other case that ATF has done.”<sup>3</sup> He stated:

I don’t believe that I knew or that [Acting Deputy Director] Billy Hoover knew that they were—that the strategy in the case was to watch people buy the guns and not interdict them at some point. That issue had never been raised. It had never been raised to our level by the whistleblowers in Phoenix that stayed in-house down there. The issue was never raised to us by ASAC [Assistant Special Agent-in-Charge George] Gillett who was supervising the case. It unfortunately was never raised to my level by SAC [Special Agent-in-Charge William] Newell who should have known about the case, if he didn’t, and recognize the issue that was percolating in his division about the disagreement as to how this was occurring. Nor was it raised to my level by DAD [Deputy Assistant Director William] McMahon who received the briefing papers from [Phoenix Group Supervisor David] Voth and may have had other information on the case. Nor was it given to me by a Deputy Assistant Director in OSII, the intel function, when he briefed this case the one time I wasn’t there and he raised an objection to it and saw nothing change.<sup>4</sup>

Acting Director Melson stated that “we give a lot of discretion to our SACs,” and he wished that the line agents had contacted him directly with their complaints.<sup>5</sup> Acting Director Melson stated that when he became fully aware of the number of purchases and the total number of weapons purchased, he remembers his “stomach being in knots.”<sup>6</sup>

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<sup>1</sup> Testimony of Special Agent John Dodson, Bureau of Alcohol, Tobacco, Firearms and Explosives, before House Committee on Oversight and Government Reform, *Hearing on Operation Fast and Furious: Reckless Decisions, Tragic Outcomes* (June 15, 2011).

<sup>2</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Ken Melson, at 33 (July 4, 2011).

<sup>3</sup> *Id.* at 72.

<sup>4</sup> *Id.* at 75.

<sup>5</sup> *Id.* at 34.

<sup>6</sup> *Id.* at 33.

ATF officials at lower levels provided similar accounts. For example, during his transcribed interview with Committee staff, Acting Deputy Director Hoover had this exchange:

Q: Mr. Hoover, when did you first learn about the allegations of gun walking in the Fast and Furious case?

A: It would have been sometime in January of 2011.

Q: And how were they brought to your attention?

A: It was brought to our attention that one of our agents spoke to Senator Grassley's office and made those allegations.<sup>7</sup>

Assistant Director Mark Chait also stated that he was "surprised" by the line agents' allegations earlier this year.<sup>8</sup>

Deputy Assistant Director McMahon told the Committee staff that he also learned of the line agents' allegations in January 2011:

Q: When did you first become aware of allegations that gun walking might have occurred in the Fast and Furious case?

A: Shortly after a takedown in January of 2011. ...

Q: How did that come to your attention?

A: I think there were some media reports or blog reports that that sort of thing was in our news clippings that we get every day.<sup>9</sup>

Special Agent-in-Charge Newell also indicated that he learned of the line agents' concerns earlier this year:

Q: I think that you're aware that at some point during the course of Operation Fast and Furious line agents made complaints about the tactical decisions made at the agent level to cease surveillance?

A: I became aware of that probably in February maybe of this year when the allegations were first made.

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<sup>7</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Hoover, at 7 (July 21, 2011).

<sup>8</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Mark Chait, at 59 (July 20, 2011)

<sup>9</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon, at 13-14 (June 28, 2011).

Q: So prior to February 2011 you were unaware of complaints from line agents in the Phoenix field division Group 7 regarding surveillance tactics being employed on the ground?

A: To the best of my recollection, I don't remember anytime ever being advised that there was some discourse amongst the agents. I became aware of that when some of the documents were released that I saw. And I want to say it was probably February, early February, something like that, of this year.<sup>10</sup>

The line agents' direct supervisor, Group Supervisor David Voth, stated in his interview with Committee staff that he did not recall complaints from the line agents regarding the tactics used in Operation Fast and Furious:

Q: Now, as part of this investigation, we've been told that, during the course of conducting surveillance on suspected straw purchasers, some of your agents felt that they had sufficient evidence to intervene in some way, but they were instructed to, quote, "stand down" by the primary case agent. You know, specifically, you know, they said that they could have intervened by conducting a traffic stop or effectuating an arrest or doing a seizure. Are you aware of those allegations?

