



Part II of III

Fast and Furious: The Anatomy of a Failed Operation

JOINT STAFF REPORT

Prepared for

**Rep. Darrell E. Issa, Chairman
United States House of Representatives
Committee on Oversight and Government Reform
&
Senator Charles E. Grassley, Ranking Member
United States Senate
Committee on the Judiciary**

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Prologue

On Independence Day 2011, as hundreds of revelers noisily walked the streets of Capitol Hill celebrating our country's independence, Ken Melson quietly walked into the halls of Congress to share his story.

In the center of Room 2154 of the Rayburn House Office Building, Ken Melson, then the Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, relaxed in his chair. To his right sat his lawyer, a former United States Attorney. To his left at the head of the table, a court reporter, called the night before for an emergency assignment, using her stenograph to record Melson's every word. Muzzled by senior leadership of the Department of Justice for months and amidst rumors of his imminent firing, Melson had had enough.

Across from the ATF Acting Director sat his interviewers, a staffer for the Oversight and Government Reform Committee and the chief investigative counsel for Senator Grassley, the individuals responsible for Melson's presence. A speakerphone sat in the center of the table, switched on for those who were unable to change their plans in the middle of a long holiday weekend to call in and participate. Ken Melson was about to begin his day-long interview with Congress as part of its investigation into ATF's gun trafficking operation known as Operation Fast and Furious.

"Are you ready to begin?" the staffer asked.

"I've got all day," Melson replied in a confident tone. "I just have to be home in time to watch the fireworks with my kids."

July 4, 2011, was not the first non-work day that Ken Melson had spent away from his family talking to congressional investigators about Fast and Furious.

During the week of June 13, 2011, the Committee on Oversight and Government Reform held its first two hearings on Fast and Furious. The second, on June 15, featured testimony by Senator Grassley and three ATF agents close to the operation, as well as three family members of slain Border Patrol Agent Brian Terry, who died as a result of the reckless tactics used in Fast and Furious. During that hearing, the Committee uncovered evidence that Ken Melson had sought access to pole cameras monitoring the homes of suspects in the investigation. Until that point, no evidence had been uncovered showing ATF's Acting Director to be engaged in such hands-on management of Fast and Furious.

The public nature of the June 15 hearing and its damaging revelations led to an increasing drumbeat for Melson's resignation. But Ken Melson had no intention of resigning. He had not viewed any footage from the pole cameras. He believed he had done nothing wrong. In fact, in his view, senior officials in the Justice Department were preventing him from doing something right.

Even though the Committee had subpoenaed Ken Melson for documents related to Fast and Furious in March, Melson was powerless to respond. Melson wanted to cooperate with Congress, but the response to the subpoena, issued to Ken Melson, came not from him, but instead from senior officials in the Justice Department. These officials, in the Office of Legislative Affairs and the Office of the Deputy Attorney General, instructed Melson not to communicate with Congress and not to communicate with his staff about Fast and Furious. They told him they would handle the response for him.

On July 4, 2011, Melson shared a blunt assessment of the Department's handling of the response:

My view is that the whole matter of the Department's response in this case was a **disaster**. That as a result, it came to fruition that the committee staff had to be more aggressive and assertive in attempting to get information from the Department, and as a result, there was more adverse publicity towards ATF than was warranted if we had cooperated from the very beginning. And a lot of what they did was damage control after a while. Their position on things changed weekly and it was hard for us to catch up on it, but **it was very clear that they were running the show.**¹

In fact, the Justice Department was “running the show” so much so that it would not permit congressional investigators to speak with Melson. Despite months of congressional inquiry into ATF, Department officials were preventing Congress from interviewing the man at the center of the investigation.

To combat this difficulty, on Thursday, June 16, 2011, the day after the second hearing on Fast and Furious, an intermediary contacted Ken Melson to suggest that it might be time for Melson to share his side of the story with congressional investigators.

Mindful of his handlers in the Office of the Deputy Attorney General, Melson immediately shrugged off the suggestion and replied to the intermediary: “I can't do that. They would slaughter me.”

Instead, the intermediary and Melson scheduled a breakfast meeting for that Sunday. The intermediary thought that senior officials in the Department leadership, looking out for their own best interests, not Melson's, were misleading Melson. He wanted to offer Melson advice on how to better answer Department officials while still protecting his own interests and the interests of ATF.

The next day, Friday, June 17, a story entitled “Head of ATF is Likely to Go” appeared on the website of the *Wall Street Journal*. The story noted that “[m]oves toward the replacement of Kenneth Melson . . . could begin next week.” Melson's tenure as ATF Acting

¹ Transcript, Interview of Kenneth E. Melson by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (July 4, 2011), at 31 [hereinafter Melson Transcript] (emphasis added) (Exhibit 1).

Director appeared to be coming to an end quickly, and, thanks to the Justice Department's handling of the matter, without an opportunity for Melson to tell his side of the story.

On Sunday morning, June 19, 2011—Father's Day—Melson and the intermediary met for breakfast at a McDonald's near Melson's home. The meeting lasted nearly an hour.

Later that afternoon, a staffer from Chairman Issa's office called Melson on his cell phone. He had obtained the number from the intermediary that morning. Unfamiliar with the incoming number, Melson, shopping in an ACE Hardware store, answered the call. Melson told the staffer he took the call because the incoming number displayed as "Private"—the same designation usually associated with incoming calls he received from Justice Department or ATF managers.

The ensuing 20-minute conversation provided a powerful insight into Melson's mindset. Melson, a distinguished career federal prosecutor, gave up his status as a member of the Senior Executive Service to become an at-will employee when President Obama asked him to serve as the ATF Acting Director. This meant that Melson could be terminated at any time and for any reason, including for disobeying the order from senior Department officials prohibiting him from speaking with congressional investigators. The fact that one such investigator made an unsolicited call to Melson, and that the call occurred on a holiday, gave Melson some confidence that he was not disobeying orders from his Department minders.

Knowing that the Department was withholding information from Congress, Melson had wanted to talk with congressional investigators to set the record straight. He even told the staffer that he himself had researched whether he could file for whistleblower status.

After the phone call, the staffer e-mailed Ken Melson's handler in the Office of the Deputy Attorney General, Associate Deputy Attorney General Matt Axelrod, to reiterate a previous request to interview Melson. In light of the *Wall Street Journal* article two days earlier, the investigator knew it was imperative to interview Melson before the Justice Department removed him as the head of ATF. Thus, he requested that the interview take place on Monday, June 20, or Tuesday, June 21.

The next day, June 20, Axelrod replied, chastising the investigator for contacting Melson directly. He wanted Congress to work through him, instead of approaching law enforcement personnel directly—regardless of how much those personnel wished to talk with Congress. Axelrod also said that the interview with Ken Melson would take place on July 13—three weeks later. Congressional investigators worried that Melson would be forced out of his job by that point.

Despite new reports surfacing on *CNN* that Melson was about to lose his job, he was still head of ATF at the end of the week. Congressional investigators, abiding by the decree from the Deputy Attorney General's office that they work only through that office in contacting law enforcement officials for interviews, were concerned that Melson would be removed as the ATF head before his scheduled July 13 interview.

On Friday, July 1, however, an opening occurred. The chief investigative counsel for Senator Grassley e-mailed Melson regarding attempts within the Department to retaliate against the Fast and Furious whistleblowers. Senator Grassley viewed these attempts as a sign of bad faith on the part of the Department, just days after he had agreed to proceed on three Justice Department nominees following Attorney General Holder's promises of cooperation with the investigation. Grassley's investigator wanted to inform Melson personally about the Department's documented retaliation attempts.

Ken Melson e-mailed back.

He was willing to talk about the matter in detail with Senator Grassley's investigator, who called him the next day to follow up. During that conversation, the investigator encouraged Melson to come in and tell his story to Congress. His reputation was being dragged through the mud, the investigator said, and senior Department officials were prohibiting him from doing anything about it. He deserved better.

Melson, knowing his days at ATF were numbered regardless of what actions he took, agreed.

On Sunday July 3, Melson traveled to Capitol Hill to meet with Senator Grassley's lead investigator, who he had spoken to the day before, and Chairman Issa's lead investigator, who he had spoken to on Father's Day. Melson came alone, without his ATF security detail. The trio convened around a conference table in a basement office about the need for Melson to testify about Fast and Furious, and the Justice Department's efforts to block him from approaching Congress to share information.

Based on the information Melson shared, it was important to get his interview on the record and to have Democratic staff present to ask questions of their own. That afternoon, Ken Melson agreed to a transcribed interview the following day, July 4, to share his story. Pursuant to an agreement between investigators and Department personnel, witnesses were allowed to sit for transcribed interviews with their own personal attorneys if they chose to do so. The Department had not informed Melson of that agreement. Once he learned of that option, he became the first ATF employee under this agreement to make that choice.

After the meeting broke up, the two staffers scrambled to ensure that the logistics were in place to conduct a transcribed interview the following morning. They located a court reporter who was able to arrive for emergency duty with less than a day's notice. They secured the House Oversight and Government Reform Committee's main hearing room in 2154 Rayburn for the interview, and invited other staff to the interview via e-mail, noting that the invitation was contingent on their commitment to maintain confidentiality. While some investigators protested about the late notice and others were unable to attend in person, the opportunity to interview Ken Melson at last persuaded many staffers to set aside their Independence Day plans and either attend in person or conference in by telephone.

With his lawyer, a former U.S. Attorney, at his side, and confident that he was doing the right thing, Melson testified for six and a half hours with no food and only a few breaks. During

his testimony, Melson made little effort to conceal his thoughts about the conduct of his Justice Department handlers in response to the congressional inquiry. Melson testified:

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.**²

In the intervening fourteen months since Ken Melson made that statement, the Justice Department has cried foul about the politicization of the congressional inquiry into Fast and Furious. Yet, Melson's words ring even truer today than they did on Independence Day 2011. The Department's actions in steering the sinking ship away from political appointees continue to give credence to Melson's testimony, as the Department has, at all costs, deflected blame away from these political appointees.

Instead of owning up to its own shortcomings, the Department sought to put the blame on Ken Melson.

² Melson Transcript at 124 (emphasis added).

I. Executive Summary

Operation Fast and Furious was not a strictly local operation conceived by a rogue ATF office in Phoenix, but rather the product of a deliberate strategy created at the highest levels of the Justice Department aimed at identifying the leaders of a major gun trafficking ring. This strategy, along with institutional inertia, led to the genesis, implementation, and year-long duration of Fast and Furious.

Shortly after he took office, Attorney General Eric H. Holder, Jr. delivered a series of speeches about combating violence along the southwest border. He focused specifically on fighting Mexico's Sinaloa Cartel, and in the fall of 2009, the Justice Department released a document crystallizing the Attorney General's vision, entitled "Department of Justice Strategy for Combating the Mexican Cartels."

As part of this new strategy, the Department of Justice made a tactical decision to shift its focus from arresting straw purchasers to identifying members of large illegal trafficking networks. These investigations would involve multiple federal agencies, and local U.S. Attorney's offices would coordinate them. In October 2009, the Deputy Attorney General led a newly created Southwest Border Strategy Group designed to ensure the effective implementation of this strategy.

The ATF Phoenix Field Division received the Department's new strategy favorably. Leaders of the Phoenix Field Division believed that the new strategy allowed agents to witness illegally purchased weapons being transferred to third parties without interdiction, even if lawful interdiction was possible. Consistent with a desire for a new emphasis on prosecuting gun trafficking cases, at around the same time, Lanny Breuer, Assistant Attorney General for the Criminal Division, assigned a prosecutor to a dormant firearms trafficking case out of the ATF Phoenix Field Division known as Operation Wide Receiver. Under prior Department leadership, Wide Receiver was not prosecuted, in part due to the reckless tactics used in the investigation. Both Breuer's resurrection of the prosecution and the Department's new strategy, however, provided the imprimatur for the Phoenix Field Division to create Operation Fast and Furious.

Though the Criminal Division assigned an attorney to assist with Fast and Furious, the operation quickly spun out of control. Straw purchasers bought hundreds of weapons illegally while federal agents watched. Armed with this information, beginning in the spring of 2010, the Department's Criminal Division—in particular, Deputy Assistant Attorney General Jason Weinstein—authorized several applications for wire intercepts to monitor the phones of straw purchasers. In the summer of 2010, a second attorney from the Criminal Division began assisting with Fast and Furious, and the Criminal Division authorized additional applications for wire intercepts. Fast and Furious was growing even larger.

The Criminal Division was not the only component of the Justice Department overseeing Fast and Furious. The Office of the Deputy Attorney General was also involved. Acting Deputy Attorney General Gary Grindler and his staff were briefed extensively on the enormous volume

of firearms involved in the case. Individuals in that office, including Ed Siskel, received constant updates on recoveries of large numbers of weapons connected to Fast and Furious.

Though many senior Department officials were keenly aware of Fast and Furious, no one questioned the operation. The Southwest Border Strategy Group asked no questions. The Criminal Division asked no questions. The Office of the Deputy Attorney General asked no questions. No one ordered that Fast and Furious be shut down. Instead, senior Department officials let it continue to grow.

Officials in the Office of the Deputy Attorney General were ill-prepared to understand and approve Fast and Furious. Ed Siskel, the Associate Deputy Attorney General responsible for the ATF portfolio, had no prior training or experience with ATF, and he did not make any effort to gain information about ATF while at his position. Acting Deputy Attorney General Gary Grindler admitted that he did not appreciate the massive size of Fast and Furious, even though it was the largest firearms trafficking case involving Mexico ever undertaken.

The hands-off management approach taken by these senior managers meant that they expected problems to be reported to them, failing to seek out information themselves. Siskel and Grindler did not ask any questions about Fast and Furious because they did not know what questions they *should* have been asking about Fast and Furious.

Monty Wilkinson, Deputy Chief of Staff to the Attorney General, contributed to the Department's lack of supervision over Fast and Furious. While Wilkinson read memos to the Attorney General about Fast and Furious, he did not believe it was his role to manage and supervise components of the Department, including ATF and the Arizona U.S. Attorney's Office. Wilkinson, like other senior Department officials, never asked questions about Fast and Furious.

In fact, just before the death of U.S. Border Patrol Agent Brian Terry, Monty Wilkinson was inquiring about the possibility of the Attorney General traveling to Phoenix to *help announce* Fast and Furious at a press conference. Once the weapons found at the Terry murder scene were traced to Fast and Furious, though, this idea was quickly scrapped.

Department leadership's failure to recognize Fast and Furious was a problem until it was too late was the result of a "pass-the-buck" attitude that emanated from the highest echelons of the Department of Justice. Every senior Department official interviewed during the Committees' investigation claimed either ignorance of Fast and Furious or that it was someone else's responsibility to ask questions or draw connections. Senior managers placed blame elsewhere and retained plausible deniability. This environment allowed Fast and Furious to fester for over a year.

Thus far, the Department has failed to reprimand any senior Department officials for their actions—or lack thereof—during Fast and Furious. In fact, several have received promotions. The management culture of the Department must change to prevent such a deadly operation from occurring again. Time is of the essence. Change must begin now.

II. Table of Names

Office of the Attorney General

Eric H. Holder, Jr.

Attorney General

After taking office, Holder delivered a series of speeches touting a new strategy to combat Mexican drug cartels. These speeches formed the basis of a new Department strategy.

Robert “Monty” Wilkinson

Deputy Chief of Staff

Monty Wilkinson read weekly reports discussing Operation Fast and Furious, yet failed to act on the information. He believed that it was not the responsibility of the Attorney General’s office to manage or supervise the Department’s components. Before Agent Brian Terry was murdered, Wilkinson inquired about the Attorney General’s participation in announcing the Fast and Furious take-down.

Office of the Deputy Attorney General

Gary Grindler

Acting Deputy Attorney General

Gary Grindler attended detailed briefings on Operation Fast and Furious in 2010. He had a passive management style, waiting for staff to bring issues to him instead of seeking them out. In January 2011, Grindler became the Chief of Staff to Attorney General Holder, a position he currently holds.

Edward Siskel

Associate Deputy Attorney General

Edward Siskel was responsible for the ATF portfolio in the Office of the Deputy Attorney General during Operation Fast and Furious, even though he had no prior training or experience with ATF. He also attended detailed briefings on Fast and Furious. Siskel is currently an Associate Counsel at the White House.

Criminal Division

Lanny Breuer

Assistant Attorney General

Led by Lanny Breuer, the Criminal Division decided to resurrect the prosecution of Operation Wide Receiver even though the case had used the reckless and misguided tactic of gunwalking.

Breuer dedicated staff resources to the U.S. Attorney's Office for the District of Arizona to help in Operation Fast and Furious. His staff also authorized at least six wiretap applications on his behalf in support of Fast and Furious.

Jason Weinstein

Deputy Assistant Attorney General

Jason Weinstein authorized wiretap applications for Operation Fast and Furious. He knew about the gunwalking tactics used in Operation Wide Receiver. He failed to connect the dots between the two cases. Weinstein resigned on September 19, 2012.

Kenneth Blanco

Deputy Assistant Attorney General

Kenneth Blanco authorized at least two wiretap applications in Operation Fast and Furious.

James Trusty

Acting Chief, Gang Unit

James Trusty was a key liaison between Criminal Division leadership and prosecutors sent by the Criminal Division to Arizona.

U.S. Attorney's Office for the District of Arizona

Dennis Burke

U.S. Attorney

Dennis Burke was the U.S. Attorney for the District of Arizona during Operation Fast and Furious. He frequently met with ATF and received updates on the case. In the early stages of Fast and Furious, Burke wanted to hold out for a bigger case instead of arresting the straw purchasers and closing the investigation. Burke resigned on August 30, 2011.

ATF Headquarters

Kenneth Melson

Acting Director

Kenneth Melson was instrumental in starting a new initiative between ATF and the Criminal Division, whereby Criminal Division attorneys assisted ATF with firearms investigations and prosecutions. Melson retired on September 19, 2012.

William Hoover

Deputy Director

Realizing that Fast and Furious had become an enormous case, William Hoover ordered an exit strategy for the investigation. The Department of Justice never implemented it. Hoover was also instrumental in briefing personnel at Department of Justice headquarters about the status of Fast and Furious, providing frequent updates to the Deputy Attorney General's office. Hoover retired from ATF on August 1, 2012.

William McMahon

Deputy Assistant Director for Field Operations—West

McMahon authorized the wiretap applications on behalf of ATF before they were sent to the Department of Justice's Office of Enforcement Operations for review and approval.

William Newell

Special Agent in Charge, Phoenix Field Division

William Newell had a history of using reckless tactics during his investigations. He believed he had the full support of senior Justice Department officials in creating and executing Fast and Furious.

III. Findings

Initial Involvement in Fast and Furious

- Following a series of speeches given by Attorney General Eric Holder, senior officials within the Justice Department developed a new strategy for combating the Mexican drug cartels. However, the Southwest Border Strategy Group, created to implement this strategy, failed to do so effectively. Instead, the draft Strategy for Combating the Mexican Cartels guided Operation Fast and Furious.
- The Justice Department's Criminal Division resurrected a dormant ATF case known as Operation Wide Receiver for prosecution. The case, in which ATF had allowed guns to walk, had not been prosecuted by previous Justice Department officials. The resurrection of the Wide Receiver prosecution may have signaled to ATF officials that the new Department leadership approved of the tactics involved.
- Fast and Furious was the first case chosen under a new partnership between ATF and the Criminal Division to focus on gun trafficking prosecutions. Shortly after Operation Fast and Furious began, the Criminal Division assigned a prosecutor to assist with the case.

Justice Department Involvement Deepens

- The Criminal Division authorized at least six wiretap applications for Fast and Furious. The applications were replete with details and instances of gunwalking. These wiretap applications bypassed ATF senior leadership and were sent straight to the Criminal Division. This approval process created the unusual situation in which senior Criminal Division officials received materials that senior ATF officials had not reviewed. These materials should have raised red flags.
- Acting Deputy Attorney General Gary Grindler, Associate Deputy Attorney General Ed Siskel, and other officials from the Office of the Deputy Attorney General attended a detailed briefing on Operation Fast and Furious in March 2010. Despite the evidence presented at the briefing of illegally-purchased firearms being recovered in Mexico, Grindler and Siskel failed to ask probing questions or take any significant follow-up action to monitor and supervise the conduct of the case.

