Fast and Furious:

Obstruction of Congress by the Department of Justice

JOINT STAFF REPORT
Part III

Prepared for

Hon. Jason Chaffetz, Chairman
U.S. House of Representatives
Committee on Oversight and Government Reform

Hon. Charles E. Grassley, Chairman
U.S. Senate
Committee on the Judiciary

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Table of Contents

I. Executive Summary

This report is the third in a series of joint staff reports, the first of which was released in 2012. Part I, released on July 31, 2012, described the role of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in Operation Fast and Furious. Part II, released on October 29, 2012, described the Department of Justice's (DOJ) role in approving the operation and failing to halt its tactics, both at the local level (U.S. Attorney's Office for the District of Arizona) and at the national level (Department of Justice headquarters in Washington, D.C., so-called "Main Justice"). This report, Part III, describes the Justice Department's response to the congressional investigation of Operation Fast and Furious primarily between the period from February 4, 2011 through the date of the House Oversight Committee subpoena, October 11, 2011. A subsequent report, Part IV, will further address the congressional investigation, but will examine the period after the House subpoena and through the date of contempt, June 28, 2012.

Initially, the principal focus of the investigation was on understanding Operation Fast and Furious itself. Specifically, the Committees sought to determine: (i) whether there was any malfeasance, abuse of authority, failed supervision, or violation of existing law, and (ii) whether the facts uncovered suggested the need for additions to, or modification of, existing federal laws.

In the course of that investigation, nearly six years ago, the Justice Department wrote to Congress and falsely denied that law enforcement officers allowed straw purchasers to buy firearms illegally in the United States and traffic them without being apprehended. On February 4, 2011, Assistant Attorney General Ron Weich signed a letter that claimed, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."[1] Since that false denial, the Committees have investigated why the Department of Justice misled Congress and failed to correct its misrepresentation in a timely manner. Despite the Department's refusal to cooperate, the investigation developed with the cooperation of DOJ whistleblowers, and especially Acting ATF Director Melson's testimony on July 4, 2011. Although Director Melson testified that the Department deliberately sought to obstruct Congress, prior to the lengthy litigation with the Department in court, the Committees had scant access to most of the documents that corroborate his testimony and illustrate the Department's tactics in detail.

On October 11, 2011, the House Committee on Oversight and Government Reform issued a subpoena to Attorney General Eric Holder for documents related to Operation Fast and Furious. In response to a question about the subpoena during a press conference, Holder stated: "We'll look at the subpoenas. I'm sure we will undoubtedly comply with them."[2]

[1] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Feb. 4, 2011), *available at* https://oversight.house.gov/wp-content/uploads/2012/08/February-4-2011-Weich-to-Grassley.pdf.

[2] CNN Newsroom, Transcript, Oct. 11, 2011, *available at* http://edition.cnn.com/TRANSCRIPTS/1110/11/cnr.06.html.

Holder, however, withheld thousands of key documents, and asked the President to assert executive privilege over *all* documents related to the Department's responses to questions from Congress about Fast and Furious. The President obliged and asserted the privilege, but the Department never produced a privilege log. On June 28, 2012, the U.S. House of Representatives voted to hold Holder in contempt of Congress and to authorize a lawsuit to obtain the withheld documents.

Pursuant to that litigation, in August 2014, a federal judge ordered the Justice Department to produce some of the documents to the Oversight Committee and to produce a privilege log for the withheld documents for which the Department was asserting executive privilege. The Department subsequently produced previously withheld documents without claiming any privilege, demonstrating that the Department had dishonestly claimed the executive privilege to hide documents from Congress and obstruct the investigation.

The produced documents showed Holder was significantly more involved in the response to Congress's investigation than had previously been understood. Many key documents are still being withheld, but the body of evidence available at this point is sufficiently robust to conclude that there are fundamental flaws in the Department's approach to responding to congressional requests for documents and information generally, and in the Department's tactics in dealing with questions about the Fast and Furious case in particular.

The new documents showed—for the first time—how Justice Department officials communicated about the congressional investigation, and specifically what they said. The communications occurred between the February 4, 2011 letter from Weich and October 11, 2011, when Chairman Issa issued the subpoena. The documents reveal a highly politicized climate at Main Justice, focused more on spin and obfuscation than getting the facts right or being transparent. These documents, along with those previously released related to the drafting of the February 4, 2011 letter from Weich, enabled the Committees to reconstruct a detailed timeline of the Justice Department's response to a significant and serious congressional investigation. This report presents that timeline, which illustrates how Justice Department officials calibrated the Department's responses to Congress, the media, and the family of slain Border Patrol Agent Brian Terry with the intent of limiting the amount of disclosed information as much as possible.

This report collects and presents key documents and communications generated in response to the congressional investigation of Fast and Furious. The key documents are reproduced in chronological order, with additional background information and other facts included for context. The report also describes four categories of deficiencies in the Justice Department's response to the Fast and Furious scandal. The documents and communications show:

1. **Failure to provide answers for the Terry Family:** Documents show the Department did not take care to make sure the Terry family received information and support. On the contrary, the Department appears to have viewed the Terry family as a public relations nuisance.

2. **Failure to objectively gather the facts:** The Department's internal investigation of the allegations first raised by whistleblowers to Senator Grassley's office was deeply flawed. Documents show senior officials at Main Justice conducted a cursory inquiry and accepted at face value the information they received from the ATF and the U.S. Attorney's Office in Arizona—the very offices responsible for the misconduct.

3. **Lack of respect for congressional oversight:** The documents show senior Justice Department officials—including the Attorney General—had a disdain for the congressional oversight function. The tactics that staff in the Office of Legislative Affairs and elsewhere used to delay and withhold information from Congress are consistent with the tone set by the Department's senior leaders.

4. **The Department's priority on politics and spin came from the Attorney General:** The documents show Attorney General Holder was managing key aspects of the Department's responses to Congress and to media inquiries rather than focusing on managing DOJ's law enforcement components. The documents do not show the Attorney General devising a strategy to minimize the danger to public safety by tracking down more than 2,000 firearms that were lost along the southwest border, nor do they show the Attorney General coordinating assistance for the Terry family. Instead, the documents show that Holder spent a great deal of time considering the political implications of the various milestone events throughout 2011.

To date, the Department has failed to provide internal documents and communications between the October 12, 2011 subpoena and the Justice Department's retraction of its letter to Senator Grassley on December 2, 2011. Questions remain about the Department's response to the congressional investigation. For years, Attorneys General refused to produce key documents that would explain:

- Which DOJ officials were responsible for providing Congress with false information;
- How, when, and why the Department discovered that the February 4, 2011 letter was false;
- Why it took so long for the Department to withdraw the letter; and
- Why the Department continued to obstruct the Committee's investigation in the interim.

Still, the documents that the Justice Department has produced to Congress show the Department's approach to responding to congressional inquiries about its programs.

1. Failure to Provide Answers for the Terry Family

Late on the night of December 14, 2010, a U.S. Border Patrol Tactical Unit (BORTAC) encountered a "rip crew"—a group of armed bandits—in Peck Canyon, Rio Rico, Arizona, about 25 miles north of Nogales. A firefight ensued. Border Patrol Agent Brian Terry was hit by a single bullet. Shortly after midnight, Terry lost consciousness and died en route to the hospital, according to testimony from fellow agents on the scene. He was 40 years old.

Two AK-47 type assault rifles were recovered at the scene of Terry's murder and traced to Operation Fast and Furious. A straw purchaser with known connections to the Mexican drug cartels had purchased the firearms from a shop in Glendale, Arizona on January 16, 2010. ATF had been aware of the purchaser's connection to a straw purchasing ring since it conducted surveillance of him on November 25, 2009. However, pursuant to the Fast and Furious operational strategy, ATF agents took no actions to disrupt the straw purchase.

At the time of Terry's murder, officials at ATF, the U.S. Attorney's Office, and the Justice Department knew about the tactics forming the basis of Operation Fast and Furious. In fact, on December 15, 2010—the day after Terry's murder—ATF connected the firearms found at the murder scene to Operation Fast and Furious. But no one told the Terry family. Josephine Terry, Brian's mother, first heard about Operation Fast and Furious from reporters who started calling for her reaction.[3]

In the subsequent weeks and months, the Terry family searched for answers about Brian's murder. On February 8, 2011, Carolyn Terry, Brian's stepmother, emailed Senator Grassley's office and asked for help. She wrote:

> It's hard to accept that our son was shot and murdered with a gun that was bought in the U.S. We have not had any contact from the Border Patrol or any other agents since returning home on the 22nd of [January]. Our calls are not returned. I truly feel that our son's death is a cover-up and they hope that we will go away. That will not happen. We want to know who allowed the sale of that gun that murdered our son. Any help will [be] appreciated. We are the victims of this case and we want some answers.[4]

Senator Grassley included that email in a letter to Attorney General Holder on February 9, 2011.[5] Documents show Holder agreed with Senator Grassley that the Terry family deserved answers. According to an email from Gary Grindler, Holder's Chief of Staff, to Assistant Attorney General Lisa Monaco, Holder was "particularly concerned" about "the assertion that there has been no contact with the victim's family."[6] Monaco replied: "It sounds like [D]ennis' office has been in contact with the family and that there are multiple factions in the family."[7]

However, officials in the U.S. Attorney's Office seemingly disregarded Holder's message that the Terry family deserved answers. Justice Department officials discussed the Terry family disrespectfully. For example, in a February 23, 2011 email, an official in the U.S. Attorney's Office for the District of Arizona referred to the family as "disgruntled."[8] On March 10, 2011, U.S. Attorney Dennis Burke met in Michigan with various members of the Terry family and provided them with false information.[9] According to the family, not only did Burke deny that

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[3] Fernanda Santos, *A Family Pulled Into the Fray Over an Agent's Death,* N.Y. TIMES, Sept. 20, 2012.
[4] Email from Carolyn Terry to Staff, Office of Sen. Charles E. Grassley (Feb. 8, 2011).
[5] Letter from Hon. Charles E. Grassley, Ranking Mem., S. Comm. on the Judiciary, to Eric Holder, Att'y Gen., U.S. Dep't of Justice (Feb. 9, 2011), at 3.
[6] Email from Gary Grindler to Lisa Monaco (Feb. 10, 2011) [DOJ-FF-06033].
[7] Email from Lisa Monaco to Gary Grindler (Feb. 10, 2011) [DOJ-FF-06033].
[8] Email from Robert Sherwood to Dennis Burke, et al. (Feb. 23, 2011) [DOJ-FF-06847].
[9] *See* email from Robert Heyer to Dennis Burke (Mar. 9, 2011) [DOJ-FF-11502–03].

the firearms recovered at the scene of Agent Terry's murder were connected to Operation Fast and Furious, "he told them that the weapons found at Agent Terry's murder scene were sold out of a Texas shop, not an Arizona shop."[10]

Emails show that Burke and his colleagues deliberately limited the amount of truthful information to share with the Terry family, and made those determinations based on concerns about media coverage. Days after Burke's meeting in Michigan, he and his colleagues in the U.S. Attorney's Office were discussing their strategy for communicating with the Terry family. Assistant U.S. Attorney Jesse Figueroa emailed Burke and several others:

> We are making a mistake by attempting to reason with the stepmother and the brother. Lisa and I have been dealing with them since the start of this case. . . . Stepmom is irrational and I firmly believe she and the brother enjoy being in the limelight. Whatever they are told will not change their irrationality and will just cause them to contact the news. If they learned about our hope for a wire I have no doubt that would have been on the news also. We should deal only with the intelligent side of the family . . . .[11]

In June 2011, the Terry family was still searching for answers. Josephine Terry testified before the House Committee on Oversight and Government Reform on June 15, 2011. She told the Committee that most of what she knew about Brian's murder and Operation Fast and Furious came from the media. She testified: "We haven't really got anything direct—phone calls or nothing from anybody."[12]

More than five years after Brian's murder, the Terry family still wonders about key details of Operation Fast and Furious. Brian's sister Michelle gave a statement to a media outlet on the fifth anniversary of her brother's murder. She stated:

> It has been 5 years since Brian was killed in the line of duty in the desert outside of Rio Rico, AZ. To date, only members of the foreign criminal element responsible for his death have been held accountable while members of the U.S. Government directly responsible for equipping them through Operation Fast and Furious have only been moved or promoted. Our family is dedicated to getting the answers that all of us as Americans deserve, as well as continuing to keep Brian's legacy alive and in the forefront.[13]

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[10] Dep't of Justice, Office of Inspector Gen., A Review of ATF's Operation Fast and Furious and Related Matters (Sep. 2012, re-issued Nov. 2012) [hereinafter DOJ OIG report], at 343 fn. 259.
[11] Email from Jesse Figueroa to Dennis Burke, et al. (Mar. 13, 2011) [DOJ-FF-11776–77].
[12] *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (June 15, 2011) (testimony of Josephine Terry).
[13] Bob Price, *Five Years Later: Family of Slain Border Patrol Agent Brian Terry Still Seeks Justice*, BREITBART, Dec. 15, 2015, *available at* http://www.breitbart.com/texas/2015/12/15/five-years-later-family-of-slain-border-patrol-agent-brian-terry-still-seeks-justice.

The Justice Department's obstruction of Congress's investigation contributed to the Terry family's inability to find answers. The Department withheld information from Congress that would have answered many of the Terry family's key questions about Brian's murder.

2. Failure to Objectively Gather the Facts

On January 27, 2011, Senator Grassley wrote to the Justice Department expressing concern about alleged gunwalking in Operation Fast and Furious and its possible relationship to Terry's murder. The Justice Department responded to Senator Grassley's letter on February 4, 2011, and declared ATF never "knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico" and "makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."[14] The letter did not mention the firearms recovered at the murder scene of Agent Terry.

The statements made by the Justice Department on February 4, 2011, were blatantly false, and nearly ten months later, on December 2, 2011, the Justice Department finally admitted as much and formally withdrew the letter. Documents reveal a flawed internal investigation by the Justice Department, in which the Department allowed people with conflicts of interest to influence the investigation. Senior officials at Main Justice conducted a cursory inquiry, in which they failed to vet information they received from the very individuals whose conduct was at issue. The Justice Department repeatedly denied ATF allowed firearms to walk despite receiving contrary information from reliable sources.

The Office of the Deputy Attorney General (ODAG) coordinated the Justice Department's internal review. Rather than conduct an independent review, however, documents show ODAG deferred to the Criminal Division, the U.S. Attorney's Office for the District of Arizona, and ATF. All three of these entities had a major conflict of interest and had reason to be concerned about the negative portrayal of the operation and their involvement in it.[15]

Documents show that when the Justice Department sent the February 4, 2011 letter to Congress, Main Justice had received information directly conflicting with the statements they made in the letter. For example, a few days after Agent Terry's murder, on December 17, 2010, ODAG received a briefing paper indicating firearms recovered from the scene of the murder were linked to Operation Fast and Furious.[16] Similarly, in early February 2011, the Deputy Director of ATF, William Hoover sent ODAG and DOJ's Office of Legislative Affairs (OLA) a memorandum describing a specific instance where ATF let firearms walk.[17]

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[14] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Feb. 4, 2011), *available at* https://oversight.house.gov/wp-content/uploads/2012/08/February-4-2011-Weich-to-Grassley.pdf.

[15] Transcript, Interview of Kenneth E. Melson by the Staff of the H. Comm. on Oversight & Government Reform and S. Comm. on the Judiciary (July 4, 2011) [hereinafter Melson Transcript], at 36–37.

[16] Email from Brad Smith to Gary Grindler, et al. (Dec. 17, 2010) [HOGR 002875–81]; attachment to email from Brad Smith to Gary Grindler, et al. (Dec. 17, 2010) [HOGR 002875–81].

[17] Email from Mark Chait to William Hoover (Feb. 3, 2011); Telephone interview of William Hoover, Deputy Dir., Bureau of Alcohol, Tobacco, Firearms & Explosives by S. Comm. on the Judiciary minority staff (Feb. 1, 2012).

Despite receiving this information, there is no evidence that ODAG thoroughly reviewed it before sending the February 4, 2011 letter to Congress. Instead, ODAG worked with Deputy Assistant Attorney General Jason Weinstein from the Criminal Division to gather information for the response, and Weinstein encouraged OLA to use strong language denying Senator Grassley's allegations.[18] ODAG and OLA quickly got the letter to Congress out the door denying the whistleblower's allegations.

After the February 4 letter to Congress, the Justice Department continued to deny the operation had deadly consequences despite evidence to the contrary. Early in the review, Matthew Axelrod—who moved from the Criminal Division to ODAG to manage the Department's response to Congress—identified materials indicating firearms may have been allowed to walk during the operation. Further, ATF Acting Director Kenneth Melson highlighted for Axelrod specific sections of the wiretap applications that were concerning and were potential "land mine[s]" for the Criminal Division.[19] Yet, on May 2, 2011, the Justice Department sent Senator Grassley a letter reaffirming its position that "ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns to Mexico."[20]

Officials closest to Operation Fast and Furious thwarted ODAG and OLA's attempts to provide complete and accurate responses to congressional inquiries. The Criminal Division had approved six wiretap applications for Operation Fast and Furious, each of which included details about the tactics that formed the basis of the operation. At least one of the applications "suggested there was probable cause to believe that straw purchasers were taking guns across the border."[21] Upon reviewing the wiretap applications, the DOJ Office of Inspector General (DOJ OIG) concluded: "We found that the affidavits described specific incidents that would suggest to a prosecutor who was focused on the question of investigative tactics that ATF was employing a strategy of not interdicting weapons or arresting known straw purchasers."[22]

Officials in the Criminal Division strongly encouraged ODAG and the Office of Attorney General to publicly assert that the Criminal Division does not approve of an investigation when it approves a wiretap application. Matthew Miller, head of DOJ's Office of Public Affairs, pushed back and told Assistant Attorney General Lanny Breuer, head of DOJ's Criminal Division: "I think people will accuse us of playing with semantics when we say that you did not authorize Fast and Furious, but they find out that CRM did authorize wiretaps. That's why I find the statement problematic and recommended against it, and why I don't want [the Office of Public Affairs] to say it."[23] Ultimately, on May 4, 2011, the Justice Department issued a statement that

[18] *See, e.g.*, email from Jason Weinstein to Faith Burton, et al. (Feb. 2, 2011) [DOJ-FF-23332–33].
[19] Email from Kenneth Melson to Matthew Axelrod (Mar. 31, 2011) [DOJ-FF-02895].
[20] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice, to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (May 2, 2011). The DOJ OIG also concluded that with respect to the May 2 letter, "the Department knew or should have known that the February 4 letter could no longer be defended in its entirety" and "the Department should not have made this statement." DOJ OIG Report at 415.
[21] Melson Transcript at 36-37.
[22] DOJ OIG report at 277.
[23] Email from Matthew Miller to Lanny Breuer (May 3, 2011) [DOJ-FF-28895].

did not mention Breuer and instead stated the operation was approved by the U.S. Attorney's Office for the District of Arizona.[24]

It is difficult to understand why the Justice Department uncritically accepted and repeated the claims of the officials accused of wrongdoing without taking steps to gather and verify facts more objectively. Documents show ODAG recognized the need to uncover the truth. On February 10, 2011, Gary Grindler emailed Deputy Chief of Staff Monty Wilkinson stating, "ODAG needs to be pushing ATF on what took place here."[25] On February 23, 2011, Eric Holder told senior officials at Main Justice: "We need answers on this. Not defensive bs- real answers."[26]

However, the Justice Department failed to uncover the truth or to provide accurate answers to the Terry family and Congress in a timely manner. The DOJ OIG reported that the Justice Department's internal inquiry was flawed. Regarding the February 4, 2011 letter to Senator Grassley, DOJ OIG stated:

> [T]he Department is ultimately responsible for representations that it makes to Congress. . . . [A] poorly executed information gathering and drafting process and questionable judgments by Department officials contributed to the inclusion of inaccurate information in the February 4 letter, and therefore the Department shares responsibility for issuing an inaccurate letter with the component officials they relied upon for information.[27]
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> The allegation in Sen. Grassley's January 27 letter that ATF had sanctioned the sale of hundreds of assault weapons contained the implication that among these weapons were two that may have been used in a firefight that resulted in the death of a federal law enforcement officer. We do not believe that the gravity of this allegation was met with an equally serious effort by the Department to determine whether ATF and the U.S. Attorney's Office had allowed the sale of hundreds of weapons to straw purchasers. This was particularly the case in this instance because the Department knew that hundreds of assault weapons had indeed been sold to straw purchasers during the Fast and Furious investigation and that two of those firearms had in fact been found at the scene of Agent Terry's murder.[28]
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[24] Sharyl Attkisson, *DOJ's Breuer authorized wiretap in ATF Fast and Furious case*, CBS NEWS (May 4, 2011).
[25] Email from Gary Grindler to Monty Wilkinson (Feb. 10, 2011) [HOGR 007063–64].
[26] Email from Eric Holder to Gary Grindler, et al. (Feb. 23, 2011) [DOJ-FF-04271].
[27] DOJ OIG report at 396.
[28] *Id.* at 397; *see also* 405-06.

> [I]n a unique circumstance such as this, where a credible allegation has been made regarding potentially serious misconduct involving those components, deference to officials close to the activity at issue should be tempered by the recognition that those officials are also invested in a positive portrayal of the activity and their alleged involvement in it. As such, officials who should be knowledgeable and forthcoming about the activity may be inclined, perhaps even unintentionally, to shade or ignore unhelpful facts when providing information about their conduct to senior Department officials. This is particularly true where, as here, Congress seeks specific information concerning allegations of improper activities.[29]

The DOJ OIG report highlighted how easy it was to detect the operation's problems once DOJ began really looking:

> When Department and ATF officials began to closely review Operation Fast and Furious in March 2011, it did not take long for them to read the Title III affidavits and ROIs from the case and determine that there were questions that needed to be resolved about Operation Fast and Furious. By this time, based on what they were learning about Operation Fast and Furious and other ATF firearms investigations, senior officials, including Cole and Weich, began having doubts about some of the statements in the February 4 letter. Melson read the Title III affidavits on an airplane flight, and immediately raised concerns. Axelrod read most of the ROIs from the case over a weekend, and immediately asked questions of the U.S. Attorney's Office about potentially problematic investigative steps in Operation Fast and Furious.[30]

Similarly, on August 4, 2011—six full months after DOJ's initial denial—Deputy Assistant Attorney General Weinstein expressed doubts about his initial assessment, emailing officials in the Office of the Attorney General:

> Within the past month or so I've had the opportunity to review, *for the first time*, some of the reports from the case. Some of what I have seen in those reports . . . is in tension with what I was told during that February call with the USAO. . . . [A]t a minimum, based on the additional information I have now seen, I would not have reached the same conclusions as I did in that summary.[31]

3. Lack of Respect for Congressional Oversight

In April 2016—more than five years after the first congressional document request and four years since the first congressional subpoena for Fast and Furious documents—a federal

[29] *Id.* at 398.
[30] *Id.* at 277.
[31] Email from Jason Weinstein to Stuart Goldberg, et al. (Aug. 4, 2011) [DOJ-FF-56090–93] (emphasis added).

judge ordered the Department of Justice to turn over documents to Congress relating to the Fast and Furious case. DOJ had withheld those documents for years by claiming executive privilege. However, in this case where the judiciary compelled disclosure of such documents, the Committees were able to see the uncooperative, often obstructionist tactics employed by the Executive Branch.

Senator Grassley initially wrote to ATF Director Kenneth Melson on January 27, 2011, seeking information about whether ATF allowed firearms to be transported to Mexico. Upon receiving the letter, ATF officials emailed about their initial plan to "hide and punt" on the information requested.[32] DOJ resisted briefing Grassley's staffers.[33] DOJ officials also told ATF that Grassley's "allegations are infuriating."[34] Throughout Senator Grassley and Chairman Darrell Issa's investigation, DOJ withheld documents and information. DOJ refused to provide documents voluntarily in response to a March 16, 2011 document request from Chairman Darrell Issa. Consequently, the Committee issued a subpoena for documents on March 30, 2011. DOJ officials discussed internally how to respond, with one official advising against suggesting that DOJ would "provide a 'substantial' number of documents."[35] He clarified that DOJ would "provide only some and withhold a substantial number."[36]

One DOJ official apparently sought to interfere with Senator Grassley's requests for information merely because he was a member of the minority party in the Senate at the time, writing: "I also am reluctant to empower Grassley's attempt as [ranking minority member] to conduct oversight by organizing a briefing."[37] In another email, a DOJ official wrote: "We are giving Chair Issa *part of* our story on the case (while saying we cannot answer all their questions) . . . ."[38] Meanwhile, in contrast to its refusal to voluntarily cooperate with the Republican minority in the Senate, DOJ invited cooperation with the Democrat minority in the House. For example, DOJ sought information from Ranking Member Cummings' staff about potential contempt-related proceedings.[39]

As the Committee's investigation escalated, DOJ continued to limit the Committees' access to information. In April, one DOJ official wrote in an email, "[W]e disagree with . . . offering Issa and Grassley a meeting with the AG at this relatively early stage of the oversight skirmish."[40] That same official advised, "It seems unwise to telegraph additional concessions at this point."[41] In a May 30, 2011 email, a DOJ official wrote, "I do think it would be a mistake to allow [Senator Grassley staff's] participation for free."[42] A similar mentality went on for

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[32] Email from Gregory Rasnake to Kenneth Melson (Jan. 27, 2011) [HOGR 003673].
[33] Email from Lanny Breuer to Jason Weinstein (Feb. 2, 2011) [HOGR 004057–58].
[34] Email from Jason Weinstein to Gregory Rasnake (Feb. 2, 2011) [HOGR 004253–54].
[35] Email from Paul Colborn to Ron Weich (Apr. 1, 2011) [DOJ-FF-21335–37].
[36] Email from Paul Colborn to Ron Weich (Apr. 1, 2011) [DOJ-FF-21335–37].
[37] Email from Paul Colborn to Matthew Axelrod and Faith Burton (Apr. 5, 2011) [DOJ-FF-22792–96].
[38] Email from Patrick Cunningham to Dennis Burke (Apr. 6, 2011) [DOJ-FF-20707–09] (emphasis added).
[39] Email from Matthew Axelrod to Faith Burton, et al. (Apr. 7, 2011) [DOJ-FF-23225]; email from Robert Weiner to Matthew Axelrod (Apr. 8, 2011) [DOJ-FF-23225].
[40] Email from Ron Weich to James Cole, et al. (Apr. 27, 2011) [DOJ-FF-27557].
[41] Email from Ron Weich to Lisa Monaco and James Cole (Apr. 28, 2011) [DOJ-FF-27700–01].
[42] Email from Ron Weich to Matthew Axelrod (May 30, 2011) [DOJ-FF-34115–17].

months.[43] In a June 6, 2011 email, a DOJ official wrote, "If we have done our job right Grassley is feeling discomfort."[44]

When DOJ staff proposed simple accommodations to assist the Committees' investigative efforts, they were rebuffed. On May 29, 2011, a DOJ official suggested producing some documents based on a Committee staff request, saying, "Seems to me that makes our insistence on a Chairman's letter silly."[45] Another official vetoed the idea, stating, "We accommodate chairmen, not committee staff."[46]

After ATF Acting Director Melson agreed to cooperate with the Committee's investigation, DOJ's position hardened further. On July 6, 2011, a DOJ legislative affairs official wrote, "I'd stay away from a representation that we'll fully cooperate in the future."[47] DOJ officials appeared to presume partisan control over Ranking Member Cummings' staff and complained when it was difficult to coordinate behind the scenes to DOJ's satisfaction. One DOJ official wrote, "[I]t isn't easy to script the minority in this situation."[48] The Attorney General encouraged his subordinates in response to news coverage of Fast and Furious: "Hit back HARD."[49] By October 6, 2011, senior DOJ officials wrote, "Relationships with Hill are irrelevant now[.]"[50]

Meanwhile, as described above, as early as March 2011, DOJ officials learned details making clear the information DOJ had provided Congress was false. Even when Deputy Assistant Attorney General Weinstein reversed his position on August 4, 2011, the Department waited four months before publicly reversing course. Only on December 2, 2011, did DOJ send a letter to Chairman Issa and Senator Grassley withdrawing its February 4, 2011 letter, citing inaccuracies in the letter.[51] For at the four months prior, the Justice Department appears to have deliberately allowed a falsehood to Congress to stand.

4. Attorney General's Priority on Politics and Spin

Documents obtained by Congress demonstrate the Department's failure to adequately supervise field offices or to focus on fixing the problems brought to light in the controversy over Operation Fast and Furious. Instead, senior leaders of the Department, including Attorney General Eric Holder, were disproportionately fixated on countering the congressional investigation, massaging the media, and protecting the Department's public image.

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[43] *See* email from Ron Weich to Faith Burton, et al. (May 29, 2011) [DOJ-FF-34115–17].
[44] Email from Ron Weich to Matthew Axelrod, et al. (June 6, 2011) [DOJ-FF-36195–96].
[45] Email from Matthew Axelrod to Tracy Schmaler, et al. (May 27, 2011) [DOJ-FF-34115–17].
[46] Email from Paul Colborn to Matthew Axelrod, et al. (May 29, 2011) [DOJ-FF-34115–17].
[47] Email from Faith Burton to Tracy Schmaler (July 6, 2011) [DOJ-FF-48038].
[48] Email from Ron Weich to Jason Weinstein (July 25, 2011) [DOJ-FF-53039].
[49] Email from Eric Holder to Tracy Schmaler, et al. (July 26, 2011) [DOJ-FF-01354–01360].
[50] Email from Gary Grindler to Eric Holder (Oct. 6, 2011) [DOJ-FF-61664–66].
[51] Letter from James Cole, Deputy Att'y Gen., Dep't of Justice, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Dec. 2, 2011), at 1, *available at* http://www.grassley.senate.gov/sites/default/files/judiciary/upload/ATF-12-02-11-Cover-letter-from-Cole-on-Document-Drop.pdf.

According to documents obtained by Congress, Holder was most active at times of heightened congressional scrutiny or media attention. Emails sent to the Attorney General regarding ongoing media and congressional matters ranged from the mundane to the strategic stonewalling of Congress. For example, on October 5, 2011, Matthew Miller, from DOJ Public Affairs, spectacularly missed the mark when criticizing others for failing to spin damaging documents to the press before turning them over to Congress. Miller wrote, "The whole point of the review is to find things like this and come up with plans for dealing with them."[52] Holder forwarded that email to his Chief of Staff, Gary Grindler, with the comment, "I agree."[53] For Miller and Holder "the whole point" of gathering information about what happened was not to learn lessons for improvement or hold people accountable for failures, but rather to prepare for how to spin it to the press.

Holder frequently expressed his disdain for congressional scrutiny. For example, on April 15, 2011, the Attorney General wrote to his senior advisers: "Issa and his idiot cronies never gave a damn about this when all that was happening was that thousands of Mexicans were being killed with guns from our country. All they want to do—in reality—is cripple ATF and suck up to the gun lobby. Politics at its worst—maybe the media will get it."[54] Holder was setting the tone from the top-down. Later in the year, Holder reiterated his disdain for Chairman Issa when he emailed his senior advisers in response to a news article citing Chairman Issa, "Why don't we just answer this asshole by stating the facts and go on offense . . . ."[55]

Much of the email correspondence from Holder obtained by Congress concerned preparation for and perception of congressional testimony and media articles. For example, in response to a *Washington Post* article about the joint Issa-Grassley report, Holder instructed his senior advisers to "[h]it back HARD."[56] On an email chain regarding a *Wall Street Journal* article and the subject of the authorization of wiretaps, Holder cautioned his senior advisers: "[E]veryone get ready—this isn't about facts."[57]

The matter was such a high priority for the Attorney General that on July 20, 2011, Chief of Staff Gary Grindler emailed Steven Reich and Tracy Schmaler, "The AG wants both of you to stick around after the 9:15 each day to discuss the status of the ATF matter."[58]

Holder also involved himself in the particulars of ATF Director Ken Melson's resignation. In order to quell any speculation on the pending departure of Melson, the Attorney General emailed his senior advisers to instruct employees to "close the door to [Melson's] office" so no one could see it was empty.[59] Holder was also concerned with the perception of coupling Melson's departure with Dennis Burke's resignation. Other U.S. Attorneys were upset that the two occurred at the same time. Holder explained to his senior advisers that "by doing it

[52] Email from Matthew Miller to Eric Holder (Oct. 5, 2011) [DOJ-FF-61785].
[53] Email from Eric Holder to Gary Grindler (Oct. 6, 2011) [DOJ-FF-61785].
[54] Email from Eric Holder to Gary Grindler, et al. (Apr. 15, 2011) [DOJ-FF-04550–51].
[55] Email from Eric Holder to Tracy Schmaler, et al. (Oct. 5, 2011) [DOJ-FF-61786].
[56] Email from Eric Holder to Tracy Schmaler, et al. (July 26, 2011) [DOJ-FF-01354–01360].
[57] Email from Eric Holder to Mythili Raman, et al. (May 4, 2011) [DOJ-FF-00656–58].
[58] Email from Gary Grindler to Steven Reich and Tracy Schmaler (July 20, 2011) [DOJ-FF-51254].
[59] Email from Eric Holder to Gary Grindler, et al. (Aug. 28, 2011) [DOJ-FF-01272–73].

together we have a one day story where Ken is the lead and Dennis gets 2nd place treatment."[60] Expressing more frustration with other U.S. Attorney reactions to Burke's resignation, Holder emailed his Chief of Staff Gary Grinder later that night: "Some people can kiss my ass."[61]

Holder's focus on public relations rather than on understanding and fixing the problems that led to Fast and Furious impeded congressional oversight and created a hostile climate wherein the Department officials who were negotiating with the Committees were chilled from making routine accommodations. Without such accommodations and compromise, the scandal could only escalate, which eventually led to the Attorney General being held in contempt of Congress.

[INTENTIONALLY BLANK]

[60] Email from Eric Holder to Channing Phillips, et al. (Aug. 30, 2011) [DOJ-FF-57990–91].
[61] Email from Eric Holder to Gary Grindler (Aug. 30, 2011) [DOJ-FF-58633–34].

II. Findings

➢ III. Prologue

FINDING:	**In October 2010, senior Justice Department officials in Washington were aware that ATF had allowed firearms to "walk" in Operation Wide Receiver. At that time, those officials began to formulate a media strategy to minimize public scrutiny of that controversial tactic.**

FINDING:	**Within hours of Agent Terry's death, ATF and the U.S. Attorney's Office in Arizona were aware that firearms found at the murder scene were connected to Operation Fast and Furious. That information was immediately communicated to Justice Department officials in Washington.**

FINDING:	**Justice Department officials from Washington did not attend the press conference to announce indictments related to Fast and Furious because of public relations concerns arising from a desire to avoid tough questions about gunwalking and Agent Terry's murder.**

FINDING:	**Justice Department officials in Arizona were relieved no mention of Border Patrol Agent Brian Terry came up at a press conference announcing indictments from Operation Fast and Furious.**

➢ IV. Initial Response to Congressional Investigation

FINDING:	**At the time ATF received Senator Grassley's letter, ATF and Justice Department officials in Washington knew firearms walked into Mexico, and that there was a connection between those firearms and the Terry murder. Acting Director Melson initially sought permission from the Department of Justice to open up a line of communication with Senator Grassley and get answers for him. However, the Justice Department instead decided to stonewall Senator Grassley, and did not acknowledge the Fast and Furious connection to the Terry murder until August 31, 2011.**

FINDING:	**The Justice Department did not take seriously Senator Grassley's letter or the obligation to uncover the truth about Fast and Furious and the Terry murder, relying almost exclusively on information from the individuals accused of wrongdoing and failing to give credence to even departmental information conflicting with those individuals' accounts.**

FINDING:	**Documents and testimony show as of February 4, 2011, when the Justice Department wrote to Senator Grassley that "ATF makes every effort to interdict" firearms purchased by straws, Department officials in Washington had information that detailed at least one instance in Fast and Furious where ATF allowed firearms to walk.**

➢ V. Post-February 4 Letter

1. Public Silence and Referral to Inspector General

FINDING:	**Only after Senator Grassley made clear he had obtained evidence through whistleblowers did some senior DOJ officials identify a need to independently evaluate ATF's claims.**

FINDING:	**Justice Department officials made a strategic decision to withhold specific answers about Fast and Furious and the Terry murder from Senator Grassley.**

FINDING:	**The Justice Department did not reach out in a meaningful way to the Terry family to provide support and answers. In fact, Department officials who were tasked with that outreach were hostile to the Terry family's pleas for answers, and even mocked the Terry family. The Terry family was only provided information the Justice Department intended to make public.**

FINDING:	**The Justice Department's internal investigation of Fast and Furious was deeply flawed. Despite instructions from Attorney General Holder to find "real answers," Deputy Assistant Attorney General Jason Weinstein still took at face value the information provided by the U.S. Attorney's Office in Arizona—the very officials who were the subjects of the investigation. Only five months after his review would Weinstein read the case reports for the first time and express doubts about his initial conclusions.**

2. Whistleblowers Go Public

FINDING:	**It was not until whistleblowers went public with details about Fast and Furious in early March 2011 that the Justice Department started to seriously consider the implications of the tragic operation. Still, the Department mainly focused on responding to the media and public relations fallout from those revelations.**

FINDING:	**When the possibility arose that the Mexican government would initiate its own investigation, an official in the Criminal Division proposed "disingenuously" relying on the Inspector General's investigation to "shelve the Mexican inquiry."**

FINDING:	**As early as March 2011, Associate Deputy Attorney General Matt Axelrod discovered multiple examples of ATF failing to interdict firearms when probable cause existed to do so. When he raised this issue with the U.S. Attorney's Office for the District of Arizona, they pointed to wiretap affidavits that included these facts, suggesting the Criminal Division at Main Justice sanctioned the strategy by approving the wiretap applications. While others at DOJ swiftly began reviewing the affidavits, no office at DOJ was willing to acknowledge its errors.**

FINDING:	**Instead of reconsidering its position when a second ATF whistleblower went public with details about Fast and Furious, Justice Department officials circulated negative information about the whistleblower.**

➢ VI. Congressional Subpoena for ATF

1. Deadline for Documents

FINDING:	**ATF Acting Director Kenneth Melson notified Main Justice officials that details in the wiretap applications approved by DOJ's Criminal Division undermined the Department's representations to Congress. However, the revelation took a back seat to DOJ's maneuvering to avoid a congressional subpoena and frame public opinion and press coverage regarding the subpoena.**

2. Response to Subpoena

FINDING:	**Paul Colborn, an official in the Justice Department's Office of Legal Counsel, played a significant role in obstructing Congress's oversight. Colborn advised against providing information to Senator Grassley and strategized to withhold information from Chairman Issa.**

3. "It Remains Our Understanding"

FINDING:	**Even as it obtained further evidence of the flawed tactics of Operation Fast and Furious, the Justice Department continued to stonewall Congress's oversight, responding only to the threat of Department nominees being held up by Congress.**

FINDING:	**Despite the Justice Department having clear facts showing it had sent Congress incorrect information on February 4, 2011, the Department continued to view the situation as a mere "oversight skirmish" and doubled down on its denials to Congress.**

4. Wiretap Applications

FINDING:	**Senior Justice Department officials, including the Attorney General, spent a great deal of time and energy to devising a strategy to square their desire to protect Assistant Attorney General Lanny Breuer from scrutiny with the fact that the Fast and Furious wiretaps, which detailed the reckless tactics that were used in the operation, were approved under Breuer's name.**

FINDING:	**Because of Main Justice's approval of the wiretap applications, officials in the U.S. Attorney's Office in Arizona, including U.S. Attorney Dennis Burke, perceived the Department's public statement regarding approval for Fast and Furious as unfair to them.**

➢ VII. Continued Obstruction

1. Blocking Witness Interviews

FINDING:	**Even after the Justice Department acknowledged Congress's oversight had identified legitimate problems with Fast and Furious, throughout the summer of 2011 Justice Department officials continued to look for every opportunity to limit the information provided to Congress. The documents do not show those officials considering the legal risks the Department created for witnesses who were exposed to subpoenas because of the Department's strategy.**

2. Deputy Attorney General Cole's Confirmation

FINDING:	**DOJ officials, including the Attorney General, carefully calculated which documents to release, and to whom. Officials sought to create the appearance that the Department was complying with the various congressional requests in exchange for getting nominations through the Senate, but undercut the efforts of those who worked to actually cooperate with Congress's oversight.**

➢ VII. Road to Subpoena for Justice Department

1. Melson Comes Forward

FINDING:	**After ATF Acting Director Kenneth Melson began cooperating with the congressional investigation, Justice Department officials worked furiously to undermine key elements of Melson's testimony while obtaining a full transcript of his interview.**

2. Full Spin Mode

FINDING:	**In late July 2011, the Attorney General began receiving daily briefings about Fast and Furious, and Justice Department officials worked actively behind the scenes to influence Congress's investigation. For example, Assistant Attorney General for Legislative Affairs Ron Weich attempted to "script" the House Oversight Committee's Democrat staff and urged FBI legislative affairs official Stephen Kelly to provide less information to Senator Grassley's staff but to continue to talk to them "to gather intelligence."**

FINDING:	**When a joint congressional staff report on Operation Fast and Furious highlighted the involvement of the Justice Department's Criminal Division and the U.S. Attorney's Office for the District of Arizona, the Department immediately launched an aggressive effort to counteract the report.**

FINDING:	**Assistant Attorney General Weich continued to obstruct the flow of information to the Committees, chiding FBI legislative affairs official Stephen Kelly for even meeting with congressional staff before "we have our shared facts straight."**

3. Failure to Correct Record

FINDING:	**Even after Assistant Deputy Attorney General Jason Weinstein notified the Attorney General's staff that his initial assessment of Operation Fast and Furious was incorrect, DOJ failed for four more months to correct its misrepresentation to Congress. Instead, Associate Deputy Attorney General Matt Axelrod urged ATF's congressional liaison to provide only "high level" statements, such as that the congressional investigation "has been a distraction."**

FINDING:	**Attorney General Holder was heavily involved in the timing and public relations aspects of the removal of ATF Acting Director Melson, going so far as to order Melson's door be closed so as to avoid the information leaking that Melson had cleaned out his office over the weekend. Holder was especially concerned about avoiding the appearance that Melson was a "fall guy."**

4. Revelation of Further Justice Department Role

FINDING:	**Department officials tried to divert attention towards a different ATF operation during the Bush administration—known as Operation Wide Receiver—to politicize the Fast and Furious investigation.**

FINDING:	**The public revelation that Attorney General Holder received memoranda on Fast and Furious in July 2010 sent senior Justice Department leadership into a frenzy, with Holder ordering top Department officials to push back hard. In response, DOJ undertook an aggressive public relations campaign, recruiting law enforcement surrogates to defend Holder.**

FINDING:	**Senior Justice Department leadership was irate that the Department's internal investigators had not leaked certain documents in a more strategic way to lessen their impact. Thereafter, Holder sought "intel" on the individuals criticizing him, from members of Congress to local sheriffs, even asking about the political affiliations of a group of sheriffs who called on him to resign.**

➢ VII. Postscript: Missing Documents

FINDING:	**The Justice Department has failed to produce documents for the period from October 11, 2011, to June 28, 2012. These documents cover such key events as the Department's decision to send Assistant Attorney General Lanny Breuer to Congress to testify regarding his knowledge of gunwalking, contradicting Attorney General Holder's assertions that knowledge of the tactics "reache[d] into the upper levels of the Justice Department."**

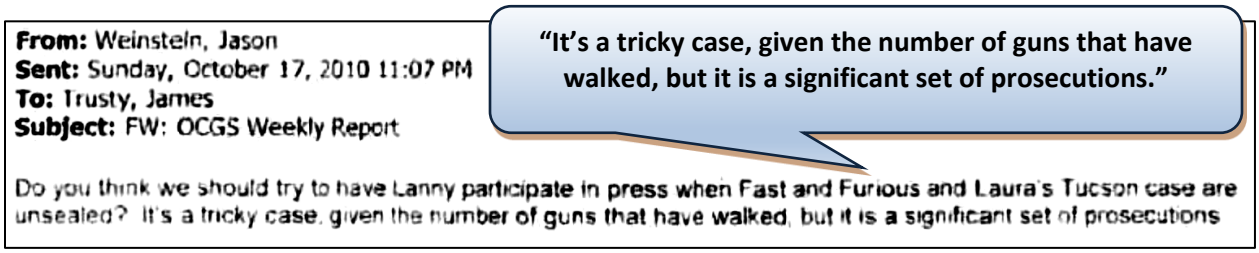
FINDING:	**The Justice Department has gone to great lengths to withhold the documents that show when the Department became aware of the problems with Fast and Furious and why it ultimately decided when it did to correct the falsehood it had provided to Congress. The Department refused to produce to Congress emails such as Weinstein's raising concerns about DOJ's position, eventually allowing Attorney General Holder to be held in contempt as a result.**

III. Prologue

FINDING: **In October 2010, senior Justice Department officials in Washington were aware that ATF had allowed firearms to "walk" in Operation Wide Receiver. At that time, those officials began to formulate a media strategy to minimize public scrutiny of that controversial tactic.**

Part II of the Committees' staff report detailed the work of the Department of Justice (DOJ) Criminal Division and its Gang Unit in prosecuting Operation Wide Receiver. In the fall of 2010, DOJ officials discussed a draft press release announcing indictments related to the operation.

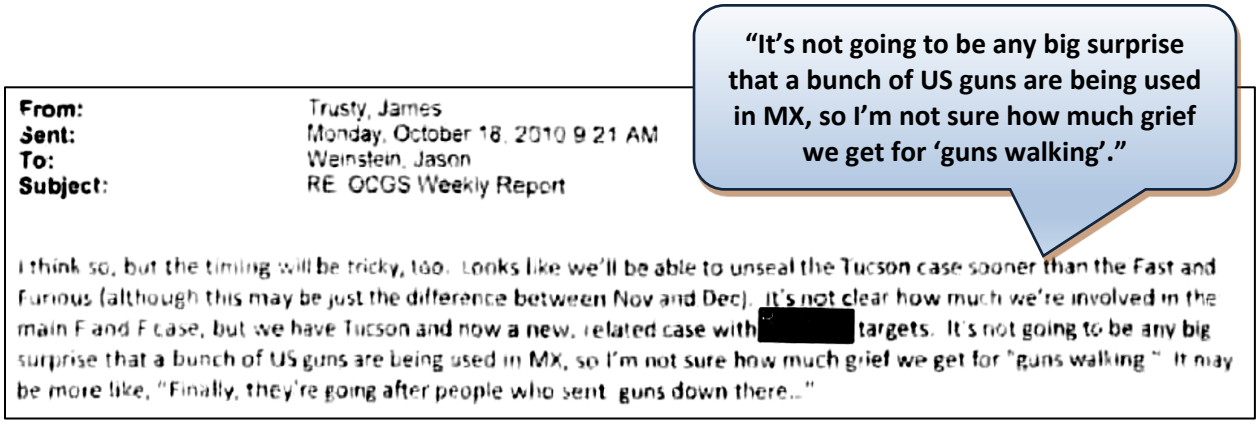
On **Sunday, October 17, 2010**, Deputy Assistant Attorney General Jason Weinstein emailed James Trusty, Acting Chief of the DOJ Criminal Division Gang Unit, about whether Assistant Attorney General Breuer should participate in a press conference relating to Operation Fast and Furious, given the use of gunwalking in Operation Wide Receiver:[62]



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

The next morning, on **Monday, October 18, 2010**, Trusty responded:[63]

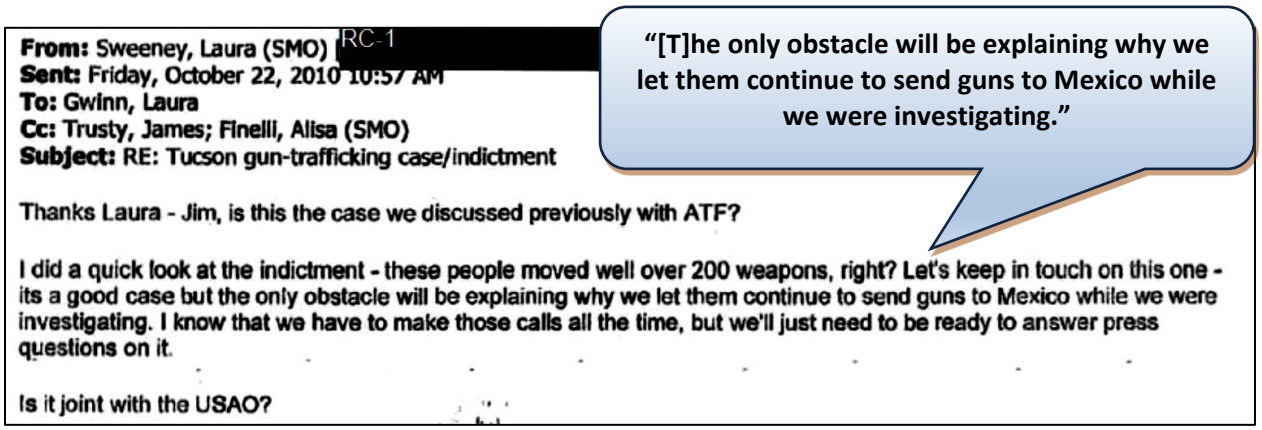


From: Trusty, James
Sent: Monday, October 18, 2010 9:21 AM
To: Weinstein, Jason
Subject: RE: OCGS Weekly Report

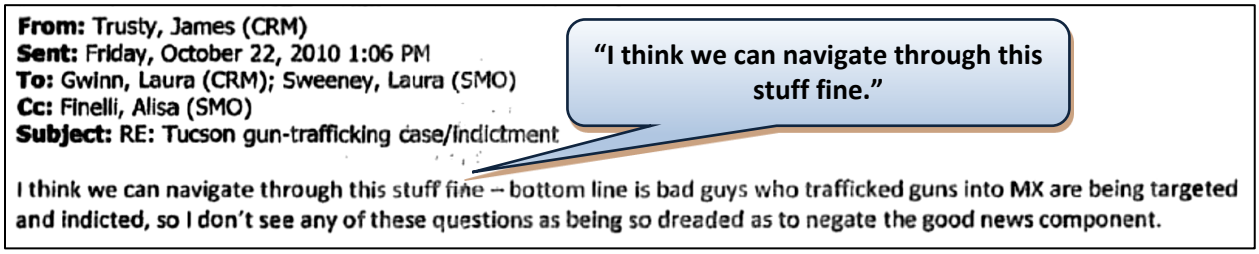
I think so, but the timing will be tricky, too. Looks like we'll be able to unseal the Tucson case sooner than the Fast and Furious (although this may be just the difference between Nov and Dec). It's not clear how much we're involved in the main F and F case, but we have Tucson and now a new, related case with [redacted] 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..."

On **Friday, October 22, 2010**, Laura Sweeney, a public affairs official assigned to the Criminal Division, emailed Criminal Division Gang Unit Assistant U.S. Attorney Laura Gwinn, copying Trusty and Sweeney's assistant Alisa Finelli:[64]

[62] Email from Jason Weinstein to James Trusty (Oct. 17, 2010) [HOGR 002864].
[63] Email from James Trusty to Jason Weinstein (Oct. 18, 2010) [HOGR 002864].
[64] Email from Laura Sweeney to Laura Gwinn (Oct. 22, 2010) [HOGR 003529–32].

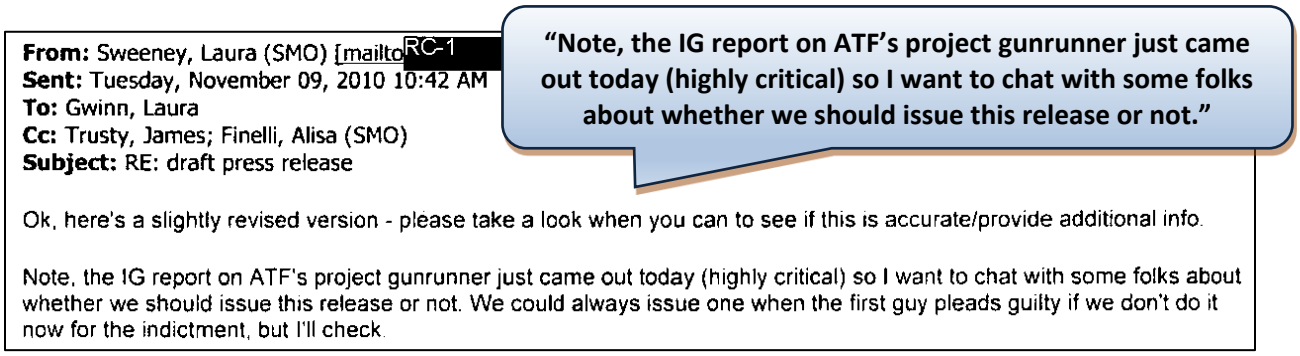


Trusty wrote back:[65]



Sweeney replied: "Agree—just want to start thinking about the questions. Definitely agree it shouldn't deter us from doing press."[66]

On **Tuesday, November 9, 2010**, the DOJ OIG released a report that heavily criticized ATF's Project Gunrunner.[67] Sweeney emailed Gwinn:[68]



Less than an hour later, Sweeney sent out a hyperlink to the report:[69]

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[65] Email from James Trusty to Laura Gwinn (Oct. 22, 2010) [HOGR 003529–32].
[66] Email from Laura Sweeney to Laura Gwinn (Oct. 22, 2010) [HOGR 003529–32].
[67] Dep't of Justice, Office of Inspector Gen., Evaluations & Inspections Div., *Review of ATF's Project Gunrunner* (Nov. 2010) (I-2011-001), *available at* https://oig.justice.gov/reports/ATF/e1101.pdf.
[68] Email from Laura Sweeney to Laura Gwinn (Nov. 9, 2010) [HOGR 003535–36].
[69] Email from Laura Sweeney to Laura Gwinn (Nov. 9, 2010) [HOGR 003535–36].

From: Sweeney, Laura (SMO) [mailto:[redacted]
Sent: Tuesday, November 09, 2010 11:33 AM
To: Gwinn, Laura
Cc: Trusty, James; Finelli, Alisa (SMO)
Subject: RE: draft press release

Here's a link to the report. http://www.justice.gov/oig/reports/ATF/e1101.pdf

How come we included the FFL's name in the indictment if we didn't want it out there? I ask only because we can assume if we issue a release and attach a copy of the indictment, it is going to be reported widely.

We'll need to wait to issue the release until after the IAs, where that info is release, if we include it in the release. The question will be of course - why didn't they stop the other 200+?

"The question will be of course – why didn't they stop the other 200+?"

Gwinn responded:[70]

From: Gwinn, Laura (CRM)
Sent: Tuesday, November 09, 2010 11:41 AM
To: Sweeney, Laura (SMO)
Cc: Trusty, James (CRM); Finelli, Alisa (SMO)
Subject: RE: draft press release

Well, legally, I have to include the name of the company/FFL in the indictment. Didn't know you attached a copy of the indictment to the release.

Do you want me to answer the question of why they didn't stop the other 200? If so, I will need to talk to you as opposed to putting in an e-mail. Altho, I can safely say that part of it has to do with not always knowing when the guns were going across the border, or how, or by whom—especially early on.

"Do you want me to answer the question of why they didn't stop the other 200? If so, I will need to talk to you as opposed to putting in an e-mail."

Sweeney soon elevated the question to Weinstein for a decision:[71]

From: Sweeney, Laura (SMO)
Sent: Tuesday, November 09, 2010 12:14 PM
To: Weinstein, Jason (CRM)
Cc: Trusty, James (CRM); Ohr, Bruce (CRM); Finelli, Alisa (SMO)
Subject: Thoughts on gun trafficking release

All,

Attached is a draft release on straw-purchaser case we discussed a few months ago with ATF I believe. Here's the thing - the IG released a report today that is highly critical of Project Gunrunner, for a number of reasons (here's a link: http://www.justice.gov/oig/reports/ATF/e1101.pdf) While I think this is a very good case, I'm wondering whether it's a good idea to announce a case where 200 guns were smuggled across the border on the same day a reporter came out saying ATF isn't doing a good job at stopping guns from crossing the border.

There are difficulties regardless of the report, but I think the overall importance of showing that we are bringing these types of cases would outweigh them, if it weren't for the IG report. I'm just not sure we'll actually end up getting good press, so much as giving legs and a specific, prescient example for the IG's report, unfair as it may be.

What do you think? (Clearly ATF has a vote too, but I want to have our recommendation first.)

"While I think this is a very good case, I'm wondering whether it's a good idea to announce a case where 200 guns were smuggled across the border on the same day a reporter came out saying ATF isn't doing a good job stopping guns from crossing the border."

"I'm just not sure we'll actually end up getting good press, so much as giving legs and a specific, prescient example for the IG's report"

[70] Email from Laura Gwinn to Laura Sweeney (Nov. 9, 2010) [HOGR 003535–36].
[71] Email from Laura Sweeney to Jason Weinstein (Nov. 9, 2010) [HOGR 003537–38].

After a follow-up email from Sweeney, Weinstein and Trusty both responded:[72]

From: Trusty, James (CRM)
Sent: Tuesday, November 09, 2010 3:35 PM
To: Weinstein, Jason (CRM); Sweeney, Laura (SMO); Sweeney, Laura (SMO)
Cc: Ohr, Bruce (CRM); Finelli, Alisa (SMO)
Subject: RE: Thoughts on gun trafficking release

ditto

From: Weinstein, Jason
Sent: Tuesday, November 09, 2010 2:31 PM
To: Sweeney, Laura (SMO); Sweeney, Laura (SMO)
Cc: Trusty, James; Ohr, Bruce; Finelli, Alisa (SMO)
Subject: RE: Thoughts on gun trafficking release

I lean against it

"I lean against it"

From: Sweeney, Laura (SMO)
Sent: Tuesday, November 09, 2010 2:30 PM
To: Sweeney, Laura (SMO); Weinstein, Jason
Cc: Trusty, James; Ohr, Bruce; Finelli, Alisa (SMO)
Subject: RE: Thoughts on gun trafficking release

Hey guys - any thoughts on this? If we decide to move forward with it, there's a lot of coordination with OIA and ATF that would need to happen. It's a tough call but given the IG report, I'm leaning toward not doing it, but would welcome your thoughts.

"It's a tough call but given the IG report, I'm learning toward not doing it"

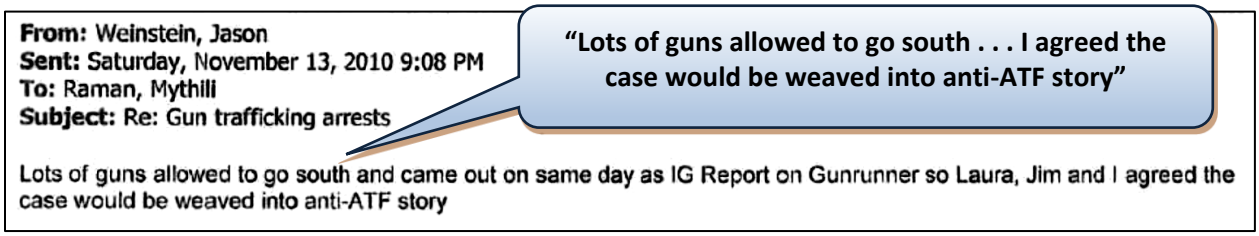
On **Saturday, November 13, 2010**, Criminal Division Chief of Staff Mythili Raman inquired about the issue:[73]

From: Raman, Mythili
To: Weinstein, Jason
Sent: Sat Nov 13 20:38:03 2010
Subject: Gun trafficking arrests

It's been one of those weeks and I'm sure I missed something on this earlier... I see in OCGS report that the Arizona gun trafficking indictment was unsealed last week and arrests made. Why did we decide not to do any press (even a press release) on it?

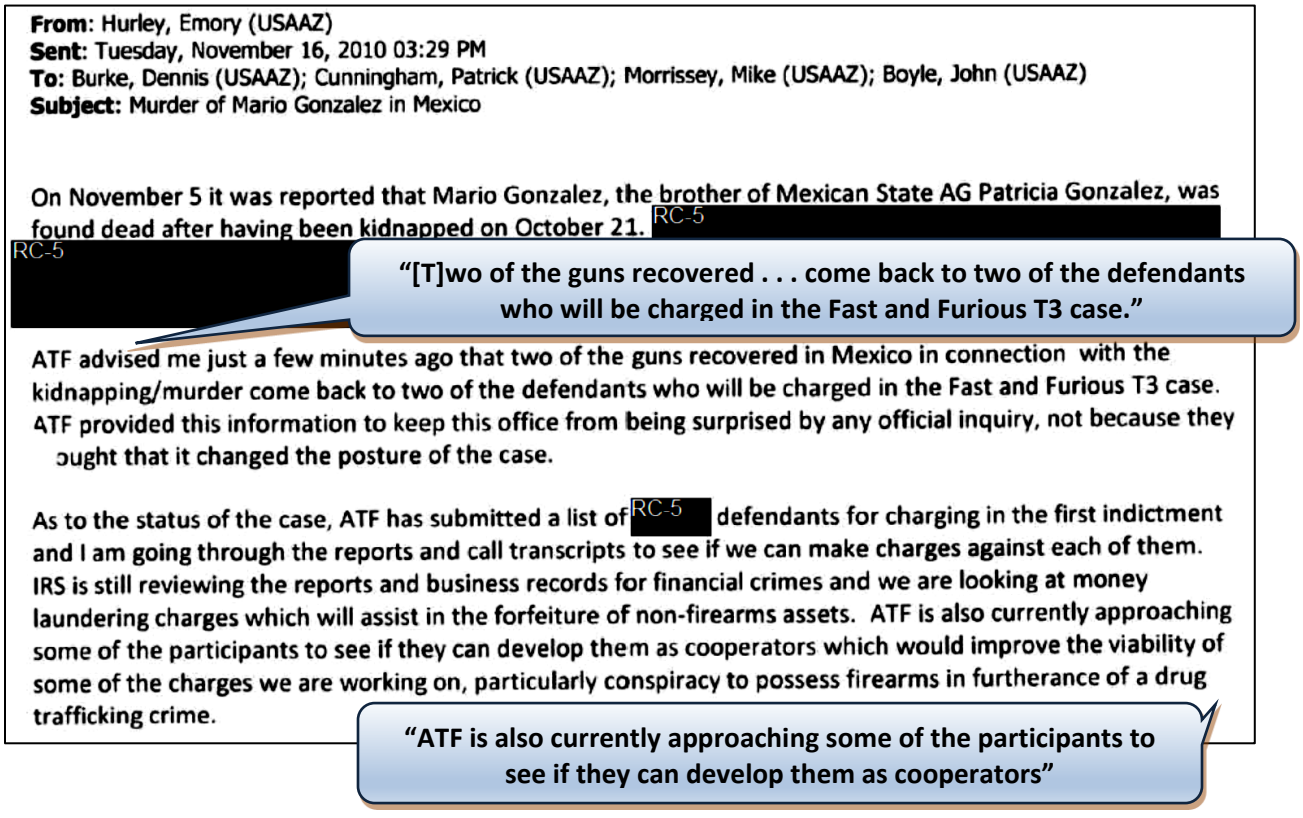
[72] Email from Laura Sweeney to James Trusty and Jason Weinstein (Nov. 9, 2010) [HOGR 003537–38].
[73] Email from Mythili Raman to Jason Weinstein (Nov. 13, 2010) [HOGR 003541].

Weinstein replied:[74]



Ultimately, the Justice Department did not do press on the Operation Wide Receiver indictments.[75]

On **Tuesday, November 16, 2010**, Phoenix Assistant U.S. Attorney Emory Hurley informed U.S. Attorney for the District of Arizona Dennis Burke and the other leadership of the Arizona U.S. Attorney's Office that Operation Fast and Furious firearms had been recovered in connection with the kidnapping and murder of the brother of a Mexican State Attorney General:[76]



[74] Email from Jason Weinstein to Mythili Raman (Nov. 13, 2010) [HOGR 003541].
[75] Although the indictments in the case were unsealed on January 25, 2011, the same day as the indictments in Operation Fast and Furious, the Criminal Division's awareness of the case's tactics would not become public knowledge until almost October 31, 2011, when Assistant Attorney General Lanny Breuer issued a public statement apologizing for his failure to alert others in DOJ to the ATF gunwalking in Operation Wide Receiver.
[76] Email from Emory Hurley to Dennis Burke, et al. (Nov. 16, 2010) [HOGR 003059].

On **Wednesday, November 24, 2010**, Burke described his views on the case to the U.S. Attorney for the Western District of Washington:[77]

From: Burke, Dennis (USAAZ)
Sent: Wednesday, November 24, 2010 3:15 PM
To: Durkan, Jenny A. (USAWAW)
Subject: RE: Gun SHows

Would love to chat.

We are about to indict around [redacted] clowns for a Gun Trafficking to Mexico operation. It's a T-III investigation that we have been working w/ ATF for a long time and IRS is all over some money laundering charges. It's going to bring a lot of attention to straw purchasing of assault weapons. Some of the weapons bought by these clowns in Arizona have been directly traced to murders of elected officials in Mexico by the Cartels, so Katie-bar-the-door when we unveil this baby.

"Some of the weapons . . . have been directly traced to murders of elected officials in Mexico by the Cartels, so Katie-bar-the door when we unveil this baby."

On **Tuesday, December 14, 2010**, Attorney General Holder's Deputy Chief of Staff Monty Wilkinson emailed Burke. There was no text in the message, but the subject of the email asked if Burke was available for a call:[78]

From: Wilkinson, Monty (OAG) (SMO)
Sent: Tuesday, December 14, 2010 11:18 AM
To: Burke, Dennis (USAAZ)
ject: You available for a call today?

An hour later, Burke sent an email to his staff with the subject "Fast and Furious":[79]

----- 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.

As the U.S. Attorney's Office in Arizona and Justice Department officials were weighing whether to publicize prosecutions related to Operation Fast and Furious, one of the guns that traced back to the operation was tied to the murder of U.S. Border Patrol Agent Brian Terry. Terry was an agent with the U.S. Border Patrol's Tactical Unit, known as BORTAC.

[77] Email from Dennis Burke to Jenny Durkan (Nov. 24, 2010) [HOGR 003068].
[78] Email from Monty Wilkinson to Dennis Burke (Dec. 14, 2010) [HOGR 003074].
[79] Email from Dennis Burke to Patrick Cunningham (Dec. 14, 2010) [HOGR 003070].

Late on the night of December 14, 2010, Terry's BORTAC team encountered a "rip crew"—a group of armed bandits—in Peck Canyon, Rio Rico, Arizona, about 25 miles north of Nogales. According to a Federal Bureau of Investigation (FBI) affidavit:[80]

> On 12/14/2010, at approximately 11:15 pm, four United States Border Patrol Agents attempted to apprehend at least five suspected illegal aliens in Peck Canyon, which is located in Rio Rico, Arizona. One of the Border Patrol Agents, utilizing thermal binoculars, observed at least two of the suspected aliens carrying rifles. When the group of suspected aliens was near the Border Patrol Agents' location, at least one Border Patrol Agent identified himself as police and ordered the suspected aliens to drop their weapons. When the suspected aliens did not drop their weapons, two Border Patrol Agents deployed "less than lethal" bean bags at the suspected aliens. At this time, at least one of the suspected aliens fired at the Border Patrol Agents. Two Border Patrol Agents returned fire, one with his long gun, and one with his pistol.

In the ensuing firefight, one bullet hit Agent Terry.

Early on the morning of **Wednesday, December 15, 2010**, Burke emailed Wilkinson:[81]

[80] Affidavit of Scott Hunter, Special Agent, Fed. Bureau of Investigation, Dec. 29, 2010, Case No. 10-10251M.
[81] Email from Dennis Burke to Monty Wilkinson (Dec. 15, 2010) [HOGR 003073].

----- Original Message -----
From: Burke, Dennis (USAAZ)
Sent: Wednesday, December 15, 2010 02:14 AM
To: Wilkinson, Monty (OAG) (SMO)
Subject: Re: You available for a call today?

Sorry for going dark on you. I was at Navajo and Hopi all day and coverage was weak at best. I did get your vm. We have a major gun trafficking case connected to Mexico we are taking down in January. 20+ defendants. Will call today to explain in detail.

Minutes later, Burke received an email notifying him of the incident:[82]

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.

One hour later, Burke received an update:[83]

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.

[INTENTIONALLY BLANK]

[82] Email from Carl Jaigobind to [distribution list] (Dec. 15, 2010) [HOGR 005872].
[83] Email from Marco Lopez to Dennis Burke (Dec. 15, 2010) [HOGR 005872].

Later that morning, Burke forwarded the emails to Wilkinson, who responded:[84]

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.

Later that morning, officials in the U.S. Attorney's Office for the District of Arizona circulated the message sent by Border Patrol Tucson Sector Deputy Chief Richard Barlow to all Tucson Sector employees:[85]

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.

[84] Email from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOGR 005872].
[85] Email from John Evans to Rachel Hernandez, et al. (Dec. 15, 2010) [HOGR 005888].

Burke forwarded the update to Wilkinson, who replied:[86]

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.

That evening, Deputy Chief Barlow announced Agent Terry's death at a press conference in Tucson, Arizona.

Border Patrol Deputy Chief of the Tucson Sector Richard Barlow speaks during a press conference, Wednesday, December 15, 2010 in Tucson, Arizona, about Border Patrol Agent Brian A. Terry (photo by Dean Knuth, Associated Press)

FINDING: **Within hours of Agent Terry's death, ATF and the U.S. Attorney's Office in Arizona were aware that firearms found at the murder scene were connected to Operation Fast and Furious. That information was immediately communicated to Justice Department officials in Washington.**

After attending the press conference, the Assistant U.S. Attorney in charge of the Tucson field office emailed Burke:[87]

[86] Email from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOGR 005888].
[87] Email from Shelley Clemens to Dennis Burke and Ann Scheel (Dec. 15, 2010) [HOGR 003076–77].

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 [redacted] Based on that, we chose not to make a formal statement RC-5 [redacted] RC-5 [redacted] They referenced that John and I were there for the USAO and to support their fice.

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

"Nate Grey was here and advised that the 2 guns are tied to an on-going Phoenix ATF inv."

Two hours later, Burke and First Assistant U.S. Attorney Ann Scheel responded:[88]

'om: Scheel, Ann (USAAZ)
nt: Wednesday, December 15, 2010 7:24 PM
,o: 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

"The guns tie back to Emory's Fast and Furious case."

Thanks. I just talked to Bill Newell about it. The guns tie back to Emory's Fast and Furious case.

When Burke forwarded Clemens' email to Wilkinson and alerted him to the connection, Wilkinson responded:[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[ed] BP officer connect back to the investigation we were going to talk about . . ."

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.

[88] Email from Dennis Burke to Shelley Clemens and Ann Scheel (Dec. 15, 2010) [HOGR 003076–77]; email from Ann Scheel to Dennis Burke and Shelley Clemens (Dec. 15, 2010) [HOGR 003076–77].
[89] Email from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOGR 005917].

At 11:41 p.m. that night, ATF Special Agent David Voth, the Group Supervisor over Operation Fast and Furious, emailed his supervisors, including Bill Newell, the ATF Special Agent in Charge of the ATF Phoenix Field Division:[90]

From: Voth, David J.
To: Newell, William D.; Needles, James R.; Gillett, George T. Jr.
Cc: Zicha, Marjorie L.; Serrano, Ricardo
Sent: Wed Dec 15 23:41:30 2010
Subject: Avila in custody

We (ATF) have Jaime Avila in our custody. We are coordinating with the USAO to charge him in the morning via Complaint. We are holding him overnight in custody.

We are charging Avila with a standalone June 2010 firearms purchase where he used a bad (old) address on the 4473. [924(a)(1)(A) – False records required to be kept by dealer.] This way we do not divulge our current case (Fast & Furious) or the Border Patrol shooting case.

Thanks,

David Voth
Group Supervisor
Phoenix Group VII

"This way we do not divulge our current case (Fast & Furious) or the Border Patrol shooting case."

The next morning, on **Thursday, December 16, 2010,** Voth again emailed his supervisors:[91]

From: Voth, David J.
Sent: Thursday, December 16, 2010 10:11 AM
To: Newell, William D.; Gillett, George T. Jr.
Subject: change in charging

Gentlemen,

After speaking with Emory he saw the wisdom in not charging the AK-47 rifles in question so as to not complicate the FBI's investigation. As such we are back to our original plan to charge the June guns purchased by Jaime AVILA.

David Voth
Group Supervisor
Phoenix Group VII
602-[redacted]

"Emory . . . saw the wisdom in not charging the AK-47 rifles in question so as to not complicate the FBI's investigation."

That same day, ATF Deputy Director William Hoover emailed Brad Smith and Mark Michalic, officials in the Office of the Deputy Attorney General, to send them information about Operation Fast and Furious and about the firearms recovered at the scene of Terry's murder:[92]

[90] Email from David Voth to William Newell, et al. (Dec. 15, 2010) [HOGR 002017].
[91] Email from David Voth to William Newell and George Gillett (Dec. 16, 2010) [DOJ-FF-57028].
[92] Email from William Hoover to Brad Smith and Mark Michalic (Dec. 16, 2010) [HOGR 002871–72].

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.

"The second . . . gives you the information re the firearms recovered at the scene of the homicide of the CBP Officer."

The next morning, on **Friday, December 17, 2010**, Smith forwarded six pages of information he had received from Hoover to Acting Deputy Attorney General Gary Grindler:[93]

From: Smith, Brad (ODAG) <[RC-1]>
Sent: Friday, December 17, 2010 11:58 AM
To: Grindler, Gary (ODAG) <[RC-1]>; Monaco, Lisa (ODAG) <[RC-1]>; Luck, Stacey (ODAG) <[RC-1]>
Cc: Michalic, Mark (ODAG) <[RC-1]>; Johnston, Deborah A. (ODAG) <[RC-1]>
Subject: ATF Update
Attach: [RC-2]; 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.

* * *

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 liked 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.

"Two of the weapons recovered from the scene have been linked to . . . 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."

[93] Email from Brad Smith to Gary Grindler, et al. (Dec. 17, 2010) [HOGR 002875–81].

The attached briefing paper read, in part:[94]

"[F]irearms were in ATF's . . . Suspect Gun Database due to their association to . . . 'Fast and Furious'"

"Avila . . . is one of [] straw firearms purchasers identified . . . and recommended . . . for prosecution"

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] in [redacted] Arizona. Jaime Avila Jr. is one of [redacted] 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.

On **Tuesday, December 21, 2010**, Gwinn emailed Sweeney:[95]

From: Gwinn, Laura
Sent: Tuesday, December 21, 2010 5:07 PM
To: Sweeney, Laura (SMO)
Cc: Jaffe, David; Trusty, James
Subject: Phoenix gun trafficking press release

"Phx USAO is going to be doing a HUGE gun trafficking indictment . . . . Supposedly the AG will be coming out . . . ."

Laura,

I got my indictment today, however, it is to be sealed. Phx USAO is going to be doing a HUGE gun trafficking indictment, perhaps near end of Jan, and they wanted to combine any press on mine with that one, since they are tangentially related. Supposedly the AG will be coming out for that big indictment. I will still send you the basics ala the Celaya template you sent back to me. But there will need to be coordination with the press office here in Phx, or however you do it

However, later that night Burke emailed Wilkinson:[96]

[94] Attachment to email from Brad Smith to Gary Grindler, et al. (Dec. 17, 2010) [HOGR 002875–81].
[95] Email from Laura Gwinn to Laura Sweeney (Dec. 21, 2011) [HOGR 003081].
[96] Email from Dennis Burke to Monty Wilkinson (Dec. 21, 2010) [HOGR 006614].

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 would not recommend the AG announce this case. I can explain in detail at your convenience. Thx.

Wilkinson responded, "Ok . . . . I'll call tomorrow."[97]

On **Wednesday, December 22, 2010,** Agent Terry's funeral service was held in Detroit, Michigan.

Law-enforcement officers carry the casket of Border Patrol officer and former U.S. Marine Brian Terry out of Greater Grace Temple in northwest Detroit after his funeral service (photo by John T. Greilick, Associated Press)

That same day, allegations regarding ATF gunwalking appeared on Internet message boards primarily used by ATF agents.

FINDING:	**Justice Department officials from Washington did not attend the press conference to announce indictments related to Fast and Furious because of public relations concerns arising from a desire to avoid tough questions about gunwalking and Agent Terry's murder.**

On **Wednesday, January 5, 2011**, Patrick Cunningham, the Arizona U.S. Attorney's Office Criminal Division Chief, emailed regarding whether James Cole, newly recess appointed as Deputy Attorney General, would attend:[98]

[97] Email from Monty Wilkinson to Dennis Burke (Dec. 21, 2010) [HOGR 006614].
[98] Email from Patrick Cunningham to Dennis Burke, et al. (Jan. 5, 2011) [HOGR 003087].

From: Cunningham, Patrick (USAAZ)
Sent: Wednesday, January 05, 2011 2:36 PM
To: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Tarango, Manuel (USAAZ)
Cc: Morrissey, Mike (USAAZ)
Subject: ATF and Fast and Furious

Friends: Mr Melson has advised Bill he still wants to attend our F and F rollout.

Bill is looking for information on our side of the press event that he can share with Melson. Have we heard from the New DAG that he is not attending?
Can we arm Bill with the answer?

"Have we heard from the New DAG that he is not attending?"

That day, ATF Chief Counsel Steve Rubenstein emailed ATF Acting Director Ken Melson, advising against disclosing the connection between the Terry murder and Operation Fast and Furious:[99]

From: Rubenstein, Steve R.
Sent: Wednesday, January 05, 2011 2:54 PM
To: Melson, Kenneth E.
Cc: Orlow, Barry S.
Subject: Potential unauthorized discosure of official informati0n

"'[W]ord is' that Phoenix FD . . . '[a]llegedly approved more than 500 AR-15 type rifles . . . to be 'walked' into Mexico.'"

This is in response to your request regarding information posted on "Clean Up ATF." Specifically, on December 22, 2010, "1desertrat" stated that "word is" that Phoenix FD ASAC George Gillet "[a[llegedly approved more than 500 AR-15 type rifles from Phoenix and Tucson cases to be 'walked' into Mexico." The post further states that "[o]ne of those rifles is rumored to have been linked to the recent killing of a Border Patrol Officer in Nogales, AZ."

"'[O]ne of those . . . is rumored to [be] linked to the recent killing of a Border Patrol Officer'"

The disclosure of this information has a potential deleterious effect on ATF's undercover operations. In that regard, suspects may alter their behavior if they know that law enforcement is allowing certain firearms to 'walk" into Mexico. In addition, public knowledge of this type of operation potentially places informants and undercover agents in jeopardy. Finally, public disclosure of such information could ATF's working relationship with Mexico.

"The disclosure of this information has a potential deleterious effect on ATF's undercover operations."

Melson responded:[100]

From: Melson, Kenneth E.
Sent: Wednesday, January 05, 2011 5:10 PM
To: Rubenstein, Steve R.
Subject: RE: Potential unauthorized discosure of official informati0n

Thanks, Steve. I am going to forward this to IA. Ken.

[INTENTIONALLY BLANK]

[99] Email from Steve Rubenstein to Kenneth Melson (Jan. 5, 2010) [DOJ-FF-44185].
[100] Email from Kenneth Melson to Steve Rubenstein (Jan. 5, 2010) [DOJ-FF-44185].

On **Tuesday, January 11, 2011**, just three days after U.S. Representative Gabrielle Giffords and others were tragically shot in Tucson, SAC Newell emailed the Chief of ATF's Public Affairs Division at headquarters, Scot Thomasson:[101]

> **From**: Newell, William D.
> **To**: Thomasson, Scot L.
> **Sent**: Tue Jan 11 09:37:37 2011
> **Subject**: Re: Todays clips
>
> Thanks, have used it several times before because I stand by it 100%. Just heard Melson's coming for the Fast/Furious press conf on the 25th. I hope he realizes how politically charged Arizona is right now especially regarding gun issues, was that way even before the Tucson shooting.

By the next day, **Wednesday, January 12, 2011**, ATF's Public Affairs Division had prepared internal talking points that specifically anticipated the issue of gunwalking would come up.[102] The sample questions in the internal document included:

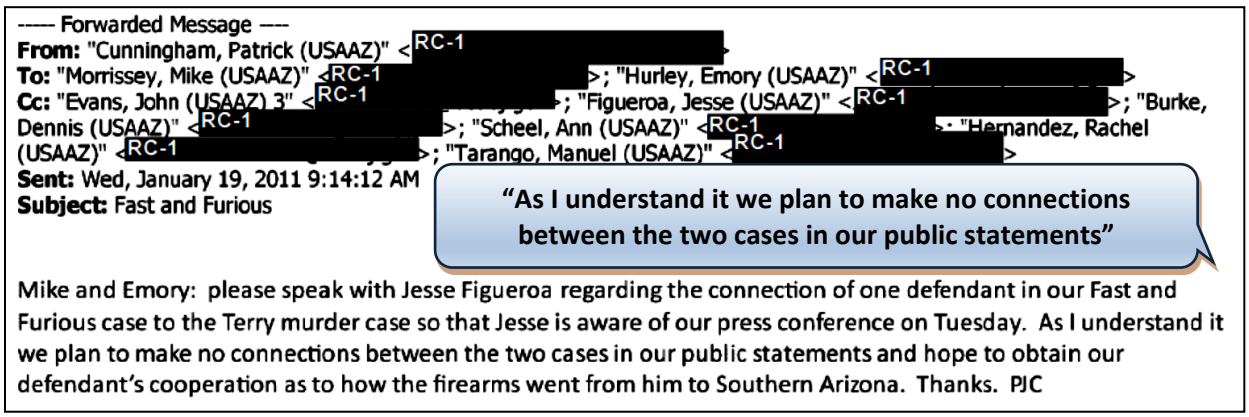
> Some media reports, referencing an anonymous ATF official, claim that ATF knowingly 'walked' about 1,900 firearms across the U.S.-Mexico border as part of this operation. What can you tell me about that?
>
> * * *
>
> We understand that a firearm bought in connection with this ATF investigation was used to murder Border Patrol Agent Brian A. Terry. Can you please comment on this information?[103]

On **Wednesday, January 19, 2011,** ATF and the U.S. Attorney's Office indicted twenty defendants, charging them mainly with straw buying for the Mexican drug cartels.[104] The indictment was to be unsealed and announced at a press conference the following week. The indictment was named after Jaime Avila, the straw purchaser who had purchased the two firearms found at the Terry murder scene on January 16, 2010.

