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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.

Appearances:

For the COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM:

STEPHEN CASTOR, CHIEF COUNSEL, INVESTIGATIONS

ASHOK M. PINTO, DEPUTY CHIEF COUNSEL, INVESTIGATIONS

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CARLTON DAVIS, COUNSEL

KATE DUNBAR, STAFF ASSISTANT

SUSANNE SACHSMAN GROOMS, MINORITY CHIEF COUNSEL

M. SCOTT LINDSAY, MINORITY COUNSEL

DONALD K. SHERMAN, MINORITY COUNSEL

CARLOS URIARTE, MINORITY STAFF

For the SENATE COMMITTEE ON THE JUDICIARY:

MAGGIE WHITNEY, SENIOR INVESTIGATIVE COUNSEL

MATT VIRKSTIS, COUNSEL

JASON FOSTER, MINORITY CHIEF INVESTIGATIVE COUNSEL

TRISTAN LEAVITT, MINORITY COUNSEL

BRIAN M. DOWNEY, MINORITY INVESTIGATOR

ROB DONOVAN, MINORITY STAFF

PATRICK BAILEY, MINORITY STAFF

For the U.S. DEPARTMENT OF JUSTICE:

STEVEN F. REICH, ASSOCIATE DEPUTY ATTORNEY GENERAL

M. FAITH BURTON, SPECIAL COUNSEL, OFFICE OF LEGISLATIVE AFFAIRS

were in fact accurate and that there further was a connection to be made after all between Wide Receiver and Fast and Furious, it was my immediate conclusion that the department had to make sure that it provided information to this committee, not just about Fast and Furious but about Wide Receiver as well.

Q And why did you do so?

A Well, once I learned that guns had walked in Wide Receiver -- I'm sorry, in Fast and Furious, I no longer viewed Wide Receiver as an aberration. I still think two cases is an aberration, but two cases is a pattern. And once I realized that there was a second case in which guns had walked, albeit years apart, I thought it was absolutely relevant to this committee's work to know -- and the Judiciary Committee's work -- to know about Wide Receiver as well as Fast and Furious.

Q The AUSA in Operation Fast and Furious had told you that guns hadn't walked. Yet based upon your albeit limited review of the record in Operation Fast and Furious, you have come to the conclusion that guns did in fact walk. Do you have any explanation for the discrepancy how could the AUSA not have identified that?

Mr. Reich. I think the issue is that this implicates the post-February 4th period. Give us a chance to see whether we can find a way to answer that. I don't know if there is or isn't. Do you want us to do that now, or do you want to wait until the end?

Mr. Lindsay. Let's do that later, or we can push it off to the final round after the break.

Mr. Castor. What is the issue, please? Could you state for the record?

Mr. Reich. I'm sorry?

Mr. Castor. What's the issue?

Mr. Reich. I think you understand what the department's position is with respect to the post-February 4th period. You may not agree with it, but I think you understand it.

Mr. Castor. I don't understand it. Could you articulate it?

Mr. Reich. It's been articulated, both in letters from the department --

Mr. Castor. But you change your position every time. When Grindler was here, you were saying like he can talk about certain things after February 4th but certain things he can't talk about. Can you just state it here so that we're clear?

Mr. Reich. Well, I think it's been made clear in letters that the department has sent to you and also the Attorney General's most recent appearance, namely that the department's position, across time, across administrations and across political parties, is that it's not appropriate for Congress to investigate how the department responds to congressional investigation.

Mr. Castor. Even when you admittedly provide inaccurate information to Congress?

Mr. Reich. Well, I think what you see is that precisely with respect to that, we waived the constitutional privilege with respect to the drafting of the February 4th letter. So with respect to that

of course, as this case teaches us, incumbent on the investigators to use appropriate tactics once they get that information. But that information is critical to starting or furthering a trafficking investigation.

Mr. Lindsay. Thank you. We are going to end our round in respect of your time, but I do want to reserve the right to come back following the next round.

[Discussion off the record.]