A: I've heard them as part of the hearing and stuff.

Q: So, during your supervision of Operation Fast and Furious, those allegations weren't brought to your attention?

A: No.

Q: You don't recall having any conversations with agents under your supervision that they had wanted to effectuate a traffic stop or effectuate an arrest and [Case Agent] Hope MacAllister told them not to?

A: I don't recall participating in any of those discussions. I don't recall people coming to me with those concerns.<sup>11</sup>

Committee staff asked Group Supervisor Voth about an e-mail he wrote on March 12, 2010, referencing a "schism" in Group 7. The e-mail stated:

It has been brought to my attention that there may be a schism developing amongst the group. This is the time we all need to pull together not drift apart. We are all entitled to

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<sup>10</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Newell, at 61 (June 8, 2011).

<sup>11</sup> House Committee on Oversight and Government Reform, Transcribed Interview of David Voth, at 85-86 (June 30, 2011).

our respective (albeit different) opinions however we all need to get along and realize that we have a mission to accomplish.<sup>12</sup>

Group Supervisor Voth explained that he sent this e-mail to address unrelated complaints by agents regarding their work schedules. Group Supervisor Voth stated:

The purpose of this email and the reason this email was sent is ... a lot of people were concerned about their scheduling on the wire and if they were on surveillance or if they were in the wire room, if they were working Saturday, if they were working at night, if they were working Sunday, when was their day off, why were they on this assignment, so and so had that assignment. ... It was strictly about the wire and the working of the wire and the scheduling of the wire. It wasn't about the way the case was being worked.<sup>13</sup>

## II. ALLEGATIONS THAT TACTICS WERE DIRECTED BY ATF OR DOJ

No ATF officials interviewed by Committee staff stated that the senior management of ATF or the Department of Justice devised or directed the controversial tactics alleged in Operation Fast and Furious.

Acting Director Melson denied that the Department of Justice or senior ATF officials devised or authorized those tactics:

Q: Did you ever authorize agents to use a tactic of stopping surveillance in order to see where the guns might go through E-trace later on?

A: Absolutely not.

Q: Did you ever use or authorize agents to use a tactic of non-intervention to see where the guns might go?

A: I don't believe I did.

Q: Did you ever tell agents not to use or authorize agents not to use other common investigative techniques like 'knock and talks' or police pullovers in order to see where the guns might go in this case?

A: No.

Q: Did anyone at the Department of Justice ever tell you or tell anyone else at headquarters and it got to you that those tactics were authorized as part of a new strategy in order to follow the guns, let the guns go, see where they might end up?

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<sup>12</sup> *Id.*, Ex. 7.

<sup>13</sup> *Id.* at 212-213.

A: No.<sup>14</sup>

Acting Director Melson stated that the *Cartel Focused Strategy*, a Southwest border strategy developed by the Justice Department, was not intended “to allow the guns to go to suspected straw purchasers without any good faith belief that you could recover those weapons.”<sup>15</sup> When asked about this document, Acting Director Melson stated:

[T]his strategy was an attempt to focus, just like the OCDETF program has for years, at taking down the top level of the cartels, recognizing as this and many other documents do, that just arresting or taking the guns from suspected straw purchasers is not going to stop the flow of weapons or the flow of drugs, just like DEA now is not focusing on distributors of dimebags of cocaine on the street. That doesn't do anything. It doesn't stop the flow of drugs coming in. They have to go after the cartels to stop it. We have to go after the cartels to stop the flow of guns. The straw purchaser is like the dimebag of cocaine being sold on the street. It puts a lot of people in jail, but it doesn't stop the crime.<sup>16</sup>

Acting Director Melson stated that the Department's strategy did not authorize or direct any specific tactics or any change in tactics. According to Acting Director Melson:

[W]e never discussed those types of tactical strategies ... that's for the group supervisor and the agent and the ASAC [Assistant Special Agent-in-Charge] and the SAC [Special Agent-in-Charge]. They do the tactical stuff.<sup>17</sup>

Acting Director Melson stated that the strategy “was a higher level Department strategy on bringing the agencies together to work more closely and coherently to get the top rung. There would have been no reason to talk about individual tactical strategies at this level.”<sup>18</sup>

Acting Deputy Director William Hoover, the principal liaison between ATF management and the Deputy Attorney General's office, also rejected the suggestion that senior management officials at ATF or the Department of Justice were responsible for the controversial tactical decisions alleged to have been made in Operation Fast and Furious:

Q: But you don't believe that this is some sort of top down it wasn't a policy or some tactical strategy from either ATF management or main Justice to engage in what happened here in Phoenix in Fast and Furious.

