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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

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

Appearances:

For the COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM:

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For the SENATE JUDICIARY COMMITTEE MINORITY STAFF:

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encompassed by Senator Grassley and others, and it is a longstanding policy at the Department of Justice that we don't talk about ongoing cases for a number of reasons that were set forth in previous memos from the Office of Legal Counsel and Attorneys General concerning the Department's interaction with Congress.

This case is a little different, because you are actually investigating looking at an investigation, as opposed to looking at subject matters which might tangentially impact an investigation. This was about an investigation itself and you can hardly investigate or discuss that without getting into some issues that impact the case.

Q I will represent to you that the Department came and briefed our staff in May.

A Yes. And that was in May. And in conjunction with ATF. Matt Axelrod.

Q Mr. Hoover and Mr. Axelrod came in, and it was a sense by then that this was a case that perhaps warranted some congressional oversight. I think the terminology shared with us was that maybe there is a there there. And I wonder if you recall at what point the Justice Department

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

here today of the back and forth you had with him, was it an e-mail or did you call him.

A I think Billy may have talked to him. He talks to Matt most often.

Q Okay. And --

A And conveys these things. I was relatively exercised, not necessarily that I found the ROI, but our agents who were looking through the stuff missed it. And that's when I decided I got to get it all and I got to read it all. And that's what I did.

Q Did you ever have a chance, whether it was directly or through Billy, to communicate to the DAG's office, Axelrod in particular, that there might be something here to focus on? There might be a big problem here with this case and the techniques used.

A Well, I think that particular ROI was the first indication other than what we heard in the press or from the committee that there could be an issue in the case. And I think they recognized that, you know, going forward, that there was an issue in the case.

Part of the problem, and one of the things that frustrated me was that I have not been allowed to

communicate to the troops about anything. So, for example, earlier on, I wanted to do a broadcast that just talked about the case, because everybody was wondering what's this case about? What are you doing at headquarters? How come you were not issuing press releases and how come you were not ordering press conferences and pushing back and things like that? And I was told not to do that.

Then after we wanted to do several things to talk to our people about what this case was about, what it wasn't about, and you know, where we were going and the fact that we were cooperating as much as we could with the committee and with the Department, but we were restrained from doing that.

And even after your hearings on the -- was it the 16th or whatever that Wednesday was, we wanted to do the same thing, and they said, well, let us read it first. So we finally drafted something and sent it over to them. I don't know whether we ever got it back, but it has restrained our ability to work with our people because although I think morale is good, there are questions about what's going on, and what is, what is -- what's top management doing about all of this? It sounds and looks like we are just sitting



on our butts doing absolutely nothing with regard to Fast and Furious but letting Congress run all over us.

[Exhibit No. 3 was marked for identification.]

BY MR. CASTOR:

Q This is the briefing that I think you had referenced earlier this morning, the January 8 briefing paper.

A Uh-huh.

Q We had some discussion about this particular briefing paper before, so I thought it was important to make sure we got it on the record. We had talked about paragraph 13, which is the paragraph that said that currently our strategy is to allow the transfer of firearms to continue, albeit at a much slower pace.

You had brought to our attention that paragraph 8 included a reference to the U.S. Attorney's office in Phoenix. The U.S. Attorney at the time, January 2010, believed that there was minimal evidence to support any type of prosecution at that time, but nevertheless, the U.S. Attorney fully supported the types of things that were being used in the investigation and the types of investigative strategy.

Virginia for how long.

A From '86 to 2007.

Q Years.

A Years.

Q Decades. Then you were over at the Executive Office of the United States Attorneys and you came and you had an opportunity to lead an agency in ATF. And by your testimony, you have led that agency, you haven't been simply a caretaker, you have done your best to pretend like you weren't the Acting Director, pretend might be the wrong word, but you have acted just like any Director would act.

What is your -- given your experience with the Justice Department, are you disappointed with the Department as a whole, that this has shaken out as it has.

A Well, let me say that I am frustrated and disappointed in the way the whole thing has been handled, unfortunately. Of course, this is unfortunately my first experience with something like this with a congressional investigation.

But I think the way it was handled went side ways and it could have been avoided with perhaps a more thoughtful approach to what was going on instead of such a strident

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?

name, having this type of thing in the newspaper, takes a very personal toll on you and your professional reputation.