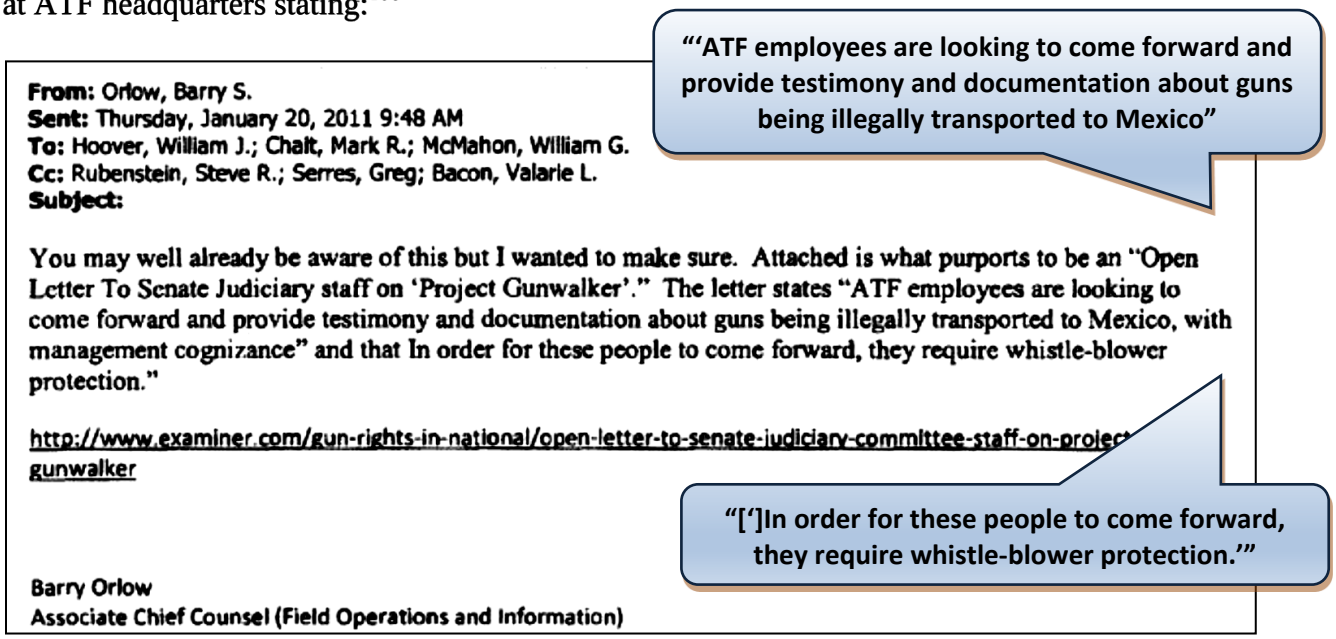
FINDING:	**Justice Department officials in Arizona were relieved no mention of Border Patrol Agent Brian Terry came up at a press conference announcing indictments from Operation Fast and Furious.**

[101] Email from William Newell to Scot Thomasson, ATF (Jan. 11, 2011) [HOGR 005479].
[102] ATF Official Statements, "Operation: Fast and Furious and Corresponding Investigations" (Jan. 12, 2011) [HOGR 005543–46].
[103] *Id.* at 2.
[104] Press Release, Dennis K. Burke, Office of the United States Attorney for the District of Arizona, Grand Juries Indict 34 Suspects in Drug and Firearms Trafficking Organization (Jan. 25, 2011).

As the press conference approached, Arizona U.S. Attorney's Office officials discussed whether to publicly disclose a connection between the Terry murder and Operation Fast and Furious:[105]



On **Thursday, January 20, 2011**, senior ATF leaders received an email from an attorney at ATF headquarters stating:[106]



[105] Email from Patrick Cunningham to Mike Morrissey, et al. (Jan. 19, 2011) [HOGR 006016]. Attorney General Holder was asked at a May 3, 2011 hearing before the House Judiciary Committee about the connection. He responded: "I don't know that to be factually accurate. I don't know. I've heard that." *U.S. Dep't of Justice: Hearing before the H. Comm. on the Judiciary*, 112th Cong. 46 (May 3, 2011) (No. 112-127), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg66154/pdf/CHRG-112hhrg66154.pdf.. The connection would not be publicly confirmed by DOJ until August 31, 2011, months after Senator Grassley's January 27, 2011 letter to ATF asking about the connection. Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Aug. 31, 2011).

[106] Email from Barry Orlow to William Hoover, et al. (Jan. 20, 2011) [HOGR 001583].

On **Friday, January 21, 2011**, Criminal Division Assistant U.S. Attorney James Trusty emailed:[107]

"[H]e is very much in agreement that Laura's case should be considered part of the F&F story. They are related."

From: Trusty, James
Sent: Friday, January 21, 2011 12:13 PM
To: Sweeney, Laura (OPA) (JMD); 'Tarango, Manuel (USAAZ)'
Cc: 'Smith, Jessica A.'; 'Finelli, Alisa (SMO)'; Gwinn, Laura
Subject: RE: F and F and sealed indictment Flores, et al

Pat Cunningham and I talked this morning – he is very much in agreement that Laura' s case should be considered part of the F&F story. They are related.

That same day, a memorial service to honor Agent Brian Terry was held in Tucson, Arizona.

Customs and Border Protection Commissioner Alan Bersin speaks at the memorial service for Agent Brian Terry (photo by Rick McCallum, Green Valley News)

[INTENTIONALLY BLANK]

[107] Email from James Trusty to Laura Sweeney, et al. (Jan. 21, 2011) [HOGR 003583].

Border Patrol agents carry an altar with boots, firearm and helmet representing fallen agent Brian Terry at Kino Stadium on Friday after memorial service (photo by Jill Torrance, Associated Press)

On **Monday, January 24, 2011**, the day before the press conference in Phoenix announcing the unsealing of the indictments in Operation Fast and Furious and Operation Wide Receiver, Weinstein emailed:[108]

From: Weinstein, Jason
Sent: Monday, January 24, 2011 10:36 AM
To: Trusty, James; Jaffe, David
Subject: AZ gun questions

Do I recall correctly that the case we're unsealing along with Fast & Furious is 8 defendants? Is this the one we made with the [redacted] FFL, where we inherited it after a lot of guns had been permitted to walk, or was this a proactive case?

As for F&F, do you know how many defs they're indicting? Are they confirmed that they're doing a press conference? Did we decide to send someone, possibly in connection with trip to Vegas for the trial? If not, will we do a press release?

OK, that's all. Thanks.

"Is this the one . . . where we inherited it after a lot of guns had been permitted to walk . . . ?"

[108] Email from Jason Weinstein to James Trusty and David Jaffe (Jan. 24, 2011) [HOGR 003585–86]. Weinstein would later claim that because "Wide Receiver was an old case [,] . . . I simply was not thinking about Wide Receiver as I assisted with the February 4th letter . . . ." Transcript, Interview of Jason Weinstein by the Staff of the H. Comm. on Oversight & Government Reform and S. Comm. on the Judiciary (Jan. 10, 2012), at 12. According to the DOJ OIG report, he told them: "I remembered, I wasn't an amnesiac, I remembered that there was a case called Wide Receiver in which guns walked which I had reacted very strongly earlier and brought to ATF's attention. But I was so focused on the Fast and Furious allegations and the insistence by the people that did the case that they weren't, this wasn't a gun walking case and I had viewed Wide Receiver as just ancient and aberrant. I just didn't think about Wide Receiver as we were responding to this." DOJ OIG report at 348. The OIG concluded: "We were not persuaded by Weinstein's assertion that Operation Wide Receiver was properly viewed as an 'aberration' that had no relevance to the allegations." DOJ OIG report at 412, 466.

Trusty replied:[109]

"We will be a part of the press release because of the 8 defendant case being connected to F&F"

From: Trusty, James
To: Weinstein, Jason; Jaffe, David
Sent: Mon Jan 24 10:45:39 2011
Subject: RE: AZ gun questions

Yes it's the 8 defendants. This is not the one with the original [redacted] FFL. This case was fairly reactive, and the good news is there is no information suggesting that law enforcement let guns walk (it's conceivable that the bad guys did more, but it's not like it was on our watch). F&F, last I knew, was about 15 defendants. Sweeney may have more updated info. They are definitely doing a press conference tomorrow. We will be a part of the press release because of the 8 defendant case being connected to F&F, and we anticipate that Laura Gwinn will be a part of the F&F prosecution, although she's been more of a consult up til this point. I talked with their 1st Assistant late last week and he was already assuming she'd be at trial table for F&F.

We decided not to scramble out to this press conference. If you feel strongly, let me know and I'll hop a plane tonight. Jaffe is hitting Pittsburgh tomorrow through Thursday for more proffers, plea negotiations, and guilty pleas.

In response, Weinstein emailed:[110]

"Everyone here agrees we should sit out this press conf"

From: Weinstein, Jason
Sent: Monday, January 24, 2011 11:24 AM
To: Trusty, James
Subject: RE: AZ gun questions

Everyone here agrees we should sit out this press conf

[INTENTIONALLY BLANK]

[109] Email from James Trusty to Jason Weinstein and David Jaffe (Jan. 24, 2011) [HOGR 003585–86].
[110] Email from Jason Weinstein to James Trusty (Jan. 24, 2011) [HOGR 003585–86].

Bill Newell, Special Agent in Charge of ATF's Phoenix Field Division, speaks at the January 25, 2011 press conference, with U.S. Attorney Dennis Burke behind him (right of Newell in photo) (photo by Matt York, Associated Press)

On **Tuesday, January 25, 2011**, the press conference took place in Phoenix. When Special Agent in Charge Newell was asked whether agents purposely allowed firearms to enter Mexico as part of an investigation, Newell answered, "Hell, no."[111]

After the press conference, Cunningham emailed:[112]

-----Original Message-----
From: Cunningham, Patrick (USAAZ)
Sent: Tuesday, January 25, 2011 11:35 AM
To: Evans, John (USAAZ) 3
Subject: RE: Ph call on Terry guns

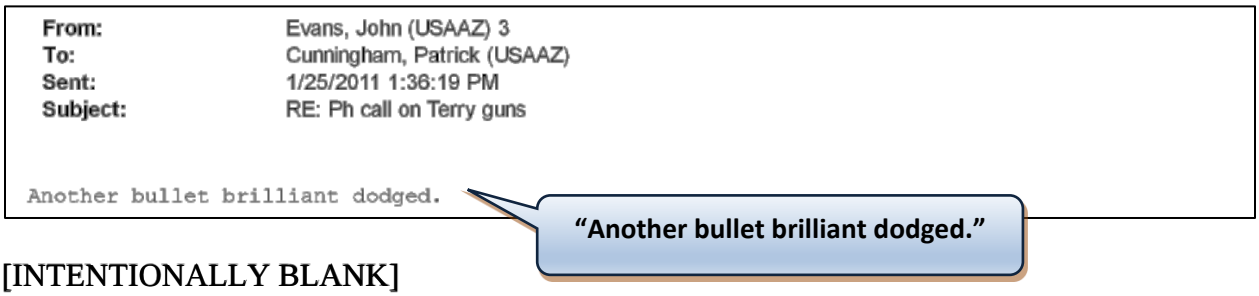
Jesse answered and press conference did not draw a question on Terry in the General session.
Issue averted.

"[P]ress conference did not draw a question on Terry"

"Issue averted."

[111] *See* H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary Joint Staff Report, *The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents* , 112th Congress (June 14, 2011), at 47-49.
[112] Email from Patrick Cunningham to John Evans (Jan. 25, 2011) [DOJ-FF-04873].

Evans responded:[113]



[INTENTIONALLY BLANK]

[113] Email from John Evans to Patrick Cunningham (Jan. 25, 2011) [DOJ-FF-04873].

IV. Initial Response to Congressional Inquiry

FINDING:	At the time ATF received Senator Grassley's letter, ATF and Justice Department officials in Washington knew firearms walked into Mexico, and that there was a connection between those firearms and the Terry murder. Acting Director Melson initially sought permission from the Department of Justice to open up a line of communication with Senator Grassley and get answers for him. However, the Justice Department instead decided to stonewall Senator Grassley, and did not acknowledge the Fast and Furious connection to the Terry murder until August 31, 2011.

On **Thursday, January 27, 2011,** Senator Grassley wrote to ATF Acting Director Melson requesting information about operations involving firearms sales to straw purchasers, and connections between those firearms and the Terry's murder.[114] The letter stated:

> Members of the Judiciary Committee have received numerous allegations that the ATF sanctioned the sale of hundreds of assault weapons to suspected straw purchasers, who then allegedly transported these weapons throughout the southwestern border area and into Mexico. According to the allegations, one of these individuals purchased three assault rifles with cash in Glendale, Arizona on January 16, 2010. Two of the weapons were then allegedly used in a firefight on December 14, 2010 against Customs and Border Protection (CBP) agents, killing CBP Agent Brian Terry. These extremely serious allegations were accompanied by detailed documentation which appears to lend credibility to the claims and partially corroborates them.[115]

Upon receipt of Senator Grassley's letter, ATF immediately forwarded it to the DOJ OLA:[116]

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[114] Letter from Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Kenneth Melson, Acting Dir., Bureau of Alcohol, Tobacco, Firearms & Explosives (Jan. 27, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/about/upload/Judiciary-01-27-11-letter-to-ATF-SW-Border-strategy.pdf.

[115] *Id.*

[116] Email from Gregory Rasnake to Ron Weich, et al. (Jan. 27, 2011) [HOGR 003637]. The DOJ OIG report states: "Upon receiving Sen. Grassley's January 27 letter, officials in both the U.S. Attorney's Office and at ATF immediately gathered information about the conduct of Jaime Avila, who had purchased the two weapons found at the Terry murder scene. This was not, however, the first time that such an effort had been undertaken. . . . [I]immediately following Agent Terry's murder on December 15, and the discovery that two firearms found at the scene were connected to Operation Fast and Furious, both the U.S. Attorney's Office in Arizona and ATF's Phoenix Field Division undertook an immediate review of Avila's straw purchasing activity, which resulted in Avila's arrest on December 15. On December 16 and 17, memorandums were provided to the leadership of both ATF and the Department that summarized the Fast and Furious investigation and the details of Avila's straw purchasing activity. However, despite learning about this connection between firearms found at the scene of Agent Terry's murder and an ongoing ATF firearms trafficking investigation, the leadership of ATF and the Department took no further action to understand how this connection came about. As a result, when Sen. Grassley's letter arrived on January 27, the leadership at ATF Headquarters and at the Department knew no more on that date about the link between Operation

From:	Rasnake, Gregory R. (ATF)
To:	Weich, Ron (SMO); Agrast, Mark D. (SMO)
CC:	Burton, Faith (SMO); Kralovec, Jamie (JMD); McDermond, James E. (ATF)
Sent:	1/27/2011 2:41:49 PM
Subject:	A Letter from Ranking Member Charles E. Grassley
Attachments:	2011-01-27 Letter to ATF.pdf

We need to discuss this very sensitive issue ASAP. I assume that the *Linder Letter* will guide our response.

Greg Rasnake
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

Later that afternoon, ATF Chief of Legislative Affairs Greg Rasnake informed his colleagues of the core issues Senator Grassley was examining:[117]

From:	Rasnake, Gregory R. (ATF)
To:	Weich, Ron (SMO); Agrast, Mark D. (SMO)
CC:	Burton, Faith (SMO); Kralovec, Jamie (JMD); McDermond, James E. (ATF); Gonzales, Mary (OLA); Thomasson, Scot L. (ATF); Hoover, William J. (ATF); Melson, Kenneth E. (ATF)
Sent:	1/27/2011 4:14:04 PM
Subject:	RE: A Letter from Ranking Member Charles E. Grassley

Just got off the phone with Grassley's staffer.

He wants these questions/issues answered/addressed:

"He wants these . . . addressed: . . . That firearms were sold to known or suspected traffickers in AZ and . . . the [federal firearms licensee] . . . had concerns"

1.) That firearms were sold to known or suspected traffickers in AZ and that the FFL informed ATF that he had concerns,
2.) That ATF asked the dealer to continue making the sales in furtherance of their investigation,
3.) That two of these weapons were recovered from the scene of the 12/14/2010 firefight that killed CBP Agent Brian Terry and that one of those weapons was actually used to kill Agent Terry.
4.) An overview of how Project Gunrunner works.

I mentioned that I didn't know how much information we would be able to share with them because this is an open case/investigation. They cited numerous occasions where they have been briefed on open cases and stated that they need to be briefed to assess whether the information they have is viable or not. They claim to have "documentation" that confirms their concerns. They are firm on their date of doing something by next Thursday, 2/3/2011.

Greg Rasnake
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

"They claim to have 'documentation' that confirms their concerns."

Melson responded: "Can you ask them for the documentation?"[118] Rasnake removed non-ATF recipients from the email thread and responded:[119]

Fast and Furious and the firearms at the Terry murder scene than they did on December 17." DOJ OIG report at 333-34.

[117] Email from Gregory Rasnake to Ron Weich, et al. (Jan. 27, 2011) [HOGR 003637].
[118] Email from Kenneth Melson to Gregory Rasnake, et al. (Jan. 27, 2011) [HOGR 003673].
[119] Email from Gregory Rasnake to Kenneth Melson (Jan. 27, 2011) [HOGR 003673].

From: Rasnake, Gregory R.
To: Melson, Kenneth E.
CC: McDermond, James E.; Hoover, William J.
Sent: 1/27/2011 5:31:06 PM
Subject: RE: A Letter from Ranking Member Charles E. Grassley

"[H]ow wonderful the thought of being able to conceal all of your evidence and spring it on the Defense at trial."

The bottom line is we couldn't even ask them for it. It would be viewed as impolite. You see - they have no reason to share. As a Prosecutor, how wonderful the thought of being able to conceal all of your evidence and spring it on the Defense at trial. The likelihood that they would give it to us is so remote, that I suggest it is not worth the risk of offending them; especially after they were "kind" enough to preview what they were looking for. On this Jim and I concur.

I think the important thing for us to do is to convince the ODAG and OLA to let us tell our side of this story, and to not "knee-jerk" hide behind the Linder Letter. My initial thoughts were to hide and punt, but after my conversation with Grassley's staffers - I don't believe that dog is gonna hunt. Grassley's team is trying to access the "craziness" factor of the information they have before they go out on a limb. But they are serious and this has the attention of his Senior staff.

Greg Rasnake
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

"My initial thoughts were to hide and punt, but after my conversation with Grassley's staffers – I don't believe that dog is gonna hunt."

Rasnake followed up with an email making the same pitch to Assistant Attorney General Ron Weich and Deputy Assistant Attorney General Mark Agrast, both in DOJ OLA.[120] Weich responded:[121]

From: Weich, Ron (SMO)
To: Rasnake, Gregory R.; Agrast, Mark D. (SMO)
Sent: 1/27/2011 6:16:51 PM
Subject: RE: A Letter from Ranking Member Charles E. Grassley

I hear you, and you may well be right. But let's get our arms around the facts first and then we'll discuss how to proceed.

From: Rasnake, Gregory R. (ATF)
Sent: Thursday, January 27, 2011 6:03 PM
To: Weich, Ron (SMO); Agrast, Mark D. (SMO)
Subject: FW: A Letter from Ranking Member Charles E. Grassley

Really think we need to go up and brief them on this. They are weighing the "craziness" factor on this.

Greg Rasnake
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

"They are weighing the 'craziness' factor on this."

[120] Email from Gregory Rasnake to Ron Weich and Mark Agrast (Jan. 27, 2011) [HOGR 003692].
[121] Email from Ron Weich to Gregory Rasnake and Mark Agrast (Jan. 27, 2011) [HOGR 003692].

Meanwhile, Melson emailed subordinates instructing them to compile information relevant to Brian Terry's murder:[122]

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----- Original Message -----
From: Melson, Kenneth E.
To: Hoover, William J.; Chait, Mark R.
Sent: Thu Jan 27 18:03:42 2011
Subject: AZ