Criminal Division Awareness of Gunwalking

- Criminal Division leadership discovered in the spring of 2010 that gunwalking had occurred in Operation Wide Receiver. However, rather than notifying the Inspector General or even the Deputy Attorney General, the individual responsible for overseeing ATF, senior Criminal Division officials held a single meeting with ATF leadership and a senior Department official in the press office in which they focused on the challenges of presenting gunwalking to the press.

- Criminal Division officials received detailed information about gunwalking in Fast and Furious at the same time these officials were expressing concern about gunwalking that had occurred in Operation Wide Receiver. Many similarities existed between the two operations. However, officials in the Justice Department claim that no one made the connection, failing to recognize the same warning signs and mistakes in both operations.

Justice Department's Failure to Supervise ATF

- Associate Deputy Attorney General Ed Siskel did not actively engage with ATF leadership. He viewed his role as extremely limited, so he did not seek out any detailed knowledge of specific ATF operations, including Operation Fast and Furious. Siskel had no prior training or experience with ATF, and he did not make any effort to learn more about ATF's problems during his tenure in ODAG.
- Acting Deputy Attorney General Gary Grindler did not take an active leadership role with respect to ATF. He waited for his staff to bring matters to his attention. Accordingly, Operation Fast and Furious continued unabated.
- Deputy Chief of Staff to the Attorney General Monty Wilkinson was uninterested in the initiatives and operations of individual Justice Department components—including those in his portfolio. In fact, he believed it was not the role of anyone in the Office of the Attorney General to manage and supervise Department components. He read weekly memos containing details about Fast and Furious, but did nothing with this information.
- Within the Department of Justice, ATF reports to the ODAG. Not a single Department official, however, took responsibility for supervising ATF. By failing to ask difficult questions about Fast and Furious, ODAG left ATF with the impression that ATF had the full support of Department leadership in the operation.

Supervision and Role of U.S. Attorney's Office

- When U.S. Attorney Dennis Burke reported to officials at Justice Department headquarters that his office had obtained a Title III wiretap in a firearms trafficking case—an unusual step and an aggressive tactic—no one at Justice Department headquarters probed deeper.
- ATF officials asked both the Justice Department's Criminal Division and ODAG for assistance in speeding up the indictments in Fast and Furious. The Justice Department, however, took no action to intervene. Instead, officials at Department headquarters were only concerned with preparing for the press impact of the indictments.

Connection of Fast and Furious to Brian Terry's Death

- Deputy Chief of Staff to the Attorney General Monty Wilkinson inquired about Attorney General Holder participating in the press conference announcing the take-down of Operation Fast and Furious.
- Both Monty Wilkinson and Gary Grindler were informed about the connection between Operation Fast and Furious and U.S. Border Patrol Agent Brian Terry's murder. Grindler received detailed information about the connection. He took no action, however, to investigate the operation.
- Shortly after the weapons from Brian Terry's murder traced back to Operation Fast and Furious, Dennis Burke recommended against Attorney General Holder's announcement of Fast and Furious to Monty Wilkinson.
- No one at Justice Department headquarters has been able to provide answers to the Terry family. During their respective transcribed interviews, Monty Wilkinson stated 38 times that he "did not recall" or "did not know." In a similar fashion, Gary Grindler did so 29 times, and Ed Siskel 21 times. In two different transcribed interviews, Dennis Burke said he "did not recall" or "did not know" a combined total of 161 times.

IV. Recommendations

- When the Justice Department promulgates a broad new strategy and implements it throughout its components, the Department must create procedures to ensure that implementation of the strategy is monitored, overseen, and supervised adequately.
- Congress vested in senior Department officials the authority to authorize applications for intrusive wire intercepts. These senior officials must review each application thoroughly to ensure such an intrusion is necessary and appropriate. Delegating this authority to subordinates introduces the risk that a careful review will not take place.
- The Justice Department needs to institute clear, written guidelines to outline the appropriate use of cooperating gun dealers during law enforcement investigations. The Department must scrutinize investigations that involve cooperating gun dealers much more closely.
- The official within the Office of the Deputy Attorney General responsible for the ATF portfolio should have ATF-specific experience and training, and must be more than just a liaison. That official should ensure that the Deputy Attorney General is able to provide meaningful supervision of ATF operations.
- The Deputy Attorney General must closely supervise ATF, an agency with a long and troubled history.
- Leadership within the Justice Department must start at the top. Senior managers should foster a culture of accountability within the Department by taking responsibility and accepting consequences for their own lack of initiative and failures.
- Justice Department components look to senior Department officials for leadership and guidance. It is critically important that these senior leaders provide such leadership and guidance. Justice Department officials also must take responsibility for supervising and managing the Department's component agencies.
- The Justice Department must provide the Terry family with a complete accounting of how it learned about the connection of their son's death to Operation Fast and Furious. The Department should also apologize for not personally informing the Terry family or publicly admitting the connection sooner.

V. Initial Involvement in Fast and Furious

A. The Cartel-Based Strategy

FINDING: Following a series of speeches given by Attorney General Eric Holder, senior officials within the Justice Department developed a new strategy for combating the Mexican drug cartels. However, the Southwest Border Strategy Group, created to implement this strategy, failed to do so effectively. Instead, the draft Strategy for Combating the Mexican Cartels guided Operation Fast and Furious.

Although ATF did not officially open the Fast and Furious investigation until the fall of 2009, the groundwork for the strategy that would guide the operation began shortly after new leadership took control of the Department of Justice nine months earlier. On February 25, 2009, just one month after Attorney General Eric Holder took office, he gave a speech noting the danger of the Mexican drug cartels, focusing on the Sinaloa cartel in particular. Attorney General Holder said of the cartels: “[They] are lucrative, they are violent, and they are operated with stunning planning and precision.”³ He promised that under his leadership “these cartels will be destroyed.”⁴ The Attorney General used his speech to outline the Department’s strategy for combating these dangerous cartels for the first time. He vowed that the Department of Justice would “continue to work with [its] counterparts in Mexico, through information sharing, training and mutual cooperation to jointly fight these cartels, both in Mexico and the United States.”⁵

In an April 2, 2009, speech in Cuernavaca, Mexico, Attorney General Holder gave further insight into the Department’s new strategy for combating these dangerous cartels. He spoke about the development of a prosecution and enforcement strategy with respect to firearms trafficking, noting that the “administration launched a major new effort to break the backs of the cartels.”⁶ In particular, the Attorney General said that the Justice Department was committed to adding “100 new ATF [Bureau of Alcohol, Tobacco, Firearms, and Explosives] personnel to the Southwest Border” and that Drug Enforcement Administration (DEA) would add “16 new positions on the border.”⁷ Most importantly, the Attorney General noted that there must be “an attack in depth, on both sides of the border, that **focuses on the leadership** and assets of the cartel.”⁸

In a June 30, 2009, speech at a Firearms Trafficking Summit in Albuquerque, New Mexico, Deputy Attorney General David Ogden observed that the southwest border is the front

³ Statement by Attorney General Eric Holder at the Xcellerator Press Conference (Feb. 25, 2009), *available at* <http://www.justice.gov/ag/speeches/2009/ag-speech-090225.html> [hereinafter Holder Statement].

⁴ ASSOC. PRESS, Mexican cartels’ drugs, mayhem hit U.S. cities, Feb. 26, 2009, *available at* http://www.msnbc.msn.com/id/29389404/ns/world_news-americas/t/mexican-cartels-drugs-mayhem-hit-us-cities/.

⁵ Holder Statement.


⁶ Statement by Attorney General Eric Holder at the Mexico/United States Arms Trafficking Conference (Apr. 2, 2009), *available at* <http://www.justice.gov/ag/speeches/2009/ag-speech-090402.html>.

⁷ *Id.*

⁸ *Id.* (emphasis added).

line of the fight against illegal gun trafficking.⁹ He also said that ATF and Immigration and Customs Enforcement (ICE) would sign a new agreement to “ensure coordination between the Departments on firearms investigations.”¹⁰

Following the Attorney General’s April 2, 2009, speech, a Firearms Trafficking Working Group was formed. This Working Group, led by Assistant Attorney General Lanny Breuer, was tasked with exploring and recommending proposals to enhance law enforcement efforts to curb firearms trafficking, focusing specifically on investigation, interdiction, training, prosecution, and intelligence-sharing.¹¹ On August 19, 2009, the Working Group presented its recommendations to the Attorney General:¹²

	U.S. Department of Justice Criminal Division
<i>Assistant Attorney General</i>	<i>Washington, D.C. 20530</i>
	August 19, 2009
MEMORANDUM FOR THE ATTORNEY GENERAL	
THROUGH:	THE DEPUTY ATTORNEY GENERAL
FROM:	Lanny A. Breuer <i>LAB by MR</i> Assistant Attorney General
SUBJECT:	<u>Recommendations of the Firearms Trafficking Working Group</u>
PURPOSE:	To obtain the approval of the Attorney General to implement the recommendations of the Firearms Trafficking Working Group.
TIMELINE:	As soon as practicable.
DISCUSSION:	

RECEIVED
AUG 19 2009
FBI

⁹ Remarks by the Deputy Attorney General for the ATF Firearms Trafficking Summit (June 29, 2009) [HOCR 006607-006613] (Exhibit 2).

¹⁰ *Id.*

¹¹ Memorandum for the Attorney General from Lanny A. Breuer (Aug. 19, 2009) [HOCR 006706-006717] (Exhibit 3).

¹² *Id.*

The recommendations section of this August 2009 memo included many of the previous public comments by Attorney General Holder and Deputy Attorney General Ogden. Among the recommendations were:

- The assistance of Gang Unit attorneys from the Criminal Division to work with southwest border U.S. Attorney's Offices on firearms trafficking prosecutions;
- Additional ATF agents in field offices along the southwest border;
- The Federal Bureau of Investigation (FBI) shifting resources along the southwest border to increase focus on firearms offenses;
- Increased coordination between ATF and ICE to dismantle criminal organizations; and
- Encouraging each U.S. Attorney's Office to consider a "range of options" to ensure aggressive prosecution of organizations that illegally traffic in firearms.¹³

These recommendations ultimately became part of a nine-page draft document entitled "Department of Justice Strategy for Combating the Mexican Cartels." Associate Deputy Attorney General Ed Siskel, Deputy Assistant Attorney General Jason Weinstein, and ATF Deputy Director William Hoover were all heavily involved in the creation of the strategy.¹⁴ It stated:¹⁵

[INTENTIONALLY BLANK]

¹³ *Id.*

¹⁴ Transcript, Interview of William Hoover by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (July 21, 2011), at 84-85 [hereinafter Hoover Transcript] (Exhibit 4).

¹⁵ Draft Department of Justice Strategy for Combating the Mexican Cartels (Oct. 22, 2009) [HOCR 001449-001459], at 1 (Exhibit 5).

**DEPARTMENT OF JUSTICE STRATEGY FOR COMBATING THE MEXICAN
CARTELS**

It is a priority of the Department of Justice to stem the growing violence and associated criminal activity perpetrated by the Mexican drug cartels, along the Southwest Border and throughout the nation. In order to maximize the efficacy of its limited resources, which are spread through numerous components of the Department, it is necessary that the Department deploy those resources pursuant to a single, coherent strategic plan.

An essential aspect of the DOJ plan must be ensuring a productive partnership with the government of Mexico, as well as with our state and local law enforcement counterparts. Equally important, we must avoid wasteful overlap and duplication with the activities of our other federal partners, particularly the law enforcement agencies at the Department of Homeland Security.

The following document sets forth the policy considerations that will guide the Department in this process.

The Strategy

The Department will implement its Strategy for Combating the Mexican Cartels under the supervision of the newly-created Southwest Border Strategy Group.

Operationally, the strategy will be executed through the proven mechanism of prosecutor-led, multi-agency task forces, using the Organized Crime Drug Enforcement Task Forces (OCDETF) Program as the primary coordinating platform. The Strategy's

The document went on to recommend "intelligence-based, prosecutor-led, multi-agency task forces" ¹⁶ It suggested that under its new model, "we develop priority targets through the extensive use of intelligence," which would allow it to "build cases, coordinating long-term, extensive investigations to identify all the tentacles of a particular organization." ¹⁷

On October 23, 2009, Deputy Attorney General Ogden disseminated this strategy to the heads of Department components, including the ATF, DEA, and FBI. ¹⁸ The Deputy Attorney General also formed a Southwest Border Strategy Group, which he headed, responsible for implementing the new strategy. The Strategy Group's first meeting was on October 26, 2009,

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ E-mail from [Department of Justice] on behalf of Deputy Attorney General David Ogden to Kathryn Ruemmler, et al. (Oct. 26, 2009) [HOCR 001449-001459] (Exhibit 5).

when it assembled to discuss the new strategy.¹⁹ The meeting invitation included Deputy Attorney General Ogden and his deputies Ed Siskel and Kathryn Ruemmler (both of whom would later leave the Justice Department for the White House Counsel's Office); Assistant Attorney General Breuer and his deputies, Jason Weinstein, Kenneth Blanco, and Bruce Swartz; ATF Acting Director Kenneth Melson and Deputy Director William Hoover; the U.S. Attorney for the District of Arizona, Dennis Burke; and the U.S. Attorney for the District of Minnesota, B. Todd Jones, then serving as Chair of the Attorney General's Advisory Committee.²⁰ The Committees were unable to ascertain any further details regarding this meeting.

ATF's Phoenix Field Division was particularly interested in key language from the strategy. Specifically, page seven of the strategy stated the following:²¹

domestic drug distribution network. Thus, given the national scope of this issue, merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them. Since 2006, Project Gunrunner has been ATF's

ATF Phoenix Field Division Assistant Special Agent in Charge (ASAC) George Gillett testified that this specific language became the blueprint for Operation Fast and Furious, as the Field Division viewed the strategy as an instruction from the Deputy Attorney General to stop focusing efforts on straw purchasers. Gillett stated:

Q. Was it your understanding that at that time DOJ was looking to ATF to focus on cartels and more of an organized crime level rather than straw purchasers?

A. Yes, sir. **The content of that plan specifically addressed wanting ATF not to focus on straw purchasers, but to focus on cartels and larger complex conspiracy type investigations.**

Q. How did that initiative trickle down to the agents in the Phoenix field office?

A. Well, to kind of paint the picture, there was the IG reports that addressed the ineffective nature of straw purchasers. The drug enforcement for the office here in Phoenix was looking to stand up an organized crime drug enforcement task force strike force, OCDETF. And the special agent in charge of the DEA office was asking for ATF's participation in this joint multi-agency strike force.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Draft Department of Justice Strategy for Combating the Mexican Cartels (Oct. 22, 2009) [HOCR 001451-001459], at 7 (Exhibit 5).

ATF here was not able to get any straw purchase prosecutions at the time because of an interpretation of the law by the U.S. Attorney's Office here in the District of Arizona. **So this strategy in October 2009 handed down by the DAG's office, actually from the Phoenix perspective, was well timed and provided us with direction on how to proceed in these types of firearms trafficking investigations.**²²

Ken Melson also testified that the Phoenix Field Division might have relied heavily on the new DAG strategy:

Now, I don't know whether agent Voth read those memos and said, oh, they opened the door for me, I can go through it now or not. I don't know. But that was the direction of the Department. And I don't disagree with that, because I worked with DAG Ogden to provide some direction and leadership for the Southwest border activity. And he did.

In fact, on the way back from Phoenix after the strike force office was open, and he went down there for the press conference, I sat next to him for a while and I talked to him about the failure of the Department to give clear guidance and coordinated, collaborative effort along the Southwest border.²³

This specific language in the Justice Department's new cartel strategy was not created in isolation. Rather, it was a result of interactions between senior Department officials and ATF. ATF Deputy Director William Hoover testified about the process for sharpening the language in the document regarding the interdiction of firearms. He stated:

Q. Did you have any discussions with anyone in the Justice Department in the weeks and months leading up to this time frame about the preparation of this document?

A. I'm confident I know I did. I'm trying to remember who exactly I had those conversations with. I'm not sure I can recall everybody I maybe talked to about this. We had some—

Q. Who can you recall?

A. I believe Jason Weinstein, Ed Siskel.

²² Transcript, Interview of George Gillett by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (May 17, 2011), at 12-13 [hereinafter Gillett Transcript] (Exhibit 6).

²³ Melson Transcript at 90 (Exhibit 1).

- Q. And what can you recall about your conversations with Mr. Weinstein?
- A. Just . . . ATF was charged with putting together the firearms trafficking piece of this. Just talking about—
- Q. So page 7, for example, the attacking the southbound flow of firearms, that would have been prepared by someone at ATF?
- A. Yes. **We would have provided language to the Department and obviously the Department would have edits, and it would have been a document that would go between us and we would get edits back and forth.** I don't recall exactly who originally drafted the strategy right now, or the language.²⁴

Hoover further stated that the Justice Department would “wordsmith and make changes that they thought appropriate.”²⁵ He testified about the involvement of Deputy Assistant Attorney General Jason Weinstein and Associate Deputy Attorney General Ed Siskel:

- Q. And so I believe I interrupted you. You were going to tell me what you recall about your conversations with Mr. Weinstein.
- A. I think we were discussing just—or my discussions with Jason is if what we were contemplating as a draft, we were on the right track. That that would not—you know, obviously we provided Jason with where we thought we needed to go, as I recall. And he said, **now I think you're on point, and that was pretty much it.**
- Q. So you just recall the one conversation with him about it?
- A. That's all that I recall right now. **I probably would have had the exact same conversation with maybe Ed Siskel.**²⁶

Associate Deputy Attorney General Ed Siskel was also a member of the Southwest Border Strategy Group, charged with “running” the Department's new cartel strategy.²⁷ Siskel testified that his role in the Group was to ensure that everybody “understood what their respective roles were.”²⁸ He stated that the ATF Phoenix Field Division's interpretation of the Department's strategy, discussed at the beginning of this section, was incorrect. Yet it was Siskel's duty to manage the ATF portfolio in the Office of the Deputy Attorney General. He was responsible for ensuring that ATF understood and adhered to Department policy. Though

²⁴ Hoover Transcript at 84-85 (Exhibit 4).

²⁵ *Id.* at 85.

²⁶ *Id.* at 85-86 (emphasis added).

²⁷ E-mail from Sam Kaplan to Mark Chait et al. (Oct. 26, 2009) (Exhibit 7).

²⁸ Transcript, Interview of Edward Siskel by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Feb. 29, 2012), at 46 [hereinafter Siskel Transcript] (Exhibit 8).

individuals within ATF believed the language in the strategy instructed it to stop focusing on straw purchasers and redirect its efforts to cartels,²⁹ Siskel claimed that was never the purpose of the strategy. He testified:

Q. Did you understand that that language authorized forgoing the interdiction of firearms when law enforcement had the legal authority to do so, in order to build a bigger firearms trafficking case?

A. No, that's not what I understand this to mean.

Q. What did you understand this to mean?

A. Well, what I understand this to mean is that we need to be interdicting firearms, prosecuting cases against people who are part of the trafficking networks, whether they're straw purchasers or not, and then moving up the chain to build cases against the trafficking networks and their leadership as well.

Q. And was that your understanding at the time when this was being developed?

A. Yes.

Q. And to the extent that you know it, was that the understanding, the mutual understanding of those who were developing the strategy?

A. Yeah, it's hard for me to say with certainty what is in somebody else's mind, but I think that the language is clear that this is emphasizing to folks involved in the working group and the various components in this effort that we need to be both interdicting and building cases against the leadership of the firearms trafficking networks.³⁰

Despite his responsibility to ensure that his fellow members of the Southwest Border Strategy Group understood their roles, we found no evidence that Siskel ever understood the ATF Phoenix Field Division's interpretation of this section of the strategy, nor did he take any steps to correct it.

Siskel failed to adequately oversee ATF operations as the Phoenix Field Division employed reckless tactics in Fast and Furious. The operation's design relied on the new Department cartel strategy and incorporated elements of speeches given by the Attorney General and Deputy Attorney General earlier in 2009: Fast and Furious was an example of coordination

²⁹ Gillett Transcript at 12-13 (Exhibit 6).