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<sup>14</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Ken Melson, at 76-77 (July 4, 2011).

<sup>15</sup> *Id.* at 77-79.

<sup>16</sup> *Id.* at 136-137.

<sup>17</sup> *Id.* at 78-79.

<sup>18</sup> *Id.* at 137.

A: No, sir. It's my firm belief that the strategic and tactical decisions made in this investigation were born and raised with the U.S. Attorney's Office and with ATF and the OCDETF strike force in Phoenix.<sup>19</sup>

Acting Deputy Director Hoover also addressed press reports regarding the involvement of the Deputy Attorney General's office. He stated:

There's been reports that the Deputy Attorney General's office was aware of the techniques being employed in Fast and Furious, and that's not the case, because I certainly didn't brief them on the techniques being employed in Fast and Furious.<sup>20</sup>

Other witnesses stated that there was no "top down" Department or ATF strategy not to intervene in the illegal sale of weapons. These officials included Assistant Director Chait, Deputy Assistant Director McMahon, Chief Kumor, and Acting ATF Attaché Canino.

Assistant Director Chait stated that no one in senior ATF management or at the Department of Justice authorized the tactics alleged to have been employed in Operation Fast and Furious:

Q: Did anyone else at ATF underneath you, did Mr. McMahon or Mr. Newell or anybody else discuss tactics, including noninterdiction, ceasing of surveillance or gun walking as a potential tactic to be employed as a part of Fast and Furious to your knowledge or as a part of—excuse me, as a part of the cartel focused strategy to your knowledge?

A: Not to my knowledge, no.

Q: What about above you? What about Deputy Director Hoover, what about Director Melson? Did they ever come down to you and say this might require us to employ new tactics, noninterdiction, ceasing surveillance, gun walking; was that ever discussed to your knowledge within ATF headquarters?

A: Not to my knowledge.

Q: Did anyone from DOJ ever come to you, ever propose, ever discuss this, ever discuss these tactics that I'm describing here as potential tactics to be employed as part of the cartel focused strategy?

A: Not to my knowledge.<sup>21</sup>

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<sup>19</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Hoover, at 224-225 (July 21, 2011).

<sup>20</sup> *Id.* at 223.

<sup>21</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Mark Chait, at 55-56 (July 20, 2011).

Similarly, Deputy Assistant Director McMahon confirmed that the cartel-focused strategy never authorized tactics of noninterdiction or gun walking in any ATF investigation:

Q: I think you discussed the 2009 cartel focused strategy?

A: I think there has been some discussion about that, yes.

Q: And you're familiar with the document?

A: I am.

Q: Did anything in that document, in your understanding, authorize or direct cutting short surveillance?

A: No, it did not. It is an overarching strategy. It helped us realign our resources. It helped us focus on the biggest cartels. It just made it a priority for our divisions to focus on the cartel focused strategy. That was the purpose of that document.

Q: Did anything in the document in your view say that you should not arrest a straw purchaser if you had enough evidence in order to build a larger case?

A: No, it did not.<sup>22</sup>

Dan Kumor, ATF's Chief of International Affairs, agreed that the tactics allegedly used in Operation Fast and Furious were not directed from ATF management or the Department of Justice management:

Q: You were in briefings with other people at ATF at headquarters. You were located at ATF headquarters. Based on your experience, was anybody talking about this, was there any evidence that this was a ...

A: Oh, no.

Q: ... deliberate strategy?

A: Contemporaneous?

Q: Contemporaneous.

A: While the investigation was going on that this was occurring? No, there was no discussion about any of this in terms of guns being surveilled and loads being discontinued, et cetera, no, there was no discussion about that.

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<sup>22</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon at 151-152 (June 29, 2011).

Q: No evidence that you saw that this was a policy of the Department of Justice and ATF headquarters, not just a operational issue in Phoenix?