I would like to see tomorrow afternoon all the material (documents) including all reports
tantamount to the case record on the defendant who sold the weapons involved in the shooting
with the CBP. Also, I think we need to call over to the higher levels of the FBI and find out
the results of the forensic testing on the guns that came from our guy. Ken
```

Melson later testified that he wanted to brief Senator Grassley's staff on the specific case.

> And after receiving that letter, our first instinct and intuition was to directly march over to Senator Grassley's office and brief him on what Fast and Furious was for purposes of explaining the concept and the role it played and how it got there, and where ATF was going in it. And we expressed that desire to the [Deputy Attorney General's] office.[123]

Similarly, according to the OIG report:

> Melson told the OIG that after receiving the January 27 letter he also asked [Faith] Burton if he could meet with Sen. Grassley to "open up a line of communication and talk to them about what the issue is, and so we can get answers for him even though it was an ongoing case, you can get answers, and you can talk about investigative methodologies which don't harm the ongoing case." Melson stated that Burton told him that it would be against Department policy to discuss an open investigation and that he could not meet with Sen. Grassley.[124]

> On **Friday, January 28, 2011**, Faith Burton emailed Ron Weich:[125]

[INTENTIONALLY BLANK]

[122] Email from Kenneth Melson to William Hoover and Mark Chait (Jan. 27, 2011) [HOGR 003709].
[123] Melson Transcript at 28.
[124] DOJ OIG report at 331.
[125] Email from Faith Burton to Ron Weich (Jan. 28, 2011) [HOGR 003794].

From: Burton, Faith (SMO)
Sent: Friday, January 28, 2011 6:57 PM
To: Welch, Ron (SMO)
Subject: Came by - just missed you - re Grassley/ATF request

"We talked with them about providing a briefing . . . to respond to the staff interests without getting into any non-public info regarding the pending matter."

Ron, Molly and Mary and I had a long conversation with ATF folks (Ken, Greg, et al) this afternoon about the Grassley letter and the follow up email from Brian Downey, seeking info about the pending investigation. We talked with them about providing a briefing that would address Project Gunrunner, the IG Report, and the practical legal requirements they must observe in the course of their investigations (e.g. probable cause) in order to respond to the staff interests without getting into any non-public info regarding the pending matter. It sounds like they've got talkers on the Project and their response to the IG report (approved already by ODAG?) and we asked them to draft the talkers for address the 3rd prong so that we can assist them in preparing for the briefing that stay within the appropriate boundaries. Apparently, they received a fair amount of push back from Jason Foster of Grassley's staff about how they receive briefings on pending investigations all the time, but we set the record straight on that (the anthrax example Jason cited is no precedent for the current demand for reasons clear to ATF now). I think we can work this out, but we'll probably have to make the next call to Jason or Brian with ATF and may need to go with them. I wanted you to know about this in light of the AG's meeting with the Senator – understand that we want all to go smoothly. Happy to discuss on Monday if that's helpful. Thanks. FB

FINDING: **The Justice Department did not take seriously Senator Grassley's letter or the obligation to uncover the truth about Fast and Furious and the Terry murder, relying almost exclusively on information from the individuals accused of wrongdoing and failing to give credence to even departmental information conflicting with those individuals' accounts.**

On **Monday, January 31, 2011,** *The Arizona Republic* contacted the U.S. Attorney's Office for the District of Arizona seeking a comment for a story about ATF's and the USAO's involvement in sanctioning firearms sales to straw purchasers:[126]

"The gist of his story centers around [a firearms licensee] . . . working with ATF in real time allowing fraudulent sales to go through to make a case."

From: Sherwood, Robert (USAAZ) <Contractor>
Sent: Monday, January 31, 2011 5:30 PM
To: Cunningham, Patrick (USAAZ); Tarango, Manuel (USAAZ); Burke, Dennis (USAA
Subject: Robert Anglen

Is calling for comment from Dennis regarding follow up story on the gun case.
The gist of his story centers around [redacted], and their assertion to him that they were working in concert with ATF and AUSAO, not merely being cooperative and sharing information about sales after the fact, but working with the atf in real time allowing fraudulent sales to go through to make a case.
He also is citing a letter from sen Grassley to atf alleging that atf sanctioned sales in real time and then lost track of the guns, including the one allegedly used or found at the Terry killing.
That doesn't sound like the briefing I heard, needless to say.
He wants comment today.
Will forward the grassley letters next.

[126] Email from Robert Sherwood to Patrick Cunningham, et al. (Jan. 31, 2011) [HOGR 003880].

Later that night, U.S. Attorney Dennis Burke emailed DOJ officials and emphasized that ATF should respond immediately and strongly to Senator Grassley's questions:[127]

From: Burke, Dennis (USAAZ) <[redacted]>
To: Pings, Anne (USAEO) <[redacted]>; Weinstein, Jason; Johnston, Deborah A. (ODAG) (SMO) <[redacted]>
Sent: Mon Jan 31 20:29:51 2011
Subject: FW: ATF GunRunner

Grassley's assertions regarding the Arizona investigation and the weapons recovered at the BP Agent Terry murder scene are based on categorical falsehoods. I worry that ATF will take 8 months to answer this when they should be refuting its underlying accusations right now.

"I worry that ATF will take 8 months to answer this when they should be refuting its underlying accusations right now."

Weinstein agreed, and offered to help prepare ATF to brief Senator Grassley:[128]

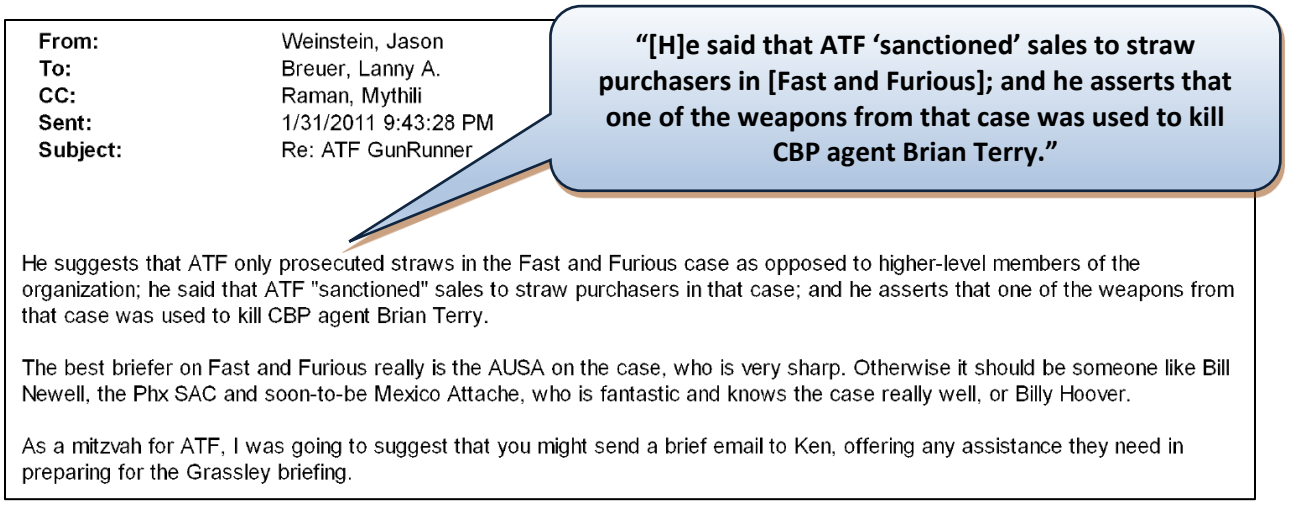
From: Weinstein, Jason
To: Burke, Dennis (USAAZ); [redacted]; Breuer, Lanny A.
Cc: Raman, Mythili
Sent: Mon Jan 31 21:14:16 2011
Subject: Re: ATF GunRunner

"This is a really important briefing for ATF – they need to nail it."

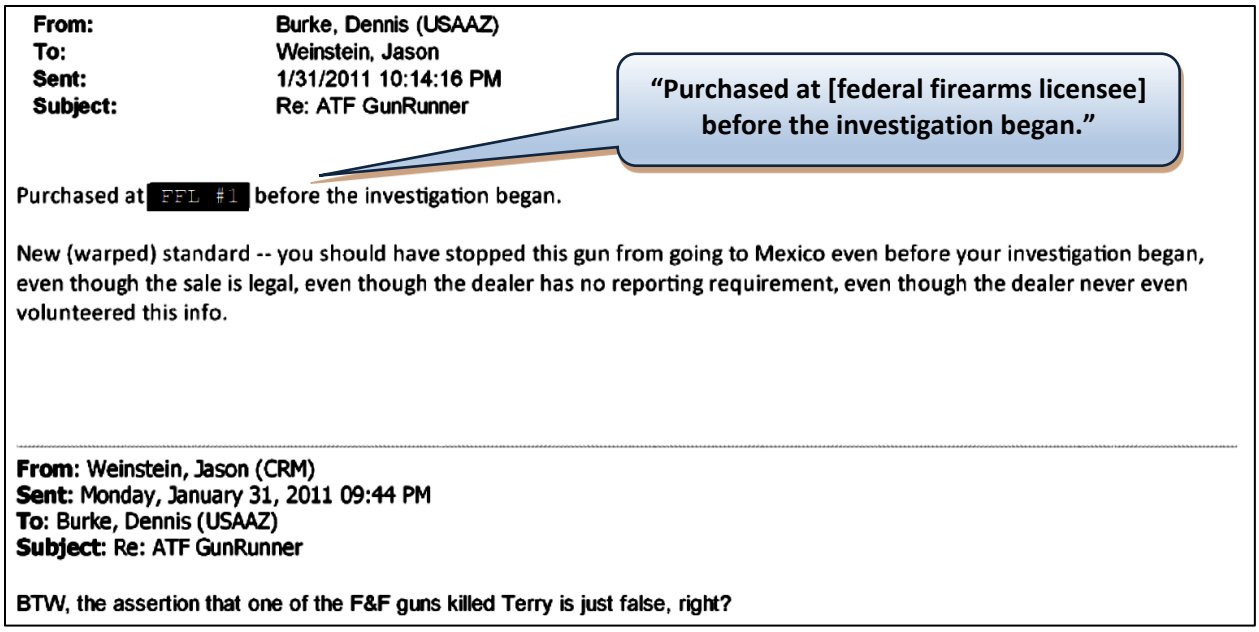
I agree completely. This is a really important briefing for ATF - they need to nail it. Since I won't be in Mexico this week after all, I'd be happy to work with ATF on the prep for this if it would be helpful.

Assistant Attorney General for the Criminal Division Lanny Breuer responded directly to Weinstein, copying Chief of Staff Mythili Raman, asking, "What's this about? What did Grassley say?"[129] Weinstein responded:[130]

[127] Email from Jason Weinstein to Dennis Burke, et al. (Jan. 31, 2011) [DOJ-FF-04905–06].
[128] Email from Jason Weinstein to Lanny Breuer (Feb. 1, 2011) [DOJ-FF-04905–06].
[129] Email from Lanny Breuer to Jason Weinstein (Jan. 31, 2011) [HOGR 003929–30].
[130] Email from Jason Weinstein to Lanny Breuer (Jan. 31, 2011) [HOGR 003929–30]. Weinstein used virtually the same language to describe the allegations to Breuer ("only prosecuted straws in the Fast and Furious case as opposed to the higher-level members of the organization") that he had used to describe Wide Receiver to Breuer back in April 2010 ("ATF let a bunch of guns walk in an effort to get upstream conspirators but only got straws"). Email from Jason Weinstein to Lanny Breuer (Apr. 30, 2010) [HOGR 003485–86].



Immediately after finishing the email to Breuer and Raman, Weinstein followed up with Burke: "BTW, the assertion that one of the F&F guns killed Terry is just false, right?"[131] Burke responded:[132]



Burke's description of the connection between Fast and Furious and the Terry murder was inaccurate. The 2012 DOJ OIG report on Fast and Furious noted that "Burke's inaccurate statements . . . clearly demonstrated a willingness to make assertions without regard for obvious and undisputed facts."[133] The report concluded: "This

[131] Email from Jason Weinstein to Dennis Burke (Jan. 31, 2011) [HOGR 003932].
[132] Email from Dennis Burke to Jason Weinstein (Jan. 31, 2011) [HOGR 003932].
[133] DOJ OIG report at 344.

inaccurate information was . . . significant because it was demonstrably false . . . ."[134]

The next morning, on **Tuesday, February 1, 2011**, Weinstein repeated Burke's false description to Breuer:[135]

From: Weinstein, Jason
To: Breuer, Lanny A.
CC: Raman, Mythili
Sent: 2/1/2011 6:49:04 AM
Subject: Re: ATF GunRunner

"ATF can and should strongly refute that"

The weapon used to kill agent Terry was purchased from the FFL before the Fast and Furious investigation ever began - so ATF can and should strongly refute that.

The same morning, *The Arizona Republic* published a story about the connection between Fast and Furious and the Terry murder on the front page, under the headline, "Claims tie ATF sting to guns in shootout: Senator links gun buy to border agent's death."[136] The story stated:

> Bandits who gunned down a U.S. Border Patrol agent during a December firefight near Nogales may have been armed with assault rifles purchased from a Valley gun store in conjunction with a federal sting operation and subsequently smuggled into Mexico, according to a key member of the U.S. Senate Judiciary Committee.
>
> * * *
>
> Tom Mangan, an ATF spokesman in Phoenix, said he was 'unaware of any guns allowed to go south of the border,' either intentionally or inadvertently.[137]

THE ARIZONA REPUBLIC

azcentral.com

TUESDAY, FEBRUARY 1, 2011

Opposition in Egypt urges million to march

Claims tie ATF sting to guns in shootout

Senator links gun buy to border agent's death

By Dennis Wagner
THE ARIZONA REPUBLIC

Bandits who gunned down a U.S. Border Patrol agent during a December firefight near Nogales may have been armed with assault rifles purchased from a Valley gun store in conjunction with a federal sting operation and subsequently smuggled into Mexico, according to a key member of the U.S. Senate Judiciary Committee.

In letters to the Bureau of Alcohol, Tobacco, Firearms and Explosives, Sen. Charles Grassley, R-Iowa, suggests that negligence by federal agents who failed to keep the firearms out of Mexico may have played a part in the slaying of Agent Brian Terry, a member of the Border Patrol's elite tactical unit known as BORTAC.

Grassley said he had information that the AK-47s recovered at the shooting scene were traced to

See BORDER Page A7

State lawmaker proposes tougher rule on gun sales

MARCO LONGARI/GETTY IMAGES

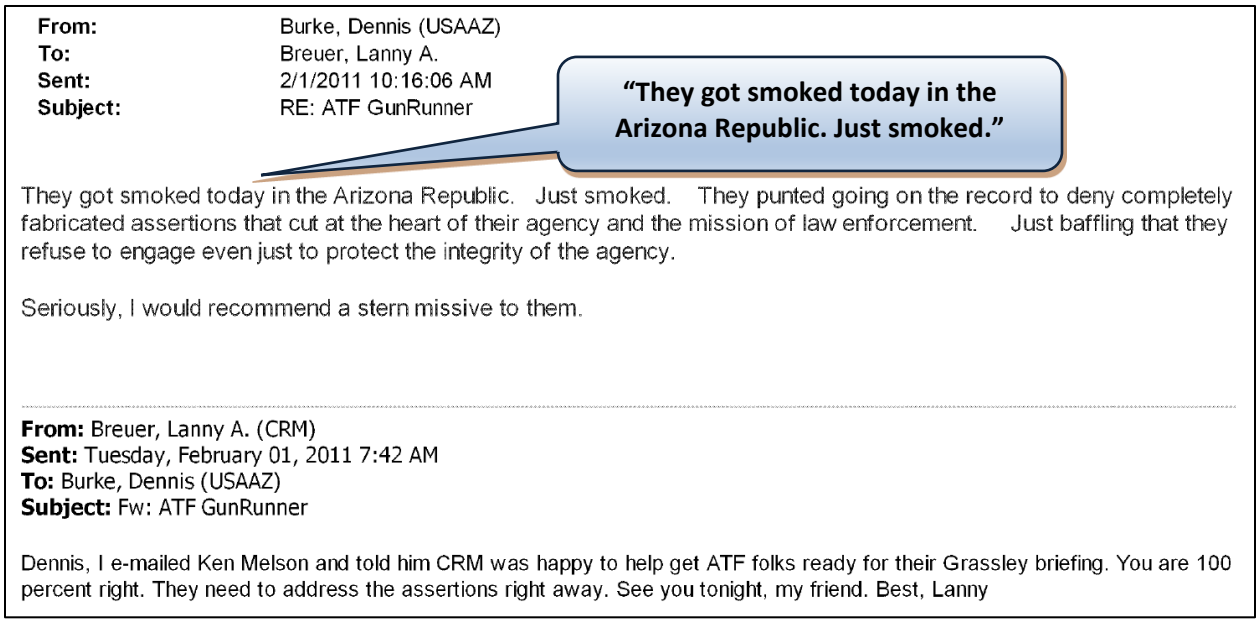
An Egyptian army captain holds the national flag as demonstrators carry him across Tahrir Square in Cairo during Monday's protests against President Hosni Mubarak. The army has pledged to not interfere with the protests, provided they remain peaceful.

[134] DOJ OIG report at 461-62.

[135] Email from Jason Weinstein to Lanny Breuer (Feb. 1, 2011) [HOGR 003938]. The DOJ OIG report noted: "Given Weinstein's and Burke's intense focus on the allegation that pertained to Avila's purchase of weapons found at the murder scene, Burke's inaccurate statement about a fact that was fundamental to this issue should have alerted Weinstein to be cautious about Burke's reliability. It also should have caused Weinstein to ask more probing questions about Burke's more general representations regarding the conduct of Operation Fast and Furious." DOJ OIG report at 404.

[136] Dennis Wagner, *Claims tie ATF sting to guns in shootout: Senator links gun buy to border agent's death*, ARIZ. REPUBLIC, Feb. 1, 2011, at A1, *available at* http://www.pressreader.com/usa/the-arizona-republic/20110201/textview.

Burke emailed Breuer about *The Arizona Republic*'s coverage of Senator Grassley's inquiry. Burke was disappointed that ATF did not push back and refute key aspects of the story:[138]



On **Wednesday, February 2, 2011**, when Weinstein asked if he could participate in the briefing of Senator Grassley's staff, Breuer advised that he should not:[139]

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[137] *Id.*

[138] Email from Lanny Breuer to Dennis Burke (Feb. 1, 2011) [HOGR 003977]; email from Dennis Burke to Lanny Breuer (Feb. 1, 2011) [HOGR 003977]. *See also* Dennis Wagner, *Claims tie ATF sting to guns in shootout: Senator links gun buy to border agent's death*, ARIZ. REPUBLIC, Feb. 1, 2011, at A1, *available at* http://www.pressreader.com/usa/the-arizona-republic/20110201/textview.

[139] Email from Lanny Breuer to Jason Weinstein (Feb. 2, 2011) [HOGR 004057–58].

From: Breuer, Lanny A.
To: Weinstein, Jason
Cc: Raman, Mythili
Sent: Wed Feb 02 00:34:13 2011
Subject: Re: Grassley briefing

"[Y]ou probably shouldn't unless absolutely necessary."

Sure but you probably shouldn't unless absolutely necessary.

From: Weinstein, Jason
To: Breuer, Lanny A.
Cc: Raman, Mythili
Sent: Tue Feb 01 20:51:44 2011
Subject: Re: Grassley briefing

"ATF will do a briefing . . . [A]re you ok with my going?"

Faith drafted a letter, which I revised to make a little tougher - she's reviewing the edits - and then she will circulate to Dennis and Billy Hoover.

ATF will do a briefing on Gunrunner, without getting too much into the details of the actual case. I don't think they'll ask us to participate, but if they do, are you ok with my going?

Weinstein agreed:[140]

From: Weinstein, Jason
To: Breuer, Lanny A.
CC: Raman, Mythili
Sent: 2/2/2011 9:40:31 AM
Subject: Re: Grassley briefing

"My thoughts exactly"

My thoughts exactly

That afternoon, Weinstein recommended addressing in DOJ's draft response to Senator Grassley the allegation that firearms found at the Terry murder scene were part of an ATF operation:[141]

From: Weinstein, Jason
To: Burton, Faith (SMO)
Sent: 2/2/2011 12:15:54 PM
Subject: FW: Very Rough Draft - for your reivew
Attachments: grassley atf.jmw edits.docx

"[A]llegation relating to the weapons recovered from the Terry shooting . . . [is] the most salacious, and the most damaging to ATF"

In addition to the edits I sent last night, I am worried about finding a way to specifically address the allegation relating to the weapons recovered from the Terry shooting. Those are the most salacious, and the most damaging to ATF, both short- and long-term.

When Burton circulated a draft of the letter to a wider group, Weinstein responded:[142]

[140] Email from Jason Weinstein to Lanny Breuer (Feb. 2, 2011) [HOGR 004057–58].
[141] Email from Jason Weinstein to Faith Burton (Feb. 2, 2011) [HOGR 004084].
[142] Email from Jason Weinstein to Faith Burton, et al. (Feb. 2, 2011) [DOJ-FF-23332–33].

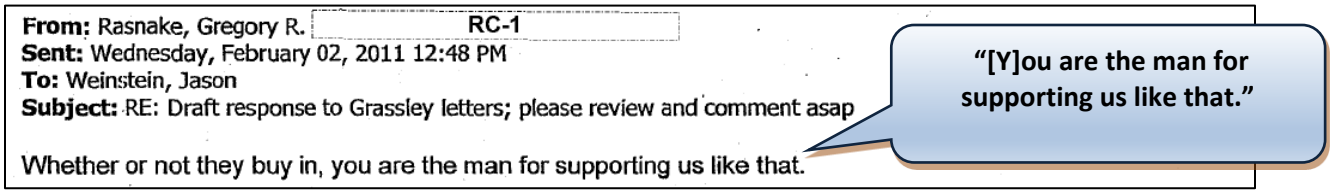
From: Weinstein, Jason [mailto:Jason.Weinstein@usdoj.gov]
Sent: Wednesday, February 02, 2011 12:38 PM
To: Burton, Faith (SMO); Hoover, William J.; Burke, Dennis (USAAZ) ATF ; Pings, Anne (USAEO) ATF ATF Melson, Kenneth E.
Cc: Gaston, Molly (SMO); Gonzales, Mary (OLA)
Subject: RE: Draft response to Grassley letters; please review and comment asap

"[T]he allegations here . . . are terribly damaging to ATF"

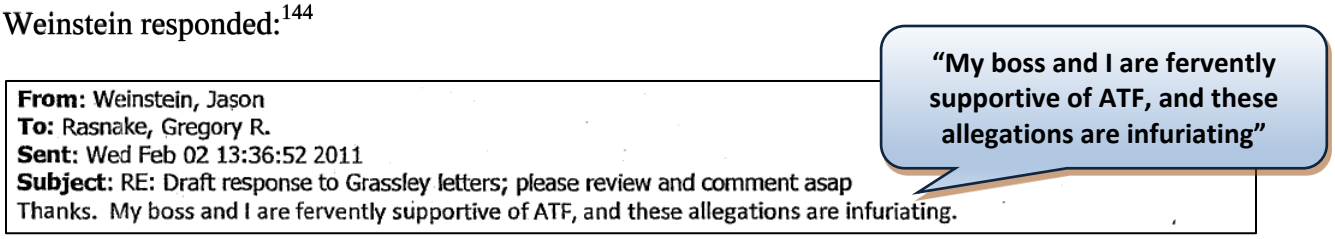
<<grassley atf.weinstein suggestions.docx>>

I think this is a terrific start, and I fully appreciate the concerns about commenting on ongoing cases – both present and future -- but I really think the Department should consider making a more forceful rebuttal to the allegations here, which are terribly damaging to ATF. Here are a few suggestions, which may be helpful.

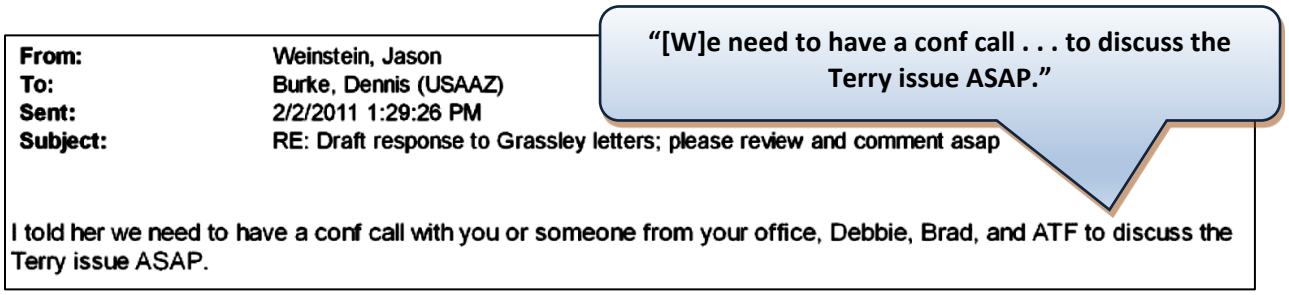
In reply, Rasnake emailed Weinstein:[143]



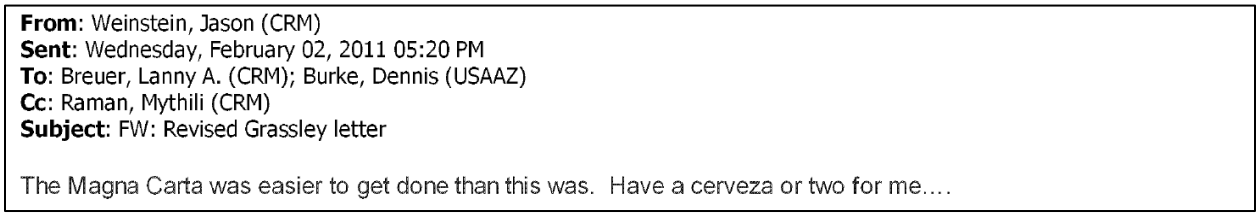
Weinstein responded:[144]



Weinstein also updated Burke about his interactions with Burton:[145]



That night Weinstein forwarded the draft letter to Breuer and Burke, who were together in Mexico:[146]



[143] Email from Gregory Rasnake to Jason Weinstein (Feb. 2, 011) [HOGR 004253–54].
[144] Email from Jason Weinstein to Gregory Rasnake (Feb. 2, 2011) [HOGR 004253–54].
[145] Email from Jason Weinstein to Dennis Burke (Feb. 2, 2011) [HOGR 004199–200].
[146] Email from Jason Weinstein to Lanny Breuer and Dennis Burke (Feb. 2, 2011) [HOGR 004423–24].

Burke responded:[147]

From: Burke, Dennis (USAAZ) RC-1
Sent: Wednesday, February 02, 2011 5:55 PM
To: Weinstein, Jason; Breuer, Lanny A.
Cc: Raman, Mythili
Subject: Re: Revised Grassley letter

Great job by you. Never pretty when the crisis involves ATF and OLA. They suffer in a combined political coma.

Breuer added:[148]

From: Breuer, Lanny A.
To: Weinstein, Jason; Burke, Dennis (USAAZ)
Cc: Raman, Mythili
Sent: Wed Feb 02 18:29:19 2011
Subject: Re: Revised Grassley letter

Burke made me laugh. Thanks, Jason. As usual, great work.

FINDING: **Documents and testimony show as of February 4, 2011, when the Justice Department wrote to Senator Grassley that "ATF makes every effort to interdict" firearms purchased by straws, Department officials in Washington had information that detailed at least one instance in Fast and Furious where ATF allowed firearms to walk.**

Later that afternoon, Senator Grassley's staff spoke by phone with Special Agent Gary Styers, an ATF agent in Texas who had previously been assigned to ATF's Group VII in the Phoenix Field Division during Fast and Furious. That night, Ron Weich emailed Faith Burton:[149]

----- Original Message -----
From: Weich, Ron (SMO)
Sent: Wednesday, February 02, 2011 07:33 PM
To: Burton, Faith (SMO)
Subject: Guidance to ATF --

ATF Deputy Director Billy Hoover just called me to ask for guidance about what guidance they should provide to agents who are getting calls from Grassley staff about ongoing cases. I gave him your #, but if you're not there let's talk in AM and then get back to him.

[147] Email from Dennis Burke to Jason Weinstein and Lanny Breuer (Feb. 2, 2011) [HOGR 004423–24].
[148] Email from Lanny Breuer to Jason Weinstein and Dennis Burke (Feb. 2, 2011) [HOGR 004423–24]. In November of that year, when asked whether he reviewed the February 4 letter before it was sent to Congress, Breuer testified: "Senator, again, I just want to be clear that, as I told you a moment ago, I regret that in April of 2010 that I did not draw the connection between Wide Receiver and Fast and Furious. Moreover, I regret that—that even . . . earlier this year that I didn't draw that connection. In direct answer to your question, senator, I can say—I cannot say for sure whether I saw a draft of the letter that was sent to you. What I can tell you, senator, is at that time, I was in Mexico dealing with very real issues that we are all so committed to." *Combating International Organized Crime: Hearing before the S. Subcomm. on Crime and Terrorism*, 112th Cong. 9 (Nov. 1, 2011) (No. J-112-49), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112shrg81638/pdf/CHRG-112shrg81638.pdf. The DOJ OIG report stated: "We agree that Breuer should have informed senior Department leadership that ATF had used tactics similar to those alleged in Sen. Grassley's letters in a prior investigation." DOJ OIG report at 414.
[149] Email from Ron Weich to Faith Burton (Feb. 2, 2011) [DOJ-FF-04935].

The same evening, Brad Smith in the Deputy Attorney General's Office also contacted Weich and Burton, copying Billy Hoover:[150]

From: Smith, Brad (ODAG)
Sent: Wednesday, February 02, 2011 7:36 PM
To: Weich, Ron (SMO); Burton, Faith (SMO)
Cc: Hoover, William J. (ATF)
Subject: RE: Revised Grassley letter

Ron and Faith,

I just wanted to alert you that Billy Hoover is receiving reports that Grassley's staff is contacting current and former ATF field agents to inquire about the open investigation into the Brian Terry murder and Project Gunrunner. Ron, at my suggestion, I thinking Billy is going to try to contact you to explain the situation and discuss how to respond. I believe ATF is looking for guidance on two issues: First, in light of Grassley's recent Whistleblower claims, what guidance can ATF offer its field agents who have been (or may be) contacted by Grassley's staff? Second, what steps can we (either at Main DOJ or ATF) take to dissuade Grassley's staff from contacting agents and potentially compromising these ongoing investigations?

Later that night, Smith forwarded Weich's response to officials in the Deputy Attorney General's office, adding an update:[151]

From: Smith, Brad (ODAG)
Sent: Wednesday, February 02, 2011 11:11 PM
To: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG); Johnston, Deborah A. (ODAG)
Subject: Fw: Revised Grassley letter

Just FYI: ATF is continuing to have issues with Grassley, now with staffers cold calling agents actively working the murder of CBP agent Brian Terry in Arizona. We have looped in Ron and Faith in OLA.

From: Weich, Ron (SMO)
Sent: Wednesday, February 02, 2011 10:06 PM
To: Smith, Brad (ODAG); Burton, Faith (SMO)
Cc: Hoover, William J. (ATF)
Subject: RE: Revised Grassley letter

Yes, Billy called me about this tonight. Faith and I will confer in the AM and then we'll get back to Billy.

The next day, on **Thursday, February 3, 2011**, Special Agent Styers sent a memorandum up the chain of command documenting his interactions on the case.[152] Special Agent Styers' memorandum stated:[153]

[150] Email from Brad Smith to Ron Weich and Faith Burton (Feb. 2, 2011) [DOJ-FF-04929–31].
[151] Email from Brad Smith to Lisa Monaco, et al. (Feb. 2, 2011) [DOJ-FF-04929–31].
[152] Email from Mark Chait to William Hoover (Feb. 3, 2011).
[153] Memorandum from Gary Styers to Robert Champion, "Contact with Congressional Investigators" (Feb. 3, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/judiciary/upload/ATF-12-14-11-Styers-memo.pdf, at 3.

Special Agent Styers was then asked about his general impression of the Fast and Furious case. Special Agent Styers stated that the case had systematically divided and isolated agents from the group. The case agent had solicited the advice of numerous experienced agents, including Special Agent Styers, regarding how to conduct and end the wiretap operations and case overall. Special Agent Styers gave the case agent his honest opinion and advice since Special Agent Styers had worked two wiretap investigations in his career. Special Agent Styers felt that his advice and opinions, as well as other agents' advice and opinions were widely disregarded. Along with other agents within the group, Special Agent Styers explained that he was no longer asked to assist with Fast and Furious and concentrated on his assigned cases and provided necessary assistance to fellow agents within the detail and group.

"[T]he case had systematically divided and isolated agents from the group"

It continued:[154]

Downey and Donovan asked Special Agent Styers what he felt was incorrect about the way the Fast and Furious case was conducted. Special Agent Styers explained that first and foremost, it is unheard of to have an active wiretap investigation without full time dedicated surveillance units on the ground. Special Agent Styers relayed that no agents in the group were assigned to surveillance on the Fast and Furious case. Special Agent Styers said that other agencies or task force officers may have been used to conduct surveillance and respond to calls of FFLs, but it seemed that either the case agent or Group Supervisor would poll the office for agents who were available to respond at short notice.

"[I]t is unheard of to have an active wiretap investigation without full time dedicated surveillance units on the ground."

The memorandum also detailed a specific instance where ATF let firearms walk:[155]

Downey and Donovan inquired as to the role that Special Agent Styers had in this case and Special Agent Styers advised that he had assisted with some surveillance operations with the case. Special Agent Styers was asked to describe the operations and relayed that one of the operations was a suspected transaction that was to occur at a gas station and detailed agents were asked to cover the transaction. While positioning to observe the suspects, Special Agent Styers and other detailed agents were told by Special Agent McAllister that agents were too close and would burn the operation. Special Agent McAllister told all the agents to leave the immediate area. While the agents were repositioning, the transaction between the suspects took place and the vehicle that took possession of the firearms eventually left the area without agents following it.

"McAllister told all the agents to leave the immediate area."

"[T]he vehicle that took possession of the firearms . . . left the area without agents following it."

The memorandum was transmitted that day to ATF Deputy Director Hoover.[156] Hoover reported to the Committees that he promptly notified ATF Senior Counsel Brad Smith of the memorandum and stated that OLA staff were also aware of the memorandum.[157] The same day, Faith Burton emailed Hoover and recommended a response in case agents asked for guidance on how to handle contacts from Senator Grassley's staff:[158]

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[154] *Id.*
[155] *Id.* at 2.
[156] Email from Mark Chait to William Hoover (Feb. 3, 2011).
[157] Telephone interview of S. Comm. on the Judiciary Minority Staff with William Hoover, Deputy Dir., Bureau of Alcohol, Tobacco, Firearms & Explosives (Feb. 1, 2012).
[158] Email from Faith Burton to William Hoover, et al. (Feb. 3, 2011) [DOJ-FF-04945].

From:	Burton, Faith (SMO)
To:	Hoover, William J. (ATF); **ATF**
CC:	Weich, Ron (SMO); Gaston, Molly (SMO); Gonzales, Mary (OLA); Weinstein, Jason (CRM); Burke, Dennis (USAAZ)
Sent:	2/3/2011 6:44:26 PM
Subject:	FW: Need quick guidance about whether/to what extent the whistleblower protection statute speaks to disclosures to Congress.

I'd recommend something along these lines if agents ask for guidance about how to respond to contacts from Senator's Grassley's staff -

During the last week in January, Senator Grassley wrote to ATF, reporting allegations that ATF had sanctioned the sale of assault weapons to suspected straw purchasers and that these weapons were used in the killing of Customs and Border Protection Agent Brian Terry. The Department has sent a written response to Senator Grassley, advising him that these allegations are not true. In further response to his requests, we expect to schedule a briefing by appropriate ATF representatives with staff for Senator Grassley and other Members of the Senate Judiciary Committee in the near future about Project Gunrunner and ATF's effort to work with its law enforcement partners to build cases that will disrupt and dismantle criminal organizations.

As always, you are in no way obligated to respond to congressional contacts or requests for information and generally, consistent with ATF policy, you should refer congressional staff who seek information from you to ATF's office of congressional affairs. You are not authorized to disclose non-public information about law enforcement matters outside of ATF or the Department of Justice to anyone, including congressional staff. This is important to protect the independence and effectiveness of our law enforcement efforts as well as the privacy and due process interests of individuals who are involved in these investigations.

If you have information about waste, fraud, or abuse within ATF - or any actions by Department employees that you believe constitute professional misconduct, you are encouraged to report that information to your supervisors and/or the Department's Office of Inspector General.

Ultimately, this language was not distributed to ATF employees.[159]

That night, Burke urged DOJ to issue the letter to Grassley as soon as possible:[160]

From: Burke, Dennis (USAAZ)
Sent: Thursday, February 03, 2011 06:55 PM
To: Burton, Faith (SMO); Monaco, Lisa (ODAG); Weich, Ron (SMO); Smith, Brad (ODAG); Hoover, William J. (ATF); Weinstein, Jason (CRM); Colborn, Paul P (SMO)
Cc: Gaston, Molly (SMO); Gonzales, Mary (OLA)
Subject: RE: Revised draft letter to Grassley per input received from all - hope this is ready. Thanks. FB

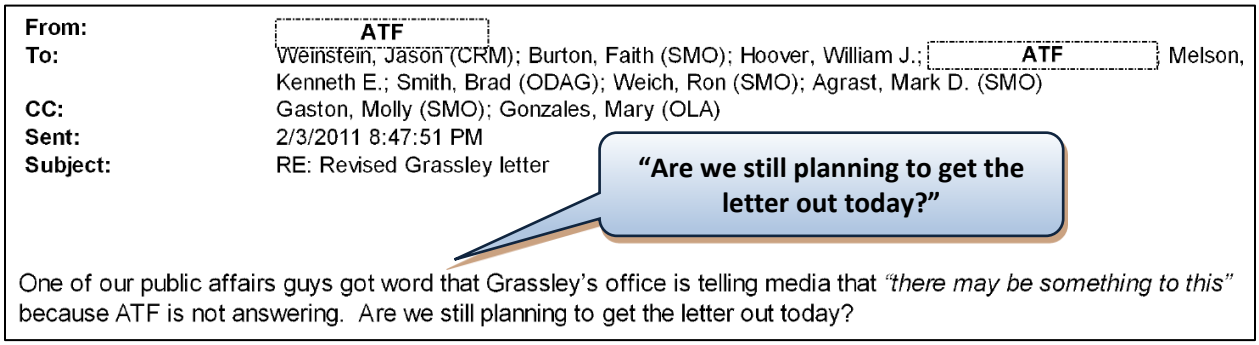
Fine by me. Thanks for sharing.

Please send soon. Every version gets weaker. We will be apologizing to him by tomorrow afternoon.

"Please send soon. Every version gets weaker."

[159] *See* letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Apr. 28, 2011), at 1, *available at* http://oversight.house.gov/wp-content/uploads/2012/07/7-31-12-FF-Part-I-FINAL-Appendix-II-1-of-3.pdf#page=109.
[160] Email from Dennis Burke to Faith Burton, et al. (Feb. 3, 2011) [DOJ-FF-23339–43].

Greg Rasnake from ATF emailed:[161]



From:	ATF
To:	Weinstein, Jason (CRM); Burton, Faith (SMO); Hoover, William J.; ATF Melson, Kenneth E.; Smith, Brad (ODAG); Weich, Ron (SMO); Agrast, Mark D. (SMO)
CC:	Gaston, Molly (SMO); Gonzales, Mary (OLA)
Sent:	2/3/2011 8:47:51 PM
Subject:	RE: Revised Grassley letter

"Are we still planning to get the letter out today?"

One of our public affairs guys got word that Grassley's office is telling media that *"there may be something to this"* because ATF is not answering. Are we still planning to get the letter out today?

Later that night, Burke added further commentary:[162]

"Grassley'[s] staff, acting as willing stooges for the Gun Lobby"

What is so offensive about this whole project is that Grassley' staff, acting as willing stooges for the Gun Lobby, have attempted to distract from the incredible success in dismantling SWB gun trafficking operations (while also changing an acceptable culture of straw purchasing) by not uttering one word of rightful praise and thanks to ATF -- but, instead, lobbing this reckless despicable accusation that ATF is complicit in the murder of a fellow federal law enforcement officer.

No commentary by Grassley on the lax laws, nor greedy gun shop owners, nor careless straw purchasers, and not boo about the evil gun traffickers for the Cartels. Nope. Just demonize ATF w/ a strategically-timed repulsive letter e-mailed to the entire press world before we ever saw it.

Yet, we feel obligated to gratuitously commend Grassley for his strong support of the Department' law enforcement mission. That I don't get.
I sat there during the press conference on this case wondering how the Gun Lobby would counter the American public' exposure to the legality of people buying 20-30 AK-47s during one purchase w no reporting requirement. Well, they figured out there counter. Never crossed my mine they would stoop this low -- and, that now we are playing defense w this low-tone response.

"Just demonize ATF w/ a strategically -timed repulsive letter"

DOJ's letter to Senator Grassley on **Friday, February 4, 2011,** stated: "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."[163] The letter made no mention of the firearms recovered at the murder scene of Border Patrol Agent Brian Terry. However, it did state:

> We . . . want to protect investigations and the law enforcement personnel who directly conduct them from inappropriate political influence. For this reason, we respectfully request that Committee staff not contact law enforcement personnel seeking information about pending criminal investigations, including the death of Customs and Border Protection

[161] Email from Greg Rasnake to Jason Weinstein, et al. (Feb. 3, 2011) [DOJ-FF-23372].
[162] Email from Dennis Burke to Ron Weich, et al. (Feb. 4, 2011) [DOJ-FF-23339–43].
[163] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Feb. 4, 2011), *available at* https://oversight.house.gov/wp-content/uploads/2012/08/February-4-2011-Weich-to-Grassley.pdf.

> Agent Brian Terry. . . . Please direct any inquiry into his killing to this office.[164]

The DOJ OIG report found that DOJ's "information gathering and drafting process" was "poorly executed" and that DOJ failed to make a "serious effort" to investigate Senator Grassley's allegations. It stated:

> [T]he Department is ultimately responsible for representations that it makes to Congress. . . . [A] poorly executed information gathering and drafting process and questionable judgments by Department officials contributed to the inclusion of inaccurate information in the February 4 letter, and therefore the Department shares responsibility for issuing an inaccurate letter with the component officials they relied upon for information.[165]
>
> * * *
>
> The allegation in Sen. Grassley's January 27 letter that ATF had sanctioned the sale of hundreds of assault weapons contained the implication that among these weapons were two that may have been used in a firefight that resulted in the death of a federal law enforcement officer. We do not believe that the gravity of this allegation was met with an equally serious effort by the Department to determine whether ATF and the U.S. Attorney's Office had allowed the sale of hundreds of weapons to straw purchasers. This was particularly the case in this instance because the Department knew that hundreds of assault weapons had indeed been sold to straw purchasers during the Fast and Furious investigation and that two of those firearms had in fact been found at the scene of Agent Terry's murder.[166]
>
> * * *
>
> [I]n a unique circumstance such as this, where a credible allegation has been made regarding potentially serious misconduct involving those components, deference to officials close to the activity at issue should be tempered by the recognition that those officials are also invested in a positive portrayal of the activity and their alleged involvement in it. As such, officials who should be knowledgeable and forthcoming about the activity may be inclined, perhaps even unintentionally, to shade or ignore unhelpful facts when providing information about their conduct to senior

[164] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Feb. 4, 2011), *available at* https://oversight.house.gov/wp-content/uploads/2012/08/February-4-2011-Weich-to-Grassley.pdf.
[165] DOJ OIG report at 396.
[166] DOJ OIG report at 397.

> Department officials. This is particularly true where, as here, Congress seeks specific information concerning allegations of improper activities.[167]
>
> * * *
>
> We concluded that during the drafting process Weinstein advocated for ATF and the U.S. Attorney's Office rather than responsibly gathering information about their conduct of the Fast and Furious investigation. . . . [W]e found that he did so despite indications during the fact-gathering and letter-drafting process that should have alerted him to the fact that U.S. Attorney Dennis Burke, who provided emphatic assurances about ATF's conduct, was an unreliable source of information. Moreover, Weinstein urged Burton to adopt an aggressive posture in the drafting of the response and sought to enlist the support of Burke and others in arguing against Burton's more measured approach to the letter. We believe that Weinstein's staunch support of ATF led him to lose perspective and provide Burton with information that distorted what a senior component official (Hoover) had told them about Avila's status as a straw purchaser in November 2009.[168]

[INTENTIONALLY BLANK]

[167] DOJ OIG report at 398.
[168] DOJ OIG report at 398-99; *see further* DOJ OIG report at 405-06.

V. Post-February 4 Letter

1. Public Silence and Referral to Inspector General

According to emails, at meetings with Mexican government officials in February 2011, Assistant Attorney General Breuer and ATF Acting Director Melson both suggested allowing firearms to travel from the United States into Mexico. On **Friday, February 4, 2011**, the day after Breuer returned from Mexico, Tony Garcia, DOJ's attaché to the U.S. Embassy in Mexico City, emailed Criminal Division staff:[169]

From: Garcia, Anthony P (Mexico City) [RC-1 redacted]
Sent: Friday, February 04, 2011 3:49 PM
To: Lurie, Adam
Cc: Swartz, Bruce; Blanco, Kenneth; Weinstein, Jason; Warlow, Molly; Rodriguez, Mary; McMillen, Jerold; Snyder, Christopher A (Mexico City); Wyatt, Arthur
Subject: AAG Breuer visit to Mexico
Attachments: [Untitled].pdf

Adam,

Below is a synopsis of Assistant Attorney General (AAG) Lanny Breuer's meetings with the Mexican Attorney General's Office (PGR), Mexico's Federal Police (SSP), and the Secretary of Foreign Relations (SRE). Sr. RLA Kevin Sundwall (OPDAT) will cover the SWB US Attorneys' Conference.

The email closed:[170]

"Breuer suggested allowing straw purchasers cross into Mexico"

Proposed Cross-Border Operation
AAG Breuer suggested allowing straw purchasers cross into Mexico so SSP can arrest and PGR can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers. RC-6 redacted

Accreditation for DOJ Attorneys assigned to Mexico
RC-2 redacted

Please let me know if you have additional questions regarding the meetings.
Tony

Tony Garcia
DOJ Attache
US Embassy - Mexico City

[169] Email from Anthony Garcia to Adam Lurie (Feb. 4, 2011) [HOGR 005752–74].
[170] *Id.*

On **Tuesday, February 8, 2011**, Garcia emailed:[171]

From: Garcia, Anthony P (Mexico City) [RC-1]
nt: Tuesday, February 08, 2011 7:19 PM
,o: Rodriguez, Mary; McMillen, Jerold
Cc: Snyder, Christopher A (Mexico City); Lurie, Adam; Warlow, Molly; Weinstein, Jason; Swartz, Bruce
Subject: Acting ATF Director Melson meeting ith Ambassador

Acting ATF Director Melson is in Mexico City this week. Melson met with the Ambassador this morning. A couple of issues that came out of the meeting:

Extradition

RC-2 [redacted]

Controlled Delivery

Melson and the Ambassador discussed the possibility of allowing weapons to pass from the US to Mexico and US law enforcement coordinating with SSP and PGR to arrest and prosecute the arms trafficker. I raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the GoM not seizing the weapons; and the weapons being used to commit a crime in Mexico.

"I raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the GoM not seizing the weapons; and the weapons being used to commit a crime in Mexico."

FINDING:	**Only after Senator Grassley made clear he had obtained evidence through whistleblowers did some senior DOJ officials identify a need to independently evaluate ATF's claims.**

Meanwhile, Senator Grassley and his staff pushed back on the claims in DOJ's February 4, 2011 letter. On **Wednesday, February 9, 2011**, DOJ officials circulated a news story reporting that DOJ denied the link between Operation Fast and Furious and the firearms recovered at the scene of Agent Terry's death. The email reported that Senator Grassley's staff had received documentation supporting the whistleblower allegations:[172]

[INTENTIONALLY BLANK]

[171] Email from Anthony Garcia to Mary Rodriguez and Jerold McMillen (Feb. 8, 2011) [HOGR 005761].
[172] Email from Mary Gonzales to Ron Weich, et al. (Feb. 9, 2011) [DOJ-FF-05760–61].

From: Gonzales, Mary (OLA)
To: Weich, Ron (SMO); Agrast, Mark D. (SMO); Wilkinson, Monty (OAG); Johnston, Deborah A. (ODAG); Smith, Brad (ODAG); Moran, Molly (OAG); Weinstein, Jason (CRM)
CC: Burton, Faith (SMO); Gaston, Molly (SMO); Thiemann, Robyn (OLP); Gross, Charles R. (SMO); Pings, Anne (USAEO); Gonzales, Mary (OLA); ATF; Beers, Elizabeth R. (FBI); Kennedy, Joseph R. (ATF); Hickson, Ernest E. (ATF); Lurie, Adam (CRM)
Sent: 2/9/2011 2:32:12 PM
Subject: DOJ Denies Claim About Guns Used In Border Shootout

Grassley staffer mentions that documents have been provided with the whistleblower allegations.

DOJ Denies Claim About Guns Used In Border Shootout.

AP NewsBreak: DOJ denies border shootout claim

(AP) – 18 hours ago

PHOENIX (AP) — The U.S. Justice Department denied a claim made to lawmakers that two guns sold in purchases sanctioned by federal firearms agents were later used in a shootout that left a Border Patrol agent dead near the Arizona-Mexico border.

"Grassley staffer mentions that documents have been provided with the whistleblower allegations."

Weinstein further forwarded the article to Breuer and Raman.[173]

That evening, Senator Grassley's Senate Judiciary Committee Staff Director Kolan Davis emailed Weich to let him know a follow-up letter from Senator Grassley would be forthcoming that night.[174] Reich replied:[175]

From: Weich, Ron (SMO) [redacted]
Sent: Wednesday, February 09, 2011 6:03 PM
To: Davis, Kolan (Judiciary-Rep)
Subject: RE: ATF

OK. As you know, ATF is coming up tomorrow to brief on Project Gunrunner and we think that may answer some of the concerns. But in any event we'll stand by for your new letter. And feel free to call anytime if you want to talk off-line about it.

"[W]e'll stand by for your new letter."

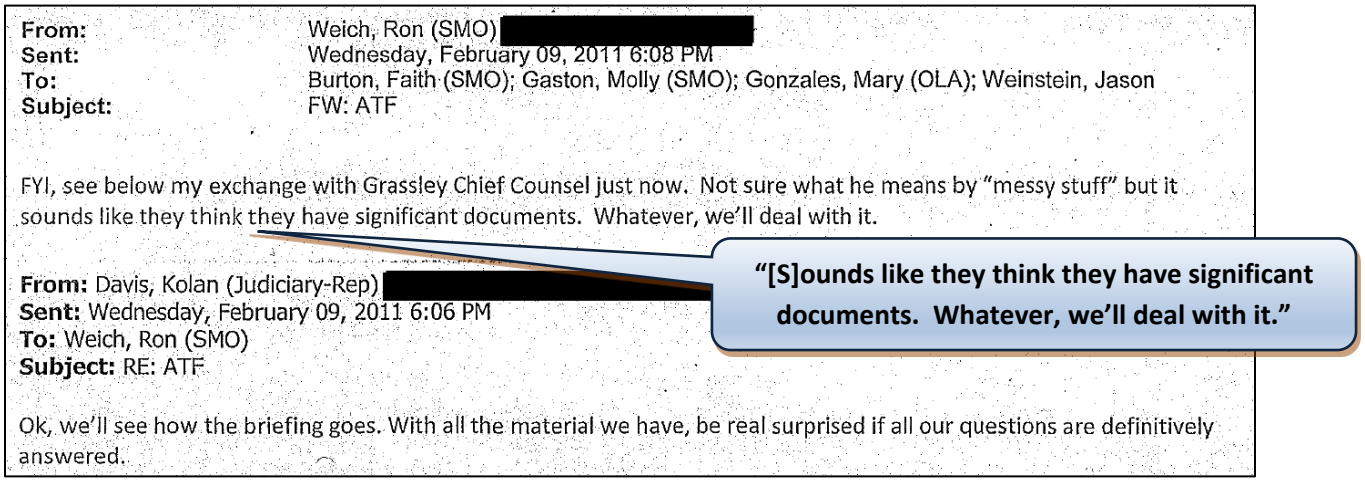
From: Davis, Kolan (Judiciary-Rep) [redacted]
Sent: Wednesday, February 09, 2011 6:01 PM
To: Weich, Ron (SMO)
Subject: ATF

You'll be getting a letter soon to your boss responding to the letter signed by you. This is pretty messy stuff.

"You'll be getting a letter soon to your boss responding to the letter signed by you. This is pretty messy stuff."

[173] Email from Jason Weinstein to Mythili Raman and Lanny Breuer (Feb. 9, 2011) [DOJ-FF-05760–61].
[174] Email from Kolan Davis to Ron Weich (Feb. 9, 2011) [DOJ-FF-04078].
[175] Email from Ron Weich to Kolan Davis (Feb. 9, 2011) [DOJ-FF-04078].

When Davis responded, Weich forwarded the email within DOJ:[176]



From: Weich, Ron (SMO) [redacted]
Sent: Wednesday, February 09, 2011 6:08 PM
To: Burton, Faith (SMO); Gaston, Molly (SMO); Gonzales, Mary (OLA); Weinstein, Jason
Subject: FW: ATF

FYI, see below my exchange with Grassley Chief Counsel just now. Not sure what he means by "messy stuff" but it sounds like they think they have significant documents. Whatever, we'll deal with it.

From: Davis, Kolan (Judiciary-Rep) [redacted]
Sent: Wednesday, February 09, 2011 6:06 PM
To: Weich, Ron (SMO)
Subject: RE: ATF

Ok, we'll see how the briefing goes. With all the material we have, be real surprised if all our questions are definitively answered.

"[S]ounds like they think they have significant documents. Whatever, we'll deal with it."

Senator Grassley's letter to Attorney General Holder that night noted that so far DOJ's response had been "little more than delay and denial."[177] The letter stated:

> The Department said the ATF makes 'every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico.' However, as I explained in my initial letter to Acting Director Melson, the allegations I received are supported by documentation.
>
> * * *
>
> The Justice Department's reply asked that Committee staff stop speaking to law enforcement personnel about these matters. However, if not for the bravery and patriotism of law enforcement personnel who were willing to put their careers on the line, this Committee would have been forced to rely on nothing more than rumors in the blogosphere and a Justice Department denial to resolve these allegations. We need more than that. To be an effective check on Executive Branch power, we need cold, hard facts.[178]

The letter closed:

> I want to share with you a portion of an e-mail from Carolyn Terry, Agent Terry's stepmother. She wrote yesterday: '. . . We want to know who allowed the sale of that gun that murdered our son. Any help will [be] appreciated. We are the victims of this case and we want some answers.'

[176] Email from Ron Weich to Faith Burton, et al. (Feb. 9, 2011) [DOJ-FF-04078].
[177] Letter from Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice (Feb. 9, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/about/upload/Judiciary-02-09-11-Letter-to-Holder-notifying-of-ATF-issues.pdf.
[178] *Id.*

> The Terry family deserves answers. The whistleblowers have expressed their desire to honor Agent Terry's memory by disclosing this information. The Justice Department should work to do the same. The best way to honor his memory is to come clean.[179]

Weich forwarded the letter to a large group of DOJ officials and wrote:[180]

From: Weich, Ron (SMO)
Sent: Wednesday, February 09, 2011 09:54 PM
To: Burton, Faith (SMO); Agrast, Mark D. (SMO); Gaston, Molly (SMO); Gonzales, Mary (OLA); Weinstein, Jason (CRM); Monaco, Lisa (ODAG); Moran, Molly (OAG); Wilkinson, Monty (OAG); Smith, Brad (ODAG); Burke, Dennis (USAAZ); Rasnake, Gregory R. (ATF); Richardson, Margaret (SMO); Miller, Matthew A (SMO)
Cc: McKay, Shirley A (SMO)
Subject: New Letter from Sen. Grassley re ATF / Gunrunner --

Those involved in the staff briefing tomorrow should consider whether this letter alters the planned approach in any way

"[C]onsider whether this letter alters the planned approach in any way"

On **Thursday, February 10, 2011**, Grindler emailed Wilkinson about the letter from Senator Grassley and recommended they "dig into this situation" to "know more about it":[181]

From: Grindler, Gary (OAG)
To: Wilkinson, Monty (OAG)
Sent: 2/10/2011 8:22:30 AM
Subject: RE: New Letter from Sen. Grassley re ATF / Gunrunner --

"We need to dig into this situation. ODAG needs to be pushing ATF"

Monty We need to dig into this situation ODAG needs to be pushing ATF on what took place here I would like to know more about it. Let's discuss at the 8:45

From: Wilkinson, Monty (OAG)
Sent: Wednesday, February 09, 2011 10:08 PM
To: Grindler, Gary (OAG)
Cc: Moran, Molly (OAG); Richardson, Margaret (SMO)
Subject: Fw: New Letter from Sen. Grassley re ATF / Gunrunner --
Importance: High

Gary-

FYI. Difficult to read on BB. Appears to be a 24 page letter taking issue with our response to his first two letters on this issue.

[179] *Id.* at 3.
[180] Email from Ron Weich to Faith Burton, et al. (Feb. 9, 2011) [HOGR 007063–64].
[181] Email from Gary Grindler to Monty Wilkinson (Feb. 10, 2011) [HOGR 007063–64].

Meanwhile, DOJ OLA continued to focus on how to avoid answering Senator Grassley's questions. Burton parsed the language in Senator Grassley's letter:[182]

From: Burton, Faith (SMO)
Sent: Thursday, February 10, 2011 11:35 AM
To: Weinstein, Jason (CRM)
Cc: Gaston, Molly (SMO); Gonzales, Mary (OLA)
Subject: Redaing Grassley's letter more closely - it does not state any facts indicating

That ATF blessed the sale to ATF Don't think it matters whether you get all the info about what happened at that meeting because we can't go there anyway. This is cleverly written bait. More later. FB

"Don't think it matters whether you get all the info about what happened . . . . This is cleverly written bait."

Another Office of Legislative Affairs attorney followed up:[183]

From: Gaston, Molly (SMO) [redacted]
Sent: Thursday, February 10, 2011 11:55 AM
To: Burton, Faith (SMO); Weinstein, Jason
Cc: Gonzales, Mary (OLA)
Subject: RE: Redaing Grassley's letter more closely - it does not state any facts indicating

Just to go into more detail on Faith's point—they've conflated allegations as bait:

> "According to whistleblowers, a least one gun dealer wanted to stop participating in sales *like those to* ATF sometime around October 2009. However, the ATF allegedly encouraged the dealer to continue selling to suspected traffickers and asked the dealer to forward information about the sales to the Bureau.

[Paragraph break]

> "The deal ATF who sold the weapons allegedly recovered at the scene of Agent Terry's death met with both ATF representatives and Assistant US Attorneys as early as December 17, 2009, to 'discuss his role as an FFL during the investigation." [The letter makes no representations about what was said at this meeting.]

So the letter doesn't actually ever say that it wa ATF that allegedly wanted to stop selling to ATF and was told to continue. They wrote it carefully because they are either guessing that it was, and want ATF to confirm, or they're trying to get ATF to deny it and talk about the case.

Emails show that Senator Grassley's letter raised concerns for Attorney General Holder. Specifically, Holder was concerned by the assertions that ATF encouraged a hesitant firearms dealer to continue to sell firearms to suspected traffickers, and that there had been no contact with Agent Terry's family. Grindler relayed Holder's concerns in an email to Lisa Monaco and Monty Wilkinson:[184]

[182] Email from Faith Burton to Jason Weinstein (Feb. 10, 2011) [DOJ-FF-01725].
[183] Email from Molly Gaston to Faith Burton and Jason Weinstein (Feb. 10, 2011) [DOJ-FF-01725].
[184] Email from Gary Grindler to Lisa Monaco (Feb. 10, 2011) [DOJ-FF-06013].

From: Grindler, Gary (OAG)
Sent: Thursday, February 10, 2011 12:32 PM
To: Monaco, Lisa (ODAG)
Cc: Wilkinson, Monty (OAG)
Subject: Grassley Letter/ATF

"[T]he AG is particularly concerned with . . . the statement that at least one gun dealer wanted to stop participating in sales"

Two issues the AG is particularly concerned with are (1) the statement that at least one gun dealer wanted to stop participating in sales like those to Avila sometime around October 2009 with ATF allegedly encouraging the dealer to continue to sell to suspected traffickers; and (2) the assertion that there has been no contact with the victim's family. The AG agrees that the family deserves answers.

Grindler forwarded Lisa Monaco's initial reply to Holder:[185]

From: Grindler, Gary (OAG)
To: Attorney General
Sent: 2/10/2011 12:41:20 PM
Subject: FW: Grassley Letter/ATF

Initial response.

From: Monaco, Lisa (ODAG)
Sent: Thursday, February 10, 2011 12:39 PM
To: Grindler, Gary (OAG)
Cc: Wilkinson, Monty (OAG)
Subject: Re: Grassley Letter/ATF

"[M]onty and I spoke to [D]ennis this morning and asked him to . . . address outreach (or lack thereof) from cbp"

On #2, monty and I spoke to dennis this morning and asked him to reach out to alan bersin to address outreach (or lack thereof) from cbp that is being complained of. It sounds like dennis' office has been in contact with the family and that there are multiple factions in the family

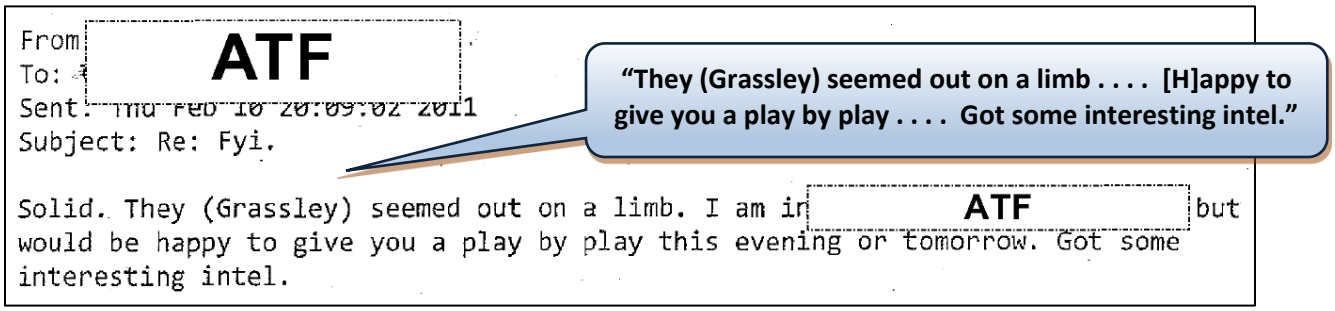
FINDING: Justice Department officials made a strategic decision to withhold specific answers about Fast and Furious and the Terry murder from Senator Grassley.

That same day, ATF and Weinstein conducted the briefing for Senate Judiciary Committee staff. The talking points DOJ prepared for the briefing reiterated the same inaccurate information that was contained in the February 4, 2011 letter to Senator Grassley:[186]

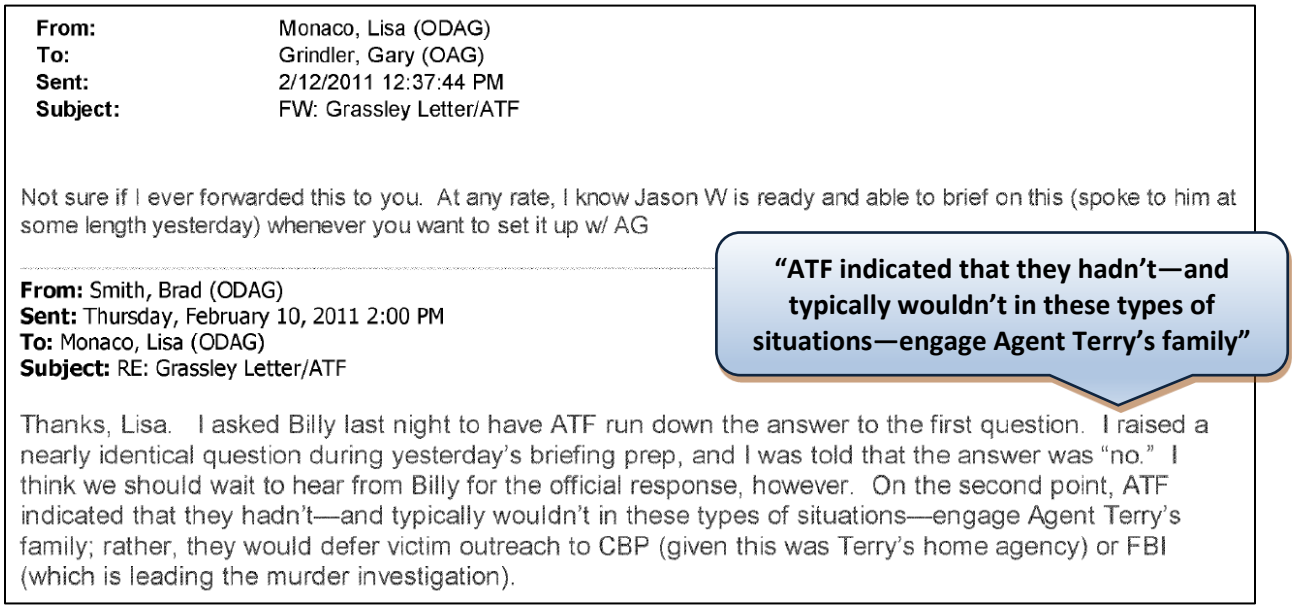
- as indicated in DOJ letter to Sen. Grassley, ATF in the AZ investigation did not knowingly allow ***any*** guns in the investigation to be transported to Mexico

[185] Email from Gary Grindler to Eric Holder (Feb. 10, 2011) [DOJ-FF-06013].
[186] Attachment to email from Jason Weinstein to Faith Burton, et al. (Feb. 10, 2011) [DOJ-FF-05819–25].

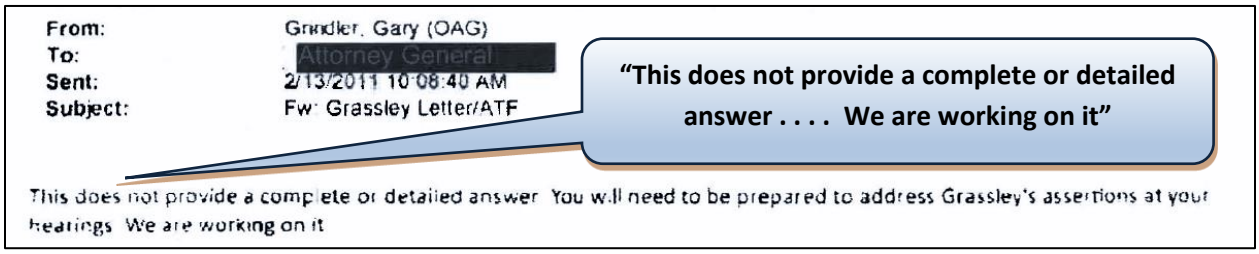
After the briefing, one ATF employee emailed another: "Grassley brief went well."[187] When asked about the "climate/receptiveness to ATF in general," they responded:[188]



On **Saturday, February 12, 2011,** Monaco forwarded Grindler an email she had received two days earlier from Brad Smith:[189]



Grindler forwarded the email chain to Holder the next morning and wrote:[190]



[187] Email from [ATF employee] to [ATF employee] (Feb. 10, 2011) [DOJ-FF-26399–401].
[188] Email from [ATF employee] to [ATF employee] (Feb. 10, 2011) [DOJ-FF-26399–401].
[189] Email from Lisa Monaco to Gary Grindler (Feb. 12, 2011) [DOJ-FF-06206].
[190] Email from Gary Grindler to Eric Holder (Feb. 13, 2011) [HOGR 007067].

On **Sunday, February 13, 2011,** Breuer emailed Grindler:[191]

"From talking to Jason [Weinstein], my understanding is that OLA made the judgment not to address any of the specific allegations in Sen. Grassley's letters during the briefing."

"During the Q&A at the briefing, Sen. Grassley's staffers asked a number of specific questions . . . which our folks declined to answer"

"Up to this point, our inquiries about the Grassley allegations have been at the U.S. Attorney/SAC level. If the AG would like us to look into those allegations further . . . [j]ust let us know"

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----- Original Message -----
From: Breuer, Lanny A. (CRM)
Sent: Sunday, February 13, 2011 03:19 PM
To: Grindler, Gary (OAG)
Subject: Sen Grassley allegations about AT

Gary,

To follow up on our conversation of Friday morning, prior to the Senate staff briefing on
Thursday, Jason checked with the USAO in AZ and with ATF (both HQ and AZ) and was advised that
the specific allegation in Sen. Grassley's most recent letter -- that ATF encouraged a
reluctant FFL to continue to make sales to suspected traffickers - is false.

From talking to Jason, my understanding is that OLA made the judgment not to address any of
the specific allegations in Sen. Grassley's letters during the briefing.  Instead, Jason and
the ATF reps. provided a tutorial of sorts on how cases against sophisticated gun trafficking
organizations like the one in AZ are built.  They walked the staffers through the kind of
tactical and investigative judgments involved at each stage of the investigation, drawing an
analogy between gun trafficking cases and drug conspiracy cases.  The goal - and by all
accounts it seems to have worked - was to communicate that the ATF's work in the AZ case and
others like it reflected sound judgment and investigative work.

During the Q&A at the briefing, Sen. Grassley's staffers asked a number of specific questions
about the AZ investigation, which our folks declined to answer, with one exception.  A staffer
asked whether as part of the AZ case, ATF ever encouraged a reluctant FFL to continue unlawful
sales.  Jason and the ATF reps. responded that based on their knowledge of the case, they were
unaware of that ever having happened in this investigation.

Up to this point, our inquiries about the Grassley allegations have been at the U.S.
Attorney/SAC level.  If the AG would like us to look into those allegations further, I could
have Jason talk specifically to the AUSAs and case agents and report back.  Just let us know
how you'd like us to proceed.

Best, Lanny
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Grindler forwarded the email to Holder:[192]

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From:      Grindler, Gary (OAG)
To:        Attorney General
Sent:      2/13/2011 3:25:07 PM
Subject:   Fw: Sen Grassley allegations about ATF


What do you think?
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On **Tuesday, February 15, 2011**, DOJ officials discussed a draft response to Senator Grassley's February 9 letter. Burke emailed:[193]

[191] Email from Lanny Breuer to Gary Grindler (Feb. 13, 2011) [DOJ-FF-06208].
[192] Email from Gary Grindler to Eric Holder (Feb. 13, 2011) [DOJ-FF-06209].
[193] Email from Dennis Burke to Faith Burton and Ron Weich (Feb. 15, 2011) [DOJ-FF-05265–66].

From:	Burke, Dennis (USAAZ)
To:	Burton, Faith (SMO); Weich, Ron (SMO)
CC:	Gaston, Molly (SMO); Gonzales, Mary (OLA)
Sent:	2/15/2011 6:32:16 PM
Subject:	RE: A Letter from Ranking Member Charles E. Grassley plus draft response, per last message. Thanks.

"[W]e are tired of playing 'gotcha' games w/ your immature staff"

I really like your response.

Basically, "we are tired of playing 'gotcha' games w/ your immature staff on a very serious subject matter and we are tired of your reckless accusations. You got a briefing, the cases are on-going, and here is our response in writing."

Its brilliant.

Nice job.

On **Wednesday, February 16, 2011**, Senator Grassley wrote to Attorney General Holder.[194] He noted that the briefers on February 10 "refused to answer specific questions about the facts and circumstances that led me to request the briefing."[195] He also identified the key question of the investigation: "When asked whether ATF had encouraged any gun dealer to proceed with sales to known or suspected traffickers such as [the individual whose guns were found at the scene of Terry's death], the briefers only said they did not have any 'personal knowledge' of that."[196] Thus, he requested various documents from DOJ.

The letter prompted questions from Attorney General Holder, asking for further confirmation of the accuracy of the Department's representations to Senator Grassley:[197]

-----Original Message-----
From: Grindler, Gary (OAG) [mailto:Gary.Grindler@usdoj.gov]
Sent: Wednesday, February 16, 2011 10:35 AM
To: Breuer, Lanny A.; Weinstein, Jason; Raman, Mythili
Subject: FW: Sen Grassley allegations about ATF

Questions from the AG:

So ATF did NOT persuade a reluctant dealer to participate- bottom line?

Do we have info on whether a gun sold in the operation was used in the shooting?

"Do we have info on whether a gun sold in the operation was used in the shooting?"

Weinstein merely contacted ATF and USAO officials in Arizona for information. As the subjects of the allegations, these officials had an interest in protecting themselves, rather than in uncovering facts that could undermine the integrity of their operation. Weinstein replied:[198]

[194] Letter from Charles Grassley, Ranking Mem., S. Comm. on the Judiciary, to Eric Holder, Att'y Gen., Dep't of Justice (Feb. 16, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/about/upload/Judiciary-02-16-11-letter-to-Holder-follow-up-doc-request.pdf.
[195] *Id.* at 1.
[196] *Id.*
[197] Email from Gary Grindler to Lanny Breuer, et al. (Feb. 16, 2011) [DOJ-FF-06212–13].
[198] Email from Jason Weinstein to Gary Grindler, et al. (Feb. 16, 2011) [DOJ-FF-06212–13].

From: Weinstein, Jason (CRM)
Sent: Wednesday, February 16, 2011 1:18 PM
To: Grindler, Gary (OAG); Breuer, Lanny A. (CRM); Raman, Mythili (CRM)
Subject: RE: Sen Grassley allegations about ATF

One other thing – my understanding is that the ballistics make it impossible to determine which gun was actually used to shoot Agent Terry, but we can say that these guns were recovered at the scene.

"[W]e can say that these guns were recovered at the scene."

From: Weinstein, Jason
Sent: Wednesday, February 16, 2011 1:15 PM
To: Grindler, Gary (OAG) (SMO); Breuer, Lanny A.; Raman, Mythili
Subject: RE: Sen Grassley allegations about ATF

Per ATF and USAO:

(1) Bottom line is that ATF did NOT persuade a reluctant dealer to participate.

(2) Two of the guns sold during the investigation were found near the scene of the shooting of Agent Terry. These guns had been purchased about 11 months earlier, by a person later determined to be part of the trafficking ring. ATF was not notified of the sales until after they had been completed.

If you need more info, I can provide additional details about the two guns and about ATF's/USAO's dealings with the gun dealers in this case.

Grindler replied:[199]

From: Grindler, Gary (OAG) [redacted]
Sent: Wednesday, February 16, 2011 1:17 PM
To: Weinstein, Jason; Breuer, Lanny A.; Raman, Mythili
Subject: RE: Sen Grassley allegations about ATF

"I would like more information"

I would like more information including what is meant by "ATF was notified of the sales until after they had been completed."

Fifteen minutes later, Weinstein emailed Breuer and Raman: "I just spoke to him – it was easier than email."[200]

Meanwhile, Grindler forwarded Weinstein's emails to Attorney General Holder:[201]

From: Grindler, Gary (OAG)
To: **Attorney General**
Sent: 2/16/2011 1:33:51 PM
Subject: FW: Sen Grassley allegations about ATF

"I still need to give you more details on this. . . . When we have a moment, I can fill you in."

I still need to give you more details on this. The guns were purchased on January 16, 2010; the FFL reported the purchase voluntarily 3 days later; the shooting took place about 11 months later. When we have a moment, I can fill you in.

[199] Email from Gary Grindler to Jason Weinstein, et al. (Feb. 16, 2011) [HOGR 007089–90].
[200] Email from Jason Weinstein to Lanny Breuer and Mythili Raman (Feb. 16, 2011) [HOGR 007089–90].
[201] Email from Gary Grindler to Eric Holder (Feb. 16, 2011) [DOJ-FF-06212–13].

Holder responded:[202]

From: Attorney General
To: Grindler, Gary (OAG)
Sent: 2/16/2011 1:54:55 PM
Subject: RE: Sen Grassley allegations about ATF

"Ok- I'll need this for the hearings"

Ok- I'll need this for the hearings

FINDING:	The Justice Department did not reach out in a meaningful way to the Terry family to provide support and answers. In fact, Department officials who were tasked with that outreach were hostile to the Terry family's pleas for answers, and even mocked the Terry family. The Terry family was only provided information the Justice Department intended to make public.

As noted above, Senator Grassley's February 9 letter included a plea from the mother of Brian Terry that "[w]e want to know who allowed the sale of that gun that murdered our son" and that "we want some answers." DOJ, however, provided no response to Senator Grassley throughout the rest of February. Even following instructions from Attorney General Holder, no one from ATF or the USAO contacted the family to explain the connection between Operation Fast and Furious and the firearms recovered at the scene of Agent Terry's murder.

On **Wednesday, February 23, 2011**, Burke forwarded a news clipping to his colleagues:[203]

From: Burke, Dennis (USAAZ)
Sent: Wednesday, February 23, 2011 8:51 AM
To: Cunningham, Patrick (USAAZ); Jefferson, Timothy (USAAZ); Evans, John (USAAZ) 3; Scheel, Ann (USAAZ)
Subject: RE: CONFIDENTIAL: Follow-up with Terry Family

Unbelievable. "Unbelievable."

STEP MOTHER FEARS "COVER-UP" IN BORDER AGENT'S DEATH. In an "exclusive" interview with FOX News Channel (2/22, 12:28 p.m. EDT), Carolyn Terry, the step mother of slain Border Patrol Agent Brian Terry, who was killed by suspected bandits in southern Arizona last December, said she fears the government is "covering up" the details surrounding her son's death. In what it called "new developments," FOX reported, "Number one, three of the four suspects arrested that night are innocent, they are being deported as just illegal immigrants. Two, the weapon used to kill agent Terry has been sourced not to Mexico but to a Phoenix gun store that was working with the federal government, yet agents did nothing to stop the sale or transfer those guns to the cartel that killed Terry. And finally, the US Senate wants answers, including a 30-page document, that details the role of the ATF in agent Terry's death."

Scheel responded to Burke's email:[204]

[202] Email from Eric Holder to Gary Grindler (Feb. 16, 2011) [DOJ-FF-06212–13].
[203] Email from Dennis Burke to Patrick Cunningham, et al. (Feb. 23, 2011) [DOJ-FF-06835–37].

From: Scheel, Ann (USAAZ)
To: Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Jefferson, Timothy (USAAZ); Evans, John (USAAZ) 3
Sent: 2/23/2011 10:53:03 AM
Subject: RE: CONFIDENTIAL: Follow-up with Terry Family

Grassley's hard at work

"Grassley's hard at work"

Ann Birmingham Scheel
First Asst. U.S. Attorney
Dist. of Arizona

Assistant U.S. Attorney John Evans replied:[205]

From: Evans, John (USAAZ) 3
To: Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Jefferson, Timothy (USAAZ); Scheel, Ann (USAAZ)
Sent: 2/23/2011 10:56:17 AM
Subject: RE: CONFIDENTIAL: Follow-up with Terry Family

"It is what we will have to expect from this women [sic] and Terry's brother for the rest of the case"

It is what we will have to expect from this women and Terry's brother for the rest of the case, no matter what really happens. It is a distraction, but it does help us in that the suspects are paying close attention to these articles and they could make the suspects feel safe because of all the inaccurate information. Perhaps if we get a wire this woman's activities will spark a conversation.

The Arizona U.S. Attorney's Office officials further emailed:[206]

[INTENTIONALLY BLANK]

[204] Email from Ann Scheel to Dennis Burke, et al. (Feb. 23, 2011) [DOJ-FF-06835–37].
[205] Email from John Evans to Dennis Burke, et al. (Feb. 23, 2011) [DOJ-FF-06844–46].
[206] Email from Patrick Cunningham to Dennis Burke, et al. (Feb. 23, 2011) [DOJ-FF-06841–43].

From: Evans, John (USAAZ) 3
To: Cunningham, Patrick (USAAZ); Burke, Dennis (USAAZ); Jefferson, Timothy (USAAZ); Scheel, Ann (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Sent: 2/23/2011 11:03:18 AM
Subject: RE: CONFIDENTIAL: Follow-up with Terry Family

The wonder of it all. Tim will prepare an email to the family which will give the information that we are going to send to CBS. There will be copies of BP. Tim has not gotten any returned phone calls from the family.

From: Cunningham, Patrick (USAAZ)
Sent: Wednesday, February 23, 2011 8:57 AM
To: Burke, Dennis (USAAZ); Jefferson, Timothy (USAAZ); Evans, John (USAAZ) 3; Scheel, Ann (USAAZ); Sherwood, Robert (USAAZ) <Contractor>
Subject: RE: CONFIDENTIAL: Follow-up with Terry Family

Another reason to reach out to the Family today through the both Kelly Willis and Bob Heyer when we provide our statement to CBS news that Dennis is currently editing and DC asked us to perfect. We can just keep sending a steady stream of accurate information to our family contacts, because we cannot stop the Step Mother.

Later, another official in the office emailed:[207]

From: Sherwood, Robert (USAAZ) <Contractor>
To: Burke, Dennis (USAAZ); Evans, John (USAAZ) 3; Cunningham, Patrick (USAAZ); Scheel, Ann (USAAZ)
Sent: 2/23/2011 1:16:48 PM
Subject: FW: Fox 10 article

"Fox News quoting disgruntled Terry Family members."

Fox News quoting disgruntled Terry Family members. Reporter just flat out claims that murder weapon has been traced back to **ATF** which is wrong. Story ran locally, but was produced by Fox LA.

FINDING:	**The Justice Department's internal investigation of Fast and Furious was deeply flawed. Despite instructions from Attorney General Holder to find "real answers," Deputy Assistant Attorney General Jason Weinstein still took at face value the information provided by the U.S. Attorney's Office in Arizona—the very officials who were the subjects of the investigation. Only five months after his review would Weinstein read the case reports for the first time and express doubts about his initial conclusions.**

[207] Email from Robert Sherwood to Dennis Burke, et al. (Feb. 23, 2011) [DOJ-FF-06847].

That afternoon, DOJ learned about a segment that would air that night on the CBS Evening News.[208] The story provided further details obtained from whistleblowers. In response, Grindler forwarded the release separately to Attorney General Holder and to press spokesman Matt Miller.[209] Miller responded:[210]

From: Miller, Matthew A (SMO)
To: Grindler, Gary (OAG)
Sent: 2/23/2011 4:59:05 PM
Subject: RE: ATF story on CBS - heads up if you haven't seen.

"I don't trust what ATF has on it."

Yeah, not good. I've tasked Tracy with working with Weinstein to come up with a new q and a on this because I don't trust what ATF has on it.

Holder replied:[211]

From: Attorney General
To: Grindler, Gary (OAG); Cole, James (SMO); Wilkinson, Monty (OAG)
Sent: 2/23/2011 5:27:11 PM
Subject: Re: ATF story on CBS - heads up if you haven't seen.

"We need answers on this. Not defensive bs- real answers."

Ok. We need answers on this. Not defensive bs- real answers.

Despite Holder's instruction to find "real answers," DOJ press official Laura Sweeney emailed:[212]

From: Sweeney, Laura (SMO)
To: Burke, Dennis (USAAZ); Thomasson, Scot L. (ATF); Burton, Faith (SMO); Weinstein, Jason (CRM); ATF; McDermond, James E. (ATF); ATF (ATF); Schmaler, Tracy (SMO)
CC: Gaston, Molly (SMO); Weich, Ron (SMO)
Sent: 2/23/2011 7:00:07 PM
Subject: RE: Draft Response to the CBS story on ATF - for use if asked -

"[D]idn't mention Grassley at all"

The piece just finished - clearly not good at all, but didn't mention Grassley at all so probably don't need to mention him in a response to query on this story. It did specifically talk about Mr. Hall, so perhaps adding the line below. I do think ODAG will need to weigh in on any proposed response to query. Tracy is wheels down shortly so please hold off using any statements until she can weigh in. Scot - please let us know if you start to get questions.

[208] Sharyl Attkisson, *Gunrunning scandal uncovered at the ATF*, CBS NEWS, Feb. 24, 2011, *available at* http://www.cbsnews.com/news/gunrunning-scandal-uncovered-at-the-atf.
[209] Email from Gary Grindler to Matthew Miller (Feb. 23, 2011) [DOJ-FF-06959]; email from Gary Grindler to Eric Holder (Feb. 23, 2011) [DOJ-FF-06959].
[210] Email from Matthew Miller to Gary Grindler (Feb. 23, 2011) [DOJ-FF-06959].
[211] Email from Eric Holder to Gary Grindler, et al. (Feb. 23, 2011) [DOJ-FF-04271].
[212] Email from Laura Sweeney to Dennis Burke, et al. (Feb. 23, 2011) [DOJ-FF-06810–12].

ATF official Scot Thomasson added:[213]

From: Thomasson, Scot L. (ATF)
To: Burke, Dennis (USAAZ); Burton, Faith (SMO); Weinstein, Jason (CRM); ATF; McDermond, James E. (ATF); ATF (ATF); Sweeney, Laura (SMO); Schmaler, Tracy (SMO); ATF (ATF); McMahon, William G. (ATF)
CC: Gaston, Molly (SMO); Weich, Ron (SMO)
Sent: 2/23/2011 7:07:23 PM
Subject: RE: Draft Response to the CBS story on ATF - for use if asked -

Dennis,

We just watched the piece. It is about 5 minutes long and is very negative, alleging ATF improprieties in the Fast and Furious investigation and death of Agent Terry. The piece highlighted multiple unnamed ATF agents involved in the investigation who were allegedly warning managers of dangerous investigative practices (allowing straw purchases from seven FFLs in 2009).

We agree that it's time to go on the offensive with strong statements about the nature of firearms trafficking.

"We agree that it's time to go on the offensive"

After receiving Holder's email, Grindler followed up with others, noting that the Attorney General would be testifying before Congress the next week:[214]

From: Grindler, Gary (OAG)
To: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG); Breuer, Lanny A. (CRM); Raman, Mythili (CRM)
Sent: 2/23/2011 6:58:11 PM
Subject: FW: ATF story on CBS - heads up if you haven't seen.

We again will need hard answers on this story given that the AG will be asked about this matter by Congress next week.

In response, Raman tasked Weinstein.[215] Lisa Monaco asked Brad Smith to brief Wilkinson.[216] On **Thursday, February 24, 2011**, Smith responded:[217]

From: Smith, Brad (ODAG)
Sent: Wednesday, February 23, 2011 11:20 PM
To: Wilkinson, Monty (OAG)
Subject: Fw: ATF story on CBS - heads up if you haven't seen

Hi Monty,

I can give you a read-out tomorrow. I also asked ATF to put together a line-by-line analysis of the allegations in Grassley's letter, which I will give you. Bottom line: ATF categorically denies ever allowing any weapons to enter Mexico illegally, and it repeatedly told us that it didn't encourage dealers to make sales that made them "uncomfortable." And, as I think you may have heard Billy mention at last week's monthly ATF-DAG meeting, ballistics indicate that the firearm that killed Agent Terry wasn't one of the alleged straw purchases.

"Bottom line: ATF categorically denies ever allowing any weapons to enter Mexico illegally"

[213] Email from Patrick Cunningham to Dennis Burke, et al. (Feb. 23, 2011) [DOJ-FF-06822–24].
[214] Email from Gary Grindler to Lisa Monaco, et al. (Feb. 23, 2011) [DOJ-FF-04268].
[215] Email from Mythili Raman to Gary Grindler, et al. (Feb. 23, 2011) [DOJ-FF-04279].
[216] Email from Lisa Monaco to Brad Smith (Feb. 23, 2011) [HOGR 007016–17].
[217] Email from Brad Smith to Monty Wilkinson (Feb. 23, 2011) [HOGR 007016–17].

That day, Weinstein again turned to Phoenix ATF and U.S. Attorney's Office to help provide answers for the Attorney General, emailing SAC Newell and U.S. Attorney Burke:[218]

From: Weinstein, Jason (CRM)
Sent: Thursday, February 24, 2011 11:08 AM
To: Newell, William D. (ATF); Burke, Dennis (USAAZ)
Cc: Sweeney, Laura (SMO); Moran, Molly (OAG); Burton, Faith (SMO); O'Neil, David (ODAG)
Subject: Conference call to discuss CBS News piece from last night
Importance: High

http://www.cbsnews.com/video/watch/?id=7357550n&tag=contentMain;contentBody

In case you haven't seen this, here's the link. It's very specific, which makes it troubling and likely to get more traction. We need to help prep the AG for testimony next week, and he's certain to be asked about this. Can we have a call today to talk about the specific allegations in the story and the purported support for them?

"Can we have a call today to talk about the specific allegations in the story and the purported support for them?"

Weinstein's email led to a phone call with Emory Hurley, the main prosecutor on Operation Fast and Furious in the U.S. Attorney's Office for the District of Arizona. On this phone call, Hurley provided answers to Weinstein's questions about firearms sales that should have put Weinstein on alert that the U.S. Attorney's Office may have knowingly allowed firearms sales to suspected traffickers. However, Weinstein did not realize the significance of the answer until five months later, in July 2011. Weinstein refused to provide information regarding this phone call in his interview with Committee staff. However, the DOJ OIG report states:

> Weinstein told the OIG that in order to gather information relevant to Sen. Grassley's allegations, he asked Hurley to focus on those transactions that ATF and the U.S. Attorney's Office knew about prior to the purchase. Specifically, Weinstein stated that he asked Hurley whether there were any purchases for which it was known in advance through a wire conversation that there was probable cause to believe that the sale would be illegal. Weinstein stated that Hurley "did not know the answer off the top of his head," and the email noted that the U.S. Attorney's Office would be providing this information at a later time. Weinstein told us that he was surprised by this because "the calls that give you probable cause before the guy walks in the door are . . . one of the things you're hoping and praying to get through the wire." He added that "the significance of [Hurley's] failure to know that didn't register with me until later," when Weinstein read the ROIs about prospective purchases in the case in July 2011.[219]

[218] Email from Jason Weinstein to William Newell and Dennis Burke (Feb. 24, 2011) [DOJ-FF-07194].
[219] DOJ OIG report at 366-67. The OEO memorandum for the May 21, 2010 wiretap application, which Weinstein signed off on, provided a specific example.

On **Saturday, February 26, 2011,** Weinstein emailed Goldberg, Wilkinson, and Moran a four-page summary of what he learned from the Arizona U.S. Attorney's office and ATF.[220] On **Sunday, February 27, 2011,** Wilkinson forwarded the email to Attorney General Holder.[221] The next day, on **Monday, February 28, 2011**, DOJ referred Operation Fast and Furious to the OIG for investigation.[222]

The following are excerpts from Weinstein's email:[223]

From: Weinstein, Jason (CRM)
Sent: Saturday, February 26, 2011 10:09 PM
To: Goldberg, Stuart (ODAG); Wilkinson, Monty (OAG); Moran, Molly (OAG)
Cc: Breuer, Lanny A. (CRM); Raman, Mythili (CRM)
Subject: AZ gun trafficking case

"[T]he DAG asked me to obtain more information about . . . 'Fast and Furious'"

Stuart/Monty/Molly,

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.

* * *

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 investigation was conducted - and the decisions about when to seize guns were made - thoughtfully, carefully, and strategically.

I hope this is helpful.

Jason

"[T]his investigation was conducted . . . thoughtfully, carefully, and strategically."

On **Wednesday, March 2, 2011**, DOJ responded to Senator Grassley's February 9 and February 16 letters.[224] Rather than responding to the concerns Senator Grassley had raised, the letter noted that DOJ appreciated the opportunity to brief Committee staff regarding ATF's efforts to interdict firearms, and indicated that the Attorney General had asked the Acting

[220] Email from Jason Weinstein to Stuart Goldberg, et al. (Feb. 26, 2011) [DOJ-FF-07408–13].
[221] Email from Monty Wilkinson to Eric Holder (Feb. 27, 2011) [DOJ-FF-07408–13]. The DOJ OIG report noted: "Weinstein's summary did not indicate that he had authorized three of the wiretap applications referenced in his summary, or that he was familiar with the Fast and Furious investigation as a result of discussions he had with McMahon in April and May 2010." DOJ OIG report at 366.
[222] DOJ OIG report at 369.
[223] Email from Jason Weinstein to Stuart Goldberg, et al. (Feb. 26, 2011) [DOJ-FF-07408–13].
[224] Letter from Eric Holder, Att'y Gen., Dep't of Justice to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Mar. 2, 2011).

Inspector General to "evaluate the concerns that have been raised about ATF investigative actions."[225]

2. Whistleblowers Go Public

FINDING:	**It was not until whistleblowers went public with details about Fast and Furious in early March 2011 that the Justice Department started to seriously consider the implications of the tragic operation. Still, the Department mainly focused on responding to the media and public relations fallout from those revelations.**

On **Thursday, March 3, 2011,** Senator Grassley again wrote to DOJ, criticizing DOJ's refusal to provide information and highlighting whistleblower documents that contradicted DOJ's representations to Congress. After receiving this letter and after whistleblowers made public statements about gunwalking in Operation Fast and Furious, DOJ began to discuss the severity of the situation. Some DOJ officials recognized a need to examine more closely the facts, but some remained focused on saving face. It is clear from the emails that, as of March 2011, DOJ lacked clarity on whether ATF permitted gunwalking in Operation Fast and Furious. Moreover, emails show that ATF and DOJ did not share the same definition of gunwalking—in fact, it seems that the issue of how to define gunwalking arose for the first time on March 10, 2011.

Senator Grassley's March 3, 2011 letter included documents obtained from whistleblowers and stated:[226]

> There are many instances where the Justice Department and its components choose to provide information about pending investigations to Congress. These examples are not always officially documented, but often occur when there are particularly egregious allegations of government misconduct or there is an extremely high level of public interest in an investigation. Getting to the truth of the ATF whistleblower allegations in this case is extremely important to the family of Brian Terry and should be important to all Americans. There is no reason to wait the unknown number of years it might take for all of the trials and all of the appeals to be exhausted. The time for truth is now. . . . [P]lease explain how the denials in the Justice Department's February 4, 2011 letter to me can be squared with the evidence.[227]

[225] *Id.*
[226] Letter from Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice (Mar. 3, 2011).
[227] *Id.* at 4-5.

That evening, Smith emailed Schmaler, stating that ATF found a document that contradicted ATF's prior statements that it "makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico":[228]

From: Smith, Brad (ODAG)
Sent: Thursday, March 03, 2011 5:52 PM
To: Schmaler, Tracy (SMO)
Cc: Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG)
Subject: ATF Story

"CBS will be running a story this evening concerning ATF's Project Gunrunner activities"

Tracy,

I understand that you are already aware that CBS will be running a story this evening concerning ATF's Project Gunrunner activities and allegations that it knowingly allowed firearms to enter Mexico. Stuart and I just chatted briefly with Ken Melson and Billy Hoover at ATF about the story, and we wanted to pass along a few points that came up in our conversation, just in case you weren't aware of them.

* * *

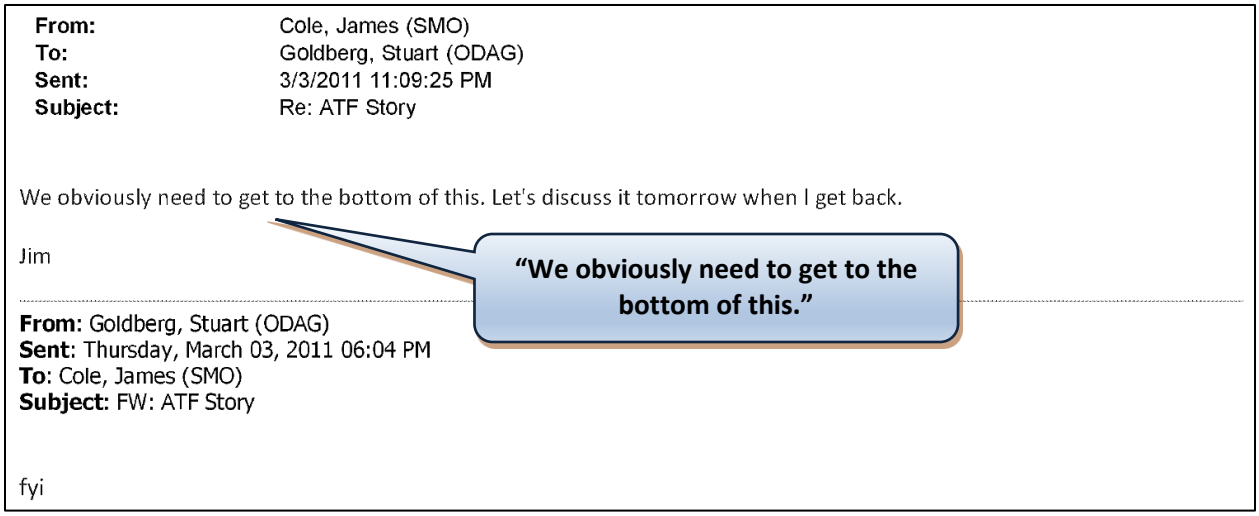
Last night, ATF found a document indicating that, on at least one occasion, an ATF agent witnessed a suspected straw purchaser resell firearms, but for reasons that remain unclear (there is some speculation that the straw's erratic driving may have played a role), broke off surveillance of the straw and did not take him into custody following the transaction. As described to us, this document appears contrary to statements from ATF last month indicating that its agents arrested suspects straws along the Southwest Border as soon as they had concrete evidence indicating the suspect straws were engaged in illegal firearms trafficking. Stuart and I have requested a copy of the document, and we will share it once we have it.

"ATF found a document indicating that . . . an ATF agent witnessed a suspected straw purchaser resell firearms, but . . . broke off surveillance . . . and did not take him into custody"

Goldberg forwarded the email to Cole, who replied:[229]

[228] Email from Brad Smith to Tracy Schmaler (Mar. 3, 2011) [DOJ-FF-09102–03].

[229] Email from James Cole to Stuart Goldberg (Mar. 3, 2011) [DOJ-FF-09102–03].



Later that evening, ATF Special Agent John Dodson appeared on CBS Evening News in an interview with investigative reporter Sharyl Attkisson.[230] The segment stated:

> Dodson's job is to stop gun trafficking across the border. Instead, he says he was ordered to sit by and watch it happen. Investigators call the tactic letting guns "walk." . . . Dodson's bosses say that never happened. Now, he's risking his job to go public. "I'm boots on the ground here in Phoenix, telling you we've been doing it every day since I've been here," he said. "Here I am. Tell me I didn't do the things I did. Tell me you didn't order me to do the things I did. Tell me it didn't happen. Now you have a name on it. You have a face to put with it. Here I am. Someone now, tell me it didn't happen."[231]

The story concluded:

> Dodson said he hopes that speaking out helps Terry's family. They haven't been told much of anything about his murder – or where the bullet came from. "First of all, I'd tell them that I'm sorry. Second of all, I'd tell that I've done everything that I can for them to get to the truth," Dodson said. "After this, I don't know what else I can do. But I hope they get it."[232]

[230] Sharyl Attkisson, *Agent: I was ordered to let U.S. guns into Mexico,* CBS NEWS, Mar. 3, 2011, *available at* http://www.cbsnews.com/news/agent-i-was-ordered-to-let-us-guns-into-mexico-03-03-2011.
[231] *Id.*
[232] *Id.*

(photo from CBS Evening News)

After the CBS story aired, the Center for Public Integrity published a lengthy, detailed account of information whistleblowers had provided about the operation.[233] When it was forwarded to Attorney General Holder, he replied:[234]

From: **Attorney General**
To: Wilkinson, Monty (OAG); Grindler, Gary (OAG)
CC: Moran, Molly (OAG)
Sent: 3/3/2011 7:22:38 PM
Subject: Re: center for public integrity piece on ATF

I hope there is another side to this story.

"I hope there is another side to this story."

From: Wilkinson, Monty (OAG)
Sent: Thursday, March 03, 2011 07:02 PM
To: Grindler, Gary (OAG); **Attorney General**
Cc: Moran, Molly (OAG)
Subject: FW: center for public integrity piece on ATF

Grindler responded: "Not good."[235]

Sweeney sent the Center for Public Integrity story to Breuer and wrote:[236]

[233] John Solomon, et al., *ATF let hundreds of U.S. weapons fall into hands of suspected Mexican gunrunners*, Center for Public Integrity (Mar. 3, 2011), https://www.publicintegrity.org/2011/03/03/2095/atf-let-hundreds-us-weapons-fall-hands-suspected-mexican-gunrunners.
[234] Email from Eric Holder to Monty Wilkinson and Gary Grindler (Mar. 3, 2011) [DOJ-FF-08170–76].
[235] Email from Gary Grindler to Monty Wilkinson and Eric Holder (Mar. 3, 2011) [DOJ-FF-08177–83].

From: Sweeney, Laura (SMO) <[redacted]>
To: Breuer, Lanny A.
Cc: Raman, Mythili; Weinstein, Jason; Finelli, Alisa (SMO)
Sent: Thu Mar 03 18:56:38 2011
Subject: Gunrunner story - you aren't referenced

"Here it is - it does not mention you."

Here it is - it does not mention you. Tracy did say that she expects the reporter to continue writing additional stories though, and he referenced a Wikileaks cable about a meeting you had in Mexico. Not sure where he's going with that one, but we'll keep on top of this.

Raman replied an hour later:[237]

From: Raman, Mythili (CRM)
Sent: Thursday, March 03, 2011 07:43 PM
To: Breuer, Lanny A. (CRM); Sweeney, Laura (SMO)
Cc: Weinstein, Jason (CRM); Finelli, Alisa (SMO)
Subject: Re: Gunrunner story - you aren't referenced

"Just heard story on NPR. Report said this is as big as Ruby Ridge."

Just heard story on NPR. Report said this is as big as Ruby Ridge.

Later, Weinstein emailed:[238]

From: Weinstein, Jason
To: Breuer, Lanny A.; Raman, Mythili; Sweeney, Laura (SMO)
Sent: Thu Mar 03 21:37:36 2011
Subject: Fw: Final Gunrunner Answers

I think this disgruntled agent fundamentally misunderstands what it means to have enough evidence to arrest a straw purchaser, and that seems to be at the heart of this. Dennis's comments below are right on.

"[T]his disgruntled agent fundamentally misunderstands what it means to have enough evidence to arrest a straw purchaser"

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice

Brad Smith in the Office of the Deputy Attorney General emailed Stuart Goldberg:[239]

From: Smith, Brad (ODAG)
To: Goldberg, Stuart (ODAG)
Sent: 3/3/2011 11:07:38 PM
Subject: Re: ATF Story

"[S]he got the point about Lanny removed from some of the print stories."

Sure thing. I also chatted with Tracy. She said she got the point about Lanny removed from some of the print stories.

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[236] Email from Laura Sweeney to Lanny Breuer (Mar. 3, 2011) [DOJ-FF-08828–34].
[237] Email from Mythili Raman to Lanny Breuer and Laura Sweeney (Mar. 3, 2011) [DOJ-FF-08828–34].
[238] Email from Jason Weinstein to Lanny Breur, et al. (Mar. 3, 2011) [DOJ-FF-08090].
[239] Email from Brad Smith to Stuart Goldberg (Mar. 3, 2011) [DOJ-FF-09108–09].

That same day, U.S. Ambassador to Mexico Carlos Pascual reached out to the Justice Department asking for a statement from DOJ to respond to fallout from the press:[240]

From: Pascual, Carlos (Mexico City)
To: William.Newell[redacted]; Williams, James H (Mexico City); Featherstone, Alex (Mexico City); Breuer, Lanny A. (CRM); Swartz, Bruce (CRM)
Cc: ATF atf.gov
Subject: Re: Fast and Furious
Date: Saturday, March 05, 2011 11:09:05 PM

"[W]e're getting trounced in the press and it's going to get worse"

Lanny, Bruce -- we're getting trounced in the press and it's going to get worse from several exchanges I've had, especially in parliament. We need help. Best thing would be a DOJ statement that we could circulate here. Anything you can do to help?

Officials from the State Department and ATF devised a plan for responding to the press coverage and, on **Sunday, March 6, 2011,** Breuer forwarded the plan to Deputy Attorney General James Cole:[241]

To: Cole, James (SMO) James Cole ATF ATF
From: Breuer, Lanny A.
Sent: Sun 3/6/2011 8:30:54 PM
Subject: Fw: Fast and Furious

This is from Ambassador Pascual. Wanted to pass it on.

----- Original Message -----
From: Pascual, Carlos (Mexico City) [redacted]
To: Breuer, Lanny A.; ATF; Swartz, Bruce; ATF
Cc: Feeley, John D (Mexico City) [redacted]; Williams, James H (Mexico City) [redacted]
Sent: Sun Mar 06 12:14:05 2011
Subject: Re: Fast and Furious

John and I just spoke with Ken. We agreed to work on three things: a statement in Washington from DOJ affirming several key facts about the operation; Embassy will reissue in Mexico; we will come up with list of people in government to make calls to clarify certain aspects of press that are wrong and explain that there is a related ongoing case that precludes further commentary.

The faster we can move down this track the better. Ken said there is a Monday meeting with the DAG. I hope this can all get approved on Monday.

Meanwhile, that same day, Melson emailed Smith and several ATF officials:[242]

[240] Email from Carlos Pascual to William Newell, et al. (Mar. 5, 2011) [DOJ-FF-03634].
[241] Email from James Cole to Lanny Breuer (Mar. 6, 2011) [DOJ-FF-03685].
[242] Email from Kenneth Melson to Brad Smith, et al. (Mar. 6, 2011) [DOJ-FF-03672–73].

From: Melson, Kenneth E. (ATF)
Sent: Sunday, March 06, 2011 12:27 PM
To: Smith, Brad (ODAG); Hoover, William J. (ATF); Kumor, Daniel J. (ATF); Chait, Mark R. (ATF)
Subject: Fw: Fast and Furious

Brad: In addition to the suggestions of Amb Pascual below, we have the Phoenix SAC and ASAC in our offices this afternoon scrubbing Fast and Furious again so we know all the facts, as well as the other case in which Dodson was the case agent. We also have the case agents here on the two Texas cases which involve two of the guns seized in Mexico in relation to the Zapata murder. We are putting time lines together to dispel the erroneous allegations in the press and in response to Grassley's further questions. We are at ATF HQ now. Let me know if you would like to join us. Ken

"[W]e have the Phoenix SAC and ASAC in our offices this afternoon scrubbing Fast and Furious again"

Smith responded:[243]

[243] Email from Brad Smith to Kenneth Melson (Mar. 6, 2011) [DOJ-FF-03672–73].

"[O]ne question we'll have to figure out is whether a DOJ/Washington-issued statement . . . will just stir-up more controversy or attention"

From: Smith, Brad (ODAG)
Sent: Sunday, March 06, 2011 1:15 PM
To: Melson, Kenneth E. (ATF)
Cc: Hoover, William J. (ATF)
Subject: RE: Fast and Furious

Thanks, Ken. I chatted with Billy a few minutes ago, and he said ATF was doing a hard scrub on th case this afternoon. I bet the timelines and chronologies will be very helpful in responding to future inquiries, etc. Just to reiterate what I realize is obvious: Any proposed statement will have to be vetted carefully by ATF, CRM, the USAO, OLA, and OPA, and probably others. I think one question we'll have to figure out is whether a DOJ/Washington-issued statement would help or hurt us vis-à-vis the Hill, the media, and other reviews, or whether it will just stir-up more controversy or attention that, at least for the time being, may be partially mitigated by noting that the AG has asked OIG to consider opening a review. And, to the extent we issue any statement, we'll have to be dead-to-rights certain that the facts in the statement are correct. Again, I apologize for saying what is as plain as day. I just think that we would be in a particularly bad spot (both in Mexico and domestically), if, in a rush to respond to the embassy's request, DOJ ended up making a statement that we subsequently had to walk back.

On **Monday, March 7, 2011**, Sweeney emailed "question and answer" responses for a press conference where Breuer would be appearing alongside Attorney General Holder:[244]

"[T]here's concern if Lanny says at press conference with AG that he didn't approve any such action, it passes the buck to the AG standing right there"

From: Sweeney, Laura (SMO) [mailto[redacted]
Sent: Monday, March 07, 2011 6:54 PM
To: Weinstein, Jason; Raman, Mythili
Cc: Finelli, Alisa (SMO)
Subject: Updated Q&A

Emailed with folks and there's concern if Lanny says at press conference with AG that he didn't approve any such action, it passes the buck to the AG standing right there (i.e., I didn't and couldn't approve this but can't speak for others standing here.)

On **Wednesday, March 9, 2011**, Weinstein emailed Goldberg:[245]

"[H]e mentioned 2 or 3 incidents in which an ATF agent . . . sent a CI, posing as a straw, in to a store to make a purchase and then had the CI hand those guns off to a trafficker."

From: Weinstein, Jason (CRM)
Sent: Wednesday, March 09, 2011 1:30 PM
To: Goldberg, Stuart (ODAG)
Subject: F&F

When we were talking to Billy in the hall the other day, he mentioned 2 or 3 incidents in which an ATF agent (inexplicably) sent a CI, posing as a straw, in to a store to make a purchase and then had the CI hand those guns off to a trafficker. That was the first I had heard of those incidents, and my understanding is that they had nothing to do with "Fast & Furious" but were part of some other investigation. Didn't want you to think I had left out what would have been a rather significant detail from my email of a couple of weeks ago.

Weinstein sent a virtually identical email to Grindler the next day.[246]

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[244] Email from Laura Sweeney to Jason Weinstein and Mythili Raman (Mar. 7, 2011) [DOJ-FF-11026–27].
[245] Email from Jason Weinstein to Stuart Goldberg (Mar. 7, 2011) [HOGR 007221].
[246] Email from Jason Weinstein to Gary Grindler (Mar. 8, 2011) [HOGR 007222]. In both emails, Weinstein failed to disclose that he had also became aware in 2010 of similar tactics in Operation Wide Receiver. The OIG report stated "Weinstein . . . told us that his knowledge of these incidents changed the way he viewed Operation Wide

The same afternoon, Schmaler emailed senior DOJ leadership regarding a brief segment by CBS's Sharyl Attkisson regarding the network's continuing coverage of the issue:[247]

From:	Schmaler, Tracy (SMO)
To:	Grindler, Gary (OAG); Miller, Matthew A (SMO); Monaco, Lisa (ODAG); Wilkinson, Monty (OAG); Moran, Molly (OAG); Goldberg, Stuart (ODAG); Smith, Brad (ODAG)
Sent:	3/9/2011 2:02:25 PM
Subject:	Latest CBS Segment on ATF

This is from previous interview w. ATF agent. Few things –
1) overall the piece hinges on her (willful?) lack of understanding about the gun laws. her language suggests a suspected straw purchaser should be arrested at time of sale and ffls are being forced to break law by selling to them. This is easy to push back on with our response re: current law and what unique factors exist in gun investigations. She knows this but continues to use terms like "gunrunner".
2) she cites FFLs being used as paid CIs – this could be routine and appropriate use -- checking w. ATF.
3) she cites court docs that suggest guns were monitored crossing border – checking w. USAO and ATF.

Schmaler also emailed Ambassador Pascual and others at the State Department to notify them that the story referenced court documents that contradicted DOJ's position that ATF did not have knowledge of firearms crossing the border to Mexico:[248]

From: Schmaler, Tracy (SMO) <Tracy.Schmaler@usdoj.gov>
To: Sweeney, Laura (SMO) [redacted]; Featherstone, Alex (Mexico City)
Cc: Pascual, Carlos (Mexico City); Feeley, John D (Mexico City); Williams, James H (Mexico City); Thomasson, Scot L. (ATF) [redacted]; ATF
ATF
Sent: Wed Mar 09 13:20:06 2011
Subject: RE: Urgent request for TPs on Fast & Furious

We're not going to be able get these in at this point. On the language, it is important to phrase it as the AG *asked* the IG to review. He can't order the IG to investigate –pls note that in any points. provided the accurate language in the guidance earlier this week.

I'd want to hear from ATF on the other points below – a recent report seemed to suggest court docs indicated there was knowledge of border crossing. Not sure if that's accurate – ATF might know -- but until we do – better to be careful in public comments. As to other point – that seems to be public info, but ATF can confirm.

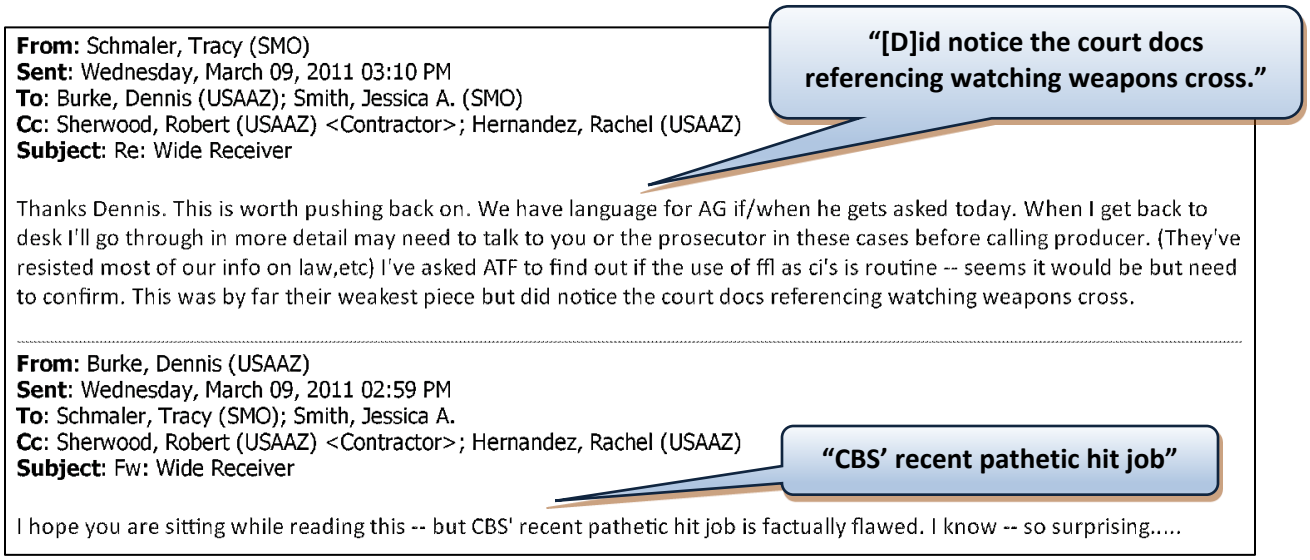
"[A] recent report seemed to suggest court docs indicated there was knowledge of border crossing."

Receiver. . . . Weinstein stated that 'once I discovered that Wide Receiver wasn't aberrant, my view was we've got to tell Congress, especially to the extent that gun walking had occurred on our watch.'" DOJ OIG report at 377-78. However, Weinstein said that that he did not advocate telling tell Congress about it until June 2011. DOJ OIG report at 378. The DOJ OIG concluded: "We were not persuaded by Weinstein's assertion that Operation Wide Receiver was properly viewed as an 'aberration' that had no relevance to the allegations." DOJ OIG report at 412; for a detailed discussion, see pp. 411-14.

[247] Email from Tracy Schmaler to Gary Grindler, et al. (Mar. 9, 2011) [HOGR 007225]; *see also* Sharyl Attkisson, *Documents point to ATF "gun running" since 2008*, CBS NEWS, Mar. 8, 2011, *available at* http://www.cbsnews.com/news/documents-point-to-atf-gun-running-since-2008.

[248] Email from Tracy Schmaler to Laura Sweeney and Alex Featherstone (Mar. 9, 2011) [DOJ-FF-03629–33].

Schmaler also flagged the court documents for Burke:[249]



On **Thursday, March 10, 2011**, Burke met in Michigan with various members of the Terry family.[250] According to the family, not only did Burke deny that the firearms recovered at the scene of Agent Terry's murder were connected to Operation Fast and Furious, "he told them that the weapons found at Agent Terry's murder scene were sold out of a Texas shop, not an Arizona shop."[251]

At a hearing of the Senate Appropriations Committee the same day, Senator Kay Bailey Hutchison asked Attorney General Holder about Fast and Furious. Emails show that Attorney General Holder voiced misgivings about ATF Deputy Director Billy Hoover's assurances that ATF did not allow firearms to walk:[252]

[INTENTIONALLY BLANK]

[249] Email from Tracy Schmaler to Dennis Burke and Jessica Smith (Mar. 9, 2011) [DOJ-FF-11187–89].
[250] *See* email from Robert Heyer to Dennis Burke (Mar. 9, 2011) [DOJ-FF-11502–03].
[251] DOJ OIG report at 343 fn. 259.
[252] Email from Eric Holder to Monty Wilkinson, et al. (Mar. 10, 2011) [HOGR 007232–34].

From: [redacted]
To: Wilkinson, Monty (OAG); Grindler, Gary (OAG); Moran, Molly (OAG)
Sent: 3/10/2011 6:28:09 PM
Subject: Re:

Do they really, really know?

"Do they really, really know?"

From: Wilkinson, Monty (OAG)
Sent: Thursday, March 10, 2011 06:10 PM
To: [redacted]; Grindler, Gary (OAG); Moran, Molly (OAG)
Subject: FW:

FYI

From: Hoover, William J. (ATF)
Sent: Thursday, March 10, 2011 5:34 PM
To: Smith, Brad (ODAG); Wilkinson, Monty (OAG)
Subject:

"[H]ope the AG understands that we did not allow guns to 'walk'"

Brad and Monty,

I hope the AG understands that we did not allow guns to "walk".

Meanwhile, Melson attempted to obtain clarification from Lisa Monaco and Stuart Goldberg of the meaning of "letting guns walk":[253]

From: Melson, Kenneth E. (ATF)
Sent: Thursday, March 10, 2011 11:56 AM
To: Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG)
Subject: AG's Testimony

"Is his definition of 'walk' in tandem with the DAG's instructions to the USA's last evening?"

Stuart and Lisa: I understand that in a response to a question by Senator Hutchinson that the AG said something to the effect of <I made it clear to the USAs and SACs that letting guns "walk" is not acceptable.> Is his definition of "walk" in tandem with the DAG's instructions to the USA's last evening? The critics' definition of "walk" is letting a person who may be a straw purchaser leave with weapons that may get to Mexico, even though we have no lawful authority, according to the USA, to seize the gun or arrest the purchaser. Ken.

The next day, on **Friday, March 11, 2011,** Cole confirmed the definition of gunwalking, indicating that he and Holder were in agreement as to the definition:[254]

From: Cole, James (SMO)
To: Goldberg, Stuart (ODAG)
Sent: 3/11/2011 4:01:26 PM
Subject: RE: AG's Testimony

"Walking means letting it go when you could arrest or legally stop."

I just spoke with the AG on the very point and the answer is yes, he meant just what I said. Walking means letting it go when you could arrest or legally stop.

[253] Email from Kenneth Melson to Stuart Goldberg and Lisa Monaco (Mar. 10, 2011) [DOJ-FF-11791–92].
[254] Email from James Cole to Stuart Goldberg (Mar. 11, 2011) [DOJ-FF-11791–92].

On **Sunday, March 13, 2011**, Jesse Figueroa of the U.S. Attorney's Office for the District of Arizona emailed others within the Arizona office regarding the family of Border Patrol Agent Brian Terry:[255]

From: Figueroa, Jesse (USAAZ)
Sent: Sunday, March 13, 2011 01:28 PM
To: Burke, Dennis (USAAZ); Clemens, Shelley (USAAZ); Evans, John (USAAZ) 3; Jefferson, Timothy (USAAZ
Cc: Granoff, Liza (USAAZ)
Subject: RE: FYI

"Stepmom is irrational and I firmly believe she and the brother enjoy being in the limelight."

We are making a mistake by attempting to reason with the stepmother and the brother. Lisa and I have been dealing with them since the start of this case. We told them when we met them that there was no dirty agent. Stepmom is irrational and I firmly believe she and the brother enjoy being in the limelight. Whatever they are told will not change their irrationality and will just cause them to contact the news. If they learned about our hope for a wire I have no doubt that would have been on the news also. We should deal only with the intelligent side of the family (e.g. Terry's sister). The intelligent side of the family knows that step mom is nuts. When we last spoke to sister she made that very clear to us.

Stepmother and brother are building a defense for the killers and anytime we talk to them we are just giving them more ammo to support their ridiculous allegations.

Also, lost in this are the other victims in the case (the agents who were with Terry when he was killed). I think we need to reach out to them and tell them we know what they are hearing on hate TV is BS.

Burke urged that the discussion should be continued off-line:[256]

From: Burke, Dennis (USAAZ)
To: Figueroa, Jesse (USAAZ); Clemens, Shelley (USAAZ); Evans, John (USAAZ) 3; Jefferson, Timothy (USAAZ)
CC: Granoff, Liza (USAAZ); Hernandez, Norma (USAAZ)
Sent: 3/13/2011 1:35:59 PM
Subject: Re: FYI

"I don't want to do this by email."

Let's talk on Monday. I don't want to do this by email. There is a lot going on out there beyond the Stepmother that impacts this case. Thx.

FINDING: **When the possibility arose that the Mexican government would initiate its own investigation, an official in the Criminal Division proposed "disingenuously" relying on the Inspector General's investigation to "shelve the Mexican inquiry."**

On **Tuesday, March 15, 2011,** Raman contacted Burke regarding "noises that they [the Mexican government] are opening a criminal investigation of ATF for Fast and Furious . . . ."[257] When Burke asked how this would "interplay w the DAG-imposed IG review," DOJ Criminal Division Office of International Affairs Director Molly Warlow advised:[258]

[255] Email from Jesse Figueroa to Dennis Burke, et al. (Mar. 13, 2011) [DOJ-FF-11776–77].
[256] Email from Dennis Burke to Jesse Figueroa, et al. (Mar. 13, 2011) [DOJ-FF-11776–77].
[257] Email from Mythili Raman to Dennis Burke (Mar. 15, 2011) [DOJ-FF-12159–61].
[258] Email from Molly Warlow to Dennis Burke and Mythili Raman (Mar. 15, 2011) [DOJ-FF-12159-61].

From: Warlow, Molly (CRM)
Sent: Tuesday, March 15, 2011 07:47 PM
To: Burke, Dennis (USAAZ); Raman, Mythili (CRM)
Cc: Weinstein, Jason (CRM); Swartz, Bruce (CRM)
Subject: RE: Fast and Furious

"It shouldn't have any interplay at all, unless we wanted to . . . invoke that as reason . . . to shelve the Mexican inquiry."

It shouldn't have any interplay at all, unless we wanted to (or needed to)invoke that as reason (even if disingenuously so) to shelve the Mexican inquiry. I can see nothing but mischief (and headaches for us) in the mexicans pursuing this, so I would like to see if there is a way we can turn it off, and the sooner the better. It may be that we can't but I think it's worth at least a conversation or two to see if there is a way we might stop it.

The same day, Burton forwarded a March 9 letter from House Judiciary Committee Republicans to Weinstein, Burke, and Gaston.[259] The letter asked several questions about Operation Fast and Furious, including, "How many weapons have been allowed to pass to Mexico under the program known as 'Fast and Furious'?"[260] Burke responded:[261]

From: Burke, Dennis (USAAZ)
Sent: Tuesday, March 15, 2011 9:37 PM
To: Burton, Faith (SMO); Weinstein, Jason (CRM)
Cc: Gaston, Molly (SMO)
Subject: Re: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

"These Members should just saddle themselves up to the defense counsel' table"

These Members should just saddle themselves up to the defense counsel' table for the gun traffickers in our on-going case. Seriously, if you all send another mealy-mouth response kicking this to the IG, you will have assisted these Members in negatively impacting, to a significant degree, an existing indictment and thereby our ability to successfully prosecute these criminals.

If that is your course of inaction, I will send my own response informing them of their interference w this prosecution and their despicable misinformation propaganda campaign of the BP Agent Terry murder case.

Burton forwarded the email to Weich and wrote: "Let's confer when you have a minute."[262]

On **Wednesday, March 16, 2011**, when a DOJ official circulated a draft response to the House Judiciary Committee letter, Hoover emailed Weinstein:[263]

[INTENTIONALLY BLANK]

[259] Email from Faith Burton to Jason Weinstein, et al. (Mar. 15, 2011) [DOJ-FF-12172].
[260] Letter from Lamar Smith, Charmain, H. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice (Mar. 9, 2011) *available at* https://judiciary.house.gov/press-release/republicanswantanswersonatfguntraffickingprogram.
[261] Email from Dennis Burke to Faith Burton and Jason Weinstein (Mar. 15, 2011) [DOJ-FF-12172].
[262] Email from Faith Burton to Ron Weich (Mar. 16, 2011) [DOJ-FF-12172].
[263] Email from William Hoover to Jason Weinstein (Mar. 16, 2011) [DOJ-FF-12204–06].

From: Hoover, William J. <William.J.Hoover@usdoj.gov>
To: Weinstein, Jason
Sent: Wed Mar 16 17:54:58 2011
Subject: RE: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

Jason,

We are fine with the letter. We would rather not go down the road of how many firearms we seized. It opens up all sorts of questions as to when we seized them. When we knew of the purchase. Why didn't we seize more. If we take that one sentence out we believe it would be better.

"We would rather not go down the road of how many firearms we seized."

Billy

Subsequently, an ATF official emailed the broader DOJ group:[264]

From: ATF
To: Burton, Faith (SMO); Weich, Ron (SMO)
Cc: McDermond, James E. <[redacted]atf.gov>; Weinstein, Jason
Sent: Wed Mar 16 18:16:53 2011
Subject: Fw: 3/9 letter from HJC Republicans re: Gunrunner -- Have you all seen this?

Faith,

This letter looks solid. We would suggest you pull the sentence that notes how many weapons we've recovered. It squares poorly with how many we haven't.

"[P]ull the sentence that notes how many weapons we've recovered."

That night, Weinstein emailed:[265]

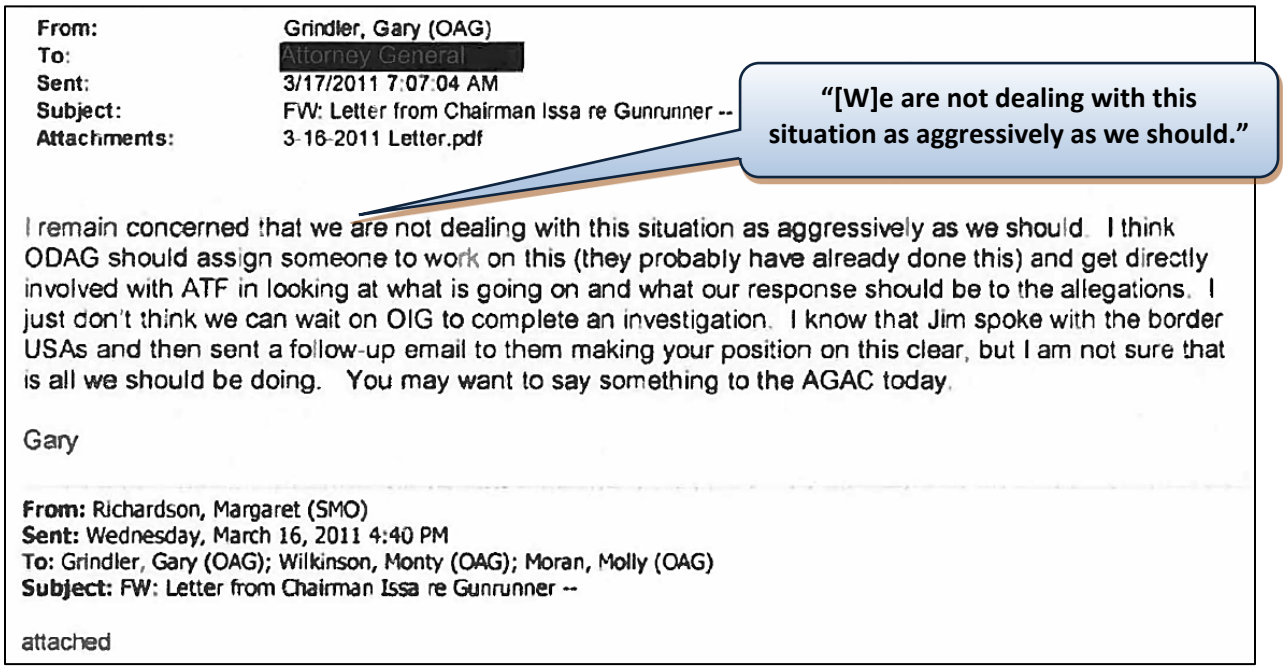
From:	Weinstein, Jason (CRM)
To:	Raman, Mythili (CRM); Axelrod, Matthew (ODAG)
Sent:	3/16/2011 11:59:19 PM
Subject:	Fw: Fast n Furious Stats.xlsx
Attachments:	Fast n Furious Stats.xlsx

These are impressive #s. The allegation in the HJC letter that DOJ was slow with wires is way off. In fact, after about the 3rd line, I asked OEO to expedite wires in this case (at request of AUSA, who reported pattern of quick drops of phones), and you can see from the timeline that OEO did exactly that.

The same day, House Oversight and Government Reform Committee Chairman Darrell Issa sent a letter to Melson asking for documents and information pertaining to Operation Fast

[264] Email from [ATF employee] to Faith Burton and Ron Weich (Mar. 16, 2011) [DOJ-FF-12213–14].
[265] Email from Jason Weinstein to Mythili Raman and Matthew Axelrod (Mar. 16, 2011) [DOJ-FF-12826].

and Furious.[266] The next morning, on **Thursday, March 17, 2011**, Grindler forwarded the letter to Attorney General Holder and wrote:[267]



Shortly thereafter, DOJ moved Matt Axelrod from the Criminal Division to ODAG to manage DOJ's response to the congressional investigation.[268]

On **Saturday, March 19, 2011**, U.S. Ambassador to Mexico Carlos Pascual resigned.[269] CBS News cited diplomatic sources inside Mexico who said "from Mexico's viewpoint, the ATF 'gunwalking' scandal was the final straw in a series of controversies."[270]

FINDING:	**As early as March 2011, Associate Deputy Attorney General Matt Axelrod discovered multiple examples of ATF failing to interdict firearms when probable cause existed to do so. When he raised this issue with the U.S. Attorney's Office for the District of Arizona, they pointed to wiretap affidavits that included these facts, suggesting the Criminal Division at Main Justice sanctioned the strategy by approving the wiretap applications. While others at DOJ swiftly began reviewing the affidavits, no office at DOJ was willing to acknowledge its errors.**

[266] Letter from Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform to Kenneth Melson, Acting Director, ATF (Mar. 16, 2011), *available at* https://oversight.house.gov/wp-content/uploads/2012/08/March-16-2011-Issa-to-Melson.pdf.
[267] Email from Gary Grindler to Eric Holder (Mar. 17, 2011) [HOGR 007068].
[268] *See* DOJ OIG report at 371-372.
[269] Sharyl Attkisson, *"Gunwalking" scandal final straw leading to resignation of U.S. ambassador to Mexico*, CBS NEWS, Mar. 20, 2011, *available at* http://www.cbsnews.com/news/gunwalking-scandal-final-straw-leading-to-resignation-of-us-ambassador-to-mexico.
[270] *Id.*

On the morning of **Monday, March 21, 2011**, the Deputy Attorney General's office asked the Criminal Division for language related to the scope and techniques used in Fast and Furious.[271] Raman emailed within the Division:[272]

From: Raman, Mythili
To: Lurie, Adam
Cc: Weinstein, Jason; Swartz, Bruce
Sent: Mon Mar 21 08:40:51 2011
Subject: RE: language for ODAG re: fast and furious

> Guys: I am only okay with this if ATF essentially certifies to this (in particular the last sentence, which is the most definitive factual statement: "At no time did any agent participate in any transaction, or urge or assist any person in buying, selling, or transporting any weapon in the U.S. or across the border."). I really, really don't want CRM to be making representations for ATF on a case in which we had zero involvement. And, if any of this turns out to be wrong after further digging by ATF or OIG, I don't want CRM to get blamed. I don't mind sticking our neck out on our cases where we are the ones that are looking for the facts, but I don't want us to do that for ATF in a matter where we are not involved.

(Why is CRM being used as a go-between ODAG and ATF on this? Jason, I know you're out, but I think you're in the best position to convey this message to ODAG.)

"I don't mind sticking our neck out on our cases where we are the ones that are looking for the facts"

Weinstein subsequently sent the following:[273]

-----Original Message-----
From: Weinstein, Jason (CRM)
Sent: Monday, March 21, 2011 9:37 AM
To: Johnston, Deborah A. (ODAG); Axelrod, Matthew (ODAG)
Cc: Raman, Mythili (CRM); Swartz, Bruce (CRM); Lurie, Adam (CRM); Warlow, Molly (CRM)
Subject: Fast and Furious

I understand that you all have asked Adam to come up with some language about the scope and techniques that were/were not used in F&F that can be included in a response to Lamar Smith and others, as well as in a preliminary response to Mexico.

As you know, I've already drafted a response to Smith that can also be used for other members; OLA has since revised that draft and should be circulating those revisions later today.

At the meeting on Thursday, there appeared to be some agreement that we should try to add some language to our congressional responses that captures, with appropriate disclaimers, the fact that to date ATF has discovered only a few (non-F&F) instances where agents intentionally let guns "walk."

I'm not sure if that's what gave rise to your request to Adam, or if you more generally wanted specific language about the F&F investigation, but either way, we've discussed this further within CRM and we think that the language that goes into the letter is more appropriately crafted by ATF, because ATF is the only entity that is in the position to know all those facts. Also, at this point, with Matt doing a deeper dive into F&F than I was in a position to do, Matt is probably in the best position to be, as an initial matter, reviewing ATF's draft language. Although we are always more than happy to help in areas that are not strictly in "our lane," this particular inquiry is fact-intensive, was not prosecuted by CRM, and was investigated by ATF -- therefore, CRM is just not in a good place to be the ones describing the facts. We'd be happy to look at any proposed language by ATF once it's been drafted, just to ensure that OIA and others are kept in the loop wrt to communications to Mexican law enforcement, but I don't think we should be the initial drafters re facts that are not within our knowledge.

"[T]here appeared to be some agreement that we should try to add some language to our congressional responses that captures . . . the fact that to date ATF has discovered only a few (non-F&F) instances where agents intentionally let guns 'walk.'"

Warlow followed up on Weinstein's email: "Serious damage is being done to our law enforcement relationship with Mexico, and frankly on a bilateral political level as well, because of what I suspect are ill-founded allegations in Mexican political and media circles about F and

[271] Email from Jason Weinstein to Deborah Johnston, et al. (Mar. 21, 2011) [DOJ-FF-17297–99].
[272] Email from Mythili Raman to Jason Weinstein and Bruce Swartz (Mar. 21, 2011) [DOJ-FF-17461–62].
[273] Email from Jason Weinstein to Deborah Johnston (Mar. 21, 2011) [DOJ-FF-17312–13]. The DOJ OIG report noted: "The e-mail message did not explicitly reference Operation Wide Receiver. As we discuss later in this chapter, Breuer also failed to inform the Department's leadership of his knowledge of Operation Wide Receiver until well after February 4." DOJ OIG report at 349 fn. 268.

F."[274] Yet she concluded the email by noting that she had been unable to get conclusive answers regarding the operation from others at DOJ:[275]

"No one seems to be able to say . . . whether this was or wasn't . . . a[n] [undercover] investigation"

are being used with such damaging effect in Mexico. The problem, however, seems to be two-fold. No one seems to be able to say with any authority whether this was or wasn't such a UC investigation, and, at least as far as I am aware, the US has to date made no response to these allegations, although we do refer to the case being the subject of internal investigation/inquiry (which I suspect aggravates rather than mitigates the temperature of the rhetoric in Mexico).

Within the Criminal Division, Raman emailed:[276]

----- Original Message -----
From: Raman, Mythili
To: Lurie, Adam; Weinstein, Jason; Warlow, Molly; Swartz, Bruce
Sent: Mon Mar 21 10:00:36 2011
Subject: FW: Fast and Furious

CRM only: The sentence in our proposed addition that raised concerns for me was the sentence that said: "At no time did any agent participate in any transaction, or urge or assist any person in buying, selling, or transporting any weapon in the U.S. or across the border." I just don't know if CRM can say that (I certainly don't have the info to say that.)

Weinstein responded:[277]

----- Original Message -----
From: Weinstein, Jason
To: Raman, Mythili; Lurie, Adam; Warlow, Molly; Swartz, Bruce
Sent: Mon Mar 21 10:10:33 2011
Subject: Re: Fast and Furious

"[T]he problem is that the facts have been a bit of a moving target on this case"

Molly, trust me that we completely get the concerns - the problem is that the facts have been a bit of a moving target on this case and we don't want to say something that proves to be inaccurate.
I believe the sentence in question to be accurate, but we are just not in the best position to say. And I also can't think of anything other than a factual rebuttal that would address the concerns Molly raised.

[INTENTIONALLY BLANK]

[274] Email from Molly Warlow to Jason Weinstein, et al. (Mar. 21, 2011) [DOJ-FF-17269–70].
[275] Email from Molly Warlow to Jason Weinstein, et al. (Mar. 21, 2011) [DOJ-FF-17269–70].
[276] Email from Mythili Raman to Adam Lurie, et al. (Mar. 21, 2011) [DOJ-FF-17297–99].
[277] Email from Jason Weinstein to Mythili Raman, et al. (Mar. 21, 2011) [DOJ-FF-17297–99].

That same night, when CBS Evening News aired another segment on the case,[278] Burke emailed the text to several colleagues in the Arizona U.S. Attorney's Office:[279]

From: Burke, Dennis (USAAZ)
To: Cunningham, Patrick (USAAZ); Sherwood, Robert (USAAZ) [Contractor]; Hernandez, Rachel (USAAZ); Hurley, Emory (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ)
Sent: 3/21/2011 9:32:38 PM
Subject: CBS News

This is a really pathetic story.

"This is a really pathetic story."

On **Tuesday, March 22, 2011**, Burke emailed multiple officials at DOJ and ATF in response to a blog post from Representative Ted Poe:[280]

"He should just show up at the defense table for . . . our indicted gun traffickers."

From: Burke, Dennis (USAAZ)
Sent: Tuesday, March 22, 2011 6:13 AM
To: ATF (ATF); Burton, Faith (SMO); 'Ron.Weich@SMOJMD.USDOJ.gov'; Moran, Molly (OAG) (SMO); Axelrod, Matthew (ODAG) (SMO); Gaston, Molly (SMO); Weinstein, Jason (CRM); Sullivan, Bill (JMD); McDermond, James E. (ATF); Melson, Kenneth E. (ATF); Hoover, William J. (ATF); ATF (ATF); Sarnacki, Jeffrey P. (ATF)
Subject: Re: Rep. Poe's Hill blog.....

Pregnant with inaccuracies and overall disgusting. He should just show up at the defense table for the ongoing trials of our indicted gun traffickers. We will indict the Terry murderers and this Rep is creating all kinds of eventual issues for that case w this drool.

Late that night, President Obama was asked about Operation Fast and Furious by a Univision reporter. He responded: "There may be a situation here which a serious mistake was made and if that's the case then we'll find out and we'll hold somebody accountable."[281] The next morning, on **Wednesday, March 23, 2011**, CBS News' Sharyl Attkisson released a short three-paragraph story on the President's statement.[282] When the article was circulated in the Arizona U.S. Attorney's Office, Burke responded:[283]

[INTENTIONALLY BLANK]

[278] Sharyl Attkisson, *ATF gunwalking scandal: Second agent speaks out*, CBS NEWS, Mar. 22, 2011, *available at* http://www.cbsnews.com/news/atf-gunwalking-scandal-second-agent-speaks-out-22-03-2011/.
[279] Email from Dennis Burke to Patrick Cunningham (Mar. 21, 2011) [DOJ-FF-17816–17].
[280] Email from Dennis Burke to Faith Burton, et al. (Mar. 22, 2011) [DOJ-FF-18234–36].
[281] Sharyl Attkisson, *Obama on "gunwalking": Serious mistake may have been made*, CBS NEWS, Mar. 23, 2011, *available at* http://www.cbsnews.com/news/obama-on-gunwalking-serious-mistake-may-have-been-made.
[282] *Id.*
[283] Email from Dennis Burke to Robert Sherwood, et al. (Mar. 23, 2011) [DOJ-FF-19423].

From: Burke, Dennis (USAAZ)
To: Sherwood, Robert (USAAZ) [Contractor]; Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Hurley, Emory (USAAZ)
Sent: 3/23/2011 7:05:46 PM
Subject: Re: Obama on Fast and Furious

Lame.

"Lame."

From: Sherwood, Robert (USAAZ) [Contractor]
Sent: Wednesday, March 23, 2011 07:01 PM
To: Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Hurley, Emory (USAAZ)
Subject: Obama on Fast and Furious

President gives extended comments in the video, essentially saying that neither he nor AG Holder approved of the "walking" guns tactic.

http://www.cbsnews.com/8301-31727_162-20046151-10391695.html

As of this point, Matt Axelrod had worked his way through a significant portion of the Department's documents regarding the case.[284] That night, he emailed Arizona U.S. Attorney's Office Criminal Division Chief Patrick Cunningham regarding ATF "Reports of Investigation," or ROIs:[285]

From: Axelrod, Matthew (ODAG) (SMO)
Sent: Wednesday, March 23, 2011 4:36 PM
To: Cunningham, Patrick (USAAZ)
Subject: ROIs

Pat,

Great speaking to you earlier. Here's the list of ROIs falling into the two categories I described, with the caveat that I've only read through ROI 399 so there may be additional ones falling into these categories that I simply haven't read yet.

"ROIs where ATF surveils . . . transfer to a third party"

1. ROIs where ATF surveils not only the purchase from the FFL but a transfer to a third party soon thereafter: 18, 33, 36, 143, 160, 219, 231, 238, 241, 259, 265, 268, 319

2. ROIs where the Title III combined with the ATF surveillance potentially gives probable cause to arrest for a violation of 924(a)(1)(A): 223, 246, 260, 261, 271, 283, 312, 335

"ROIs where the Title III [wiretap] combined with the ATF surveillance potentially gives probable cause to arrest"

Thanks.

[284] *See* email from Christopher Pellettiere to Stuart Lowrey, et al. (Mar. 21, 2011) [HOGR 007207].
[285] Email from Matthew Axelrod to Patrick Cunningham (Mar. 23, 2011) [HOGR 007208–10].

The next day, on **Thursday, March 24, 2011**, Cunningham sent Axelrod a lengthy email which described the transfer of a firearm from the original purchaser to a "second person."[286] The email began:[287]

From: Cunningham, Patrick (USAAZ)
Sent: Thursday, March 24, 2011 3:32 PM
To: Axelrod, Matthew (ODAG)
Cc: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Morrissey, Mike (USAAZ)
Subject: FW: Final email for Matt ROIs and First Transfers

"I wanted to get you a quick response regarding the first transfers from a lawful purchaser to a second person and why prosecution and seizure of those weapons are so difficult."

Matt:

I wanted to get you a quick response regarding the first transfers from a lawful purchaser to a second person and why prosecution and seizure of those weapons are so difficult. This email is not for any letter but for your review of the ROIs and if your view of the governing statutes is different, by all means give me a call to discuss. We are preparing answers to the six questions for you and reviewing each ROI you sent us. We will call you to arrange some meeting times to discuss the ROIs on your schedule.

Later that night, Axelrod responded:[288]

To: Cunningham, Patrick (USAAZ[redacted]
Cc: Burke, Dennis (USAAZ)[redacted]Scheel, Ann (USAAZ)[redacted]Hernandez, Rachel (USAAZ[redacted]
Morrissey, Mike (USAAZ)[redacted]
From: Axelrod, Matthew (ODAG)
Sent: Thur 3/24/2011 7:44:31 PM
Subject: RE: Final email for Matt ROIs and First Transfers

Thanks, Pat. I really appreciate all the help in sorting this out.

"On the legal analysis, I guess I do have a slightly different take."

On the legal analysis, I guess I do have a slightly different take. Maybe we can talk this through sometime later today?

Meanwhile, Cunningham circulated to colleagues in the Arizona U.S. Attorney's Office the responses he intended to send to six questions from Axelrod:[289]

[286] Email from Patrick Cunningham to Matthew Axelrod (Mar. 24, 2011) [HOGR 007208–10].
[287] *Id.*
[288] Email from Matthew Axelrod to Patrick Cunningham (Mar. 24, 2011) [HOGR 007208–10].
[289] Email from Patrick Cunningham to Dennis Burke, et al. (Mar. 24, 2011) [DOJ-FF-18937–42].

From: Cunningham, Patrick (USAAZ)
Sent: Thursday, March 24, 2011 3:42 PM
To: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Morrissey, Mike (USAAZ); McCormick, Glenn (USAAZ); Hurley, Emory (USAAZ); Kelly, Kristen (USAAZ) 6
Subject: Six Smith Questions and Proposed Answers

Dennis and Friends: I propose to send this to Matt, but not the other addressees on Matt's email: Melson, Kenneth E.; Hoover, William J.; Pellettiere, Christopher A.

Please note that paragraph 4 recounts **the DAG's approval** of our 7 wiretap applications which recounted surveillance in the case The attached OCDETF reports are copies of the signed documents, and I added a sentence regarding the release of evidence that Dennis suggested.
Ok to send? pJC

"[N]ote that paragraph 4 recounts the DAG's approval of our 7 wiretap applications which recounted surveillance"

The paragraph highlighted by Cunningham read:[290]

4. Did ATF or the U.S. Attorney's Office in Phoenix coordinate the "Fast and Furious" program with the Department? Did the Department approve the strategy?

"[T]he affidavits in support of the applications each laid out the significant facts"

[Yes, we note that this case involved the approval by the DAG's Office of seven separate wiretap applications, and the affidavits in support of the applications each laid out the significant facts and problems developed during the surveillances conducted over the length of the investigations, as a matter of establishing necessity for the wires.]

On **Friday, March 25, 2011**, Cunningham emailed the responses to Axelrod:[291]

From: Cunningham, Patrick (USAAZ)
Sent: Friday, March 25, 2011 1:24 PM
To: Axelrod, Matthew (ODAG)
Cc: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Morrissey, Mike (USAAZ)
Subject: Six Smith Questions and Proposed Answers

Matt: Below are our proposed answers to the six questions. Bracketed material are facts for you to know and use when you think appropriate. Thanks for your hard work on this case. PJC

Axelrod flagged the wiretap issue for Raman at the same time DOJ officials had become aware CBS Evening News planned to air a story on an additional whistleblower, ATF Attaché to Mexico Darren Gil. The segment that aired that evening on CBS Evening News stated:

> In an exclusive interview with CBS News, the lead ATF official in Mexico at the time Darren Gil says somebody in the Justice Department did know about the case. Gil says his supervisor at ATF's Washington D.C. headquarters told him point-blank the operation was approved even higher than ATF Director Kenneth Melson.[292]

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[290] *Id.*
[291] Email from Patrick Cunningham to Matthew Axelrod (Mar. 25, 2011) [DOJ-FF-19013–18].
[292] Sharyl Attkisson, *ATF gunwalking: Who knew, and how high up?*, CBS NEWS, Mar. 25, 2011, *available at* http://www.cbsnews.com/news/atf-gunwalking-who-knew-and-how-high-up.

The story also discussed a meeting in Mexico City between Breuer and Carlos Pascual, the U.S. Ambassador to Mexico, as well as a March 4, 2011 request from Senator Grassley to the State Department for any records related to the visit.[293]

Shortly after Cunningham's email, Raman emailed Sweeney:[294]

-----Original Message-----
From: Raman, Mythili
Sent: Friday, March 25, 2011 01:35 PM Eastern Standard Time
To: Sweeney, Laura (SMO)
Cc: Weinstein, Jason; Swartz, Bruce; Blanco, Kenneth; Wroblewski, Jonathan
Subject: possible language to use to respond to CBS article

Matt Axelrod indicated that DAG's office wants to clear any language before it's used. Here's my crack at it (I've tried to craft it remembering, of course, that the Criminal Division does sign off on wiretaps etc, but not on the operation or strategy):

"[T]he Criminal Division does sign off on wiretaps"

"AAG Lanny Breuer did not authorize the ATF "Fast and Furious" investigation. As the Assistant Attorney General of the Criminal Division, AAG Breuer does not have any supervisory authority over the ATF and does not authorize ATF operations or investigations."

Soon thereafter, Raman requested an urgent review of the wiretap affidavits:[295]

From: Raman, Mythili
Sent: Friday, March 25, 2011 1:43 PM
To: Weinstein, Jason; OBrien, Paul
Cc: Swaney, Michelle Guardino; Rosen, Paul
Subject: RE: Fast n Furious Stats.xlsx -- URGENT

"There seems to be a suggestion . . . that the Criminal Division would have . . . divined that there is a problem with guns walking."

Paul Obrien –

Urgent request – I just tried to call you. Can you please call me? There seems to be a suggestion in a draft response from the USAO to a Congressional letter that the wiretap affidavits in these investigations would have talked about "problems" conducting surveillance (I assume in the necessity section, which would be expected). But, the USAO's suggestion seems to be that the Criminal Division would have therefore divined that there is a problem with guns walking. I haven't seen the USAO's actual language, but have just heard about it. I really need someone to look at the affidavits asap to see what they say. Perhaps Paul Rosen (who I've cc'd here) can help,but we'd need the actual affidavits. Would you have them still?

Paul O'Brien, the Director of the Office of Enforcement Operations (the office in the Criminal Division which does the initial review of wiretap applications), responded: "We are pulling the files."[296] By that night, a Criminal Division official was reviewing them.[297]

Meanwhile, Sweeney responded to the coming CBS News story:[298]

[293] Letter from Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Hillary Rodham Clinton, Sec'y, U.S. Dep't of State (Mar. 4, 2011), *available at* http://www.cbsnews.com/htdocs/pdf/2011-03-.pdf.
[294] Email from Mythili Raman to Laura Sweeney (Mar. 25, 2011)
[295] Email from Mythili Raman to Jason Weinstein and Paul O'Brien (Mar. 25, 2011) [DOJ-FF-12835–36].
[296] Email from Paul O'Brien to Mythili Raman and Jason Weinstein (Mar. 25, 2011) [DOJ-FF-12833–34].
[297] Email from Adam Lurie to Mythili Raman, et al. (Mar. 25, 2011) [DOJ-FF-12833–34].
[298] Email from Laura Sweeney to Mythili Raman (Mar. 25, 2011) [DOJ-FF-19811].

From: Sweeney, Laura (SMO) [redacted]
Sent: Friday, March 25, 2011 2:12 PM
To: Raman, Mythili
Cc: Weinstein, Jason; Swartz, Bruce; Blanco, Kenneth; Wroblewski, Jonathan
Subject: RE: possible language to use to respond to CBS article

This story is completely misleading and unfair, but as I told Mythili, I think we want to be careful about not advancing it further by saying something didn't happen that the story doesn't actually allege. Certainly we'd push back if any other reporters wanted to follow up on this story, and certainly if directly asked by this reporter or any other the statement below is spot on. But the story really only directly says Lanny was at a meeting generally in Mexico. The rest is insinuation that he somehow knew, but if the reporter had enough to say that fact, she would have done so in her story. This is almost bait to see if she can get us to say more, which she'll then come back to us with numerous follow up questions and tomorrow's story becomes AAG Breuer didn't authorize it, but won't comment on whether he knew or provide any further detail. And then the agent comes back and swears that a trafficking case absolutely was discussed, etc., etc. I think we go down a rabbit hole that generates more stories if we start swinging at the pitch from this CBS reporter.

"I think we go down a rabbit hole that generates more stories if we start swinging at the pitch from this CBS reporter"

Deputy Assistant Attorney General Kenneth Blanco, who reviewed the March 10 and July 1 Fast and Furious wiretap applications in 2010, later responded to Raman's initial email:[299]

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-----Original Message-----
From: Blanco, Kenneth (CRM)
Sent: Friday, March 25, 2011 3:42 PM
To: Raman, Mythili (CRM); Sweeney, Laura (SMO)
Cc: Weinstein, Jason (CRM); Swartz, Bruce (CRM); Wroblewski, Jonathan (CRM)
Subject: RE: possible language to use to respond to CBS article

We need to make sure they are not part of an AGEO, SARC, or Group One which the
CRM does sign off on. These could be understood as authorizing an ATF investigation.
```

Sweeney replied:[300]

From: Sweeney, Laura (SMO)
To: Blanco, Kenneth; Raman, Mythili
CC: Weinstein, Jason; Swartz, Bruce; Wroblewski, Jonathan
Sent: 3/25/2011 7:45:00 PM
Subject: RE: possible language to use to respond to CBS article

Right now, we're going to stand down on doing a response but will continue to monitor the situation closely.