³⁰ Siskel Transcript at 50-51 (Exhibit 8).

between ATF and ICE on firearms trafficking investigations; it utilized additional ATF and DEA personnel on the Southwest Border; it received assistance from a Criminal Division Gang Unit attorney; and the case was an example of close involvement from the U.S. Attorney's Office, which played a role in almost every strategic and tactical decision of the case. Fast and Furious targeted the Sinaloa cartel, with the overly ambitious goal of working a case on "both sides of the border" in an effort to take down the cartel's leadership. Given that Fast and Furious incorporated many parts of the new cartel strategy, and given that it was Siskel's role to ensure that the Department components implemented the strategy effectively, Siskel bears significant responsibility for the failures of Fast and Furious.

RECOMMENDATION: When the Justice Department promulgates a broad new strategy and implements it throughout its components, the Department must create procedures to ensure that implementation of the strategy is monitored, overseen, and supervised adequately.

B. Coordination between the Justice Department's Criminal Division and ATF

1. Operation Wide Receiver

FINDING: The Justice Department's Criminal Division resurrected a dormant ATF case known as Operation Wide Receiver for prosecution. The case, in which ATF had allowed guns to walk, had not been prosecuted by previous Justice Department officials. The resurrection of the Wide Receiver prosecution may have signaled to ATF officials that the new Department leadership approved of the tactics involved.

In the summer of 2009, the Firearms Trafficking Working Group, led by Assistant Attorney General Lanny Breuer, was preparing to make its recommendations to the Attorney General. One recommendation was that Gang Unit attorneys from Breuer's Criminal Division should work with southwest border U.S. Attorney's Offices on firearms trafficking prosecutions. On July 22, 2009, the Criminal Division contacted U.S. Attorney's offices along the southwest border with an offer to assist with gun trafficking cases as "part of the Department's SWB gun trafficking strategy. . . ."³¹ The U.S. Attorney's Office for the District of Arizona communicated that offer to ATF's Phoenix Field Division.³² ATF responded in early August 2009 seeking assistance with prosecuting an older case known as Operation Wide Receiver.³³

³¹ E-mail from [Executive Office of U.S. Attorneys] to [Southwest Border U.S. Attorney's Offices] (Jul. 22, 2009) [HOCR 003369-003370] (Exhibit 9).

³² See e-mail from George Gillett to James Small and Sigberto Celaya (Jul. 28, 2009) [HOCR 005433-005434] (Exhibit 10).

³³ E-mail from George Gillett to Robert Miskell (Aug. 5, 2009) [HOCR 005433-005434] (Exhibit 10); see also e-mail from Gretchen Shappert to James Trusty (Aug. 12, 2009) [HOCR 003372-003373] (Exhibit 11).

Wide Receiver had begun in the spring of 2006 when a Federal Firearms Licensee (FFL) contacted ATF regarding suspicious firearms transactions.³⁴ Despite ATF having this FFL record audio of the transactions and the telephone calls associated with them, the Wide Receiver targets were not arrested until September 2007, well over a year after the investigation started.³⁵ During that time, over 300 guns had been sold to the straw purchasers without ATF disrupting the sales or interdicting the firearms.³⁶ After the targets had been arrested, the case languished. One prosecutor writing in December 2008 stated: “I don’t like the case. I think it is wrong for us to allow 100s of guns to go into Mexico to drug people knowing that is where they are going.”³⁷

In August 2009, however, after ATF’s Phoenix Field Division asked the Justice Department for assistance with Wide Receiver, the Criminal Division assigned a prosecutor, Laura Gwinn, to conduct a review of the case.³⁸

We found no evidence that during the time that Wide Receiver was being conducted, the case was ever raised to the level of Assistant Attorney General for the Criminal Division Alice Fisher, who served from 2005 to 2008. In contrast, in early September 2009, ATF and the Criminal Division began “to talk about ways CRM [Criminal Division] and ATF can coordinate on gun trafficking and gang-related initiatives.”³⁹ E-mails produced by the Justice Department reveal that around the same time, Breuer was “VERY interested in the Arizona gun trafficking case” known as Wide Receiver:⁴⁰

“He [Lanny Breuer] is VERY interested in the Arizona gun trafficking case . . .”

From: Trusty, James
To: Gwinn, Laura
Sent: Wed Sep 02 14:28:01 2009
Subject: request

Kevin and I had a long chat with Lanny today about GU cases, investigations, etc. He is VERY interested in the Arizona gun trafficking case, and he is traveling out there around 9/21. Consequently, he asked us for a “briefing” on that case before the 21st rolls around. My recollection is that you aren’t going to be out there until the 28th or so, which is fine. But could you send me an email write up (no more than a page or two) describing what you know about this case at this point? (# of guns, types – if any are sexy—target(s), whether an FFL is involved, basics on evidence, i.e., “there was a cooperator who made numerous consensual calls...” That kind of thing. By week’s end would be fine, and thanks mucho.

Jim

³⁴ Memorandum from Laura Gwinn to Jason Weinstein, “Operation Wide Receiver (Tucson, AZ USAO)” (Oct. 1, 2009), at 1 [HOCR 003391-003393] (Exhibit 12).

³⁵ *Id.*

³⁶ *Id.*; see also e-mail from Chuck Higman to Larry Shiver (Jun. 26, 2007) [HOCR 005412-005413] (Exhibit 13).

³⁷ See e-mail from Serra Tsethlikai to Al Kleiner (Dec. 19, 2008) [HOCR 005430-005431] (Exhibit 14).

³⁸ See e-mail from James Trusty to Kevin Carwile (Aug. 12, 2009) [HOCR 003372-003373] (Exhibit 11); see also e-mail from Laura Gwinn to Serra Tsethlikai (Aug. 13, 2009) [HOCR 003374] (Exhibit 15).

³⁹ E-mail from Jason Weinstein to Lanny Breuer (Sep. 10, 2009) [HOCR 003378] (Exhibit 16).

⁴⁰ E-mail from James Trusty to Laura Gwinn (Sep. 2, 2009) [HOCR 003375] (Exhibit 17).

The next day, Breuer's chief of staff "mentioned the case again . . . so there is clearly great attention/interest from the front office."⁴¹

In response, the Criminal Division prosecutor, Laura Gwinn, gave a senior official in the Gang Unit, a component of the Criminal Division, a summary of her initial review:⁴²

The image shows a screenshot of an email from Laura Gwinn. The email text is as follows:

-----Original Message-----
From: Gwinn, Laura
Sent: Thursday, September 03, 2009 11:51 AM
To: Trusty, James
Subject: Tucson

I will try to pound this out before yet another disaster arises this morning. As you know it has been several weeks since I spoke to the aUSA so I am going off limited memory. I believe the investigation of this case wrapped up about a year ago. It is an ATF led case [REDACTED]. I believe the ffl has a business but was selling the guns to the targets from his house. There are tapes which I am told have been translated. Cas involves 300 to 500 guns (unclear to me why we have such a wide range; doesn't someone know exact numbers?). It is my understanding that a lot of those guns "walked". Whether some or all of that was intentional is not known. The aUSA seemed to think ATF screwed up by not having a mechanism in place to seize weapons once they crossed the border. In any event I believe a small number of the guns have been recovered in connection with police action in Mexico. I do not know if they have been traced to crimes. If you have other specific Qs I will try to answer but I think I have told you everything I know.

Sent from Blackberry
Laura Gwinn
US Dept of Justice Gang Unit
[REDACTED] (c)

Two callout boxes are present:

- A red callout box at the top right contains the text: "It is my understanding that a lot of those guns 'walked.'"
- A blue callout box at the bottom right contains the text: "The aUSA seemed to think ATF screwed up by not having a mechanism in place to seize the weapons once they crossed the border."

James Trusty, the senior Gang Unit official, wrote on September 20, 2009: "Big question is what's wrong with it, basically."⁴³ Gwinn e-mailed back: "Will see if I can figure out what the problems are (other than ATF letting 300 or 400 guns across the border)."⁴⁴ Trusty responded that he didn't see the walked guns as an issue:⁴⁵

⁴¹ E-mail from James Trusty to Laura Gwinn (Sep. 3, 2009) [HOCR 003376-003377] (Exhibit 18).

⁴² E-mail from Laura Gwinn to James Trusty (Sep. 3, 2009) [HOCR 003376-003377] (Exhibit 18).

⁴³ E-mail from James Trusty to Laura Gwinn and Kevin Carwile (Sep. 22, 2009) [HOCR 003379-003380] (Exhibit 19).

⁴⁴ E-mail from Laura Gwinn to James Trusty and Kevin Carwile (Sep. 22, 2009) [HOCR 003379-003380] (Exhibit 19).

⁴⁵ E-mail from James Trusty to Kevin Carwile and Laura Gwinn (Sep. 22, 2009) [HOCR 003379-003380] (Exhibit 19).

----- Original Message -----

From: Trusty, James
To: Gwinn, Laura; Carwile, Kevin
Sent: Tue Sep 22 19:30:02 2009
Subject: RE: Tucson

“If guns getting across is the only problem . . . we’re in good shape.”

If guns getting across is the only problem (and the AUSAs are too busy) we're in good shape. Drug cases learn that hundreds of kilos have gone across into the US, so I don't think missing some seizures is anything fatal. Is gun trafficking a specified unlawful activity (or whatever predicates are called) for money laundering? I honestly don't recall, it's been so long since I dabbled in money laundering cases.

Meanwhile, Kevin Carwile, Chief of the Criminal Division’s Gang Unit, was in Phoenix. On September 23, 2009, Carwile e-mailed Gwinn and Trusty: “I am with the A[T]F SAC currently. He also promises he will get me an assessment of the case, pros and cons, by the end of the week.”⁴⁶

A week later, Carwile informed William Newell, Special Agent in Charge (SAC) of ATF’s Phoenix Field Division, that the Justice Department had decided to revive the case:⁴⁷

From: Carwile, Kevin
To: Newell, William D.
Sent: Wed Sep 30 08:04:32 2009
Subject: gun trafficking case
Bill,

FYI - as I mentioned to you in Phoenix, I had one of my attys in Tucson last week reviewing the semi-dormant ATF gun trafficking investigation being handled out of that office. After our review, we have decided to take the case and the USAO has agreed. If you have any input/suggestions re. this matter, please feel free to send me an email or give me a call at RC 1. Thanks and I look forward to seeing you again soon.

P. Kevin Carwile
Chief, Gang Unit
Criminal Division
U.S. Department of Justice

Newell responded to Carwile: “I was informed of this yesterday. I appreciate your interest in the case and the assistance.”⁴⁸

E-mail traffic reveals that within ATF, the Phoenix Field Division was carefully weighing the Justice Department’s response to its case. When ATF Phoenix Field Division

⁴⁶ E-mail from Kevin Carwile to Laura Gwinn and James Trusty (Sep. 23, 2009) [HOCR 003383-003384] (Exhibit 20).

⁴⁷ E-mail from Kevin Carwile to William Newell (Sep. 30, 2009) [HOCR 003389] (Exhibit 21).

⁴⁸ E-mail from William Newell to Kevin Carwile (Sep. 30, 2009) [HOCR 003389] (Exhibit 21).

ASAC George Gillett initially sent the case to the U.S. Attorney’s Office in August 2009, he observed: “[Assistant United States Attorney] was . . . pushing back w/ moral dilemma w/ the G[overnment] allowing the targets to traffic 300+ firearms to Mexico.”⁴⁹ In late September, before the case was accepted, Gillett e-mailed SAC Newell: “I think (reading between the lines) when Kevin [Carwile] spoke with Bill McMahon and I, he asked for an executive summary to see if they were missing something. Kevin’s comments were that his attorney felt the case, while not perfect, was prosecutable and straightforward.”⁵⁰

The revival of the Wide Receiver prosecution—despite ATF’s use of gunwalking tactics—may have suggested to Newell and Gillett that under the new Justice Department leadership, and its new Strategy for Combating the Mexican Drug Cartels, such tactics would not preclude prosecution of similar cases in the future.

2. Operation Fast and Furious

FINDING:	Fast and Furious was the first case chosen under a new partnership between ATF and the Criminal Division to focus on gun trafficking prosecutions. Shortly after Operation Fast and Furious began, the Criminal Division assigned a prosecutor to assist with the case.
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In Phoenix, just one month after the Criminal Division decided to prosecute Operation Wide Receiver, the ATF Phoenix Field Division initiated the case on October 31, 2009 that would become Operation Fast and Furious.

In Washington D.C., throughout the fall of 2009 lower-level discussions continued between ATF and the Criminal Division regarding collaboration on firearms trafficking cases.⁵¹ These discussions resulted in an e-mail exchange in early December 2009 between the two principals, ATF Acting Director Ken Melson and Assistant Attorney General Lanny Breuer, head of the Criminal Division, to put these ideas into action. On December 3, 2009, Melson reached out to Breuer. He stated:⁵²

[INTENTIONALLY BLANK]

⁴⁹ E-mail from George Gillett to Robert Miskell (Aug. 5, 2009) [HOCR 005433-005434] (Exhibit 10).

⁵⁰ E-mail from George Gillett to William Newell (Sep. 26, 2009) [HOCR 005441-005442] (Exhibit 22).

⁵¹ See, e.g., e-mail from Jason Weinstein to Sam Kaplan and William Hoover (Nov. 11, 2009) [HOCR 003401] (Exhibit 23).

⁵² E-mail from Kenneth Melson to Lanny Breuer (Dec. 3, 2009) [HOCR 003403] (Exhibit 24).

"I would like to see if you have any interest in assigning a criminal division attorney to work with that group The level of activity will depend on the number of Mexican seizures."

From: Melson, Kenneth E. [mailto:^{KC-1}]
Sent: Thursday, December 03, 2009 5:46 PM
To: Breuer, Lanny A.
Cc: Siskel, Edward N. (ODAG) (SMO); Hoover, William J.
Subject: Weapons seizures in Mexico

Lanny: We have decided to take a little different approach with regard to seizures of multiple weapons in Mexico. Assuming the guns are traced, instead of working each trace almost independently of the other traces from the seizure, I want to coordinate and monitor the work on all of them collectively as if the seizure was one case. Using the traces as intelligence, and compiling the information from each trace investigation, we can connect the purchases, identify the traffickers and use more serious charges against them. The intelligence analysis and linking of trace data and investigation results will be done at HQ out of our intelligence directorate. I would like to see if you have any interest in assigning a criminal division attorney to work with that group to develop multi-division/district cases and perhaps go to the district with the best venue to indict the case. The level of activity will depend on the number of Mexican seizures, and whether they will trace the guns, or allow us to do it. We do seem to be making progress with our Mexican partners. We are currently working on a case with SSP which might lead us to the first joint arrest in Mexico of a person connect to US arms trafficking. We should meet again just to catch up on where we are in our gun trafficking issues and we could talk about the above idea as well. Let me know what you think. Thanks. Ken.

Breuer included Ed Siskel from the Office of the Deputy Attorney General on his response. He stated:⁵³

From: Breuer, Lanny A.
Sent: Friday, December 04, 2009 10:18 AM
To: Melson, Kenneth E. (ATF)
Cc: 'Siskel, Edward N. (ODAG) (SMO)'; 'Hoover, William J.'; Weinstein, Jason; Rosen, Paul; Raman, Mythili; Fageil, Steven
Subject: RE: Weapons seizures in Mexico

Ken,

We think this is a terrific idea and a great way to approach the investigations of these seizures. Our Gang Unit will be assigning an attorney to help you coordinate this effort. Please let us know who will be the POC at ATF on this, and we'll have the Gang Unit folks reach out to that person. I would love to see you to discuss this further and other issues or common interest. I hope you are well.

Best,

Lanny

In an e-mail two days later, Deputy Assistant Attorney General Jason Weinstein wrote to the leadership of the Criminal Division's Gang Unit. Weinstein wrote: "Lanny is very eager to have a GU [Gang Unit] person hook up with [ATF] on this initiative."⁵⁴ For its part, Acting Director Melson worked to set up a meeting with Breuer to discuss the initiative.⁵⁵

⁵³ E-mail from Lanny Breuer to Kenneth Melson (Dec. 4, 2009) [HOCR 003403] (Exhibit 24).

⁵⁴ E-mail from Jason Weinstein to Kevin Carwile and James Trusty (Dec. 6, 2009) [HOCR 003405] (Exhibit 25).

⁵⁵ E-mail from Kenneth Melson to Michelle Back (Dec. 4, 2009) [HOCR 001986] (Exhibit 26).

This quickly became an important initiative for both ATF and the Criminal Division. Kevin Carwile, Chief of the Gang Unit, had further meetings with ATF leadership about the initiative.⁵⁶ He subsequently assigned Criminal Division Gang Unit prosecutor Joe Cooley to assist ATF.⁵⁷ On December 17, 2009, ATF leadership and ATF's Office of Strategic Information and Intelligence (OSII) briefed Carwile and Cooley on Fast and Furious.⁵⁸ The briefing included a link analysis detailing connections among straw purchasers and weapons recovered, specially prepared for the briefing.⁵⁹ The briefing was important enough that Cooley had to rearrange his holiday plans to attend.⁶⁰

Cooley, however, was not the only Criminal Division attorney involved with Fast and Furious during this time period. On January 5, 2010 Assistant Attorney General Lanny Breuer met with ATF Deputy Director Hoover and Assistant Director Chait to discuss the new initiative and weapons seizures in Mexico.⁶¹ After this meeting, Chait went to an internal ATF intelligence briefing on Fast and Furious, where he fielded questions from ATF Southwest Border Coordinator Ray Rowley and ATF OSII leadership on his plan for shutting down the operation.⁶² Chait, however, failed to answer when asked, "How long are you going to let this go on?"⁶³

Also on January 5, 2010, ATF met in Phoenix with the Assistant U.S. Attorney (AUSA) Emory Hurley. Hurley's supervisor, head of the National Security Section Michael Morrissey, e-mailed U.S. Attorney Burke about the meeting:⁶⁴

⁵⁶ See e-mail from Kevin Carwile to Jason Weinstein (Dec. 9, 2009) [HOCR 003407] (Exhibit 27).

⁵⁷ Melson Transcript at 76-77 (Exhibit 01); *see also* Transcript, Interview of Steven Martin by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Jul. 6, 2011), at 35-36 [hereinafter Martin Transcript] (Exhibit 28).

⁵⁸ See e-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) [HOCR 002832-002833] (Exhibit 29).

⁵⁹ E-mail from Kevin O'Keefe to George Gillett (Dec. 14, 2009) (Exhibit 30).

⁶⁰ *Id.*

⁶¹ Meeting on "Weapons Seizures in Mexico w/ Lanny Breuer" at Robert F. Kennedy Building, Room 2107, Jan. 5, 2010, 10:00 AM [HOCR 001987] (Exhibit 31).

⁶² Martin Transcript at 43-45 (Exhibit 28).

⁶³ Martin Transcript at 43.

⁶⁴ E-mail from Mike Morrissey to Dennis Burke (Jan. 5, 2010) [HOCR 002960] (Exhibit 32).

From: Morrissey, Mike (USAAZ)
Sent: Tuesday, January 05, 2010 5:13 PM
To: Burke, Dennis (USAAZ)
Cc: Lodge, Joe (USAAZ); Hurley, Emory (USAAZ)
Subject: heads up on gun trafficking case

“[L]ocal ATF is on board with our strategy . . . We should hold out for the bigger case, try to get a wire, and if it fails, we can always do the straw buyers.”

Dennis – Joe Lodge has been briefed on this but wanted to get you a memo for your review. Bottom line – we have a promising guns to Mexico case (some weapons already seized and accounted for), local ATF is on board with our strategy but ATF headquarters may want to do a smaller straw purchaser case. We should hold out for the bigger case, try to get a wire, and if it fails, we can always do the straw buyers. Emory’s memo references that this is the “Naco, Mexico seizure case” -- you may have seen photos of that a few months ago. << File: Emory trafficking case.wpd >>

Burke responded:⁶⁵

“Hold out for bigger.”

To: Burke, Dennis (USAAZ)
Cc: Morrissey, Mike (USAAZ); Lodge, Joe (USAAZ); Hurley, Emory (USAAZ)
Subject: RE: heads up on gun trafficking case

Hold out for bigger. Let me know whenever and w/ whomever I need to weigh-in.