A Well, it does, and I'm sorry that after 28 years, that happens. But as I said earlier, many of us in the Director's suite were unhappy with the way OLA was handling it. They are a very experienced group of people up there, Faith Burton has been up there for years, and I know she knows the Hill like the back of her hand and we have relied on her and others at OLA, I have for several years, both at ATF and EOUSA when we had Hill interactions.

But the feedback I was getting from the Department and other places is that she and Senator Grassley did not necessarily see eye-to-eye on a number of things, so she was very strident in her approach to this and with Senator Grassley.

I sat in Matt's office one day when they were writing the letter to Senator Grassley about him being only a ranking member and not the chair of the committee. I sat there across the desk from Matt, as I recall, and said, this is really just poking him in the eye. What's the sense of doing this? Even if you say you can't give it to him, he's going to get it through the back door anyhow, so why are we

aggravating this situation.

So that was one example, as well as just the time it took to respond. I mean, I don't like to be an unresponsive individual, but I knew that through my experience in EOUSA and other places that it takes forever to get a letter back to a Congressman or a Senator.

But we were concerned that the information was not getting to you all. I'm not saying that I would have given you what we call open discovery and let you rummage through the ROIs because we do have a case to protect. And Dennis Burke has said on a number of occasions that the information that has come out so far on the web sites from Congress and the approach of some of the witnesses has negatively impacted their case.

So we would have had to have been careful about that, but we don't need to talk -- in order to let you know what's going on, we don't need to talk about what happened on April 6 at the 7-11 parking lot on South Asia Street in Phoenix. We don't have to get into that type of detail to explain what our role was and what the proposed strategy was, and what we did well and what we did badly, and what we won't do again, and what we have done to fix it. And so there were

ways in which I think it could have been handled differently.

Q And I would submit to you -- I won't speak for Senator Grassley, but those types of letters with attachments that got made public may not have needed to be written.

A I understand that 100 percent and that's part of the collateral damage that I think the OLA and the DAG's office took. At one point, I had a conversation with Billy about this. And we had decided that we should approach Matt to consider with the other people in the Department whether somebody else other than Faith should head this up, since there seemed to be a particular animosity between the Senator and Faith Burton. And we got no response for that.

Mr. Foster. Let me just say for the record, I have not -- I don't know if Senator Grassley knows Faith Burton, just to be clear.

Mr. Melson. Okay. Maybe they don't. Okay, that's fine.

Mr. Castor. Might be a one way --

Mr. Foster. I think it might be a one-way animosity.

Mr. Melson. Maybe it's an animosity towards

and one of many.

Q So the e-mail on the last page from Billy Hoover says, "we are fine with this letter" but that's dated February 2nd, that's one of the early drafts so that is not the draft that he's fine with, correct.

A I suspect it's one of the early drafts just looking at a timeline on here.

Q So the ones where your name is unredacted on the distribution list, can you tell me if you recall who the other people were on the distribution list.

A You mean who are blacked out.

Q There is one that says USAAZ, for example.

A That is Arizona, but it could be anywhere from the U.S. Attorney to the First Assistant or Criminal Division chief.

Q Independent of the document --

A No.

Q -- do you recall if the U.S. Attorney was a participant in drafting the letter.

A Well, I don't have --

Q Or reviewing drafts of the letter.

A I don't have independent recollection of that. I

believe from information that I received that he was among those who reviewed the information. And he -- they shared a lot of the information and got his input on a number of things.

Q On the first page, which is not an e-mail that you are on, but it says, I just reviewed -- somebody and I just reviewed and are okay with it. We did pick up on adding "enforcement." Do you have any idea what that is relating to.

A No, unless I look at the letter and find the word enforcement. But otherwise, I think I was in Mexico or on the way to Mexico on the 2nd. And that's why I was dropped off of the review of this letter after the -- after the fifth draft, and so when it got to the 3rd of February, I don't appear to have been in the loop again.

Q You didn't see the final that went over after that.

A I didn't see the final, no.

Q Before it came to us, I mean.

A No, I don't believe so. Because I think I was in Mexico. And so, I am told that -- that I am not on the list of individuals who reviewed the first signed version or the one that went. Now, in all fairness to everybody, that