A: No, I had no no, I did not have any knowledge of that.<sup>23</sup>

Acting ATF Attaché Canino, who was stationed in Mexico, was not involved in the tactics of Operation Fast and Furious, but he stated that the Department's directive did not authorize the tactics allegedly used by agents in Phoenix Group 7:

Q: Is there anything from this strategic document that, again, indicated to you that ATF agents would be authorized to stop making—to stop surveillance of stash houses?

A: No.

Q: Or to let guns walk?

A: No.

Q: So these strategic papers—were there—

A: Basically, you know, what was happening a lot is a lot of our agents were, you know, okay, we got a straw, let's move on to the next case. You know, they weren't spending time. Okay, let's flip this guy, you know; let's do our due diligence, guys, you know; let's wear off some shoe leather, you know. So this is reemphasizing, hey, guys, do you know what? We expect you know, if you identify a straw, to work it. Let's find out, you know, what cell he's at, who is the financier, you know. Let's do a little legwork on this.

Q: But your interpretation would be let's bust the straw and flip it up the chain?

A: You have to.

Q: And interdict the weapons? That's what you thought this document meant?

A: You have to, you have to.<sup>24</sup>

William Newell, the Special Agent-in-Charge for the Phoenix Field Division, also stated that the tactics in Operation Fast and Furious were not directed or derived from any Department

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<sup>23</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Dan Kumor, at 84-85 (July 13, 2011).

<sup>24</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Carlos Canino, at 125 (June 16, 2011).

strategy.<sup>25</sup> When asked whether there was “any guidance given to the agents about different techniques” or “not interdicting suspicious transactions,” Special Agent-in-Charge Newell replied, “Not that I recall, no.”<sup>26</sup>

Group Supervisor Voth also stated that he was not aware of any portion of the Department’s cartel focused strategy that authorized the tactics used in Operation Fast and Furious:

Q: Well, is there anything in this document [the Department’s 2009 cartel focused strategy] or any of the other documents that you reviewed related to the cartel focused strategy that directed you or your agents to forego conducting interdictions when you believed you had lawful authority to do so?

A: No, I don’t think we forego or I don’t think we didn’t seize firearms when we had lawful authority.

Q: In fact, you did, as part of Operation Fast and Furious, you did in fact interdict weapons when you believed you had lawful authority to do so?

A: I think I stated previously, but we seized hundreds of firearms as part of this case.

Q: Was there anything in the 2009 cartel focused strategy document that you just reviewed or any of the other cartel focused strategy documents that you’ve reviewed that directed you or your agents to cut off surveillance early?

A: No, not that I’m aware of.

Q: Was there anything in this 2009 cartel focused strategy document or anything in any other cartel focused strategy document that you reviewed that directed you or your agents to forego arresting individuals when you believed you had legal authority to do so?

A: No. There’s not—I am not aware of any specific language in here that said not to arrest people.<sup>27</sup>

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<sup>25</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Newell, at 14-15 (June 8, 2011).

<sup>26</sup> *Id.* at 12.

<sup>27</sup> House Committee on Oversight and Government Reform, Transcribed Interview of David Voth, at 52 (July 1, 2011).

### III. MARCH 2010 BRIEFINGS TO SENIOR ATF OFFICIALS

Although officials interviewed by the Committee stated that they were not aware of the line agents' specific concerns, evidence obtained by the Committee indicates that some senior ATF officials were briefed in March 2010 that suspects were purchasing large numbers of weapons, and that many of these weapons were being recovered at crime scenes in Mexico. Although action was ordered to develop an "exit strategy" to bring indictments within 90 days, no indictments were issued until January 2011.

#### A. Acting Director Melson

In March 2010, ATF senior management received briefings in Washington D.C. about Operation Fast and Furious. It does not appear that Acting Director Melson attended these briefings. In his transcribed interview on July 4, 2011, Acting Director Melson stated that he did not become aware until 2011 that a relatively small number of suspects were purchasing a large number of firearms. He stated that he became aware of this information when he was conducting his own subsequent investigation and reviewed Reports of Investigation (ROIs). He stated:

I think early on, if there had been an awareness of not just the number of guns, but the number of guns that a single person purchased, and that we were watching the guns being purchased by them, I think we would have taken a different approach on it, and would have approached [one suspect] and at the risk of putting the investigation in danger at least stopped his multiple purchases that continued on and on and on for a significant period of time.