ATF communicated with the Criminal Division about the issue of what strategy to employ for Fast and Furious. For instance, on January 11, 2010, ATF headquarters told Gang Unit prosecutor Joe Cooley:

Quite honestly, we here in ATF HQ are still trying to hash out a viable enforcement strategy to target the DTOs, and more specifically the Sinaloa and Gulf/Zetas. We will keep you apprised of any developments. . . . The Arizona case continues to progress—info coming in from the investigation [redacted] a common player, and from the intel community (at the classified level). An AUSA is on board; I will get the name for you shortly.⁶⁶

Four days later, Cooley received an e-mail update marked “high” importance:

[A] lot of activity has recently taken place in our Phoenix case targeting the Sinaloa cartel, to include a seizure of 40 rifles in a stash house in El Paso, TX (yes, all the way over there), which were purchased by

⁶⁵ E-mail from Dennis Burke to Mike Morrissey (Jan. 7, 2010) [HOCR 002960] (Exhibit 32).

⁶⁶ E-mail from Kevin O’Keefe to Joseph Cooley (Jan. 11, 2010) [HOCR 003411-003413] (Exhibit 33).

STEWARD (the biggest straw purchaser on the link chart we gave you) on 24 December.⁶⁷

According to e-mails later in January 2010, SAC Newell and the Fast and Furious case agent also flew in from Phoenix to brief either Cooley or Carwile again on Fast and Furious.⁶⁸

The ATF Phoenix Field Division's anxiety to obtain the support of the Justice Department's Criminal Division was only natural, since the Criminal Division was responsible for approving Title III (T-III) wiretap applications. U.S. Attorney Dennis Burke testified that Newell repeatedly asked for his help on getting the wire: "He would say whatever you can do to help out with this, whatever you can do to help out with this, in a very kind of positive way."⁶⁹ Burke stated that getting a wire for a firearms case was not common. He testified:

Q. [F]or a firearms and an ATF case, getting a wire is pretty unusual?

A. You're right.

Q. You probably don't have any other ones?

A. I don't think so.

* * *

Q. Had you ever seen or worked or heard of a firearms prosecution that had a large scale T-III app?

A. I did not work one myself, and I can't say I was aware of one at the time. You know, I think—part of my recollection was that **anyone who was doing a wire outside of DEA was not a typical procedure.** The FBI obviously does wires. They do a lot of FISAs and other—but an actual wiretap like this, my recollection at the time, **I did think that ATF was not an agency that had a lot of history with doing T-IIIs.**⁷⁰

Burke testified as to one of the reasons it was so unusual: "[Y]ou need to show even in your Title III a necessity, which is a requirement that you have tried or exhausted other methods of investigation and thereby put you in a position for a need to do a Title III."⁷¹

⁶⁷ E-mail from Kevin O'Keefe to Joseph Cooley (Jan. 15, 2010) [HOCR 003411-003413] (Exhibit 33).

⁶⁸ *Id.*

⁶⁹ Transcript, Interview of Dennis Burke by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Aug. 18, 2011), at 32 [hereinafter Burke Aug. Transcript] (Exhibit 34).

⁷⁰ *Id.* at 32, 59 (emphasis added).

⁷¹ *Id.* at 63.

VI. Justice Department Involvement Deepens

A. Wiretap Authorizations Through Criminal Division

FINDING: **The Criminal Division authorized at least six wiretap applications for Fast and Furious. The applications were replete with details and instances of gunwalking. These wiretap applications bypassed ATF senior leadership and were sent straight to the Criminal Division. This approval process created the unusual situation in which senior Criminal Division officials received materials that senior ATF officials had not reviewed. These materials should have raised red flags.**

Through the spring and summer of 2010, the Criminal Division authorized applications for the use of wire intercepts in Operation Fast and Furious. Generally, federal wire intercepts are rare in ATF cases. They are especially rare in firearms trafficking cases. Operation Fast Furious involved at least seven wire intercepts and six wiretap applications. The Criminal Division authorized wiretap applications on March 10, 2010; April 15, 2010; May 6, 2010; May 14, 2010; June 1, 2010; and July 1, 2010. Deputy Assistant Attorney General Jason Weinstein, Deputy Assistant Attorney General Kenneth Blanco, and Deputy Assistant Attorney General John Keeney signed these applications on behalf of Assistant Attorney General Lanny Breuer.

1. Criminal Division Approval of Wiretap Applications

The process for authorizing the wiretaps in Fast and Furious began locally in Phoenix. The U.S. Attorney's Office, in conjunction with the ATF Phoenix Field Division, drafted the first wiretap application in late January 2010. The application contained an affidavit by the Fast and Furious case agent detailing investigative tactics used, as well as outlining the probable cause as to why the wire intercepts were necessary to further the investigation.

On February 5, 2010, ATF Phoenix Field Division SAC Bill Newell sent the application to Bill McMahon, Deputy Assistant Director for Field Operations, at ATF headquarters.⁷² McMahon was the only official at ATF headquarters responsible for reviewing the applications and giving ATF's authorization to transmit them to the Justice Department.⁷³ McMahon, however, claimed that he did not review them.⁷⁴

With McMahon's approval, the U.S. Attorney's Office in Arizona forwarded the applications to the Department's Criminal Division. An office within the Criminal Division, the

⁷² E-mail from William Newell to William McMahon (Feb. 5, 2010) (Exhibit 35).

⁷³ Transcript, Interview of Mark Chait by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (July 20, 2011) (Exhibit 36), at 37-38; *see also* Melson Transcript at 172 (Exhibit 1).

⁷⁴ Transcript, Interview of William McMahon by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (June 28, 2011), at 53-54 [hereinafter McMahon Transcript] (Exhibit 37).

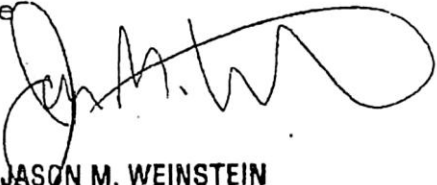
Office of Enforcement Operations (OEO) is “primarily responsible for the Department’s statutory wiretap authorizations.”⁷⁵ Lawyers in OEO review wiretap applications, which include affidavits describing the factual bases upon which authorization is sought, to ensure that they “meet statutory requirements and DOJ policies.”⁷⁶

Federal law requires that the Attorney General, Deputy Attorney General, Associate Attorney General or Deputy Assistant Attorney General in the Criminal Division authorize each application.⁷⁷ In practice, when OEO lawyers complete their review of a wiretap package, they provide the package to a Deputy Assistant Attorney General in the Criminal Division. In the case of Fast and Furious, Deputy Assistant Attorneys General Jason Weinstein and Kenneth Blanco signed the applications on behalf of Assistant Attorney General Lanny Breuer.⁷⁸

Lanny A. Breuer
Assistant Attorney General
Criminal Division

JUN 1 2010

Date



**JASON M. WEINSTEIN
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION**

After signature, the wiretap applications would return to OEO. For Operation Fast and Furious, each application for Fast and Furious included a memorandum from Assistant Attorney General Breuer to Paul O’Brien, Director of OEO, authorizing the interception application. AUSA Emory Hurley, the lead federal prosecutor on the case in Arizona, was also notified.⁷⁹

⁷⁵ Letter from Deputy Attorney General James Cole to Chairman Darrell Issa, et al., at 6 (Jan. 27, 2012).

⁷⁶ *Id.*; see also 18 U.S.C. § 2516(1) (2006).

⁷⁷ 18 U.S.C. § 2516(1) (2006).

⁷⁸ See, e.g., Memorandum from Lanny A. Breuer, Assistant Attorney General Criminal Division to Paul M. O’Brien, Director, Office of Enforcement Operations, Criminal Division, Authorization for Interception Order Application, Mar. 10, 2010.

⁷⁹ See e-mail from Emory Hurley to Mike Morrissey (Mar. 10, 2010) [HOGR 002990] (Exhibit 38).

MEMORANDUM

MAR 10 2010

TO: Paul M. O'Brien, Director
Office of Enforcement Operations
Criminal Division

ATTN: Emory Hurley

FROM: Lanny A. Breuer
Assistant Attorney General
Criminal Division

SUBJECT: Authorization for Interception Order Application

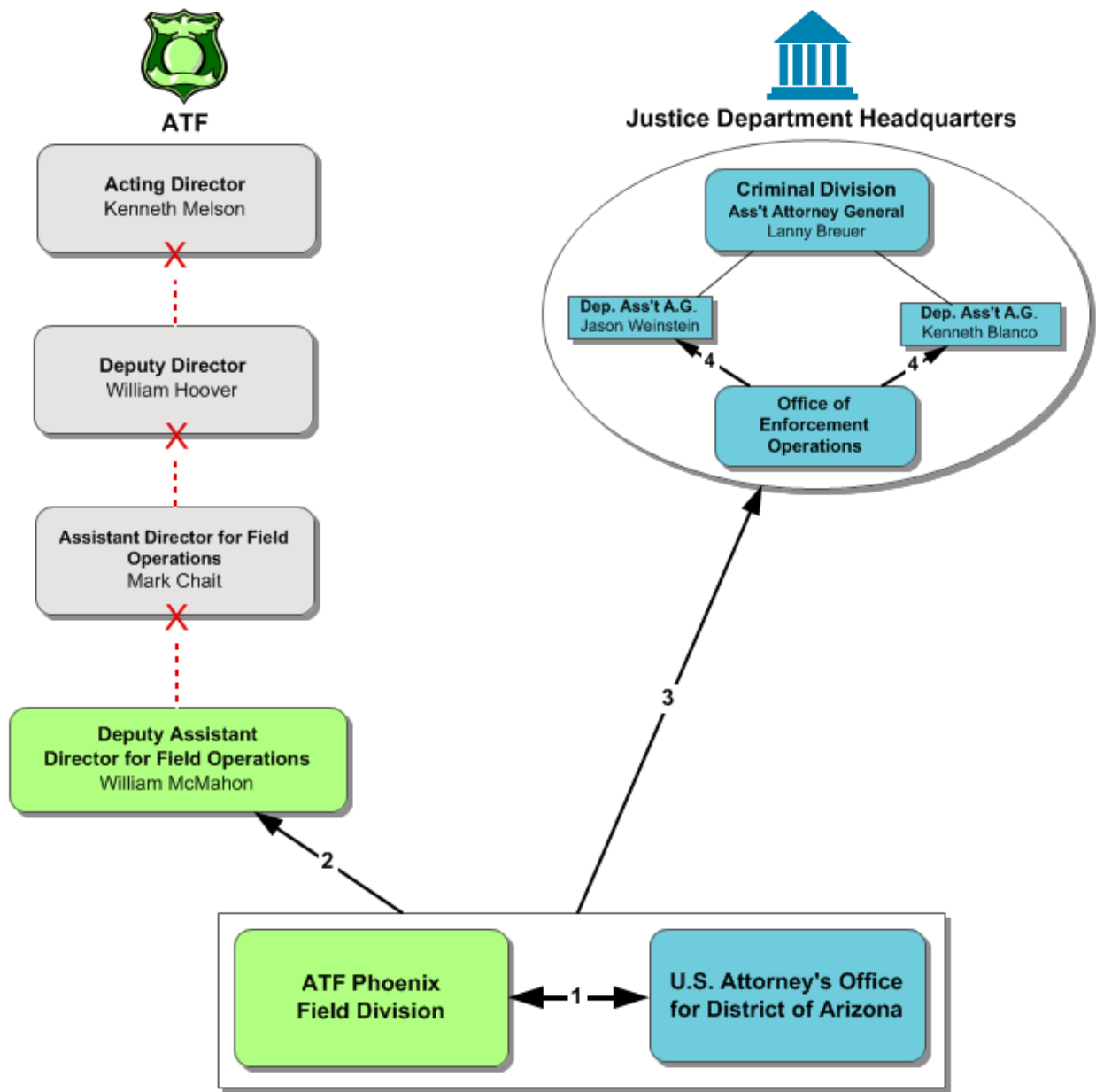
The wiretap applications were replete with specific instances of gunwalking, in which federal agents had the legal authority to interdict illegally purchased firearms but instead allowed the transfer of firearms to other individuals to take place. Eventually, many of these guns ended up in Mexico. Each wiretap application specifically discussed the termination of surveillance of straw purchasers. Thus, even a cursory review of the applications would leave the reader with the clear and unequivocal impression that gunwalking was occurring during Fast and Furious.

Importantly, the authorization process for these applications bypassed senior ATF leadership and went straight to the Justice Department. As a result, it is possible that senior officials in the Justice Department had as much as, if not more, notice of gunwalking in Fast and Furious than senior officials at ATF. The wiretap applications contained explicit descriptions of gunwalking, and historically, no one above a Deputy Assistant Director at ATF was in the practice of authorizing them.

On the other hand, federal law requires senior political appointees in the Justice Department—which included two Deputy Assistant Attorneys General on behalf of Assistant Attorney General Lanny Breuer—to authorize these applications. These senior officials, therefore, were responsible for the contents of the applications, and should have recognized the evidence that gunwalking was occurring right under their noses.

The following chart illustrates the wiretap authorization process within the Department of Justice with respect to Fast and Furious:

Authorization Process for Wiretap Applications



Despite this elaborate and seemingly comprehensive process to ensure proper review of the applications and compliance with federal law, *none of the senior ATF or Justice Department officials actually admitted to reading the applications for wire intercepts.* Though these officials were responsible for the contents of the applications and signed the authorization forms, they

later claimed they did not actually read the applications themselves. Rather, they stated that they relied on summary memoranda that accompanied the applications.

Put bluntly, the Department of Justice rubber stamped the most important documents in *Fast and Furious*. These applications authorized federal agents to continue using the very reckless tactics that Attorney General Holder and many others have condemned in recent months. Rubber stamping these applications allowed the Department plausible deniability about the evidence of gunwalking tactics contained in the applications. The senior Department officials legally obligated to sign the applications did not actually read the documents they were signing.

Congress demanded heightened scrutiny of these applications by senior officials because they are such an invasive law enforcement technique. Congress vested the power to authorize such applications in the Attorney General or certain of his subordinates, and not in a lower level Justice Department employee.⁸⁰ To “authorize” in any meaningful sense must include a review of the document being authorized. By failing to properly read or review these applications before authorizing them, senior Department officials are undermining the law.

ATF Deputy Assistant Director Bill McMahon was the first Justice Department official who failed to read the wiretap applications. McMahon testified that even though he did not read the applications, he conveyed their importance to Deputy Assistant Attorney General Jason Weinstein. Even then, Weinstein *still* did not read the applications. McMahon testified:

A. We were discussing wires pretty early on, and it did take us a while to get our first wire. And there was actually—there were some delays in the process of getting new wires, and **I actually had to have a meeting with someone from the Criminal Division as well to see what we can do to help speed this along**, to speed the process along. Because these wires are rolling over pretty quickly. They were up—we were up on a phone for a day or two and then they would go down. So we needed to roll into our next phone.

Q. And just on that, when you were having problems with the speed from the wires, was that a problem from—where was the problem generating from?

A. OEO and main Justice.

Q. Not from the U.S. Attorney’s Office?

A. Well, there may have been some delay there, but that wasn’t something I could really deal with. What I was—what was getting communicated to me was OEO was taking too long in the process. So myself and Deputy Director Hoover had a meeting with—we

⁸⁰ 18 U.S.C. § 2516(1) (2006).

had a scheduled meeting with Jason Weinstein on—I forget what subject. But after the meeting **we had a conversation with Jason about getting these wires approved quicker, and he made a commitment to assign one person to it so that it would speed the process.**

Q. And during that meeting, did you guys have specific conversations about the substance of the case?

A. **Not the substance, but Jason was aware of what was going on with this case.**

Q. **And did the speed for the wires improve?**

A. **They did. Very much so.**⁸¹

Weinstein admitted that he “reviewed what [he] believe[d] to be three of the wiretaps in Fast and Furious, in what [he] now know[s] to be Fast and Furious.”⁸² However, Weinstein chose to rely only on the summary memoranda from OEO lawyers instead of reviewing the actual applications. He testified:

My general practice . . . **is to review the summary memo in the first instance and to go to the affidavit only if there are issues or questions that are not answered by the summary memo that I need to answer in order to make a probable cause determination.** So my practice in every case, in every wiretap I reviewed since I came on the job, is to review the summary memo. And I can probably count on one hand the number of times when there’s been something in the memo that was poorly written, that left me confused about the meaning of a dirty call or a legal issue that caused me to have to go to the affidavit.⁸³

Consistent with a theme seen throughout the Department regarding Fast and Furious, Weinstein blamed his subordinates—attorneys in OEO—for failing to bring any problems with the Fast and Furious affidavits to his attention. ATF Deputy Director William Hoover testified that Weinstein had even assigned one specific individual to read the affidavits:

[A]t one point I became aware of the concern about the length of time it was taking to get the title 3 affidavits approved in OEO. I went to Jason and expressed my concern, and he said let me find out what I can do. And basically all those title 3 affidavits were then reviewed by the same

⁸¹ McMahan Transcript at 59-60 (emphasis added) (Exhibit 37).

⁸² Transcript, Interview of Jason Weinstein by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Jan. 10, 2012), at 86 [hereinafter Weinstein Transcript] (Exhibit 39).

⁸³ *Id.* at 86-87 (emphasis added).

individual to try to pick up the pace, because I did not want that to be stretched out.⁸⁴

During prior testimony before Congress, Assistant Attorney General Lanny Breuer and Attorney General Eric Holder have gone to great lengths to explain that the Criminal Division reviews wiretap applications only for legal sufficiency and not to evaluate the propriety of the tactics.⁸⁵ Specifically, Assistant Attorney General Breuer testified in November 2011:

[T]he role of the reviewers and the role of the deputy in reviewing Title Three applications is only one. It is to [e]nsure that there is legal sufficiency to make an application to go up on a wire, and legal sufficiency to petition a federal judge somewhere in the United States that we believe it is a credible request. Be we cannot—those now 22 lawyers that I have who review this in Washington—and it used to only be seven—can not and should not replace their judgment, nor can they, with the thousands of prosecutors and agents all over the country. There is a legal analysis; is there a sufficient basis to make this request.⁸⁶

However, the distinction made by Breuer—that those reviewing the wiretap applications do so only for legal sufficiency and not for tactics—ignores the fact that a review of the tactics is *part of the review for legal sufficiency*. Congress intended that Justice Department officials verify whether all other tactics have been exhausted before an agency turns to the highly invasive tactic of tapping a phone line. All wiretap applications must contain “a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear unlikely to succeed if tried or to be too dangerous.”⁸⁷ Thus, even a pure review of legal sufficiency must have included a review of tactics that had been used.

Further, the Criminal Division has obligations beyond a review for mere legal sufficiency. Arizona U.S. Attorney Dennis Burke testified that he believed the purpose of Criminal Division review of wiretap applications was to ensure that local U.S. Attorneys’ Offices are not abusing the wiretap process and to put a quality control check in place from headquarters.⁸⁸ The Justice Department has acknowledged the Criminal Division must ensure that its “lawyers help AUSAs and trial attorneys ensure that their wiretap packages meet statutory requirements and DOJ policies.”⁸⁹ The operational tactics detailed in the wiretap applications—abandoning surveillance and failure to interdict firearms—violated Department

⁸⁴ Hoover Transcript at 180-181 (Exhibit 4).

⁸⁵ *Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources: Hearing Before the Subcomm. on Crime and Terrorism of the Sen. Comm. on the Judiciary*, 112th Cong. (Nov. 1, 2011) (testimony of Lanny Breuer, Ass’t Att’y Gen., U.S. Dept. of Justice); *Oversight of the U.S. Department of Justice: Hearing Before the Sen. Comm. on the Judiciary*, 112th Cong. (Nov. 8, 2011) (testimony of Eric Holder, Att’y Gen., U.S. Dep’t of Justice).

⁸⁶ *Combating International Organized Crime: Evaluating Current Authorities, Tools, and Resources: Hearing Before the Subcomm. on Crime and Terrorism of the Sen. Comm. on the Judiciary*, 112th Cong. (Nov. 1, 2011) (testimony of Lanny Breuer, Ass’t Att’y Gen., U.S. Dep’t. of Justice) (emphasis added).

⁸⁷ 18 U.S.C. § 2518(1)(c).

⁸⁸ Burke Aug. Transcript at 150-151 (Exhibit 34).

⁸⁹ Letter from Deputy Attorney General James Cole to Chairman Darrell Issa et al., at 6 (Jan. 27, 2012).

policy.⁹⁰ Thus, at the very least, Jason Weinstein and Kenneth Blanco were negligent in their duty to ensure that the wiretap applications they authorized in Fast and Furious complied with Department of Justice policy.

RECOMMENDATION: Congress vested in senior Department officials the authority to authorize applications for intrusive wire intercepts. These senior officials must review each application thoroughly to ensure such an intrusion is necessary and appropriate. Delegating this authority to subordinates introduces the risk that a careful review will not take place.