FINDING: **Instead of reconsidering its position when a second ATF whistleblower went public with details about Fast and Furious, Justice Department officials circulated negative information about the whistleblower.**

[299] Email from Kenneth Blanco to Mythili Raman and Laura Sweeney (Mar. 25, 2011) [DOJ-FF-19627].
[300] Email from Laura Sweeney to Kenneth Blanco to Mythili Raman (Mar. 25, 2011) [DOJ-FF-19627].

Meanwhile, State Department officials in the U.S. Embassy in Mexico discussed Mexican news source *El Universal* covering the allegations in the CBS News story:[301]

From: Featherstone, Alex (Mexico City)
To: State/Privacy (Mexico City); Pascual, Carlos (Mexico City); Feeley, John D (Mexico City); Williams, James H (Mexico City)
Cc: Bryan, Judith L (Mexico City); Mexico City PD All Press Section
Sent: Fri Mar 25 14:16:17 2011
Subject: RE: El Universal on "letting guns walk" into Mexico

"Gil said that ATF Washington told him that Melson and DOJ's Lanny Breuer were aware"

Yes, you're right, Arturo. It's under investigation. We have no comment.

According to CBS News, Darren Gil said that ATF Washington told him that Melson and DOJ's Lanny Breuer were aware of the cross-border gun movements. Senator Grassley reportedly asked State to turn over notes and records from Breuer's visits here last summer.

Feeley forwarded the chain to Breuer:[302]

From: Feeley, John D (Mexico City) [redacted]
To: Breuer, Lanny A.; Swartz, Bruce
Sent: Fri Mar 25 17:06:45 2011
Subject: Fw: El Universal on "letting guns walk" into Mexico

I can fill you in on Gil if either want a call in 30 mins

Breuer emailed back to Feeley, "Sure, [i]t's such fiction."[303] Feeley replied:[304]

From: Feeley, John D (Mexico City) <[redacted]>
To: Breuer, Lanny A.
Sent: Sat Mar 26 00:40:30 2011
Subject: Re: El Universal on "letting guns walk" into Mexico

"It is fiction and I'll give you the background on this disgruntled former employee who was a problem from the time he arrived."

Am in Chiapas. Will call over weekend. It is fiction and I'll give you the background on this disgruntled former employee who was a problem from the time he arrived.

The next morning, on **Saturday, March 26, 2011,** Sweeney responded to the email chain:[305]

From: Sweeney, Laura (SMO)
To: Breuer, Lanny A.; Raman, Mythili; Weinstein, Jason; Swartz, Bruce
Sent: 3/26/2011 9:21:05 AM
Subject: Re: El Universal on "letting guns walk" into Mexico

"[R]ead the CBS story carefully"

I will email Alex and John and encourage them to encourage reporters to read the CBS story carefully as it does NOT say Lanny knew guns were walking.

[301] Email from Alex Featherstone to Carlos Pascual, et al. (Mar. 25, 2011) [DOJ-FF-19679–82].
[302] Email from John Feeley to Lanny Breuer and Bruce Swartz (Mar. 25, 2011) [DOJ-FF-19683–85].
[303] Email from Lanny Breuer to John Feeley (Mar. 26, 2011) [DOJ-FF-19679–82].
[304] Email from John Feeley to Lanny Breuer (Mar. 26, 2011) [DOJ-FF-19679–82].
[305] Email from Laura Sweeney to Lanny Breuer, et al. (Mar. 26, 2011) [DOJ-FF-19683–85].

On **Monday, March 28, 2011**, Weich emailed Axelrod:[306]

From:	Weich, Ron (SMO)
Sent:	Monday, March 28, 2011 9:51 AM
To:	Axelrod, Matthew (ODAG); Burton, Faith (SMO)
Cc:	Gaston, Molly (SMO)
Subject:	RE: Fast and Furious

I'd be available around 3. Faith or Molly (cc'd) can say better, but I believe we have been waiting for ODAG to react to the latest draft of the reply that tries to "tell our story" as discussed in the meeting you convened with Dennis Burke and others some days ago.

On **Tuesday, March 29, 2011**, Molly Warlow of DOJ's Criminal Division emailed Axelrod in response to edits to a State Department statement regarding Fast and Furious:[307]

"In this regard, we want to be clear that Operation Fast and Furious was not a "sting" operation, or an operation in which ATF agents were acting in an undercover capacity as buyers, sellers, or transporters of any weapons Moreover, in absolutely no respect did Operation Fast and Furious involve our ATF agents conducting an undercover operation in Mexico. In this case, the ATF agents were attempting to identify possible straw purchasers, and those for whom the straw purchasers were buying, and others in the chain of purchase, sale, and transport of those weapons. They did this through ordinary investigative techniques undertaken within the territory of the United States: gathering intelligence, working leads, and doing surveillance. At no time did any agent participate in any illicit transaction, or urge or assist any person in illicitly purchasing, selling, or transporting any weapon in the U.S. or across the border. Moreover, Operation Fast and Furious did not involve "controlled deliveries" of weapons into Mexico, [and at no time did any agent stand idly by and watch illicit guns cross the border into Mexico – ***Matt I understand you were still assessing this last issue.***]

The next morning Warlow followed up:[308]

From:	Warlow, Molly
To:	Axelrod, Matthew (ODAG) (SMO)
CC:	Weinstein, Jason; Swartz, Bruce; Raman, Mythili; Lurie, Adam; Pope, Amy; McMillen, Jerold; [redacted]@state.gov; [redacted]@state.gov
Sent:	3/30/2011 9:50:32 AM
Subject:	RE: Possible statement/language to rebut possible mischaracterizations in Mexico of Operation Fast and Furious

Thanks, Matt. I understand too, that the "letting the guns walk" issue is the most difficult, and the most ill-defined conceptually.

"[T]he 'letting the guns walk' issue is the most difficult"

[306] Email from Ron Weich to Matthew Axelrod and Faith Burton (Mar. 28, 2011) [DOJ-FF-04250].
[307] Email from Molly Warlow to Matthew Axelrod (Mar. 29, 2011) [DOJ-FF-20107–08].
[308] Email from Molly Warlow to Matthew Axelrod (Mar. 30, 2011) [DOJ-FF-20107–08].

VI. Congressional Subpoena for ATF

1. Deadline for Documents

FINDING:	**ATF Acting Director Kenneth Melson notified Main Justice officials that details in the wiretap applications approved by DOJ's Criminal Division undermined the Department's representations to Congress. However, the revelation took a back seat to DOJ's maneuvering to avoid a congressional subpoena and frame public opinion and press coverage regarding the subpoena.**

The deadline to respond to the document request in Chairman Issa's March 16, 2011 letter was five o'clock p.m. on **Wednesday, March 30, 2011**. That afternoon, Paul Colborn emailed:[309]

From: Colborn, Paul P (SMO)
Sent: Wednesday, March 30, 2011 2:20 PM
To: Weiner, Robert (ODAG)
Subject: Issa subpoena threat re Gunrunner

FYI, OLA has just received a phone call from Issa's staff threatening to issue a subpoena tomorrow if the documents requested in the attached are not received by today's request deadline.

The email was forwarded up the chain to Attorney General Holder and other senior DOJ officials.[310]

That afternoon, Burton emailed:[311]

From:	Burton, Faith (SMO)
To:	Weich, Ron (SMO)
CC:	Gaston, Molly (SMO)
Sent:	3/30/2011 2:52:26 PM
Subject:	RE: Now am going into Verrilli hearing,

Ron, in Molly's conversation with Issa staff today about their request re Fast & Furious, she was advised that they'll issue a subpoena tomorrow if we don't produce the docs (virtually all re pending investigation) by tomorrow. We've advised Matt Axelrod and Paul Colborn; we're working on a response to Issa's letter now and plan to call them to make our best efforts to persuade them not to do this if possible. Please let us know when you return.

Later that evening, Hoover emailed regarding a request from Matt Axelrod:[312]

[309] Email from Paul Colborn to Robert Weiner (Mar. 30, 2011) [DOJ-FF-21205].
[310] Email from Monty Wilkinson to Eric Holder, et al. (Mar. 30, 2011) [DOJ-FF-21205].
[311] Email from Faith Burton to Ron Weich (Mar. 30, 2011) [DOJ-FF-21137].
[312] Email from [ATF employee] to William Hoover, et al. (Mar. 30, 2011) [DOJ-FF-21166–68].

From: ATF
To: Hoover, William J.; Melson, Kenneth E.; Chait, Mark R.; McMahon, William G.
CC: ATF
Sent: 3/30/2011 8:07:02 PM
Subject: Response to Mr. Issa
Attachments: @ISSA 3-16-2011 Letter.pdf; image001.png

"Mr. Issa and the committee have promised subpoenas if we do not meet their document demand"

All:

Now that we are close to done with the letter to Mr. Smith, Matt has asked that we turn our attention to the letter from Mr. Issa as our next priority. Apparently Mr. Issa and the committee have promised subpoenas if we do not meet their document demand by this Friday. In Matt's estimation we will be unable to do so, but do want to have some form of response to him by then. In that vein, Matt has asked that we review the document request received from the committee (attached) and determine:

1) What do we have that is responsive?
2) How much of the information is related to Fast and Furious and thus cannot be turned over?
3) How much can we turn over?
4) Our draft responses to each of the 8 issues below.

Can we meet after staff or SLT to discuss this please.

Axelrod also emailed a group of individuals, including Melson, regarding setting up a meeting the next day:[313]

From: Axelrod, Matthew (ODAG)
Sent: Wednesday, March 30, 2011 8:20 PM
To: Cunningham, Patrick (USAAZ); ATF (ATF); Burke, Dennis (USAAZ); Melson, Kenneth E. (ATF); Hoover, William J. (ATF); Burton, Faith (SMO); Gaston, Molly (SMO); Colborn, Paul P (SMO); Schmaler, Tracy (SMO); Wilkinson, Monty (OAG); Weiner, Robert (ODAG); ATF (ATF)
Subject: Response to Congressman Issa letter

All,

I think we need to meet tomorrow from 2:00 to 3:00 EST to discuss the Department's response to Congressman Issa's letter dated March 16, 2011. As I mentioned to some of you on the phone, we need to figure out what information/documents we have that are responsive to the request and are at the same time not related to the ongoing criminal investigation. I'm hopeful that we can get a preliminary readout from the USAO and ATF on that tomorrow during the meeting. I'll have my assistant set up a call-in # for the folks in Arizona and will get a conference room here for everyone else. Thanks.

That night, Melson decided to read some of the wiretap applications for himself. He discovered that some the wiretap applications that U.S. Attorneys approved included affidavits suggesting there was probable cause to believe that straw purchasers were taking firearms across the border. He later told the Committees in a transcribed interview:

> [W]hile flying to one of my divisions . . . , and I think it may have been on March 30th, I was reading through the some of the wiretap applications on the plane. In fact, I think I was the first, other than a couple of agents who

[313] Email Matthew Axelrod to Patrick Cunningham, et al. (Mar. 30, 2011) [DOJ-FF-21083–84].

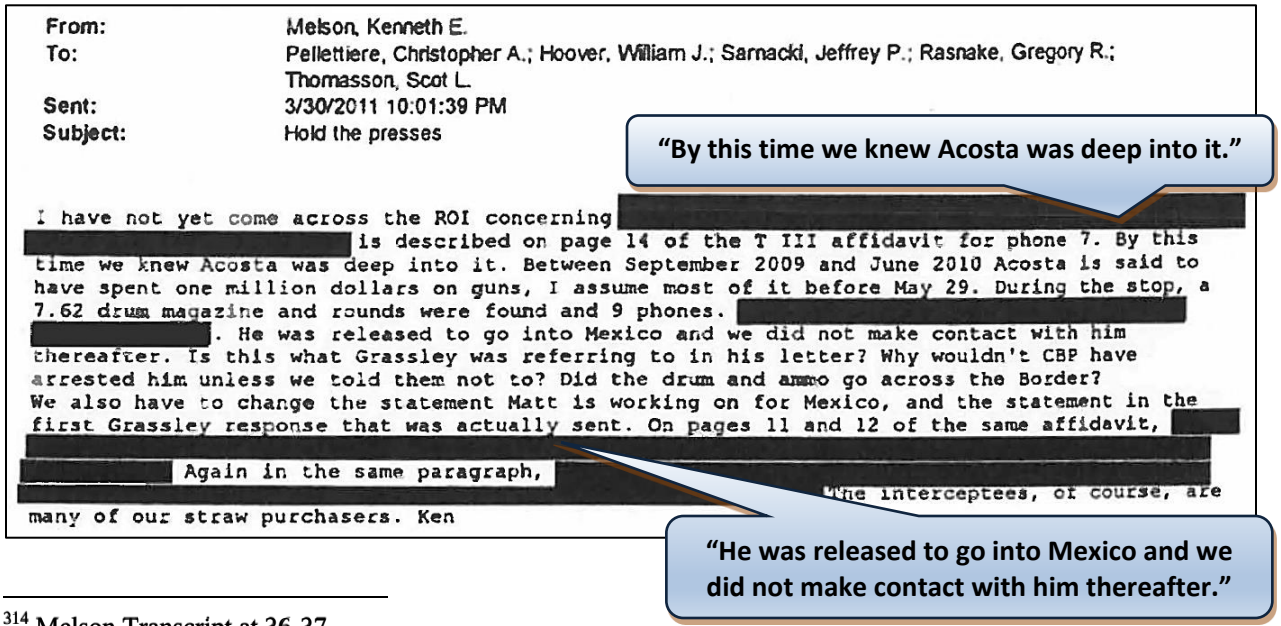
reviewed all of the ROIs and everything, but missed the smoking guns.

I decided to have confidence that we've looked at everything, that I would read them all. So sitting on the plane, reading the wiretap affidavit and one of the wiretap affidavits – in fact, I think more than one, there was a statement in there prepared by the agents – the AUSA and reviewed by the Criminal Division that suggested there was probable cause to believe that straw purchasers were taking guns across the border.

Because they set out in the affidavit the various – the various border crossings of the straw purchasers. These were not observed border crossings. ATF did not know they were crossing the border ahead of time. These were from CBP's, the Custom and Border Protection database. We could go back and see when people go and come north because there is no southbound transactional record.

But it was apparent to me that they were suggesting that there was probable cause to believe that this information – that these straw purchasers were taking guns across the border. So while on the plane, I drafted an e-mail to our people, and said, you know, you better back off, you better back off this statement, because – the statement 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.[314]

Melson's first email regarding the Title III—or "T III"—wiretap affidavit went to other officials at ATF:[315]



From: Melson, Kenneth E.
To: Pellettiere, Christopher A.; Hoover, William J.; Sarnacki, Jeffrey P.; Rasnake, Gregory R.; Thomasson, Scot L.
Sent: 3/30/2011 10:01:39 PM
Subject: Hold the presses

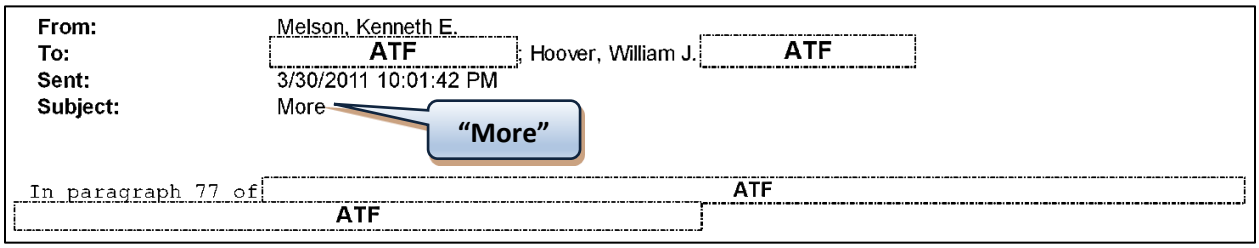
I have not yet come across the ROI concerning [redacted] is described on page 14 of the T III affidavit for phone 7. By this time we knew Acosta was deep into it. Between September 2009 and June 2010 Acosta is said to have spent one million dollars on guns, I assume most of it before May 29. During the stop, a 7.62 drum magazine and rounds were found and 9 phones. [redacted]. He was released to go into Mexico and we did not make contact with him thereafter. Is this what Grassley was referring to in his letter? Why wouldn't CBP have arrested him unless we told them not to? Did the drum and ammo go across the Border? We also have to change the statement Matt is working on for Mexico, and the statement in the first Grassley response that was actually sent. On pages 11 and 12 of the same affidavit, [redacted] Again in the same paragraph, [redacted] the interceptees, of course, are many of our straw purchasers. Ken

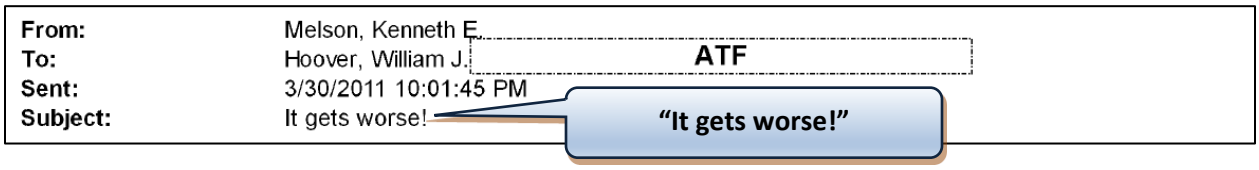
"By this time we knew Acosta was deep into it."

"He was released to go into Mexico and we did not make contact with him thereafter."

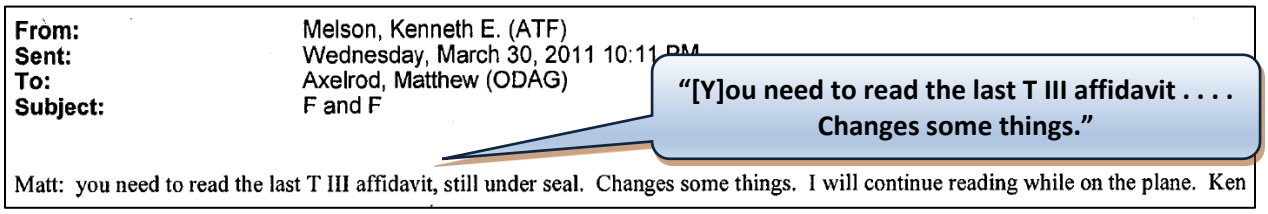
[314] Melson Transcript at 36-37.
[315] Email from Kenneth Melson to Christopher Pellettiere, et al. (Mar. 30, 2011) [HOGR 007212].

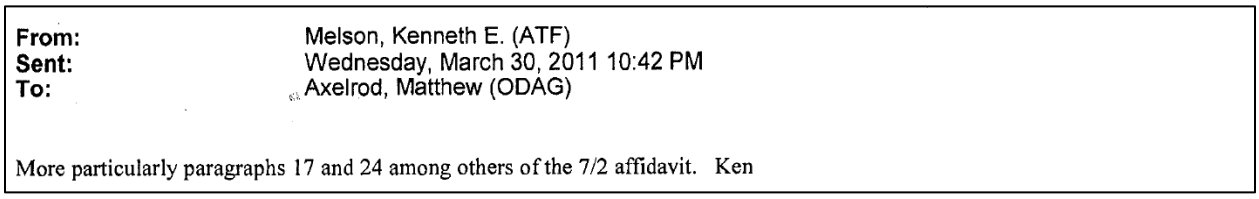
It was followed by a succession of other emails:[316]





Melson then sent Axelrod two emails regarding the affidavits:[317]

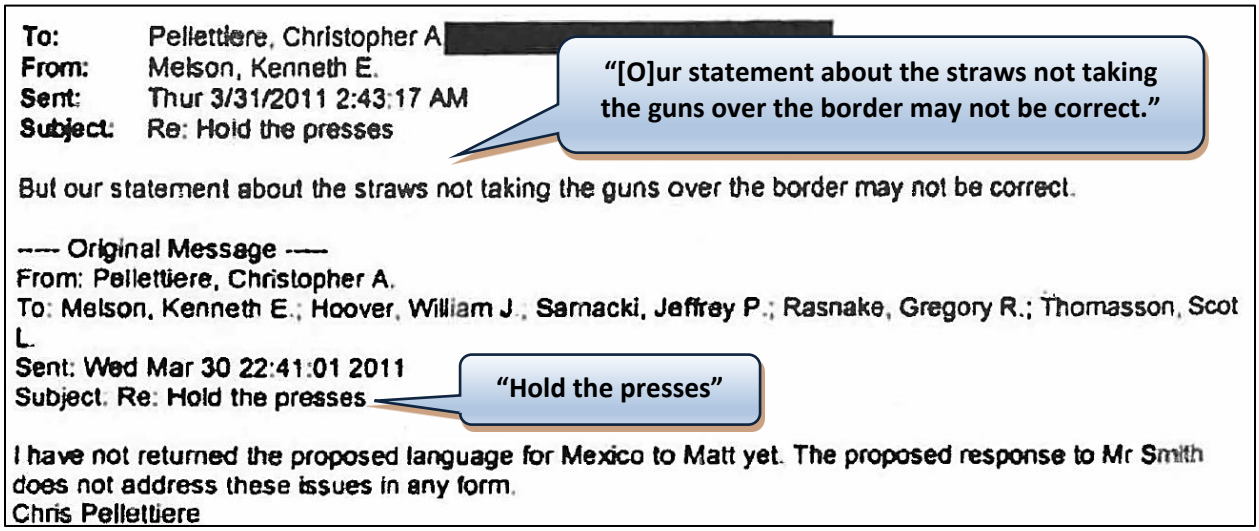




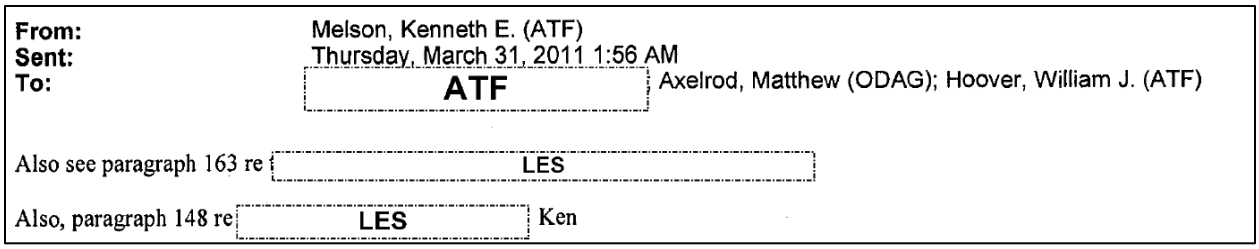
[INTENTIONALLY BLANK]

[316] Email from Kenneth Melson to William Hoover, et al. (Mar. 30, 2011) [DOJ-FF-21164]; email from Kenneth Melson to William Hoover (Mar. 30, 2011) [DOJ-FF-21161].
[317] Email from Kenneth Melson to Matthew Axelrod (Mar. 30, 2011) [DOJ-FF-02897]; email from Kenneth Melson to Matthew Axelrod (Mar. 30, 2011) [DOJ-FF-02894].

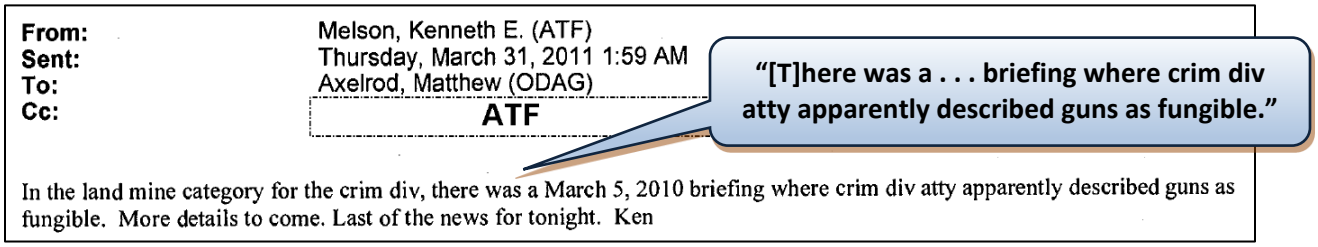
Acting ATF Chief of Staff Chris Pellettiere responded:[318]



As his flight went late into the night, Melson again emailed:[319]



Melson sent one final email that night:[320]



[318] Email from Christopher Pellettiere to Kenneth Melson, et al. (Mar. 30, 2011) [HOGR 007216–17]; email from Christopher Pellettiere to Kenneth Melson (Mar. 31, 2011) [HOGR 007216–17]. Ultimately, the April 4, 2011, response to House Judiciary Committee members provided only vague reassurances and did not provide the information requested. Rather than citing the fact that the interdiction numbers "square[d] poorly" with the number that were not seized, DOJ invoked other grounds for withholding the information: "Unfortunately, at this time, we are not in a position to answer your questions in greater detail. The Department has a long standing policy against the disclosure of non-public information about ongoing criminal investigations." Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Randy J. Forbes, H. Comm. on the Judiciary (April 4, 2011), *available at* http://forbes.house.gov/uploadedfiles/response_from_doj.pdf, at 2.

[319] Email from Kenneth Melson to Matthew Axelrod, et al. (Mar. 31, 2011) [DOJ-FF-02896].

[320] Email from Kenneth Melson to Matthew Axelrod (Mar. 31, 2011) [DOJ-FF-02895].

DOJ has produced no further communications indicating what Axelrod did with these emails.[321] However, Burke was on the same flight as Melson, and Melson said he told Burke of his concerns during a layover in Phoenix.[322]

The next day, **Thursday, March 31, 2011**, Axelrod convened his meeting to discuss the response to Chairman Issa's letter.[323] After the meeting, Faith Burton and Molly Gaston advised Oversight and Government Reform Committee staff the documents requested by Chairman Issa would not be forthcoming that week. Subsequently, Committee staff indicated to Weich that a subpoena was on its way, information Weich passed on to several DOJ officials. Shortly thereafter, Issa signed a subpoena for ATF Director Kenneth Melson.[324]

In response to an email about the impending subpoena, Wilkinson wrote:[325]

From:	Wilkinson, Monty (OAG)
To:	Richardson, Margaret (SMO); Grindler, Gary (OAG); Moran, Molly (OAG)
Sent:	3/31/2011 6:24:11 PM
Subject:	RE: likely Issa subpoena re: Fast + Furious --
Attachments:	Issa 3-16-11 Incoming.pdf

Right. I just got off the phone with Matt Axelrod on this. Let's talk.

Shortly thereafter, he followed up with the same group:[326]

From:	Wilkinson, Monty (OAG)
To:	Richardson, Margaret (SMO); Grindler, Gary (OAG); Moran, Molly (OAG)
Sent:	3/31/2011 6:38:13 PM
Subject:	RE: likely Issa subpoena re: Fast + Furious --

"I discussed with the AG."

I discussed with the AG. Will fill you in tomorrow.

[321] However, Axelrod told the OIG "his review of these materials raised additional questions about whether ATF had interdicted weapons where it had probable cause to do so." DOJ OIG report at 373. Further, "Cole stated that Axelrod identified 'a number of incidences where surveillance broke off.' Our review indicates that Axelrod was particularly concerned with incidents in which ATF agents conducted surveillance of firearms purchases and the subsequent transfer of the firearms to third parties without seizing or interdicting the firearms." *Id.* at 374.
[322] *Id.* at 375.
[323] *See* email from Matthew Axelrod to Patrick Cunningham, et al. (Mar. 30, 2011) [DOJ-FF-21083–84].
[324] *See* H. Comm. on Oversight & Gov't Reform, ***Press Release: Charmain Issa Subpoenas ATF for 'Project Gunrunner' Documents*** (April 1, 2011), *available at* https://oversight.house.gov/chairman-issa-subpoenas-atf-for-project-gunrunner-documents.
[325] Email from Monty Wilkinson to Margaret Richardson, et al. (Mar. 31, 2011) [DOJ-FF-21229].
[326] Email from Monty Wilkinson to Margaret Richardson, et al. (Mar. 31, 2011) [DOJ-FF-21228].

On a different thread, Lisa Monaco asked: "[W]hat's the status of the response to [I]ssa that had been discussed to try to buy time?"[327] Faith Burton recounted to her colleagues:[328]

From: Burton, Faith (SMO)
Sent: Thursday, March 31, 2011 06:46 PM
To: Monaco, Lisa (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Greenfeld, Helaine (SMO); Richardson, Margaret (SMO); Miller, Matthew A (SMO); Weiner, Robert (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: likely Issa subpoena re: Fast + Furious --

We met for about 2 hours today with ATF, USAO by phone, Rob and Paul in a meeting that Matt convened and made good progress in identifying a) materials we could likely produce in fairly short order; b) information we can add to our letter that would be responsive to items in his letter; and 3) requested information and docs that go to the heart of the criminal investigations (F & F plus Terry shooting).
Molly and I then spoke at length with Issa staff after that (and per agreement in our meeting), explained that we expected we can send a written response to their letter with documents within a week, noting that the requests for documents relating to the pending criminal investigations will be very difficult. Basically, I said that while we it's unlikely we'd be in a position to give them everything they requested, we would give them everything that we could and would work with them to find ways to accommodate their information needs if at all possible. The conversation went well, ended on a positive note and they did not bring up a subpoena at all.

DOJ Public Affairs Director Matthew Miller replied:[329]

From: Miller, Matthew A (SMO)
Sent: Thursday, March 31, 2011 6:53 PM
To: Burton, Faith (SMO); Monaco, Lisa (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Greenfeld, Helaine (SMO); Richardson, Margaret (SMO); Weiner, Robert (ODAG); Goldberg, Stuart (ODAG)
Subject: Re: likely Issa subpoena re: Fast + Furious --

Should we get a letter ready to send immediately tomorrow after he announces them saying:
We are surprised and disappointed to receive this subpoena. We were having productive conversations with your staff and as you are aware, had promised to provide most of the documents by next week before you cut off negotiations and instead issued this subpoena. We'll continue to work productively with the committee in a way that does not compromise our ongoing criminal investigation.

I think we need to be ready to respond immediately to show we were acting in good faith here and he is not.

Burton added in response:[330]

From: Burton, Faith (SMO)
Sent: Thursday, March 31, 2011 07:00 PM
To: Miller, Matthew A (SMO); Monaco, Lisa (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Greenfeld, Helaine (SMO); Richardson, Margaret (SMO); Weiner, Robert (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: likely Issa subpoena re: Fast + Furious --

Pls note – we did not promise to provide most of the docs.

"[W]e did not promise to provide most of the docs."

[327] Email from Lisa Monaco to Ron Weich, et al. (Mar. 31, 2011) [DOJ-FF-21261–63].
[328] Email from Faith Burton to Lisa Monaco, et al. (Mar. 31, 2011) [DOJ-FF-21261–63].
[329] Email from Matthew Miller to Faith Burton, et al. (Mar. 31, 2011) [DOJ-FF-21261–63].
[330] Email from Faith Burton to Matthew Miller, et al. (Mar. 31, 2011) [DOJ-FF-21335–37].

DOJ officials were divided on whether to respond through a press statement or a letter. Burton wrote:[331]

From: Burton, Faith (SMO)
Sent: Thursday, March 31, 2011 07:12 PM
To: Miller, Matthew A (SMO); Monaco, Lisa (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Greenfeld, Helaine (SMO); Richardson, Margaret (SMO); Weiner, Robert (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: likely Issa subpoena re: Fast + Furious --

Seems like it would be preferable to await the subpoena and send our response as planned, with docs, early next week. Understand your interest in being in a position to respond to any press inquiries you may receive on a Friday afternoon about this, but we can work with you on a statement along the lines you suggest below. We just need it to be precisely consistent with our statements to Issa staff today. Our letter can reiterate our disappointment, but to be fair, staff have given us a heads up -- so we aren't going to be surprised and they clearly want to work with us -- they've just got a chairman who wants to issue a subpoena. We really can't quantify the docs yet because we haven't reviewed them; hopefully, we have more info soon, but our instincts are to stay a calm course now.

Miller emailed Weich and Richardson:[332]

"[O]therwise this will be portrayed as us stonewalling."

From: Miller, Matthew A (SMO)
To: Weich, Ron (SMO); Richardson, Margaret (SMO)
Sent: 3/31/2011 7:17:55 PM
Subject: Fw: likely Issa subpoena re: Fast + Furious --

What do you think? I understand the need to stay calm, as she says, but a subpoena is about as serious an escalation as you can get on his part. It will be treated as a declaration of war by the press, and I think we need to show clearly that he is out of line, not us, otherwise this will be portrayed as us stonewalling. A letter would just be more effective than a statement I think, and I don't see the downside of sending it. We can send a full letter next week, but this is about managing press tomorrow.

He also made the case to the wider group:[333]

From: Miller, Matthew A (SMO)
Sent: Thursday, March 31, 2011 7:21 PM
To: Burton, Faith (SMO); Monaco, Lisa (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Greenfeld, Helaine (SMO); Richardson, Margaret (SMO); Weiner, Robert (ODAG); Goldberg, Stuart (ODAG)
Subject: Re: likely Issa subpoena re: Fast + Furious --

What's the harm in sending a letter along these lines tomorrow? It would be more effective with the press than a statement would be, and are we really going to aggrevate the committee more than they already are? They're sending us a subpoena already.

[INTENTIONALLY BLANK]

[331] Email from Faith Burton to Matthew Miller, et al. (Mar. 31, 2011) [DOJ-FF-21261–63].
[332] Email from Mathew Miller to Ron Weich and Margaret Richardson (Mar. 31, 2011) [DOJ-FF-21261–63].
[333] Email from Matthew Miller to Faith Burton, et al. (Mar. 31, 2011) [DOJ-FF-21335–37].

As the discussion about how to respond continued, Miller proceeded to press for a letter:[334]

From: Miller, Matthew A (SMO)
Sent: Thursday, March 31, 2011 7:44 PM
To: Monaco, Lisa (ODAG); Burton, Faith (SMO); Weich, Ron (SMO); Colborn, Paul P (SMO); Greenfeld, Helaine (SMO); Richardson, Margaret (SMO); Weiner, Robert (ODAG); Goldberg, Stuart (ODAG)
Subject: Re: likely Issa subpoena re: Fast + Furious --

A statement is a good backup, but a letter would be more productive with the press -- they will see it as directly engaging with Issa versus indirectly with them. If there are risks to a letter that outweigh the benefit gained in the press, then we should weigh those against the upside and make a judgment call. But if there is no appreciable downside (and given that he is already sending us a subpoena I don't know what it would be), then I don't see why we wouldn't do the short letter. It's essentially a press statement in letter form to get more bang.

"It's essentially a press statement in letter form to get more bang."

Miller subsequently offered to draft the letter,[335] at which point Burton emailed Weich:[336]

From: Burton, Faith (SMO)
To: Weich, Ron (SMO)
Sent: 3/31/2011 8:02:46 PM
Subject: FW: likely Issa subpoena re: Fast + Furious --

"We can't be driven in responding . . . by public affairs equities"

Ron, in my view, this is not OK for lots of reasons, but if you agree, it will be important for you to state that here. We can't be driven in responding to Chairman or other Members of Congress by public affairs equities, as important as they are. We can help OPA prepare a response to press inquiries tomorrow, but we shouldn't send a letter to Issa for that purpose.

2. Response to Subpoena

FINDING: **Paul Colborn, an official in the Justice Department's Office of Legal Counsel, played a significant role in obstructing Congress's oversight. Colborn advised against providing information to Senator Grassley and strategized to withhold information from Chairman Issa.**

Later that night, after the subpoena for Melson was served by email, Paul Colborn wrote that he favored responding by letter:[337]

From: Colborn, Paul P (SMO)
To: Weich, Ron (SMO); Miller, Matthew A (SMO); Burton, Faith (SMO); Monaco, Lisa (ODAG); Greenfeld, Helaine (SMO); Richardson, Margaret (SMO); Weiner, Robert (ODAG); Goldberg, Stuart (ODAG); Krass, Caroline D. (SMO); Bies, John
Sent: 3/31/2011 11:32:36 PM
Subject: Re: likely Issa subpoena re: Fast + Furious --

Agree we should discuss in the morning, but now that the subpoena has been served, I lean towards sending a letter.

[334] Email from Matthew Miller to Lisa Monaco, et al. (Mar. 31, 2011) [DOJ-FF-21335–37].
[335] Email from Matthew Miller to Faith Burton, et al. (Mar. 31, 2011) [DOJ-FF-21335–37].
[336] Email from Faith Burton to Ron Weich (Mar. 31, 2011) [DOJ-FF-21423–25].
[337] Email from Paul Colborn to Ron Weich, et al. (Mar. 31, 2011) [DOJ-FF-21309–11].

However, on **Friday, April 1, 2011**, when Miller's draft was circulated, Colborn wrote to Weich and others:[338]

From: Colborn, Paul P (SMO)
To: Weich, Ron (SMO)
CC: Bies, John; Burton, Faith (SMO); Krass, Caroline D. (SMO)
Sent: 4/1/2011 9:03:23 AM
Subject: RE: likely Issa subpoena re: Fast + Furious --

"[W]e'll provide only some and withhold a substantial number"

Ron, Matt's draft is not a good letter. Much too weak on the open investigation point and suggesting we'll provide a "substantial" number of documents while withholding only "some" relating to the investigation into the death of the agent. Much more likely, it's the reverse: we'll provide only some and withhold a substantial number, and they concern not just the murder investigation but also the longstanding Fast and Furious investigation.

To respond to the subpoena, DOJ officials strategized about how to produce as few documents as possible to Chairman Issa without angering the Committee or demonstrating the necessity of the subpoena. DOJ officials discussed coordination with Democrat House and Senate offices to obtain information about Issa's plans and to help DOJ portray the investigation as partisan.

On **Friday, April 1, 2011**, Committee on Oversight and Government Reform Ranking Member Elijah Cummings released a letter criticizing the Committee's subpoena. In response, DOJ officials discussed how to coordinate with a Democrat Senator to issue a similar letter. Burke and Weich emailed:[339]

From: Weich, Ron (SMO)
Sent: Sunday, April 03, 2011 7:17 PM
To: Burke, Dennis (USAAZ)
Subject: RE: Letter from Cummings to Issa

Yup. Working on it.

From: Burke, Dennis (USAAZ)
Sent: Friday, April 01, 2011 6:17 PM
To: Weich, Ron (SMO)
Subject: FW: Letter from Cummings to Issa

Be nice to see one of these type of missives from a Senator, too.

On **Tuesday, April 5, 2011,** when circulating a draft response letter to Senator Grassley's March 15, 2011 letter to the Drug Enforcement Administration, Paul Colborn dismissed the suggestion of providing Senator Grassley's staff a briefing:[340]

[338] Email from Paul Colborn to Ron Weich (Apr. 1, 2011) [DOJ-FF-21335–37].
[339] Email from Ron Weich to Dennis Burke (Apr. 3, 2011) [DOJ-FF-22553].
[340] Email from Paul Colborn to Matthew Axelrod and Faith Burton (Apr. 5, 2011) [DOJ-FF-22792–96].

From: Colborn, Paul P (SMO)
To: Axelrod, Matthew (ODAG); Burton, Faith (SMO)
CC: Gaston, Molly (SMO)
Sent: 4/5/2011 10:54:21 PM
Subject: Re: Draft response to Grassley's letter of 3/15 to DEA, revised

"I also am reluctant to empower Grassley's attempt as RMM to conduct oversight by organizing a briefing"

I tend to agree.

I also am reluctant to empower Grassley's attempt as RMM to conduct oversight by organizing a briefing for the committee when the committee thru its chairman has expressed no interest in conducting oversight and indeed has implied the opposite (by Leahy's short letter asking if investigation is open).

The next day, on **Wednesday, April 6, 2011**, Cunningham emailed Burke:[341]

From: Cunningham, Patrick (USAAZ)
To: Burke, Dennis (USAAZ)
CC: Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Morrissey, Mike (USAAZ)
Sent: 4/6/2011 4:02:53 PM
Subject: Fw: AZ Proposed Edits to Draft Issa response

"We are giving Chair Issa part of our story on the case"

Nice support from Jason. Do you want to call Matt when you are in range. I am happy to call him also, but thought you may want to be heard personally. We are giving Chair Issa part of our story on the case (while saying we cannot answer all their questions) and doing so because of the Disinformation campaign out there now. Pjc

Late that night, Axelrod emailed Cole, Goldberg, and Monaco regarding the subpoena issued by Chairman Issa:[342]

To: Cole, James (SMO) **James Cole**
Cc: Goldberg, Stuart (ODAG) [redacted]; Monaco, Lisa (ODAG) [redacted]
From: Axelrod, Matthew (ODAG)
Sent: Thur 4/7/2011 12:33:39 AM
Subject: Update

"OLA feels it's important that we demonstrate that . . . the subpoena was unnecessary"

Jim,

Since we didn't have a staff meeting this week, Lisa suggested that I send you a quick email updating you on the following:

1. Fast and Furious. We have a draft response prepared to be sent to Chairman Issa. We need to get it out the door tomorrow -- when OLA spoke with Issa's staff last Thursday, they promised that we would provide documents "within a week" and that week ends tomorrow. OLA feels it's important that we demonstrate that the sending of the subpoena was unnecessary by sticking to our original timeframe. I agree. Our planned production will not involve any physical handover of documents. The responsive documents that have been located are all law-enforcement sensitive, so Committee staff will be invited here to DOJ to view them. I showed them to Lisa briefly this evening and will go through them with her again in the morning. There is one document that I will need to discuss with you. Bill Sullivan from JMD is working on finding a time for Billy Hoover and I to brief Chairman Wolf's staff next week on the challenges faced in gun trafficking investigations generally.

[341] Email from Patrick Cunningham to Dennis Burke (Apr. 6, 2011) [DOJ-FF-20707–09].
[342] Email from Matthew Axelrod to James Cole (Apr. 7, 2011) [DOJ-FF-22824].

On **Thursday, April 7, 2011**, Axelrod emailed a group of individuals regarding the letter to Chairman Issa: "Here is the latest version. It reflects a slightly changed approach. The idea is that we'll produce some docs in paper (the budget docs, the OIG reports) and will provide access only to others."[343] Burton responded:[344]

From: Burton, Faith (SMO)
Sent: Thursday, April 07, 2011 4:34 PM
To: Axelrod, Matthew (ODAG); Colborn, Paul P (SMO); Gaston, Molly (
Richardson, Margaret (SMO); Wilkinson, Monty (OAG)
Cc: Weich, Ron (SMO)
Subject: RE: Latest version of Issa letter

"I think that provision of publicly available docs in response to a congressional request . . . will serve only to anger the Committee. They will perceive it as disrespectful"

I'm not sure that there is anything responsive to the request or subpoena in the budget doc or the IG report, although we'll look at that again now. More importantly, however, I think that provision of publicly available docs in response to a congressional request – absent the assent of committee staff – will serve only to anger the Committee. They will perceive it as disrespectful – as the Department handing them only docs they already have – and I don't believe it will be helpful to us in the short term or the long run. We can, of course, advise staff that we believe that portions of the report are responsive, ask if they want us to provide it, and if not, note that in our letter, but to send these docs (assuming they're responsive) otherwise will only add to the complexities we face here in my view. Thanks. FB

Colborn agreed and added:[345]

From: Colborn, Paul P (SMO)
Sent: Thursday, April 07, 2011 04:56 PM
To: Burton, Faith (SMO); Axelrod, Matthew (ODAG); Gaston, Molly (SMO); Schmaler, Tracy (SMO); Weiner, Robert (ODAG); Richardson, Margaret (SMO); Wilkinson, Monty
Cc: Weich, Ron (SMO)
Subject: RE: Latest version of Issa letter

"[T]hat what we chose to give them only some publicly available, non-responsive or marginally-responsive documents."

I think Faith makes a good point. And it's not just that we will anger the committee or its staff. We also will be giving them an easy target for them to ridicule in a responding letter or other public statement: that what we chose to give them only some publicly available, non-responsive or marginally-responsive documents. I think it's better to recognize the reality of the situation: that by definition the committee is intruding into law enforcement sensitive territory – and that most responsive material is off-limits open investigative material and the rest is sensitive law enforcement information that should only be made available for review.

Later that night, Axelrod emailed with other DOJ officials regarding an upcoming Oversight and Government Reform Committee business meeting:[346]

[343] Email from Matthew Axelrod to Paul Colborn, et al. (Apr. 7, 2011) [DOJ-FF-23001–02].
[344] Email from Faith Burton to Matthew Axelrod, et al. (Apr. 7, 2011) [DOJ-FF-23001–02].
[345] Email from Paul Colborn to Faith Burton, et al. (Apr. 7, 2011) [DOJ-FF-23001–02].
[346] Email from Matthew Axelrod to Faith Burton, et al. (Apr. 7, 2011) [DOJ-FF-23225]; email from Robert Weiner to Matthew Axelrod (Apr. 8, 2011) [DOJ-FF-23225].

From: Weiner, Robert (ODAG)
To: Axelrod, Matthew (ODAG)
Sent: 4/8/2011 3:38:32 AM
Subject: Re: Committee meeting next Wed

"HOGRC is holding a formal meeting next Wed morning, which . . . is a prerequisite to . . . contempt."

We should check Committee and House rules on notice.

----- Original Message -----
From: Axelrod, Matthew (ODAG)
Sent: Thursday, April 07, 2011 10:51 PM
To: Burton, Faith (SMO); Colborn, Paul P (SMO); Weiner, Robert (ODAG); Gaston, Molly
Subject: Committee meeting next Wed

I've learned that the HOGRC is holding a formal meeting next Wed morning, which I understand is a prerequisite to a vote to hold someone in contempt. Faith, can you reach out to minority staff to see if they: (a) know the reason for the meeting; and (b) have a view as to whether, even if the mtg's primary purpose is unrelated to our subpoena/production, they think F and F might come up at the meeting? Thanks.

On **Friday, April 8, 2011**, Axelrod emailed Burton, Colborn, Weiner, and Gaston after he learned about the business meeting scheduled for the following week.[347] Burton responded:[348]

From: Burton, Faith (SMO)
To: Axelrod, Matthew (ODAG); Colborn, Paul P (SMO); Weiner, Robert (ODAG); Gaston, Molly (SMO)
Sent: 4/8/2011 7:57:53 PM
Subject: RE: Committee meeting next Wed

"We've reached out to minority staff"

Matt, we've reached out to minority staff but not yet connected with them; more soon.

Monday, April 11, 2011 marked the return date on the Oversight and Government Reform Committee subpoena for Melson. That night, Melson, who less than two weeks prior had informed DOJ of the problems with its February 4 response to Senator Grassley, followed up on a suggestion to convene a panel to discuss policies and practices used in Fast and Furious:[349]

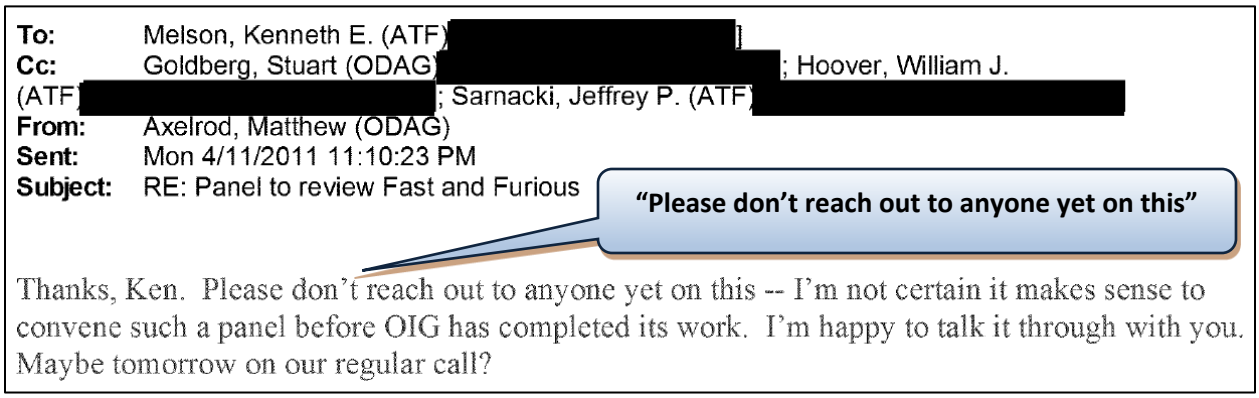
From: Melson, Kenneth E. (ATF)
Sent: Monday, April 11, 2011 6:48 PM
To: Axelrod, Matthew (ODAG)
Cc: Goldberg, Stuart (ODAG); Hoover, William J. (ATF); Sarnacki, Jeffrey P. (ATF)
Subject: Panel to review Fast and Furious

"[W]e want to convene a panel to advise us on the policies and practices in Fast and Furious"

Matt: As I indicated several weeks ago, we want to convene a panel to advise us on the policies and practices in Fast and Furious and other trafficking cases. We have had the entrance interview with the OIG, and informed them of our intent. They expressed no concern with proceeding. Our initial thought is to ask the following to participate:

[347] Email from Matthew Axelrod to Faith Burton, et al. (Apr. 7, 2011) [DOJ-FF-23226].
[348] Email from Faith Burton to Matthew Axelrod, et al. (Apr. 8, 2011) [DOJ-FF-23226].
[349] Email from Kenneth Melson to Matthew Axelrod (Apr. 11, 2011) [DOJ-FF-24155].

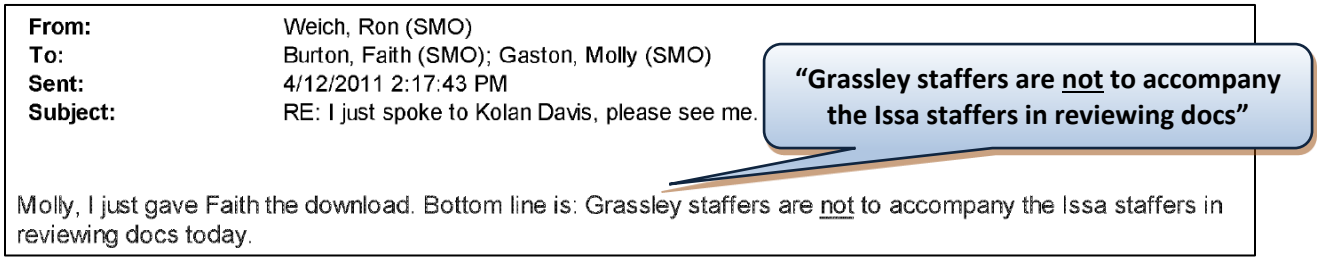
Axelrod instructed Melson to wait:[350]



3. "It Remains Our Understanding"

FINDING: **Even as it obtained further evidence of the flawed tactics of Operation Fast and Furious, the Justice Department continued to stonewall Congress's oversight, responding only to the threat of Department nominees being held up by Congress.**

On **Tuesday, April 12, 2011** at 2:00 p.m., DOJ made the first documents available for *in camera* review in response to the subpoena. However, when Senator Grassley's Judiciary Committee staff arrived for the review, they were turned away by DOJ. Weich emailed:[351]



[INTENTIONALLY BLANK]

[350] Email from Matthew Axelrod to Kenneth Melson (Apr. 11, 2011) [DOJ-FF-24155].
[351] Email from Ron Weich to Faith Burton and Molly Gaston (Apr. 12, 2011) [DOJ-FF-24361].

Later that night, Weich emailed:[352]

From:	Weich, Ron (SMO)
To:	Burton, Faith (SMO); Gaston, Molly (SMO)
Sent:	4/12/2011 9:36:06 PM
Subject:	FW: ATF Document Review - 2pm

"I had made no such assurance about simultaneous receipt of documents."

Kolan sent this to me before I spoke to him this afternoon. In that conversation I made very clear to him that I had made no such assurance about simultaneous receipt of documents. Rather, I had merely assured him that we would respond to Senator Grassley's letters as promptly as we respond to any other member.

On **Wednesday, April 13, 2011**, Senator Grassley sent Attorney General Holder a letter regarding the document review situation.[353] The letter also attached further evidence documenting some of the problems with Operation Fast and Furious.[354] The letter stated:

> The Department's failure to cooperate with my requests is especially troubling in light of the February 4, 2011, reply to my initial letter. In that reply, the Justice Department took the position that those allegations were "false" and specifically denied "that ATF 'sanctioned' or otherwise knowingly allowed the sale of assault weapons" to straw purchasers. The letter further claimed that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." I already provided evidence contradicting that denial in my February 9 and March 3 letters. In addition, attached you will find further documentation undermining the Department's assertion. Specifically, the documents are emails between ATF officials and a Federal Firearms Licensee (FFL) in Arizona. These emails demonstrate that ATF instructed gun dealers to engage in suspicious sales despite the dealers' concerns.[355]

In addition to asking for access to documents, the letter concluded with just one question about the underlying investigation:

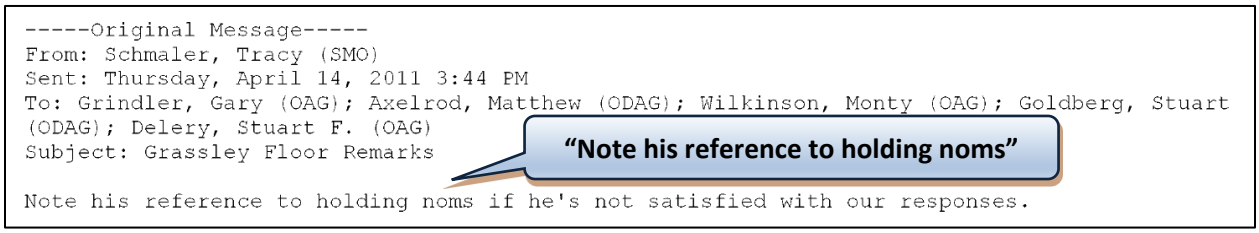
> Do you stand by the assertion in the Department's reply that the ATF whistleblower allegations are 'false' and specifically that ATF did not sanction or otherwise knowingly allow the sale of assault weapons to straw purchasers? If so, please explain why in light of the mounting evidence to the contrary.[356]

---

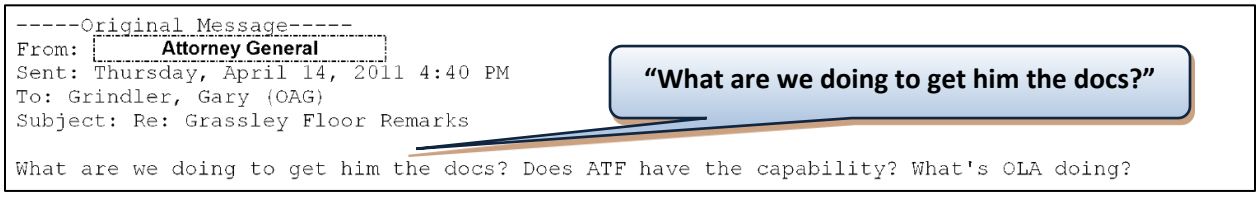
[352] Email from Ron Weich to Faith Burton and Molly Gaston (Apr. 12, 2011) [DOJ-FF-24360].
[353] Letter from Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice (Apr. 13, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/about/upload/Judiciary-ATF-04-13-11-letter-to-Holder-Docs-FFLs-2.pdf.
[354] *Id.*
[355] Letter from Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice at 1-2 (Apr. 13, 2011).
[356] *Id.* at 3.

On **Thursday, April 14, 2011**, Senator Grassley spoke on the floor of the Senate about Operation Fast and Furious and the Department of Justice's inadequate responses to his document requests: "[I]ronically, I have provided more internal documents to the Justice Department in this investigation than the Justice Department has provided to me."[357] Senator Grassley further explained the emails he'd obtained between ATF and one federal firearms licensee, noting: "The government put these firearms dealers in a completely unfair position. . . . [T]he government asks these gun dealers to keep selling to the bad guys even after the dealers warned it might end in tragedy."[358] He closed: "I have not exercised my right to object to any unanimous consent request on nominations because of this issue – yet. However, I want my colleagues and officials at the Justice Department to hear this loud and clear. If that's what it takes, then I will take those actions."[359]

Within DOJ, Tracy Schmaler circulated Senator Grassley's floor statement to senior officials:[360]



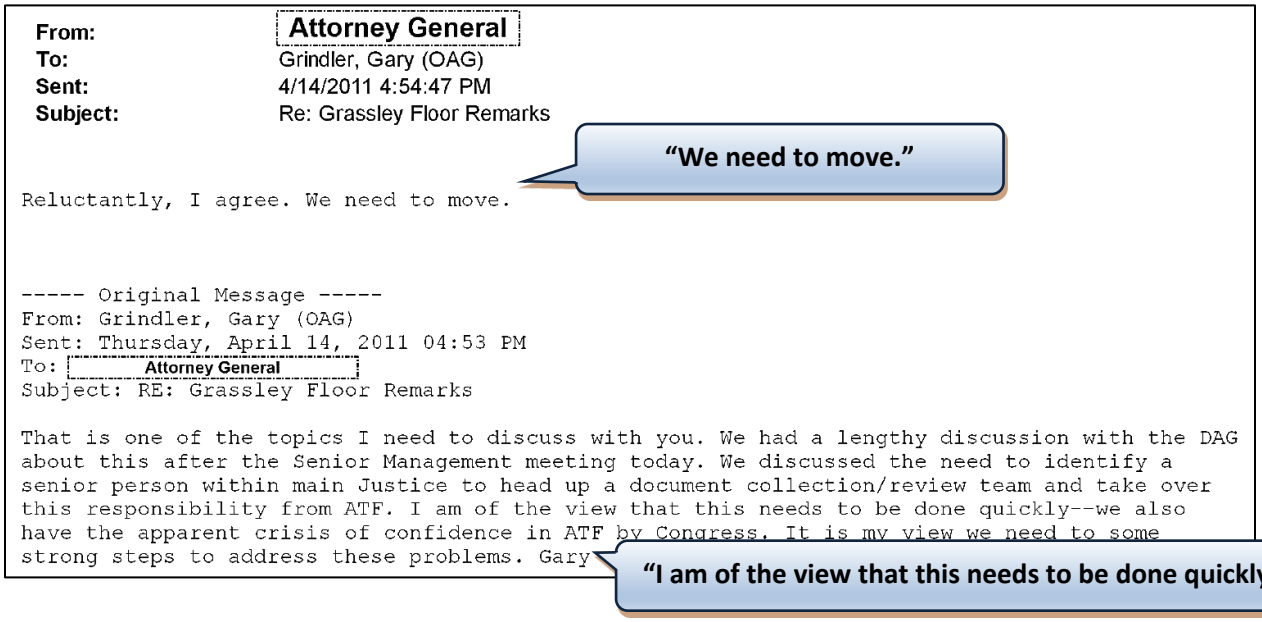
Grindler forwarded Schmaler's email to Attorney General Holder, who responded:[361]



[INTENTIONALLY BLANK]

[357] 157 CONG. REC. S2474 (Apr. 14, 2011) (statement of Sen. Grassley).
[358] *Id.* at S2475.
[359] *Id.*
[360] Email from Tracy Schmaler to Gary Grindler (Apr. 14, 2011) [DOJ-FF-24992–95].
[361] Email from Eric Holder to Gary Grindler (Apr. 14, 2011) [DOJ-FF-24992–95].

Senator Grassley's floor statement compelled DOJ to change its position. Holder and Grindler wrote:[362]



From: Attorney General
To: Grindler, Gary (OAG)
Sent: 4/14/2011 4:54:47 PM
Subject: Re: Grassley Floor Remarks

"We need to move."

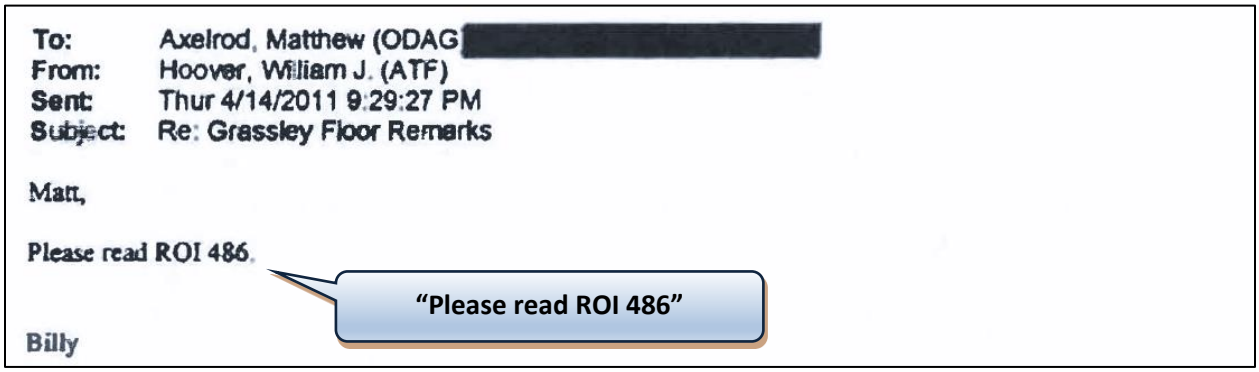
Reluctantly, I agree. We need to move.

----- Original Message -----
From: Grindler, Gary (OAG)
Sent: Thursday, April 14, 2011 04:53 PM
To: Attorney General
Subject: RE: Grassley Floor Remarks

That is one of the topics I need to discuss with you. We had a lengthy discussion with the DAG about this after the Senior Management meeting today. We discussed the need to identify a senior person within main Justice to head up a document collection/review team and take over this responsibility from ATF. I am of the view that this needs to be done quickly--we also have the apparent crisis of confidence in ATF by Congress. It is my view we need to some strong steps to address these problems. Gary

"I am of the view that this needs to be done quickly"

That night, ATF Deputy Director Hoover forwarded Senator Grassley's speech to Axelrod and wrote:[363]



To: Axelrod, Matthew (ODAG [redacted]
From: Hoover, William J. (ATF)
Sent: Thur 4/14/2011 9:29:27 PM
Subject: Re: Grassley Floor Remarks

Matt,

Please read ROI 486.

"Please read ROI 486"

Billy

[INTENTIONALLY BLANK]

[362] Email from Gary Grindler to Eric Holder (Apr. 14, 2011) [DOJ-FF-24992–95]; email from Eric Holder to Gary Grindler (Apr. 14, 2011) [DOJ-FF-24992–95].
[363] Email from William Hoover to Matthew Axelrod (Apr. 14, 2011) [HOGR 007201–007204].

Axelrod obtained it from the Arizona U.S. Attorney's Office:[364]

To: Axelrod, Matthew [redacted]
Cc: Burke, Dennis [redacted]; Morrissey, Mike (USAAZ) [redacted]; Kelly, Kristen (USAAZ) [redacted]; Hurley, Emory (USAAZ) [redacted]
From: Cunningham, Patrick (USAAZ)
Sent: Thur 4/14/2011 11:41:44 PM
Subject: ROIs 455 and 486
ROI 485.pdf
ROI 486.pdf

Thanks for the call today Matt. Enclosed are the ROI's written regarding the meetings with the FFI's. pJC

The same evening, officials in the Deputy Attorney General's office emailed about a request from White House National Security Council staff for ongoing updates:[365]

From: Johnston, Deborah A. (ODAG)
Sent: Thursday, April 14, 2011 6:37 PM
To: Axelrod, Matthew (ODAG)
Subject: Fast and Furious

"She is looking for updates on subpoenas we/ATF has received and testimony before Congress, etc."

Matt: Sarah Kendall is on the NSC staff . She has been requested to keep James Brennan up to date on the externalities of the Fast& Furious case. She is looking for updates on subpoenas we/ATF has received and testimony before Congress etc. They are not looking for any of the substantive information on the investigation. Can you assist her?

On **Friday, April 15, 2011**, DOJ officials discussed Chairman Issa's consideration of issuing subpoenas for witness testimony from a firearms dealer who cooperated in the Fast and Furious investigation. Grindler noted the escalation to Holder:[366]

From: Grindler, Gary (OAG)
Sent: Friday, April 15, 2011 03:30 PM
To: Attorney General
Subject: FW: Possible subpoena for cooperating FFL

"This keeps escalating"

This keeps escalating.

Holder responded:[367]

[364] Email from Patrick Cunningham to Matthew Axelrod (Apr. 14, 2011) [HOGR 007205].
[365] Email from Deborah Johnston to Matthew Axelrod (Apr. 14, 2011) [DOJ-FF-25086].
[366] Email from Gary Grindler to Eric Holder (Apr. 15, 2011) [DOJ-FF-04550–51].
[367] Email from Eric Holder to Gary Grindler, et al. (Apr. 15, 2011) [DOJ-FF-04550–51].

From:	**Attorney General**
To:	Grindler, Gary (OAG); Cole, James (SMO); Goldberg, Stuart (ODAG)
Sent:	4/15/2011 3:38:17 PM
Subject:	Re: Possible subpoena for cooperating FFL

"We have to be careful. His decision has to be truly his. If he testifies so be it."

Ok. We have to be careful. His decision has to truly be his. If he testifies so be it.

Issa and his idiot cronies never gave a damn about this when all that was happening was that thousands of Mexicans were being killed with guns from our country. All they want to do- in reality- is cripple ATF and suck up to the gun lobby. Politics at its worst- maybe the media will get it.

"Issa and his idiot cronies never gave a damn about this . . . . All they want to do - in reality - is cripple ATF and suck up to the gun lobby."

Burton indicated that she expected Ranking Member Cummings to raise to Chairman Issa the Department's concerns about exposing a potential cooperating witness to the public, and discourage him from doing so:[368]

From:	Burton, Faith (SMO)
To:	Colborn, Paul P (SMO); Axelrod, Matthew (ODAG); Gaston, Molly (SMO)
CC:	Weich, Ron (SMO)
Sent:	4/15/2011 7:01:47 PM
Subject:	RE: Draft letter to Issa re contact with witnesses
Attachments:	issa contact with witnesses.docx

Here's a draft that reflects Paul's tweaks and a few others in the 3rd para. We've left messages this afternoon for both Castor and his superior, Rob Borden, on majority staff - explaining our serious concern about their conduct here and the prospect of a subpoena to this witness. We also expect that RMM Cummings will talk with Issa about this, noting his concerns and asking that Issa staff consult with us before taking any steps that might impact our investigation. The downside, as Molly pointed out today, is that this letter puts our concerns on the record before we know whether they will back off. Aren't we outing our witness here as a cooperator? Is there a downside to that? We've indicated to staff that he's a cooperating witness but that this info is not public, but we've not expressed that in the record, FOIAble doc. My sense is that Issa is not likely to back down in response to such a demand unless it's accompanied by pressure from others (e.g. leadership and RMM) and we don't have that yet. Not sure we want to pull the trigger now, but we should talk about that.

"We also expect that RMM Cummings will talk with Issa about this, noting his concerns"

On **Tuesday, April 19, 2011,** DOJ officials discussed elevating a response letter to Chairman Issa to the attention of the White House Communications Office:[369]

From:	Colborn, Paul P (SMO)
To:	Monaco, Lisa (ODAG)
CC:	Axelrod, Matthew (ODAG); Burton, Faith (SMO)
Sent:	4/19/2011 2:44:34 PM
Subject:	FW: ODAG version with Paul's edits from yesterday morning plus OLA suggested changes to the first para.
Attachments:	Issa Contact Letter 419.doc

Lisa, either Matt or I have shared with WHCO the near-final drafts of our letters to Issa. Is it OK with you if I do that with this letter? If so, pls let me know when there is a version close enough to final to send over.

[368] Email from Faith Burton to Paul Colborn, et al. (Apr. 15, 2011) [DOJ-FF-25235–36].
[369] Email from Paul Colborn to Lisa Monaco (Apr. 19, 2011) [DOJ-FF-25771].

On **Wednesday, April 20, 2011,** Chairman Issa sent Melson a letter in response.[370] The letter stated:

> It is unclear to which specific criminal investigations Mr. Weich is referring. Such a blanket prohibition, if accepted, would conceal the entirety of Project Gunrunner and Operation Fast and Furious from legitimate congressional scrutiny. This is unacceptable. As a co-equal branch of government, Congress has a right, even a constitutional obligation, to conduct oversight of the Executive Branch, including the Department of Justice.
>
> * * *
>
> Sometimes, we may take a deferential approach to the Department when we are both investigating a third[] party's wrongdoing. Here, however, we are not conducting a concurrent investigation with the Department of Justice, but rather an independent investigation of the Department of Justice – specifically, allegations that the reckless and inappropriate decisions of Department officials have created a serious public safety hazard.[371]

As DOJ officials discussed the letter, Burton emailed:[372]

From:	Burton, Faith (SMO)
To:	Axelrod, Matthew (ODAG); Schmaler, Tracy (SMO); Weich, Ron (SMO); Weiner, Robert (ODAG); Wilkinson, Monty (OAG); Delery, Stuart F. (OAG); Goldberg, Stuart (ODAG); Richardson, Margaret (SMO); Gaston, Molly (SMO); Miller, Matthew A (SMO); Monaco, Lisa (ODAG)
Sent:	4/20/2011 2:49:59 PM
Subject:	RE: Chairman Issa Chastises ATF Director, Contempt Proceedings Possible Next Step

I don't think there was coverage of our letter to Issa because his staff was very clear that they aren't going to publicly release anything on this; we shouldn't either at this point. We're working on the draft response to Issa on doc preservation from ATF's draft. We'll need to have docs out the door before a briefing will be helpful. Committee staff understand our concerns about the pending investigation – they just believe that there are other strategy and policy docs about allowing guns to cross the border that we have not provided to them.

"Committee staff understand our concerns"

FINDING: Despite the Justice Department having clear facts showing it had sent Congress incorrect information on February 4, 2011, the Department

[370] H. Comm. on Oversight & Gov't Reform, *Press Release: Chairman Issa Chastises ATF for Refusal to Comply with Subpoena* (Apr. 20, 2011), *available at* https://oversight.house.gov/chairman-issa-chastises-atf-for-refusal-to-comply-with-subpoena.
[371] Letter from Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform to Kenneth Melson, Acting Dir., Bureau of Alcohol, Tobacco, Firearms & Explosives (Apr. 20, 2011).
[372] Email from Faith Burton to Matthew Axelrod, et al. (Apr 20, 2011) [DOJ-FF-25883–85].

continued to view the situation as a mere "oversight skirmish" and doubled down on its denials to Congress.