It—you know, that would have to have been a judgment made at the time, if we were alerted to it, but nevertheless that was a judgment made by the Phoenix supervisors and the U.S. Attorney's Office, that this should continue in that vein because we didn't have sufficient evidence to prosecute those individuals at the time. And that's a legal decision. That's a lawyer's decision, a prosecutor's decision. It's not a street agent's decision to tell the U.S. Attorney when we've got enough for a case.<sup>28</sup>

Acting Director Melson stated that, after reading the ROIs, he alerted the Department of Justice. He stated:

I assigned a task force of agents to read through all the ROIs to determine whether or not the allegations that were being made by individuals in CBS and Senator Grassley were true or not, because frankly we didn't think they were true.

They did a review of those and found nothing that would indicate that that was true. I then asked them to bring to me all the ROIs that pertained to [one suspect] in particular and I read through those and found ROIs that indeed suggested that interdiction could have occurred, and probably should have occurred, but did not occur.

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<sup>28</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Ken Melson, at 55 (July 4, 2011).

And it was at that point that I took that ROI and gave it to our people and the Department. In fact, we briefed and gave it to [a Justice Department official] in particular, because to me that was a smoking gun that we really needed to look at the rest of this particular case. Not making a judgment as to whether they should have interdicted in light of information they knew on the streets that might have affected officer safety or civilian safety, because taking down a car in the middle of Phoenix that's loaded with weapons by unknown individuals is a dangerous—a dangerous situation.

So I don't know whether they should have or shouldn't have. All I know is I found an ROI. That's when we asked for all the stuff.<sup>29</sup>

Acting Director Melson explained further that he did not know whether there had been probable cause to arrest the suspects at issue. He stated:

Q: After reading the ROI, did you believe there was probable cause to arrest—arrest the driver or seize the guns based on what you read.

A: Based upon the instructions and the view of the law by the U.S. Attorney, there would not have been probable cause, because—for several reasons. One, the purchase by the suspected straw purchaser could have been a lawful purpose—I mean a lawful purchase. He may not have lied on anything. The transfer of guns to a non-prohibited person would have been lawful. So there would have been no unlawful transaction. They don't know whether the driver of the other car is a convicted felon or illegal immigrant or what his situation is. That doesn't mean you couldn't have stopped the car, and gotten his identification and asked him what he was doing with the weapons or found out more information to advance the investigation. But again, that so often is a judgment call that is made by the police officers on the street that, you know, it's hard to second-guess that. The reason I pulled it out is because this was at a time I think after the CBS News exposé where we were yelling, stop the guy, stop the guy, and this came the closest of that of anything I saw going through there. So I wanted to alert my staff as well as the DAG's office that there were instances in which guns were not stopped. Now, whether they could have been stopped or we had the lawful authority, that's where some of the disagreement comes as to whether or not there was probable cause to stop that car and arrest or search.

Q: So when you were saying earlier this morning that you believed this ROI showed an instance of where ATF had allowed guns to be transferred without interdiction, were you not making any judgment about whether or not there was lawful authority in that particular instance?

A: That's correct. But it just alerted us to the fact that there are instances that could have done that, and so as Senator Grassley said in his e-mail we saw just before, there may be something to this.<sup>30</sup>

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<sup>29</sup> *Id.* at 68-69.

**B. Acting Deputy Director Hoover**

In his transcribed interview with Committee staff, Acting Deputy Director Hoover stated that he attended a briefing in March on Operation Fast and Furious provided by the Office of Strategic Information and Intelligence. As a result of this briefing, he stated that he became concerned with the number of guns being purchased and ordered an “exit strategy” to close the case and seek indictments within 90 days:

A: I did receive a briefing in March of 2010. ...

Q: And during the pendency of the case in 2010, what was your understanding of what was going on? There was a lot of guns?

A: Yes. I knew that we had a large number of straw purchasers purchasing firearms. I knew that – didn’t know the specific numbers of firearms. I knew that there was a lot of money involved and it involved all cash transactions.

Q: Which is suspicious, correct?

A: It would be for that number of firearms, that’s absolutely correct.

Q: And you knew that some of these weapons were showing up in Mexico?