Mr. Kerner. All right. So just to clarify a couple of things, you mentioned a conference call with Mr. Melson and stuff where you couldn't recall the date. Do you recall the subject of that conference call?

Mr. Reich. I just don't think he can do more than he has done on that.

Mr. Kerner. If it was not before February 4th then, it doesn't even fall into your restriction.

Mr. Reich. The problem is if it is after, it does.

Mr. Kerner. Since we don't if it's after, why don't we see if he has any recollection what the subject was?

Mr. Foster. He clearly had an affirmative recollection of something he was about to tell us. Can't we just ask him an open-ended question? What do you recall about your teleconference with Ken Melson, whenever it occurred?

Mr. Reich. Before we get to that, can I just ask him, are you able to with any more specificity put a date on that call in terms of

pre or post 2-4?

Mr. Weinstein. My best recollection is that it was after the letter, after the February 4th letter. I just don't recall when after. But it was after the letter.

Mr. Reich. I think in light of that, it just falls within the department's prohibition.

Mr. Leavitt. Was it before the February 10th briefing?

Mr. Weinstein. My best recollection is it was after the briefing as well.

BY MR. KERNER:

Q There are some legal documents that ATF has that talk about allowing the flow of firearms to continue to make the bigger case. They have some legal documents to that effect. In effect, we have sort of talked about them in the past a number of times. Do you have any awareness of those?

A We have talked?

Q I am sorry, the committee has talked about some of the legal justification.

Mr. Castor. OCDETF briefing papers, for example.

Mr. Weinstein. If there is a document you wanted to show me, I would be happy to look at it.

Mr. Castor. We didn't bring it.

Mr. Kerner. No, but do you have any awareness of that?

Mr. Weinstein. Any awareness of ATF briefing papers?

Mr. Weinstein. Yes?

had -- the only conversation, I think, that you could recall having with Mr. Newell about Fast and Furious, and said you had checked with him on a question that you anticipated would come up at the February 10th briefing, and that you wanted to know what the answer would be, if you were permitted to give the answer at the briefing. What was the question?

Mr. Reich. I think we already went through that. I think, because the decision was made that he couldn't brief on the specifics of the case, that we can't tell what you the question was.

Mr. Foster. He can't -- I'm sorry, I'm confused. So he -- I thought we were able to ask up to the briefing now, up to February 10. This is a conversation before February 10 that he had with Newell.

Mr. Reich. I understand your question. The answer is, as I said earlier, we've allowed you to inquire about communications that were made at the briefing to committee staff. But the run-up, the internal run-up at the Department to the communications with the committee are part of the Department's privileged communications.

Mr. Weinstein. Can I just take a moment?

[A discussion was held off the record.]

Mr. Castor. Do you know what kind of privilege you're citing?

Mr. Reich. The one we've been talking about all day. Privilege. So there is a privilege through which the Department, or privilege process through which the Department prepares communications to Congress. We've allowed you to talk to him about what he said to you. Communications internal to the Department that led up to that briefing

are, in our view, not appropriate.

BY MR. FOSTER:

Q Was it a phone call or in person?

Mr. Reich. You can answer that.

Mr. Weinstein. My recollection, Mr. Foster, is it was an email exchange.

BY MR. FOSTER:

Q Do you know whether that email has been produced?

Mr. Reich. You can say whether it's been produced or not, if you know.

Mr. Weinstein. I don't know.

BY MR. FOSTER:

Q Do you recall -- did you get an answer?

Mr. Reich. You can say whether you got an answer.

Mr. Weinstein. My recollection is I got an answer. I don't know if I got what I considered to be a complete answer.

Q I'm sorry?

A Not that I doubted the information, I just don't remember if I got a full answer to the question by the time I left to come see you. It was sort of a last minute thing as I recall.

Q And have you rereviewed that answer since? Have you reviewed that email in the course of preparing for today?

A I don't remember. I don't remember. I looked at so many emails in preparing to come see you today, I just don't remember if that was one of them.