On **Friday, April 22, 2011,** Melson circulated to senior DOJ officials a draft of a letter to new Mexican Attorney General Marisela Morales.[373] Tracy Schmaler responded by questioning the level of detail Melson proposed to provide:[374]

From: Schmaler, Tracy (SMO)
Sent: Friday, April 22, 2011 12:34 PM
To: Goldberg, Stuart (ODAG); Axelrod, Matthew (ODAG); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Subject: FW: Letter to Marisella

Have we gone into this level of detail in our congressional responses? Hadn't seen the OCDETF line before or language in second to last graph. Understand urgency from ATF viewpoint, but should run these down before having any ATF-signed letter providing more or different info.

The draft also stirred further questions among the officials:[375]

From: Goldberg, Stuart (ODAG)
Sent: Friday, April 22, 2011 01:34 PM
To: Schmaler, Tracy (SMO); Axelrod, Matthew (ODAG); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Subject: RE: Letter to Marisella

Matt – do we have 100% confidence in the accuracy of this paragraph?

"[D]o we have 100% confidence in the accuracy of this paragraph?"

Operation Fast and Furious neither involved a "sting" in Mexico nor any "controlled deliveries" of weapons into Mexico, , nor did it involve our ATF agents conducting any undercover operations in Mexico. There were no undercover law enforcement officers involved in Operation Fast and Furious.

Were there controlled deliveries and stings in Mexico in other cases run as part of Gunrunner and/or by ATF Arizona?

Were there UCs in FF – but just not UC law enforcement officers?

Axelrod replied:[376]

"The first sentence, yes. The second sentence, no."

From: Axelrod, Matthew (ODAG)
Sent: Friday, April 22, 2011 1:40 PM
To: Goldberg, Stuart (ODAG); Schmaler, Tracy (SMO); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Subject: Re: Letter to Marisella

The first sentence, yes. The second sentence, no. I seem to vaguely recall one or two ROIs discussing use of a UC in the United States. I could be wrong though -- I'll need to check when I return on Monday.

In addition, I think we need to strike the entire graph that describes F and F as successful (the "allegations in the media" graph). We have not said that yet to Congress and, frankly, I'm not sure we yet have a view on that question.

[373] Email from Kenneth Melson to William Hoover (Apr. 19, 2011) [DOJ-FF-26548–50].
[374] Email from Tracy Schmaler to Stuart Goldberg, et al. (Apr. 22, 2011) [DOJ-FF-26548–50].
[375] Email from Stuart Goldberg to Tracy Schmaler, et al. (Apr. 22, 2011) [DOJ-FF-26548–50].
[376] Email from Matthew Axelrod to Stuart Goldberg, et al. (Apr. 22, 2011) [DOJ-FF-26548–50].

Axelrod's email led to further discussion among the officials:[377]

From: Axelrod, Matthew (ODAG)
Sent: Friday, April 22, 2011 01:55 PM
To: Goldberg, Stuart (ODAG); Schmaler, Tracy (SMO); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Subject: Re: Letter to Marisella

Yes, there were a handful of attempted controlled deliveries (with MX participation) in cases falling under the Gunrunner umbrella generally.

Despite that, I think it's okay to say that F and F didn't involve those tactics. I think it's the allegations about F and F specifically that are causing the outcry, no?

From: Goldberg, Stuart (ODAG)
Sent: Friday, April 22, 2011 01:50 PM
To: Axelrod, Matthew (ODAG); Schmaler, Tracy (SMO); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Subject: RE: Letter to Marisella

But weren't there controlled deliveries and stings in Mexico in other cases run as part of Gunrunner and/or by ATF Arizona? I am concerned about answering this too narrowly – clearly the Mexican public cares about the broad swath of what was being done – not just FF, right?

Schmaler tried to provide clarity:[378]

"Why set ourselves up to be accused of misleading"

From: Schmaler, Tracy (SMO)
Sent: Friday, April 22, 2011 02:04 PM
To: Axelrod, Matthew (ODAG); Goldberg, Stuart (ODAG); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Subject: Re: Letter to Marisella

Why set ourselves up to be accused of misleading if we know these things occurred - just not as part of this project? Agree w Stuart and vote against splitting that hair when the concern is about the conduct ... Not if it was done on tues as part of F and F, but rather on friday as part of slow and steady.

Goldberg wrote in response to Axelrod:[379]

From: Goldberg, Stuart (ODAG)
To: Axelrod, Matthew (ODAG); Schmaler, Tracy (SMO); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Sent: 4/22/2011 6:01:10 PM
Subject: RE: Letter to Marisella

I see it differently – FF is just what has come in the public eye – they will be upset by what has been done or not done. If no guns were walked in FF but were in another Gunrunner operation – the outcry would be the same.

[377] Email from Matthew Axelrod to Stuart Goldberg, et al. (Apr. 22, 2011) [DOJ-FF-26548–50].
[378] Email from Tracy Schmaler to Matthew Axelrod, et al. (Apr. 22, 2011) [DOJ-FF-26548–50].
[379] Email from Stuart Goldberg to Matthew Axelrod, et al. (Apr. 22, 2011) [DOJ-FF-26555–57].

On a different chain discussing the same letter, Goldberg added:[380]

From: Goldberg, Stuart (ODAG)
Sent: Friday, April 22, 2011 06:07 PM
To: Axelrod, Matthew (ODAG); Johnston, Deborah A. (ODAG); Monaco, Lisa (ODAG)
Subject: RE: MX Letter

Lisa and I were just discussing that the reference to use of undercovers makes us queasy – and it clearly will be what Grassley et al zero in on when they get the letter. Why not put an affirmative statement at the end taken from one of the previous letters:

Like,

"[T]he reference to use of undercovers makes us queasy"

However, I do wish to note that the Attorney General has said, it is an important mission of the Department of Justice to stop the flow of guns into Mexico. The Attorney General has made it clear to the law enforcement agencies and prosecutors working along the Southwest that the Department should never knowingly permit firearms to cross the border.

Axelrod concluded:[381]

From: Axelrod, Matthew (ODAG)
To: Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); Johnston, Deborah A. (ODAG); Wilkinson, Monty (OAG)
Sent: 4/22/2011 6:17:37 PM
Subject: Re: Letter to Marisella

I still disagree. We've made distinctions between F and F and Gunrunner in our letters to Congress. I think we can do the same here. F and F is drawing the attention b/c it is alleged to involve thousands of guns. It's important to knock down the rumors circulating in MX about how those thousands of guns were handled. The handful of occasions that the tactics in question were used in other Gunrunner cases involve onesies and twosies. It's quite different -- distinguishble not just b/c not part of F and F, but in scope as well.

Understanding that Stuart and Tracy have a different view, I think it means that we can't send a letter.

For what it's worth, I believe that the DAG already made the statements about F and F orally to Marisela last week

"The handful of occasions that the tactics in question were used in other . . . cases involve onesies and twosies."

On **Monday, April 25, 2011,** discussion continued on what could be said of Fast and Furious to the Government of Mexico:[382]

[INTENTIONALLY BLANK]

[380] Email from Stuart Goldberg to Matthew Axelrod, et al. (Apr. 22, 2011) [DOJ-FF-26990–91].
[381] Email from Matthew Axelrod to Tracy Schmaler, et al. (Apr. 22, 2011) [DOJ-FF-26548–50].
[382] Email from Stuart Goldberg to Matthew Axelrod and Deborah Johnston (Apr. 25, 2011) [DOJ-FF-27159–60].

From: Goldberg, Stuart (ODAG)
Sent: Monday, April 25, 2011 11:38 AM
To: Axelrod, Matthew (ODAG); Johnston, Deborah A. (ODAG)
Cc: Monaco, Lisa (ODAG)
Subject: RE: Marisela letter

I do not see that reading. I would be reluctant to recommend characterizing any aspect of FF until our team (and perhaps the OIG) figures out what actually took place.

"I would be reluctant to recommend characterizing any aspect of FF until our team . . . figures out what actually took place."

From: Axelrod, Matthew (ODAG)
Sent: Monday, April 25, 2011 11:35 AM
To: Goldberg, Stuart (ODAG); Johnston, Deborah A. (ODAG)
Cc: Monaco, Lisa (ODAG)
Subject: RE: Marisela letter

I defer to the group, but I'm concerned that the last sentence can be read to suggest that Fast and Furious included "design[ing] an undercover operation that involves sending guns across the border" (which it did not) and that is why the AG has since made it clear to law enforcement that such things should not happen. That would obviously have the opposite of the intended effect. The key point is to beat back the allegations that F and F involved an undercover operation in MX. Is there any way to move a version of the UC sentence into the paragraph that talks about F and F?

Goldberg escalated the issue to Deputy Attorney General Cole:[383]

From: Goldberg, Stuart (ODAG)
To: Cole, James (SMO)
Sent: 4/25/2011 11:34:24 PM
Subject: FW: Marisela letter

"They believe I am being too reluctant and that we should give Marisela what she needs to fend off wild allegations in the press."

Axelrod and the ATF think that the last line suggests that in FF undercovers were used. I don't agree. They both contend categorically that "undercovers" were not used in Mexico in FF and instead want to affirmatively say just that (Matt says it is not in any ROI) - I am hesitant to make sure an assertion at this point regarding FF --- for fear that it might be at conflict with something done in FF (or that Dotson and company say was done) or in another Gunrunner case, for that matter. They believe I am being too reluctant and that we should give Marisela what she needs to fend off wild allegations in the press.

On **Tuesday, April 26, 2016,** Cole and Goldberg emailed regarding the final stages of the letter to Mexican Attorney General Morales:[384]

[383] Email from Stuart Goldberg to James Cole (Apr. 25, 2011) [DOJ-FF-27159–60].
[384] Email from Stuart Goldberg to James Cole (Apr. 26, 2011) [DOJ-FF-27216].

From: Goldberg, Stuart (ODAG)
To: Cole, James (SMO)
Sent: 4/26/2011 1:10:59 AM
Subject: Re: Here's the one additional sentence

Agreed.

From: Cole, James (SMO)
Sent: Monday, April 25, 2011 08:12 PM
To: Goldberg, Stuart (ODAG)
Subject: Re: Here's the one additional sentence

"I'm reluctant to say anything so definitive. We've been burned before."

I'm reluctant to say anything so definitive. We've been burned before.

Jim

From: Goldberg, Stuart (ODAG)
Sent: Monday, April 25, 2011 07:57 PM
To: Cole, James (SMO)
Subject: Fw: Here's the one additional sentence

From: Axelrod, Matthew (ODAG)
Sent: Monday, April 25, 2011 07:46 PM
To: Goldberg, Stuart (ODAG)
Subject: Here's the one additional sentence

That I suspect ATF would like added to the Fast and Furious paragraph in the draft letter to the Mexican AG:

"During Operation Fast and Furious, ATF agents did not conduct any undercover operations in Mexico."

Goldberg forwarded the decision to Axelrod and wrote:[385]

From: Goldberg, Stuart (ODAG)
To: Axelrod, Matthew (ODAG)
Sent: 4/26/2011 11:36:17 AM
Subject: FW: Here's the one additional sentence

Fyi. No need to describe in such stark terms to ATF if they call of course.

[INTENTIONALLY BLANK]

[385] Email from Stuart Goldberg to Matthew Axelrod (Apr. 26, 2011) [DOJ-FF-27214–15].

The same morning, DOJ became aware that one of the ATF whistleblowers had received a subpoena to testify at an upcoming hearing before the House Oversight and Government Reform Committee:[386]

-----Original Message-----
From: Axelrod, Matthew (ODAG)
Sent: Tuesday, April 26, 2011 9:17 AM
To: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG); Wilkinson, Monty (OAG); Weiner, Robert (ODAG); Richardson, Margaret (SMO); Schmaler, Tracy (SMO)
Subject: FW: Congressional Subpoena
Importance: High

Attached is a subpoena for testimony at a May 10 hearing for [ATF] who is a line agent in the Phoenix Field Division. He was initially assigned to Fast and Furious, but was removed from the investigation at some point. I'm confirming why he was removed, but the initial indication is that it was for reasons similar to those applicable to Agent Dodson -- unwillingness to work the wire room, unwillingness to work on an investigation where he wasn't he lead agent, etc.

On **Wednesday, April 27, 2011,** Burke emailed Wilkinson:[387]

From: Wilkinson, Monty (OAG) (SMO)
To: Burke, Dennis (USAAZ)
Sent: 4/27/2011 9:20:07 PM
Subject: Re: Grassley/Issa

Okay. We discussed this today. We're trying to schedule a sit down with the AG, Issa and Grassley.

From: Burke, Dennis (USAAZ)
Sent: Wednesday, April 27, 2011 08:50 PM
To: Wilkinson, Monty (OAG)
Subject: Grassley/Issa

Their antics are truly impacting our prosecutions in several cases, creating (what would otherwise be far-fetch) defenses in our cases, etc.

We are about to unseal the indictment in the Border Patrol Agent Terry case, that accompanies a strategy we have been working w/ Mexico on a wire down there. All this is in jeopardy by what Grassley and Issa are doing, saying and erroneously feeding to their shill at CBS.

Really would strongly recommend the Department take a stand on this.

Would like to talk to you about it. Thx.

Dennis

"All this is in jeopardy by what Grassley and Issa are doing, saying and erroneously feeding to their shill at CBS."

[386] Email from Matthew Axelrod to Lisa Monaco, et al. (Apr. 26, 2011) [DOJ-FF-27262–63].
[387] Email from Monty Wilkinson to Dennis Burke (Apr. 27, 2011) [DOJ-FF-27520].

The same night, Weich emailed other DOJ officials:[388]

From: Weich, Ron (SMO)
To: Cole, James (SMO); Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG); Axelrod, Matthew (ODAG)
CC: Burton, Faith (SMO)
Sent: 4/27/2011 8:34:12 PM
Subject: Issa / Grassley / ATF --
Attachments: issa meeting.docx; issa letter 427.docx

Sorry I missed the meeting that was convened earlier this evening. I was co-hosting a happy hour with FBI's Leg shop and ours. I had earlier left messages with Stuart and Lisa to discuss this matter.

I understand that ODAG has directed OLA to draft a short letter to Issa (a similar letter would go to Grassley) proposing a meeting with the AG. That draft is the first of the two attached documents. The second attachment is a longer draft letter conveying our concerns about Issa's activities with greater specificity and referencing earlier correspondence. We think the longer version is preferable.

But while we think a "push back" letter makes sense, we disagree with the strategy of offering Issa and Grassley a meeting with the AG at this relatively early stage of the oversight skirmish, and on the eve of the AG's oversight hearings in House and Senate Judiciary. In an unrelated meeting with the AG late this afternoon I offered him my sense that it would be premature for him to have a face-to-face meeting with these members before we have exhausted other avenues to resolve the dispute. He seemed open to that approach, and asked me to communicate further with Jim and Stuart. I am available to do that anytime tomorrow.

"[W]e disagree with . . . offering Issa and Grassley a meeting with the AG at this relatively early stage of the oversight skirmish"

On **Thursday, April 28, 2011,** Cole emailed Attorney General Holder and others:[389]

From: Cole, James (SMO)
To: Attorney General Grindler, Gary (OAG); Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG)
Sent: 4/28/2011 12:31:53 PM
Subject: Issa Letter

OLA has made a strong pitch that we not offer the AG for the meeting in the first instance because they think it will use up our heaviest tool too soon. We pushed back on the need to have engagement at the highest level of DOJ and they suggested that I do it. That not only holds you in reserve, but has traditionally been a DAG role in protecting law enforcement operations. We pointed out that it would be more powerful for you to be able to say that you have personally offered to meet, but they were unimpressed with the value of that compared to your saying you've asked the DAG to meet with them, particularly compared to the use of you too early.

I told them I'd raise the issue with you. I'm a little torn on how I come out on it. I appreciate the value of holding you in reserve and the risk of lots of other members wanting a meeting with you if this is viewed as a precedent. On the other hand, this is an extreme situation and involves positioning as well as substance, and there may be value in showing how concerned we are about the danger to this pending criminal prosecution and investigation and how out of the ordinary their tactics have been by playing our most important card. In the end I'm not convinced we will do much more than make a record, so on balance I would be comfortable either way.

"[T]his is an extreme situation and involves positioning as well as substance"

[388] Email from Ron Weich to James Cole, et al. (Apr. 27, 2011) [DOJ-FF-27557].
[389] Email from James Cole to Eric Holder, et al. (Apr. 28, 2011) [DOJ-FF-01461].

Holder responded: "Guess I agree with them. Let's make the DAG offer."[390]

Later that afternoon, Weich emailed:[391]

From: Weich, Ron (SMO)
Sent: Thursday, April 28, 2011 03:09 PM
To: Monaco, Lisa (ODAG); Cole, James (SMO)
Cc: Goldberg, Stuart (ODAG); Burton, Faith (SMO)
Subject: RE: Issa?Grassley Letters

"It seems unwise to telegraph additional concessions at this point"

Lisa and I just spoke, and I conveyed my final concern that using the phrase "in order to find a way forward" after already saying that we are assembling documents suggests that "the way forward" entails something beyond providing those documents. It seems unwise to telegraph additional concessions at this point and in this letter. So we propose to have that sentence read simply: "We think it would be helpful for you and the Deputy Attorney General to meet to discuss these matters." The rest would be the same as your draft below. OK?

By the way, as I told Lisa, Grassley's chief counsel told me in a phone call a short time ago that at the hearing Grassley intends to focus on Gitmo, DOMA and Sentinel rather than ATF. Maybe he's just throwing me off the trail, but maybe this whole thing is less of a member concern and more of a staff (Jason Foster) concern.

On **Monday, May 2, 2011,** Attorney General Holder had a conference call with Senator Grassley. The call was scheduled to take place before Holder's testimony in two successive days of oversight hearings, first before the House Judiciary Committee on May 3, and then before the Senate Judiciary Committee on May 4. According to Grassley: "I personally expressed my concern to the Attorney General about the accuracy of the Department's replies in our telephone conversation . . . ."[392] Grassley also raised concerns about whistleblower retaliation and allegations that officials in the U.S. Attorney's Office for the District of Arizona were intentionally obstructing the congressional investigation.

That afternoon, DOJ sent Senator Grassley a response to his April 14 letter asking that DOJ revisit its position.[393] According to Weich, the Department wanted to memorialize its position before the hearings that week.[394] The letter, signed by Weich, stated: "It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico."[395] As Senator Grassley stated later that week: "I was stunned that just a

[390] Email from Eric Holder to James Cole, et al. (Apr. 28, 2011) [DOJ-FF-01461].
[391] Email from Ron Weich to Lisa Monaco and James Cole (Apr. 28, 2011) [DOJ-FF-27700–01].
[392] *Oversight of the U.S. Dep't of Justice: Hearing before the S. Comm. on the Judiciary*, 112th Cong. 3 (May 4, 2011) (No. J-112-18), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112shrg73839/pdf/CHRG-112shrg73839.pdf.
[393] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice, to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (May 2, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/about/upload/Judiciary-ATF-05-02-11-letter-from-DOJ-denial-2-to-allegations.pdf.
[394] DOJ OIG report at 383.
[395] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice, to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (May 2, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/about/upload/Judiciary-ATF-05-02-11-letter-from-DOJ-denial-2-to-allegations.pdf.

few hours after our conversation, the Department sent another letter repeating the denial in slightly different words."[396]

With respect to that letter, the DOJ OIG later concluded:

> [B]y the date of its May 2 letter to Sen. Grassley, senior Department officials responsible for drafting the letter knew or should have known that ATF had not made "every effort to interdict weapons purchased illegally and prevent their transportation to Mexico," either in Operation Fast and Furious or other firearms trafficking investigations, and that the February 4 letter contained inaccuracies. We therefore concluded that the Department knew or should have known that the February 4 letter could no longer be defended in its entirety when Department officials wrote to Sen. Grassley on May 2. . . . Given that senior Department officials' confidence in the accuracy of the February 4 letter was decreasing rather than increasing as their internal review progressed, we found it troubling that the Department's May 2 response letter to Sen. Grassley included a substantive statement – albeit a qualified one – regarding the Fast and Furious investigation.[397]
>
> * * *
>
> We believe that the Department should not have made this statement in its May response to Sen. Grassley. Regardless of whether there was any intent to draw a distinction between straw purchasers and third parties, senior Department officials knew or should have known that while ATF may not have allowed straw purchasers to buy firearms so that they themselves could take the guns to Mexico, ATF had in many instances allowed straw purchasers to buy firearms knowing that a third party would be transporting them to Mexico. The review of the Operation Fast and Furious case file that had been conducted by Department officials to this point, including the Title III affidavits, indicated that suspects were buying guns for the purpose of getting them into Mexico. Moreover, ATF was aware from later seizures that some of those firearms did in fact end up in Mexico.[398]

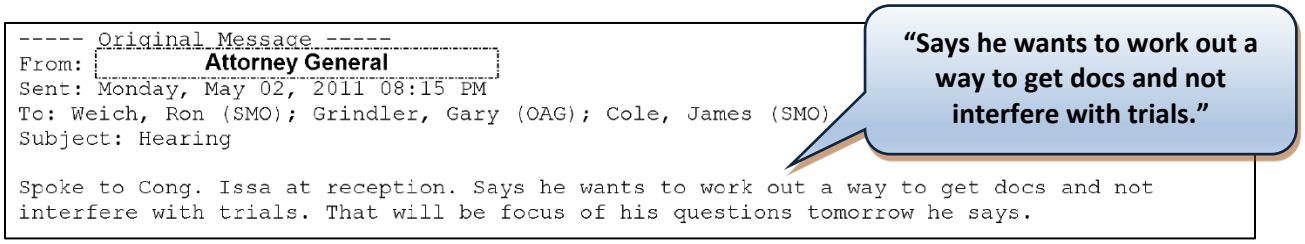
[INTENTIONALLY BLANK]

[396] *Oversight of the U.S. Dep't of Justice: Hearing before the S. Comm. on the Judiciary*, 112th Cong. 3 (May 4, 2011) (No. J-112-18), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112shrg73839/pdf/CHRG-112shrg73839.pdf.
[397] DOJ OIG report at 396.
[398] DOJ OIG report at 415.

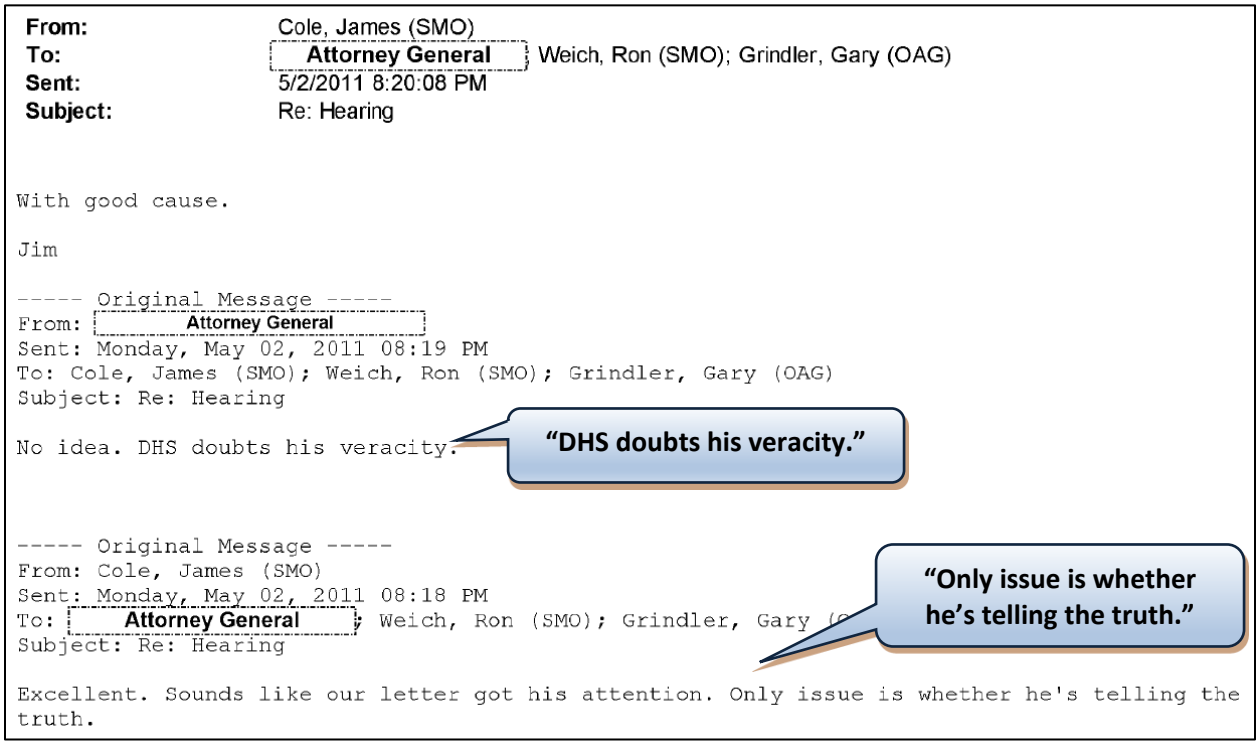
4. Wiretap Applications

FINDING:	**Senior Justice Department officials, including the Attorney General, spent a great deal of time and energy to devising a strategy to square their desire to protect Assistant Attorney General Lanny Breuer from scrutiny with the fact that the Fast and Furious wiretaps, which detailed the reckless tactics that were used in the operation, were approved under Breuer's name.**

The night of Monday, May 2, 2011, Holder emailed senior DOJ officials:[399]



Holder emailed back and forth with Deputy Attorney General Cole:[400]



On **Tuesday, May 3, 2011,** DOJ officials finished their final preparations for questions Holder might receive at the hearing:[401]

[399] Email from Eric Holder to Ron Weich, et al. (May 2, 2011) [DOJ-FF-01443].
[400] Email from James Cole to Eric Holder (May 2, 2011) [DOJ-FF-01443].

From: Axelrod, Matthew (ODAG)
To: Grindler, Gary (OAG)
CC: Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG); Weich, Ron (SMO)
Sent: 5/3/2011 11:45:01 AM
Subject: Re: Response to Senator Grassley's 4/13 letter - just sent in pdf format to Grassley & Leahy staff; hard copy to follow. FYI

"I would try to avoid having him engage in the specifics."

I would try to avoid having him engage in the specifics. But if pressed, he could say that taking guns to MX is a separate crime. If a straw were to try to cross the border with a gun and ATF knew, they wouldn't let it happen (unless they were coordinating with MX authorities, which happened in a handful of non-Fast and Furious cases). It's a bright line. The question of whether ATF allowed sales to straws will take longer to investigate, since it's not always so clear that someone is a straw rather than a lawful gun buyer.

From: Grindler, Gary (OAG)
Sent: Tuesday, May 03, 2011 07:34 AM
To: Axelrod, Matthew (ODAG)
Cc: Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG); Weich, Ron (SMO)
Subject: RE: Response to Senator Grassley's 4/13 letter - just sent in pdf format to Grassley & Leahy staff; hard copy to follow. FYI

How do we explain being somewhat definitive ("it remains our understanding") on the question whether ATF knowingly allowed straw purchasers to take guns to Mexico and defer to OIG on the other factual questions?

"How do we explain . . . whether ATF knowingly allowed straw purchasers to take guns to Mexico"

Grindler also asked:[402]

From: Grindler, Gary (OAG)
Sent: Tuesday, May 03, 2011 07:37 AM
To: Axelrod, Matthew (ODAG)
Cc: Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG); Weich, Ron (SMO)
Subject: RE: Response to Senator Grassley's 4/13 letter - just sent in pdf format to Grassley & Leahy staff; hard copy to follow. FYI

And if Issa inquires about how he can get access to documents and not interfere with the criminal investigation, what should the AG say?

[INTENTIONALLY BLANK]

[401] Email from Matthew Axelrod to Gary Grindler (May 3, 2011) [DOJ-FF-28769–70].
[402] Email from Gary Grindler to Matthew Axelrod (May 3, 2011) [DOJ-FF-28778].

Grindler forwarded Axelrod's response to Holder:[403]

From: Grindler, Gary (OAG)
To: Attorney General (SMO)
Sent: 5/3/2011 7:48:12 AM
Subject: FW: Response to Senator Grassley's 4/13 letter - just sent in pdf format to Grassley & Leahy staff; hard copy to follow. FYI

To the issue that Issa suggested he would raise with you today.

From: Axelrod, Matthew (ODAG)
Sent: Tuesday, May 03, 2011 7:47 AM
To: Grindler, Gary (OAG)
Cc: Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Goldberg, Stuart (ODAG); Monaco, Lisa (ODAG); Weich, Ron (SMO)
Subject: Re: Response to Senator Grassley's 4/13 letter - just sent in pdf format to Grassley & Leahy staff; hard copy to follow. FYI

He can say that we're happy to work with him on that. We have offered to have the DAG meet with him and have offered to have our people brief his staff. So far, he hasn't taken us up on either offer.

That afternoon, Chairman Issa and Senator Grassley sent their first joint letter to DOJ.[404] The letter stated:

> As Senator Grassley discussed on the phone with you yesterday, we are very concerned that the Department chose to send a letter containing false statements in response to his initial inquiry into the ATF whistleblower allegations related to Operation Fast and Furious. . . . [W]e were surprised and disappointed to see the Department repeated once again, in slightly different language, its denial in a letter received shortly after your conversation with Senator Grassley. . . . We are extremely disappointed that you do not appear to be taking the issue seriously enough to ensure the Department's representations are accurate, forthcoming, and complete. We will continue to probe and gather the facts independently, as it has become clear that we cannot rely on the Department's self-serving statements to obtain any realistic picture of what happened.[405]

Senator Grassley added a hand-written note at the bottom of the letter: "P.S. You should check to see if you are getting accurate information from your staff. You might be ill-served."[406]

At the hearing that day, Chairman Issa asked Holder whether Breuer authorized Operation Fast and Furious.[407] Holder responded: "I'm not sure whether Mr. Breuer authorized

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[403] Email from Gary Grindler to Eric Holder (May 3, 2011) [DOJ-FF-28778].
[404] Letter from Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice (May 3, 2011), *available at* http://www.grassley.senate.gov/sites/default/files/about/upload/Judiciary-ATF-05-03-11-Grassley-Issa-letter-to-Holder-in-response-to-denial-2.pdf.
[405] *Id.* at 1-2.
[406] *Id.* at 2.

it. You have to understand the way in which the Department operates although their operations—this one has gotten a great deal of publicity."[408]

Deputy Chief of Staff Amy Pope emailed Weich:[409]

-----Original Message-----
From: Pope, Amy (CRM)
Sent: Tuesday, May 03, 2011 12:21 PM
To: Weich, Ron (SMO)
Subject: On fast and furious

Can't AG just say, "No. Lanny Breuer did not authorize it. "

"Can't AG just say, 'No. Lanny Breuer did not authorize it.'"

That afternoon, a draft statement for the Attorney General to use to answer questions about Breuer was circulated in DOJ:[410]

From: Raman, Mythili (CRM)
Sent: Tuesday, May 03, 2011 03:01 PM
To: Grindler, Gary (OAG); Monaco, Lisa (ODAG)
Cc: Axelrod, Matthew (ODAG)
Subject: FW: proposed statement

Gary/Lisa: Per your conversations with Gary, here is the statement that Lanny would like AG to use.

From: Raman, Mythili
Sent: Tuesday, May 03, 2011 3:01 PM
To: Breuer, Lanny A.
Cc: Sweeney, Laura (SMO)
Subject: proposed statement

The Assistant Attorney General of the Criminal Division does not authorize ATF operations, and did not do so in Fast and Furious.

[INTENTIONALLY BLANK]

[407] *U.S. Dep't of Justice: Hearing before the H. Comm. on the Judiciary*, 112th Cong. 45 (May 3, 2011) (No. 112-127), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg66154/pdf/CHRG-112hhrg66154.pdf.
[408] *Id.*
[409] Email from Amy Pope to Ron Weich (May 3, 2011) [DOJ-FF-28966].
[410] Email from Mythili Raman to Gary Grindler and Lisa Monaco (May 3, 2011) [DOJ-FF-28955–56].

In response to an email from Grindler, Axelrod provided a sample answer to the question of who authorized the operation:[411]

From: Axelrod, Matthew (ODAG) [mailto:Matthew.Axelrod@usdoj.gov]
Sent: Tuesday, May 03, 2011 3:19 PM
To: Grindler, Gary (OAG) (SMO); Raman, Mythili; Monaco, Lisa (ODAG) (SMO)
Subject: RE: proposed statement

Here's what we said in our response to Chairman Smith on April 4:

"Operation Fast and Furious is an ongoing criminal investigation of an extensive gun-trafficking enterprise. It was opened over a year ago and approved by the ATF Phoenix Field Office and the United States Attorney's Office for the District of Arizona (USAO) in the normal course, consistent with established procedures for such matters. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program."

From: Grindler, Gary (OAG)
Sent: Tuesday, May 03, 2011 3:14 PM
To: Raman, Mythili (CRM); Monaco, Lisa (ODAG)
Cc: Axelrod, Matthew (ODAG)
Subject: Re: proposed statement

How was this operation "authorized" in the first place? Who "authorized" it?

Raman added:[412]

From: Grindler, Gary (OAG) [mailto:Gary.Grindler@usdoj.gov]
Sent: Tuesday, May 03, 2011 3:36 PM
To: Raman, Mythili; Axelrod, Matthew (ODAG) (SMO); Monaco, Lisa (ODAG) (SMO)
Cc: Pope, Amy
Subject: Re: proposed statement

Consider the AG armed.

From: Raman, Mythili (CRM)
Sent: Tuesday, May 03, 2011 03:35 PM
To: Axelrod, Matthew (ODAG); Grindler, Gary (OAG); Monaco, Lisa (ODAG)
Cc: Pope, Amy (CRM)
Subject: RE: proposed statement

"We just want to make sure that the AG is armed with the answer if he is asked tomorrow . . . about Lanny's . . . involvement."

I have no reason to disagree with Matt on who authorized Fast and Furious, as he knows those facts best. We just want to make sure that the AG is armed with the answer if he is asked tomorrow – like he was today – about Lanny's own involvement.

IE -- given that Issa asked the AG specifically about Lanny, and Grassley is likely to do so tomorrow (and now the Wall Street Journal has also asked specifically about Lanny), we think it's important to be prepared to answer that question directly.

Soon, Schmaler emailed:[413]

[411] Email from Matthew Axelrod to Gary Grindler, et al. (May 3, 2011) [DOJ-FF-28955–56].
[412] Email from Mythili Raman to Matthew Axelrod, et al. (May 3, 2011) [DOJ-FF-28961–62].

----- Original Message -----
From: Schmaler, Tracy (SMO)
Sent: Tuesday, May 03, 2011 03:38 PM
To: Axelrod, Matthew (ODAG); Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Miller, Matthew A (SMO); Monaco, Lisa (ODAG)
Subject: response re: Issa exchange

We're getting follow up on the Issa-AG exchange today, specifically regarding the Lanny role question. Given the org chart of the Dept makes clear that the LE components don't report to CRM, what about the following as a response to media? (didn't tie it specifically to F&F given the ongoing IG investigation and the fact that some aspects of the operation (wire taps) were signed off by CRM and some could view a denial of any role in f&f as being disingenuous.)

"[S]ome could view a denial of any role in f&f as being disingenuous."

That evening, Weich and Pope emailed regarding Pope's recommendation that Attorney General Holder definitively state that Breuer did not authorize the operation:[414]

From: Pope, Amy (CRM)
To: Weich, Ron (SMO)
Sent: 5/3/2011 8:59:49 PM
Subject: Re: On fast and furious

I think we are ok. I know what the AG intended to say. Just frustrating that it appeared as if he didn't know.

Amy E. Pope | U.S. Department of Justice | Deputy Chief of Staff and Counselor to the Assistant Attorney General | Criminal Division | ☎ (202) 514-0770

----- Original Message -----
From: Weich, Ron (SMO) <Ron.Weich@usdoj.gov>
To: Pope, Amy
Sent: Tue May 03 19:03:58 2011
Subject: RE: On fast and furious

Long day. Did this get resolved or is Lanny still anxious? For what it's worth, the AG now knows to give a flat no if Grassley asks tomorrow.

"[T]he AG now knows to give a flat no if Grassley asks tomorrow."

As *The Wall Street Journal* requested a statement for an article it prepared to run regarding the Criminal Division's role in approving wiretaps in Operation Fast and Furious, DOJ Public Affairs Director Matthew Miller recommended against issuing a statement specific to Breuer:[415]

[413] Email from Tracy Schmaler to Matthew Axelrod, et al. (May 3, 2011) [DOJ-FF-28985–86].
[414] Email from Ron Weich to Amy Pope (May 3, 2011) [DOJ-FF-28966]; email from Amy Pope to Ron Weich (May 3, 2011) [DOJ-FF-28966].
[415] Email from Matthew Miller to Lanny Breuer (May 3, 2011) [DOJ-FF-28895].

From: Miller, Matthew A (SMO) [mailto:Matthew.A.Miller@usdoj.gov]
Sent: Tuesday, May 03, 2011 7:17 PM
To: Breuer, Lanny A.
Cc: Schmaler, Tracy (SMO); Grindler, Gary (OAG) (SMO)
Subject: Statement

"If we say this with respect to you, we will have to answer similar questions with a host of other Department officials."

Lanny-- I continue to think it's a bad idea for us to say something about this issue on the record other than the affirmative statement we have already given saying who did authorize it. If we say this with respect to you, we will have to answer similar questions with a host of other Department officials. I also think it's very unlikely that Evan comes back to us and pushes for anything about you on the record tonight, given that it's 7:15 and he has not done so yet.

That said, if he does come back to us I am comfortable with giving him something attributed to you. How about:

"The Assistant Attorney General of the Criminal Division does not authorize ATF operations, and I did not do so in Fast and Furious." -- Lanny Breuer

Breuer raised concerns with offering a statement in his name:[416]

From: Breuer, Lanny A. (CRM)
Sent: Tuesday, May 03, 2011 7:23 PM
To: Miller, Matthew A (SMO)
Cc: Schmaler, Tracy (SMO); Grindler, Gary (OAG)
Subject: RE: Statement

"But frankly if we do give a statement, I do not understand why the statement should come from me."

I agree that we don't need to say anything if the paper does not come back to us. But frankly if we do give a statement, I do not understand why the statement should come from me. I don't think that is appropriate and not what we ordinarily do. I spend an extraordinary amount of time on Mexico for this Department. I have never said no to any request made of me. I do not authorize ATF investigations and the Department knows that. Moreover, it is to the Department's benefit to make clear that the AAG for Criminal, who plays a major role on Mexico matters, did not authorize Fast and Furious.

In a separate chain, Miller emailed with Attorney General Holder:[417]

From: Attorney General
Sent: Tuesday, May 03, 2011 7:24 PM
To: Miller, Matthew A (SMO)
Subject: Re: Statement

What's the Journal planning to write?

From: Miller, Matthew A (SMO)
Sent: Tuesday, May 03, 2011 07:22 PM
To: Attorney General
Cc: Grindler, Gary (OAG)
Subject: FW: Statement

Fyi. This is not something that I think needs to rise to you, but I'm sending it your way in case you hear from Lanny tonight (he has been quite exercised about it).

Miller added:[418]

[416] Email from Lanny Breuer to Matthew Miller (May 3, 2011) [DOJ-FF-28895].
[417] Email from Eric Holder to Matthew Miller (May 3, 2011) [DOJ-FF-28920–22].

From: Miller, Matthew A (SMO)
To: Attorney General
Sent: 5/3/2011 7:24:55 PM
Subject: RE: Statement

"Lanny is concerned about his name being in it"

They already have this statement up. I don't think it would go much further than this if at all, but Lanny is concerned about his name being in it (it's not in this version):

When Holder offered to make the statement himself, Miller emailed:[419]

From: Miller, Matthew A (SMO)
Sent: Tuesday, May 03, 2011 07:26 PM
To: Attorney General Grindler, Gary (OAG)
Cc: Delery, Stuart F. (OAG); Richardson, Margaret (SMO); Wilkinson, Monty (OAG)
Subject: RE: Statement

There is no good reason to put you in the middle of this.

"There is no good reason to put you in the middle of this."

From: Attorney General
Sent: Tuesday, May 03, 2011 7:25 PM
To: Grindler, Gary (OAG); Miller, Matthew A (SMO)
Cc: Delery, Stuart F. (OAG); Richardson, Margaret (SMO); Wilkinson, Monty (OAG)
Subject: Re: Statement

Why not just attribute it to me?

"Why not just attribute it to me?"

Referring to his testimony earlier that day, Holder replied to Miller: "I guess I started it."[420]

From: Miller, Matthew A (SMO)
To: Attorney General
Sent: 5/3/2011 7:29:09 PM
Subject: RE: Statement

"I can call you and explain the nuance."

If you want, I can call you and explain the nuance.

From: Attorney General
Sent: Tuesday, May 03, 2011 7:29 PM
To: Miller, Matthew A (SMO); Grindler, Gary (OAG)
Cc: Delery, Stuart F. (OAG); Richardson, Margaret (SMO); Wilkinson, Monty (OAG)
Subject: Re: Statement

I guess I started it

To Breuer, Miller emailed:[421]

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[418] Email from Matthew Miller to Eric Holder (May 3, 2011) [DOJ-FF-28920–22].
[419] Email from Matthew Miller to Eric Holder and Gary Grindler (May 3, 2011) [DOJ-FF-28946–47].
[420] Email from Matthew Miller to Eric Holder (May 3, 2011) [DOJ-FF-28946–47].
[421] Email from Matthew Miller to Lanny Breuer (May 3, 2011) [DOJ-FF-28895].

From: Miller, Matthew A (SMO)
Sent: Tuesday, May 03, 2011 7:27 PM
To: Breuer, Lanny A. (CRM)
Cc: Schmaler, Tracy (SMO); Grindler, Gary (OAG)
Subject: RE: Statement

"I think people will accuse us of playing with semantics when we say that you did not authorize Fast and Furious, but they find out that CRM did authorize wiretaps."

I think people will accuse us of playing with semantics when we say that you did not authorize Fast and Furious, but they find out that CRM did authorize wiretaps. That's why I find the statement problematic and recommended against it, and why I don't want OPA to say it.

Similarly, Schmaler emailed:[422]

From: Schmaler, Tracy (SMO)
To: Axelrod, Matthew (ODAG); Miller, Matthew A (SMO); Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Monaco, Lisa (ODAG)
Sent: 5/3/2011 8:09:42 PM
Subject: RE: response re: Issa exchange

All for definitive, and it has upside of taking this theory - which has been brewing for weeks thanks to former attaché allegations -- off the table. Just so long as everyone is aware that if/when we get q's about CRM approving aspects of the operation (x # of wiretaps) we run the risk of seeming disingenuous to some who will not take our explanation that aspects of the operation are not the same as authorizing the operation.

"[W]e run the risk of seeming disingenuous"

Later that night Axelrod responded to a document that had been circulated:[423]

From: Axelrod, Matthew (ODAG)
To: Miller, Matthew A (SMO)
CC: Schmaler, Tracy (SMO)
Sent: 5/3/2011 11:09:37 PM
Subject: RE: Fast and Furious
Attachments: Fast and Furious Grassley QA.doc

"Seems to me a tough answer to give if he gets asked the direct question."

I had some small edits. I assume that the Q and A about Lanny is where you all ended up? Seems to me a tough answer to give if he gets asked the direct question.

On the morning of **Wednesday, May 4, 2011,** Senator Grassley made an opening statement at the Senate Judiciary Committee hearing, which stated:

> The Department argues that the congressional investigation of these allegations threatened the ongoing criminal prosecutions of straw purchasers. Yet the Department and the ATF chose to wait and watch those same straw purchasers do business for over a year before charging them with any criminal conduct. It was only after the death of Terry that the straw purchasers were finally charged. I take exception to the notion that Congress must hold off on an investigation on the grounds that

[422] Email from Tracy Schmaler to Matthew Axelrod, et al. (May 3, 2011) [DOJ-FF-28985–86].
[423] Email from Matthew Axelrod to Matthew Miller (May 3, 2011) [DOJ-FF-29652].

> discovering the truth could hinder prosecutions. . . . Congress should not allow its fact-finding efforts to be stonewalled just because the details might be embarrassing to certain officials in the Department.[424]

Later, Grassley asked Attorney General Holder whether it could account for the location of 1,318 firearms purchased by fifteen suspects after they had been identified as targets in the Operation Fast and Furious investigation.[425] Holder said he was unable to answer the question but would report back to the Committee.[426]

Meanwhile, DOJ learned that cover pages accompanying wiretap applications signed off by DOJ's Criminal Division in Operation Fast and Furious were about to become public:[427]

From: Burton, Faith (SMO)
Sent: Wednesday, May 04, 2011 11:06 AM
To: Axelrod, Matthew (ODAG); Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); ATF; Hoover, William J. (ATF)
Cc: Colborn, Paul P (SMO); Gaston, Molly (SMO); Weich, Ron (SMO)
Subject: FW: Redacted Docs to be released today by Issa & Grassley

We're advised that Grassley and Issa will release these docs today. Thanks. FB

Axelrod forwarded Burton's email to Raman, who emailed:[428]

From: Raman, Mythili
Sent: Wednesday, May 04, 2011 11:28 AM
To: Swartz, Bruce; Weinstein, Jason; Blanco, Kenneth; Pope, Amy; Breuer, Lanny A.
Cc: OBrien, Paul
Subject: FW: Redacted Docs to be released today by Issa & Grassley

"Sounds like someone must have leaked to the committee"

FYI – Sounds like someone must have leaked to the committee one of ATF in Fast and Furious (Paul ATF Apparently, OLA is going to push back on Committee to convince them that releasing sealed docs are not appropriate.

Breuer forwarded the chain to Grindler:[429]

[424] *Oversight of the U.S. Dep't of Justice: Hearing before the S. Comm. on the Judiciary*, 112th Cong. 3-4 (May 4, 2011) (No. J-112-18), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112shrg73839/pdf/CHRG-112shrg73839.pdf.
[425] *Id.* at 10.
[426] *Id.*
[427] Email from Faith Burton to Matthew Axelrod (May 4, 2011) [DOJ-FF-30089–90].
[428] Email from Mythili Raman to Bruce Swartz (May 4, 2011) [DOJ-FF-30070–71].
[429] Email from Gary Grindler to Lanny Breuer (May 4, 2011) [DOJ-FF-30070–71].

From: Grindler, Gary (OAG) [mailto:Gary.Grindler@usdoj.gov]
Sent: Wednesday, May 04, 2011 12:36 PM
To: Breuer, Lanny A.
Subject: RE: Redacted Docs to be released today by Issa & Grassley

I totally agree. Should we open an investigation?

"Should we open an investigation?"

From: Breuer, Lanny A. (CRM)
Sent: Wednesday, May 04, 2011 11:31 AM
To: Grindler, Gary (OAG)
Subject: FW: Redacted Docs to be released today by Issa & Grassley

"This is shocking."

Gary, This is shocking. Someone is leaking sealed materials. Lanny

Grindler forwarded the chain to Monaco, Wilkinson, and Stuart Goldberg,[430] who responded:[431]

From: Goldberg, Stuart (ODAG)
To: Grindler, Gary (OAG); Monaco, Lisa (ODAG); Wilkinson, Monty (OAG)
Sent: 5/4/2011 12:50:06 PM
Subject: RE: Redacted Docs to be released today by Issa & Grassley

Is it clear that the authorization document that we can seek a wire, is in fact a sealed document? First, I think we need to have a broader discussion about the types of documents sought by the Committee and the manner by which they are procuring them .

Throughout the day, Breuer exchanged similar emails on the question with Raman:[432]

From: Breuer, Lanny A.
To: Raman, Mythili
Sent: 5/4/2011 8:49:16 PM
Subject: RE: Redacted Docs to be released today by Issa & Grassley

I agree.

From: Raman, Mythili
Sent: Wednesday, May 04, 2011 2:23 PM
To: Breuer, Lanny A.
Subject: RE: Redacted Docs to be released today by Issa & Grassley

"I don't think it is wise for the Department to open an investigation"

Well, CRM definitely cant be involved in any leak investigation on this. And, I don't think it is wise for the Department to open an investigation either, since it will look (incorrectly) like retaliation against someone who is disclosing info to the Committee.

From: Breuer, Lanny A.
Sent: Wednesday, May 04, 2011 1:38 PM
To: Raman, Mythili
Subject: FW: Redacted Docs to be released today by Issa & Grassley

What do you think?

[430] Email from Gary Grindler to Lisa Monaco, et al. (May 4, 2011) [DOJ-FF-30406–07].
[431] Email from Stuart Goldberg to Gary Grindler, et al. (May 4, 2011) [DOJ-FF-30406–07].
[432] Email from Lanny Breuer to Mythili Raman (May 4, 2011) [DOJ-FF-30070–71].

Meanwhile, when Grindler forwarded the news to Holder, the Attorney General forwarded it to Miller, asking:[433]

From: Attorney General (SMO)
Sent: Wednesday, May 04, 2011 1:11 PM
To: Miller, Matthew A (SMO)
Subject: FW: Redacted Docs to be released today by Issa & Grassley

Any hearing reactions?

From: Grindler, Gary (OAG)
Sent: Wednesday, May 04, 2011 12:36 PM
To: Attorney General (SMO)
Subject: FW: Redacted Docs to be released today by Issa & Grassley

Miller responded:[434]

From: Miller, Matthew A (SMO)
To: Attorney General (SMO)
Sent: 5/4/2011 1:12:42 PM
Subject: RE: Redacted Docs to be released today by Issa & Grassley

I will forward you some clips.

"[W]e need to be very careful to not do anything that looks like retaliation against whistleblowers."

Regarding the point below, while an investigation may be appropriate, we need to be very careful to not do anything that looks like retaliation against whistleblowers.

In Arizona, Scheel emailed her colleagues in the U.S. Attorney's Office regarding how the wiretap application cover pages, transmitted by Assistant U.S. Attorney Shelley Clemens, had been produced to Congress:[435]

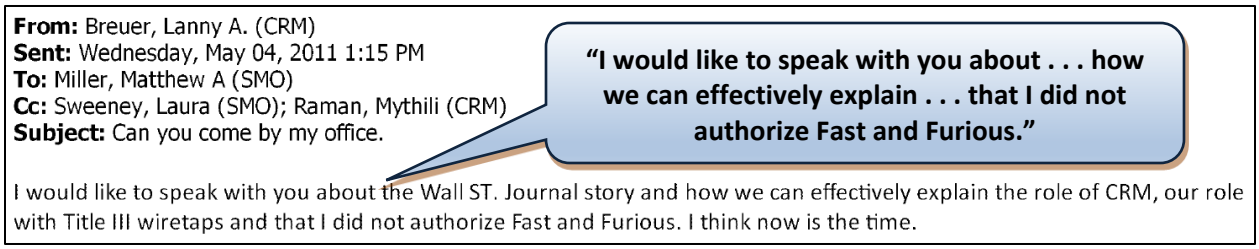
From: Scheel, Ann (USAAZ)
To: Cunningham, Patrick (USAAZ); Burke, Dennis (USAAZ); Clemens, Shelley (USAAZ)
Sent: 5/4/2011 12:48:25 PM
Subject: RE: Redacted Docs to be released today by Issa & Grassley

I'm curious to know which one of the recipients of Shelley's email turned it over to Grassley.

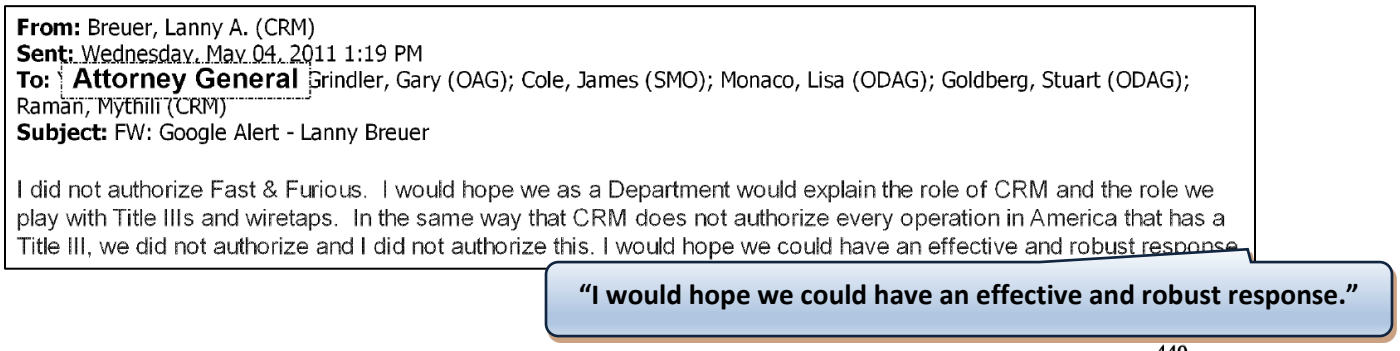
The House Oversight and Government Reform Committee press release accompanying the excerpts of the wiretap cover pages stated: "Assistant Attorney General Lanny Breuer knew about and even approved a wiretap application for suspects targeted in Operation Fast and

[433] Email from Eric Holder to Matthew Miller (May 4, 2011) [DOJ-FF-30084].
[434] Email from Matthew Miller to Eric Holder (May 4, 2011) [DOJ-FF-30089–90].
[435] Email from Ann Scheel to Patrick Cunningham (May 4, 2011) [DOJ-FF-30297].

Furious over a year ago."[436] Shortly thereafter, *The Wall Street Journal* released an article on the documents.[437] The article triggered a flurry of email activity within DOJ regarding how to respond, with a particular focus on how to defend the Criminal Division's role in approving wiretap applications. Breuer emailed Matt Miller in the press office:[438]

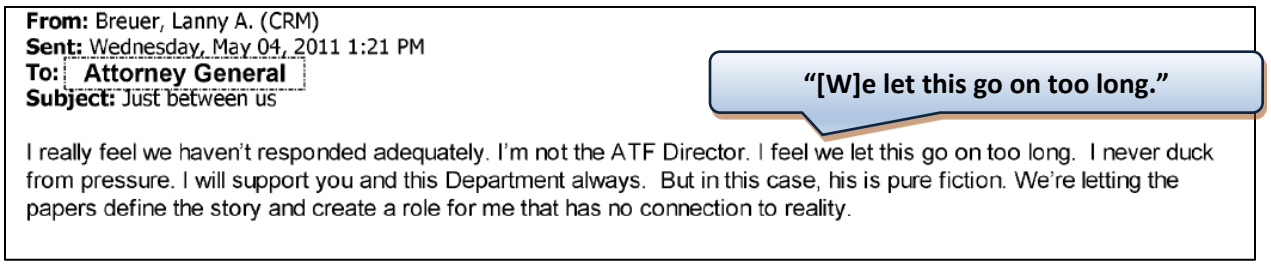


He followed up to Attorney General Holder and others, forwarding a link to the *Wall Street Journal* article:[439]



Attorney General Holder responded: "If we go out with something do we make it worse?"[440]

Starting a new chain just with Holder, Breuer responded:[441]



[436] H. Comm. on Oversight & Gov't Reform, *Press Release: What Attorney General Holder Won't Tell on Controversial Gun Operation, Documents Do* (May 4, 2011), *available at* https://oversight.house.gov/release/what-attorney-general-holder-wont-tell-on-controversial-gun-operation-documents-do.
[437] Evan Perez, *Lawmakers Step Up Probe of Gun Trafficking Operation*, WALL ST. J. (May 4, 2011), http://blogs.wsj.com/washwire/2011/05/04/lawmakers-step-up-probe-of-gun-trafficking-operation.
[438] Email from Lanny Breuer to Matthew Miller (May 4, 2011) [DOJ-FF-30289].
[439] Email from Lanny Breuer to Eric Holder, et al. (May 4, 2011) [DOJ-FF-00656–58].
[440] Email from Eric Holder to Lanny Breuer to, et al. (May 4, 2011) [DOJ-FF-00656–58].
[441] Email from Lanny Breuer to Eric Holder (May 4, 2011) [DOJ-FF-30418].

In reply, Holder wrote:[442]

From: Attorney General
Sent: Wednesday, May 04, 2011 1:23 PM
To: Breuer, Lanny A.
Subject: RE: Just between us

What would we say though- how would we phrase it; what would be the occasion for the release; would it generate more questions

To the wider group, Breuer emailed:[443]

From: Breuer, Lanny A. (CRM)
Sent: Wednesday, May 04, 2011 1:27 PM
To: Attorney General Grindler, Gary (OAG); Cole, James (SMO); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG); Raman, Mythili (CRM)
Subject: RE: Google Alert - Lanny Breuer

Seems pretty bad to me right now. The story is incorrect. I did not authorize this operation. I don't know why we can't say that.

From: Attorney General
Sent: Wednesday, May 04, 2011 1:21 PM
To: Breuer, Lanny A.; Grindler, Gary (OAG) (SMO); Cole, James (SMO); Monaco, Lisa (ODAG) (SMO); Goldberg, Stuart (ODAG) (SMO); Raman, Mythili
Subject: RE: Google Alert - Lanny Breuer

If we go out with something do we make it worse?

"If we go out with something do we make it worse?"

Holder replied:[444]

From: Attorney General
Sent: Wednesday, May 04, 2011 1:32 PM
To: Breuer, Lanny A. (CRM); Grindler, Gary (OAG); Cole, James (SMO); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG); Raman, Mythili (CRM)
Subject: RE: Google Alert - Lanny Breuer

Understand Matt is coming to see you shortly- may be a basis to say what you want

Warning- that will not kill this

"Warning- that will not kill this"

[INTENTIONALLY BLANK]

[442] Email from Eric Holder to Lanny Breuer (May 4, 2011) [DOJ-FF-30418].
[443] Email from Lanny Breuer to Eric Holder, et al. (May 4, 2011) [DOJ-FF-00656–58].
[444] Email from Eric Holder to Lanny Breuer, et al. (May 4, 2011) [DOJ-FF-00656–58].

Cole weighed in:[445]

From: Cole, James (SMO) James Cole
Sent: Wednesday, May 04, 2011 1:40 PM
To: Attorney General Breuer, Lanny A.; Grindler, Gary (OAG) (SMO); Monaco, Lisa (ODAG) (SMO); Goldberg, Stuart (ODAG) (SMO); Raman, Mythili
Subject: RE: Google Alert - Lanny Breuer

While I know that this stings, there are two places in the article that make it clear that just because you signed the TIII doesn't mean that you knew any details about the investigation. There is a chance that any response may look too defensive in light of that limitation and raise the stakes. I doubt we could say anything more than is already in the article about how your role is limited in T III signings. I am happy to see what the possible responses are, but I think we need to be careful not to make it worse with whatever we do.

Raman replied:[446]

From: Raman, Mythili (CRM)
Sent: Wednesday, May 04, 2011 1:46 PM
To: Cole, James (SMO); Attorney General Breuer, Lanny A. (CRM); Grindler, Gary (OAG); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: Google Alert - Lanny Breuer

This is not just about Lanny or any one person. Our DAAGs (Bruce, Jason, Mary Pat, Ken and Greg) sign 60 wiretap applications a week in all kinds of case – public corruption, white collar, narcotics and gangs -- and if we don't start correcting the narrative that CRM therefore "approves" each of those investigations, then we as a Department and Division are really in trouble. CRM doesn't approve those investigations any more than does the district judge who signs off on the application and the suggestion that by approving the filing of a wiretap application, we therefore approved the walking of guns into Mexico is harmful not just to the Division, but the Department.

"[T]he suggestion that by approving the filing of a wiretap application, we therefore approved the walking of guns into Mexico is harmful not just to the Division, but the Department."

She added:[447]

Ironically, months ago, when a US Attorney from another district DID solicit CRM's position on whether a load of guns should be part of a controlled delivery to Mexico, it was Lanny who definitively and forcefully told the US Attorney NOT to let that happen.

In response, Holder wrote:[448]

From: Attorney General
Sent: Wednesday, May 04, 2011 1:52 PM
To: Raman, Mythili (CRM); Cole, James (SMO); Breuer, Lanny A. (CRM); Grindler, Gary (OAG); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: Google Alert - Lanny Breuer

Ok- but everyone get ready- this isn't about facts

"[T]his isn't about facts"

[445] Email from James Cole to Eric Holder, et al. (May. 4, 2011) [DOJ-FF-00656–58].
[446] Email from Mythili Raman to Eric Holder, et al. (May 4, 2011) [DOJ-FF-00656–58].
[447] *Id.* Raman did not mention Breuer's own proposal to Mexico in February 2011.
[448] Email from Eric Holder to Mythili Raman, et al. (May 4, 2011) [DOJ-FF-00656–58].

When Cole responded, Holder emailed just him:[449]

From: Attorney General
To: Cole, James (SMO)
Sent: 5/4/2011 4:00:31 PM
Subject: RE: Google Alert - Lanny Breuer

A minor detail

From: Cole, James (SMO)
Sent: Wednesday, May 04, 2011 1:58 PM
To: Attorney General; Raman, Mythili (CRM); Breuer, Lanny A. (CRM); Grindler, Gary (OAG); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: Google Alert - Lanny Breuer

Again, I'm happy to look at proposed language, but the article does not say Lanny approved the investigation.

DOJ eventually issued a statement on May 4, 2011. It did not mention Breuer. It did, however, state that the operation was approved by the U.S. Attorney's Office for the District of Arizona:

> The review process for wiretap applications is a narrow assessment of whether a legal basis exists to support a surveillance request that ultimately goes before a judge for decision. These reviews are not approval of the underlying investigations or operations. As the department has stated, the Fast and Furious operation was approved by the U.S. Attorney's Office for the District of Arizona and the ATF Phoenix Field Office. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program.[450]

FINDING:	**Because of Main Justice's approval of the wiretap applications, officials in the U.S. Attorney's Office in Arizona, including U.S. Attorney Dennis Burke, perceived the Department's public statement regarding approval for Fast and Furious as unfair to them.**

[INTENTIONALLY BLANK]

[449] Email from James Cole to Eric Holder, et al. (May 4, 2011) [DOJ-FF-00656–58].
[450] Sharyl Attkisson, *DOJ's Breuer authorized wiretap in ATF Fast and Furious case*, CBS NEWS, May 4, 2011, *available at* http://www.cbsnews.com/news/dojs-breuer-authorized-wiretap-in-atf-fast-and-furious-case; *cf.* Evan Perez, *Lawmakers Step Up Probe of Gun Trafficking Operation*, WALL ST. J., May 4, 2011, http://blogs.wsj.com/washwire/2011/05/04/lawmakers-step-up-probe-of-gun-trafficking-operation.

That evening, U.S. Attorney for the District of Columbia Ron Machen emailed Burke:[451]

From: Machen Jr., Ronald C. (USADC)
Sent: Wednesday, May 04, 2011 07:05 PM
To: Burke, Dennis (USAAZ)
Subject: Fast and Furious

Wanted to make sure you saw this article on Fast and Furious - which mentions you.

Best, Ron

http://oversight.house.gov/index.php?option=com_content&view=article&id=1272:what-attorney-general-holder-wont-tell-on-controversial-gun-operation-documents-do&catid=22:releasesstatements

The next morning, on **Thursday, May 5, 2011,** Burke forwarded Machen's email to Ron Weich and wrote:[452]

From: Burke, Dennis (USAAZ)
Sent: Thursday, May 05, 2011 07:20 AM
To: Weich, Ron (SMO)
Cc: Wilkinson, Monty (OAG)
Subject: Fw: Fast and Furious

I'm sending a letter to Chairman Issa. Ill cc you.

We are on the verge of losing a 20 defendant case over this and Issa' attacks have already shown up in motions to dismiss in other gun trafficking cases.

Whatever "strategy" the Dept has chosen to stop, hell, even counter, these attacks is not working.

Weich responded:[453]

From: Weich, Ron (SMO)
Sent: Thursday, May 05, 2011 07:35 AM
To: Burke, Dennis (USAAZ)
Cc: Wilkinson, Monty (OAG) (SMO)
Subject: Re: Fast and Furious

Dennis, I know your frustration and I share it, but under no circumstances should you send a letter to Chairman Issa.

Burke's response was ultimately forwarded to Attorney General Holder:[454]

[451] Email from Ronald Machen, Jr. to Dennis Burke (May 4, 2011) [DOJ-FF-04580–81].
[452] Email from Dennis Burke to Ron Weich (May 5, 2011) [DOJ-FF-04580–81].
[453] Email from Ron Weich to Dennis Burke (May 5, 2011) [DOJ-FF-04580–81].
[454] Email from Monty Wilkinson to Eric Holder (May 5, 2011) [DOJ-FF-04580–81].

From: Wilkinson, Monty (OAG)
Sent: Thursday, May 05, 2011 8:14 AM
To: Grindler, Gary (OAG); **Attorney General**
Subject: Fw: Fast and Furious

From: Weich, Ron (SMO)
Sent: Thursday, May 05, 2011 08:12 AM
To: Monaco, Lisa (ODAG); Axelrod, Matthew (ODAG); Burton, Faith (SMO); Moran, Molly (OAG)
Cc: Wilkinson, Monty (OAG)
Subject: Fw: Fast and Furious

From: Burke, Dennis (USAAZ)
Sent: Thursday, May 05, 2011 07:55 AM
To: Weich, Ron (SMO)
Cc: Wilkinson, Monty (OAG)
Subject: Re: Fast and Furious

Ill cc you.

"I[']ll cc you."

Holder emailed in response:[455]

From: Grindler, Gary (OAG)
To: **Attorney General**
Sent: 5/5/2011 9:04:29 AM
Subject: RE: Fast and Furious

If possible, I would like to talk with you for a few minutes before the 9:15 about all of this.

From: **Attorney General**
Sent: Thursday, May 05, 2011 8:21 AM
To: Wilkinson, Monty (OAG); Grindler, Gary (OAG); Cole, James (SMO)
Subject: Re: Fast and Furious

Let's figure out what we do. Get from Dennis the motions that mention Issa.

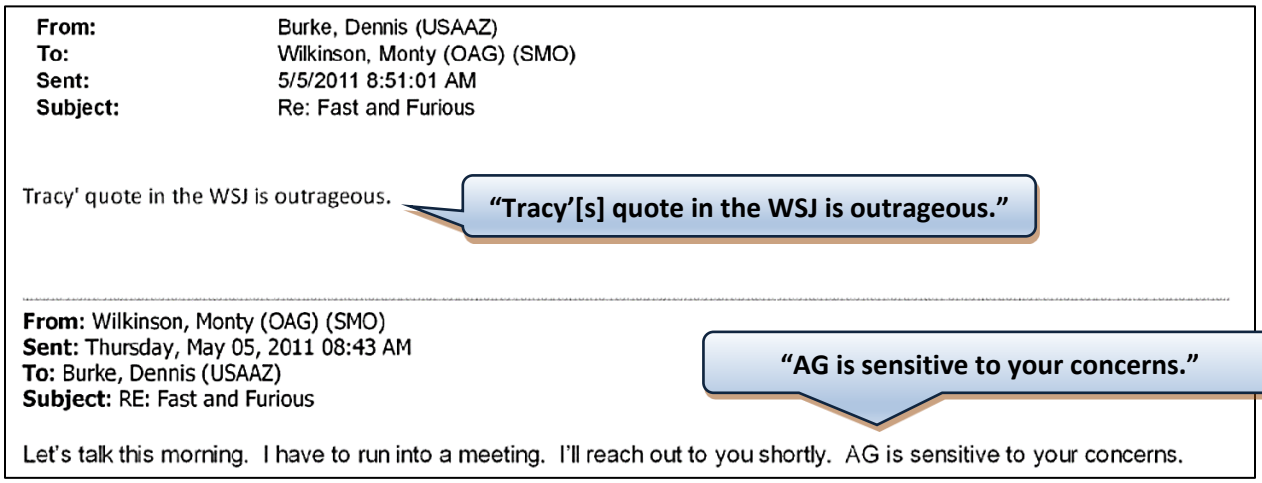
Later that afternoon, Holder emailed:[456]

From: **Attorney General**
To: Wilkinson, Monty (OAG)
Sent: 5/5/2011 12:40:19 PM
Subject: RE: Fast and Furious

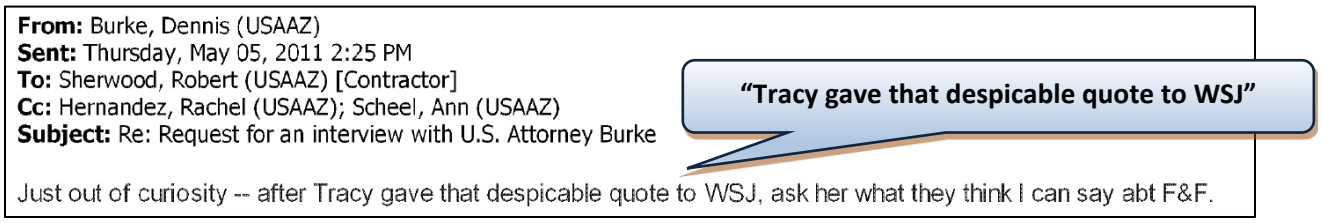
Spoke to Marshall

[455] Email from Eric Holder to Monty Wilkinson, et al. (May 5, 2011) [DOJ-FF-04600–01].
[456] Email from Eric Holder to Monty Wilkinson (May 5, 2011) [DOJ-FF-04580–81]. Marshall Jarrett served as the Director of the Executive Office of United States Attorneys.

Meanwhile, Wilkinson and Burke emailed:[457]



In Arizona, U.S. Attorney Burke also wrote to staff in his office about the press statement:[458]



First Assistant U.S. Attorney Scheel responded:[459]

[INTENTIONALLY BLANK]

[457] Email from Monty Wilkinson to Dennis Burke (May 5, 2011) [DOJ-FF-04618–19]; email from Dennis Burke to Monty Wilkinson (May 5, 2011) [DOJ-FF-04618–19].
[458] Email from Dennis Burke to Robert Sherwood (May 5, 2011) [DOJ-FF-30732–33].
[459] Email from Ann Scheel to Robert Sherwood, et al. (May 5, 2011) [DOJ-FF-30732–33].

From: Scheel, Ann (USAAZ)
To: Sherwood, Robert (USAAZ) [Contractor]; Burke, Dennis (USAAZ); Hernandez, Rachel (USAAZ)
Sent: 5/5/2011 5:39:40 PM
Subject: Re: Request for an interview with U.S. Attorney Burke

Yes, I guess it's every man for himself.

"I guess it's every man for himself."

From: Sherwood, Robert (USAAZ) [Contractor]
Sent: Thursday, May 05, 2011 05:37 PM
To: Burke, Dennis (USAAZ); Hernandez, Rachel (USAAZ); Scheel, Ann (USAAZ)
Subject: RE: Request for an interview with U.S. Attorney Burke

Ann, Rachel, did you see Tracy's quote?

http://blogs.wsj.com/washwire/2011/05/04/lawmakers-step-up-probe-of-gun-trafficking-operation/?KEYWORDS=tracy+schmaler

The January 2010 memo also notes that ATF agents were advised by Phoenix prosecutors at the time that there wasn't enough evidence to prosecute targets of the probe and that "additional firearms purchases should be monitored and additional evidence" gathered.

The March 2010 Justice Department wiretap approval came from the office of Lanny Breuer, assistant attorney general who heads the criminal division. It was signed by one of his deputies, Kenneth Blanco. The office handles a large volume of such requests and the Justice Department says a wiretap approval doesn't include a review of investigative tactics.

Tracy Schmaler, Justice Department spokeswoman, said the wiretap approvals are "a narrow assessment of whether a legal basis exists to support a surveillance request that ultimately goes before a judge for decision. These reviews are not approval of the underlying investigations or operations."

That day, Axelrod, Hoover, and others met with staff from the House Oversight and Government Reform Committee. In the meeting, Axelrod acknowledged, "I certainly admit there is something to see," and stated that it "looks like there's [a] 'there' there."[460]

[INTENTIONALLY BLANK]

[460] Meeting between U.S. Dep't of Justice, Bureau of Alcohol, Tobaccos, Firearms & Explosives, and H. Comm. on Oversight & Gov't Reform staff (May 5, 2011).

VII. Continued Obstruction

1. Blocking Witness Interviews

FINDING:	**Even after the Justice Department acknowledged Congress's oversight had identified legitimate problems with Fast and Furious, throughout the summer of 2011 Justice Department officials continued to look for every opportunity to limit the information provided to Congress. The documents do not show those officials considering the legal risks the Department created for witnesses who were exposed to subpoenas because of the Department's strategy.**

On **Monday, May 9, 2011,** Senator Grassley announced on the floor of the Senate that he would not cooperate with moving the nomination of James Cole, who had been recess appointed as Deputy Attorney General, until DOJ cooperated with Congress's investigation of Operation Fast and Furious.[461] Senator Grassley stated:

> To this day, the Justice Department has still not produced a single page of documents in response to my inquiries and has provided only previously released public documents in response to Chairman Issa. . . . I said on the floor on April 14 that if the Justice Department did not cooperate and provide the information we need, I would consider exercising my right to object to unanimous consent requests on a nomination. Since that time, I have received nothing but stonewalling from the Department. As the chief operating officer of the Department, Mr. Cole is in a position to ensure the Justice Department meaningfully cooperates with my inquiries and complies with my document requests. He has failed to do so.[462]

On **Tuesday, May 10, 2011,** Gary Grindler emailed Attorney General Holder to let him know he had spoken with Burke about Fast and Furious:[463]

From: Grindler, Gary (OAG)
Sent: Tuesday, May 10, 2011 07:56 AM
To: Attorney General
Cc: Moran, Molly (OAG); Wilkinson, Monty (OAG)
Subject: SW Border

Mr. AG: Yesterday I spoke with Dennis Burke about Fast and Furious (I had talked with him briefly about this at the AGAC and he expressed an interest in talking with me). Monty also spoke with Dennis at great length about F&F and is addressing his concerns about how this has been handled which Monty can fill you in on when you return.

[461] 157 CONG. REC. S2762 (May 9, 2011) (statement of Sen. Charles Grassley), *available at* https://www.congress.gov/crec/2011/05/09/CREC-2011-05-09-pt1-PgS2762.pdf.
[462] *Id.* at S2765.
[463] Email from Gary Grindler to Eric Holder (May 10, 2011) [DOJ-FF-31510–11].

Grindler's email also included an update on a proposal that the Attorney General visit Tucson, Arizona as part of a previously planned southwest border trip.[464] Attorney General Holder responded:[465]

From: **Attorney General**
To: Grindler, Gary (OAG)
CC: Moran, Molly (OAG); Wilkinson, Monty (OAG)
BCC: Miller, Matthew A (SMO)
Sent: 5/10/2011 8:24:52 AM
Subject: Re: SW Border

"Arizona just may not be the place right now while the controversy persists."

Ok. Concern: Arizona just may not be the place to be right now while the controversy persists.

On **Tuesday, May 17, 2011,** Raman emailed Breuer about an upcoming House Judiciary subcommittee hearing and listed advantages and disadvantages of Breuer testifying:[466]

"Issa could show up to ask you Fast and Furious questions"

From: Raman, Mythili
To: Breuer, Lanny A.
Cc: Wroblewski, Jonathan
Sent: Tue May 17 08:12:11 2011
Subject: RE: Corruption hearing is now before HJC SUBcommittee.

Pros:
1. You get to tout corruption efforts
2. Jonathan indicates that the legislation is going to pass, so we get to be on the winning side of this

Cons:
1. It's the house and it's a subcommittee -- we don't want them to get used to you being their witness
2. Issa could show up to ask you Fast and Furious questions, though I'm certain you can handle it
3. The next two weeks are really busy, so finding time to prep you appropriately is going to be challenging -- you have the CEJA hearing in front of the full committee, the speech, the Obiang announcement, the other PIN announcement etc.

On **Wednesday, May 25, 2011,** Cunningham emailed Matt Axelrod:[467]

From: Cunningham, Patrick (USAAZ)
Sent: Wednesday, May 25, 2011 1:26 PM
To: Axelrod, Matthew (ODAG) (SMO)
Cc: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Morrissey, Mike (USAAZ)
Subject: House Hearings on F and F

Matt:
I have learned Supervisory Special Agent Peter Forcelli of ATF has advised ATF management here in Phoenix that Congressional staff contacted Forcelli over the weekend and advised him that the House will hold hearings on F and F. Today I learned that the scheduled hearing date is June 16, 2011 and that Forcelli advised the Committee staff that he would indeed be willing to testify in the hearing.

[464] *Id.*
[465] Email from Eric Holder to Gary Grindler (May 10, 2011) [DOJ-FF-31510–11].
[466] Email from Mythili Raman to Lanny Breuer (May 17, 2011) [DOJ-FF-32984].
[467] Email from Patrick Cunningham to Matthew Axelrod (May 25, 2011) [DOJ-FF-33889].

That evening, Weich emailed several senior DOJ officials:[468]

From: Weich, Ron (SMO)
Sent: Wednesday, May 25, 2011 5:47 PM
To: Grindler, Gary (OAG); Richardson, Margaret (SMO); Goldberg, Stuart (ODAG); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Burton, Faith (SMO); Axelrod, Matthew (ODAG); Smith, Brad (ODAG)
Subject: Read-out of my meeting with Chambliss and Grassley staffs re Cole / doc requests:

I met with Kolan Davis (Grassley) and Martha Scott Poindexter (Chambliss) this afternoon. It was a mixed bag. On the one hand they were both in a pragmatic, constructive mode -- we all agreed this is a dispute that can be solved with good faith on all sides. On the other hand, there are remaining **�**asks**�** on both fronts, some of which represent steps backwards from what we thought were each member's position.

Weich further wrote of Senator Grassley's Committee Staff Director Kolan Davis:[469]

On the Grassley front, the good news is that Kolan is no longer asking us to satisfy the laundry list of demands in Grassley's May 16 letter (attached here:)

But he is asking for something more than the letter Leahy offered Grassley. He was vague about what more might be needed - I think he doesn't know what Grassley would settle for, and it is clear that Grassley's price may go down if Chambliss is truly solved and Grassley becomes an obstacle to Chambliss getting his documents. As I have suggested to Matt, I think we should prepare an internal document assessing each of the demands in the 5/16 letter to see if there are some easy ones that we can **�**concede**�** (knowing that we might concede them to Issa/Smith anyway) in order to bring Grassley along.

"[S]ee if there are some easy ones that we can 'concede' (knowing that we might concede them to Issa/Smith anyway)"

Weich concluded the email: "Obviously there are still many moving parts. We need to work through each of the issues internally to decide whether we want to make further concessions or not . . . ."[470]

On **Friday, May 27, 2011,** Senator Grassley's office sent Ron Weich a list representing a list of requests that would represent a good faith effort on DOJ's part toward meaningful cooperation with the joint investigation by Senate Judiciary Committee and House Oversight and Government Reform Committee staff into the ATF whistleblower allegations.[471] The list chiefly included documents initially requested by Senator Grassley's February 16, March 4, and March 16 letters, as well as by letter and subpoena from the House Oversight and Government Reform Committee on March 16 and March 31.[472] Grindler forwarded it to Cole:[473]

[468] Email from Ron Weich to Gary Grindler, et al. (May 25, 2011) [DOJ-FF-33911–12].
[469] *Id.*
[470] *Id.*
[471] Email from Kolan Davis to Ron Weich (May 27, 2011) [DOJ-FF-34081–86].
[472] Attachment to email from Gary Grindler to James Cole (May 27, 2011) [DOJ-FF-34079–83].
[473] Email from Gary Grindler to James Cole (May 27, 2011) [DOJ-FF-34079].

From: Grindler, Gary (OAG)
Sent: Friday, May 27, 2011 1:06 PM
To: Cole, James (SMO)
Subject: Nominations

"Not very good news"

Not very good news. Gary


See below/attached from Grassl...


RE: See below/ attached from Gr...

Later that night, Axelrod emailed:[474]

From: Axelrod, Matthew (ODAG)
Sent: Friday, May 27, 2011 07:32 PM
To: Schmaler, Tracy (SMO); Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Burton, Faith (SMO); Colborn, Paul P (SMO)
Subject: Call with Steve Castor

Faith and I spoke with Steve Castor earlier today. It was a fairly long conversation. A few items of note:

1. We discussed the possibility of a compromise on the witness interview issue. Rather than do a global protocol, we would start by making an ATF official available who doesn't have/want a personal lawyer. That way, staff would have no problem with us having a DOJ attorney present. As for the transcript issue, we would agree that once the transcript was prepared, the witness and the DOJ attorney would have the ability to review (although not retain) it. We also discussed the fact that we would need to be given a copy at some point down the road because of potential discovery obligations. I strongly think that we should make Bill Newell available next week under this procedure. We'll see how it goes and then reassess.

2. With regard to the documents, Steve said that they were considering having a contempt hearing due to our failure to physically produce any documents that weren't already publicly available. He said that they wanted a DOJ official to come before the committee to explain publicly why the docs weren't being physically produced. On the issue of requiring a Chairman's Letter in order to get the OCDETF reports and Melson briefing books, Steve said they were prepared to send one – but said that the letter would ask for a bunch of other things as well. He said that sending an extensive letter would obviate the need for them to send a new letter every few days. He also said that he was surprised we were forcing them to send a letter, since his past experience was that once an investigation got going, there was generally a good level of informal give and take with the Executive Branch agency. My strong view is that we should simply make the docs available without a Chairman's Letter. As I see it, under the logic that has been employed so far, if Steve had sent use a Chairman's Letter at the beginning of the investigation saying "Produce every shred of paper associated in any way with Fast and Furious," then we would provide these docs because they fit within the request. Seems to me that makes our insistence on a Chairman's Letter a little silly.