A: We did know that. I received a briefing in January saying that some firearms that were purchased during Operation Fast and Furious were discovered in Mexico. However, some of these firearms that were purchased were purchased without our folks in Phoenix knowing about the sale of the gun at the time. They were notified subsequent to the sale, sometimes a day later, sometimes three days later.

Q: It’s our understanding that you and Mr. Chait, in March approximately, asked for an exit strategy for the case?

A: That is correct. ...

Q: And if you could tell us what led to that request?

A: We received a pretty detailed briefing in March, I don’t remember the specific date, I’m going to say it’s after the 15th of March, about the investigation, about the number of firearms purchased by individuals. ... That would have been by our Intel division in the headquarters. ... During that briefing I was, you know, just jotting some notes. And I was concerned about the number of firearms that were being purchased in this investigation, and I decided that it was time for us to have an exit strategy and I asked for an exit strategy. It was a conversation

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<sup>30</sup> *Id.* at 122-123.

that was occurring between Mark Chait, Bill McMahon and myself. And I asked for the exit strategy 30, 60, 90 days, and I wanted to be able to shut this investigation down.

Q: And by shutting the investigation down, you were interested in cutting off the sales of weapons to the suspects, correct?

A: That's correct.

Q: And you were worried, is it fair to say, that these guns were possibly going to be getting away and getting into Mexico and showing up at crime scenes?

A: I was concerned not only that that would occur in Mexico, but also in the United States.

Q: And at that time did you request, in addition to the exit strategy, did you request any specific actions on the part of the Phoenix folks to make sure these guns didn't get out of their control?

A: I did not specifically request that. I allowed field operations to run that investigation.<sup>31</sup>

He was also asked about efforts to conduct additional interdiction efforts:

Q: But the question is, were there any other operational controls put in place that gave you personal comfort that fewer guns – or that ATF was going to get control of this?

A: I did not get any specific instruction. I remember having conversations with – actually, the day of that briefing when I asked for the strategy, I had discussions with Mark Chait and also Bill McMahon around that strategy and how we needed to ensure that we were taking steps to interdict as many firearms as possible and to move to close that investigation down.<sup>32</sup>

In prepared testimony for tomorrow's hearing, Lorren Leadmon, an ATF Intelligence Operations Specialist, states that he conducted the March 2010 briefings. He states:

In March 2010, I conducted a video conference briefing with the managing officials from the four ATF border divisions, an attorney from the Department of Justice and every one of the ATF senior management staff except the Acting Director. With the assistance of the group supervisor in charge of the Fast and Furious investigation, I provided a briefing outlining the amount of firearms purchased and expenditures up to the end of February

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<sup>31</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Hoover, at 10-11 (July 21, 2011).

<sup>32</sup> *Id.* at 68.

along with the number of firearms seized and the seizure location. The totals briefed are the same as previously stated. The issue of the firearms not being seized by the case agents was brought up and briefly discussed. From this point on, our team continued to monitor the case and offered assistance but only briefed the status of the case a few times.<sup>33</sup>

### C. Actions Taken After the March 2010 Briefing

Officials interviewed by Committee staff indicated that several steps were taken after the March 2010 briefing, including the submission of an exit strategy and later efforts to interdict weapons. During this time, additional officials contacted ATF management to express concerns about the number of firearms being transferred to Mexico.

In late April 2010, the Phoenix Field Division submitted an exit strategy to resolve the investigation and pursue suspect indictments by the end of July 2010.<sup>34</sup> Nevertheless, no suspects were indicted until in January 2011.<sup>35</sup> According to several ATF officials, indictments were delayed at the U.S. Attorney's Office.<sup>36</sup>

Dan Kumor, ATF's Chief of International Affairs, stated that in July 2010, he informed Acting Director Melson, Acting Deputy Director Hoover, Assistant Director Chait, and Deputy Assistant Director McMahon about the high number of weapons being traced from Phoenix to Mexico.<sup>37</sup>

Deputy Assistant Director McMahon stated that he recalled hearing Mr. Kumor's concerns about "a large number of guns being recovered in Mexico." He stated that he replied:

That it is our concern as well. We are working this investigation the best we can to take down this group of individuals and stop them from putting the guns in Mexico.<sup>38</sup>

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<sup>33</sup> House Committee on Oversight and Government Reform, Testimony of Lorren D. Leadmon, Sr., *Hearing on Operation Fast and Furious: The Other Side of the Border* (July 26, 2011).