2. Awaiting Wiretap Approval

As the Criminal Division at Justice Department headquarters began considering the first wiretap application in Fast and Furious, the case continued to develop. U.S. Attorney Dennis Burke received periodic updates on Fast and Furious from both his own staff and ATF SAC Newell since he had authorized the strategy of holding out for a bigger case. On February 20, 2010, ATF made a seizure of Fast and Furious weapons a mile from the border of Mexico. Newell notified Burke about the seizure:

42 AK-47 rifles we seized this past Saturday west of Tucson and a mile from the border. . . . The two cars carrying these firearms were about to cross into Mexico. This is from the ATF “Fast and Furious” OCDETF case. The suspects stopped at an address in Tucson before heading south and as it turns out this residence is a main target residence in our “Wide Receiver” OCDETF case out of Tucson.⁹¹

In response to Newell’s e-mail, Burke e-mailed AUSA Hurley: “Talk to [Criminal Division Chief Patrick] Cunningham. I would like a briefing from you and him on Fast and Furious when I get back to Phoenix. Thanks. This is great stuff!”⁹²

Newell followed up separately with Burke that morning:⁹³

⁹¹ E-mail from William Newell to Dennis Burke (Feb. 22, 2010) [HOGR 002968-002969] (Exhibit 40).

⁹² E-mail from Dennis Burke to Emory Hurley (Feb. 22, 2010) [HOGR 002970] (Exhibit 41).

⁹³ E-mail from William Newell to Dennis Burke (Feb. 22, 2010) [HOGR 002968] (Exhibit 40).

From: Newell, William D. (ATF)
Sent: Monday, February 22, 2010 10:18 AM
To: Burke, Dennis (USAAZ)
Subject: RE: TNW 50 caliber rifle

10-4, it's part of the "Fast and Furious" ODETF Strike Force case we are hoping to be up on a Federal T-III soon. This group is up to approx 800 "weapons of choice" mainly AK-47s, FN 5.7 pistols, etc. Emory is fully up to speed on it but if you want a more in-depth briefing we can do that over here at your earliest convenience. We have the charts showing the trafficking hierarchy, links due to purchases, phone tolls, intel from surveillance, etc.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix Field Division (Arizona and New Mexico) Office - [REDACTED]

Newell and Burke also spoke that morning. Burke was startled by just how big the case he had said to "hold out for bigger" had gotten.⁹⁴

From: Newell, William D.
Sent: Monday, February 22, 2010 11:56 AM
To: Voth, David J.; Gillett, George T. Jr.
Subject: RE: FYI photo from this weekend...

Mr. Gillett sent it to me yesterday but thank you. Also, I talked to the USA this morning about this case and advised him of the seizure and link to the Tucson ODETF case. He was taken aback by some of the facts I informed him about (including the fact that we are up to approx 800 guns) so I am setting up a briefing for him (alone no USAO "posse") about this case and several other cases I feel his is being misled about. Should be within the next couple of weeks so be prepared. Thanks.

Bill Newell
Special Agent in Charge
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Phoenix Field Division (Arizona and New Mexico)
Office - [REDACTED]

"He was taken aback by some of the facts I informed him about (including the fact that we are up to approx. 800 guns) . . ."

On the afternoon of February 22, 2010, Hurley gave Burke a further update, emphasizing the efforts to avoid alerting these traffickers that ATF was watching them:

⁹⁴ E-mail from William Newell to David Voth, et al. (Feb. 22, 2010) [HOCR 001339] (Exhibit 42).

From: Hurley, Emory (USAAZ)
nt: Monday, February 22, 2010 4:13 PM
o: Cunningham, Patrick (USAAZ)
Cc: Morrissey, Mike (USAAZ)
Subject: FW: TNW .50 caliber rifle

Pat,

Bill Newell's email below regarding a seizure of 42 (now I understand it to be 41) AK-47s is linked to the Fast and Furious OCADETF case in which we are drafting a wire application. The AKs were being driven by people not yet identified as major targets and may just be mules for the gun traffickers. We had a GPS device inside one of the rifles and the shipment was going to be interdicted during and out-bound inspection. The drivers apparently saw the out-bound secondary inspection going on and turned around. The agent did not have much specific information about the stop and seizure of the firearms, but is optimistic that there was a pretext stop so the drivers and the traffickers are not too hinked up. Drivers were not arrested, one is showing willingness to be interviewed and/or cooperate.

I can further brief you and Dennis at your convenience.

Thank you
Emory

“[O]ptimistic that there was a pretext stop so the drivers and the traffickers are not too hinked up.”

Later that day, the connection between Operations Fast and Furious and Wide Receiver was also relayed to Laura Gwinn, the Criminal Division prosecutor working on Wide Receiver:⁹⁵

[INTENTIONALLY BLANK]

⁹⁵ E-mail from Matthew Bayer to Laura Gwinn (Feb. 22, 2010) [HOCR 003420-003421] (Exhibit 43).

From: Bayer, Matthew B. [RC-1]
To: Gwinn, Laura
Sent: Mon Feb 22 18:44:58 2010
Subject: Fw: Seizure Info

Hey Laura!

I'm sure you know about this, but here is a synopsis for you reading. We will probly need to coordinate with the ATF case agent on the OTHER ATF case.

Matt

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Arellano, Bernardo
To: Bayer, Matthew B.
Sent: Mon Feb 22 17:14:33 2010
Subject: FW: Seizure Info

Synopsis: On February 20, 2010, ATF Tucson is notified that firearms purchased in Phoenix are at a residence in Tucson, AZ. The Google Earth map indicates it is on Rayo Luna, Tucson, AZ. Agents familiar with Operation Wide Receiver recognize the location as being near the residence of Carlos Celaya at [RC-1]. A drive-by confirms that the locations are one and the same. Agents initiate surveillance and observe a 1996 Isuzu Rodeo leaving the residence and travel to other locations in Tucson. The vehicle eventually winds up in Sells, AZ and stops at a residence near Indian Route 19 where Border Patrol agents contact the occupants of the vehicle and see firearms in plain view. A total of 41 firearms was seized (AK-47 types, AK-47 type pistols, AR-15 pistol, .308 semi-auto rifles, and magazines).

Gwinn notified her colleague, fellow Criminal Division prosecutor Joe Cooley, about Carlos Celaya, the common target between Wide Receiver and Fast and Furious.⁹⁶ Gwinn also learned that Fast and Furious was “about twice as big” as Wide Receiver.⁹⁷ She subsequently contacted the ATF case agent for Fast and Furious about the overlap.⁹⁸

On March 1, 2010, Joe Cooley went to ATF headquarters to discuss developments in Fast and Furious and received a briefing from Kevin O’Keefe, Chief of ATF’s Criminal Intelligence Division.⁹⁹ He also spoke with ATF’s Phoenix Field Division and the Arizona U.S. Attorney’s Office.¹⁰⁰ The next day, Cooley advised AUSA Emory Hurley, the lead prosecutor from Arizona assigned to Fast and Furious, to include 18 § U.S.C. 924(c) as a violation listed in the Title III wiretap application package.¹⁰¹ Cooley said it seemed logical that purchasing firearms on behalf of the Mexican drug cartels would be carrying firearms “during and in relation to” a drug

⁹⁶ E-mail from Laura Gwinn to Joseph Cooley (Feb. 22, 2010) [HOCR 003422] (Exhibit 44).

⁹⁷ E-mail from Matthew Bayer to Laura Gwinn (Feb. 22, 2010) [HOCR 003420-003421] (Exhibit 43).

⁹⁸ E-mail from Laura Gwinn to Matthew Bayer (Feb. 24, 2010) [HOCR 002973] (Exhibit 45).

⁹⁹ E-mail from Joseph Cooley to Bryan Reeves (Mar. 3, 2010) [HOCR 003425] (Exhibit 46); *see also* e-mail from Kevin O’Keefe to Joseph Cooley (Mar. 4, 2010) [HOCR 002806] (Exhibit 47).

¹⁰⁰ *Id.*

¹⁰¹ E-mail from Joseph Cooley to Emory Hurley (Mar. 2, 2010) [HOCR A 002632].

conspiracy.¹⁰² This e-mail suggests that Cooley read the Title III application for Fast and Furious, which was then under review by the Criminal Division.

As ATF readied for the unusual step of obtaining a federal wire intercept in a firearms trafficking case, ATF Phoenix Field Division Group VII supervisor David Voth flew from Phoenix to Washington, D.C. to provide a detailed briefing to ATF leadership on Fast and Furious. Documents suggest that Joe Cooley may have met with Voth one-on-one to talk about the case.¹⁰³ Cooley also attended Voth's March 5, 2010, briefing, which included a 26-slide PowerPoint presentation linking straw purchasers from Fast and Furious with weapons recoveries in the Mexican states of Guerrero, Sonora, and Baha California.¹⁰⁴ The presentation also showed that the Fast and Furious straw purchasing ring had spent a total of \$615,000 to buy 1,026 guns.¹⁰⁵ Cooley took three pages of notes, which included both of these facts.¹⁰⁶

SAC Newell, who had been conferenced in by telephone to the headquarters briefing, was impressed with Cooley, who Newell thought had "a good idea of what needs to be done":¹⁰⁷

From: Newell, William D.
To: Gillett, George T. Jr.
Sent: Fri Mar 05 16:23:19 2010
Subject: Fast and Furious case
Dave did a great job on the conference call today. We can discuss more on Monday but one thing I want us to do asap is come up with a prosecution plan. I want our potential defendants listed out and what charges we hope to perfect against them. Karmgard, Jim and I discussed a potential 924(c) conspiracy along with the straw purchasing and 554 violations. I want us to have a good plan and then present to the DOJ rep, Joe Cooley, who was on line today and seems to have a good idea of what needs to be done. Since he's our detailed rep we should use him to get advice and guidance and then present our plans to the USAO. That way we'll already have Main Justice buy-in and they'll know it here. We can discuss more at Staff on Monday but wanted you to think about this and get with Dave and Tom to discuss as well.

On March 10, 2010, AUSA Hurley finally got word that the Criminal Division had approved the first wiretap application. Hurley forwarded the information up to his supervisor in the Arizona U.S. Attorney's Office,¹⁰⁸ who in turn sent the information to U.S. Attorney Burke.¹⁰⁹

¹⁰² *Id.*; see also 18 U.S.C. § 922(c).

¹⁰³ See e-mail from George Gillett to Joseph Cooley and David Voth (Mar. 1, 2010) [HOCR 002155] (Exhibit 48).

¹⁰⁴ "Operation The Fast and The Furious," PowerPoint presentation; compare e-mail from Lorren Leadmon to Mark Chait, et al. (Mar. 5, 2010) [HOCR 002091-002092] (Exhibit 49).

¹⁰⁵ "Operation The Fast and The Furious," PowerPoint presentation.

¹⁰⁶ Notes of Joseph Cooley (Mar. 5, 2010) [HOCR 002807-002809] (Exhibit 50).

¹⁰⁷ E-mail from William Newell to George Gillett (Mar. 5, 2010) (Exhibit 51).

¹⁰⁸ E-mail from Emory Hurley to Mike Morrissey (Mar. 10, 2010) [HOCR 002990] (Exhibit 38).

¹⁰⁹ E-mail from Mike Morrissey to Dennis Burke (Mar. 10, 2010) [HOCR 002990] (Exhibit 38).

From: Morrissey, Mike (USAAZ)
Sent: Wednesday, March 10, 2010 8:42 PM
To: Hurley, Emory (USAAZ)
Subject: FW: Celis-Acosta, RC-3

You've made the US Attorney happy. Read the chain below.

From: Burke, Dennis (USAAZ)
Sent: Wednesday, March 10, 2010 6:35 PM
To: Morrissey, Mike (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Subject: Re: Celis-Acosta, RC-3

"Frickin' love it!!"

Frickin' love it!!

From: Morrissey, Mike (USAAZ)
To: Burke, Dennis (USAAZ)
Cc: Cunningham, Patrick (USAAZ)
Sent: Wed Mar 10 20:34:24 2010
Subject: FW: Celis-Acosta, RC-3

RC-3

RC-3 Good job by Emory – a T-3 in a gun case is unusual, and aggressive. Hopefully we'll do it more in the future, but Emory is the trailblazer.

"Good job by Emory – a T-3 in a gun case is unusual, and aggressive. Hopefully we'll do it more in the future, but Emory is the trailblazer."

From: Hurley, Emory (USAAZ)
Sent: Wednesday, March 10, 2010 5:58 PM
To: Morrissey, Mike (USAAZ)
Subject: FW: Celis-Acosta, RC-3

Now we are just waiting on ATF.

RC-3

Shortly thereafter, Laura Gwinn contacted AUSA Hurley about the overlap between Operation Wide Receiver and Operation Fast and Furious:¹¹⁰

¹¹⁰ E-mail from Laura Gwinn to Emory Hurley (Mar. 15, 2010) [HOCR 002991] (Exhibit 52).

From: Gwinn, Laura (CRM)
Sent: Monday, March 15, 2010 7:25 AM
To: Hurley, Emory (USAAZ)
Subject: Tucson gun case overlap

I am handling a large gun trafficking case in Tucson, called Operation Wide Receiver. I have been tied up in a capital case in Maryland, since Jan, but learned a couple weeks ago that there appears to be overlap between a gun case you are handling in Phoenix, and my case. Specifically, I understand that two of your targets went to the house of one of my targets, Carlos Celaya, and a short time later were arrested trying to go over the border with guns. I am anticipating indicting my case, including Celaya by the end of April. Once I finish this capital case, probably this Friday, then await a verdict, I expect to go to AZ for a week or so (probably week of April 5), then hope to indict a couple weeks after that. Will this cause any problem/issues for your case?

In response, Hurley requested that the take-down of Wide Receiver be delayed because of the overlap:¹¹¹

From: Hurley, Emory (USAAZ) [RC-1]
Sent: Monday, March 15, 2010 12:21 PM
To: Gwinn, Laura
Subject: RE: Tucson gun case overlap

My case agent tells me that taking down your targets may cause some problems with our wire case. (We are anticipating going up this afternoon). Within the last two weeks she had spoken to one of your case agents and discussed delaying your takedown a bit so as not to spook our targets. Is this something you could do? Please give me a call at your convenience. Thank you,

Gwinn subsequently spoke with Hurley and agreed to wait until the right time to indict Wide Receiver:¹¹²

From: Gwinn, Laura
Sent: Tuesday, March 16, 2010 2:48 PM
To: Bayer, Matthew B. (ATF)
Subject: large capacity magazines?

Matt, we are winding down our capital case, should go to the jury for sentence on Friday. I am starting to work on Tucson again, specifically, trying to figure out sentencing guidelines. RC-4
RC-4 Base level for guidelines are higher if the firearm is "a semiautomatic firearm that is capable of accepting a large capacity magazine." Do the AK-type and AR-type weapons that we have fit this description??

Also, I spoke with AUSA in Phoenix about their case. Apparently you spoke with the agent and agreed we would sit tight for a while. While I don't disagree with that, I would have preferred that you called me about it first (yes, I know I was in trial, but evenings & weekends work). In any event, I understand they just went up on a T-3, and the AUSA and I agreed to stay in contact to determine the right time to indict our case. I'm still hopeful that we might make an end of April, maybe early May, time period.

"I understand that just went up on a T-3, and the AUSA and I agreed to stay in contact to determine the right time to indict our case."

¹¹¹ E-mail from Emory Hurley to Laura Gwinn (Mar. 15, 2010) [HOCR 002991] (Exhibit 52).

¹¹² See e-mail from Laura Gwinn to Matthew Bayer (Mar. 16, 2010) [HOCR 003440] (Exhibit 53).

Meanwhile, the Criminal Division pulled Joe Cooley off *Fast and Furious* in mid-March 2010, just days after the first wiretap application was approved. As Criminal Division official Kevin Carwile recounted to Deputy Assistant Attorney General Jason Weinstein on March 16, 2010:

I assigned Joe Cooley to the investigation, he got briefed and then started his Latin Kings trial. He just turned his attention back to the case and went to SOD [Special Operations Division] for a briefing on the matter. That is when he learned the USAO now had the case and was about to go up on a wire. We offered to help but they said they had it under control.¹¹³

Five months later, in August 2010, the Criminal Division would reassign one of their prosecutors to *Fast and Furious*—Laura Gwinn. In the meantime, wiretap renewals throughout the summer would ensure that the Criminal Division continued to be informed about the case during much of 2010.

B. Deputy Attorney General Briefed

FINDING:	Acting Deputy Attorney General Gary Grindler, Associate Deputy Attorney General Ed Siskel, and other officials from the Office of the Deputy Attorney General attended a detailed briefing on Operation Fast and Furious in March 2010. Despite the evidence presented at the briefing of illegally-purchased firearms being recovered in Mexico, Grindler and Siskel failed to ask probing questions or take any significant follow-up action to monitor and supervise the conduct of the case.
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With a groundbreaking federal wiretap approval imminent, ATF leadership, including the Director and Deputy Director, briefed new Acting Deputy Attorney General Gary Grindler in a monthly meeting held on March 12, 2010. Elevating the case up to the Deputy Attorney General's level was the logical next step, since within the organizational structure of the Justice Department, ATF reports to the Deputy Attorney General.¹¹⁴

Associate Deputy Attorney General Edward Siskel joined Acting Deputy Attorney General Grindler at the monthly ATF meetings. Although the Deputy Attorney General himself is responsible for ATF, in practice, a designated official within the Office of the Deputy Attorney General (ODAG) is responsible for managing the portfolio of issues relating to ATF. This official is supposed to monitor ATF operations and bring potential ATF issues to the attention of the Deputy Attorney General.¹¹⁵ During the pendency of *Fast and Furious*, this official was Associate Deputy Attorney General Siskel.

¹¹³ E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) [HOCR 002830-002831] (Exhibit 54).

¹¹⁴ USDOJ: About Department of Justice Agencies, *available at* <http://www.justice.gov/agencies/index-org.html> (last visited May 14, 2012).

¹¹⁵ Melson Transcript at 25 (Exhibit 1).