"Seems to me that makes our insistence on a Chairman's Letter a little silly"

On **Sunday, May 29, 2011,** Paul Colborn responded:[475]

[474] Email from Matthew Axelrod to Tracy Schmaler, et al. (May 27, 2011) [DOJ-FF-34115–17].
[475] Email from Paul Colborn to Matthew Axelrod, et al. (May 29, 2011) [DOJ-FF-34115–17].

From: Colborn, Paul P (SMO)
Sent: Sunday, May 29, 2011 09:36 AM
To: Axelrod, Matthew (ODAG); Schmaler, Tracy (SMO); Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Burton, Faith (SMO)
Subject: Re: Call with Steve Castor

1. Agree we should do compromise on Newell interview.

2. Think we should discuss Chairman's letter issue. We accommodate chairmen, not committee staff. This would set a bad precedant with the principal oversight committee in Congress.

"We accommodate chairman, not committee staff."

Weich added:[476]

"[A]ccess to . . . interviews is one of the goodies we're offering Grassley in the negotiation . . . , and so we should not give it away for free."

From: Weich, Ron (SMO)
Sent: Sunday, May 29, 2011 04:46 PM
To: Burton, Faith (SMO); Colborn, Paul P (SMO); Axelrod, Matthew (ODAG); Schmaler, Tracy (SMO); Richardson, Margaret (SMO); Wilkinson, Monty (OAG)
Subject: RE: Call with Steve Castor

I also agree we should get to the Newell interview in order to be on a constructive track with them, but I have a couple of questions:

(1) On the chairman's letter issue, I know there was a chairman's letter at the start of this whole effort by the Oversight Committee, and probably several since. How does the document request in that letter (those letters?) line up against what we are now prepared to give them?

(2) What have we said to Castor about Grassley staff's attendance in these interviews? That seems relevant for two reasons: First, access to these interviews is one of the goodies we're offering Grassley in the negotiation over nominees, and so we should not give it away for free. Second, Castor can't presume to limit the DOJ attendees in these interviews and then bring an uninvited guest on his side. I have already made known to Matt my objection to bargaining away OLA's participation in the interviews.

"I have already made known . . . my objection to bargaining away OLA's participation in the interviews."

Axelrod replied, in part regarding Senator Grassley's Chief Investigative Counsel Jason Foster:[477]

From: Axelrod, Matthew (ODAG)
Sent: Sunday, May 29, 2011 10:19 PM
To: Weich, Ron (SMO); Burton, Faith (SMO); Colborn, Paul P (SMO); Schmaler, Tracy (SMO); Richardson, Margaret (SMO); Wilkinson, Monty (OAG)
Subject: Re: Call with Steve Castor

On Ron's question #1, the recent doc request by staff does not fit within the prior request/subpoena from HOGRC (although it may fit within a prior request from HJC). But, for reasons I express below at the beginning of the email chain, I don't think that is determinative here. If there's concern about precedent, we can always send a cover letter explaining why we're doing it in this instance only.

On #2, we have not addressed the issue of Foster's presence at any interview of Newell. Personally, I disagree that excluding Foster would be the best way to get Grassley to come around -- better to let Foster participate and use it to demonstrate our good faith and willingness to work with him. Also, as I previously mentioned to Ron, we're not bargaining away OLA's presence per se -- we're just agreeing to limit the number of DOJ lawyers. Theoretically, we could send OLA instead of a prosecutor. We're just choosing not to. If we want a deal on interviews, this is an area where we have to give.

"I disagree that excluding Foster would be the best way to get Grassley to come around"

[476] Email from Ron Weich to Faith Burton, et al. (May 29, 2011) [DOJ-FF-34115–17].
[477] Email from Matthew Axelrod to Ron Weich, et al. (May 29, 2011) [DOJ-FF-34115–17].

Meanwhile, Weich and Burton emailed:[478]

From: Burton, Faith (SMO)
To: Weich, Ron (SMO)
Sent: 5/30/2011 11:03:41 AM
Subject: Re: Call with Steve Castor

Yes, let's discuss tomorrow. To my knowledge, I've been on the calls, except for 1 early on, but Matt does most of the talking.

From: Weich, Ron (SMO)
Sent: Sunday, May 29, 2011 04:47 PM
To: Burton, Faith (SMO)
Subject: FW: Call with Steve Castor

"It feels like we (OLA) are losing control"

If feels like we (OLA) are losing control – Matt talking to Castor without you now? Let's talk on Tues about how to restore our role. I think I need to be more involved.

On **Monday, May 30, 2011,** Weich narrowed the chain to just Axelrod:[479]

From: Weich, Ron (SMO)
Sent: Monday, May 30, 2011 07:25 AM
To: Axelrod, Matthew (ODAG)
Subject: RE: Call with Steve Castor

"I do think it would be a mistake to allow Foster's participation for free."

Matt, just to you – I continue to feel strongly about the issue of OLA participation, and I do think it would be a mistake to allow Foster's participation for free. Let's you and I talk Tues AM before any further communication with Castor. Thx.

On **Wednesday, June 1, 2011,** Axelrod emailed Burke, Melson, and others:[480]

From: Axelrod, Matthew (ODAG) (SMO)
Sent: Wednesday, June 01, 2011 4:45 PM
To: Burke, Dennis (USAAZ); Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ); Scheel, Ann (USAAZ); ATF ATF (ATF); Melson, Kenneth E. (ATF); Hoover, William J. (ATF); Sarnacki, Jeffrey P. (ATF)
Cc: Burton, Faith (SMO)
Subject: Fast and Furious hearing the week of June 13

Faith and I spoke with Steve Castor from Chairman Issa's staff this evening. HOGRC will be holding a public hearing on F&F sometime the week of June 13, probably June 15 or 16.

[478] Email from Ron Weich to Faith Burton (May 29, 2011) [DOJ-FF-34118–19]; email from Faith Burton to Ron Weich (May 30, 2011) [DOJ-FF-34118–19].
[479] Email from Ron Weich to Matthew Axelrod (May 30, 2011) [DOJ-FF-34115–17].
[480] Email from Matthew Axelrod to Dennis Burke, et al. (June 1, 2011) [DOJ-FF-34202].

Burke forwarded the email to Breuer, who responded:[481]

From:	Breuer, Lanny A. (CRM)
To:	Burke, Dennis (USAAZ)
Sent:	6/1/2011 8:01:12 PM
Subject:	Re: Fast and Furious hearing the week of June 13

Thanks. Let's have dinner next time you're here.

On a different chain that night, Weich emailed Burton and Axelrod regarding questions from Breuer's Deputy Chief of Staff, Amy Pope:[482]

From:	Weich, Ron (SMO)
To:	Burton, Faith (SMO); Axelrod, Matthew (ODAG)
CC:	Gaston, Molly (SMO)
Sent:	6/1/2011 8:26:31 PM
Subject:	Amy Pope has raised two issues with me --

"[A]re we powerless to limit the witness' testimony . . . ? How do we know he is a whistleblower?"

1. With respect to the rumored House Oversight hearing with an ATF witness, are we powerless to limit the witness' testimony, even if he would veer into 6(e) or deliberative material? How do we know he is a whistleblower?

2. With respect to Chairman Issa's upcoming trip to Mexico, apparently the State Dept has asked one of the CRM lawyers in the embassy to serve as Issa's control officer. How do we manage Issa's interaction with that individual and others down there as he asks about F+F matters?

"State Dept has asked one of the CRM lawyers in the embassy to serve as Issa's control officer. How do we manage Issa's interaction . . . as he asks about F+F matters?"

On **Thursday, June 2, 2011,** Axelrod learned of an incident involving a Mexican government-owned helicopter forced down in Jalisco, Mexico. The email stated in part:[483]

On May 31, 2011 ATF personnel gained access to the recovered weapons. A partial list was sent to Phoenix this morning and compared to known purchases in Fast and Furious. At this point it is believed that at least three and possibly seven 7.62 caliber rifles have been linked to Fast and Furious. The three that are linked are tied to defendants that are currently under indictment. The 50 caliber does not link to Fast and Furious. A full list of all recovered guns is expected to be delivered to Phoenix in the morning and they will immediately compare it to Fast and Furious purchases.

[481] Email from Lanny Breuer to Dennis Burke (June 1, 2011) [DOJ-FF-34202].
[482] Email from Ron Weich to Faith Burton and Matthew Axelrod (June 1, 2011) [DOJ-FF-34151].
[483] Email from [ATF employee] to [ATF employee] and Matthew Axelrod (Jun. 2, 2011) [DOJ-FF-34778–79].

Blogs were reporting the Fast and Furious firearms recovered at the scene, and Axelrod forwarded the chain to Schmaler, who responded:[484]

From: Schmaler, Tracy (SMO)
Sent: Thursday, June 02, 2011 09:50 PM
To: Axelrod, Matthew (ODAG)
Subject: Re: The Mexico Helicopter Incident

Naturally.

Axelrod added:[485]

"[ATF] emphasizes that the incident did not involve a 50cal . . . while ignoring the fact that it did involve 7.62s that may have been from F and F. Missing the forest for the trees."

From: Axelrod, Matthew (ODAG)
Sent: Thursday, June 02, 2011 9:58 PM
To: Schmaler, Tracy (SMO)
Subject: Re: The Mexico Helicopter Incident

In case you missed it, **ATF** email emphasizes that the incident did not involve a 50cal from F and F while ignoring the fact that it did involve 7.62s that may have been from F and F. Missing the forest for the trees.

Schmaler later sent a link to coverage of the issue by CBS News.[486]

On **Friday, June 3, 2011,** in response to a Question for the Record from Senator Grassley regarding the Criminal Division's awareness of Operation Fast and Furious, Criminal Division officials discussed the need to disclose the Operation Fast and Furious wiretaps: [487]

From: Pope, Amy
To: Carwile, Kevin
Sent: 6/3/2011 4:33:50 PM
Subject: Re: Important please read

"We know they know there are wiretaps"

We know they know there are wiretaps (they have released some publicly).

Amy E. Pope | U.S. Department of Justice | Deputy Chief of Staff and Counselor to the Assistant Attorney General | Criminal Division | ☎ (202) 514-0770

From: Carwile, Kevin
To: Pope, Amy
Sent: Fri Jun 03 12:32:01 2011
Subject: RE: Important please read

This seems fine except I don't understand why there is a portion on the review of wiretaps given the question does not mention wiretaps….but I assume this was not inadvertent.

[484] Email from Tracy Schmaler to Matthew Axelrod (June 2, 2011) [DOJ-FF-34778–79].
[485] Email from Matthew Axelrod to Tracy Schmaler (June 2, 2011) [DOJ-FF-34778–79].
[486] Email from Tracy Schmaler to Matthew Axelrod (June 2, 2011) [DOJ-FF-34778–79]; *see also* Sharyl Attkisson, *'Gunwalker' guns linked to helicopter shooting*, CBS NEWS, June 26, 2011, *available at* http://www.cbsnews.com/news/gunwalker-guns-linked-to-helicopter-shooting.
[487] Email from Amy Pope to Kevin Carwile (June 3, 2011) [DOJ-FF-36416–17].

Officials also emailed about whether the requirement that Deputy Assistant Attorney Generals review wiretap applications arose from a statute, or merely DOJ policy:[488]

From: Raman, Mythili
To: Andres, Greg; Pope, Amy; Trusty, James; Blanco, Kenneth; Brown, Mary Patrice; Swartz, Bruce; Weinstein, Jason; Lurie, Adam; Wroblewski, Jonathan; Carwile, Kevin; OBrien, Paul; Sweeney, Laura (SMO)
Sent: 6/3/2011 7:35:44 PM
Subject: RE: Important please read

"A DAAG is required by Title 3 to approve the [wiretap applications]"

1. A DAAG is required by Title 3 to approve the T-3s (under the statute, a DAAG, AAG, Associate AG, DAG or AG must approve). So, you should keep "must" in.

From: Andres, Greg
Sent: Friday, June 03, 2011 1:51 PM
To: Pope, Amy; Trusty, James; Blanco, Kenneth; Brown, Mary Patrice; Raman, Mythili; Swartz, Bruce; Weinstein, Jason; Lurie, Adam; Wroblewski, Jonathan; Carwile, Kevin; OBrien, Paul; Sweeney, Laura (SMO)
Subject: RE: Important please read

Two minor things:
1. I'm not sure we should say that DAAGs "**must**" review and approve T3s (Division's Deputy Assistant Attorneys General must review and approve electronic surveillance applications for every wiretap sought in every federal criminal investigation conducted by any federal prosecutor) – i.e, that is our internal procedure and not (I think) required by law. I would simply delete the word "must."

Pope circulated draft language that would later be whittled down:[489]

The review process is limited and specific – it assesses whether there is legal basis (probable cause and necessity) to support the wiretap request. It is not an authorization of an underlying investigation or a comprehensive review of the strategies or tactics to be employed in that investigation. This review of the wiretap request is fundamentally the same review later conducted by a federal district court judge prior to authorizing the electronic surveillance. To the extent wiretaps were sought in Operation Fast and Furious, the applications in support of those wiretaps would have been reviewed by a Deputy Assistant Attorney General before being submitted to a federal district court judge.

By at least in or about March 2010, members of the Criminal Division became aware that ATF and the U.S. Attorney's Office in Arizona were working on a firearms-trafficking investigation known as "Operation Fast and Furious." The question refers to a strategy to "allow the transfer of firearms to continue to take place in order to further the investigation." The quotation appears to be a reference to an ATF Phoenix Field Division briefing paper dated January 8, 2010, which the Office of the Assistant Attorney General for the Criminal Division first received in connection with its response to this QFR. Officials within the Office of the Assistant Attorney General were not aware of this ATF briefing paper and Criminal Division officials did not, at any time, make any operational decisions relating to this investigation.

"[T]he applications in support of those wiretaps would have been reviewed by a Deputy Assistant Attorney General"

Meanwhile, DOJ continued to discuss the transcribed interviews being conducted by Congress. Axelrod emailed Goldberg:[490]

[488] Email from Mythili Raman to Greg Andres, et al. (June 3, 2011) [DOJ-FF-35961–62].
[489] Email from Amy Pope to Greg Andres, et al. (June 6, 2011) [DOJ-FF-37016–17].
[490] Email from Matthew Axelrod to Stuart Goldberg (June 3, 2011) [DOJ-FF-36418–19].

From: Axelrod, Matthew (ODAG)
Sent: Friday, June 03, 2011 6:29 PM
To: Goldberg, Stuart (ODAG)
Subject: Call with Steve Castor

Faith and I spoke to Castor. It did not go particularly well. He said that he was surprised that we wanted to exclude Jason from the interviews and that he thought it had been understood that Jason would attend. He said that the Chairman wants to just send subpoenas and to do depositions. I pointed out to Steve that doing depos wouldn't get Jason in the room, and since that was the one issue we were discussing, subpoenas wouldn't seem to accomplish much. Steve said that the Chairman was already upset that Steve was going to allow the presence of agency counsel and preferred to do depos anyway. I asked Steve whether he would hold off serving the subpoenas until the end of the day Monday and he said he would.

When Goldberg forwarded to Cole, Cole responded:[491]

From: Cole, James (SMO)
To: Goldberg, Stuart (ODAG)
Sent: 6/3/2011 7:47:59 PM
Subject: Re: Call with Steve Castor

I take it that Castor is Issa's guy and Jason is Grassley's guy. This may help bring things to a head.

2. Deputy Attorney General Cole's Confirmation

FINDING: **DOJ officials, including the Attorney General, carefully calculated which documents to release, and to whom. Officials sought to create the appearance that the Department was complying with the various congressional requests in exchange for getting nominations through the Senate, but undercut the efforts of those who worked to actually cooperate with aspects of Congress's oversight.**

On **Saturday, June 4, 2011,** as DOJ continued to block Senator's Grassley's staff from participating in witness interviews conducted by the Oversight Committee, Weich emailed:[492]

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----- Original Message -----
From: Weich, Ron (SMO)
Sent: Saturday, June 04, 2011 09:40 AM
To: Grindler, Gary (OAG); Goldberg, Stuart (ODAG); Delery, Stuart F. (OAG); O'Neil, David
(ODAG); Schmaler, Tracy (SMO); Burton, Faith (SMO); Colborn, Paul P (SMO); Richardson,
Margaret (SMO)
Cc: Axelrod, Matthew (ODAG)
Subject: Fw: ATF / Newell Interview

It seems like we hit a nerve here, which I think may be good for current purposes. Grassley
holds the key to his staff's full participation in this investigation. All he has to do is
allow a vote on our nominees and accept the letter Leahy has offered. It is highly ironic that
this staffer is outraged by DOJ interference in leg branch prerogatives when Grassley won't
allow the President to staff this key exec branch agency.
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"It seems like we hit a nerve here, which I think may be good for current purposes."

[491] Email from James Cole to Stuart Goldberg (June 3, 2011) [DOJ-FF-36418–19].
[492] Email from Ron Weich to Gary Grindler, et al. (June 4, 2011) [DOJ-FF-04644–45].

A few days later, on **Monday, June 6, 2011,** Axelrod sent an identical email to both ATF and the U.S. Attorney's Office for the District of Arizona:[493]

From: Axelrod, Matthew (ODAG)
Sent: Monday, June 06, 2011 11:01 AM
To: Cunningham, Patrick (USAAZ)
Cc: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Morrissey, Mike (USAAZ); Weich, Ron (SMO)
Subject: Need you to review immediately

"The Department is attempting to resolve its dispute with Senator Grassley . . . over his ability to conduct oversight"

Pat,

The Department is attempting to resolve its dispute with Senator Grassley today over his ability to conduct oversight of Fast and Furious. The attachments consist of docs that we may need to give as part of that resolution. My proposed redactions are visible in red. Please let me know immediately if the provision of any of these docs would compromise your ability to prosecute the indicted case or to continue your ongoing investigation. Also, please let me know if there are any additional redactions that are essential. Thanks.

Weich forwarded the email to Burton and Gaston:[494]

From: Weich, Ron (SMO)
Sent: Monday, June 06, 2011 11:10 AM
To: Burton, Faith (SMO); Gaston, Molly (SMO)
Cc: Axelrod, Matthew (ODAG)
Subject: FW: Need you to review immediately

Faith and Molly – I've told Matt (cc'd) that we are trying hard to hold the line today on process-only concessions to Grassley. But if we need to get into the documents, it's obviously vital to know what the USAO thinks.

That afternoon, Axelrod emailed Grindler, David O'Neil, and Weich:[495]

From: Axelrod, Matthew (ODAG)
Sent: Monday, June 06, 2011 4:35 PM
To: Grindler, Gary (OAG); O'Neil, David (ODAG); Weich, Ron (SMO)
Subject: Documents necessary to satisfy Senator Grassley

"I think we can give much of what is sought, if it would result in confirmation."

To the extent that the dispute with Senator Grassley turns on our ability to provide documents in categories (a) through (g) of Senator Grassley's "good faith first step" document, I think we can give much of what is sought, if it would result in confirmation. Here are the categories as outlined in the Grassley document:

Less than an hour later, Weich replied:[496]

[493] Email from Matthew Axelrod to Patrick Cunningham (June 6, 2011) [DOJ-FF-36080].
[494] Email from Ron Weich to Faith Burton and Molly Gaston (June 6, 2011) [DOJ-FF-36144–45].
[495] Email from Matthew Axelrod to Gary Grindler, et al. (June 6, 2011) [DOJ-FF-36195–96].
[496] Email from Ron Weich to Matthew Axelrod, et al. (June 6, 2011) [DOJ-FF-36195–96].

From: Weich, Ron (SMO)
Sent: Monday, June 06, 2011 05:06 PM
To: Axelrod, Matthew (ODAG); Grindler, Gary (OAG); O'Neil, David (ODAG)
Subject: RE: Documents necessary to satisfy Senator Grassley

This is very useful to have, but as I just told Matt I don't believe we will need to give up all of this to get our remaining noms confirmed. The meeting Dave and I attended today – and the subsequent GOP cave on Verrilli – lead me to believe that we are on the right track with our process concessions to Grassley. That's what Grassley agreed to before he moved the goal posts, that's what Leahy believes he must agree to again, and I have reason to believe that other Senators (including Chambliss and McConnell) think our position is reasonable. If we have done our job right Grassley is feeling discomfort now.

That said, I very much want to arm the AG with the ability to offer Grassley some specific documents (perhaps A and B below) to sweeten the pot and seal the deal. But there are important reasons for not giving Grassley everything he is asking for: it would embolden him in future fights and would "use up" a lot of material that we will eventually need to release to Issa (soon to be joined by Grassley) as the oversight struggle continues.

"If we have done our job right Grassley is feeling discomfort right now."

"[T]here are important reasons for not giving Grassley everything he is asking for: it would embolden him in future fights and would 'use up' a lot of the material that we will eventually need to release to Issa . . . as the oversight struggle continues."

Meanwhile, Axelrod corresponded with House Oversight Chief Investigative Counsel Steve Castor over the interview of ATF witnesses:[497]

-----Original Message-----
From: Axelrod, Matthew (ODAG)
Sent: Monday, June 06, 2011 11:23 AM
To: Burton, Faith (SMO); Weich, Ron (SMO); Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Grindler, Gary (OAG)
Subject: Fw: Do you have time to talk on the phone today?

I just got this email from Issa's staffer.

----- Original Message -----
From: Castor, Stephen [mailto[redacted]
Sent: Monday, June 06, 2011 11:20 AM
To: Axelrod, Matthew (ODAG)
Subject: RE: Do you have time to talk on the phone today?

Are these witnesses ok with Sen Grassley's staff participating? You know we are working with them.

"Are these witnesses ok with Sen Grassley's staff participating?"

Subsequently, Axelrod forwarded the email to a broader group and wrote:[498]

----- Original Message -----
From: Axelrod, Matthew (ODAG)
Sent: Monday, June 06, 2011 12:36 PM
To: Burton, Faith (SMO); Weich, Ron (SMO); Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Grindler, Gary (OAG)
Subject: RE: Do you have time to talk on the phone today?

Just learned that Issa's staffer has been reaching out to ATF employees directly and asking whether they'd be willing to be interviewed by Issa's and Grassley's staff voluntarily with agency counsel present.

[497] Email from Matthew Axelrod to Faith Burton, et al. (June 6, 2011) [DOJ-FF-36563–64].
[498] Email from Matthew Axelrod to Faith Burton and Paul Colborn (June 6, 2011) [DOJ-FF-36563–64].

Axelrod responded:[499]

-----Original Message-----
From: Axelrod, Matthew (ODAG)
Sent: Monday, June 06, 2011 12:39 PM
To: 'Castor, Stephen'
Subject: RE: Do you have time to talk on the phone today?

Steve,

I remain optimistic that the Department and Senator Grassley can work out their differences so that Jason can indeed be present for the interviews.

Matt

Later, Burton and Colborn commented:[500]

From: Colborn, Paul P (SMO)
To: Burton, Faith (SMO); Axelrod, Matthew (ODAG)
CC: Weich, Ron (SMO)
Sent: 6/6/2011 3:37:43 PM
Subject: RE: Do you have time to talk on the phone today?

Of course, whether the interviewees are ok with Jason being there is irrelevant to our institutional concern.

"[W]hether the interviewees are ok with Jason [Foster] being there is irrelevant"

-----Original Message-----
From: Burton, Faith (SMO)
Sent: Monday, June 06, 2011 3:35 PM
To: Axelrod, Matthew (ODAG)
Cc: Weich, Ron (SMO); Colborn, Paul P (SMO)
Subject: Re: Do you have time to talk on the phone today?

Matt, have we responded to this? Perhaps we should engage but wld be helpful to have more info.

When Axelrod forwarded in response his email to Castor from earlier in the day, Burton emailed Weich directly:[501]

From: Burton, Faith (SMO)
To: Weich, Ron (SMO)
Sent: 6/6/2011 4:23:39 PM
Subject: Fw: Do you have time to talk on the phone today?

"I'm concerned that Matt is communicating independently with Staff here."

Ron, how's this looking from your end? I'm concerned that Matt is communicating independently with Staff here.

----- Original Message -----
From: Axelrod, Matthew (ODAG)
Sent: Monday, June 06, 2011 03:54 PM
To: Burton, Faith (SMO); Weich, Ron (SMO); Colborn, Paul P (SMO)

[499] Email from Matthew Axelrod to Faith Burton, et al. (June 6, 2011) [DOJ-FF-36563–64].
[500] Email from Faith Burton to Matthew Axelrod (June 6, 2011) [DOJ-FF-36563–64]; email from Paul Colborn to Faith Burton and Matthew Axelrod (June 6, 2011) [DOJ-FF-36563–64].
[501] Email from Faith Burton to Ron Weich (June 6, 2011) [DOJ-FF-36569–70].

That evening, Axelrod emailed Castor:[502]

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-----Original Message-----
From: Axelrod, Matthew (ODAG) [mailto:Matthew.Axelrod@usdoj.gov]
Sent: Monday, June 06, 2011 6:07 PM
To: Castor, Stephen
Cc: Burton, Faith (SMO)
Subject: RE: Do you have time to talk on the phone today?

Steve,

I know I asked you to hold off until the end of the day today before issuing subpoenas to the
ATF witnesses who we are willing to make available to you for voluntary interviews. I was
optimistic that the Department and Senator Grassley would be able to resolve their differences
by then. I'm now asking you to please hold off a little longer. My understanding is that some
progress was made today, but that an agreement between Senator Grassley and the Department has
not yet been reached. I am hopeful that if you can hold off for another day or two, the
Department and Senator Grassley will be able to reach a quick resolution and Senator
Grassley's staff will be able to participate fully in the interviews. Thanks, Steve.

Matt
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When Castor responded, Axelrod again forwarded the email to Burton and Colborn:[503]

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-----Original Message-----
From: Axelrod, Matthew (ODAG)
Sent: Monday, June 06, 2011 6:45 PM
To: Burton, Faith (SMO); Colborn, Paul P (SMO)
Subject: FW: Do you have time to talk on the phone today?

Fyi.

-----Original Message-----
From: Castor, Stephen [mailto[redacted]]
Sent: Monday, June 06, 2011 6:42 PM
To: Axelrod, Matthew (ODAG)
Subject: RE: Do you have time to talk on the phone today?

I'm not sure I understand what you are talking about. Whether or not these differences to
which you refer get worked out have nothing to do with our interviews. It strikes me as
remarkably unusual that the Department is advising the Chairman on who can or cannot be
present.
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"It strikes me as remarkably unusual that the Department is advising the Chairman on who can or cannot be present."

The next day, on **Tuesday, June 7, 2011,** Attorney General Holder met with Senator Grassley to work out a path forward on DOJ nominations and Senator Grassley's investigation of Operation Fast and Furious.[504] Grindler emailed:[505]

[502] Email from Faith Burton to Ron Weich (June 6, 2011) [DOJ-FF-36571–72].
[503] Email from Matthew Axelrod to Faith Burton and Paul Colborn (June 6, 2011) [DOJ-FF-36571–72].
[504] *See* "Points for Meeting with Sens. Chambliss and Grassley re: Documents/Nominations," attachment to email from Ron Weich to David O'Neil, et al. (Jun. 7, 2011) [DOJ-FF-37069–70].
[505] Email from Gary Grindler to Matthew Axelrod and Stuart Goldbery (June 7, 2011) [DOJ-FF-37182].

From:	Grindler, Gary (OAG)
To:	Axelrod, Matthew (ODAG); Goldberg, Stuart (ODAG)
Sent:	6/7/2011 7:07:46 PM
Subject:	Grassley/Issa

We definitely need to have a production ready, if at all possible, for Friday including some emails and items b and d.

Meanwhile, Weinstein indicated that he and Breuer would be meeting on **Wednesday, June 8, 2011** regarding Operation Fast and Furious:[506]

From: Weinstein, Jason
To: Trusty, James; Andres, Greg
Sent: Tue Jun 07 21:06:21 2011
Subject: Re: OCGS meeting

"I have to meet with Lanny about Fast and Furious"

I have to meet with Lanny about Fast and Furious at same time so can't make it after all

That evening, Chairman Issa wrote to Acting Director Melson.[507] The letter noted that despite the Committee's subpoena and "dozens of telephone calls with DOJ's Legislative Affairs office and officials in the Office of the Deputy Attorney General . . . the result of these communications . . . has been the production of no non-public documents by DOJ and ATF[.]"[508] It concluded: "Absent a complete production of documents pursuant to the subpoena by the dates mentioned, the Committee will be forced to evaluate whether contempt sanctions must be considered."[509]

Goldberg emailed the letter to Grindler and wrote:[510]

From:	Goldberg, Stuart (ODAG)
To:	Grindler, Gary (OAG)
Sent:	6/8/2011 6:52:58 PM
Subject:	FW: Letter from Chairman Issa to ATF Director Melson
Attachments:	6-8-2011 Letter.pdf

"[T]his seems to be a prelude for a contempt finding."

Fyi – this seems to be a prelude for a contempt finding.

On **Thursday, June 9, 2011,** White House press official Eric Schultz emailed with Tracy Schmaler:[511]

[506] Email from Jason Weinstein to James Trusty and Greg Andres (June 7, 2011) [DOJ-FF-37254].
[507] Letter from Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform to Kenneth Melson, Acting Dir., Bureau of Alcohol, Tobacco, Firearms & Explosives (June 8, 2011).
[508] *Id.* at 1.
[509] *Id.* at 2.
[510] Email from Stuart Goldberg to Gary Grindler (June 7, 2011) [DOJ-FF-37271].
[511] Emails between Eric Schultz, Tracy Schmaler, and Matthew Miller (June 9, 2011) [DOJ-FF-37738].

From: Schmaler, Tracy (SMO)
Sent: Thursday, June 09, 2011 02:17 PM
To: Eric H. Schultz; Miller, Matthew A (SMO)
Subject: Re: fast and furious

Right now its sharryl at cbs. Perez from wsj has done some stories. Few mexican outlets.

From: Schultz, Eric [mailto: Eric H. Schultz
Sent: Thursday, June 09, 2011 02:15 PM
To: Schmaler, Tracy (SMO); Miller, Matthew A (SMO)
Subject: fast and furious

Do you guys know the key reporters who cover fast and furious?

When Schmaler highlighted the points DOJ intended to make leading up the House Oversight Committee's upcoming hearings, Schultz responded:[512]

From: Schultz, Eric
To: Schmaler, Tracy (SMO); Miller, Matthew A (SMO)
Sent: 6/9/2011 4:04:52 PM
Subject: RE: fast and furious

"We are particularly interested in ya'll making that second point on process"

Perfect. We are particularly interested in ya'll making that second point on process since I think that where most of this is headed next week.

From: Schmaler, Tracy (SMO) [mailto:Tracy.Schmaler@usdoj.gov]
Sent: Thursday, June 09, 2011 4:02 PM
To: Schultz, Eric; Miller, Matthew A (SMO)
Subject: RE: fast and furious

Something like that – I'll send you our talking points when they are final. Have them in 3 buckets the first two will be part of Ron's testimony –

- general points covering mission to stop illegal gun trafficking problem on border / AG making clear guns don't cross border/ IG investigation
- the need to balance preserving integrity of investigations from undue political interference with legitimate congressional oversight
- Brian terry shooting response and charging of guy in AZ for it.

[INTENTIONALLY BLANK]

[512] Email from Eric Schultz to Tracy Schmaler and Matthew Miller (June 9, 2011) [DOJ-FF-37745–46].

Subsequently, Grinder emailed Attorney General Holder:[513]

From: Grindler, Gary (OAG)
To: **Attorney General**
CC: Delery, Stuart F. (OAG); Wilkinson, Monty (OAG); Richardson, Margaret (SMO)
Sent: 6/9/2011 4:35:29 PM
Subject: Issa/Fast and Furious Hearings Next Week

Tomorrow we need to discuss what is going on with the hearings scheduled for next week and the possibility that Issa's committee will vote on whether to cite Ken Melson with contempt with respect to the Committee's March 31st document subpoena. Finding time tomorrow will be difficult since you have a very full schedule. Since **Unrelated** we can try to schedule this meeting at that time.

Later that evening, White House Deputy Counsel Kathryn Ruemmler emailed Gary Grindler and Lisa Monaco:[514]

From: Ruemmler, Kathryn H. [mailto: **Kathryn H. Ruemmler**
Sent: Thursday, June 09, 2011 6:22 PM
To: Grindler, Gary (OAG); Monaco, Lisa (ODAG)
Subject: Fast & Furious

Am concerned about the Wednesday hearing/Thursday business meeting that Issa is having next week. Can we talk about it tomorrow?

"Am concerned about the Wednesday hearing/Thursday business meeting that Issa is having"

Kathryn Ruemmler
Principal Deputy Counsel to the President
The White House
West Wing, 2d Floor

Monaco responded:[515]

From: Monaco, Lisa (ODAG)
To: **Kathryn H. Ruemmler** Grindler, Gary (OAG)
Sent: 6/9/2011 10:24:59 PM
Subject: Re: Fast & Furious

Yes. Gary and I met with others on this today.

[INTENTIONALLY BLANK]

On **Friday, June 10, 2011,** DOJ made its first production of non-public documents pursuant to the subpoena.[516] The June 10 production totaled 69 pages.[517]

[513] Email from Gary Grindler to Eric Holder (Jun. 9, 2011) [DOJ-FF-37713].
[514] Email from Kathryn Ruemmler to Gary Grindler and Lisa Monaco (June 9, 2011) [DOJ-FF-37716].
[515] Email from Lisa Monaco to Kathryn Ruemmler and Gary Grindler (June 9, 2011) [DOJ-FF-37716].
[516] Report of the H. Comm. on Oversight & Gov't Reform, Resolution Recommending that House of Representatives Find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, In Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Government Reform (June

As DOJ was preparing for the second House Oversight and Government Reform Committee hearing, scheduled for June 15, 2011, Axelrod emailed:[518]

From:	Axelrod, Matthew (ODAG)
To:	Weich, Ron (SMO); Colborn, Paul P (SMO); Burton, Faith (SMO); Richardson, Margaret (SMO); Schmaler, Tracy (SMO)
Sent:	6/10/2011 12:16:50 PM
Subject:	Agent Forcelli

Evidently, Agent Forcelli is planning on testifying that the USAO (and, specifically, the line AUSA Emory Hurley) takes too long to charge cases and isn't aggressive enough. Dennis Burke wants to know whether it's proper for a Department employee to be testifying before Congress without having his testimony cleared through the Department, etc.

"Burke wants to know whether it's proper for a Department employee to be testifying before Congress without having his testimony cleared"

That afternoon, Schmaler noted:[519]

From:	Schmaler, Tracy (SMO)
To:	Axelrod, Matthew (ODAG); Burton, Faith (SMO); Colborn, Paul P (SMO); Wilkinson, Monty (OAG); Burton, Faith (SMO); Bies, John; Weich, Ron (SMO)
Sent:	6/10/2011 2:00:08 PM
Subject:	FW: talkers
Attachments:	Agent Terry murder points.docx; General F &F points.docx

"[T]erry points would be reactive only"

I've got edits to the oversight/investigation talkers -- if folks have anything on these other two (terry points would be reactive only, if asked and for use for Ron in QA if he gets asked by committee.)

[INTENTIONALLY BLANK]

2012) at 4, *available at* https://oversight.house.gov/wp-content/uploads/2012/06/6-19-12-Fast-and-Furious-Contempt-Report.pdf.

[517] Letter from Ronald Weich, Ass't Att'y Gen., Dep't of Justice, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (June 10, 2011).

[518] Email from Matthew Axelrod to Ron Weich, et al. (June 11, 2011) [DOJ-FF-37766].

[519] Email from Tracy Schmaler to Matthew Axelrod, et al. (June 10, 2011) [DOJ-FF-37319].

Only the background section of the talking points referenced the firearms connected to Operation Fast and Furious:[520]

> *Background –*
>
> Two (?) guns related to the Fast and Furious operation were recovered near the scene of Agent Terry's murder.
>
> The person arrested and charged in the murder was not affiliated with ATF's Fast and Furious operation.

That night Axelrod sent an email which indicated that some of the individuals involved in deciding what to turn over to Congress were the very same ATF Phoenix Field Division officials who had been a part of Operation Fast and Furious:[521]

From: Axelrod, Matthew (ODAG)
Sent: Friday, June 10, 2011 07:20 PM
To: Morrissey, Mike (USAAZ); [redacted] (ATF); Newell, William D. (ATF); Needles, James R. (ATF); Colborn, Paul P (SMO); Bies, John; Ramirez, Monica (ODAG); Safwat, Adam (CRM); Crabb, John D. (USADC); Chambers, Felicia (CIV); Gaston, Molly (SMO); Burton, Faith (SMO)
Cc: [redacted] (ATF); [redacted] (ATF); Knight, Janis (ATF); Bakka, Scott E. (ATF); Harjo, David J. (ATF); Stinnett, Melanie S. (ATF); Hoover, William J. (ATF)
Subject: Document review details

All,

We've worked out a plan for the document review process this weekend (and next week). The folks on the "to" line of this email will be participating in the second stage of the review process – in other words, we'll be looking at docs after a first line review has been completed by ATF lawyers. We'll be working in teams. Each team will have one ATF/USAO reviewer and one DOJ reviewer. I'll explain more about the process tomorrow, but for now I need to make sure that we have the right number of bodies available to start the review process tomorrow morning. My understanding is that ATF/USAO will have three people available tomorrow morning at 9:00 AM – Mike Morrissey, Bill Newell, and [redacted]. We need three DOJ reviewers for tomorrow at 9:00 AM as well. John Crabb and I are both available, so we need one more. On Sunday, we'll have four ATF/USAO reviewers – the three from Saturday plus Jim Needles. So, on the DOJ side, we'll need two bodies in addition to me and John Crabb. Adam, Felicia, and Monica – can the three of you please figure out which one of you can be there tomorrow and which two of you can be there on Sunday?

On Sunday, Paul Colborn and Molly Gaston will begin doing a final layer of OLC/OLA review. They'll take one final look at each document before it goes out the door (or before it gets held back because of privilege).

"ATF/USAO will have three people available tomorrow morning . . . – Mike Morrisey, Bill Newell"

[520] Attachment to email from Tracy Schmaler to Matthew Axelrod, et al. (June 8, 2011) [DOJ-FF-37302–03].
[521] Email from Matthew Axelrod to Mike Morrissey, et al. (June 11, 2011) [DOJ-FF-39257–58]. The DOJ OIG report concluded Morrissey "failed to provide responsible oversight of Operation Fast and Furious." Dep't of Justice, Office of Inspector Gen., *A Review of ATF's Operation Fast and Furious and Related Matters* (Sep. 2012), at 444–45. It also stated SAC Newell "bore ultimate responsibility for the failures in Operation Fast and Furious, particularly in light of his close involvement with the office's highest-profile and most resource-intensive case. . . . Newell furnished incomplete information and at times made statements that conveyed a misleading impression to ATF Headquarters on matters related to Operation Fast and Furious. . . . Overall, we found that SAC Newell's conduct with respect to Operations Wide Receiver and Fast and Furious was irresponsible . . . ." *Id.* at 437–40.

On **Saturday, June 11, 2011,** Monaco suggested creating talking points that staff for House Oversight and Government Reform Committee Ranking Member Elijah Cummings could use at the upcoming hearing.[522] Burton responded:[523]

From:	Burton, Faith (SMO)
To:	Weich, Ron (SMO); Monaco, Lisa (ODAG)
CC:	Goldberg, Stuart (ODAG); Axelrod, Matthew (ODAG); Gaston, Molly (SMO); Colborn, Paul P (SMO)
Sent:	6/11/2011 4:24:47 PM
Subject:	RE: Revised Draft letter to Issa - picks up

I have already offered the minority talking points and they have respectfully declined. Think it would be really good if we could get the letter out by Tuesday – it would help Ron at the hearing and the minority could use it. We can always right more letters, but this one makes important points that we will want in the record before the hearing, I would think. I've been working on a revised draft this afternoon; awaiting some final details on page numbers and dollars from Molly- will send a revised draft within the hour. Thanks. FB

On **Monday, June 13, 2011,** the House Oversight and Government Reform Committee held a hearing titled "Obstruction of Justice: Does the Justice Department Have to Respond to a Lawfully Issued and Valid Congressional Subpoena."[524]

On **Tuesday, June 14, 2011,** DOJ reviewed the proposed statement for DOJ official Ron Weich, representing DOJ on a second panel at the June 15 Oversight Committee hearing:[525]

From:	Grindler, Gary (OAG)
To:	Richardson, Margaret (SMO)
Sent:	6/14/2011 8:33:20 AM
Subject:	RE: Next Week's Issa Hearings

On page 6, we say that "[t]he Committee's oversight activities in this matter have already undermined...the independence, integrity and effectiveness of the Department's criminal investigations." This sounds like a bit of an exaggeration, but I don't know what the actual impact the disclosures had. We should be careful about using words like "undermined" if the entire investigation was not "undermined."

"This sounds like a bit of an exaggeration . . . . We should be careful about using words like 'undermined' if the entire investigation was not 'undermined.'"

[INTENTIONALLY BLANK]

[522] Email from Lisa Monaco to Faith Burton (June 11, 2011) [DOJ-FF-38499].
[523] Email from Faith Burton to Ron Weich and Lisa Monaco (June 11, 2011) [DOJ-FF-38503–04].
[524] *Obstruction of Justice: Does the Justice Department Have to Respond to a Lawfully Issued and Valid Congressional Subpoena: Hearing before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (June 13, 2011) (No. 112-61), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70820/pdf/CHRG-112hhrg70820.pdf.
[525] Email from Gary Grindler to Margaret Richardson (June 14, 2011) [DOJ-FF-42250–51].

Later that day, the House Oversight and Government Reform Committee and the Senate Judiciary Committees published a joint staff report.[526] *The New York Times* published an article on the report, its first article regarding Operation Fast and Furious.[527] The article stated:

> Some . . . agents blew the whistle to Congress this year after two . . . guns were found at the scene of the murder of the Border Patrol agent, Brian A. Terry. An official with knowledge of the investigation said that neither the bullet that killed Mr. Terry in December nor the casings found at the scene had been linked to the weapons that were recovered there. The official emphasized that "the murder weapon has not been discovered."[528]

The online article also linked to a January 28, 2011 memorandum from the U.S. Attorney's Office for the District of Arizona which confirmed that the purchaser of the firearms recovered at the scene of Agent Terry's murder had become a suspect in the Fast and Furious investigation over seven weeks prior to the purchase.[529] The memorandum had not previously been produced to Congress.

That night, Weich received an email from Senator Grassley's staff outlining the status of document production that had been agreed with Grassley in order for Cole to be confirmed as Deputy Attorney General.[530] The email noted:[531]

> c. Records related to 12/17/09 DOJ/FFL meeting: They said this category was sensitive, implying an *in camera* review. There's been no specific description of why this category is sensitive and no written commitment that we or the House side will receive an *in camera* review.
>
> * * *
>
> f. Records relating to Terry ballistics: They said this one is off the table. However, we started getting questions today suggesting that DOJ had provided detailed information on this to the press.
> g. ATF / USAtty communications on genesis of F&F: Same status as (d) and (e).

Weich forwarded the email to David O'Neill, an official in the Office of the Deputy Attorney General, noting: "I don't know what he's talking about re: press."[532]

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[526] H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary, The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents, Joint Staff Report, 112th Cong. (June 14, 2011), *available at* http://oversight.house.gov/wp-content/uploads/2012/02/ATF_Report.pdf.
[527] Ginger Thompson, *Justice Department Accused of 'Reckless Technique,'* N.Y. TIMES, June 14, 2011, *available at* http://www.nytimes.com/2011/06/15/us/politics/15guns.html.
[528] *Id.*
[529] Memorandum from [redacted] to [redacted], U.S. Attorney's Office, District of Arizona, "Jaime Avila, Jr.", Jan. 28, 2011, http://www.documentcloud.org/documents/204491-operation-fast-and-furious-draft-report.html#document/p52.
[530] Email from Kolan Davis to Ron Weich (June 14, 2011) [DOJ-FF-42862–64].
[531] Email from Jason Foster to Kolan Davis (June 14, 2011) [DOJ-FF-42862–64].
[532] Email from Ron Weich to David O'Neil (June 14, 2011) [DOJ-FF-42862–64].

O'Neill in turn circulated the email to a broader group of senior DOJ officials on the morning of **Wednesday, June 15, 2011,** and wrote:[533]

From: O'Neil, David (ODAG)
Sent: Wednesday, June 15, 2011 8:20 AM
To: Goldberg, Stuart (ODAG); Grindler, Gary (OAG); Delery, Stuart F. (OAG); Axelrod, Matthew (ODAG); Schmaler, Tracy (SMO); Richardson, Margaret (SMO)
Cc: Weich, Ron (SMO)
Subject: Re: Document Production Status

My sense is that we are in striking distance with Grassley and that, once we confirm the principals' understanding, we can take that to McConnell with reasonable assurance that he will hold Grassley to his word. [Pause for Stuart and Tracy to stop laughing]. Are we meeting this morning?

Meanwhile, Schmaler emailed regarding the Arizona U.S. Attorney's Office memorandum released by *The New York Times*:[534]

From: Schmaler, Tracy (SMO)
Sent: Wednesday, June 15, 2011 08:10 AM
To: Schmaler, Tracy (SMO); Axelrod, Matthew (ODAG); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: look at the fax # and office at the top

"[N]ot clear if it was faxed to NYT or Congress."

To be clear p 52. Looks like it was faxed to from USAO yesterday – includes their # and name. not clear if it was faxed to NYT or Congress. The internal memo is not part of the official report posted on grassley's page.

From: Schmaler, Tracy (SMO)
Sent: Wednesday, June 15, 2011 8:05 AM
To: Axelrod, Matthew (ODAG); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: look at the fax # and office at the top

"[O]ne of docs Grassley asked for and we could not provide b/c USAO objected."

This was posted on the nyt. (and one of docs Grassley asked for and we could not provide b/c USAO objected)

https://www.documentcloud.org/documents/204491-operation-fast-and-furious-draft-report.html#document/p52

Schmaler notified the officials on the chain regarding productions to Senator Grassley:[535]

[533] Email from David O'Neil to Stuart Goldberg, et al. (June 15, 2011) [DOJ-FF-42862–64].
[534] Email from Tracy Schmaler to Matthew Axelrod, et al. (June 15, 2011) [DOJ-FF-42940].
[535] Email from Tracy Schmaler to Stuart Goldberg, et al. (June 15, 2011) [DOJ-FF-42862–64].

From: O'Neil, David (ODAG)
To: Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); Grindler, Gary (OAG); Delery, Stuart F. (OAG); Axelrod, Matthew (ODAG); Richardson, Margaret (SMO)
CC: Weich, Ron (SMO)
Sent: 6/15/2011 12:48:21 PM
Subject: Re: Document Production Status

Well that certainly complicates things.

From: Schmaler, Tracy (SMO)
Sent: Wednesday, June 15, 2011 08:47 AM
To: Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Grindler, Gary (OAG); Delery, Stuart F. (OAG); Axelrod, Matthew (ODAG); Richardson, Margaret (SMO)
Cc: Weich, Ron (SMO)
Subject: RE: Document Production Status

On C - an internal memo on that meeting is posted on NYT site this morning with the fax stamp from USAO in AZ -- looks like they sent it to NYT yesterday afternoon/evening. See p. 52

Subsequently, Goldberg emailed:[536]

From: Goldberg, Stuart (ODAG)
To: Cole, James (SMO); Monaco, Lisa (ODAG); Grindler, Gary (OAG)
Sent: 6/15/2011 10:31:26 AM
Subject: NYT memo

I talked to Matt Axelrod about it. When Grassley's staff pushed for the document, Matt checked with the USAO. The USAO vigorously objected to producing the document even in camera because the document was deliberative and the memo was a memo from the line AUSA to the USA. As a result of this conversation, we advised Grassley and his staff that we could not provide the memo. Matt's assessment is that it is a sensitive nonpublic law enforcement document, but because it is almost entirely factual it is not deliberative.

"[B]ecause it is almost entirely factual it is not deliberative."

DOJ officials continued to discuss Weich's statement. Burton wrote to Weich regarding the statement in his draft that "the Department has provided the Committee with 92 pages of documents responsive to the subpoena":[537]

From: Burton, Faith (SMO)
Sent: Wednesday, June 15, 2011 7:07 AM
To: Weich, Ron (SMO)
Subject: Re: new version of oral statement attached --

"I think the double digit numbers re our production will be ridiculed and I'd stick with the triple digit totals"

Thanks, this is much better. I think that the double digit numbers re our production will be ridiculed and I'd stick with the triple digit totals - you can still point out that we've been producing on a rolling basis but the most important points clearly are the volume of records we must gather, review, and process and all in the midst of an ongoing investigation and the fact that we're dedicating substantial resources to these tasks. See you soon.

[536] Email from Stuart Goldberg to James Cole, et al. (June 15, 2011) [DOJ-FF-43041].
[537] Email from Faith Burton to Ron Weich (June 15, 2011) [DOJ-FF-42315–17]; *see also* email from Ron Weich to Ron Weich (June 14, 2011) [DOJ-FF-42315–17].

Given the reference in the *New York Times* article to the ballistics report from the firearms recovered at the Terry murder scene, officials also discussed whether to release the report to Congress. The report was covered by the House Oversight Committee's March 31 subpoena. In the Arizona U.S. Attorney's Office, Cunningham emailed Burke and Scheel:[538]

```
----- Original Message -----
From: Cunningham, Patrick (USAAZ)
Sent: Wednesday, June 15, 2011 10:20 AM
To: Burke, Dennis (USAAZ); Scheel, Ann (USAAZ)
Subject: Ballistics report

In view of NY Times story Matt is initially inclined to release the ballistics report to
Congress. Shall I support or oppose? Grassley on CSpan now.
```

"Matt is initially inclined to release the ballistics report to Congress."

Burke responded, "Support."[539] However, that afternoon Stephen Dedalus Kelly, the FBI Assistant Director for Legislative Affairs, emailed top DOJ officials:[540]

From: Kelly, Stephen
To: Monaco, Lisa (ODAG) (JMD); Weich, Ron (SMO) (JMD)
Cc: Caproni, Valerie E.
Sent: Wed Jun 15 13:44:15 2011
Subject: I understand ...

... that we are deferring to you all on whether to provide a couple lab reports to Issa in the ATF matter. I do, however, want the decision makers on this to realize that, while we defer to DoJ and the prosecutors on this, in my view, this is a very bad idea. This will become precedent for Sen. Grassley's office to seek actual documents from DoJ and the FBI in pending criminal investigations, and there's a better than 50/50 chance that Sen. Grassley will become Chairman of the Judiciary Committee in the next cycle. If the documents are provided here, we can expect to see specific requests to DoJ and the FBI for documents in pending criminal investigations as a routine matter from Committee chairs, potentially including Sen. Grassley. I understand that the information in the reports may have been leaked to the press, but that does not alleviate our need to protect the integrity of the investigation, and that includes the actual lab reports analyzing evidence. Can't we find some other way to provide this information to the Committee short of providing the lab reports?

"[T]his is a very bad idea. This will become precedent for Sen. Grassley's office . . . , and there's a better than 50/50 chance that Sen. Grassley will become Chairman of the Judiciary Committee in the next cycle."

The FBI's General Counsel, Valerie Caproni, emailed in response to Kelly's assessment: "I agree."[541] Lisa Monaco responded to the group:[542]

From: Monaco, Lisa (ODAG)
Sent: Wednesday, June 15, 2011 2:57 PM
To: Caproni, Valerie E. (FBI); Kelly, Stephen (FBI); Weich, Ron (SMO)
Subject: Re: I understand ...

I have spoken with folks here on this and think for now we will not be providing this

Weich later forwarded the chain to Steven Reich.[543] Reich, who had recently been hired as an Associate Deputy Attorney General to take over from Matt Axelrod DOJ's management of the

[538] Email from Patrick Cunningham to Dennis Burke and Ann Scheel (June 15, 2011) [DOJ-FF-42970–71].
[539] Email from Dennis Burke to Patrick Cunningham and Ann Scheel (June 15, 2011) [DOJ-FF-42970–71].
[540] Email from Stephen Kelly to Lisa Monaco and Ron Weich (June 15, 2011) [DOJ-FF-43037].
[541] Email from Valerie Caproni to Stephen Kelly, et al. (June 15, 2011) [DOJ-FF-43037].
[542] Email from Lisa Monaco to Valerie Caproni, et al. (June 15, 2011) [DOJ-FF-43037].
[543] Email from Ron Weich to Steven Reich (June 17, 2011) [DOJ-FF-43038–39].

congressional investigation into Operation Fast and Furious, was a former senior associate White House counsel for President Bill Clinton.[544]

At noon that same day, the House Oversight and Government Reform Committee heard testimony from Senator Grassley laying out the results of his investigation thus far; family members of Border Patrol Agent Brian Terry, alongside whistleblowers John Dodson, Lee Casa, and Pete Forcelli; and Assistant Attorney General Weich.[545]

Late Border Agent Brian Terry's cousin Robert Heyer, sister Michelle Terry Balogh, and mother Josephine Terry join ATF whistleblowers John Dodson, Olindo "Lee" Casa, and Peter Forcelli on June 15, 2011 hearing panel (House Oversight and Government Reform Committee photo)

In discussing DOJ's failure to acknowledge the connection between Operation Fast and Furious and the firearms recovered at the scene of Agent Terry's death, Heyer testified:

> [T]here is a level of frustration for the family. I want to make it clear that our number-one goal is to pursue the prosecution of all the killers of Brian. That is our number-one goal. And, you know, the U.S. attorney's office in Tucson and the FBI is working very hard to do that. But I also think that I can speak for the family—we have talked about this this morning—that there seems to be a separation, a distinct separation, between Brian's murder investigation and the ATF Operation Gunrunner, Fast and Furious

[544] *See* Andrew Ramonas, *Clinton Counsel Steven Reich to Join DOJ*, MAINJUSTICE.COM, June 9, 2011, *available at* https://web.archive.org/web/20150926062930/http://www.mainjustice.com/2011/06/09/clinton-counsel-steven-reich-to-join-doj.

[545] *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes: Hearing before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (June 15, 2011) (No. 112-64), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg71077/pdf/CHRG-112hhrg71077.pdf.

> Operation. There seems to be a hesitancy to connect the two. So that part is very frustrating.[546]

When Weich appeared on the second panel, Chairman Issa asked him: "[W]ho here in Washington authorized it? . . . Who authorized this at Justice?"[547] Weich responded: "Mr. Chairman, I do not know the answer to that question. And the Inspector General is reviewing the matter."[548]

Assistant Attorney General Ron Weich at June 15, 2011 House Oversight and Government Reform Committee hearing (House Oversight and Government Reform Committee photo)

That afternoon, commenting on a hearing of the Senate Drug Caucus, Jill Wade wrote:[549]

[546] *Id.* at 123-24.
[547] *Id.* at 166.
[548] *Id.*
[549] Email from Jill Wade to Ron Weich, et al. (June 15, 2011) [DOJ-FF-43271].

-----Original Message-----
From: Wade, Jill C (SMO)
Sent: Wednesday, June 15, 2011 5:12 PM
To: Weich, Ron (SMO); Burton, Faith (SMO); Gaston, Molly (SMO); Agrast, Mark D. (SMO)
Subject: RE: Another hearing?

I just followed up with Drug Caucus Staff Director Eric Jacobstein about Chairman Feinstein's stated desire (on the Record) to hold a FF hearing Co-Chaired by Grassley. Eric said she might be willing to broaden the hearing to "firearms trafficking generally" rather than just FF. He said the timing will depend on the OIG Report. He asked for a sense of when the OIG Report on FF will be completed - the Caucus will time their hearing based on that release, although if the Report isn't going to be done this year they are likely to hold the hearing regardless of the Report release.

Do you guys have a sense of when the OIG Report will be released? Eric would like this information tonight if possible.

-JCW

-----Original Message-----
From: Wade, Jill C (SMO)
Sent: Wednesday, June 15, 2011 3:31 PM
To: Weich, Ron (SMO); Burton, Faith (SMO); Gaston, Molly (SMO)
Subject: Another hearing?

Drug Caucus Chairman Feinstein just said she's going to hold a FF hrg w Grassley.
(Am at hrg)

"Feinstein just said she's going to hold a FF hrg w Grassley"

On **Thursday, June 16, 2011,** DOJ officials continued to email about the issue:[550]

From: Agrast, Mark D. (SMO)
To: Weich, Ron (SMO)
Sent: 6/16/2011 7:51:27 AM
Subject: RE: Another hearing?

"Of course . . . Grassley . . . will try to steer them to F&F."

Of course, with Grassley as co-chair, he will try to steer them to F&F.

-----Original Message-----
From: Weich, Ron (SMO)
Sent: Thursday, June 16, 2011 7:01 AM
To: Wade, Jill C (SMO); Burton, Faith (SMO); Gaston, Molly (SMO); Agrast, Mark D. (SMO)
Subject: RE: Another hearing?

We have no idea when OIG will finish its work. Faith, do you think you could ask your contact there whether it will be in this calendar year, as Jill asks below? I certainly assume so. If the Drug Caucus is going to hold a hearing in this area it really should be gun/drug trafficking generally, not F+F, and we should steer them in that direction.

"If the Drug Caucus is going to hold a hearing . . . it really should be . . . not F+F, and we should steer them in that direction."

That same day, Acting Director Melson raised in a monthly meeting with Deputy Attorney General Cole issues with information sharing between the FBI, the Drug Enforcement Administration (DEA), and ATF that had impacted Operation Fast and Furious. According to Melson's subsequent testimony:

[550] Email from Mark Agrast to Ron Weich (June 16, 2011) [DOJ-FF-43271].

> Let us just say it came to our attention that there may have been involvement of other agencies in this. And I was concerned about it. . . . [W]e mentioned it to ODAG on a number of occasions, and somewhat on certain terms of my concern that this whole thing would unravel and make the USG, the government, look a lot worse than it does with what's coming out now. And was kind of brushed off with that until frustration reached the level that, in a monthly meeting with the [Deputy Attorney General], the day after the hearings, I mentioned to him exactly what we knew, so that he would know as to what could be or was happening, for whatever purposes he wanted to use it for.[551]

Two days later, on **Friday, June 17, 2011,** an ATF official circulated among ATF and DOJ officials a *Wall Street Journal* article titled "Head of ATF Likely To Go."[552] DOJ official Jill Wade forwarded the article to Mark Michalic and wrote:[553]

From: Wade, Jill C (SMO)
To: Michalic, Mark (ODAG)
Sent: 6/17/2011 9:29:39 PM
Subject: Fw: FYI - Wall Street Journal

I called this one.

"I called this one."

From: ATF (ATF)
Sent: Friday, June 17, 2011 09:17 PM
To: McDermond, James E. (ATF)
Cc: Thomasson, Scot L. (ATF); Weich, Ron (SMO); Office of Legislative Affairs [redacted]; Burton, Faith (SMO); Axelrod, Matthew (ODAG); Wade, Jill C (SMO); Gaston, Molly (SMO); Sarnacki, Jeffrey P. (ATF); ATF (ATF)
Subject: FYI - Wall Street Journal

HEAD OF ATF LIKELY TO GO
By
EVAN PEREZ And
DEVLIN BARRETT

That day, in response to a press inquiry regarding reports that firearms used in a high-profile kidnapping and murder were linked to Fast and Furious, Axelrod emailed:[554]

[551] Melson Transcript at 111-12.
[552] Email from [ATF employee] to James McDermond (June 17, 2011) [DOJ-FF-44261–62]; *see* also Evan Perez and Devlin Barrett, *Head of ATF Is Likely to Go*, WALL ST. J. (June 17, 2011, print version June 18, 2011).
[553] Email from Jill Wade to Mark Michalic (June 17, 2011) [DOJ-FF-44261–62].
[554] Email from Matthew Axelrod to [ATF employee] (June 17, 2011) [DOJ-FF-44015–18].

From: Axelrod, Matthew (ODAG)
To: ATF
Cc: Schmaler, Tracy (SMO) (JMD); Reich, Steven (ODAG) (JMD)
Sent: Fri Jun 17 17:33:02 2011
Subject: FW: f and f question
Were two F&F guns actually traced to the scene of this kidnapping? Can you run that down for us?

From: Lajeunesse, William [mailto[redacted]@FOXNEWS.COM]
Sent: Friday, June 17, 2011 3:48 PM
To: Schmaler, Tracy (SMO)
Cc: Benham, Janelle; Lajeunesse, William
Subject: tracy question

We have learned that 2 Fast and Furious guns have been traced to the scene of the kidnapping of the brother of the now former Attorney General of Chihuahua, the state where Juarez is located.

ATF dismissed the connection by responding that day:[555]

From: ATF (ATF)
Sent: Friday, June 17, 2011 6:56 PM
To: Axelrod, Matthew (ODAG)
Cc: Schmaler, Tracy (SMO); Reich, Steven (ODAG)
Subject: Re: f and f question

No. He was kidnapped in october. Some three weeks later police pull over 6 car loads of guys in the same neighborhood. 8 are arrested. 16 guns are recovered. ATF

ATF

Guns recovered 11/4/10. Guns traced May 2011 ATF No forensics on any of the guns we know of

For fox to suggest the guns are linked is like saying there was a murder in southeast three weeks ago. Tonight a car load of guys get caught with guns in southeast. Ergo the guns are linked to the murder.

"For [F]ox to suggest the guns are linked is like saying there was a murder in southeast three weeks ago."

Axelrod only asked more probing questions of ATF after Chairman Issa and Ranking Member Grassley wrote to the Ambassador of Mexico on **Tuesday, June 21, 2011,** requesting further details.[556] Subsequently, on **Wednesday, June 22, 2011,** Axelrod emailed senior officials, including Cole:[557]

[555] Email from [ATF employee] to Matthew Axelrod (June 17, 2011) [DOJ-FF-44015–18].
[556] Email from Matthew Axelrod to [ATF employee] (June 22, 2011) [DOJ-FF-44015–18]; Email from Matthew Axelrod to James Cole, et al. (June 22, 2011) [DOJ-FF-44015–18].
[557] Email from Matthew Axelrod to James Cole, et al. (June 22, 2011) [DOJ-FF-44015–18].

From: Axelrod, Matthew (ODAG)
Sent: Wednesday, June 22, 2011 10:08 PM
To: Cole, James (SMO); Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: Re: f and f question

I just heard from ATF. Their initial reporting on this was incorrect.

Evidently, when MX law enforcement arrested the kidnappers at their hideout, they seized a number of firearms, two of which tie back to Fast and Furious. I'll double check Issa's letter in the morning, but it appears that the allegations in it (and in the Fox News report) are accurate.

"I'll double check Issa's letter in the morning, but it appears that the allegations . . . are accurate."

Goldberg responded: "I am shocked."[558] Axelrod subsequently emailed Cole with a summary:[559]

From: Axelrod, Matthew (ODAG)
To: Cole, James (SMO)
CC: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Sent: 6/23/2011 8:30:35 AM
Subject: Bulletpoints on the MX kidnapping

1. Recently, Chairman Issa sent a letter to **State** in which he cited to a Fox News report stating that two Fast and Furious guns were used in the kidnapping and murder of the brother of the former Attorney General of Chihuahua.

2. We've been told by ATF that when Mexican law enforcement raided the kidnappers' compound, they seized a number of firearms, two of which tie back to Fast and Furious.

3. While it may be an overstatement to say that the guns were "used" in the murder, the core allegation appears to be true - namely, that the kidnappers/murderers were in possession of two guns that tie back to Fast and Furious.

"[T]he kidnappers/murderers were in possession of two guns that tie back to Fast and Furious."

Meanwhile, on **Monday, June 20, 2011,** Schmaler had circulated further follow-up on the issue of Melson's possible ouster:[560]

From: Schmaler, Tracy (SMO)
To: Axelrod, Matthew (ODAG); Reich, Steven (ODAG); Weich, Ron (SMO); Burton, Faith (SMO); Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Colborn, Paul P (SMO)
Sent: 6/20/2011 11:09:31 AM
Subject: TPM on Melson

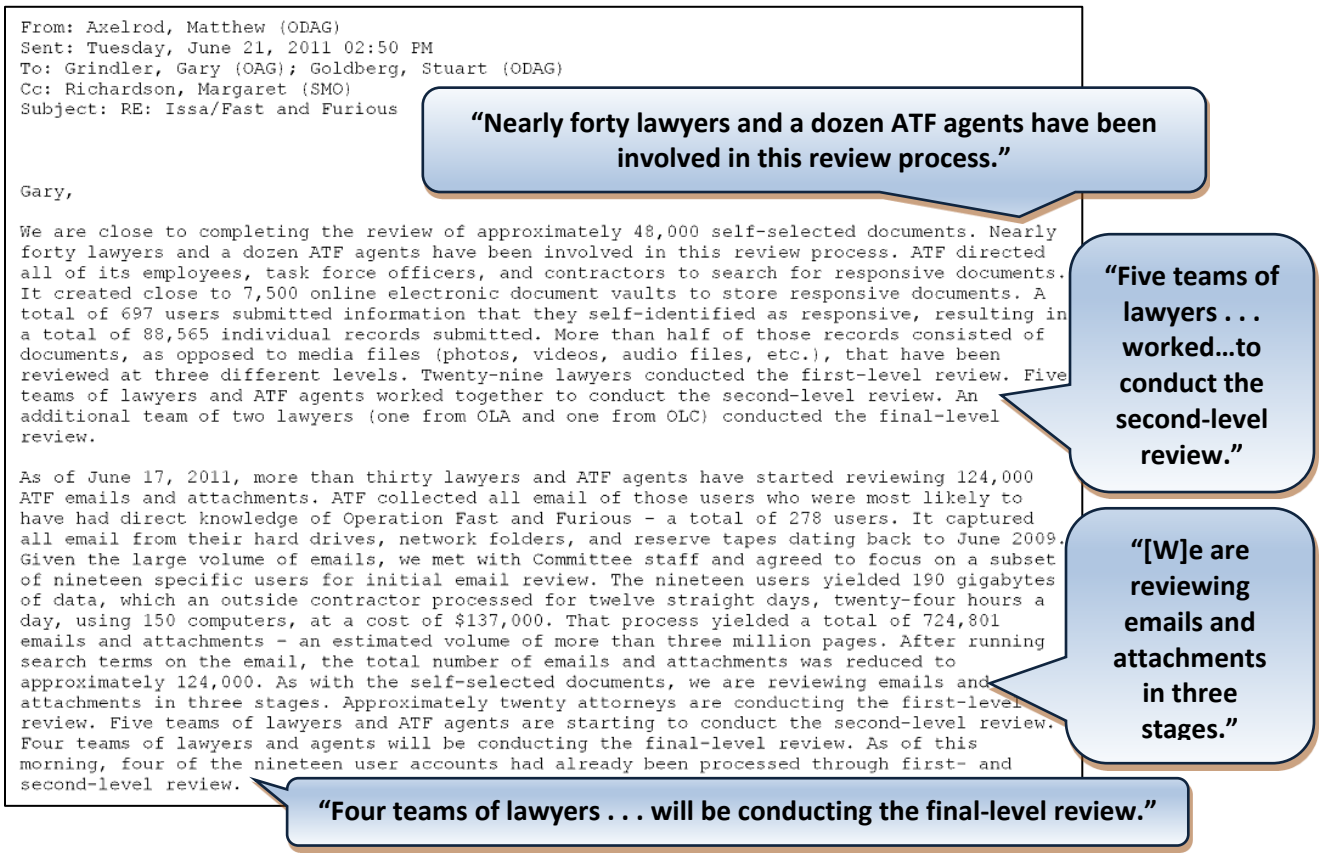
Follow up on Melson/Traver. Also note the graphs on challenges in arresting/convicting straw -- includes the 2008 case.

http://tpmmuckraker.talkingpointsmemo.com/2011/06/issa_poised_to_collect_first_scalp_in_atf_fast_and.php?ref=fpa

Darrell Issa Poised To Get First Win In ATF Fast And Furious Scandal

[558] Email from Stuart Goldberg to Matthew Axelrod (June 23, 2011) [DOJ-FF-44015–18].
[559] Email from Matthew Axelrod to James Cole (June 23, 2011) [DOJ-FF-44871].
[560] Email from Tracy Schmaler to Matthew Axelrod, et al. (June 20, 2011) [DOJ-FF-44315].

On **Tuesday, June 21, 2011,** Grindler emailed Axelrod and Goldberg: "The AG wanted me to get a report on the pace at which documents are being reviewed and to get the most recent production letter that included a compilation of the docs produced to date, etc. . . . ."[561] Axelrod's response revealed the immense lengths DOJ went to identify materials not to produce to Congress:[562]



From: Axelrod, Matthew (ODAG)
Sent: Tuesday, June 21, 2011 02:50 PM
To: Grindler, Gary (OAG); Goldberg, Stuart (ODAG)
Cc: Richardson, Margaret (SMO)
Subject: RE: Issa/Fast and Furious

Gary,

We are close to completing the review of approximately 48,000 self-selected documents. Nearly forty lawyers and a dozen ATF agents have been involved in this review process. ATF directed all of its employees, task force officers, and contractors to search for responsive documents. It created close to 7,500 online electronic document vaults to store responsive documents. A total of 697 users submitted information that they self-identified as responsive, resulting in a total of 88,565 individual records submitted. More than half of those records consisted of documents, as opposed to media files (photos, videos, audio files, etc.), that have been reviewed at three different levels. Twenty-nine lawyers conducted the first-level review. Five teams of lawyers and ATF agents worked together to conduct the second-level review. An additional team of two lawyers (one from OLA and one from OLC) conducted the final-level review.

As of June 17, 2011, more than thirty lawyers and ATF agents have started reviewing 124,000 ATF emails and attachments. ATF collected all email of those users who were most likely to have had direct knowledge of Operation Fast and Furious - a total of 278 users. It captured all email from their hard drives, network folders, and reserve tapes dating back to June 2009. Given the large volume of emails, we met with Committee staff and agreed to focus on a subset of nineteen specific users for initial email review. The nineteen users yielded 190 gigabytes of data, which an outside contractor processed for twelve straight days, twenty-four hours a day, using 150 computers, at a cost of $137,000. That process yielded a total of 724,801 emails and attachments - an estimated volume of more than three million pages. After running search terms on the email, the total number of emails and attachments was reduced to approximately 124,000. As with the self-selected documents, we are reviewing emails and attachments in three stages. Approximately twenty attorneys are conducting the first-level review. Five teams of lawyers and ATF agents are starting to conduct the second-level review. Four teams of lawyers and agents will be conducting the final-level review. As of this morning, four of the nineteen user accounts had already been processed through first- and second-level review.

Grindler forwarded the response to Holder.[563]

That day DOJ officials discussed possible locations for an upcoming announcement regarding the Southwest Border Counternarcotics Strategy:[564]

[561] Email from Gary Grindler to Stuart Goldberg and Matthew Axelrod (June 21, 2011) [DOJ-FF-44355–56].
[562] Email from Matthew Axelrod to Gary Grindler and Stuart Goldberg (June 21, 2011) [DOJ-FF-44355–56].
[563] Email from Gary Grindler to Eric Holder (June 21, 2011) [DOJ-FF-44355–56].
[564] Email from Matthew Miller to Gary Grindler and Molly Moran (June 21, 2011) [DOJ-FF-44557–59].

From: Miller, Matthew A (SMO)
To: Grindler, Gary (OAG); Moran, Molly (OAG)
CC: Wilkinson, Monty (OAG)
Sent: 6/21/2011 4:41:54 PM
Subject: Re: July 7th schedule

"This is a dumb location. Issa represents the [San Diego] area."

This is a dumb location. Issa represents the SD area. We would walk right into a storm.

From: Grindler, Gary (OAG)
Sent: Tuesday, June 21, 2011 04:39 PM
To: Moran, Molly (OAG)
Cc: Wilkinson, Monty (OAG); Miller, Matthew A (SMO)
Subject: RE: July 7th schedule

I believe that the AG has already visited the San Diego USAO. Can't we push back on this location—but, of course, we would have to suggest one. What about El Paso?

Ultimately, the announcement was made in Nogales, Arizona.[565]

That same day, Steve Reich emailed Gary Grindler:[566]

"[T]here is a limit to how often you can send a letter like this as the points typically lose effectiveness when repeated."

From: Reich, Steven (ODAG)
Sent: Tuesday, June 21, 2011 7:55 PM
To: Grindler, Gary (OAG)
Cc: Goldberg, Stuart (ODAG)
Subject: OGR Committee letter

Gary, this email lays out in a bit more detail the reasons that I recommend we not send tonight the proposed letter to the OGR Committee outlining the status of our production.

These types of letters typically are sent when adverse Committee action is imminent. We do not have any reason to believe that adverse action will be taken at tomorrow's meeting. There is no contempt issue on the agenda and the Minority advises us that the majority of the meeting is expected to cover matters on which there is bipartisan support. Matt Axelrod's almost-daily communications with the Committee over the past week regarding document production have been positive and the acrimony on these topics that existed prior to the last Committee meeting has not been in evidence. In short, the Committee seems to accept that things are working more smoothly. Of course, that doesn't mean they won't take shots at us. Indeed, the Committee has on its agenda tomorrow a report on oversight activity, which means that they affirmatively will take shots at us. But, we can respond through Tracy or Matt to whatever specific criticisms are made.

In all, my recommendation is that we save the letter for when we need to create a record to avert imminent adverse Committee action. While I don't think there would be substantive harm in sending the letter now, I also think there is a limit to how often you can send a letter like this as the points typically lose effectiveness when repeated.

For what it is worth, Faith Burton consulted Minority staff this afternoon and their recommendation was also that we not send the letter.

"Faith Burton consulted Minority staff this afternoon and their recommendation was also that we not send the letter."

[565] U.S. Dep't of Homeland Security, *Press Release: Senior Administration Officials Release Southwest Border Counternarcotics Strategy* (July 7, 2011), *available at* https://www.dhs.gov/news/2011/07/07/senior-administration-officials-release-southwest-border-counternarcotics-strategy.
[566] Email from Steven Reich to Gary Grindler (June 21, 2011) [DOJ-FF-44868–70].

Grindler forwarded the email to Attorney General Holder and wrote, "Steven recommends that we not send the letter discussed earlier today."[567] He outlined the agenda for the Oversight and Government Reform Committee meeting, then added:[568]

> FYI, there are another four or five additional items on the agenda. Steven states that this "activity report" will probably involve criticism of ATF and DOJ, but does mention contempt. One additional fact is that I had thought the letter with the expansive discussion of our document collection and review effort would have also involved a production of documents. That is not the case. A document production took place today and the informational discussion would now be in a letter without any further document production. Also, the committee meeting is tomorrow at 9:30 a.m. not Thursday as I had been led to believe today.
>
> With Steve's report below and the additional information, I am now convinced that we should not send the letter. Let me know if you agree.

The next morning, on **Wednesday, June 22, 2011**, Grindler again emailed Holder to seek a decision on withholding a response.[569] When Holder asked for the basic reason, Grindler summarized:[570]

"[W]e need to hold our powder until a time when we may be in greater trouble with the Committee."

> **From**: Grindler, Gary (OAG)
> **Sent**: Wednesday, June 22, 2011 07:58 AM
> **To**: Attorney General
> **Subject**: RE: OGR Committee letter
>
> Reich argues that because a contempt vote is not going to come up today, we need to hold our powder until a time when we may be in greater trouble with the Committee. He says that the conversations with the committee staff since your testimony have improved and that they seem relatively satisfied with the production. I pushed him on the risk of a contempt vote and he feels strongly that the contempt issue will not come up. Also, he points to the apparent fact that the minority staff recommends against sending the letter.
>
> Gary
>
> ---
>
> **From:** Attorney General
> **Sent:** Wednesday, June 22, 2011 7:55 AM
> **To:** Grindler, Gary (OAG)
> **Subject:** Re: OGR Committee letter
>
> What's the basic reason why not?

Holder replied, "Ok."[571] Grindler emailed Reich:[572]

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[567] Email from Gary Grindler to Eric Holder and James Cole (June 21, 2011) [DOJ-FF-44868–70].
[568] *Id.*
[569] Email from Gary Grindler to Eric Holder (June 22, 2011) [DOJ-FF-44868–70].
[570] Email from Gary Grindler to Eric Holder (June 22, 2011) [DOJ-FF-44868–70].
[571] Email from Eric Holder to Gary Grindler (June 22, 2011) [DOJ-FF-44868–70].
[572] Email from Gary Grindler to Steven Reich (June 22, 2011) [DOJ-FF-44821–22].

From: Grindler, Gary (OAG)
Sent: Wednesday, June 22, 2011 8:06 AM
To: Reich, Steven (ODAG)
Cc: Goldberg, Stuart (ODAG); Weich, Ron (SMO); Burton, Faith (SMO); Richardson, Margaret (SMO); Cole, James (SMO); Axelrod, Matthew (ODAG)
Subject: RE: OGR Committee letter

The AG is OK with our not sending the letter to the OGR Committee this morning. Please let me know the outcome of the meeting. Thanks. Gary

Late that night, Weich emailed regarding the pending agreement with Senator Grassley and Senator Chambliss surrounding Cole's confirmation:[573]

From: Weich, Ron (SMO)
To: Grindler, Gary (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Richardson, Margaret (SMO); Schmaler, Tracy (SMO); Appelbaum, Judy (SMO); Delery, Stuart F. (OAG)
Sent: 6/22/2011 11:50:41 PM
Subject: timing of votes / Chambliss docs / Leahy letter --
Attachments: 6-22-11 PJL to Holder re ATF info .docx

The Reid guy tells me that it is possible the votes will be tomorrow afternoon if Chambliss says OK (he specifically said Chambliss, not Grassley). Per an earlier conversation with Dave, I am going to suggest to Chambliss staff that the quickest way to assure Chambliss that the box contains what we say it contains is for them to come here in the AM to inspect the box. But if she balks at that suggestion and instead asks for us to deliver the box there, I think we need to do that in order to be true to the prior understanding. I see no way we can get screwed at this point. Even if Grassley tried to play games, McConnell and Chambliss wouldn't let him.

"I see no way we can get screwed . . . if Grassley tried to play games"

On **Thursday, June 23, 2011**, Miller emailed Holder and others:[574]

From: Miller, Matthew A (SMO)
To: Grindler, Gary (OAG); Cheung, Denise (OAG); **Attorney General**
Sent: 6/23/2011 12:01:28 AM
Subject: **Unrelated**

"[I]t would easily sidetrack into Fast and Furious (which we don't have a lot of good answers to until we have made some change)."

Unrelated - plus it would easily sidetrack into Fast and Furious (which we don't have a lot of good answers to until we have made some change). **Unrelated**

On **Thursday, June 23, 2011**, senior officials emailed regarding Attorney General Holder's testimony before the House Judiciary Committee on May 3, in which he stated to Chairman Chaffetz that he "probably heard about Fast and Furious for the first time over the last few weeks":[575]

[573] Email from Ron Weich to Gary Grindler, et al. (June 22, 2011) [DOJ-FF-44829].
[574] Email from Matthew Miller to Eric Holder, et al. (June 23, 2011) [DOJ-FF-44856].
[575] Email from Gary Grindler to Matthew Miller, et al. (June 23, 2011) [DOJ-FF-44886]; email from Stuart Delery to Gary Grindler (June 23, 2011) [DOJ-FF-44886]; *see also United States Department of Justice: Hearing before the*

From: Delery, Stuart F. (OAG)
To: Grindler, Gary (OAG)
Sent: 6/23/2011 10:11:01 AM
Subject: Re: Issa

On a little break here after the Coliseum and Forum.

if there were earlier public statements, such as at the Appropriations hearings or something else around then, that might be the easiest way -- point to those statements and say that time flies in this job.

From: Grindler, Gary (OAG)
Sent: Thursday, June 23, 2011 06:55 AM
To: Miller, Matthew A (SMO); Goldberg, Stuart (ODAG); Delery, Stuart F. (OAG); Richardson, Margaret (SMO)
Subject: Issa

"We need to focus in on how to clarify the testimony of the AG"

We need to focus in on how to clarify the testimony of the AG at the hearing on May 3rd.

Meanwhile, as the Justice Department committed to cooperate with Senator Grassley's oversight of Operation Fast and Furious, he lifted his hold on Cole's nomination. On **Tuesday, June 28, 2011,** the Senate confirmed Cole as Deputy Attorney General.

[INTENTIONALLY BLANK]

H. Comm. on Judiciary, 112th Cong. 45 (May 3, 2011) (No. 112-127), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg66154/pdf/CHRG-112hhrg66154.pdf.