<sup>34</sup> *Id.*, Ex. 3.

<sup>35</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Newell, at 86 (June 8, 2011).

<sup>36</sup> *See, e.g.*, House Committee on Oversight and Government Reform, Transcribed Interview of David Voth, at 199-200 (June 30, 2011).

<sup>37</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Dan Kumor, at 41 (July 13, 2011).

<sup>38</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon, at 41-42 (June 28, 2011).

Several witnesses stated that in August 2010, agents began to interdict and seize more firearms to prevent suspects from trafficking additional weapons. Deputy Assistant Director McMahon stated that agents used seizure warrants to prevent suspected straw purchasers in the case from acquiring more firearms:

Q: So following the time period in July when you heard the phone calls and you had enough information to have an understanding that there would be enough proof to charge a conspiracy or to, you know, move forward against these individuals, there was still a time gap between that and the actual indictment?

A: Right. I never actually heard the phone calls. It was mainly the discussion I would have with [Special Agent-in-Charge] Bill Newell, is that, okay, we are done with the wiretap, we are preparing indictments, and that was some time in June, I believe. And then, yeah, it took until January to get the indictments. It was maybe a weekly conversation with Bill, where are we, what is the story, what is the plan and they are working on it, they are working on it, they are promising this month, they are promising next month, and it just kept getting delayed until January.

Q: And at that point, what was your understanding of what was happening when those suspected individuals continued to go into an FFL and try and purchase a firearm?

A: Right. We are doing that technique that I spoke about earlier where we are actually getting the seizure warrants for those items [redacted].

Q: So did you do that for all of them?

A: I think everyone that we knew about that is what I was being communicated from Phoenix. When we are done with the wires and we are preparing for indictments, we are interdicting at every moment we could with this very unique technique, the seizure warrants.

Q: So as far as you know, as soon as they were ready to prepare the indictments, they had sufficient evidence, they seized every weapon that they knew of that was being purchased after that fact?

A: That was my understanding, yes.<sup>39</sup>

In his transcribed interview with Committee staff, Acting Deputy Director Hoover was asked whether mistakes by ATF may have contributed to the delay in obtaining indictments against Fast and Furious suspects:

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<sup>39</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon, at 82-84 (June 28, 2011); *see also* House Committee on Oversight and Government Reform, Transcribed Interview of Mark Chait, at 72-73 (July 20, 2011).

- Q: Have you identified any mistakes that you have made, looking back, in this case?
- A: I probably should've been a little more strident in my request for that case to be shut down in July.
- Q: You're talking about the exit strategy?
- A: The exit strategy. I probably should have been a lot more strident with that, there's no question. I probably should have jumped on a plane and flown to Phoenix and gotten the field division team or – and the U.S. Attorney's team together and had a discussion. Or if I didn't do that, I probably should have directed field operations to do that.<sup>40</sup>

#### IV. LAW ENFORCEMENT TOOLS TO COMBAT TRAFFICKING

There has been near unanimity among agents and officials at all levels that law enforcement officials lack sufficient tools to effectively combat firearms trafficking along the Southwest border.

On June 30, 2011, Ranking Member Cummings issued a report entitled, “Outgunned: Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking.” Based on the testimony of ATF field agents at the Committee's June 15 hearing, the report made three recommendations to strengthen the ability of law enforcement to effectively combat firearms trafficking networks: (1) enact stronger criminal penalties for straw purchasers; (2) create a dedicated firearms trafficking statute; and (3) implement a reporting requirement for multiple long gun sales.<sup>41</sup>

On June 24 and 25, 2011, Chairman Issa and Ranking Member Cummings traveled to Mexico City as part of a delegation of seven Members of Congress to meet with Mexican and U.S. officials. The delegation was briefed by numerous officials who warned that Mexican drug cartels are arming themselves with military-grade weapons purchased in the United States and illegally trafficked to Mexico. John Feeley, the U.S. chargé d'affaires in Mexico, warned the delegation that weapons trafficked from the United States are fueling “war-like activities” by the drug cartels and that the United States needs to stop those weapons before they get to Mexico. He stated: “By the time they get here, the horse is already out of the barn.”<sup>42</sup>

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<sup>40</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William Hoover, at 221 (July 21, 2011).