The March 12, 2010, briefing presented Siskel and Grindler with overwhelming evidence of illegal straw purchasing during Fast and Furious. The presentation included a chart identifying the straw purchasers, 31 in all, and the number of weapons they had acquired by that date, 1,026.¹¹⁶ Three of these straw purchasers had already purchased over 100 weapons each, with one straw purchaser having already acquired over 300 weapons. During this briefing, they learned that buyers had paid cash for every single gun. Grindler made a handwritten note of this fact, along with the fact that the money for the purchases was being wired to Western Union:¹¹⁷

PURCHASE SUMMARY				
NAME	GUN		INVOICE	
	PURCHASES	TOTAL	TOTAL	NOTES
RC-4				
James Avilar	11,084.00	13,002.64		
RC-4				
Alfredo Celis	36,919.75	36,821.33		
Jacob Chambers	36,541.75	39,863.98		
RC-4				
Dejan Hecagovak	22,719.80	23,761.91		
RC-4				
Jacob Mantelongo	7,442.97	7,731.27		
Joshua Moore	39,863.40	64,020.06		
RC-4				
Liriel Pastino	204,110.59	213,756.87		
RC-4				
Jose Pollanco	1,799.00	1,951.82		
RC-4				
Sean Steward	134,838.84	140,034.38		
RC-4				
TOTAL PURCHASES	\$ 819,394.05	\$ 840,745.32		

Total Cost of Firearms Purchased as of Feb 27, 2010 785115-10-0004

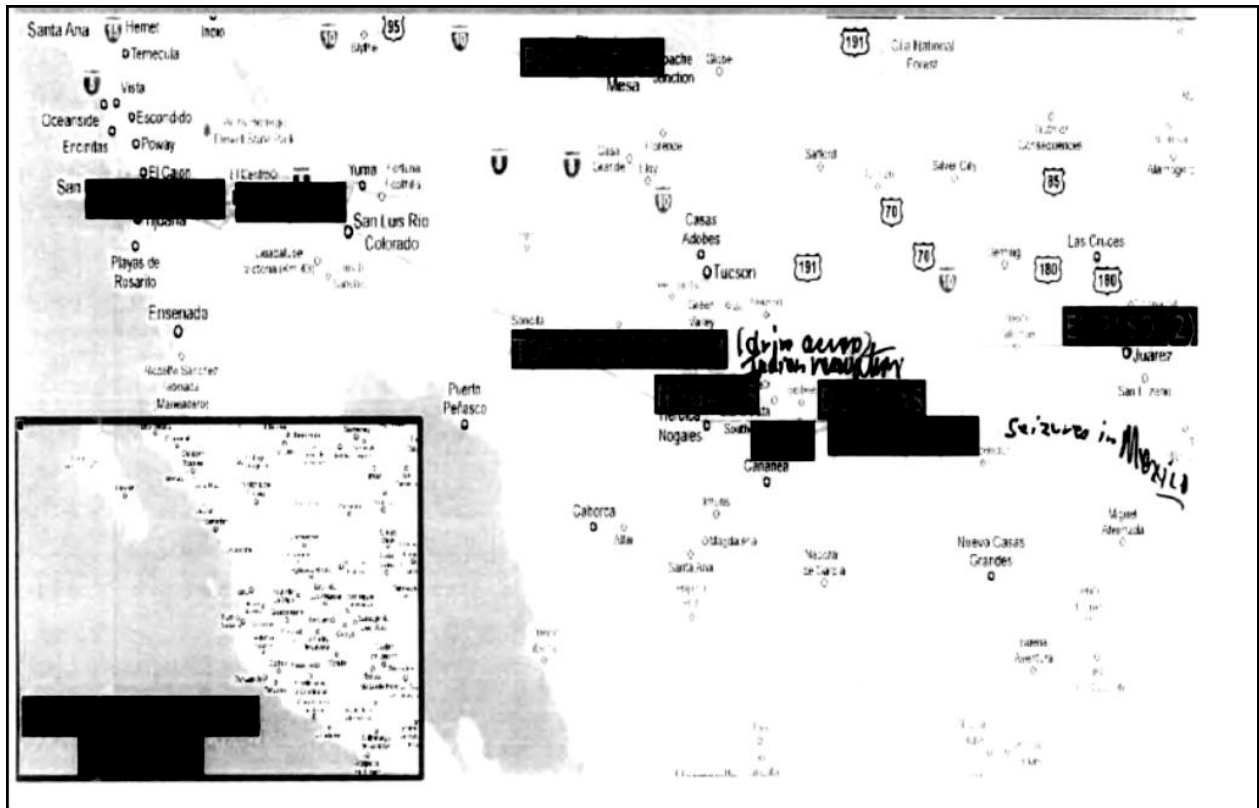
All cash, Western Union only

Siskel and Grindler were also shown a map of Mexico with detailed locations of recoveries of Fast and Furious weapons—including some at crime scenes:¹¹⁸

¹¹⁶ “Operation The Fast and The Furious,” March 12, 2010 [HOCR 002820—HOCR 002823] (Exhibit 55).

¹¹⁷ *Id.*

¹¹⁸ *Id.*



The briefing also discussed the use of stash houses where weapons bought during Fast and Furious were stored before being transported to Mexico. In addition, Siskel and Grindler learned of some of the unique investigative techniques ATF was using during Fast and Furious.¹¹⁹

[INTENTIONALLY BLANK]

¹¹⁹ *Id.*



Despite this detailed presentation, Acting Deputy Director Gary Grindler did not fully appreciate the number of weapons at issue in *Fast and Furious*. He testified: “**I am not sure at this point of my tenure that I knew exactly what this was in terms of significance.** It is what it says, 1,026 guns.”¹²⁰

A memorandum sent to Grindler on March 26, 2010, cited cases for support of a proposed long gun regulation. The number of guns involved in each case—“several hundred,” “19,” “five,” and “69,” respectively—made clear that with 1,130 guns, *Fast and Furious* involved a significantly larger number of firearms than any of the other cases ATF identified to support its proposed regulation.¹²¹ The sheer numbers should have raised questions for Grindler and ODAG, as they already had for some senior ATF officials.

¹²⁰ Transcript, Interview of Gary Grindler by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Dec. 14, 2011), at 15 (emphasis added) [hereinafter Grindler Transcript] (Exhibit 56).

¹²¹ Memorandum for the Attorney General from Kenneth Melson, “Issuing demand letters to Federal firearms licensees (FFLs) in selected states requiring them to submit multiple sales information concerning certain types of rifles” (Mar. 26, 2010), at 3 [HOCR 004972-004976] (Exhibit 57).

Ed Siskel had worked on ATF issues since becoming a senior counsel in ODAG in January 2009. He became the Associate Deputy Attorney General with the ATF portfolio in October 2009.¹²² Still, he failed to act. Siskel testified:

- Q. When you are hearing about Fast and Furious presumably for the first time, or at least you haven't told us you heard about Fast and Furious prior to this, did the fact that a man named Uriel Patino is purchasing 313 firearms raise any caution flags in your mind?
- A. So I don't remember the briefing and I don't remember this PowerPoint presentation, but if you are asking me does the information here that someone purchased 313 firearms raise concerns, certainly the issue of firearms trafficking is a concern. But there is nothing on this PowerPoint slide that you are asking me about that indicates when these firearms were purchased, what the circumstances were under which they were purchased or what tactics were used in the investigation.
- Q. Outstanding questions, and I am sure you raised all those questions with the briefers after the meeting, did you not?
- A. Again, I don't remember the briefing and I don't remember the slide. **What I am trying to answer is your question about whether that figure alone raises concerns, and my response was that that figure alone doesn't** because it is not clear whether the purchases happened historically and have been linked to this investigation through historical trace data, for example.¹²³

Unlike ATF Deputy Director Hoover, Siskel registered no concern over the number of firearms involved in Fast and Furious. Even if Siskel had believed that Phoenix ATF had become aware of these traffickers and their previous buying activity in March 2010, the increasing number of illegal gun purchases through the summer of 2010 should have caused him to ask clarifying questions of ATF.

Grindler testified that he had not been responsible as Acting Deputy Attorney General for what occurred at ATF. Rather, he believed that Ed Siskel had maintained that responsibility as Associate Deputy Attorney General. Grindler stated:

- Q. Some of the operational details of the case were shared with you, based on our understanding, and you made notes that you say a tracker followed to three stash houses.
- A. I made those notes, yes.

¹²² Siskel Transcript at 8-9 (Exhibit 8).

¹²³ *Id.* at 24 (emphasis added).

- Q. At any point, do you have a recollection of whether there was a discussion about what are we going to do with these guns so we make sure they don't get to Mexico?
- A. My recollection is that, I mean, based on—as I said, my recollection is really based on this. These were guns they seized in the United States. This is a seizure in the United States reflected by this and the map that was provided. So I mean they were going to use them—I mean, this is an assumption. But they seized these guns, so it is evidence.
- Q. Were you confident at that point that ATF was seizing the guns? Did they represent that to you?
- A. Based on this and my notes and the map that talks about a seizure of these guns in this Indian reservation, yes. If they had told me that they were not keeping these guns, I am confident that is something I would have taken notes on or asked about.¹²⁴

Grindler assumed, but never confirmed, that ATF had seized most of the guns purchased in *Fast and Furious*. Grindler did not follow up on his assumption, however—not even with the deputy he assigned to monitor ATF. When asked about Grindler's belief that ATF had been Siskel's responsibility, Siskel initially denied it, then responded that he was unaware of anything untoward occurring during *Fast and Furious*. Siskel testified:

- A. So you indicated that this was the agency that I was responsible for, and I would disagree with that characterization.

* * *

- Q. [W]hy didn't you ask a single one of those [questions] of anybody following this briefing?
- A. Well, I don't remember the briefing, I don't remember what questions were asked during it. So what I have tried to do is, to answer your question, based on what, as I sit here today, this information indicates to me.
- Q. Mr. Grindler told us that he had one person specifically assigned to the ATF portfolio, and by name he mentioned you. If ATF is your responsibility, as Mr. Grindler told us it was, [why weren't] you . . . asking any questions about why there is 1,000 firearms that are collected, why they are giving this big briefing, why they have

¹²⁴ Grindler Transcript at 16-17 (emphasis added) (Exhibit 56).

spent over half a million dollars on these firearms and why there are all these seizures in Mexico.

* * *

- A. [I] don't remember the meeting. What I will say, though, is that ATF was working hard on investigating firearms trafficking, and what this indicates to me is that they are investigating potential firearms trafficking and does not suggest anything about inappropriate tactics being used.¹²⁵

Although Siskel and Grindler both attended the March 12, 2010, briefing that included a presentation of significant information and data about Fast and Furious, neither asked questions or conducted any supervision whatsoever of ATF.

C. The Criminal Division's Awareness of Gunwalking

Wiretap applications for Fast and Furious came across the desks of senior Criminal Division officials around the exact same time that they learned that gunwalking had occurred in Operation Wide Receiver. Had these same Criminal Division officials read the initial wiretap applications in Fast and Furious, they would have discovered in the spring of 2010 that gunwalking was occurring during Fast and Furious, too. Unfortunately, the discovery of gunwalking in Wide Receiver did not cause these Criminal Division officials to even *begin* reading the wiretap applications in Fast and Furious.

Wide Receiver and Fast and Furious were the only two major ATF cases from Arizona to which the Criminal Division had prosecutors assigned. They also happened to have overlapping targets. Yet despite the fact that both cases involve SAC Newell and contemporaneous notices of sales from cooperating FFLS, a high volume of guns (although Fast and Furious contained four times as many guns as Wide Receiver), and a strategy aimed at identifying upstream conspirators, Criminal Division officials claim they never drew any connection between the two cases. The failure to identify the similarities between the cases—or at least begin scrutinizing ATF wiretap applications more carefully after discovering gunwalking in one case—represents a major failure of Criminal Division leadership.

¹²⁵ Siskel Transcript at 23-26 (Exhibit 8).

1. Discovering Gunwalking in Operation Wide Receiver

FINDING: Criminal Division leadership discovered in the spring of 2010 that gunwalking had occurred in Operation Wide Receiver. However, rather than notifying the Inspector General or even the Deputy Attorney General, the individual responsible for overseeing ATF, senior Criminal Division officials held a single meeting with ATF leadership and a senior Department official in the press office in which they focused on the challenges of presenting gunwalking to the press.

Shortly after the first wiretap application was approved in Fast and Furious, officials in the Criminal Division became aware of gunwalking by ATF's Phoenix Field Division. On March 16, 2010, Deputy Assistant Attorney General Jason Weinstein received an e-mail from Gang Unit Chief Kevin Carwile which included a description of Operation Wide Receiver. It stated:¹²⁶

"With the help of a cooperating FFL, the operation has monitored the sales of over 450 weapons since

- o ***Operation Wide Receiver is a firearms trafficking investigation involving ATF, Gang Unit and USAO Tucson. With the help of a cooperating FFL, the operation has monitored the sales of over 450 weapons since 2006, particularly lower-receivers of AR-15 rifles. The weapons are believed to have been transported to Mexico and, in fact several of the weapons have been recovered there. Gang Unit and ATF continue to monitor communications between the targets of this investigation and plan to return an indictment in the coming months.***

Weinstein responded to the e-mail:¹²⁷

From: Weinstein, Jason
Sent: Tuesday, March 16, 2010 11:04 AM
To: Carwile, Kevin
Subject: RE: talking points

I'm looking forward to reading the pros memo on Wide Receiver but am curious – did ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?

¹²⁶ E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) [HOCR 003434-003435] (emphasis added) (Exhibit 58).

¹²⁷ E-mail from Jason Weinstein to Kevin Carwile (Mar. 16, 2010) [HOCR 003438] (Exhibit 59).

Weinstein later testified:

The piece of that that caused the greatest concern was the possibility that with the assistance of the cooperating FFL that they had actually monitored, **and I took that to possibly mean that they had recorded in real time the sales of those guns.** And so my question to Mr. Carwile is did they actually—was the FFL cooperating and were they monitoring the sales as they occurred, or did the sales happen and the FFL began cooperating after the fact; because the answer to that question would affect, at least potentially affect the analysis about whether they let guns go that they had the legal authority to have stopped.¹²⁸

Both e-mails from that period of time, and Weinstein’s later testimony, demonstrate that he was “stunned” by the gunwalking. Weinstein testified that he was upset upon learning about gunwalking in Wide Receiver:

If you look at the April 12th email, you will get that my reaction was I [was] stunned about the tactics. And one of the reasons I was stunned was because in my career as prosecutor we had—I had always gone to great lengths and taught people to go to great lengths to avoid letting even a single operable firearm to get out of law enforcement’s control. So that’s the depth of my concern about it¹²⁹

The same April 12, 2010 e-mail Weinstein referenced, however, also focuses on the press implications if the public were to learn about ATF’s gunwalking:¹³⁰

-----Original Message-----
From: Weinstein, Jason
Sent: Monday, April 12, 2010 5:30 AM
To: Carwile, Kevin; Trusty, James
Subject: My airplane reading, Part II

Been thinking more about "Wide Receiver I." ATF HQ should/will be embarrassed that they let this many guns walk - I'm stunned, based on what we've had to do to make sure not even a single operable weapon walked in UC operations I've been involved in planning - and there will be press about that. In addition, this diary that casts aspersions on one of the agents is a challenge for the case but also something that is likely to embarrass ATF publicly. For those reasons, I think we need to make sure we go over these issues with our front office and with Billy Hoover before we charge the case. Of course we should still go forward, but we owe it to ATF HQ to preview these issues before anything gets filed.

I'm not suggesting we need to send the memo further up the chain - it would take you or me a really long time to convert what Laura wrote into something we could send to Lanny - but we should schedule a time to brief Lanny and Mythili on the case next week (end of the week, bc he testifies on Wed and is jammed up before then) and then to brief Billy after that.

"ATF HQ should/will be embarrassed that they let this many guns walk . . . and there will be press about that."

¹²⁸ Weinstein Transcript at 95 (emphasis added) (Exhibit 39).

¹²⁹ Weinstein Transcript at 21.

¹³⁰ E-mail from Jason Weinstein to Kevin Carwile (Apr. 12, 2010) [HOCR 003442] (Exhibit 60).

The concern for these press implications persisted as the issue of gunwalking made its way up the chain of leadership in the Criminal Division. On April 19, 2010, the issue arose in a meeting with Assistant Attorney General Lanny Breuer.¹³¹ According to James Trusty, who was at the meeting, Breuer just wanted them to meet with ATF Acting Director Ken Melson and Deputy Director Billy Hoover “so they know the bad stuff that could come out”:¹³²

<p>----- Original Message ----- From: Trusty, James To: Carwile, Kevin Sent: Mon Apr 19 18:40:08 2010 Subject: Re: How did the</p> <p>Went fine. You know how he is. Wants us to meet with Ken and Billy at some point so they know the bad stuff that could come out. I'm going to come in late tomorrow - probably near noon -- work from home in the am and then work til around 6.</p> <p>----- Original Message ----- From: Carwile, Kevin To: Trusty, James Sent: Mon Apr 19 18:23:42 2010 Subject: How did the</p> <p>Meeting go with lanny?</p>	<p>“Wants us to meet with Ken and Billy at some point so they know the bad stuff that could come out.”</p>
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Concern for public perception—and not the concern about public safety that gunwalking severely implicates—was also the message Weinstein conveyed when he contacted ATF Deputy Director William Hoover to set up the meeting:¹³³

<p>-----Original Message----- From: Weinstein, Jason RC-1 Sent: Tuesday, April 20, 2010 7:36 AM To: Hoover, William J. Subject: Calendar invite</p> <p>Billy,</p> <p>You and Ken will be receiving an invite for a meeting with Lanny, me, and some others next week on a soon-to-be-charged gun trafficking case we're doing with ATF in Tucson. (Your code name is Operation Wide Receiver.) The reason we wanted to meet with you before charging is that the case has 2 aspects that could create media challenges and we wanted to talk through them first. Happy to fill you in by phone whenever convenient. When you get the invite, feel free to include someone from your PIO (and anyone else you want).</p> <p>Best,</p> <p>Jason</p>	<p>“The reason we wanted to meet with you before charging is that the case has 2 aspects that could create media challenges and we wanted to talk through them first.”</p>
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¹³¹ Meeting on Arizona Gun Trafficking Investigation, Apr. 19, 2010, 2:45 PM, Participants: Lanny Breuer, Mythili Raman, Steven Fagell, Jason Weinstein, Amy Pope, James Trusty, and Kevin Carwile [HOCR 003450] (Exhibit 61).

¹³² E-mail from James Trusty to Kevin Carwile (Apr. 19, 2010) [HOCR 003451] (Exhibit 62).

¹³³ E-mail from Jason Weinstein to William Hoover (Apr. 20, 2010) [HOCR 003452] (Exhibit 63).

In preparation for the subsequent April 28, 2010, meeting with ATF, Weinstein e-mailed spokesperson Laura Sweeney from the Office of Public Affairs to request that she and a colleague attend the meeting to address the press challenges of Operation Wide Receiver.¹³⁴

-----Original Message-----
From: Weinstein, Jason (CRM)
Sent: Wednesday, April 28, 2010 7:11 AM
To: Sweeney, Laura
Subject: Meeting invite

If you or Alisa (or both) are available at 11, can you meet with me, Trusty, and Billy Hoover to discuss an impending indictment in a gun trafficking case that has some rather significant (and I hope unique) press challenges? Sorry for short notice.

“ . . . a gun trafficking case that has some rather significant (and I hope unique) press challenges”

Sweeney wrote back: “We’ll be there.”¹³⁵

Weinstein also e-mailed Trusty about the meeting, making no mention about preventing gunwalking or holding anyone accountable for it.¹³⁶

From: Weinstein, Jason
Sent: Wednesday, April 28, 2010 9:13 AM
To: Trusty, James
Subject: Wide Receiver ATF mtg

“[D]escrib[e] the case and the issues, and then we can spend the rest of the time talking messaging.”

If ok with you, I figured you could do for Billy what you did for Lanny in terms of describing the case and the issues, and then we can spend the rest of the time talking messaging.


Signaling the emphasis on the public relations focus of the meeting, attendants were evenly divided between ATF, the Criminal Division, and the Office of Public Affairs. Notes from one attendee, however, also show Operation Fast and Furious was a topic of discussion:¹³⁷

¹³⁴ E-mail from Jason Weinstein to Laura Sweeney (Apr. 28, 2010) [HOCR 003476] (Exhibit 64).

¹³⁵ E-mail from Laura Sweeney to Jason Weinstein (Apr. 28, 2010) [HOCR 003476] (Exhibit 64).

¹³⁶ E-mail from Jason Weinstein to James Trusty (Apr. 28, 2010) [HOCR 003477] (Exhibit 65).

¹³⁷ Notes of Alisa Finelli, Office of Public Affairs, Justice Department (Apr. 28, 2010) [HOCR 006989] (Exhibit 66). The Justice Department produced these notes on June 19, 2012—just as Attorney General Eric Holder was negotiating a settlement proposal with Congress. The Committee voted to recommend the House hold him in contempt two days later. The e-mail was the only document that the Justice Department had produced in a month and one of only thirty pages produced in two months.

* May 12 - 2 or 3 defendants
indictment 2006-07; 183 guns sold in
first conspiracy, AR15's in bulk
vast majority of guns not recovered
2nd conspiracy - same people but
bigger mix of weapons 200 some
purchased - 50 recovered - 5 in Mexico -
Feb 07, 10 defendants
* gun trafficking, illegal aliens, straw purchase,
some overlap w/ investigation
* Fast and Furious, 

Weinstein testified that not only was he stunned about gunwalking in Wide Receiver, “that’s the way I communicated it to the folks from ATF at that meeting. I communicated as clearly as I could that those tactics were inappropriate, albeit under different ATF management and 3 years earlier, they were nevertheless inappropriate.”¹³⁸ Yet not a single e-mail produced by the Justice Department shows that he—or anyone else at Main Justice—communicated this to ATF. E-mails between ATF officials indicate that they understood exactly the message that Weinstein seemed to be communicating: “Some surprises but nothing terrible.”¹³⁹

Two days after the meeting, Weinstein summarized it—and the press strategy formulated in it—to Breuer:¹⁴⁰

¹³⁸ Weinstein Transcript at 20-21 (Exhibit 39).

¹³⁹ E-mail from William McMahon to Mark Chait (Apr. 28, 2010) [HOCR 005455] (Exhibit 67).

¹⁴⁰ E-mail from Jason Weinstein to Lanny Breuer (Apr. 30, 2012) [HOCR 003485-003486] (Exhibit 68).