VIII. Road to Subpoena for Justice Department

1. Melson Comes Forward

FINDING:	**After ATF Acting Director Kenneth Melson began cooperating with the congressional investigation, Justice Department officials worked furiously to undermine key elements of Melson's testimony while obtaining a full transcript of his interview.**

On **Thursday, June 30, 2011**, Attorney General Eric Holder forwarded Chief of Staff Gary Grindler an article that had appeared on June 27 regarding ATF Acting Director Ken Melson testifying before Congress:[576]

From: ATTORNEY GENERAL
To: Grindler, Gary (OAG)
Sent: 6/29/2011 9:53:04 AM
Subject: FW: ATF Head Kenneth Melson to Testify Before Congress on Operation Fast and Furious - The Daily Beast

-----Original Message-----
From: Attorney General
Sent: Tuesday, June 28, 2011 11:44 PM
To: ATTORNEY GENERAL
Subject: ATF Head Kenneth Melson to Testify Before Congress on Operation Fast and Furious - The Daily Beast

http://www.thedailybeast.com/articles/2011/06/27/atf-head-kenneth-melson-to-testify-before-congress-on-operation-fast-and-furious.html

That afternoon, ATF emailed Axelrod requesting approval to disseminate two documents.[577] One of the documents was an employee-wide message Acting Director Melson proposed to send to all employees:[578]

[INTENTIONALLY BLANK]

[576] Email from Eric Holder to Gary Grindler (June 29, 2011) [DOJ-FF-46147]; *see also* John Solomon, *Obama Gun-Sting Breakthrough*, DAILY BEAST (June 27, 2011), http://www.thedailybeast.com/articles/2011/06/27/atf-head-kenneth-melson-to-testify-before-congress-on-operation-fast-and-furious.html.
[577] Email from Jeffrey Sarnacki to Matthew Axelrod (Jun. 30, 2011) [DOJ-FF-46382].
[578] Attachment to email from Jeffrey Sarnacki to Matthew Axelrod (Jun. 30, 2011) [DOJ-FF-46384–85].

Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF

Director Statement

Not for Public Dissemination/For Internal Use Only

At the Frontline Against Violent Crime — Public Affairs Division - Washington, DC

Employee Message about Fast and Furious Investigation

(6/29/2011)

The U.S. House of Representative's Committee on Oversight and Government Reform and the U.S. Senate Judiciary Committee are investigating the firearms trafficking investigation known as Operation Fast and Furious. News reports and committee testimony would suggest that ATF is reluctant to provide information on this matter. Be assured that we are working through the Department of Justice to be responsive to all Congressional inquiries. We do so while carefully considering the impact such release would have on the case. Additionally, ATF is also cooperating fully with the independent investigation being conducted by the DOJ Office of the Inspector General into the strategies implemented in this case. These investigations are not a referendum on the exceptional work performed by ATF employees every day. The "Fast and Furious" investigation is just one of nearly 1,500 firearms trafficking cases that ATF perfected in Fiscal Year 2010. We continue to be AT THE FRONTLINE AGAINST VIOLENT CRIME.

* * *

I respect the legitimate role that the legislative branch plays in conducting oversight over the executive branch. I am also cognizant of the delicate balance at play when Congress investigates open criminal investigations. With that said, please know that I have a firm desire and resolve to meet with Congressional committee members to address concerns associated with their inquiry. I expect to be afforded that opportunity in the near future. Also know that we welcome the independent review being conducted by the Office of the Inspector General. That review is also ongoing and until it is concluded, it would be inappropriate to discuss those details at this time.

"I have a firm desire and resolve to meet with Congressional committee members . . . . I expect to be afforded that opportunity in the near future."

On **Friday, July 1, 2011**, Stuart Goldberg forwarded the message to Cole.[579]

On **Sunday, July 3, 2011**, representatives from Chairman Issa's and Senator Grassley's staffs met confidentially with Acting Director Melson for three hours. A transcribed interview with Melson was originally scheduled for July 13 and set to include DOJ and ATF counsel.[580] However, once Melson became aware of his right to participate in a transcribed interview with his own personal counsel rather than attorneys representing DOJ, he arranged such an interview for the next morning on Capitol Hill.[581]

[579] Email from Stuart Goldberg to James Cole and Matthew Axelrod (July 1, 2011) [DOJ-FF-46284–85].
[580] *See* letter from Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice (July 5, 2011), at 1.
[581] *Id.*

On the morning of **Monday, July 4, 2011**, the Committees conducted a transcribed interview of Melson. In the interview, he stated:

> 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 sideways 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 as 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.[582]
>
> * * *
>
> [M]any 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 [Axelrod]'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".[583]
>
> * * *
>
> 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 . . . .[584]

[582] Melson Transcript at 124.
[583] *Id.* at 126-27.
[584] *Id.* at 128.

On the evening of **Tuesday, July 5, 2011**, Chairman Issa and Senator Grassley sent a letter to DOJ regarding Melson's transcribed interview.[585] The letter stated:

> Acting Director Melson's cooperation was extremely helpful to our investigation. He was candid in admitting mistakes that his agency made and described various ways he says that he tried to remedy the problems. According to Mr. Melson, it was not until after the public controversy that he personally reviewed hundreds of documents relating to the case, including wiretap applications and Reports of Investigations (ROIs). By his account, he was sick to his stomach when he obtained those documents and learned the full story. Mr. Melson said that he told the Office of the Deputy Attorney General (ODAG) at the end of March that the Department needed to reexamine how it was responding to the requests for information from Congress.[586]

Cole forwarded the letter to senior DOJ officials, copying Attorney General Holder:[587]

From: Cole, James (SMO)
Sent: Tuesday, July 05, 2011 07:52 PM
To: Grindler, Gary (OAG); Goldberg, Stuart (ODAG); Axelrod, Matthew (ODAG); Weich, Ron (SMO); Reich, Steven (ODAG)
Cc: Attorney General
Subject:

<<2011-07-05 CEG-DEI to AG.PDF>>

Attached is a copy of a letter we received today from Chairman Issa and Senator Grassely. After the morning meeting tomorrow let's meet to discuss how to respond to the letter.

Jim

Holder responded:[588]

From: Attorney General
To: Cole, James (SMO); Grindler, Gary (OAG); Goldberg, Stuart (ODAG); Axelrod, Matthew (ODAG); Weich, Ron (SMO); Reich, Steven (ODAG)
Sent: 7/5/2011 8:32:57 PM
Subject: Re:

"A strong response is necessary."

Let's discuss tomorrow but we need to figure out how we deal with all the inaccuracies in the letter. A strong response is necessary.

On **Wednesday, July 6, 2011,** as DOJ discussed the draft response, Faith Burton wrote:[589]

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[585] Letter from Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Eric Holder, Att'y Gen., Dep't of Justice (July 5, 2011).
[586] *Id.*
[587] Email from James Cole to Gary Grindler, et al. (July 5, 2011) [DOJ-FF-47327].
[588] Email from Eric Holder to James Cole, et al. (July 5, 2011) [DOJ-FF-47327].

From:	Burton, Faith (SMO)
To:	Schmaler, Tracy (SMO)
CC:	Reich, Steven (ODAG); Colborn, Paul P (SMO); Weich, Ron (SMO)
Sent:	7/6/2011 3:02:43 PM
Subject:	RE: Draft Issa and Grassley response letter: privileged and confidential
Attachments:	Issa 76 redline.doc

Tracy, I'd stay away from a representation that we'll fully cooperate in the future – because we don't know where this will go and the important point is that we'll accommodate their legitimate info needs. Here's my tweak.

"I'd stay away from a representation that we'll fully cooperate in the future"

As new information continued to flow in to DOJ, officials discussed delaying a letter response, but Schmaler disagreed:[590]

From:	Schmaler, Tracy (SMO)
To:	Burton, Faith (SMO); Reich, Steven (ODAG); Colborn, Paul P (SMO); Weich, Ron (SMO); Axelrod, Matthew (ODAG); Richardson, Margaret (SMO); Miller, Matthew A (SMO)
Sent:	7/6/2011 4:13:07 PM
Subject:	RE: Think we need to think carefully before sending anything out today -

Noting that we have been responsive to inquiries and worked w. committee is not enough given the accusations in this letter and the implication of melson's testimony that Grassley and Issa have left with this letter. The most effective response– to all our audiences – is a letter back to the Hill. Today.

Around the same time, Matt Miller emailed:[591]

From:	Miller, Matthew A (SMO)
To:	Colborn, Paul P (SMO); Weich, Ron (SMO); Schmaler, Tracy (SMO); Burton, Faith (SMO); Reich, Steven (ODAG); Axelrod, Matthew (ODAG); Richardson, Margaret (SMO)
Sent:	7/6/2011 4:03:24 PM
Subject:	RE: Think we need to think carefully before sending anything out today -

We are losing time here everyone -- at this point of the day, every minute that goes by means we will have less impact on tomorrow's stories. I thought this thing had been all but cleared a while ago.

"[E]very minute that goes by means we will have less impact on tomorrow's stories."

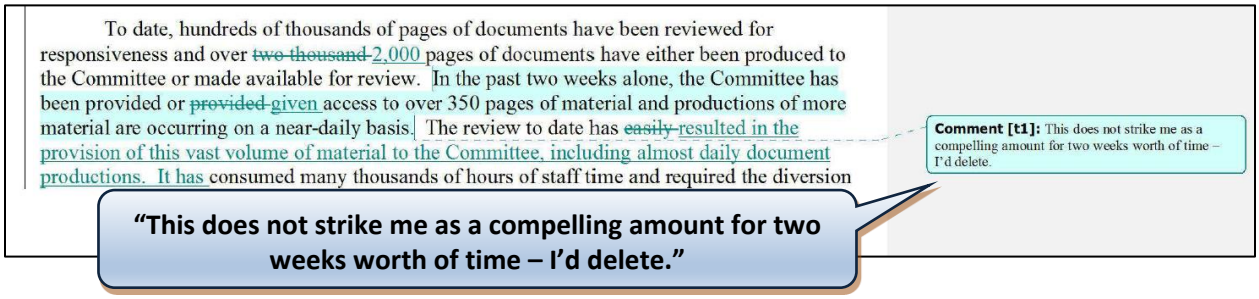
As officials in DOJ reviewed exactly what to write to Congress, Schmaler emailed:[592]

[589] Email from Faith Burton to Tracy Schmaler (July 6, 2011) [DOJ-FF-48038].
[590] Email from Tracy Schmaler to Faith Burton, et al. (July 6, 2011) [DOJ-FF-48285].
[591] Email from Matthew Miller to Paul Colborn, et al. (July 6, 2011) [DOJ-FF-48100].
[592] Email from Tracy Schmaler to Steven Reich, et al. (July 6, 2011) [DOJ-FF-48033–37].

From:	Schmaler, Tracy (SMO)
To:	Reich, Steven (ODAG); Goldberg, Stuart (ODAG); Grindler, Gary (OAG); Richardson, Margaret (SMO); Axelrod, Matthew (ODAG); Weich, Ron (SMO); Burton, Faith (SMO); Miller, Matthew A (SMO)
Sent:	7/6/2011 6:35:43 PM
Subject:	RE: Draft Issa and Grassley response letter: privileged and confidential
Attachments:	Issa 7-6-11.tas edits.doc

My edits tracked in the attached.

* * *



The final letter was sent to the Committees that day.[593]

Later that night, Schmaler emailed senior DOJ officials:[594]

From: Schmaler, Tracy (SMO)
Sent: Wednesday, July 06, 2011 08:29 PM
To: Reich, Steven (ODAG); Axelrod, Matthew (ODAG); Weich, Ron (SMO); Burton, Faith (SMO); Colborn, Paul P (SMO); Ramirez, Monica (CRT); Wilkinson, Monty (OAG); Richardson, Margaret (SMO); Miller, Matthew A (SMO)
Subject: WaPo tomw

…going to report that Melson indicated to the congressional investigators that the AG did not know about Fast and Furious; that it would have been unusual for other DOJ officials in DC to know the details and that the U.S. Attys office in Phoenix was overseeing it. apparently USAO in AZ learned this and gave a comment that they give case related legal advice to agencies, but don't direct them -- ATF and their tactical decisions are supervised by ATF. There's also reference to Melson having come forward on his own because he feels Dept's handling of the whole thing has been "problematic" and was harming ATF … as well as reference to other information given to Congress indicating that Melson was in fact briefed on Fast and Furious and asked questions about it.

"Melson . . . feels Dept's handling of the whole thing has been 'problematic'"

Miller forwarded the email to Holder, who in turn forwarded it to Breuer:[595]

[593] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (July 6, 2011).
[594] Email from Tracy Schmaler to Steven Reich, et al. (July 6, 2011) [DOJ-FF-48082].
[595] Email from Eric Holder to Lanny Breuer (July 6, 2011) [DOJ-FF-48082].

From: Breuer, Lanny A. (CRM)
To: Attorney General
Sent: 7/6/2011 10:23:08 PM
Subject: Re: WaPo tomw

Thanks

From: Attorney General
To: Breuer, Lanny A.
Sent: Wed Jul 06 20:55:39 2011
Subject: Fw: WaPo tomw

From: Miller, Matthew A (SMO)
Sent: Wednesday, July 06, 2011 08:54 PM
To: Attorney General Grindler, Gary (OAG)
Subject: Fw: WaPo tomw

Fyi.

On **Thursday, July 7, 2011,** FBI's Stephen Kelly emailed Weich regarding DOJ's July 6 letter:[596]

From: Kelly, Stephen (FBI)
To: Weich, Ron (SMO)
Sent: 7/7/2011 3:23:25 PM
Subject: Heads up...

... the Director may be calling you, as he wanted to thank you for the letter response you sent to Issa/Grassley, and for your work on the ATF matter. Just didn't want you to be surprised if he calls.

- SDK

Stephen D. Kelly
Assistant Director
Office of Congressional Affairs
Federal Bureau of Investigation

Later that night, Weich forwarded an email from Senator Grassley's staff to others at DOJ:[597]

[596] Email from Stephen Kelly to Ron Weich (July 7, 2011) [DOJ-FF-48371].
[597] Email from Ron Weich to Faith Burton, et al. (July 7, 2011) [DOJ-FF-46954–96].

From: Weich, Ron (SMO)
Sent: Thursday, July 07, 2011 11:10 PM
To: Burton, Faith (SMO); Axelrod, Matthew (ODAG); Reich, Steven (ODAG); Colborn, Paul P (SMO); Schmaler, Tracy (SMO); Ramirez, Monica (ODAG)
Cc: Gaston, Molly (SMO)
Subject: FW: voicemail

Ugh. Let's settle in the AM meeting how I should reply to this. Among other things, I would like to craft a reply that gets me out of a dialogue with Jason. The only reason Molly and I engaged with him last Friday is that Kolan passed him off to me for him to convey information to me, not vice versa.

"I would like to craft a reply that gets me out of a dialogue with [Senator Grassley's staff]."

From: Foster, Jason (Judiciary-Rep) [redacted]
Sent: Thursday, July 07, 2011 8:24 PM
To: Weich, Ron (SMO)
Cc: Davis, Kolan (Judiciary-Rep); Gaston, Molly (SMO)
Subject: RE: voicemail

Ron,

I haven't heard back yet on the question below from last Friday about who I should follow up with regarding who in the press shop may have had access to the *in camera* batch of documents. I believe Steve Castor has been seeking similar information from Matt Axelrod as well, but hasn't received a complete answer yet.

On **Friday, July 8, 2011,** Holder's Chief of Staff Gary Grindler emailed Cole's Chief of Staff Stuart Goldberg:[598]

From: Grindler, Gary (OAG)
Sent: Friday, July 08, 2011 1:04 PM
To: Goldberg, Stuart (ODAG)
Subject: ATF

Stuart: The Attorney General would like to get an short outline of our current plan for (1) completing the collection and review of emails and other documents relevant to the Fast and Furious inquiry; (2) producing documents to Congressman Issa's committee; and (3) conducting any interviews in order to be able to determine with confidence what took place with the Fast and Furious investigation so we can then decide how to communicate this information to Congress and, as appropriate, the public. The AG would like to know what sources of emails and documents we are pursuing (ATF; CRM; USAO; DEA; FBI; USMS, etc...) and the schedule for completing the review.

"[D]etermine with confidence what took place . . . so we can then decide how to communicate this information to Congress"

Grindler forwarded Goldberg's response to Holder, who responded:[599]

[INTENTIONALLY BLANK]

[598] Email from Gary Grindler to Stuart Goldberg (July 8, 2011) [DOJ-FF-48617].
[599] Email from Eric Holder to Gary Grindler (July 8, 2011) [DOJ-FF-48617].

From: Attorney General
To: Grindler, Gary (OAG)
Sent: 7/8/2011 2:22:36 PM
Subject: RE: ATF

Good; stay on them

From: Grindler, Gary (OAG)
Sent: Friday, July 08, 2011 1:28 PM
To: Attorney General
Subject: FW: ATF

FYI

From: Goldberg, Stuart (ODAG)
Sent: Friday, July 08, 2011 1:22 PM
To: Grindler, Gary (OAG)
Subject: RE: ATF

Gary - Reich is indeed leading this effort. He is in Arizona today, but I will sit down with him on Monday, and make sure something is put together addressing these questions.

Meanwhile, Weinstein emailed Reich about the October 17, 2010 email (located in this report's Prologue) in which he had discussed Operation Wide Receiver and Operation Fast and Furious and written, "It's a tricky case, given the number of guns that have walked":[600]

From: Weinstein, Jason
Sent: Friday, July 08, 2011 11:38 AM
To: Reich, Steven (ODAG) (JMD)
Subject: found that email

It's a problem of unclear pronoun reference – in the first sentence, I ask whether Lanny should participate in press when "Fast and Furious and Laura's Tucson case" are unsealed, because we had a litigating role in the latter case. Then when I say in the second sentence that "It's a tricky case, given the number of guns that have walked," the "it" is a reference to "Laura's Tucson case" -- that was Wide Receiver, the several-year-old USAO investigation that we were asked to adopt only after the investigation was long over. I then compound the grammatical confusion when I go on to say that "it" is "a significant set of prosecutions," referring to both cases together.

Hope that helps clear it up. Somewhere my HS English teacher is cringing.

It is unclear from Weinstein's email to Reich what caused Weinstein to search for the October 17, 2010 email at this particular time. However, Weinstein also forwarded the email to Amy Pope.[601]

[600] Email from Jason Weinstein to Steven Reich (July 8, 2011) [DOJ-FF-48634]. The email subsequently became a subject of dispute. On October 3, 2011, Weinstein was contacted by *The Wall Street Journal* to comment on his earlier email. Email from Evan Perez to Jason Weinstein (Oct. 3, 2011) [DOJ-FF-61098–99].
[601] Email from Jason Weinstein to Amy Pope (July 8, 2011) [DOJ-FF-48634].

On **Tuesday, July 12, 2011,** Weich emailed Reich regarding Melson's testimony regarding DOJ:[602]

From: Weich, Ron (SMO)
To: Reich, Steven (ODAG)
Sent: 7/12/2011 11:58:05 AM
Subject: couple further thoughts --

1. It is documented in emails (and reflected in the voicemail I forwarded to you) that as Faith and Jason Weinstein worked on the initial response to Grassley, ATF was pressing for stronger denials of the allegation that guns were walked to Mexico.

2. It is documented in emails that in the early weeks following Issa's document requests, Faith was pressing ATF to gather responsive documents and ATF did not do so. Ultimately ODAG needed to send a team of AUSAs to gather the ATF documents because ATF did not or could not do so.

So it's hard to understand how Melson can credibly blame Faith for a lack of responsiveness.

As far as I'm concerned, this is something we can discuss at the 3PM with Faith, but if you don't want to do so let me know.

Late on the night of **Tuesday, July 19, 2011,** Holder emailed DOJ officials to find out whether Senator Leahy would provide DOJ with copies of the transcript from Acting Director Melson's interview with staff from the Senate Judiciary Committee and House Oversight and Government Reform Committee.[603]

----- Original Message -----
From: Attorney General
Sent: Wednesday, July 20, 2011 12:01 AM
To: Weich, Ron (SMO); Cole, James (ODAG); Grindler, Gary (OAG); Goldberg, Stuart (ODAG)
Subject: Transcript?

We ever hear from Leahy on the transcript?

Emails indicate that congressional Democrats had refused DOJ's requests for behind-the-scenes assistance. When Reich responded, Holder followed up:[604]

[INTENTIONALLY BLANK]

[602] Email from Ron Weich to Steven Reich (July 12, 2011) [DOJ-FF-49267].
[603] Email from Eric Holder to Ron Weich, et al. (July 20, 2011) [DOJ-FF-04351].
[604] Email from Eric Holder to Ron Weich, et al. (July 20, 2011) [DOJ-FF-04351].

From: Attorney General
To: Weich, Ron (SMO); Cole, James (ODAG); Grindler, Gary (OAG); Goldberg, Stuart (ODAG); Miller, Matthew A (SMO); Schmaler, Tracy (SMO); Perrelli, Thomas J. (OAAG)
Sent: 7/20/2011 12:06:56 AM
Subject: Re: Transcript?

Ok. After the 9:15. Let's get the letter from me to issa, grassley and the dems ready.

One paragraph- you want an answer to your letter send me the transcript

"One paragraph- you want an answer to your letter send me the transcript"

----- Original Message -----
From: Weich, Ron (SMO)
Sent: Wednesday, July 20, 2011 12:04 AM
To: Attorney General; Cole, James (ODAG); Grindler, Gary (OAG); Goldberg, Stuart (ODAG)
Subject: Re: Transcript?

I heard from Bruce. They feel they cannot provide it, although they can be helpful in other ways. Let's discuss in person tomorrow.

2. *Full Spin Mode*

FINDING: **In late July 2011, the Attorney General began receiving daily briefings about Fast and Furious, and Justice Department officials worked actively behind the scenes to influence Congress's investigation. For example, Assistant Attorney General for Legislative Affairs Ron Weich attempted to "script" the House Oversight Committee's Democrat staff and urged FBI legislative affairs official Stephen Kelly to provide less information to Senator Grassley's staff but to continue to talk to them "to gather intelligence."**

On **Wednesday, July 20, 2011,** Grindler emailed Steve Reich and Tracy Schmaler:[605]

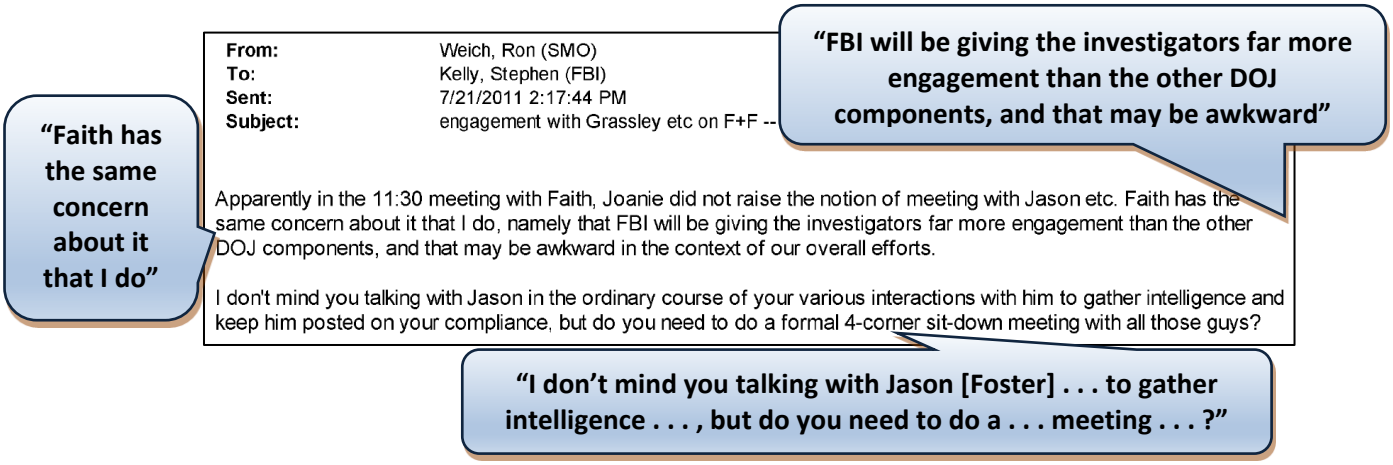
From: Grindler, Gary (OAG)
To: Reich, Steven (ODAG); Schmaler, Tracy (SMO)
Sent: 7/20/2011 7:22:15 AM
Subject: 9:15

"The AG wants both of you to stick around . . . each day to discuss the status of the ATF matter."

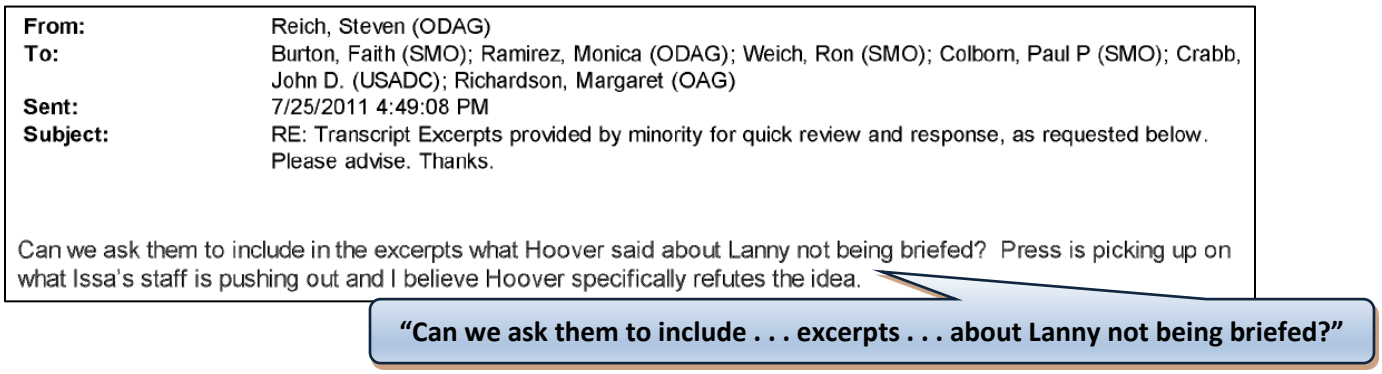
The AG wants both of you to stick around after the 9:15 each day to discuss the status of the ATF matter. Thanks. Gary

That afternoon, Weich emailed with FBI legislative affairs official Stephen Kelly:[606]

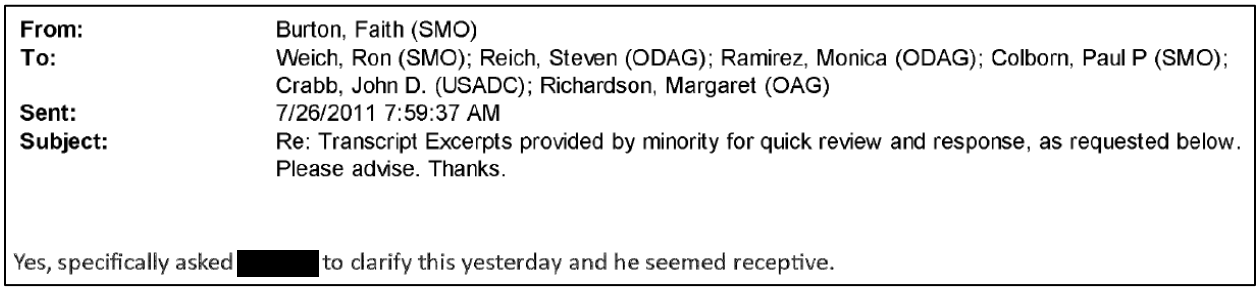
[605] Email from Gary Grindler to Steven Reich and Tracy Schmaler (July 20, 2011) [DOJ-FF-51254].
[606] Email from Ron Weich to Stephen Kelly (July 21, 2011) [DOJ-FF-51656].



On **Monday, July 25, 2011,** the day before a House Oversight and Government Reform Committee hearing on Operation Fast and Furious, Chairman Issa and Ranking Member Cummings' staff provided DOJ with transcript excerpts that they intended to use during the hearing, in order to ensure that the Committee was not releasing any information detrimental to the ongoing criminal investigation. Reich emailed regarding Breuer:[607]



The next morning, Burton responded:[608]



In the meantime, Weich emailed:[609]

[607] Email from Steven Reich to Faith Burton, et al. (July 25, 2011) [DOJ-FF-53024].
[608] Email from Faith Burton to Ron Weich, et al. (July 26, 2011) [DOJ-FF-53025–26].
[609] Email from Ron Weich to Jason Weinstein (July 25, 2011) [DOJ-FF-53039].

-----Original Message-----
From: Weich, Ron (SMO) [mailto:Ron.Weich@usdoj.gov]
Sent: Monday, July 25, 2011 8:12 PM
To: Weinstein, Jason
Cc: Pope, Amy
Subject: Just picked up your VM --

I'll send an email Unrelated with some thoughts. Bottom line: we're trying, but not easy to script minority in this situation.

"[W]e're trying, but not easy to script minority in this situation."

He further explained:[610]

From: Weich, Ron (SMO)
To: Weinstein, Jason (CRM)
CC: Pope, Amy (CRM)
Sent: 7/25/2011 10:18:01 PM
Subject: RE: Just picked up your VM --

I have conveyed the points we discussed, including that Lanny's trip to Mexico was not about individual cases, CRM's limited role in approving wiretap applications and the fact that Issa received a briefing that would have contained more info about specific cases than anything Lanny received. But as I said below, the minority staffers are not letting us script them or feed them talking points. They are guarded in their interactions with us. While they know that Issa is over the top and a bully, they also believe that ATF made significant mistakes and they don't easily distinguish between ATF and Main DOJ like we do. They will challenge specific tactics by the majority and will poke holes in unreasonable or premature conclusions, but they don't see the whole effort as a "witch hunt." So we're trying to make common cause with the minority, but they don't see themselves as partners in our effort to tell our story.

"[T]hey don't see the whole effort as a 'witch hunt.'"

Later Weich circulated specific text he intended to send to Democrat staff on the Oversight Committee:[611]

From: Weich, Ron (SMO)
To: Burton, Faith (SMO)
Sent: 7/25/2011 10:50:32 PM
Subject: also, are you OK if I send [redacted] the followng …

"Jason W[einstein] . . . anxious to have these additional points conveyed"

(Jason W and Amy P are anxious to have these additional points conveyed before the hearing, and Reich agrees we should)

[redacted], thanks for talking earlier with me and Faith. Just one aspect we wanted to follow up on: it seems likely that Issa will try to tie F+F to Main Justice by suggesting that the Criminal Division was aware of what was going on in ATF's Phoenix office. But in fact, neither AAG Lanny Breuer nor his top aides in the Criminal Division would have learned about the operational details of an investigation the Criminal Division was not leading. Lanny's trip to Mexico was not about specific cases and he would not have discussed cases with his Mexican counterparts. The fact is, Chairman Issa probably learned more about F+F in the briefing he received than Lanny would have received in the course of his duties.

[610] Email from Ron Weich to Jason Weinstein (July 25, 2011) [DOJ-FF-53039].
[611] Email from Ron Weich to Faith Burton (July 25, 2011) [DOJ-FF-53883].

FINDING:	When a joint congressional staff report on Operation Fast and Furious highlighted the involvement of the Justice Department's Criminal Division and the U.S. Attorney's Office for the District of Arizona, the Department immediately launched an aggressive effort to counteract the report.

On the morning of **Tuesday, July 26, 2011,** the House Oversight and Government Reform Committee held a hearing focused on the impact of Operation Fast and Furious on Mexico.[612] Additionally, the Oversight Committee's majority staff released a joint staff report with Senator Grassley's staff on the Senate Judiciary Committee.[613] The report noted the U.S. Attorney's Office for the District of Arizona was "inextricably involved in supervising Operation Fast and Furious . . . ."[614] The report also contained a small section of testimony from ATF officials indicating that Breuer had been briefed on Fast and Furious in Mexico, and noted: "Further, the Department of Justice's Office of Enforcement Operations (OEO) approved numerous of the wiretap applications in this case. These applications were signed on behalf of Assistant Attorney General Breuer in the spring of 2010."[615]

(House Oversight and Government Reform Committee photo)

[612] *Operation Fast and Furious: The Other Side of the Border: Hearing before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (July 26, 2011) (No. 112-100), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg72802/pdf/CHRG-112hhrg72802.pdf.
[613] H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary, The Department of Justice's Operation Fast and Furious: Fueling Cartel Violence, Joint Staff Report, 112th Cong. (July 26, 2011), *available at* https://oversight.house.gov/wp-content/uploads/2012/02/FINAL_FINAL.pdf.
[614] *Id.* at 40.
[615] *Id.* at 39-40.

Chairman Issa raised the wiretaps in the hearing, asking: "Did Lanny Breuer – was he briefed by January 8, 2010? . . . [H]is office approved the wiretaps under his authority. . . . [S]omebody had to be briefed who signed it on his behalf, on his authority."[616] The ATF Phoenix and headquarters officials testifying professed ignorance as to the matter.

Meanwhile, Schmaler emailed Department officials that morning:[617]

From: Schmaler, Tracy (SMO) [mailto:Tracy.Schmaler@usdoj.gov]
Sent: Tuesday, July 26, 2011 10:16 AM
To: Pope, Amy; Weinstein, Jason; Weich, Ron (SMO) (JMD); Reich, Steven (ODAG) (JMD)
Subject: RE: clips

I'm working on a general statement re: DOJ officials. As constructed can push back on that quote, but going to assume he's been briefed on Sinaloa cartel and investigative efforts there … will be a he said, he said with the agents. What about the doj official? Is that cooley? Would be helpful to put in context.

In response to a different email including *The Washington Post*'s coverage of the report,[618] Attorney General Holder wrote:[619]

"Hit back HARD"

From: Attorney General
To: Schmaler, Tracy (SMO); Grindler, Gary (OAG); Perrelli, Thomas J. (OAAG); Cole, James (ODAG); Goldberg, Stuart (ODAG); Miller, Matthew A (SMO)
Sent: 7/26/2011 10:17:53 AM
Subject: Re: WaPo - U.S. anti-gunrunning effort turns fatally wrong

Hit back HARD

Grindler subsequently set up a meeting for the next day:[620]

[INTENTIONALLY BLANK]

[616] *Id.* at 188.
[617] Email from Tracy Schmaler to Amy Pope, et al. (July 26, 2011) [DOJ-FF-54247–63].
[618] Sari Horwitz, *Operation Fast and Furious: A gunrunning sting gone wrong*, July 26, 2011, *available at* https://www.washingtonpost.com/investigations/us-anti-gunrunning-effort-turns-fatally-wrong/2011/07/14/gIQAH5d6YI_story.html.
[619] Email from Eric Holder to Tracy Schmaler, et al. (July 26, 2011) [DOJ-FF-01354–01360].
[620] Email from Gary Grindler to Linda Long (July 26, 2011) [DOJ-FF-52671].

From: Grindler, Gary (OAG)
To: Long, Linda E (OAG)
Sent: 7/26/2011 11:09:05 AM
Subject: RE:

Sensitive matter

From: Long, Linda E (OAG)
Sent: Tuesday, July 26, 2011 11:09 AM
To: Grindler, Gary (OAG)
Subject: RE:

OK to use ATF on the subject line?

From: Grindler, Gary (OAG)
Sent: Tuesday, July 26, 2011 10:49 AM
To: Long, Linda E (OAG)
Subject:

Please schedule a conference and a call among the AG, the DAG, Dave O'Neil, Stuart Delery, Steven Reich and me tomorrow morning at 9:45 A.M. The DAG will be reached by phone. We may add others, but not yet. Possibly Tracy Schmaler and possibly Matt Axelrod.

As DOJ officials worked to draft a press statement, Weinstein responded in part:[621]

From: Weinstein, Jason (CRM)
To: Schmaler, Tracy (SMO); Pope, Amy (CRM); Weich, Ron (SMO); Reich, Steven (ODAG)
Sent: 7/26/2011 10:27:55 AM
Subject: RE: clips

Some suggestions:

AAG Breuer did not know about any of the operational details of, or the tactics employed in, the case known as Operation Fast and Furious, and there is not one shred of evidence to the contrary.

Acting Director Melson and Deputy Director Hoover have both testified that senior DOJ officials at Main Justice did not know the operational details of the case, because they themselves did not know. Deputy Director Hoover specifically testified that AAG Breuer was never briefed about the details of the case.

The AAG of the Criminal Division does not supervise the ATF or the U.S. Attorney's Offices. And the notion that the AAG of the Criminal Division knew more than the ATF Acting Director, the ATF Deputy Director, the ATF Deputy Assistant Direction for Field Operations, and the ATF Attache to Mexico about an ATF operation is ludicrous.

Schmaler circulated to a different group of officials a draft press statement:[622]

[621] Email from Jason Weinstein to Tracy Schmaler, et al. (July 26, 2011) [DOJ-FF-54247–63].
[622] Email from Tracy Schmaler to Steven Reich, et al. (July 26, 2011) [DOJ-FF-53852].

From: Schmaler, Tracy (SMO)
Sent: Tuesday, July 26, 2011 11:42 AM
To: Reich, Steven (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Ramirez, Monica (ODAG); Burton, Faith (SMO); Richardson, Margaret (OAG)
Subject: Please Review - Comment on ATF hearing

Folks, pls send edits, want to get this out soon.

"It's unfortunate that Chairman Issa continues to promote a wild-eyed conspiracy that simply doesn't exist by selectively releasing small excerpts of transcripts while hiding testimony and other facts his own Committee has gathered. Instead of providing the public with full transcripts of interviews, Chairman Issa has refused to be transparent, lifted partial statements and flatly ignored testimony that refutes his unsubstantiated allegations that senior Department officials approved or even had knowledge of certain tactics being employed in a regional gun trafficking operation in Phoenix. The Department, like the Committee, is interested in getting to the bottom of the serious concerns raised by ATF agents about this operation, which is why the Attorney General has asked the Inspector General to investigate the matter. If Chairman Issa is really interested in an honest, open investigation, we are happy to work with him, but his latest distortions make this entire exercise look more like political grandstanding than legitimate oversight."

DOJ officials provided feedback. Burton emailed regarding the comment on "providing the public with full transcripts of interviews":[623]

From: Burton, Faith (SMO)
To: Schmaler, Tracy (SMO); Reich, Steven (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Ramirez, Monica (ODAG); Richardson, Margaret (OAG)
Sent: 7/26/2011 12:06:45 PM
Subject: Re: Please Review - Comment on ATF hearing

"Hard to know if we'd be OK with public disclosure of the transcripts"

Hard to know if we'd be OK with public disclosure of the transcripts since they may contain info that wld be problematic in terms of T3 and pending investigation. Think our letter asked that he provide us with the whole Melson tr and think we shld ask for others but not public disclosure until we can review them and evaluate. Thanks.

Weich added: [624]

"[T]he hearing . . . has largely been about ATF rather than Main DOJ."

From: Weich, Ron (SMO)
Sent: Tuesday, July 26, 2011 12:18 PM
To: Reich, Steven (ODAG); Schmaler, Tracy (SMO); Colborn, Paul P (SMO); Ramirez, Monica (ODAG); Burton, Faith (SMO); Richardson, Margaret (OAG)
Subject: RE: Please Review - Comment on ATF hearing

As I just told Tracy, I think we should make clear that this statement responds to the committee report rather than to the hearing, which has largely been about ATF rather than Main DOJ. Here's an effort to make that clear, and also to adjust the tone:

"The Majority report perpetuates the unsubstantiated assertion that senior Justice Department officials approved this law enforcement operation. Instead of providing full transcripts of interviews, the report includes small excepts of interviews and ignores testimony showing that senior officials were unaware of tactics being employed in a single gun trafficking operation in Phoenix. The Department, like the Committee, is interested in getting to the bottom of the serious concerns raised by ATF agents, which is why the Attorney General has asked the Department's Inspector General to investigate the matter."

[623] Email from Faith Burton to Tracy Schmaler, et al. (July 26, 2011) [DOJ-FF-53852].
[624] Email from Ron Weich to Steven Reich, et al. (July 26, 2011) [DOJ-FF-53862].

Even Office of Legal Counsel official Paul Colborn pushed back on Schmaler's statement, emailing:[625]

From: Colborn, Paul P (SMO)
Sent: Tuesday, July 26, 2011 12:46 PM
To: Schmaler, Tracy (SMO); Reich, Steven (ODAG); Weich, Ron (SMO); Ramirez, Monica (ODAG); Burton, Faith (SMO); Richardson, Margaret (OAG)
Subject: RE: Please Review - Comment on ATF hearing

Tracy, at pages in the report does the committee "accus[e] us of being complicit in an illegal gun-running operation"? I don't yet understand the predicate for issuing such a strongly-written statement.

"[T]hey are accusing us of being complicit in an illegal gun-running operation"

From: Schmaler, Tracy (SMO)
Sent: Tuesday, July 26, 2011 12:37 PM
To: Colborn, Paul P (SMO); Reich, Steven (ODAG); Weich, Ron (SMO); Ramirez, Monica (ODAG); Burton, Faith
Richardson, Margaret (OAG)
Subject: RE: Please Review - Comment on ATF hearing

C'mon, I took out "wild-eyed" … that toned it down. to recap, they are accusing us of being complicit in an illegal gun-running operation despite evidence that they have refuting such a notion. I think this tone is sharp but not disrespectful given what they're doing.

The ultimate final statement was circulated by Schmaler:

From: Schmaler, Tracy (SMO) [mailto:Tracy.Schmaler@usdoj.gov]
Sent: Tuesday, July 26, 2011 2:49 PM
To: Weinstein, Jason; Pope, Amy; Weich, Ron (SMO) (JMD); Reich, Steven (ODAG) (JMD)
Subject: RE: clips

Here is statement giving to reporters asking about DOJ officials knowledge and approval of this –

"The Committee's report promotes unsubstantiated theories by selectively releasing excerpts of transcripts while ignoring testimony and other information. For whatever reason, the leadership of the Committee chose not to release witness testimony that makes clear that operational details relating to this investigation were unknown to senior Department of Justice officials.

"The Department, like the Committee, is interested in getting to the bottom of the concerns raised by ATF agents about this operation, which is why the Attorney General has asked the Inspector General to investigate the matter. The Department continues to cooperate with the investigation, but the Committee must be willing to share all of the facts."

Weinstein replied: "I think we should be stronger,"[626] but when informed by Schmaler the statement had already gone out, responded:[627]

[625] Email from Paul Colborn to Tracy Schmaler, et al. (July 26, 2011) [DOJ-FF-53838–40].
[626] Email from Jason Weinstein to Tracy Schmaler, et al. (Jul. 26, 2011) [DOJ-FF-53988–4005].
[627] Email from Jason Weinstein to Tracy Schmaler, et al. (Jul. 26, 2011) [DOJ-FF-53988–4005].

From: Weinstein, Jason
Sent: Tuesday, July 26, 2011 3:37 PM
To: Schmaler, Tracy (SMO) (JMD); Pope, Amy; Weich, Ron (SMO) (JMD); Reich, Steven (ODAG) (JMD)
Subject: RE: clips

You actually didn't suggest it was open to edits – but I was hoping it still was, since based on our conf call, I thought we agreed that we would all have an opportunity to discuss before it went out. Unfortunately that wasn't the case.

That afternoon, Schmaler reported on the press coverage, linking to a *Wall Street Journal* article:[628]

From: Schmaler, Tracy (SMO)
Sent: Tuesday, July 26, 2011 04:47 PM
To: Attorney General; Grindler, Gary (OAG); Richardson, Margaret (OAG)
Subject: WSJ - ATF Chief Says He Didn't Approve Tactics

Most of the stories from hearing today focused on the accusations within ATF about the operation and who knew what at ATF, when they knew it, and what was shared with Mexican counterparts. We were able to get more traction pushing back on the accusations about senior level approval/knowledge. Good WSJ piece below.

"We were able to get more traction pushing back on the accusations about senior level approval/knowledge."

Holder responded:[629]

From: Attorney General
Sent: Tuesday, July 26, 2011 6:29 PM
To: Schmaler, Tracy (SMO); Grindler, Gary (OAG); Richardson, Margaret (OAG)
Subject: Re: WSJ - ATF Chief Says He Didn't Approve Tactics

Where do they go next. They can't get what they want- people saying it went higher up

So now- highers up should have known

Schmaler emailed back:[630]

From: Schmaler, Tracy (SMO)
To: Attorney General; Grindler, Gary (OAG); Richardson, Margaret (OAG)
Sent: 7/26/2011 7:24:32 PM
Subject: RE: WSJ - ATF Chief Says He Didn't Approve Tactics

Yes – there's some of that now but it doesn't get them much to say we should have known considering they started w. the accusations that we did know.

On the message, they continue the shift away from details of operation to the DOJ muzzling/covering up narrative but that loses credibility now that the underlying conspiracy theory is falling short of the expectations they set. They'll probably keep trying though given the witnesses they have yet to trot out at a hearing – including ATF Leadership - Melson and Hoover. Wouldn't surprise me if they also move to USAO and/or Lanny.

"Wouldn't surprise me if they also move to USAO and/or Lanny."

"[T]hey continue the shift away from details of operation to the DOJ muzzling/ covering up narrative"

[628] Email from Tracy Schmaler to Eric Holder, et al. (July 26, 2011) [DOJ-FF-55063–65]; *see also* Evan Perez, *ATF Chief Says He Didn't Approve Tactics*, WALL ST. J., July 26, 2011, *available at* http://www.wsj.com/articles/SB10001424053111903999904576470412200383534.
[629] Email from Eric Holder to Tracy Schmaler (July 26, 2011) [DOJ-FF-55063–65].
[630] Email from Tracy Schmaler to Eric Holder, et al. (July 26, 2011) [DOJ-FF-55063–65].

FINDING:	Assistant Attorney General Weich continued to obstruct the flow of information to the Committees, chiding FBI legislative affairs official Stephen Kelly for even meeting with congressional staff before "we have our shared facts straight."

On **Friday, July 29, 2011,** Weich emailed Stephen Kelly about a meeting Kelly had with congressional staff:[631]

"[W]e've asked all the components to wait until we have our shared facts straight before going to the Hill"

-----Original Message-----
From: Weich, Ron (SMO) [mailto:Ron.Weich@usdoj.gov]
Sent: Friday, July 29, 2011 4:45 PM
To: Kelly, Stephen
Subject: Your meeting with staffers re F+F oversight --

I'm dismayed that you did it, for all the reasons I said on the phone a few days ago. As I said then, we've asked all the components to wait until we have our shared facts straight before going to the Hill on this. I told you ODAG was leading that effort and I told you I would encourage them to move quickly, which I did.

But I'm more disturbed to hear that you have said to others that I said it was "fine" for you to have such a meeting. Nothing could be further from the truth. I specifically asked that you NOT have such a meeting. You said you wanted to gather info and I said have a phone call with Jason rather than a 4 corner meeting. Do you remember our conversation differently?

Kelly responded:[632]

"[N]ot to provide any substantive information or to provide any substantive briefing, which we didn't do."

From: Kelly, Stephen (FBI)
To: Weich, Ron (SMO)
Sent: 7/29/2011 5:06:55 PM
Subject: RE: Your meeting with staffers re F+F oversight --

I remember saying at a meeting two weeks ago with staff (where ODAG was present) and in my call with you last week that we wanted to meet with staff to narrow the scope of what they were asking for before we sent them a letter, not to provide any substantive information or to provide any substantive briefing, which we didn't do. At the meeting two weeks ago, ODAG specifically said that was a good strategy, and in my discussion with you, I apologize but I did not hear that we should not go meet with staff to put off responding to the letter, rather I heard you saying we should not discuss any facts or make any commitments, which we didn't do. We did not bring any substantive people and made clear we were not providing facts. If the Committee has come to you and suggested otherwise, I'm happy to correct things with them. I apologize, but I did not hear you say to me not to go to staff to narrow the scope of their requests, and I thought you were asking me appropriately to limit the scope of our discussions to that, which I thought we did.

Please call and we'll sort this out.

[631] Email from Ron Weich to Stephen Kelly (July 29, 2011) [DOJ-FF-55437].
[632] Email from Stephen Kelly to Ron Weich (July 29, 2011) [DOJ-FF-55437].

Weich forwarded the exchange to Richardson, O'Neil, and Reich, then added:[633]

```
----- Original Message -----
From: Weich, Ron (SMO)
Sent: Friday, July 29, 2011 06:30 PM
To: Richardson, Margaret (OAG); O'Neil, David (ODAG); Reich, Steven (ODAG)
Subject: Re: Your meeting with staffers re F+F oversight --

Please don't forward this email exchange further. I need to talk to him, but I'm not trying to
burn him within his agency. He and I generally work well together -- this is unusual.

----- Original Message -----
From: Weich, Ron (SMO)
Sent: Friday, July 29, 2011 06:01 PM
To: Richardson, Margaret (OAG); O'Neil, David (ODAG); Reich, Steven (ODAG)
Subject: Fw: Your meeting with staffers re F+F oversight --

FYI.
```

"I'm not trying to burn him within his agency."

Ultimately, Weich and Kelly concluded the conversation:[634]