<sup>41</sup> *OUTGUNNED: Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking*, Minority Staff Report Prepared for Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (June 2011) (online at [democrats.oversight.house.gov/images/stories/OUTGUNNED%20Firearms%20Trafficking%20Report%20-%20Final.pdf](http://democrats.oversight.house.gov/images/stories/OUTGUNNED%20Firearms%20Trafficking%20Report%20-%20Final.pdf)).

<sup>42</sup> Briefing by John Feeley to Members of the House Committee on Oversight and Government Reform (June 25, 2011).

ATF's chief intelligence analyst in Mexico, Dennis Fasciani, confirmed for the delegation that "the vast majority of weapons recovered at crime scenes in Mexico do come from the United States." He estimated that roughly 75% of all traced weapons were originally purchased in the four border states of Texas, New Mexico, Arizona, and California, and he stated that ATF needs the ability to monitor long gun sales in real-time in order to stop trafficking networks.<sup>43</sup>

In response to the warnings of ATF field agents, Rep. Carolyn Maloney and Ranking Member Cummings jointly introduced a firearms trafficking bill that would specifically prohibit knowingly providing two or more firearms to an individual that the transferor knew or had reason to know would use the weapons unlawfully.<sup>44</sup>

In his transcribed interview on July 4, 2011, Acting Director Melson echoed these calls for additional law enforcement assistance:

Q: [B]ased on your experience as Acting Director of ATF and a long time prosecutor, you just don't feel that ATF has the legal resources available to it to stop that flow of weapons.

A: That's correct.<sup>45</sup>

Acting Director Melson also expressed support for a multiple long gun sales reporting requirement to give ATF important information about suspected straw purchasers for drug trafficking organizations on the Southwest border:

Q: Would multiple long gun sales reporting be a helpful law enforcement tool to understand and identify trafficking networks early on?

A: Absolutely.

Q: Why?

A: Because it gives us information about the people who are buying weapons of choice in Mexico. And if we were given on Monday the information that you had gone in and purchased four semi-automatic weapons, and then we are able to look at other multiple sales reports and find that two days earlier, you bought another

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<sup>43</sup> Briefing by Dennis Fasciani to Members of the House Committee on Oversight and Government Reform (June 25, 2001).

<sup>44</sup> H.R. 2554.

<sup>45</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Ken Melson, at 183 (July 4, 2011).

five and that a week earlier you bought 20, then that would be able to allow us to focus on you as a suspected straw purchaser.<sup>46</sup>

Acting Director Melson was also asked about whether a dedicated firearms trafficking statute would assist law enforcement in prosecuting these cases:

Q: And would the establishment of a specific and dedicated firearms trafficking statute that specifically prohibited firearms trafficking behavior that allowed you to use a pattern of behavior to prosecute cases rather than the mere paperwork violations that you mentioned earlier, would that assist law enforcement in prosecuting these cases?

A: Absolutely.<sup>47</sup>

Acting Deputy Director Hoover, Assistant Director Chait, and Deputy Assistant Director McMahon also expressed support for a reporting requirement for multiple long gun sales, describing it as “a useful tool” for law enforcement agents.<sup>48</sup> They also endorsed a proposal for a dedicated firearms trafficking statute and increased sentences for straw purchasers.<sup>49</sup>

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<sup>46</sup> *Id.* at 84.

<sup>47</sup> *Id.* at 97.

<sup>48</sup> House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon at 149 (June 29, 2011); House Committee on Oversight and Government Reform, Transcribed Interview of Mark Chait, at 141-142 (July 20, 2011); House Committee on Oversight and Government Reform, Transcribed Interview of William Hoover, at 155-157 (July 21, 2011).

<sup>49</sup> House Committee on Oversight and Government Reform, Transcribed Interview of Ken Melson, at 83-84 (July 4, 2011); *see also* House Committee on Oversight and Government Reform, Transcribed Interview of William McMahon at 147-149 (June 29, 2011); House Committee on Oversight and Government Reform, Transcribed Interview of Mark Chait, at 63-64 (July 20, 2011); House Committee on Oversight and Government Reform, Transcribed Interview of William Hoover, at 165-166 (July 21, 2011).

**V. WITNESSES**

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