From: Weinstein, Jason
Sent: Friday, April 30, 2010 7:03 PM
To: Breuer, Lanny A.
Subject: Re: Operation Wide Receiver

“ATF let a bunch of guns walk in an effort to get upstream conspirators but only got straws, and didn’t recover many guns.”

As you'll recall from Jim's briefing, ATF let a bunch of guns walk in effort to get upstream conspirators but only got straws, and didn't recover many guns. Some were recovered in MX after being used in crimes. Billy, Jim, Laura, Alisa and I all think the best way to announce the case without highlighting the negative part of the story and risking embarrassing ATF is as part of Deliverance.

“[T]he best way to announce the case without highlighting the negative part of the story and risking embarrassing ATF is as part of Deliverance.”

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Office: RC 1
Cell: RC 1

----- Original Message -----

From: Breuer, Lanny A.
To: Weinstein, Jason
Sent: Fri Apr 30 18:39:45 2010
Subject: Re: Operation Wide Receiver

Anything I should know about thos?

----- Original Message -----

From: Weinstein, Jason
To: Breuer, Lanny A.; Raman, Mythili; Fagell, Steven
Sent: Wed Apr 28 18:59:27 2010
Subject: Operation Wide Receiver

Jim T and I met with Billy Hoover and with Laura and Alisa to talk about this gun trafficking case with the issues about the guns being allowed to walk for investigative purposes. Can fill you in tomorrow in more detail but we all think the best move is to indict both Wide Receiver I and Wide Receiver II under seal and then unseal as part of Project Deliverance, where focus will be on aggregate seizures and not on particulars of any one indictment.

Notwithstanding Weinstein’s claim that he was upset about the tactics of Wide Receiver, the single meeting on April 28, 2010, was the only forum in which he supposedly communicated his disapproval to ATF. He testified:

Q. So there is not a single email that shows—in other words, there is no written record that shows that you were upset over these tactics?

A. No, there’s just the meeting itself that I had in which I

communicated it face to face.

Q. So there is a single meeting you had?

A. It was a single hour-long meeting in which I communicated my concerns about the tactics.¹⁴¹

Weinstein's e-mails with ATF do not convey any sense of outrage.¹⁴² Nor has the congressional inquiry uncovered any other evidence that Weinstein communicated his disapproval of the tactics used in Wide Receiver to ATF. Thus, it is perhaps not surprising that McMahon believed it was "nothing terrible."¹⁴³

Equally important, neither Weinstein nor Breuer took any steps to inform anyone else of the gunwalking. This includes the Department's Inspector General or the Office of the Deputy Attorney General, which technically was responsible for ATF and met with ATF on a much more regular basis than the Criminal Division. Had ODAG been informed, it might have exercised some modicum of oversight over ATF, rather than ignoring the agency and doing virtually nothing to supervise it.

Instead, after his single meeting with ATF Deputy Director Hoover, Weinstein considered the matter closed. Weinstein testified that he did not recall whether he followed up with anyone at ATF after the meeting. He stated:

Q. And did you ever take any steps to find out from Mr. Hoover or Mr. Melson whether or not anyone had been held accountable for engaging in that inappropriate tactic in Wide Receiver, either in the April time frame when you learned about it or later when the Fast and Furious' allegations came up?

A. **I don't recall one way or another whether I followed up with Mr. Hoover on that question. I just don't recall.**

Q. So to your knowledge no one ever—nothing you did necessarily caused anyone to address with the agents or the leadership of the Phoenix Field Division, specifically Mr. Newell, that this was an unacceptable tactic?

A. I just don't know the answer to that.

Q. I mean, how does that get communicated to the people who are doing it if you don't communicate it to them and there is no official inquiry about it?

¹⁴¹ Weinstein Transcript at 19-20 (Exhibit 39).

¹⁴² E-mail from Jason Weinstein to William Hoover (Apr. 20, 2010) [HOCR 003452] (Exhibit 63).

¹⁴³ E-mail from William McMahon to Mark Chait (Apr. 28, 2010) [HOCR 005455] (Exhibit 67).

A. Well, I communicated to their boss. And he's everybody's boss except Mr. Melson's. So I communicated to him. He has the same reaction to it that I do. So I walk away, you know, with the understanding that he views it the same way I do.

It seems to me the one way—and I don't run ATF, and I don't know exactly how ATF operates, but one way for it to get addressed internally is for the leadership at headquarters level to communicate to the field, just as the Attorney General did this in this case. You know, the Attorney General directed the DAG to issue a directive to AUSAs and agents in the field that you should not be involved in any investigation, and you should stop any tactic that involves guns intentionally going across the border. That is one way you can communicate things to the field. I don't know what Mr. Hoover did or didn't do. I just can't say.

Q. And you didn't ask?

A. **As I said, I just don't recall—I don't recall whether I did or not.**¹⁴⁴

Assistant Attorney General Lanny Breuer later testified:

I wish at that time that I had said clearly to the Deputy Attorney General and the Attorney General that in this case Wide Receiver, we had determined that in 2006 and 2007, guns had walked. I did not do that.¹⁴⁵

While Criminal Division officials claim they wanted to prevent the misguided tactics of Wide Receiver from being repeated, their actions at the time were inconsistent with these claims. The Criminal Division held just one meeting with ATF to raise concerns about Wide Receiver. The Division's failure to inform either Department leadership or the Department's Inspector General at the time they learned about the tactics undermines the claims that they were conscientious and dutiful upon learning that ATF had walked guns.

¹⁴⁴ Weinstein Transcript at 143-145 (emphasis added) (Exhibit 39).

¹⁴⁵ S. Comm. on the Judiciary, Subcomm. on Crime and Terrorism Hearing, *Combating International Organized Crime*, 112th Congress (Nov. 1, 2011), at 8.

2. Drawing a Connection Between Wide Receiver and Fast and Furious

FINDING: Criminal Division officials received detailed information about gunwalking in Fast and Furious at the same time these officials were expressing concern about gunwalking that had occurred in Operation Wide Receiver. Many similarities existed between the two operations. However, officials in the Justice Department claim that no one made the connection, failing to recognize the same warning signs and mistakes in both operations.

Jason Weinstein testified that he communicated to Billy Hoover and William McMahon that the tactics of Wide Receiver “were inappropriate.”¹⁴⁶ Weinstein said he believed the tactics used in Wide Receiver to be an aberration, something that happened “under different ATF management and 3 years earlier,” and that similar tactics were no longer being used.¹⁴⁷ Weinstein testified that he believed “under different ATF management” to mean at the headquarters level of ATF.¹⁴⁸ Although ATF had a new Acting Director, the official Weinstein met with, William Hoover, had still been a senior official at ATF during Wide Receiver, then serving as Assistant Director for Field Operations.

More importantly, Wide Receiver took place during SAC Newell’s tenure at ATF’s Phoenix Field Division. While Weinstein testified that he believed he had first met Newell in October 2009 in Mexico, and that he did not have any communications with Newell about Fast and Furious until 2011,¹⁴⁹ ASAC George Gillett testified: “I do know that Mr. Newell was personal friends with an attorney in the DAG’s office. I want to say his name was Jason Weinstein, if I am not mistaken, and they would have regular telephone conversations because of their friendship.”¹⁵⁰

Despite discussions of Wide Receiver spanning several months in the Criminal Division and the fact that Fast and Furious was the only other Arizona ATF case the Criminal Division was assisting with, Weinstein claimed that he did not draw a connection between the two. Weinstein and other Criminal Division leaders missed a critical opportunity to draw such a connection by not reading the wiretap applications. Because Weinstein was presented the applications for approval, he was effectively given more information about the operational tactics in Fast and Furious than Acting ATF Director Melson, Deputy Director Hoover, or Assistant Director Chait.

Weinstein testified that the use of the word “monitored” in a description of tactics used in Wide Receiver, caused him “the greatest concern.”¹⁵¹ It caused him to ask: “[D]id ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began

¹⁴⁶ Weinstein Transcript at 20-21 (Exhibit 39).

¹⁴⁷ *Id.*

¹⁴⁸ Weinstein Transcript at 21.

¹⁴⁹ Weinstein Transcript at 22-24.

¹⁵⁰ Gillett Transcript at 32-33 (Exhibit 6).

¹⁵¹ Weinstein Transcript at 95 (Exhibit 39).

cooperating?”¹⁵² If that one word about Wide Receiver caused Weinstein such consternation, then just a cursory review of the wiretap applications in Fast and Furious—from a case originating from the same ATF Phoenix Field Division—should have made him panic.

Weinstein described Wide Receiver to Breuer as ATF having “let a bunch of guns walk in an effort to get upstream conspirators but only g[e]t[ting] straws, and didn’t recover many guns.”¹⁵³ Nevertheless, within weeks of Weinstein’s meeting with ATF about Wide Receiver, he approved one of the Fast and Furious wiretap applications with several similarities to Wide Receiver, and with far more detail than the single use of the word “monitored.”

Weinstein, who did not read the wiretap applications but instead relied on the summary memos, testified that nothing in the three wiretap summary memos he read concerned him:

What I can say is that had I seen anything in what I reviewed in connection with the wiretaps that gave me any reason to suspect that guns were walking in that case in Fast and Furious, I would have reacted very strongly to it. And you saw in the April 12th email, April 12, 2010 email, how strongly I reacted to guns that had walked 3 years earlier. If I thought that those guns were walking 3 weeks earlier or 3 days earlier or 3 hours earlier—that is, that it was still ongoing—my reaction would have been even stronger.¹⁵⁴

In the wake of discovering gunwalking in Wide Receiver, Weinstein and the rest of the Criminal Division needed to be vigilant with respect to any gun trafficking operation originating out of the ATF Phoenix Field Division. If Weinstein and other senior Department officials were truly committed to preventing gunwalking tactics from recurring in the future, they would have done something to hold accountable those in ATF who had been responsible for it. Then, they would have read more than just the summary memos and scrutinized the Fast and Furious wiretap applications submitted by the same ATF Field Division for any sign of the tactic. They did not.

Despite these failures, Weinstein has refused to accept any responsibility for Fast and Furious. Despite being in a unique position to stop the operation because of the wiretap applications he authorized, Jason Weinstein has deflected blame, maintaining that ATF’s Phoenix Field Division and the U.S. Attorney’s Office were responsible. Weinstein testified:

A. I will say that I have significant concerns based on what I know now about the management, about what appeared to me to be some management issues in the Phoenix field office of ATF. . . .

Q. What about approving the so-called misguided tactics? I mean, isn’t that on the SAC as well?

¹⁵² E-mail from Jason Weinstein to Kevin Carwile (Mar. 16, 2010) [HOCR 003438] (Exhibit 59).

¹⁵³ E-mail from Jason Weinstein to Lanny Breuer (Apr. 30, 2012) [HOCR 003485-003486] (Exhibit 68).

¹⁵⁴ Weinstein Transcript at 92-93 (Exhibit 39).

- A. Well, again, I don't know what he did, what he didn't do. I don't know if the facts of that have come out yet or will come out. But, ultimately, he is at the top of the management chain in an office, and to the extent that tactics were being used in that office that shouldn't have been used—it is my view that it is not a terribly large office, but there are a number of levels of supervision between him and the line agent. But at the end of the day the SAC is responsible for what goes on in his office.¹⁵⁵

While Jason Weinstein believes the SAC is responsible for what occurs in his office, Weinstein fails to account for the fact that his own actions in authorizing the wiretap applications *allowed these reckless tactics to continue*. And even though two Criminal Division prosecutors were assigned to Fast and Furious at different times, Weinstein did not seek information from them about the case—even when allegations of gunwalking arose in 2011. He instead placed the blame squarely on an individual several levels below him, and in an altogether completely different organization.

Jason Weinstein testified that “gun-walking is a pretty extraordinary thing and it’s an extraordinarily bad tactic.”¹⁵⁶ Weinstein, however, himself bears responsibility for the approval and authorization of this very tactic. Weinstein’s experience with Wide Receiver and his access to the details of Fast and Furious put him in a position to take action. His actions allowed for the reckless tactics he claims he was so adamantly against to be used.

Assistant Attorney General Lanny Breuer, the head of the Criminal Division, also bears a great deal of blame for failing to draw the connection between the two operations. He directed the Criminal Division’s response to learning about gunwalking in Wide Receiver, and set the expectation that merely meeting with—and not supervising—ATF was sufficient. Breuer failed to take decisive action when he discovered gunwalking in Wide Receiver. He admitted as much in his October 31, 2011, public apology.¹⁵⁷

[INTENTIONALLY BLANK]

¹⁵⁵ *Id.* at 29.

¹⁵⁶ *Id.* at 64.

¹⁵⁷ Public statement of Lanny Breuer (Oct. 31, 2010) (Exhibit 69).

Assistant Attorney General Lanny A. Breuer of the Criminal Division released the following statement today:

“Throughout my tenure as Assistant Attorney General, one of my highest priorities, and one of the central missions that I have set for the Criminal Division, has been to work with our Mexican counterparts to fight the scourge of drug trafficking and violence in Mexico, and to address the public safety crisis along the Southwest Border of the United States. That is why, among many other steps, in 2009, I offered Southwest Border U.S. Attorneys’ Offices assistance from one of the Criminal Division’s experienced prosecutors to assist in gun trafficking prosecutions.

“In response to that offer, the Arizona U.S. Attorney’s Office asked the Criminal Division prosecutor to assume responsibility for Operation Wide Receiver, and the Criminal Division’s Gang Unit agreed to do so, despite not having been involved in the underlying flawed investigation of the matter by the Tucson Field Office of the ATF’s Phoenix Field Division in 2006 and 2007.

“As that prosecutor evaluated the case in the fall of 2009, she realized that ATF’s investigation - which had concluded two years earlier - had included the use of misguided tactics that had resulted in ATF losing control of numerous guns that then crossed the border into Mexico. This information was brought to my attention in April 2010.

“When I learned of the unacceptable tactics used in Operation Wide Receiver, I instructed one of my Deputy Assistant Attorneys General to schedule a meeting with ATF’s Acting Director and Deputy Director to bring these issues to their attention. The next day, my Deputy contacted ATF leadership to arrange a meeting, and approximately one week later, my Deputy met with the ATF Deputy Director and others to discuss this matter.

“In prosecuting the defendants in Operation Wide Receiver, the Criminal Division focused on how to ensure that those responsible for illegal firearms trafficking were brought to justice, despite the flaws in the investigation.

“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 of any similarities between the two. That was a mistake, and I regret not having done so.

“I remain more committed than ever to the Criminal Division’s mission to fight violence in the United States and Mexico.”

Both Jason Weinstein and Lanny Breuer have both expressed regret for failing to draw a connection between Operation Wide Receiver and Operation Fast and Furious. The consequences of the actions they regret may have allowed hundreds of additional weapons to flow across the border into Mexico, leading to the deaths of countless innocent citizens.

RECOMMENDATION: The Justice Department needs to institute clear, written guidelines to outline the appropriate use of cooperating gun dealers during law enforcement investigations. The Department must scrutinize investigations that involve cooperating gun dealers much more closely.

D. Justice Department's Failure to Supervise ATF

Throughout the summer of 2010, the Criminal Division's prosecutor in Arizona kept the Criminal Division informed about Fast and Furious. Meanwhile, officials in the Office of the Deputy Attorney General and the Office of the Attorney General were responsible for supervising ATF. Both of these offices knew the size of Fast and Furious and continued to receive updates on it throughout the summer of 2010. Neither office intervened or made any effort to become better informed about the case.

1. Siskel Waited for ATF to Report Problems

FINDING: Associate Deputy Attorney General Ed Siskel did not actively engage with ATF leadership. He viewed his role as extremely limited, so he did not seek out any detailed knowledge of specific ATF operations, including Operation Fast and Furious. Siskel had no prior training or experience with ATF, and he did not make any effort to learn more about ATF's problems during his tenure in ODAG.

While the Justice Department's Criminal Division continued its significant involvement in Fast and Furious, the Office of the Deputy Attorney General completely failed in its management responsibilities of ATF. At the heart of ODAG's mismanagement during Fast and Furious was confusion surrounding objectives and responsibilities. This purported confusion was the product of either complete miscommunication among Department officials, indicating a systemic problem, or obfuscation to deflect blame.

According to former Acting Deputy Attorney General Grindler, Associate Deputy Attorney General Ed Siskel was responsible for monitoring ATF and reporting any problems or difficulties to his superiors.¹⁵⁸ Grindler testified:

Q. How do problems make their way to the Attorney General, if there was a problem in an ATF case?

¹⁵⁸ Grindler Transcript at 30 (Exhibit 56).

- A. Well, I can't speak about—this is sort of an abstract response. With any component, they have a responsibility to bring significant problems to the attention of the leadership office. So it would be the heads of the law enforcement components, the United States Attorneys, the heads of the components all have that responsibility. And then, as I have already talked about, with Ed Siskel, for example, or Mark Michalic, **if in their interaction with the law enforcement components they identify problems, they need to bring it to the leadership's attention so that something can be done about it.**¹⁵⁹

Siskel, however, had a completely different view. Although he received detailed briefings and updates on ATF operations, Siskel viewed his role as a limited one. Siskel contended it was not his job to supervise ATF, but rather to interface with ATF leadership regarding certain Justice Department policy questions.¹⁶⁰ Siskel testified that his limited role precluded him from knowing the operational details of any given ATF investigation—not even ATF's most significant one, Operation Fast and Furious.¹⁶¹ Siskel testified:

As I described earlier, my position as an Associate Deputy Attorney General was **largely a policy position** and one where I worked with the leadership of the law enforcement components on issues that they had that needed to be, for example, elevated to the level of the Deputy Attorney General for a decision. And **that did not involve getting into the operational details of particular investigations.**¹⁶²

Documents show, however, that ODAG—including Ed Siskel—received briefings, briefing papers, and memos discussing the details of specific ATF investigations. As discussed above in Section V.I.B., Siskel received a detailed briefing about Fast and Furious in March 2010. Other e-mails dated after that briefing show Siskel's involvement with Fast and Furious and other ATF operations. For example, in one e-mail, Siskel asked Mark Chait, ATF Assistant Director of Field Operations, about operations in Arizona:¹⁶³

¹⁵⁹ *Id.* (emphasis added).

¹⁶⁰ Siskel Transcript at 43-45 (Exhibit 8).

¹⁶¹ Siskel Transcript at 43-44.

¹⁶² *Id.* at 43 (emphasis added).

¹⁶³ E-mail from Edward Siskel to Mark Chait (Jul. 14, 2010) [HOCR 002847-002848] (Exhibit 70).

From: Siskel, Edward N (ODAG)
Sent: Wednesday, July 14, 2010 6:38 PM
To: Chait, Mark R. (ATF)
Cc: Hoover, William J (ATF)
Subject: RE: SIR

Thanks Mark. How much longer is the GRIT going to be operating in AZ? At what point after that will we know the total results of the operation and be in a position to do some public roll out along the lines of what we did in Texas?

From: Chait, Mark R. (ATF)
Sent: Wednesday, July 14, 2010 4:49 PM
To: Siskel, Edward N. (ODAG)
Cc: Hoover, William J. (ATF)
Subject: Fw: SIR

This is second significant seizure yesterday by our GRIT.
Mark R. Chait
Assistant Director
Field Operations

“At what point after that will we know the total results of the operation and be in a position to do some public roll out along the lines of what we did in Texas?”

Siskel also received other updates and briefings from ATF on Fast and Furious throughout 2010, despite his insistence that his position did not involve delving into the operational details of particular investigations.

Although he attended briefings on ATF operations and was ATF’s chief liaison to the Office of the Deputy Attorney General, Siskel seemed unaware of some of the most basic ATF practices. For example, he had no knowledge of how ATF’s Suspect Gun Database worked. Siskel testified:

Q. So no one at ATF ever explained to you what the suspect gun database is and the way that it interoperates with the tracing system to allow them to have immediate notice . . . when the recovery occurs rather than the longer, more cumbersome trace process . . . [N]obody at ATF ever explained that to you? Do you have any knowledge of that before I explained it to you just now?

A. **I’m fairly confident that nobody at ATF ever explained that to me.**

Q. Did you understand it before I explained it to you just now?

A. No.¹⁶⁴

ATF’s use of the Suspect Gun Database has important policy implications Siskel should have been aware of. Somehow, he was totally unaware of how ATF used this important tool.