From: Kelly, Stephen (FBI)
To: Weich, Ron (SMO)
Sent: 7/29/2011 6:48:58 PM
Subject: Re: Your meeting with staffers re F+F oversight --

```
Understood. I think that's a garble through others here, which is my fault if it got across
the street that way. I understand there was a full meeting today with all parties and it seems
like all is on course, but let's definitely talk on Monday.


----- Original Message -----
From: Weich, Ron (SMO) <Ron.Weich@usdoj.gov>
To: Kelly, Stephen
Sent: Fri Jul 29 18:29:57 2011
Subject: Re: Your meeting with staffers re F+F oversight --

Just left you VM on your office #. We can talk on Mon to sort it out. The thing that bugged me
was having ODAG hear from FBI that I said a meeting was "fine" which is not true. You know I
discouraged a meeting when we spoke.
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"You know I discouraged a meeting when we spoke."

On **Tuesday, August 2, 2011,** Weich emailed Reich and Burton:[635]

From: Weich, Ron (SMO)
Sent: Tuesday, August 02, 2011 2:13 PM
To: Reich, Steven (ODAG); Burton, Faith (SMO)
Subject: FW: F&F Meeting

Steve / Faith – in the course of my conversation with Stephen Kelly yesterday about the FBI's premature outreach to the Hill, he suggested the meeting described below. I know there is a larger process underway for gathering facts from each of the law enforcement components, but this smaller "sidebar" conversation with Stephen alone may well be useful to us. Let me know.

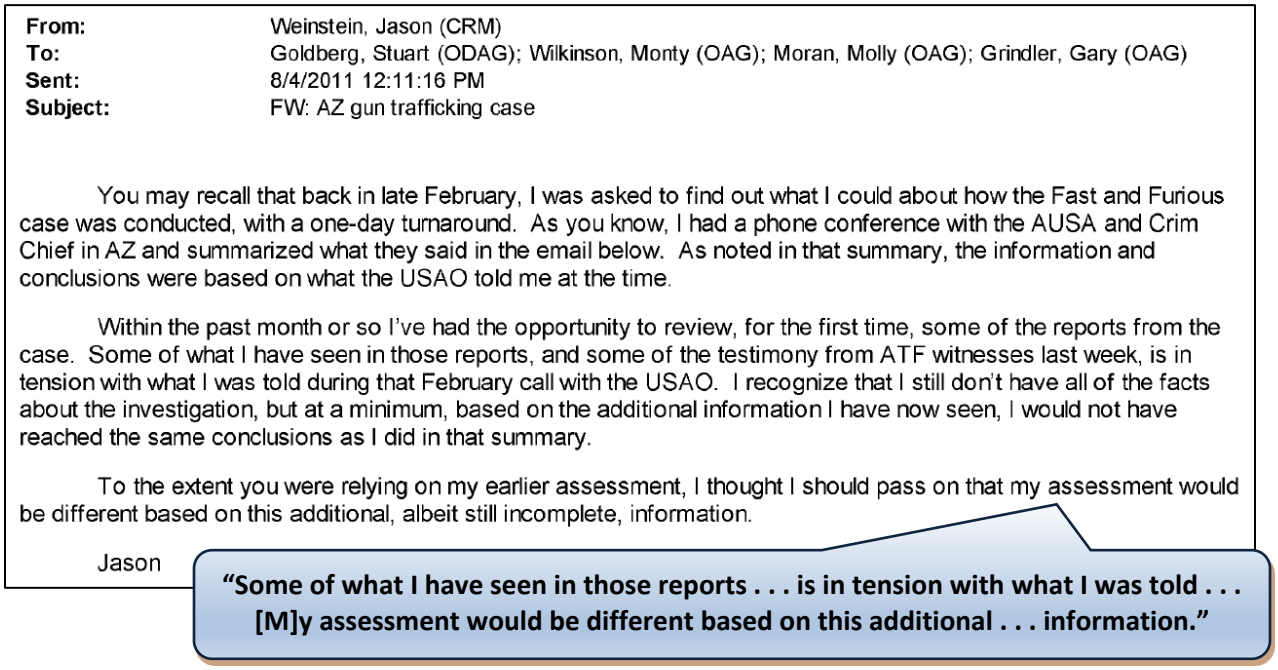
[633] Email from Ron Weich to Margaret Richardson, et al. (July 29, 2011) [DOJ-FF-55447–48].
[634] Email from Ron Weich to Stephen Kelly (July 29, 2011) [DOJ-FF-55437]; email from Stephen Kelly to Ron Weich (July 29, 2011) [DOJ-FF-55437].
[635] Email from Ron Weich to Steven Reich and Faith Burton (Aug. 2, 2011) [DOJ-FF-55919–20].

Burton replied:[636]

3. Failure to Correct Record

FINDING:	**Even after Assistant Deputy Attorney General Jason Weinstein notified the Attorney General's staff that his initial assessment of Operation Fast and Furious was incorrect, DOJ failed for four more months to correct its misrepresentation to Congress. Instead, Associate Deputy Attorney General Matt Axelrod urged ATF's congressional liaison to provide only "high level" statements, such as that the congressional investigation "has been a distraction."**

On **Thursday, August 4, 2011,** nearly six months after Assistant Deputy Attorney General Weinstein reported that Fast and Furious was conducted "thoughtfully, carefully, and strategically," Weinstein emailed officials within the Office of the Attorney General to notify them that his initial conclusions conflicted with information he had since learned:[637]



[636] Email from Faith Burton to Steven Reich and Ron Weich (Aug. 2, 2011) [DOJ-FF-55919–20].
[637] Email from Jason Weinstein to Stuart Goldberg, et al. (Aug. 4, 2011) [DOJ-FF-56090–93].

On **Friday, August 12, 2011,** Ann Scheel sent Faith Burton the Terry family's motion to intervene in the prosecution of the straw purchasers involved in Operation Fast and Furious.[638] Burton replied:[639]

From: Burton, Faith (SMO) (JMD)
Sent: Friday, August 12, 2011 10:19 AM
To: Scheel, Ann (USAAZ)
Subject: RE: Terry Family Victim status and proposed interview of Dennis on 8/18

Thanks, Ann, and yes, please send your response as well. Think it's important for folks to understand that we are not opposing the family's motion in this case.

In response, Scheel emailed:[640]

From: Scheel, Ann (USAAZ)
Sent: Friday, August 12, 2011 2:23 PM
To: Burton, Faith (SMO)
Subject: RE: Terry Family Victim status and proposed interview of Dennis on 8/18

Faith-

I am trying to track down the response that was actually filed. I want to be clear however, that we did oppose the motion to intervene as being contrary to the CVRA and case law and that such a motion was unnecessary because the USAO had been in contact with the victim's family and had provided them with all information they are entitled to regarding the case.

With regard to the **ATF** *case in Phoenix…we did oppose that motion as well because the Terry family is not a victim as defined by the CVRA. I can track that motion and response down as well. The CVRA, in any event, does not allow a victim to intervene in a case the way they have requested.*

"[W]e did oppose the motion"

"[T]he USAO . . . had provided them with all information they are entitled to"

"[T]he Terry family is not a victim as defined by the CVRA."

Burton followed up:[641]

From: Burton, Faith (SMO) (JMD)
To: Scheel, Ann (USAAZ)
Sent: 8/12/2011 2:34:56 PM
Subject: RE: Terry Family Victim status and proposed interview of Dennis on 8/18

Thanks – want to make sure that I understand : under the CVRA, victim families are entitled to certain information and to have certain input, which you all are providing to them in the Osorio case, right? If so, is there a written record that you have agreed to their CVRA vic status in that case? I assume that the CVRA does not provide to intervention by victims, but instead affords them certain rights that protected without the need for such intervention and that you all have agreed that they are entitled to those CVRA rights in the Osorio case. Thanks for educating me about this.

"[V]ictim families are entitled to certain information . . . which you all are providing . . . right?"

On **Tuesday, August 16, 2011,** Burton emailed Burke about preparing for his transcribed interview with the Committees:[642]

[638] Email from Ann Scheel to Faith Burton (Aug. 12, 2011) [DOJ-FF-56690–91].
[639] Email from Faith Burton to Ann Scheel (Aug. 12, 2011) [DOJ-FF-56690–91].
[640] Email from Ann Scheel to Faith Burton (Aug. 12, 2011) [DOJ-FF-56690–91].
[641] Email from Faith Burton to Ann Scheel (Aug. 12, 2011) [DOJ-FF-56690–91].

From:	Burton, Faith (SMO)
To:	Burke, Dennis (USAAZ)
CC:	Scheel, Ann (USAAZ); Admin. Assistant (JMD); Weich, Ron (SMO); Reich, Steven (ODAG); Gaston, Molly (SMO); Crabb, John D. (USADC)
Sent:	8/16/2011 5:16:02 PM
Subject:	Are you here? Hope the trip went smoothly. We'd like to connect with you tonight if possible.

"We've . . . prepared an outline of questions/topics that you might want to review"

Dennis, we've prepared some materials for your review this evening if you have some time. We've collected a very small group of docs and prepared an outline of questions/topics that you might want to review before we meet tomorrow morning. It would probably be most convenient if we just delivered them to you wherever you're staying. Please let us know how best to deliver the package to you. We plan to meet at 10 am tomorrow in the OLA Conference Room, 1137 Main. Looking forward to seeing you. Thanks. Faith

On **Wednesday, August 17, 2011,** Axelrod emailed ATF Assistant Deputy Director of the Office of Public and Governmental Affairs Chris Shaefer voicing his concern that agency talking points about Fast and Furious should not include details or conclusions because of new information that the Department was continuing to uncover:[643]

"This version wades further . . . into details and conclusions about Fast and Furious, which strikes us as unwise given the evolving nature of what we're all still learning"

Thanks for sending this over. This version wades further than the last version into details and conclusions about Fast and Furious, which strikes us as unwise given the evolving nature of what we're all still learning about the underlying facts and the risk that what you say will be twisted and taken out of context by agency critics. Our recommendation is that any communication of this sort be kept high level -- this has been a distraction, ATF is cooperating with the investigation, and ATF is doing lots of great work in other areas. The last version that was sent over was much closer to this type of high level message than this version is.

"Our recommendation is that any communication of this sort be kept high level -- [e.g.] this has been a distraction"

Matt

Matthew S. Axelrod
Associate Deputy Attorney General
Office of the Deputy Attorney General
U.S. Department of Justice

On **Tuesday, August 23, 2011,** Weich emailed:[644]

[INTENTIONALLY BLANK]

[642] Email from Faith Burton to Dennis Burke (Aug. 16, 2011) [DOJ-FF-56995].
[643] Email from Matt Axelrod to Chris Shaefer (Aug. 17, 2011) [DOJ-FF-00002].
[644] Email from Ron Weich to Faith Burton, et al. (Aug. 23, 2011) [DOJ-FF-57713].

From: Weich, Ron (SMO)
To: Burton, Faith (SMO); Reich, Steven (ODAG); Colborn, Paul P (SMO); Ramirez, Monica (ODAG)
Sent: 8/23/2011 10:45:46 AM
Subject: call from Acting IG Schnedar re: aspect of F+F --
Attachments: Chairman Issa and RMM Grassley 7 21 11.pdf

"Cynthia [Schnedar] called this AM to chide me (politely)"

FYI, Cynthia called this AM to chide me (politely) for the paragraph in our response, below, which asks Issa to send the Melson transcript to OIG. She said it is important for OIG's independence that the Department not ask for information on OIG's behalf. She said they feel free to contact congressional committees to obtain information they need -- they don't need our help and are concerned about the appearance of us asking for something on their behalf. I told Cynthia we would be cognizant of that concern in the future.

As I recall, we included that paragraph during the hurried drafting process for this letter as sort of a "gotcha" point since Issa had recently asked us to share certain info with OIG. In retrospect, I think we could have done without it.

"[W]e included that . . . as sort of a 'gotcha' point"

FINDING: **Attorney General Holder was heavily involved in the timing and public relations aspects of the removal of ATF Acting Director Melson, going so far as to order Melson's door be closed so as to avoid the information leaking that Melson had cleaned out his office over the weekend. Holder was especially concerned about avoiding the appearance that Melson was a "fall guy."**

On **Thursday, August 25, 2011,** Deputy Attorney General Cole sent the following memorandum to Attorney General Holder about removing Acting Director Melson from his post at ATF:[645]

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Change in Leadership at ATF

"[A] change in leadership is necessary"

As we have discussed, a change in leadership is necessary at the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Both the senior leadership of the Department and the rank-and-file at ATF have lost confidence in Acting Director Ken Melson's ability to lead the agency at this critical and challenging time. This loss of confidence stems from a number of factors involving the management of the agency, including the following.

[645] Attachment to email from [Administrative Assistant (ODAG)] to Matthew Axelrod (Aug. 25, 2011) [DOJ-FF-57792–95].

On the morning of **Sunday, August 28, 2011,** Melson emailed DOJ officials about logistics related to his departure from ATF:[646]

----- Original Message -----
From: Melson, Kenneth E. (ATF)
Sent: Sunday, August 28, 2011 10:28 AM
To: Cole, James (BOP); Goldberg, Stuart (ODAG)
Subject: Change of position

The previous email was sent before the message was added. Still getting used to the iPad. The prior email contains a draft press release for Monday that I would like to issue from ATF. Stuart, could you pass it on to OPA? I have my office cleared out **Unrelated** **Unrelated** I may not be back until late Tuesday afternoon in time for the class at 6.

I will need to know to whom to report to in OLA on Wednesday.

DOJ officials discussed a press strategy and public affairs equities. When Goldberg forwarded Melson's email to Attorney General Holder and others, Holder responded:[647]

----- Original Message -----
From: **Attorney General**
Sent: Sunday, August 28, 2011 11:33 AM
To: Cole, James (ODAG)
Cc: Grindler, Gary (OAG); Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG); Weich, Ron (SMO)
Subject: Re: Change of position

Let's hold all until Tuesday as planned

----- Original Message -----
From: Cole, James (ODAG)
Sent: Sunday, August 28, 2011 11:32 AM
To: **Attorney General**
Cc: Grindler, Gary (OAG); Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG); Weich, Ron (SMO)
Subject: Re: Change of position

The problem with going earlier than Tuesday is that we won't have Dennis in the package.

Jim

"[P]roblem with going earlier than Tuesday is that we won't have Dennis in the package."

On Aug 28, 2011, at 11:27 AM, **Attorney General** wrote:

> Do we want to hold off on all press stuff until Tuesday? Impact on hill notifications if he goes out on monday?

[INTENTIONALLY BLANK]

[646] Email from Kenneth Melson to James Cole and Stuart Goldberg (Aug. 28, 2011) [DOJ-FF-01274–75].
[647] Email from Eric Holder to James Cole, et al. (Aug. 28, 2011) [DOJ-FF-01310–11].

He added:[648]

From: Attorney General
To: Cole, James (ODAG)
CC: Grindler, Gary (OAG); Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG); Weich, Ron (SMO)
Sent: 8/28/2011 11:36:55 AM
Subject: Re: Change of position

And further action/accountability awaits resolution of ongoing review. (Kingaree and IG)

----- Original Message -----
From: Attorney General
Sent: Sunday, August 28, 2011 11:35 AM
To: Cole, James (ODAG)
Cc: Grindler, Gary (OAG); Schmaler, Tracy (SMO); Goldberg, Stuart (ODAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG); Weich, Ron (SMO)
Subject: Re: Change of position

We have to make known the breadth of the changes- at the top in USAO and ATF. At worker level at USAO and ATF. No one is a fall guy here.

"No one is a fall guy here."

Later, Goldberg emailed:[649]

From: Goldberg, Stuart (ODAG)
Sent: Sunday, August 28, 2011 12:32 PM
To: Attorney General Cole, James (ODAG); Schmaler, Tracy (SMO); O'Neil, David (ODAG); Grindler, Gary (OAG); Delery, Stuart F. (OAG)
Subject: Fw: Change of position

"Ken . . . has cleaned out his office. That will create a buzz at ATF"

Fyi. I also want to flag that Ken says he has cleaned out his office. That will create a buzz at ATF if it is apparent and I am guessing Ken notified a bunch of people directly about his departure especially since he will not be around most of Monday and Tuesday. So we will have to be lined up to respond to the press and the Hill.

David O'Neill in the Office of the Deputy Attorney General responded:[650]

From: O'Neil, David (ODAG)
Sent: Sunday, August 28, 2011 12:51 PM
To: Goldberg, Stuart (ODAG); Attorney General Cole, James (ODAG); Schmaler, Tracy (SMO); Grindler, Gary (OAG); Delery, Stuart F. (OAG)
Subject: Re: Change of position

"[H]e may think he's giving us a heads-up . . . as opposed to asking"

So we should loop Ron and Steve into circulation of draft statements. Also, Ken's message below reads like he may think he's giving us a heads-up on the message he plans to send Monday as opposed to asking for clearance. If we haven't made clear to him that we want to approve/coordinate any messaging about this, we probably should just say that OPA is going to revise the first draft he shared and we'll get back to him with a new one.

[648] Email from Eric Holder to James Cole, et al. (Aug. 28, 2011) [DOJ-FF-01310–11].
[649] Email from Stuart Goldberg to Eric Holder, et al. (Aug. 28, 2011) [DOJ-FF-01274–75].
[650] Email from David O'Neil to Stuart Goldberg, et al. (Aug. 28, 2011) [DOJ-FF-01274–75].

Deputy Attorney General Cole added:[651]

From: Cole, James (ODAG)
Sent: Sunday, August 28, 2011 01:12 PM
To: O'Neil, David (ODAG)
Cc: Goldberg, Stuart (ODAG); **Attorney General**; Schmaler, Tracy (SMO); Grindler, Gary (OAG); Delery, Stuart F. (OAG)
Subject: Re: Change of position

Ken describes the release as a draft, but does say it is for Monday release. I did make it clear to him that we would be announcing this on Tuesday. We should tell him that OPA will need to review it and may revise it and that we are planning on releasing it on Tuesday. The office clean out is a surprise and creates an issue about timing. As Stuart points out, this may be out in ATF on Monday in some way. It may force us into a choice of doing it in two steps or letting some confusion and speculation exist for a day. Can we get away with answering any questions that may come on Monday by saying we'll have an announcement on Tuesday?

Schmaler and Grindler replied:[652]

From: Grindler, Gary (OAG)
Sent: Sunday, August 28, 2011 01:18 PM
To: Schmaler, Tracy (SMO); Cole, James (ODAG); O'Neil, David (ODAG)
Cc: Goldberg, Stuart (ODAG); **Attorney General**; Delery, Stuart F. (OAG)
Subject: Re: Change of position

If not out yet as soon as people come to work tomorrow it is out.

From: Schmaler, Tracy (SMO)
Sent: Sunday, August 28, 2011 01:17 PM
To: Cole, James (ODAG); O'Neil, David (ODAG)
Cc: Goldberg, Stuart (ODAG); **Attorney General**; Grindler, Gary (OAG); Delery, Stuart F. (OAG)
Subject: Re: Change of position

I'll email ken to let him know I'm reviewing and suggest he call me today to talk through timing and roll out. Can let him know we plan tues and find out who he talked with at ATF and elsewhere. If it leaks monday we can confirm leadership change in process and working with ken. We'll need to get to dennis as soon as possible.

"We'll need to get to dennis as soon as possible."

Holder instructed:[653]

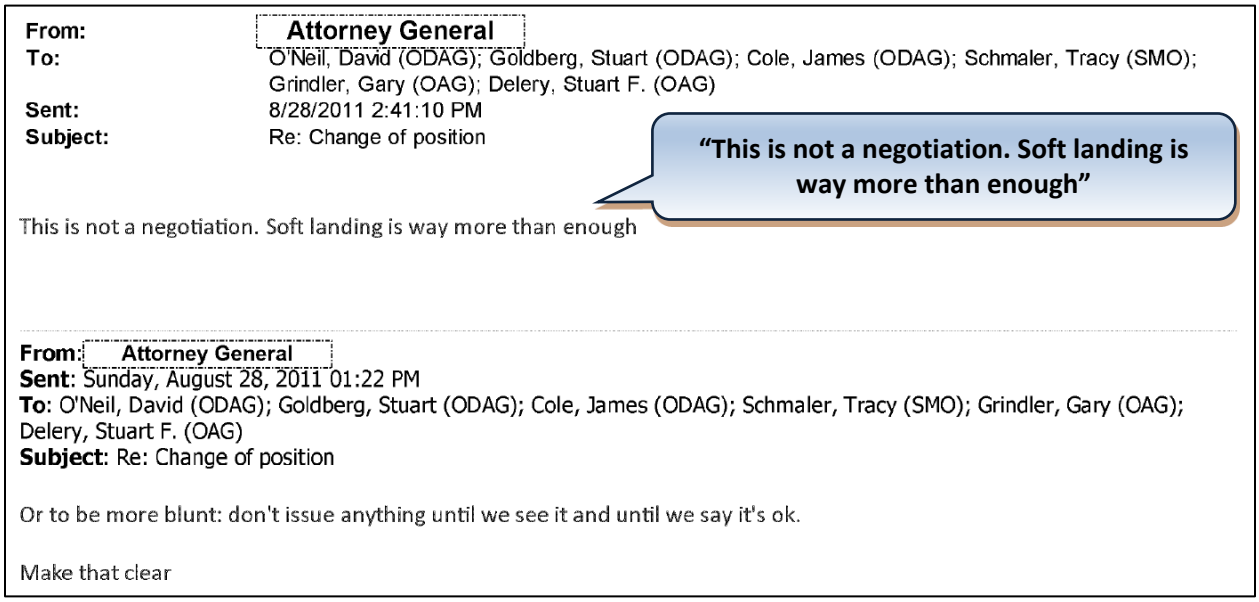
From: **Attorney General**
To: Grindler, Gary (OAG); Schmaler, Tracy (SMO); Cole, James (ODAG); O'Neil, David (ODAG)
CC: Goldberg, Stuart (ODAG); Delery, Stuart F. (OAG)
Sent: 8/28/2011 1:24:19 PM
Subject: Re: Change of position

"Tell them to close the door to his office"

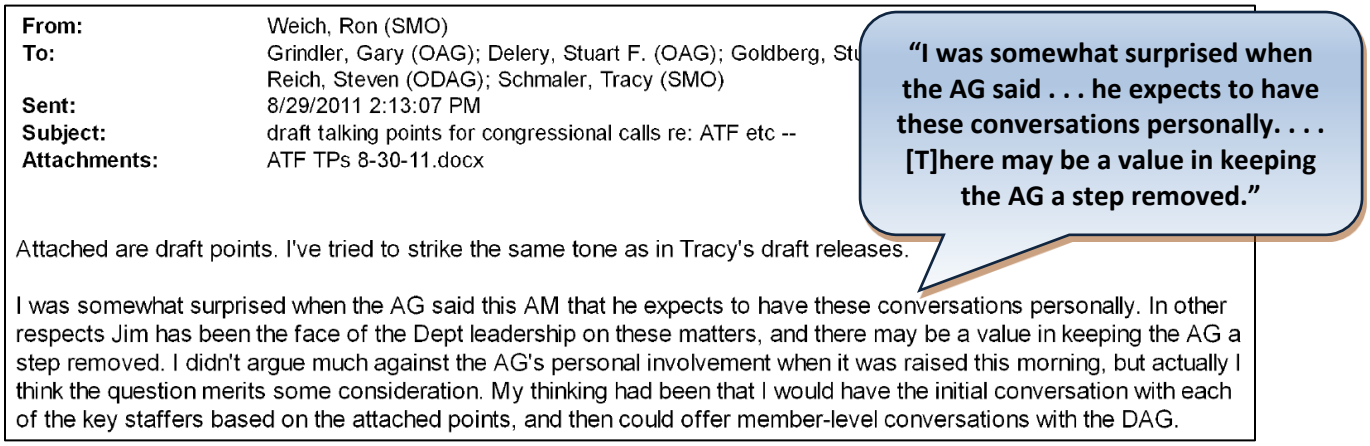
Tell them to close the door to his office

[651] Email from James Cole to David O'Neil (Aug. 28, 2011) [DOJ-FF-01272–73].
[652] Email from Gary Grindler to Tracy Schmaler, et al. (Aug. 28, 2011) [DOJ-FF-01272–73].
[653] Email from Eric Holder to Gary Grindler, et al. (Aug. 28, 2011) [DOJ-FF-01272–73].

On the issue of the statement, he wrote:[654]



On **Monday, August 29, 2011,** DOJ officials emailed about draft talking points for calls to Congress regarding Melson's removal from ATF and Burke's removal from DOJ. Weich advocated against Holder's personal involvement:[655]



Grindler followed up:[656]

[654] Email from Eric Holder to Gary Grindler, et al. (Aug. 28, 2011) [DOJ-FF-01274–75].
[655] Email from Ron Weich to Gary Grindler, et al. (Aug. 29, 2011) [DOJ-FF-57852–83].
[656] Email from Gary Grindler to Stuart Delery, et al. (Aug. 29, 2011) [DOJ-FF-57899–900].

From: Grindler, Gary (OAG)
Sent: Monday, August 29, 2011 2:33 PM
To: Delery, Stuart F. (OAG); Weich, Ron (SMO); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Reich, Steven (ODAG); Schmaler, Tracy (SMO)
Subject: Re: draft talking points for congressional calls re: ATF etc --

I agree with Stuart's suggestion as to OIG and that the Department will continue its review of this situation. I would not say that we may take further steps because that would suggest that we in effect fired Ken and Dennis.

"I would not say that we may take further steps because that would suggest that we in effect fired Ken and Dennis."

From: Delery, Stuart F. (OAG)
Sent: Monday, August 29, 2011 02:29 PM
To: Weich, Ron (SMO); Grindler, Gary (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Reich, Steven (ODAG); Schmaler, Tracy (SMO)
Subject: RE: draft talking points for congressional calls re: ATF etc --

Let's collect any comments on the draft TPs by 4:00 so that the AG can then look at the draft.

Do we want to say that the management review and the IG's investigation are both ongoing, and that the Department may take further action as appropriate depending on the results?

Schmaler commented on the line, "Ken Melson and Dennis Burke have both acknowledged mistakes in that area, and it will be useful to turn the page from those mistakes":[657]

From: Schmaler, Tracy (SMO)
To: Delery, Stuart F. (OAG); Grindler, Gary (OAG); Weich, Ron (SMO); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Reich, Steven (ODAG)
Sent: 8/29/2011 3:49:57 PM
Subject: RE: draft talking points for congressional calls re: ATF etc --

These say ken and dennis have acknowledge mistakes – that will likely get out from these conversations and we'll get asked on the record if that;s accurate.

Goldberg responded with an edit to the sentence:[658]

From: Goldberg, Stuart (ODAG)
To: Delery, Stuart F. (OAG); Grindler, Gary (OAG); Weich, Ron (SMO); O'Neil, David (ODAG); Reich, Steven (ODAG); Schmaler, Tracy (SMO)
Sent: 8/29/2011 4:15:22 PM
Subject: RE: draft talking points for congressional c

"I think we do not want to give the impression – or allow the Congress to claim – that Melson or Burke are being scapegoated."

I made a slight suggested tweak to the highlighted sentence because I think we do not want to give the impression – or allow the Congress to claim -- that Melson or Burke are being scapegoated:

- These changes will help us move past the controversy that has surrounded Fast and Furious. Ken Melson and Dennis Burke have both acknowledged a number of mistakes were made in this investigation, and their departures will help their offices turn the page from those mistakes. Our new team will bring a fresh perspective to the fight against illegal gun trafficking.

[657] Email from Tracy Schmaler to Stuart Delery, et al. (Aug. 29, 2011) [DOJ-FF-57966–67].
[658] Email from Stuart Goldberg to Stuart Delery, et al. (Aug. 29, 2011) [DOJ-FF-57899–900].

Reich noted that the talking points for conversations with congressional staff would be the first time Congress learned of an internal management review on Fast and Furious, despite DOJ stating it had to wait for the Inspector General's report before taking any action:[659]

From: Reich, Steven (ODAG)
To: Weich, Ron (SMO)
Sent: 8/29/2011 2:34:41 PM
Subject: RE: draft talking points for congressional calls re: ATF etc --

Correct. The view was that no one should be surprised that we feel the need to manage our components, especially given Sen. Grassley's handwritten note saying that the AG was not getting accurate information.

From: Weich, Ron (SMO)
Sent: Monday, August 29, 2011 2:33 PM
To: Reich, Steven (ODAG)
Subject: FW: draft talking points for congressional calls re: ATF etc --

Just to you - am I correct that we have not discussed the management review with the Hill?

That night Schmaler also circulated a question and answer document regarding the pending personnel changes.[660]

[INTENTIONALLY BLANK]

[659] Email from Steven Reich to Ron Weich (Aug. 29, 2011) [DOJ-FF-57855].
[660] Attachment to email from Tracy Schmaler to Gary Grindler, et al. (Aug. 30, 2011) [DOJ-FF-58607–10].

ATF Leadership Change

Why was Melson removed from his position?

This change in leadership was made because it was in the best interest of ATF and its employees who work each day to fulfill a critical public safety mission. This change will allow the agency and its employees to focus on their mission as they move forward under a new leader who brings decades of experience in law enforcement and has a proven record as a strong and steady leader.

What do you mean by the best interest of the agency? Is that a reference to the ongoing congressional investigation into the Fast and Furious operation?

There are ongoing investigations by the Inspector General and Congress into ATF's Fast and Furious operation and I'm not going to prejudge the outcome of those inquiries. It's clear from concerns raised by ATF agents, testimony and other information that this investigation allowed a significant number of guns to get in the hands of criminals. That is of serious concern to the Department, so much so that when these concerns were first raised publicly several months ago, the AG asked the IG to investigate the matter. At the same time, the Department made clear its policy to prosecutors and law enforcement agents working along the Southwest Border that under no circumstances should guns be allowed to cross the border.

In the meantime, the Department has a responsibility to do what is best for the agency and that involved making a leadership change. We talked with Ken and he agreed that his departure would help ATF move forward and focus on its important public safety missions while these investigations continue.

On **Tuesday, August 30, 2011,** Goldberg replied to Schmaler's email:[661]

From: Goldberg, Stuart (ODAG)
Sent: Tuesday, August 30, 2011 07:46 AM
To: Schmaler, Tracy (SMO); Grindler, Gary (OAG); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Reich, Steven (ODAG); Weich, Ron (SMO)
Subject: RE: QA

A couple of suggestions – in the "why was Melson removed" response, it probably would be good to weave in that there was mutual recognition that it was in the best interest of ATF.

"[T]here was mutual recognition . . . it was in the best interest of ATF."

Weich also emailed the larger group regarding the talking point, "Finally, the U.S. Attorney's office in Arizona has decided to re-staff the criminal cases arising out of ATF's Operation Fast and Furious":[662]

[661] Email from Stuart Goldberg to Tracy Schmaler, et al. (Aug. 30, 2011) [DOJ-FF-58606].

From: Weich, Ron (SMO)
To: Cole, James (ODAG); Perrelli, Thomas J. (OAAG); Delery, Stuart F. (OAG); Goldberg, Stuart (ODAG); Grindler, Gary (OAG); O'Neil, David (ODAG); Reich, Steven (ODAG); Schmaler, Tracy (SMO); Taylor, Elizabeth G. (OAAG); Axelrod, Matthew (ODAG)
Sent: 8/30/2011 10:05:15 AM
Subject: REVISED draft talking points for congressional calls re: ATF etc --
Attachments: ATF TPs 8-30-11.docx

Per our conversation this AM, I've revised the USAO "re-staffing" point to remove reference to F+F, and made a couple of other tweaks.

"I've revised the USAO 're-staffing' point to remove reference to F+F"

The revised version simply said, "[T]he U.S. Attorney's office in Arizona has decided to re-staff several criminal cases. We will provide details about those changes in the near future."[663]

Soon the personnel changes were announced.[664] Weich updated Attorney General Holder on the calls to Congress:[665]

From Attorney General (OAG)
Sent: Tuesday, August 30, 2011 12:34 PM
To: Weich, Ron (SMO); Schmaler, Tracy (SMO); Grindler, Gary (OAG); Cole, James (ODAG); Delery, Stuart F. (OAG); Perrelli, Thomas J. (OAAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG)
Subject: Re: congressional calls re Melson/Burke etc --

If we meet with him- we do it here.

"If we meet with him- we do it here."

From: Weich, Ron (SMO)
Sent: Tuesday, August 30, 2011 12:32 PM
To: Schmaler, Tracy (SMO); Attorney General (OAG); Grindler, Gary (OAG); Cole, James (ODAG); Delery, Stuart F. (OAG); Perrelli, Thomas J. (OAAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG)
Subject: RE: congressional calls re Melson/Burke etc --

I have now spoken to the Grassley staff, and also to staff for House Judiciary.

The Issa staff has gotten back to me to say that Issa does not need to talk to the AG this week, but that he would like to meet with the AG after Labor Day. May make sense -- we can discuss. No other takers yet for AG calls.

Schmaler updated Holder and other senior DOJ officials on the press coverage:[666]

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[662] Email from Ron Weich to James Cole, et al. (Aug. 30) [DOJ-FF-57869]; *see also* email from Ron Weich to Gary Grindler, et al. (Aug. 29, 2011) [DOJ-FF-57852–53].
[663] Attachment to email from Ron Weich to James Cole, et al. (Aug. 30, 2011) [DOJ-FF-57869–70].
[664] *See, e.g.*, Jerry Markon and Sari Horwitz, ***ATF head Kenneth Melson reassigned amid gun-trafficking probe***, WASH. POST, Aug. 30, 2011, *available at* https://www.washingtonpost.com/politics/atf-head-kenneth-melson-reassigned-amid-gun-trafficking-probe/2011/08/30/gIQAjALppJ_story.html.
[665] Email from Ron Weich to Tracy Schmaler, et al. (Aug. 30, 2011) [DOJ-FF-01285].
[666] Email from Tracy Schmaler to Eric Holder, et al. (Aug. 30, 2011) [DOJ-FF-58064–71].

From: Schmaler, Tracy (SMO)
Sent: Tuesday, August 30, 2011 01:15 PM
To: Attorney General Cole, James (ODAG); Perrelli, Thomas J. (OAAG); Grindler, Gary (OAG); Delery, Stuart F. (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Reich, Steven (ODAG); Weich, Ron (SMO)
Subject: Clips - Round 1

"So far, coverage is good."

So far, coverage is good. I'm checking on the CBS report that Ken held a conference call w. reporters. I believe that's inaccurate and she miswrote that as a conference call w. SACs. (helps identify where the leaks are over there)

When she sent the same clips to White House spokesperson Eric Schultz, they discussed how to further disseminate their message:[667]

From: Schmaler, Tracy (SMO)
To: 'Schultz, Eric'
Sent: 8/30/2011 1:25:46 PM
Subject: RE: Clips - Round 1
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg; image006.jpg; image007.jpg

No – though they are in recess so scattered … and have to say, ISsa's response was somewhat tempered for him so not sure he blasts this decision.

From: Eric H. Schultz
Sent: Tuesday, August 30, 2011 1:23 PM
To: Schmaler, Tracy (SMO)
Subject: RE: Clips - Round 1

"When the R's start going on cable to beat us up, we don't have anyone to put out, right?"

Totally agree clips have been good. When the R's start going on cable to beat us up, we don't have anyone to put out, right?

Holder and Cole emailed:[668]

From: Cole, James (ODAG)
To: Attorney General (OAG)
Sent: 8/30/2011 2:08:36 PM
Subject: RE: congressional calls re Melson/Burke etc --

I don't want to jinx it, but it really is astounding that the plan worked – so far.

Jim

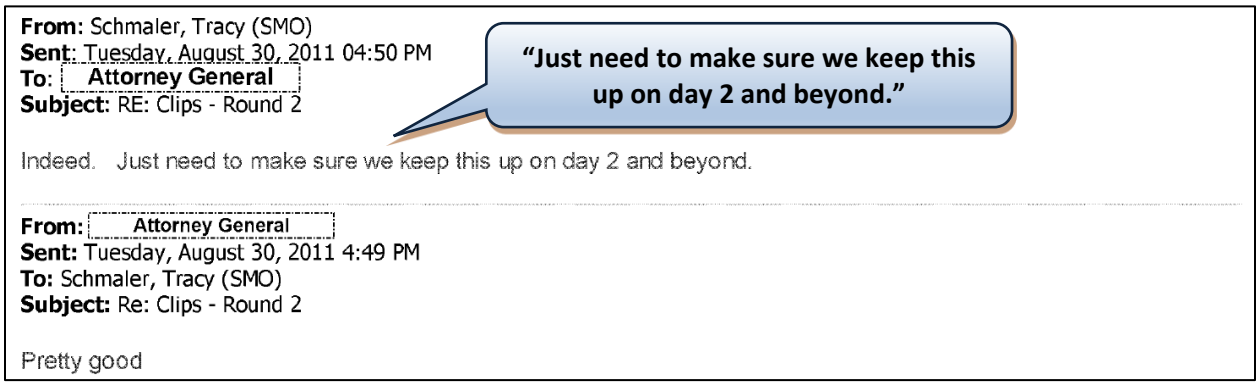
"[I]t really is astounding that the plan worked – so far."

From: Attorney General (OAG)
Sent: Tuesday, August 30, 2011 2:08 PM
To: Cole, James (ODAG)
Subject: RE: congressional calls re Melson/Burke etc --

Went well- so far

[667] Email from Tracy Schmaler to Eric Schultz (Aug. 30, 2011) [DOJ-FF-58191–98].
[668] Emails between Eric Holder and James Cole (Aug. 20, 2011) [DOJ-FF-01299–300].

The afternoon of that same day, Schmaler and Holder emailed about the press coverage:[669]



On **Wednesday, August 31, 2011,** DOJ sent a letter to Issa and Grassley that officially acknowledged for the first time that firearms recovered from the murder scene of Border Patrol Agent Brian Terry were connected with Operation Fast and Furious:[670]

> Our original response to QFR 49(a) stated that, as of May 26, 2011, "ATF is aware of eleven instances where a recovered firearm associated with this case was recovered in connection with a crime of violence in the United States." That answer mistakenly combined the total number of known traces for such recoveries in the United States and Mexico, instead of providing the number for the United States alone, as the Question requested. Moreover, the response included the two firearms recovered at the scene of the tragic death of Border Patrol Agent Brian Terry, even though the Question asked that those firearms be excluded. In fact, beyond these two firearms, ATF is aware of only one instance where a firearm associated with Operation Fast and Furious was traced and coded as recovered in connection with a crime of violence in the United States.

Some of the information about other firearm recoveries related to the case came as news to individuals in the Arizona U.S. Attorney's Office:[671]

[INTENTIONALLY BLANK]

[669] Emails between Eric Holder and Tracy Schmaler (Aug. 30, 2011) [DOJ-FF-58573–605].
[670] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Aug. 31, 2011). An earlier response had provided similar information, but had not explicitly acknowledged that the firearms recovered at the scene of Agent Terry's death were connected to Operation Fast and Furious.
[671] Email from Patrick Cunningham to Molly Gaston, et al. (Aug. 31, 2011) [DOJ-FF-58015–16].

From: Cunningham, Patrick (USAAZ)
To: Gaston, Molly (SMO) (JMD); Gaston, Molly (ATF); Burton, Faith (SMO) (JMD)
CC: Scheel, Ann (USAAZ); Morrissey, Mike (USAAZ)
Sent: 8/31/2011 8:50:47 PM
Subject: Recovery Details Summary

Molly and Faith:

We do not want to send this letter until our local ATF agents have gone to the AZ Department of Public Safety (DPS) and read the reports relating to the DPS paragraph on Page 1:

"This event . . . will cause inquiries here in AZ by law enforcement and the press"

FINDING: **Department officials tried to divert attention towards a different ATF operation during the Bush administration—known as Operation Wide Receiver—to politicize the Fast and Furious investigation.**

Late on the night of **Tuesday, August 30, 2011,** Holder emailed Schmaler regarding an encounter with Chairman Issa:[672]

----- Original Message -----
From: **Attorney General**
Sent: Tuesday, August 30, 2011 10:41 PM
To: Schmaler, Tracy (SMO)
Subject: Greta

"Seems like he's lost his footing."

Just saw our guy. Seems like he's lost his footing. "Work with us". What we did was appropriate. Meet with me to figure out how to wrap this up. But- says Lanny involved.

Schmaler wrote back:[673]

[672] Email from Eric Holder to Tracy Schmaler (Aug. 30, 2011) [DOJ-FF-58613].
[673] Email from Tracy Schmaler to Eric Holder (Aug. 30, 2011) [DOJ-FF-58613].

----- Original Message -----
From: Schmaler, Tracy (SMO)
Sent: Tuesday, August 30, 2011 10:47 PM
To: Attorney General
Subject: Re: Greta

"[H]eard rumblings about Lanny from a reliable reporter. New stuff we don't know yet, apparently."

Yea - heard rumblings about Lanny from a reliable reporter. New stuff we don't know yet, apparently. We've seen this before. Issa hopes he's the link to Main and has thrown up all sorts of thin theories.
At this point, the reporters won't share so I'm a bit skeptical ... but trying to pry loose. Something to file away. I'll keep you posted.

Holder replied:[674]

----- Original Message -----
From: Attorney General
Sent: Tuesday, August 30, 2011 10:51 PM
To: Schmaler, Tracy (SMO)
Subject: Re: Greta

"We have to dig on this and see what the hell they're talking about."

We have to dig on this and see what the hell they're talking about.

On **Thursday, September 1, 2011,** DOJ made its final production of emails responsive to the ATF subpoena. That same day, Chairman Issa and Senator Grassley wrote a letter to Ann Scheel, the new Acting U.S. Attorney for the District of Arizona, which stated:

> Your office's recent court filing in opposition to the rights asserted by the family of slain Border Patrol Agent Brian Terry under the Crime Victims' Rights Act (CVRA) is disquieting. . . . We find it difficult to understand why anyone would oppose the Terry family's motion on the grounds that there is potentially no connection at all between the case against Mr. Avila and the case against Agent Terry's murderers.[675]

The letter also requested transcribed interviews with various Department officials in the office.[676] In response, Colborn emailed:[677]

From: Colborn, Paul P (SMO)
Sent: Thursday, September 01, 2011 12:06 PM
To: Weich, Ron (SMO)
Subject: FW: New Letter from Chairman Issa & Senator Grassley re: USAO-Arizona

"[L]ike to bounce off you some thoughts . . . on executive privilege arguments to oppose a deposition subpoena for Hurley."

Steve, if you have a moment today, I'd like to bounce off you some thoughts I have on executive privilege arguments to oppose a deposition subpoena for Hurley.

On **Tuesday, September 6, 2011,** Ron Weich wrote:[678]

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[674] Email Eric Holder to Tracy Schmaler (Aug. 30, 2011) [DOJ-FF-58613].
[675] Letter from Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary to Ann Birmingham Scheel, Acting U.S. Att'y for the Dist. of Ariz. (Sept. 1, 2011), at 2-3, *available at* https://oversight.house.gov/wp-content/uploads/2012/08/September-1-2011-Issa-and-Grassley-to-Scheel.pdf.
[676] *Id.* at 2.
[677] Email from Paul Colborn to Ron Weich (Sept. 1, 2011) [DOJ-FF-58815–16].

From:	Weich, Ron (OLA)
To:	Schmaler, Tracy (OPA); Axelrod, Matthew (ODAG); Goldberg, Stuart (ODAG); Grindler, Gary (OAG); Reich, Steven (ODAG); Richardson, Margaret (OAG); O'Neil, David (ODAG)
Sent:	9/6/2011 3:04:54 PM
Subject:	RE: **ATF**

"[D]iscourage the story line that these cases have been reassigned in response to congressional pressure."

Please try to discourage the story line that these cases have been reassigned in response to congressional pressure. This should be described as an internal decision based on the Dept's assessment of what is best for the cases and the USAO in light of facts we have learned in the course of internal review. Issa/Grassley may try to take credit, but we should not buy in.

"Issa/Grassley may try to take credit"

On **Wednesday, September 7, 2011,** Holder held a televised news conference in which he acknowledged the case "was clearly a flawed enforcement effort," but stated: "The notion that this reaches into the upper levels of the Justice Department is something that at this point I don't think is supported by the facts and I think once we examine it and once the facts are revealed we'll see that's not the case."[679]

On **Monday, September 19, 2011,** Colborn emailed regarding a letter to Chairman Issa on the information DOJ was withholding:[680]

From:	Colborn, Paul P (OLC)
To:	Reich, Steven (ODAG); Burton, Faith (OLA)
CC:	Crabb, John D. (USADC); Ramirez, Monica (ODAG); Weich, Ron (OLA); **Admin. Assistant**
Sent:	9/19/2011 11:13:56 AM
Subject:	RE: Draft wrap-up letter for discussion
Attachments:	issa atf final ppc.docx

Looks good to me. My revisions to Steve's are in brown (at least on my screen). I like Steve's insertion of language on the charging decision in the "memos on memos" paragraph. However, I've tweaked the sentence since I'm not positive that every single withheld memo on memo was dated January 25 or later. I also suggest deleting the sentence giving a page count on our memos on memos withholding. Since that category is generally off-limits as a matter of separation of powers, I think giving a page count is an inappropriate accommodation at this point. They have no legitimate oversight interest in that information.

"I think giving a page count is an inappropriate accommodation at this point."

The next day, on **Tuesday, September 20, 2011,** Colborn emailed:[681]

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[678] Email from Ron Weich to Tracy Schmaler, et al. (Sept. 6, 2011) DOJ-FF-59566 –67].
[679] Terry Frieden, *Holder: 'Fast and Furious' operation didn't reach DOJ 'upper levels'*, CNN, Sept. 7, 2011, *available at* http://www.cnn.com/2011/US/09/07/holder.fast.and.furious.
[680] Email from Paul Colborn to Steven Reich and Faith Burton (Sept. 19, 2011) [DOJ-FF-60096].
[681] Email from Paul Colborn to Steven Reich (Sept. 20, 2011) [DOJ-FF-60147].

From:	Colborn, Paul P (OLC)
To:	Reich, Steven (ODAG)
CC:	Burton, Faith (OLA); Weich, Ron (OLA); Richardson, Margaret (OAG); Crabb, John D. (USADC); Ramirez, Monica (ODAG)
Sent:	9/20/2011 12:24:23 PM
Subject:	HOGR Request to Interview AUSA Hurley

Steve, here is the D.C. Circuit quote I referred to at this morning's meeting: "While fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events."

On the night of **Friday, September 30, 2011,** DOJ produced the first documents responsive to Chairman Issa and Senator Grassley's July 11 request for documents from certain senior Department officials. While the documents did not include any mention of Breuer, the production did include emails from other Criminal Division officials, such as the email in which Weinstein wrote, "It's a tricky case, given the number of guns that have walked."

On **Monday, October 3, 2011,** DOJ began fielding inquiries regarding Weinstein's email.[682] DOJ used the opportunity to point reporters to Operation Wide Receiver, an earlier operation run by ATF's Phoenix Field Division. However, an article on the issue in *The Wall Street Journal* also focused on memoranda Holder received about Fast and Furious.[683] When Schmaler forwarded it to Holder, he responded:[684]

From:	**Attorney General**
To:	Schmaler, Tracy (OPA); Grindler, Gary (OAG); Richardson, Margaret (OAG)
Sent:	10/3/2011 11:30:55 PM
Subject:	Re: WSJ -Justice Emails Show Officials Discussing Gun Probe

Sigh. Can I see the 2 reports mentioned below- sure I didn't read them. I rarely do. The February e-mail shows that was my first real F/F knowledge.

"Can I see the 2 reports . . . sure I didn't read them."

----- Original Message -----
From: Schmaler, Tracy (OPA)
Sent: Monday, October 03, 2011 11:16 PM
To: **Attorney General** ; Grindler, Gary (OAG); Richardson, Margaret (OAG)
Subject: WSJ -Justice Emails Show Officials Discussing Gun Probe

He's updating the parenthetical to say DOJ has made clear its POLICY is *not* to allow guns to walk.

OCTOBER 3, 2011, 9:11 P.M.
Justice Emails Show Officials Discussing Gun Probe

By EVAN PEREZ

[682] *See, e.g.*, email from Evan Perez to Jason Weinstein (Oct. 3, 2011) [DOJ-FF-61098–99].
[683] Evan Perez, *Justice Emails Show Officials Discussing Gun Probe*, WALL ST. J., Oct. 3, 2011, *available at* http://www.wsj.com/articles/SB10001424052970204612504576609632148173472.
[684] Email from Eric Holder to Tracy Schmaler (Oct. 3, 2011) [DOJ-FF-61082–83].

That same night, another public affairs official emailed Gary Grindler:[685]

From: Grindler, Gary (OAG)
Sent: Monday, October 03, 2011 07:06 PM
To: Lumpkin, Beverley (OPA)
Subject: RE: fyi: ATF/F&F

What did it say?

From: Lumpkin, Beverley (OPA)
Sent: Monday, October 03, 2011 5:58 PM
To: Grindler, Gary (OAG)
Subject: fyi: ATF/F&F

"Bad story coming on CBS Evening News tonight."

Bad story coming on CBS Evening News tonight.

The official followed up:[686]

From: Lumpkin, Beverley (OPA)
To: Grindler, Gary (OAG)
Sent: 10/3/2011 9:47:14 PM
Subject: Re: fyi: ATF/F&F

Sorry, I've been offline...
The lead-in was quite lurid: AG knew about FandF well before he testified based on these new memos... From NDIC (?!) and AAG Breuer. Sounded like component weekly memos.
But then they backed away halfway through and put in caveats and DOJ saying AG had heard the name of the op but knew no details.
So the headline was ugly but the story oddly lacking. I **Unrelated** will try to get transcript.

The story, written by CBS' Sharyl Attkisson, was titled "ATF Fast and Furious: New documents show Attorney General Eric Holder was briefed in July 2010."[687] According to Attkisson, DOJ spokeswoman Tracy Schmaler yelled at her about the story, while she said White House spokesman Eric Schultz "literally screamed at me and cussed at me" about the story.[688]

On **Tuesday, October 4, 2011,** Schmaler emailed Schultz regarding Attkisson, as well as the fact that no other media outlets were covering DOJ's spin on Operation Wide Receiver:[689]

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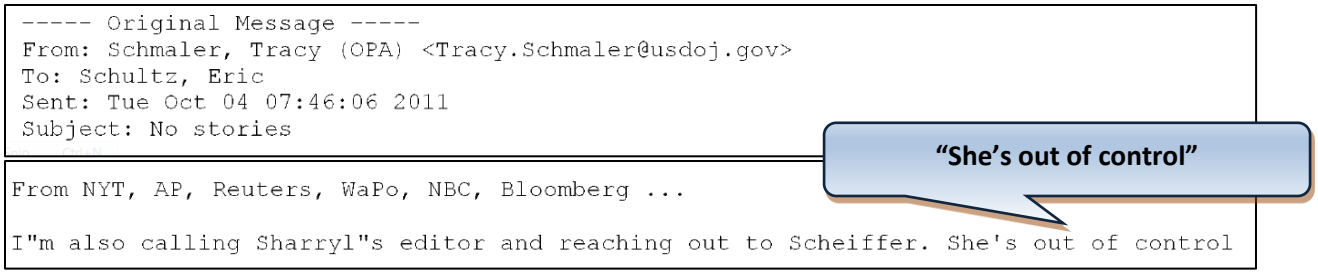
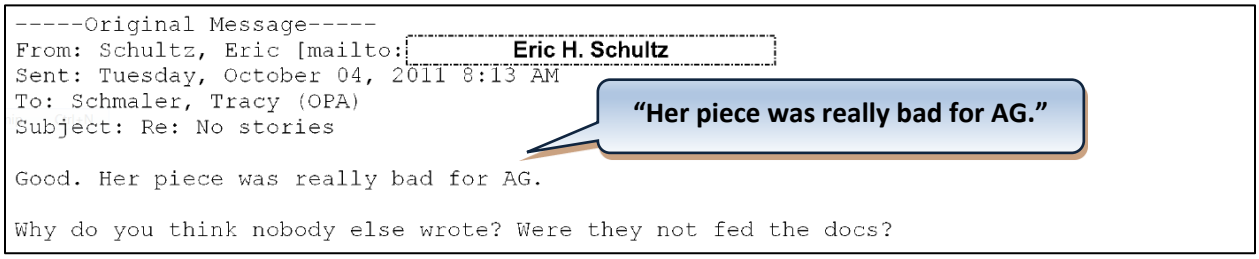
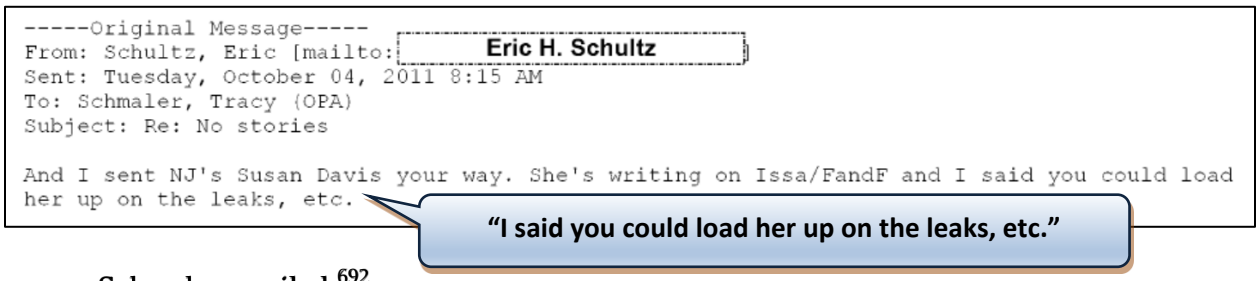
[685] Email from Beverly Lumpkin to Gary Grindler (Oct. 3, 2011) [DOJ-FF-60970].
[686] Email from Beverly Lumpkin to Gary Grindler (Oct. 3, 2011) [DOJ-FF-60970].
[687] Sharyl Attkisson, *ATF Fast and Furious: New Documents show Attorney General Eric Holder was briefed in July 2010*, CBS NEWS, Oct. 3, 2012, *available at* http://www.cbsnews.com/news/atf-fast-and-furious-new-documents-show-attorney-general-eric-holder-was-briefed-in-july-2010.
[688] Media, *CBS Reporter Claims White House Officials Screamed and Cursed at Her (Audio)*, HUFFINGTON POST, Oct. 5, 2011, *available at* http://www.huffingtonpost.com/2011/10/05/cbs-white-house-screamed_n_995794.html.
[689] Email from Tracy Schmaler to Eric Schultz (Oct. 4, 2011) [DOJ-FF-61330–32].



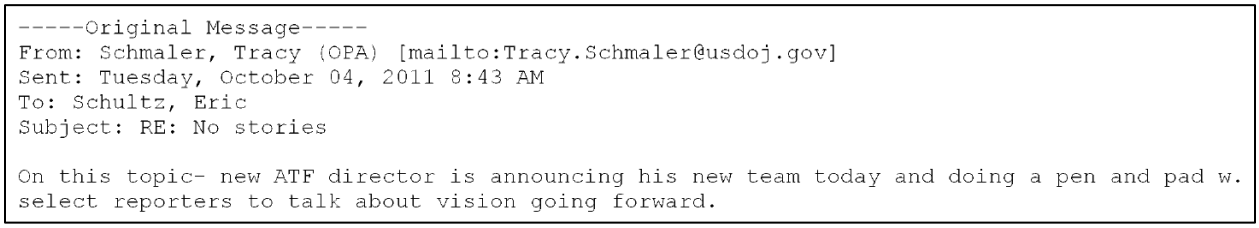
Schultz responded:[690]



He also added:[691]



Schmaler emailed:[692]



Schultz replied:[693]

[690] Email from Eric Schultz to Tracy Schmaler (Oct. 4, 2011) [DOJ-FF-61330–32].
[691] Email from Eric Schultz to Tracy Schmaler (Oct. 4, 2011) [DOJ-FF-61330–32].
[692] Email from Tracy Schmaler to Eric Schultz (Oct. 4, 2011) [DOJ-FF-61330–32].
[693] Email from Eric Schultz to Tracy Schmaler (Oct. 4, 2011) [DOJ-FF-61330–32].

-----Original Message-----
From: Schultz, Eric [mailto: **Eric H. Schultz**
Sent: Tuesday, October 04, 2011 10:10 AM
To: Schmaler, Tracy (OPA)
Subject: RE: No stories

I think you're just going to generate another round of Fast and Furious stories for second day in a row.

-----Original Message-----
From: Schmaler, Tracy (OPA) [mailto:Tracy.Schmaler@usdoj.gov]
Sent: Tuesday, October 04, 2011 10:09 AM
To: Schultz, Eric
Subject: RE: No stories

He's got a positive message about new team and moving forward. Plus he has no connection to f and f so he'll be able to bat those away. We need to take over the storyline here.

"[H]e has no connection to f and f so he'll be able to bat those away."

"We need to take over the storyline here."

Schmaler responded that the stories would come up inevitably anyway when the changes were announced, but Schultz emailed:[694]

-----Original Message-----
From: Schultz, Eric [mailto: **Eric H. Sch**
Sent: Tuesday, October 04, 2011 10:19 AM
To: Schmaler, Tracy (OPA)
Subject: RE: No stories

But to give reporters new quotes and fodder to write a whole new round of stories, given the current pique in interest, seems like a mistake.

"[T]o give reporters new quotes and fodder to write a whole new round of stories, given the current pique in interest, seems like a mistake."

-----Original Message-----
From: Schmaler, Tracy (OPA) [mailto:Tracy.Schmaler@usdoj.gov]
Sent: Tuesday, October 04, 2011 10:18 AM
To: Schultz, Eric
Subject: RE: No stories

Whenever they announce these f and f will come up.

That morning, Schultz emailed regarding a passage in *Politico*'s coverage of the issue:[695]

-----Original Message-----
From: **Eric H. Schultz**
Sent: Tuesday, October 04, 2011 9:59 AM
To: Schmaler, Tracy (OPA)
Subject: FW: Politico: Docs put Holder on the spot in Fast & Furious

This highlighted paragraph below is incorrect, no? This is a reference to the Tuscon case, right? Can you guys get fixed?

Meanwhile, other leaked documents show that senior Justice Department officials were aware of Fast and Furious in 2010. In an October 2010 email, Jason Weinstein, deputy attorney general in the DoJ's criminal division, wrote an email to Lanny Breuer, head of the criminal division about Fast and Furious, referencing "the number of guns that have walked."

[694] Email from Eric Schultz to Tracy Schmaler (Oct. 4, 2011) [DOJ-FF-61330–32].
[695] Email from Eric Schultz to Tracy Schmaler (Oct. 4, 2011) [DOJ-FF-61342–43].

Later that day, House Judiciary Chairman Lamar Smith called for a special counsel to investigate the issue.[696] Grindler emailed:[697]

From: Grindler, Gary (OAG)
Sent: Tuesday, October 04, 2011 01:45 PM
To: Richardson, Margaret (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Schmaler, Tracy (OPA); Delery, Stuart F. (OAG); Weich, Ron (OLA)
Subject: ATF

"I would like to convene a meeting to discuss how we should be dealing with the events"

I would like to convene a meeting later today to discuss how we should be dealing with the events of the day. I am unable to do this before 6:00 p.m. What is your availability?

In response, Schmaler circulated a draft press release:[698]

From: Schmaler, Tracy (OPA)
Sent: Tuesday, October 04, 2011 2:22 PM
To: Delery, Stuart F. (OAG); Richardson, Margaret (OAG); Grindler, Gary (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Weich, Ron (OLA)
Subject: RE: ATF

"[K]eep in mind, these are the same folks who called for 'heads to roll' over a $16 muffin"

I think we need something sooner to respond to Smith's release (below). keep in mind, these are the same folks who called for "heads to roll" over a $16 muffin that wasn't a $16 muffin. (that was Grassley, to be accurate) what about this:

Reich responded regarding the final sentence of Schmaler's draft release:[699]

"I think 'proactively alerted' is a bit strong"

From: Reich, Steven (ODAG)
To: Weich, Ron (OLA); Schmaler, Tracy (OPA); Delery, Stuart F. (OAG); Richardson, Margaret (OAG); Grindler, Gary (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG)
Sent: 10/4/2011 2:57:57 PM
Subject: RE: ATF

I also think we need to soften the final sentence. While Castor and I discussed Wide Receiver I think "proactively alerted" is a bit strong as to that one matter.

Shortly thereafter, the Associated Press released an article titled, "AP sources: Bush-era probe involved guns walking."[700] The article cited as its source "two federal law enforcement officials."[701] Schmaler emailed the article to Holder, who responded:[702]

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[696] H. Comm. on the Judiciary, *Press Release: Smith Calls for Investigation into AG's Statements at HJC* (Oct. 4, 2011), *available at* https://judiciary.house.gov/press-release/smithcallsforinvestigationintoagsstatementsathjchearing/.
[697] Email from Gary Grindler to Margaret Richardson, et al. (Oct. 4, 2011) [DOJ-FF-61191–93].
[698] Email from Tracy Schmaler to Stuart Delery, et al. (Oct. 4, 2011) [DOJ-FF-61191–93].
[699] Email from Steven Reich to Ron Weich, et al. (Oct. 4, 2011) [DOJ-FF-61191–93].
[700] Pete Yost, *AP sources: Bush-era probe involved guns 'walking'*, ASSOC. PRESS, Oct. 4, 2011, *available at* http://www.sandiegouniontribune.com/sdut-ap-sources-bush-era-probe-involved-guns-walking-2011oct04-story.html.
[701] *Id.*
[702] Email from Eric Holder to Tracy Schmaler (Oct. 4, 2011) [DOJ-FF-61363–64].

From: Attorney General
To: Schmaler, Tracy (OPA)
CC: Swartz, Bruce (CRM)
Sent: 10/4/2011 4:18:42 PM
Subject: RE: AP sources: Bush-era probe involved guns 'walking'

WOW!

"WOW!"

From: Schmaler, Tracy (OPA)
Sent: Tuesday, October 04, 2011 4:12 PM
To: Attorney General
Subject: AP sources: Bush-era probe involved guns 'walking'

AP sources: Bush-era probe involved guns 'walking'
By PETE YOST, Associated Press - 1 hour ago

On **Wednesday, October 5, 2011,** Stuart Delery wrote to Schmaler and Grindler, as well as other members of the Office of the Deputy Attorney General and the Office of Legislative Affairs:[703]

From: Delery, Stuart F. (OAG)
To: Schmaler, Tracy (OPA); Grindler, Gary (OAG); Goldberg, Stuart (ODAG); Richardson, Margaret (OAG); Reich, Steven (ODAG); O'Neil, David (ODAG); Weich, Ron (OLA)
Sent: 10/5/2011 8:19:50 AM
Subject: RE: weekly report QAs - EDITS BY AM PLS

In addition to saying that he asked the IG to look into the matter, should we also say that he made crystal clear to ATF [and the US Attorneys], through instructions from the DAG, what should have been apparent to them before: under no circumstances should DOJ agencies be allowing guns to walk. In general, I think it's useful for us to push back on the idea that the AG needed to be pushed by Congress on this. Even before the hearings, he made sure that this would not happen going forward and asked the IG to look at what happened in the past. He was out front on this - a point that seems to get lost.

"[I]t's useful for us to push back on the idea that the AG needed to be pushed by Congress on this."

FINDING: **The public revelation that Attorney General Holder received memoranda on Fast and Furious in July 2010 sent senior Justice Department leadership into a frenzy, with Holder ordering top Department officials to push back hard. In response, DOJ undertook an aggressive public relations campaign, recruiting law enforcement surrogates to defend Holder.**

That day, questions regarding Operation Fast and Furious arose at a White House press conference, including a question regarding Sharyl Attkisson: "When government officials start yelling at you, sometimes it's because they're getting defensive, right? . . . Why would the administration be yelling at her about this story?"[704]

[703] Email from Stuart Delery to Tracy Schmaler, et al. (Oct. 5, 2011) [DOJ-FF-61373–74].
[704] Press conference, Oct. 5, 2011, *available at* https://www.whitehouse.gov/the-press-office/2011/10/05/press-briefing-press-secretary-jay-carney.

Schmaler emailed the transcript to Holder, who responded:[705]

From: **Attorney General**
To: Schmaler, Tracy (OPA); Richardson, Margaret (OAG); Grindler, Gary (OAG)
Sent: 10/5/2011 7:37:04 PM
Subject: Re: WH briefing - q's on f and f

Well done. But we need to get out my answer about the "program" first time. It was NOT as a result of the damn memos. Not the source of my knowledge

"[D]amn memos. . . . Not the source of my knowledge"

From: Schmaler, Tracy (OPA)
Sent: Wednesday, October 05, 2011 06:54 PM
To: **Attorney General** Richardson, Margaret (OAG); Grindler, Gary (OAG)
Subject: WH briefing - q's on f and f

Jay got a few q's ... they had our points and made them pretty effectively.

Minutes later Holder emailed Schmaler, irate that a Sharyl Attkisson story on Operation Wide Receiver included a hyperlink to her October 3 story about his being briefed in July 2010:[706]

[INTENTIONALLY BLANK]

[705] Email from Eric Holder to Tracy Schmaler, et al. (Oct. 5, 2011) [DOJ-FF-61706–08].
[706] Email from Tracy Schmaler to Eric Holder (Oct. 5, 2011) [DOJ-FF-61686–89]; *see also* Sharyl Attkisson, *Informant: ATF "gun walking" went on for years*, CBS NEWS, Oct. 5, 2011, *available at* http://www.cbsnews.com/news/informant-atf-gun-walking-went-on-for-years.

To: Schmaler, Tracy (OPA)[Tracy.Schmaler@usdoj.gov]
From: Attorney General
Sent: Wed 10/5/2011 7:39:58 PM
Subject: Re: Informant: ATF "gun walking" went on for years

"Holder briefed"!!!???
Scream at her

"Scream at her"

From: Schmaler, Tracy (OPA)
Sent: Wednesday, October 05, 2011 02:28 PM
To: Attorney General
Subject: Informant: ATF "gun walking" went on for years

CBS on wide receiver - note she says not only border towns at the end. this makes things interesting for issa /grassley

October 5, 2011 9:56 AM

Informant: ATF "gun walking" went on for years

The ATF, the agency that's supposed to stop gun smuggling, turned a blind eye for years, as hundreds of guns "walked" across the Mexican border, CBS News has learned.

In a report on "The Early Show," CBS News investigative correspondent Sharyl Attkisson said a confidential informant has come forward "with a fascinating story of how U.S. agents began letting guns 'walk' across the Mexican border - more than four years ago."

ATF "Fast and Furious": New documents show Attorney General Eric Holder was briefed in July 2010

Later that night, Holder wrote:[707]

[INTENTIONALLY BLANK]

[707] Email from Eric Holder to Tracy Schmaler, et al. (Oct. 5, 2011) [DOJ-FF-61786].

"Why don't we just answer this asshole"

----- Original Message -----
From: Attorney General
Sent: Wednesday, October 05, 2011 09:02 PM
To: Attorney General; Schmaler, Tracy (OPA); Grindler, Gary (OAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG)
Subject: Re: Darrell Issa to Eric Holder: Admit you knew - MJ Lee - POLITICO.com

Why don't we just answer this asshole by stating the facts and go on offense in ways I've been thinking. Saying nothing until a hearing is not acceptable.

"[G]o on offense"

Ohlson emailed:[708]

From: "Ohlson, Kevin (ODAG)" <Kevin.Ohlson@usdoj.gov>
To: Attorney General; Matthew Miller
Matthew Miller
Sent: Wednesday, October 5, 2011 9:18 PM
Subject: Re: Fwd: Darrell Issa to Eric Holder: Admit you knew - MJ Lee - POLITICO.com

This story is gaining traction. You need to stop it from snowballing -- now. Having unnamed sources in the Department defend you is never going to work. I would suggest an immediate on the record pen-and-pad with all regular DOJ reporters (no interlopers who want to agitate) -- and no cameras -- in your conference room. Then you lay it all out showing that this drumbeat from the Right is bullshit.

"[T]his drumbeat from the Right is bullshit"

In a separate chain, Miller sent his own advice:[709]

From: Matthew Miller <Matthew Miller>
Date: October 5, 2011 9:29:32 PM EDT
To: Attorney General, Kevin Ohlson <kevin.ohlson@usdoj.gov>
Subject: Re: Fwd: Darrell Issa to Eric Holder: Admit you knew - MJ Lee - POLITICO.com
Reply-To: Matthew Miller <Matthew Miller>

"The coverage really did break through . . . of course it was in the NYT this morning."

I've been giving this a lot of thought today. The coverage really did break through -- the cables all spent time on it, and of course it was in the NYT this morning.

I think you have to personally answer this. Because the charge right now goes to your credibility, the answer has to come from you. The Department can do its defense as well, but you need to be out there defending it. So I would do two things immediately:

* * *

[708] Email from Kevin Ohlson to Eric Holder and Matthew Miller (Oct. 5, 2011) [DOJ-FF-61648–49].
[709] Email from Matthew Miller to Eric Holder and Kevin Ohlson (Oct. 5, 2011) [DOJ-FF-61647].

"The last time your credibility was directly questioned was whether you had disclosed all of your amicus briefs"

1. Send a letter to the Hill explaining what happened. Put in context the amount of information you get every week, say that you don't recall reading those bullets or being aware of Fast and Furious at any time before early this year, but in any event, you certainly weren't aware of the gun walking aspect of it until the news broke earlier this year (at which point you took immediate steps to have the IG investigate, etc.). This needs to happen tomorrow. In fact, it should've happened today. The last time your credibility was directly questioned was whether you had disclosed all of your amicus briefs -- the story started to break on a Thursday night, and we made people stay up all night compiling information so we could get a response out by 1 pm or so on Friday.

2. Find a way for you to get in front of a reporter or two about this. You don't want to call a press conference on this because it will blow things out perspective, but if you have any events in the next few days (preferably tomorrow), you could find a way to take two or three questions on it afterwards. Or if that's not easily doable, you could find a way to "run into" a couple of reporters on your way to something. Maybe Pete Williams, Carrie, Pete Yost -- that part can be managed. Most important is that you're in front of a camera in a relaxed manner giving a response you have rehearsed.

It would be ideal if those two things happened in the same day so you didn't have two news cycles of responding -- you want to do it all at once.

"[Y]ou could find a way to 'run into' a couple of reporters on your way to something."

"Most important is that you're in front of a camera in a relaxed manner giving a response you have rehearsed."

Shortly thereafter, Miller emailed again:[710]

From: Matthew Miller <Matthew Miller>
Date: October 5, 2011 9:40:46 PM EDT
To: "Ohlson, Kevin \(ODAG\)" <Kevin.Ohlson@usdoj.gov>, Attorney General
Attorney General
Subject: Re: Fwd: Darrell Issa to Eric Holder: Admit you knew - MJ Lee - POLITICO.com
Reply-To: Matthew Miller <Matthew Miller>

Reading Kevin's advice after I sent mine. I think we agree strategically that you personally need to answer this, and the rest is just tactics (who you talk to, when, etc).

The more I think about the offense versus defense part, I do think you should go on offense, too. After explaining what happened, you could go back at them by saying something like: "But let's be clear what this is all about. I've ordered an investigation into what happened. But there are people on the Hill who don't care about what really happened. For them this has become about scoring political points and weakening an agency charged with cracking down on gun violence. There are a lot of powerful lobbyists and their allies on the hill who have wanted to cripple the ATF for a long time, and they're using this as an opportunity to do so. I'm not going to let them. It's clear the ATF made mistakes here. We've cleaned house, and we're going to fix the agency, but we're not going to allow it to be put out of business by people carrying water for the gun lobby."

This part has to be really carefully crafted and delivered, but I think it could be effective as a one-two punch. (One, explain what happened with your testimony; two, punch back.)

"[W]e're not going to allow [ATF] to be put out of business by people carrying water for the gun lobby."

"This part has to be really carefully crafted and delivered"

Holder forwarded the chain to Grindler.[711]

[710] Email from Matthew Miller to Kevin Ohlson and Eric Holder (Oct. 5, 2011) [DOJ-FF-61648–49].
[711] Email from Eric Holder to Eric Holder (Oct. 5, 2011) [DOJ-FF-61648–49].

FINDING:	Senior Justice Department leadership was irate that the Department's internal investigators had not leaked certain documents in a more strategic way to lessen their impact. Thereafter, Holder sought "intel" on the individuals criticizing him, from members of Congress to local sheriffs, even asking about the political affiliations of a group of sheriffs who called on him to resign.

Later that night, DOJ Office of Public Affairs Director Matthew Miller emailed Holder:[712]

From: Matthew Miller <RC1>
Date: October 5, 2011 10:52:33 PM EDT
To: Attorney General
Subject: Confidentially
Reply-To: Matthew Miller <RC1>

"The whole point of the review is to find things like this and come up with plans for dealing with them."

"It should have been obvious that these memos were going to be a huge target"

If I were you, I would want answers from the entire team (Cole, Reich, on down), on why the Department let Issa decide what to do with these memos. The whole point of the review is to find things like this and come up with plans for dealing with them. It should have been obvious that these memos were going to be a huge target, and instead of just handing them over, the Department should have put them out to reporters on its own terms, instead of letting Issa do it. Give them to Issa at the same time you give them to the press with an explanation that takes the air out of the balloon.

And if the answer is we owe it to Issa to give him this stuff first -- well, that's obviously ridiculous.

Holder forwarded the email to Grindler with the comment, "I agree."[713]

On **Thursday, October 6, 2011,** Stephen Kelly emailed Weich regarding a briefing the FBI and DEA provided Committee staff with the previous day:[714]

From: Kelly, Stephen (FBI)
Sent: Thursday, October 06, 2011 4:48 PM
To: Weich, Ron (OLA)
Subject: RE: QFRs

"I believe it went well, but we'll just have to see whether the Committee comes back to us"

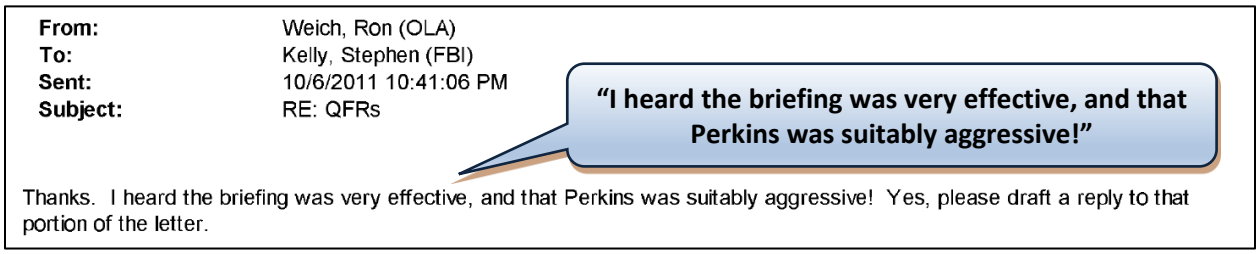
Totally understand, good luck, and hang in there.

Happy to give you the back brief on our F&F session whenever you have time. I believe it went well, but we'll just have to see whether the Committee comes back to us or not. You should know that, in my view, we ended up answering the FBI portion of the latest Issa/Grassley letter on informants, and I'm happy to draft something for you to cover our portion of the letter.

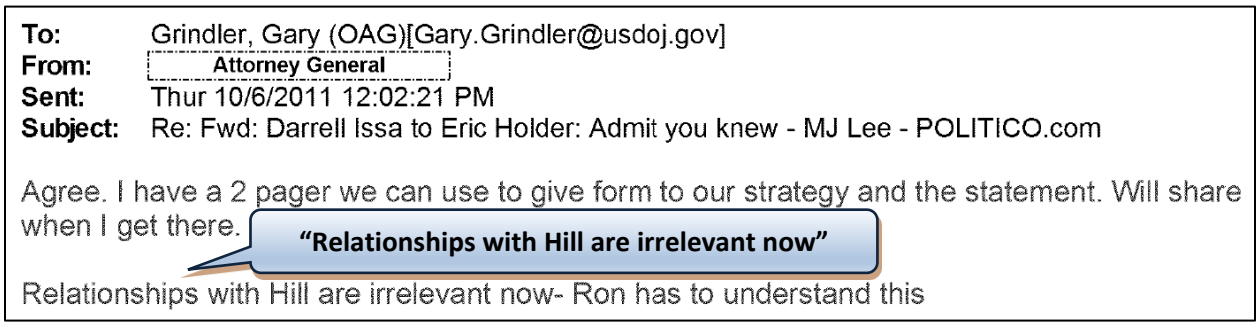
Talk soon.

[712] Email from Matthew Miller to Eric Holder (Oct. 5, 2011) [DOJ-FF-61785].
[713] Email from Eric Holder to Gary Grindler (Oct. 6, 2011) [DOJ-FF-61785].
[714] Email from Stephen Kelly to Ron Weich (Oct. 6, 2011) [DOJ-FF-61962–63].

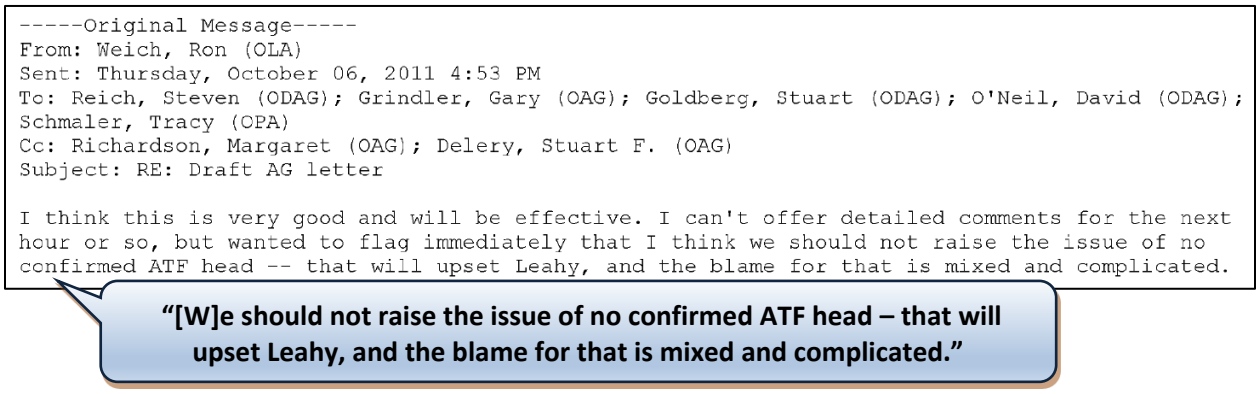
Weich replied, referencing FBI Assistant Director Kevin Perkins:[715]



Meanwhile Holder continued to email Grindler regarding the letter being drafted to Congress:[716]



Later that afternoon, a draft of the letter was circulated. In response, Weich wrote:[717]



That night, Schmaler updated her colleagues on the press coverage from the statement DOJ issued:[718]

[715] Email from Ron Weich to Stephen Kelly (Oct. 6, 2011) [DOJ-FF-61962–63].
[716] Email from Gary Grindler to Eric Holder (Oct. 6, 2011) [DOJ-FF-61664–66].
[717] Email from Ron Weich to Steven Reich (Oct. 6, 2011) [DOJ-FF-61787].
[718] Email from Tracy Schmaler to Eric Holder, et al. (Oct. 6, 2011) [DOJ-FF-61935–44].

From: Schmaler, Tracy (OPA)
Sent: Thursday, October 06, 2011 7:14 PM
To: Attorney General Cole, James (ODAG); Grindler, Gary (OAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG); Reich, Steven (ODAG); Goldberg, Stuart (ODAG); Weich, Ron (OLA)
Subject: Clips

first round of clips, still waiting on stories from WSJ and LAT and updated from AP. As expected they're keying off the president's comments at news conference. A few opted not to write -- NYT and Bloomberg -- for lack of interest.

Two hours later, Schmaler sent out an update:[719]

From: Schmaler, Tracy (OPA)
Sent: Thursday, October 06, 2011 09:15 PM
To: Schmaler, Tracy (OPA); Attorney General; Cole, James (ODAG); Grindler, Gary (OAG); Richardson, Margaret (OAG); Delery, Stuart F. (OAG); Reich, Steven (ODAG); Goldberg, Stuart (ODAG); Weich, Ron (OLA)
Subject: RE: Clips 2

Updated AP and WSJ – both note the tactics date back to bush era. Also, WSJ included the power point and notes it, like the weekly reports, did not mention troubling tactics at issue.

When Holder replied, Schmaler emailed:[720]

From: Schmaler, Tracy (OPA)
Sent: Thursday, October 06, 2011 09:35 PM
To: Attorney General
Subject: Re: Clips 2

Wanted more bites on power point to get that off table -- most said the didn't think it merited once they heard explanation. We;ll see if that holds when issa packages it. Overall, helps set up your letter tomorrow.

"We[']ll see if that holds when [I]ssa packages it."

From: Attorney General
Sent: Thursday, October 06, 2011 09:30 PM
To: Schmaler, Tracy (OPA)
Subject: Re: Clips 2

Not bad

On **Friday, October 7, 2011,** Attorney General Holder, who was in Chicago for a speech, checked in with Schmaler on the status of the letter.[721] Schmaler suggested arranging a meeting with reporters in order to release the letter:[722]

[719] Email from Tracy Schmaler to Eric Holder, et al. (Oct. 6, 2011) [DOJ-FF-61935–44].
[720] Email from Tracy Schmaler to Eric Holder (Oct. 6, 2011) [DOJ-FF-61935–44].
[721] Email from Eric Holder to Tracy Schmaler (Oct. 7, 2011) [DOJ-FF-62414].
[722] Email from Tracy Schmaler to Eric Holder (Oct. 7, 2011) [DOJ-FF-62414].

----- Original Message -----
From: Schmaler, Tracy (OPA)
Sent: Friday, October 07, 2011 09:32 AM
To: Attorney General
Subject: Re: Roll out

Few options , most effective way would be if you do pen and pad to land it there. It's the right frame for your opening points and a good handout.

Issa is appearing on Fox Sunday. We've gotten some foothold back w/ our pushback - if we get out today strong and clean think it goes a long way toward pre-empting his appearance. As well as getting out front of mccain if he decides to go public w/ special counsel request.

----- Original Message -----
From: Attorney General
Sent: Friday, October 07, 2011 09:25 AM
To: Schmaler, Tracy (OPA)
Subject: Roll out

When do we roll out the letter today? Still needs a bit of work

"[G]oes a long way toward pre-empting [Issa's] appearance. As well as getting out in front of [M]c[C]ain if he decides to go public w/ special counsel request."

Holder asked in reply:[723]

From: Attorney General
To: Schmaler, Tracy (OPA)
Sent: 10/7/2011 9:35:03 AM
Subject: Re: Roll out

We have intell on McCain?

"We have intell [sic] on McCain?"

He also asked her about surrogates for the letter:[724]

----- Original Message -----
From: Schmaler, Tracy (OPA)
Sent: Friday, October 07, 2011 09:45 AM
To: Attorney General
Subject: Re: Roll out

Gave our stuff to some of the regular dem pundits and bloggers on cables

Barr has our material for his appearance today.

Lanny D - was on o'reilly this week and pushed back. Talked w/ him at length last night and gave him our stuff, he's going to do a column for hill, huffpost and is willing to go out more on cables

Reaching out to some others, including the regulars thompson, gorelick, etc.

----- Original Message -----
From: Attorney General
Sent: Friday, October 07, 2011 09:36 AM
To: Schmaler, Tracy (OPA)
Subject: Re: Roll out

Where are our surrogates?

"Gave our stuff to some of the regular [D]em pundits and bloggers on cables"

[723] Email from Eric Holder to Tracy Schmaler (Oct. 7, 2011) [DOJ-FF-62414].
[724] Email from Tracy Schmaler to Eric Holder (Oct. 7, 2011) [DOJ-FF-62417].

Later that morning, Schmaler sent senior DOJ officials notice of a press conference scheduled by sheriffs in Phoenix, Arizona to discuss Operation Fast and Furious:[725]

From: Schmaler, Tracy (OPA)
To: Grindler, Gary (OAG); Reich, Steven (ODAG); Weich, Ron (OLA); Delery, Stuart F. (OAG); Richardson, Margaret (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Axelrod, Matthew (ODAG)
Sent: 10/7/2011 11:24:51 AM
Subject: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

Sheriffs Press Conference to discuss Operation Fast and Furious
Share · Public Event

Time Friday, October 7 · 11:00am - 12:00pm

Location Arizona Peace Officers Memorial, Wesley Bolin Memorial Plaza
1700 West Washington Street
Phoenix, AZ

Created By Paul Babeu

More Info Pinal County Sheriff Paul Babeu and nine other elected Sheriffs' will be holding a Press Conference at the Arizona Peace Officers Memorial, located at Wesley Bolin Memorial Plaza to discuss "Operation Fast and Furious." The Press Conference is open to the media and public.

Wall

Hey, have you heard about this press conference? Apparently Fox reported last night that the sheriffs will call for Holder's resignation, and will also call for "accessory to murder charges for any future victims of Fast and Furious guns."

Grindler, who received the email, forwarded it to Holder in Chicago, who responded:[726]

From: Attorney General
Sent: Friday, October 07, 2011 11:41 AM
To: Grindler, Gary (OAG)
Subject: Re: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

"Get background on sheriffs. Republicans?"

Get background on sheriffs. Republicans?

Grindler immediately sent out the request:[727]

From: Grindler, Gary (OAG)
To: Schmaler, Tracy (OPA); Richardson, Margaret (OAG)
Sent: 10/7/2011 11:44:22 AM
Subject: RE: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

Can we try to get some background on these sheriffs—i.e. political affiliation, etc…

[725] Email from Tracy Schmaler to Gary Grindler, et al. (Oct. 7, 2011) [DOJ-FF-62418].
[726] Email from Eric Holder to Gary Grindler (Oct. 7, 2011) [DOJ-FF-62527–30].
[727] Email from Gary Grindler to Tracy Schmaler and Margaret Richardson (Oct. 7, 2011) [DOJ-FF-62121–22].

Meanwhile, Holder forwarded his response to Schmaler, followed up with a question about Sheriff Paul Babeu, and then forwarded the whole chain to Matt Miller:[728]

From: Attorney General
Sent: Friday, October 07, 2011 11:49 AM
To: Matthew Miller
Subject: Fwd: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

Ideas? If yes- share with Gary. Going to a meeting at WH for 2 hours. Need surrogates - law enforcement types.

Sent from my iPhone - So please forgive my typos.

Begin forwarded message:

From: Attorney General
Date: October 7, 2011 11:45:35 AM EDT
To: "Grindler, Gary (OAG)" <[redacted]>, "Schmaler, Tracy (OPA)" <[redacted]>
Subject: Re: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

"Babeau has been real outspoken. What do we know about him?"

Babeau has been real outspoken. What do we know about him?

Miller responded:[729]

On Oct 7, 2011, at 10:56 AM, Matthew Miller < <mailto:Matthew Miller> <mailto:Matthew Miller> Matthew Miller wrote:

Get Neal MacBride, Laurie Robinson, or whoever has the best relationship to call Naleo, etc. immediately to ask them to round up people for a press statement saying how outrageous this is. I'll send a note to Gary.

"[I]mmediately . . . ask them to round up people for a press statement saying how outrageous this is."

Meanwhile, Holder continued to push Grindler and Schmaler:[730]

[728] Email from Eric Holder to Matthew Miller (Oct. 7, 2011) [DOJ-FF-62527–30].
[729] Email from Matthew Miller to Eric Holder (Oct. 7, 2011) [DOJ-FF-62527–30]. Miller sent his email at 11:56 EDT, but the time stamp on his email reflects Central Daylight Time.

From: Schmaler, Tracy (OPA)
Sent: Friday, October 07, 2011 12:25 PM
To: Attorney General; Grindler, Gary (OAG)
Subject: RE: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

We've got a few and will push them to reporters. The opening of the letter will also be a good pushback on the crackpot accessory to murder charges.

From: Attorney General
Sent: Friday, October 07, 2011 11:50 AM
To: Grindler, Gary (OAG); Schmaler, Tracy (OPA)
Subject: Re: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

"We need law enforcement surrogates TODAY!!"

We need law enforcement surrogates TODAY!!
(Check Laurie Robinson)

Grindler and Schmaler updated Holder:[731]

From: Schmaler, Tracy (OPA)
Sent: Friday, October 07, 2011 12:27 PM
To: Grindler, Gary (OAG); Attorney General
Subject: RE: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

Great- we've got a few chiefs and sheriffs from other cities/states as well.

From: Grindler, Gary (OAG)
Sent: Friday, October 07, 2011 12:26 PM
To: Schmaler, Tracy (OPA); Attorney General
Subject: RE: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

Tracy, I have reached out to Laurie Robinson and Marylou Leary and they are now looking for people to address the press conference.

That afternoon, DOJ sent Holder talking points for a phone call with Senate Judiciary Committee Chairman Patrick Leahy letting him know Holder's letter would be sent to Congress that afternoon.[732] The talking points included:[733]

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[730] Email from Tracy Schmaler to Eric Holder and Gary Grindler (Oct. 7, 2011) [DOJ-FF-62119–20].
[731] Email from Tracy Schmaler to Gary Grindler and Eric Holder (Oct. 7, 2011) [DOJ-FF-62119–20].
[732] Email from Gary Grindler to Eric Holder (Oct. 7, 2011) [DOJ-FF-62012]; email from Gary Grindler to Eric Holder (Oct. 7, 2011) [DOJ-FF-62013–14].
[733] Attachment to email from Gary Grindler to Eric Holder (Oct. 7, 2011) [DOJ-FF-62012]; email from Gary Grindler to Eric Holder (Oct. 7, 2011) [DOJ-FF-62013–14].

- The letter takes a swipe at Issa and other members who have denied ATF the tools it needs to enforce the law. Specifically it criticizes the House vote to block an ATF reporting rule. I know the gun issue is sensitive for you in Vermont, and I'm confident the letter won't put you in a bad position in any way.

- Thank you for all your help on this and so many matters. I know we asked you to join this oversight effort as part of the nominations deal, and there are better things for you and your staff to be doing. But your participation has been important. I think you'll see that this letter gives you some arguments to push back on the irresponsible arguments from the other side.

"I know the gun issue is sensitive for you in Vermont"

"I know . . . there are better things for you and your staff to be doing."

During the call, Weich emailed:[734]

From: Weich, Ron (OLA)
To: Schmaler, Tracy (OPA); Richardson, Margaret (OAG); Reich, Steven (ODAG)
Sent: 10/7/2011 4:12:41 PM
Subject: RE: AG talking to Sen. Leahy now

"Leahy thinks the letter is very good and effective - he's glad we did it."

AG just reported to me that Leahy thinks the letter is very good and effective - he's glad we did it.

From: Weich, Ron (OLA)
Sent: Friday, October 07, 2011 3:57 PM
To: Schmaler, Tracy (OPA); Richardson, Margaret (OAG); Reich, Steven (ODAG)
Subject: FW: AG talking to Sen. Leahy now

And Jeremy Paris thinks the letter is great. But he predicts Issa will demand the AG's appearance in HOGR next week.

That evening, Miller wrote:[735]

[INTENTIONALLY BLANK]

[734] Email from Ron Weich to Tracy Schmaler, et al. (Oct. 7, 2011) [DOJ-FF-62366].
[735] Email from Matthew Miller to Eric Holder (Oct. 7, 2011) [DOJ-FF-62527–30].

From: Matthew Miller <Matthew Miller>
Date: October 7, 2011 9:26:41 PM EDT
To: Attorney General
Subject: Re: Sheriffs in AZ - presser on AG resignation and "accessory to murder charges"

"Your letter's playing well."

Your letter's playing well. Time to think about next steps. They are going to hit back very, very hard to this - probably organized statements/letters calling on your resignation. We need to be ready.

I talked to Margaret and Tracy and have been deputized to organize surrogates. It's a good role for someone outside DOJ. I'll get with Raben and we'll put together a pool, arm them with info, and get them out there.

Good to be on offense!

Late that night, as Holder emailed Schmaler to let her know he had just finished a speech and was back on a plane to D.C., Schmaler replied:[736]

----- Original Message -----
From: Schmaler, Tracy (OPA)
Sent: Saturday, October 08, 2011 01:08 AM
To: Attorney General
Subject: Re: Any more?

great - heard it went well. below are LA Times, NYT and WSJ -- same kind of stories casting the letter as a strong rebuke. all in all - went well.

we're getting the wide receiver op during bush administration as a standard graph in some of the mainstream coverage (WSJ, AP, and our CBS friend) - which is good, helps keep them off the notion that this isolated one administration

volley is to issa -- we'll see what he brings next week.

"[V]olley is to [I]ssa"

[736] Email from Tracy Schmaler to Eric Holder (Oct. 7, 2011) [DOJ-FF-04343–46].

The next morning, on **Saturday, October 8, 2011,** Holder responded:[737]

> ----- Original Message -----
> From: **Attorney General**
> Sent: Saturday, October 08, 2011 08:48 AM
> To: Schmaler, Tracy (OPA); Grindler, Gary (OAG); Cole, James (ODAG); Delery, Stuart F. (OAG); Richardson, Margaret (OAG)
> Subject: Re: Any more?
>
> More: their logical first reaction after they reviewed the docs WE sent them (belies the notion we've been holding back) should have been "I wonder if AG saw these?" Not their gotcha response- too typical of a hyper partisan, broken Washington. Play into the larger narrative.

He also added:[738]

> **From:** **Attorney General**
> **To:** Schmaler, Tracy (OPA); Cole, James (ODAG); Reich, Steven (ODAG); Weich, Ron (OLA); Richardson, Margaret (OAG); Grindler, Gary (OAG); Perrelli, Thomas J. (OAAG); Greenfeld, Helaine (SMO); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Axelrod, Matthew (ODAG)
> **Sent:** 10/8/2011 11:40:46 AM
> **Subject:** Re: Clips Round 3 - AG letter
>
> Timing of our letter was fortunate given the statements by knothead-partisan Arizona sheriffs

On **Sunday, October 9, 2011,** Chairman Issa indicated on a morning news program that a subpoena to DOJ would likely be forthcoming.[739] That night, Issa sent a letter to Attorney General Holder responding to his October 7 letter.[740]

The next morning, on **Monday, October 10, 2011,** Weich flagged the letter for others:[741]

> ----- Original Message -----
> From: Weich, Ron (OLA)
> Sent: Monday, October 10, 2011 08:19 AM
> To: Reich, Steven (ODAG); Schmaler, Tracy (OPA)
> Subject: Fw: Letter from Chairman Issa
>
> They sent this letter last night. Reading it on BB, it appears to urge the AG to "come clean" but I think does not demand his testimony in HOGR. I will circulate it more broadly later this AM when at my desk.

Later that morning, Weich circulated the letter to Holder and others in DOJ:[742]

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[737] Email from Eric Holder to Tracy Schmaler, et al. (Oct. 8, 2011) [DOJ-FF-04343–46].
[738] Email from Eric Holder to Tracy Schmaler, et al. (Oct. 8, 2011) [DOJ-FF-04313–26].
[739] *See, e.g.,* Associated Press, *Issa: 'Fast and furious' subpoenas issued soon*, YAHOO! NEWS, Oct. 10, 2011, *available at* https://www.yahoo.com/news/issa-fast-furious-subpoenas-issued-soon-204241306.html.
[740] H. Comm. on Oversight & Gov't Reform, *Press Release: Issa to Holder: "You Own Fast and Furious"*, (Oct. 9, 2011), *available at* https://oversight.house.gov/release/issa-to-holder-you-own-fast-and-furious.
[741] Email from Ron Weich to Steven Reich and Tracy Schmaler (Oct. 10, 2011) [DOJ-FF-62641–42].

-----Original Message-----
From: Weich, Ron (OLA)
Sent: Monday, October 10, 2011 11:55 AM
To: Attorney General; Cole, James (ODAG); Perrelli, Thomas J. (OAAG); Grindler, Gary (OAG); Richardson, Margaret (OAG); Goldberg, Stuart (ODAG); O'Neil, David (ODAG); Schmaler, Tracy (OPA); Reich, Steven (ODAG); Axelrod, Matthew (ODAG); Delery, Stuart F. (OAG); Greenfeld, Helaine (SMO)
Subject: 10/9 letter to the AG from Chairman Issa re F+F --

This was emailed to us last night. It is a very aggressive rebuttal of the letter we sent Fri, but surprisingly does not directly seek the AG's testimony in the House Oversight Committee. I will share it with CRM as well since it references their activities.

"[S]urprisingly does not directly seek the AG's testimony"

That afternoon, Schmaler emailed:[743]

----- Original Message -----
From: Schmaler, Tracy (OPA)
Sent: Monday, October 10, 2011 02:47 PM
To: Attorney General
Subject: RE: 10/9 letter to the AG from Chairman Issa re F+F --

Am providing the below to the few media who are picking up on this. it's just fox, politico and a few blogs. Want to keep pushing back, but make clear this is issa playing to the cameras more than anything else:

"Want to . . . make clear this is [I]ssa playing to the cameras more than anything else"

Attorney General Holder responded:[744]

From: Attorney General
To: Schmaler, Tracy (OPA)
Sent: 10/10/2011 3:03:11 PM
Subject: Re: 10/9 letter to the AG from Chairman Issa re F+F --

Agree. I'd amp up responses even more. And ask: mr issa what are YOUR proposals and why do YOU oppose proposals Obama Admin has made? Challenge them

"Challenge them"

On **Tuesday, October 11, 2011,** DOJ held a press conference for Holder. In preparation for possible questions about a subpoena for Holder, Schmaler emailed:[745]

[742] Email from Ron Weich to Eric Holder, et al. (Oct. 10, 2011) [DOJ-FF-62811].
[743] Email from Tracy Schmaler to Eric Holder (Oct. 10, 2011) [DOJ-FF-62811].
[744] Email from Eric Holder to Tracy Schmaler (Oct. 10, 2011) [DOJ-FF-62811].
[745] Email from Tracy Schmaler to Steven Reich (Oct. 11, 2011) [DOJ-FF-62875–76].

From:	Schmaler, Tracy (OPA)
To:	Reich, Steven (ODAG)
CC:	Weich, Ron (OLA)
Sent:	10/11/2011 12:29:33 PM
Subject:	RE: Subpoena issued to A.G. Holder?

If AG gets asked, going to have him say dept has and will continue to work w. committee – we've cooperated w/ them on both simple requests for docs as well as subpoenas -- we've provided info w/o need for subpoena but issa has resorted to these unnecessary tactics in past – which is unfortunate..

"[G]oing to have him say . . . we've cooperated w/ them"

When Holder was indeed asked about Operation Fast and Furious at the press conference, Eric Schultz emailed Schmaler to ask if she had a transcript of an exchange.[746] Schmaler summarized it for Schultz:[747]

From:	Schmaler, Tracy (OPA)
To:	**Eric H. Schultz**
Sent:	10/11/2011 3:16:54 PM
Subject:	Re: do you guys have transcript of presser - specifically the F&F question

Asked about subpoenas coming - he said we have provided info by request and supoena andexpected that wouldn't change but will not let this political game-playing (my words, not his) distract from our real work - like foiling this plot.

A short while later, she circulated the transcript to others in DOJ:[748]

From:	Schmaler, Tracy (OPA)
To:	Reich, Steven (ODAG); Weich, Ron (OLA)
Sent:	10/11/2011 3:40:17 PM
Subject:	AG at press conf

Q: Mr. AG I have to ask you about the Fast and Furious investigation if you can indulge me for one minute. The report is that they are preparing sub on the Hill to get info from the Justice Department, naming top officials in the Justice Department. Apparently the people on the Hill - your critics - say they just don't believe your testimony in essence. What do you have to say about that? How will you comply with the subpoenas?

A: Well, we have sent thousands of pages of documents up to the Hill. Subpoenas, I'm sure we will undoubtedly comply with. What I want the American people to understand is that in complying with those subpoenas and dealing with that inquiry - that will not distract us from the important business that we have to do here at the Justice Department including matters like the one we have announced today.

"Subpoenas, I'm sure we will undoubtedly comply with."

On **Tuesday, October 11, 2011,** Chairman Issa issued a subpoena to Attorney General Holder for documents related to Operation Fast and Furious.[749] DOJ has not produced any communications which post-date the issuance of the subpoena.

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[746] Email from Eric Schultz to Tracy Schmaler (Oct. 11, 2011) [DOJ-FF-62885].
[747] Email from Tracy Schmaler to Eric Schultz (Oct. 11, 2011) [DOJ-FF-62885].
[748] Email from Tracy Schmaler to Steven Reich and Ron Weich (Oct. 11, 2011) [DOJ-FF-62879].
[749] H. Comm. on Oversight & Gov't Reform, *Press Release: Oversight Committee Subpoenas Attorney General for Operation Fast and Furious Communications and Documents* (Oct. 12, 2011), *available at*

IX. Postscript: Missing Documents

FINDING:	**The Justice Department has failed to produce documents for the period from October 11, 2011, to June 28, 2012. These documents cover such key events as the Department's decision to send Assistant Attorney General Lanny Breuer to Congress to testify regarding his involvement, contradicting Attorney General Holder's assertions that knowledge of the tactics "reache[d] into the upper levels of the Justice Department."**

Late on the morning of **Monday, October 31, 2011,** the Senate Judiciary Committee's Subcommittee on Crime and Terrorism released its witness list for a hearing the next morning on combating international organized crime.[750] The list included Assistant Attorney General Breuer.

Two hours later, the Committee learned that DOJ's Office of Legislative Affairs would make a Fast and Furious document production and provide a briefing on the documents at the end of the day. The documents included emails sent in 2010 by Breuer and his deputies, including Weinstein, regarding Operation Wide Receiver and its use of the tactic of walking firearms. According to the emails, Breuer and Weinstein convened a meeting with ATF leadership regarding the tactic, yet failed to alert others at DOJ.

Although not present at the October 31, 2011 briefing by DOJ legislative affairs officials, immediately following it, Breuer released a statement which read in part:

> 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

https://oversight.house.gov/release/oversight-committee-subpoenas-attorney-general-for-operation-fast-and-furious-communications-and-documents.

[750] *Combating International Organized Crime: Hearing before the S. Subcomm. on Crime and Terrorism*, 112th Cong. (Nov. 1, 2011) (No. J-112-49).

> of any similarities between the two. That was a mistake, and I regret not having done so.[751]

As of that date, the Justice Department had produced no emails related to the drafting of the February 4, 2011, letter.

According to the later DOJ OIG report:

> Breuer told the OIG that the first draft of his statement to Congress acknowledging responsibility for failing to raise Operation Wide Receiver to Department leadership was prepared by the Office of the Deputy Attorney General, and that he then worked on the statement with his staff in the Criminal Division. He stated that he wanted to "take as much responsibility as I could," adding that he believed "there was an expectation that I would step up to the plate, and I was willing to do it."[752]

Yet at the **Tuesday, November 1, 2011** hearing, after asking why Breuer failed to alert any other DOJ officials to the gunwalking in Operation Wide Receiver, Senator Grassley raised the drafting of the February 4 letter.[753] Breuer gave the impression that because of his trip to Mexico, the drafting of the letter was not on his radar:

> Q. On February 4th, 2011, the department sent me a letter also assuring me that allegations of gun walking were untrue. It reads, quote, "ATF makes every effort to interdict weapons that have been purchased illegally, and prevent their transportation to Mexico," end of quote. That statement is absolutely false. And you admitted as much last night, that you knew by April, 2010, that ATF walked guns in Operation Wide Receiver. That is . . . correct, yes?
>
> A. Yes, senator. What I . . .
>
> Q. That's all I need to know, if that's correct. Did you review that letter before it was sent to me?
>
> A. Senator, again, I just want to be clear that, as I told you a moment ago, I regret that in April of 2010 that I did not draw the connection between Wide Receiver and Fast and Furious.

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[751] Jonathan Strong, *Top Justice Official Expresses Regret at Gun Walking Omission*, ROLL CALL, Oct. 31, 2011, *available at* http://www.rollcall.com/news/top_justice_official_expresses_regret_at_gun_walking_omission-209925-1.html.

[752] DOJ OIG report at 388.

[753] *Combating International Organized Crime: Hearing before the S. Subcomm. on Crime and Terrorism*, 112th Cong. 9 (Nov. 1, 2011) (No. J-112-49), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112shrg81638/pdf/CHRG-112shrg81638.pdf.

> Moreover, I regret that—that even . . . earlier this year that I didn't draw that connection.
>
> In direct answer to your question, senator, I can say—I cannot say for sure whether I saw a draft of the letter that was sent to you. What I can tell you, senator, is at that time, I was in Mexico dealing with [the] very real issues that we are all so committed to.
>
> But I also regret, as I've said, that I didn't draw that connection earlier.[754]

As discussed above, Breuer was in fact sent multiple drafts of the letter before it was sent to Senator Grassley. Because DOJ has failed to provide any of the communications from the time period surrounding Breuer's testimony, the Committees are unable to assess how premeditated Breuer's misleading testimony was.

Assistant Attorney General Lanny Breuer testifies before the Senate Judiciary Subcommittee on Crime and Terrorism on November 1, 2011 (photo from C-SPAN)

Similarly, on **Tuesday, November 8, 2011,** Attorney General Holder appeared before the Senate Judiciary Committee for an oversight hearing.[755] When asked about the wiretap applications approved by the Criminal Division, Holder testified:

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[754] *Id.*

[755] *Oversight of the U.S. Dep't of Justice: Hearing before the S. Comm. on the Judiciary*, 112th Cong. (Nov. 8, 2011) (No. J-112-50), *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112shrg74542/pdf/CHRG-112shrg74542.pdf.

> I have not seen them. But I do not have any information that indicates that those wiretap applications had anything in them that talked about the tactics that have made this such a bone of contention and have legitimately raised the concern of Members of Congress as well as those of us in the Justice Department. I would be surprised if the tactics themselves about gun walking were actually contained in those applications.[756]

Holder's claim of ignorance about the contents of the wiretap applications seems disingenuous. Holder received daily briefings, beginning months earlier on Operation Fast and Furious. He participated in many email chains with his senior management regarding how to communicate about the wiretap applications. And, he managed DOJ's effort to remove ATF Acting Director Melson after Melson testified to Congress regarding the problematic information in the wiretap affidavits.

Further, Holder's stated assumptions about the contents of applications stand at odds with the DOJ OIG's later finding: "We found that the affidavits described specific incidents that would suggest to a prosecutor who was focused on the question of investigative tactics that ATF was employing a strategy of not interdicting weapons or arresting known straw purchasers."[757] Fully nine months after DOJ failed to gather sufficient information to send an accurate letter to Congress, the Attorney General continued to provide Congress with misleading and unreliable information.

FINDING:	**The Justice Department has gone to great lengths to withhold the documents that show when the Department became aware of the problems with Fast and Furious and why it ultimately decided when it did to correct the falsehood it had provided to Congress. The Department refused to produce to Congress emails such as Weinstein's raising concerns about DOJ's position, eventually allowing Attorney General Holder to be held in contempt as a result.**

On **Friday, December 2, 2011,** Deputy Attorney General Cole finally signed a letter to Chairman Issa and Senator Grassley withdrawing the February 4, 2011 letter:

> As indicated in congressional testimony by senior Department officials on several occasions . . . facts have come to light during the course of this investigation that indicate that the February 4 letter contains inaccuracies. Because of this, the Department now formally withdraws the February 4 letter.[758]

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[756] *Id.* at 32-33.
[757] DOJ OIG report at 277.
[758] Letter from James Cole, Deputy Att'y Gen., Dep't of Justice, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, and Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Dec. 2, 2011), at 1, *available at* http://www.grassley.senate.gov/sites/default/files/judiciary/upload/ATF-12-02-11-Cover-letter-from-Cole-on-Document-Drop.pdf.

Still, DOJ continued to refuse to provide all the documents that Congress subpoenaed. Ultimately, this resulted in Attorney General Holder, the custodian of the documents and the named recipient of the subpoena, being held in contempt of Congress on **Thursday, June 28, 2012**.

While DOJ has produced some responsive documents dated through the spring and summer of 2011, it continues to withhold documents that post-date the Oversight and Government Reform Committee's October 12, 2011 subpoena. These documents are key to understanding whether DOJ may have intentionally obstructed the congressional investigation into Operation Fast and Furious. Only when they are produced will Congress fully understand what preparation went into the misleading testimony of both Breuer and Holder, why DOJ finally decided to withdraw the inaccurate February 4 letter, and what evidence of intent to obstruct the Committee's subpoenas may exist between October 12, 2011, and June 28, 2012.

Attorney General Eric Holder shows document to Assistant Attorney General Ron Weich at February 2, 2012 hearing before the House Oversight and Government Reform Committee; Associate Deputy Attorney General Steven Reich visible in background between them (House Oversight and Government Reform Committee photo)

[INTENTIONALLY BLANK]

X. Conclusion

DOJ's actions in 2011 with regard to Operation Fast and Furious raise a host of questions about how Executive Branch agencies respond to congressional oversight. Notwithstanding the specific nature of whistleblower allegations conveyed by Congress, DOJ failed to take seriously its obligation to submit to meaningful congressional oversight. Had DOJ treated the allegations with more seriousness, it might have become aware of the problems with Fast and Furious much more swiftly.

As the DOJ OIG concluded, some of the failures in responding to Congress stemmed from a fundamentally flawed process for responding to serious allegations of misconduct. The Committees must conduct further investigation to determine whether DOJ has implemented changes to its process in order to avoid repeating the same mistakes.

Attorney General Eric Holder testifies at February 2, 2012 House Oversight and Government Reform Committee hearing as ATF whistleblower Special Agent John Dodson looks on (House Oversight and Government Reform Committee photo)

Given the questions raised by these documents, the Committees may also need to pursue further steps to better understand the role that individual actors may have played in obstructing Congress. Despite DOJ initially accusing Senator Grassley of "inappropriate political influence" on career prosecutors and law enforcement,[759] several emails appear to corroborate Acting

[759] Letter from Ronald Weich, Asst. Att'y Gen., Dep't of Justice to Charles Grassley, Ranking Mem., S. Comm. on the Judiciary (Feb. 4, 2011).

Director Melson's allegation that some within DOJ were "really trying to figure out a way to push the information away from their political appointees at the Department."[760]

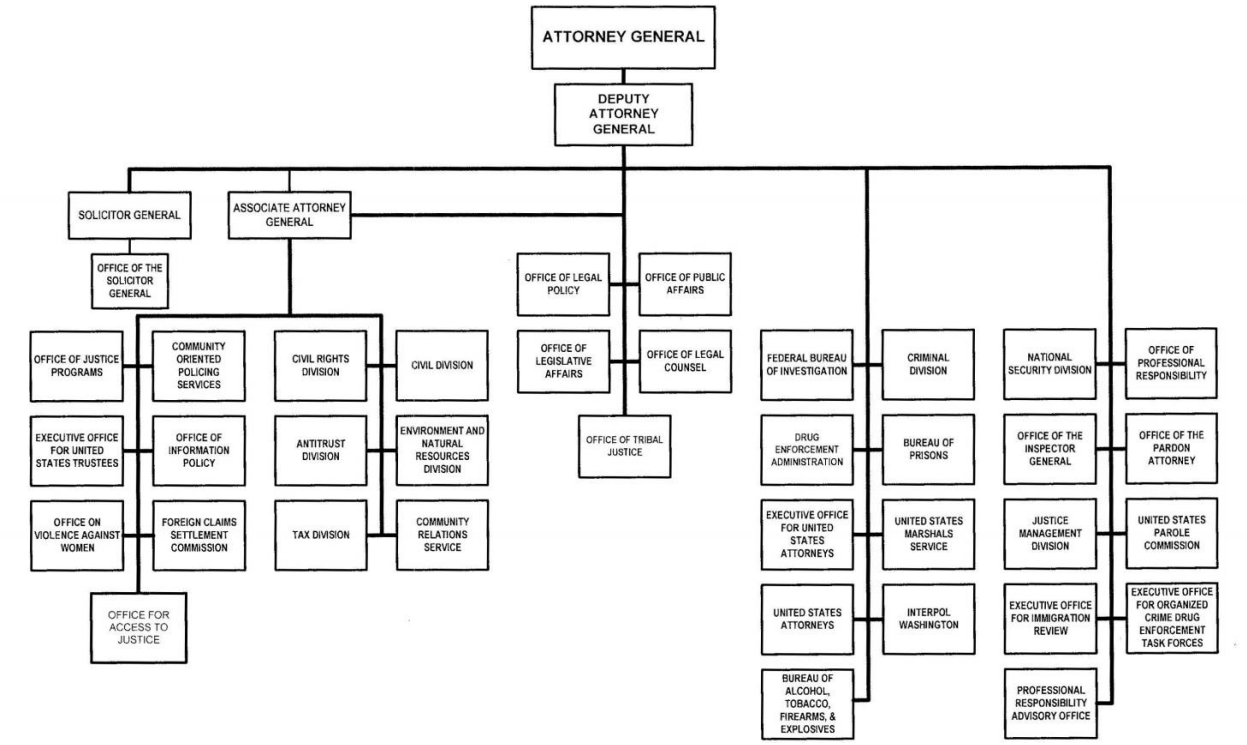
DOJ's defensive focus on self-preservation is all the more unfortunate given its impact on the family of deceased Border Patrol Agent Brian Terry. Whistleblowers put their careers on the line to shed light on the circumstances surrounding Agent Terry's death. Now, Terry's family deserves to better understand why the allegations regarding his death were not taken seriously by DOJ.

ATF whistleblower Special Agent John Dodson joins the Terry family at a memorial statue of Agent Terry built at the Brian A. Terry Border Patrol Station near Naco, Arizona (photo courtesy of Terry family)

[INTENTIONALLY BLANK]

[760] Melson Transcript at 124.

XI. Appendix: Table of Names



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Principal Associate Deputy Attorney General (until mid-2011)

Stuart M. Goldberg
Chief of Staff (through July 2011); Principal Associate Deputy Attorney General (after July 2011)

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Senior Counsel to the Assistant Attorney General for the Criminal Division (to March 2011); Associate Deputy Attorney General (from March 2011)

Steven Reich
Associate Deputy Attorney General (from June 2011)

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