¹⁶⁴ Siskel Transcript at 104 (emphasis added) (Exhibit 8).

Siskel claims he was oblivious to all things Fast and Furious at ATF. He professed having no knowledge that William Hoover had requested an exit strategy.¹⁶⁵ Siskel was also completely unaware that ATF was working with cooperating FFLs, who were providing ATF with contemporaneous notice of sales to straw purchasers. He testified:

Q. So no one ever communicated that to you, either at the March briefing or on any other occasion, that they were working with a gun dealer who was providing them with contemporaneous notice of the sales to the straw buyers?

A. I don't recall anyone ever telling me that while I was in the Department.

Q. Do you think you would recall it if they told you that?

A. I might recall it. I just don't know. I mean, the notion that Federal firearms licensees might cooperate in a criminal investigation wouldn't strike me as unusual, but I don't recall.

Q. Would it strike you as unusual if the vast majority of the guns that were on that chart that were shown to you weren't historical purchases but were, rather, purchases that were made with contemporaneous notice to the ATF from a cooperating gun dealer?

A. You know, based on the public reporting about the sort of inappropriate tactics that were used in this case, it does surprise me that those tactics were used. **But I was not aware of any of that when I was in the Department.**¹⁶⁶

Siskel claimed to have no knowledge of the ATF briefing paper stating that the current strategy was "to allow the transfer of firearms to continue to take place in order to further the investigation and to allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexican DTO's."¹⁶⁷ He testified:

Q. Sitting here today reading the language, "Currently our strategy is to allow the transfer of firearms to continue to take place in order to further the investigation and to allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexican DTO's which are perpetrating

¹⁶⁵ *Id.* at 45-46.

¹⁶⁶ *Id.* at 76 (emphasis added).

¹⁶⁷ Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper on 785115-10-[redacted]* (Jan. 8, 2010) [HOCR 001918] (Exhibit 71).

armed violence along the southwest border. This is all in compliance with,” and there is a citation to an ATF order. Sitting here today, are you familiar with the ATF order?

A. No.

Q. Do you recall anyone at ATF ever discussing that ATF order with you or its role in Fast and Furious in justifying the tactics used in operation Fast and Furious?

A. **No, I don’t recall anyone from ATF discussing that order with me in any context, and I don’t recall anyone talking about the inappropriate tactics being used in this investigation.**

Q. Do you agree sitting here today that this bullet point is a reference to the inappropriate tactic of allowing the transfer of firearms to continue to take place in order to further the investigation and identify more co conspirators?

A. I don’t really have a basis for saying one way or the other whether this is a reference to inappropriate tactics.¹⁶⁸

Siskel operated under the assumption others were responsible for providing him with information and bringing problems to his attention. His role as a member of the Southwest Border Strategy Group was to ensure that individuals understood their roles and to impart a clear understanding of Department policy to ATF officials. Siskel, however, did not take the proper action to fulfill this responsibility.

Ed Siskel left the Department on December 10, 2010, just five days before Agent Terry’s murder, to take a position in the White House Counsel’s Office. When the Justice Department discovered the connection between the gun that killed Agent Terry and the tactics of Operation Fast and Furious, no one informed Siskel, or asked him what he knew.¹⁶⁹

RECOMMENDATION: The official within the Office of the Deputy Attorney General responsible for the ATF portfolio should have ATF-specific experience and training, and must be more than just a liaison. That official should ensure that the Deputy Attorney General is able to provide meaningful supervision of ATF operations.

¹⁶⁸ Siskel Transcript at 134-135 (emphasis added) (Exhibit 8).

¹⁶⁹ Siskel Transcript at 35-36.

2. Grindler Waited for Siskel to Report Problems

FINDING: **Acting Deputy Attorney General Gary Grindler did not take an active leadership role with respect to ATF. He waited for his staff to bring matters to his attention. Accordingly, Operation Fast and Furious continued unabated.**

Acting Deputy Attorney General Gary Grindler took a management approach of delegating tasks and responsibilities to his subordinates and then remaining uninvolved until problems were brought to his attention. This management style insulated him from problems occurring beneath him. Instead of accepting responsibility for his leadership shortcomings, Grindler instead passed the buck to his underlings.

Grindler believed that once tasks were delegated, they were no longer his problem. He testified:

- A. The way I organized the office was I had two individuals on my staff who had ATF as a component where they have responsibility. These individuals had other responsibilities, but that was one of their responsibilities. So from a management point of view, they had the responsibility to know more than I knew about ATF, and if there were issues that they believed needed to be brought to my attention, then **I expected them to bring it to my attention.**

Beyond that, ATF being a law enforcement component works with the United States Attorneys across the country, and if there are issues either way with those relationships, it would be my expectation that either the United States Attorneys would either directly or through the executive office of U.S. Attorneys bring issues to my attention that they thought warranted my attention, and **if ATF similarly had issues with United States Attorneys, I would expect it to bring it to my attention.** And obviously the head of ATF had a responsibility to bring issues to my attention.

- Q. And who were your—I guess they were associate deputies that had the ATF portfolio?

A. One.

- Q. Mr. Siskel was one?

A. **Mr. Siskel was an Associate Deputy Attorney and he had ATF as a portfolio.**¹⁷⁰

¹⁷⁰ Grindler Transcript at 10 (emphasis added) (Exhibit 56).

Based on Grindler's testimony, either ATF officials or Siskel—or both—should have brought problems to his attention. Neither did.

In Grindler's view, problems did not exist if no one told him about them.

Grindler was not proactive. He stated:

Q. And did you have regular meetings with Messrs. Siskel and Michalic about ATF, or did you learn about ATF, manage ATF, only on an as-needed basis?

A. I don't recall a specific meeting with them solely about ATF. I said to my staff if there is an issue I really need to know, they need to come in and tell me.¹⁷¹

Grindler disclaimed all responsibility for learning about the gunwalking tactics that ATF used. He testified:

Q. Did you assign Mr. Siskel to keep track of this case on a going forward basis?

A. I don't recall. **Again, ATF is his responsibility.**

Q. Do you recall any specific conversations with Mr. Siskel about the Fast and Furious case outside of this meeting and the other ATF monthly meetings?

A. No.¹⁷²

Despite the outcome of Fast and Furious, Grindler found no fault with his approach. He testified:

Q. What other types of management decisions have been made at the Department to make sure a case like this will never happen in the future?

A. I don't know whether there are other management decisions. I think to the extent that information comes in regarding this matter and to the extent that it gives us a basis to do—where we think we need to take a management decision. When I say we, again, I am not the decision-maker, but I believe that that is and will be an ongoing process to review that, consider that, in the context of

¹⁷¹ *Id.* at 11.

¹⁷² *Id.* at 17 (emphasis added).

management.¹⁷³

Passive leadership and a poor management structure made it difficult to identify operational flaws in the component agencies the ODAG supervised. The fact remains, however, that ODAG had important information regarding Fast and Furious, but did not handle it properly. Grindler and Siskel expected others to deal with it. This management breakdown directly contributed to the disastrous consequences of Operation Fast and Furious.

Grindler has made no attempt to find out what actually happened during Fast and Furious, despite having been second in command at the Department during the entire pendency of the operation. He headed the office with direct supervisory authority over ATF. As late as December 2011, Grindler knew little about Fast and Furious. He stated:

- Q. So it is your position that ATF didn't let these guns walk?
- A. I don't know all the details of the facts. I believe that there were serious flaws in their operational tactics. But it is a fairly high level understanding that it included dropping of surveillance, maybe not interdicting guns where they had a legal basis to interdict. Exactly how many of the guns fall into those categories and how many don't, **I don't know. I just don't know.**¹⁷⁴

His testimony sums up the problem. Grindler appeared for a transcribed interview in December 2011—nearly one year after the scandal broke—and more than a year after he was informed, in detail, about Fast and Furious and the connection to Brian Terry's death. He testified:

- Q. Were you aware that the case began based on information from a previous DEA State wire in which Celis Acosta is recorded talking about trafficking guns across the border specifically and setting up a specific transaction?

* * *

- Q. Were you ever aware of that? Did you know it before I told you just now?
- A. **I don't recall being aware of it back in 2010.** I seem to recall, after your investigation began, hearing something like that.

- Q. So today, you understand that the ATF knew from—ATF and DEA and FBI knew from the November December 2009 time frame that the ring leader, Mr. Celis Acosta, had been recorded on DEA intercepts talking about trafficking guns to Mexico.

¹⁷³ Grindler Transcript at 25-26 (Exhibit 56).

¹⁷⁴ *Id.* at 23-24 (emphasis added).

- A. I don't know that, nor do I know the details of that now.
- Q. So you don't know that now. You don't know that that's true.
- A. **I don't know that that's true—or false.**¹⁷⁵

In the intervening period of time, he failed to learn *anything* about the case or to re-examine the case in any meaningful way. Grindler stated:

- Q. So you haven't done any retrospective work, given the fact that you were the Deputy at the time and now you are one of the principal advisers for the Attorney General?
- A. I don't know what you mean by retrospective work.
- Q. Well, **what the heck happened**, and how can we make sure, since you were the Deputy at the time when the Fast and Furious case unfolded, really bad things happened, what can we learn from that to make sure it doesn't happen again?
- A. I believe that the Deputy Attorney General's office is engaged in—has been engaged in considering what steps need to be made and there has been consultation with the Attorney General. It has been taken very seriously.¹⁷⁶

Senior Justice Department officials were not eager to find out what was going on at ATF during Fast and Furious. After its failure, they were even less inclined to do so. During his transcribed interview, Gary Grindler testified that he “did not know” or “did not recall” 29 times; Ed Siskel said he “did not know” or “did not recall” 21 times. Grindler and his Justice Department colleagues have not exercised strong leadership, and they have failed to communicate a sense of urgency to find out what breakdowns within the Department led to Operation Fast and Furious. Grindler and his colleagues have failed to exercise real leadership and shoulder the blame for their shortcomings during Fast and Furious.

RECOMMENDATION: The Deputy Attorney General must closely supervise ATF, an agency with a long and troubled history.

¹⁷⁵ *Id.* at 124 (emphasis added).

¹⁷⁶ *Id.* at 27-28 (emphasis added).

3. Wilkinson Failed to Ask Questions

FINDING: Deputy Chief of Staff to the Attorney General Monty Wilkinson was uninterested in the initiatives and operations of individual Justice Department components—including those in his portfolio. In fact, he believed it was not the role of anyone in the Office of the Attorney General to manage and supervise Department components. He read weekly memos containing details about Fast and Furious, but did nothing with this information.

Monty Wilkinson served as Deputy Chief of Staff to Attorney General Holder during the pendency of Operation Fast and Furious. Wilkinson's portfolio of responsibilities included both ATF and U.S. Attorneys' Offices across the country. Like Siskel and Grindler, though, Wilkinson did not actively seek to inform himself about ATF operations, including Fast and Furious. Wilkinson testified that it was not part of his role or anyone else's in the Office of the Attorney General to supervise components of the Justice Department. He stated:

Q. [Y]ou emphasized the point that you weren't responsible for supervising the components that were in your portfolio. Is that a fair statement?

A. Right. **It is accurate to say I didn't supervise or manage the components**, correct.

Q. And you also, I believe, said that you weren't responsible for overseeing them, is that accurate?

A. That's right. Yes, correct.

Q. So is anyone in the Attorney General's Office responsible for either overseeing, supervising or managing the components?

A. The role of the staff in the Attorney General's Office is to be a liaison with the components, to try to have a grasp on what is going on in the components and on top of important issues. **I did not get into the operations of the components.**

Q. So is the answer to my question no?

A. Could you repeat the question?

Q. My question was is anyone in the Attorney General's Office responsible for overseeing the components of the Justice Department, supervising the components of the Justice Department or managing the components of the Justice Department?

- A. I said the role is to try to be on top of the issues in those components, so that we aren't blindsided by issues, to have a relationship such that issues are, important issues are brought to our attention so that we can report them to the Attorney General, but **it's not to manage or supervise.**¹⁷⁷

Wilkinson claims he never brought the issue of Fast and Furious to Attorney General Holder's attention although he knew about it for several months. Beginning in the summer of 2010, the Attorney General began receiving weekly updates on Operation Fast and Furious. These updates came from ATF, the Criminal Division, and the National Drug Intelligence Center. Attorney General Holder has stated that "[a]ttorneys in my office" are responsible for reviewing these memoranda and bringing any potential issues to his attention.¹⁷⁸ Monty Wilkinson was the individual responsible for reading these weekly updates on Fast and Furious. He did not seek out more information about the large firearms trafficking operation that appeared in the weekly updates. Wilkinson testified:

- Q. Just to follow up on one thing that [Department counsel] just said, so in these weekly memoranda, it references Fast and Furious?

A. That is correct.

- Q. So when you received these, you were aware of an investigation named Fast and Furious. Is that a fair statement?

A. **Yes. If I read the weekly reports, I would have seen the reference to Fast and Furious.** But I didn't know, other than what was in the weekly reports, I didn't know anything about it.

- Q. But you did read the weekly reports, you said, right?

A. **I made it a practice to read them.** I can't sit here today and say I absolutely read every weekly report. But I tried to read all of the weekly reports. I tried to read the weekly reports as they came.

- Q. Given what [congressional staff] asked you, when was the first time, sitting today—

A. Well, I would have seen the references to Fast and Furious in weekly reports that I read.

¹⁷⁷ Transcript, Interview of Monty Wilkinson by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Apr. 13, 2012), at 65-66 (emphasis added) [hereinafter Wilkinson Transcript] (Exhibit 72).

¹⁷⁸ Letter from Attorney General Eric Holder to Chairman Darrell Issa et al. (Oct. 7, 2011), at 3.

- Q. And so do you recall when the first reference was?
- A. It would have been around the timeframe of the fall of 2010, I guess.
- Q. **And did you ask any questions about what that is or any follow up?**
- A. **No.** I mean, as I sit here today and read the missions, and you look at them, there is nothing in there that references the inappropriate tactics that were used in Operation Fast and Furious. **So, no, I didn't ask questions about it.**¹⁷⁹

Wilkinson adopted an approach akin to that of Grindler and Siskel. This approach was a passive one. Having three senior Department managers with supervisory authority over ATF all taking a passive approach with respect to ATF allowed problems within ATF to grow out of control without senior Department leadership stepping in to fix the problem.

RECOMMENDATION: Leadership within the Justice Department must start at the top. Senior managers should foster a culture of accountability within the Department by taking responsibility and accepting consequences for their own lack of initiative and failures.

4. Total Lack of ATF Supervision Within Justice Department

FINDING: Within the Department of Justice, ATF reports to the ODAG. Not a single Department official, however, took responsibility for supervising ATF. By failing to ask difficult questions about Fast and Furious, ODAG left ATF with the impression that ATF had the full support of Department leadership in the operation.

Justice Department headquarters was derelict in its supervision of ATF, a component agency of the Justice Department. The Office of the Deputy Attorney General oversees ATF and its operations. Yet, *no one* at Justice Department headquarters considered themselves responsible for supervising ATF—not the Acting Deputy Attorney General nor the individuals in his office he chose for the task. Several Department officials testified that if ATF had a problem, ATF was expected to bring that problem to the Justice Department's attention. No meaningful supervision took place. Interviews with Justice Department officials made clear that from the bottom of the chain to the top, no one was ensuring that ATF ran sound operations.

ATF considered Ed Siskel in ODAG to be its connection with Justice Department headquarters. Siskel testified:

¹⁷⁹ Wilkinson Transcript at 33-34 (emphasis added) (Exhibit 72).

A. So you indicated that this was the agency that I was responsible for, and I would disagree with that characterization.

* * *

Q. Did ATF report up to you?

A. No, **I wouldn't say that they reported to me.** I mean, in the sense that the sort of chain of command is that they reported to the Deputy Attorney General and through the Deputy Attorney General to the Attorney General. But I did work closely with them and tried to work with them and the Deputy Attorney General to help ATF achieve its mission and through various issues.¹⁸⁰

Many memos addressed to the Attorney General from component agencies are addressed “through the Deputy Attorney General.” Acting Deputy Attorney General Grindler testified:

Q. The Deputy's office has some supervisory responsibility of ATF, correct?

A. Correct.

Q. And that responsibility is delegated to Mr. Siskel at the time—

A. Part of it, yes.

Q. —and Mr. Michalic. You rely on—at that time you relied on those people to manage ATF, supervise ATF, to the greatest extent.

A. Well, I mean, I rely on them for their responsibility. . . .

Q. But there is a responsibility of the Deputy's office to conduct active, affirmative supervision of ATF, correct?

A. I don't know that I would use all those words. I mean, they answer up through me at the time, and I did have a management responsibility. But as I have tried to explain, because of the magnitude of the issues and the number of components, national security issues that are confronting this Department, **I necessarily have to rely on members of my staff to try to get more information.**¹⁸¹

Ed Siskel, however, failed to perform this role adequately.

¹⁸⁰ Siskel Transcript at 23, 38 (emphasis added) (Exhibit 8).

¹⁸¹ Grindler Transcript at 95-96 (Exhibit 56).

Attorney General Holder placed responsibility for reading memoranda from ATF “for the Attorney General” on his Deputy Chief of Staff, Monty Wilkinson, but as described above, Wilkinson was reluctant to acknowledge that the Attorney General’s Office had any oversight responsibility for its components of the Justice Department. He suggested, however, that the Office of the Deputy Attorney General bore more responsibility for management of the components. He testified:

Q. So is it your view that the Deputy Attorney General is responsible for supervising, managing, and overseeing the components?

A. What my—what I said is that the—the leadership of components, like ATF, report to the Deputy Attorney General. That’s—

Q. And is that because he supervises and manages or oversees them?

A. He—that’s—he does—I mean they report to him.

Q. Let’s ask it this way: If the ATF or any component was doing something that Mr. Holder didn’t like, how would you communicate his not wanting them to do that to them? Like what would be the process for communicating—

Let’s say the agency, through you or through some other mechanism, communicated a policy that they were following, and the AG didn’t want them to do that. How would you go about telling them that? And who on the org chart would be responsible to tell Billy Hoover, Hey, don’t do that?

A. You know it could really depend on what the issue is. It could be from the Deputy Attorney General. It could be—there could be communications from attorneys on the AG’s staff to the components to—

Q. Right. But Billy Hoover is going to look—it’s an org chart. It’s like a pyramid. Billy Hoover isn’t going to take orders from just any lawyer in the Justice Department. So it’s got to be someone—

Just to finish, so Billy Hoover has to respect that the person who says, Don’t do that, or do it differently or however you want to say it, that that’s somebody in his chain of command, if you will, somebody that he—that is above him, that can basically order him to do something. I think Jason was alluding to that. Is that the DAG’s Office? So if the DAG said don’t do that or do do that, is that—I guess we get into the word “managing.” Is that who Billy Hoover has to take orders from?

A. **The DAG's Office does exercise management—some management—I mean over components.**¹⁸²

The Office of the Attorney General thought that the Office of the Deputy Attorney General exercised supervision over ATF. The Deputy Attorney General thought his staff, Ed Siskel in particular, exercised supervision over ATF. Ed Siskel did not see it as his responsibility to supervise ATF—even though ATF believed that it needed to report to Ed Siskel. In other words, the management structure at Department headquarters allowed for zero oversight of ATF, with no single person believing it was their responsibility to supervise the agency.

In an October 7, 2011, letter to several members of Congress, Attorney General Eric Holder wrote:

Attorneys in my office and in the Office of the Deputy Attorney General review these weekly reports and bring to my attention only those matters deemed to require my consideration or action; given the volume of material to which I must devote my attention, I do not and cannot read them cover-to-cover. Here, no issues concerning Fast and Furious were brought to my attention because the information presented in the reports did not suggest a problem.¹⁸³

As illustrated above, however, no single individual in Justice Department headquarters was ever *looking* for problems. Even when red flags should have raised questions with Justice Department officials, each official assumed someone else was responsible for dealing with ATF.

Notwithstanding the leadership vacuum at Justice Department headquarters, ATF leadership still looked to ODAG officials for guidance and briefed them about important operations occurring in ATF. The ATF Phoenix Field Division relied on the Deputy Attorney General's new strategy for combating the drug cartels, including shifting focus from straw purchasers, in developing Operation Fast and Furious. In the absence of actual supervision, ATF believed it had the full backing of senior Justice Department officials for its strategy.¹⁸⁴

RECOMMENDATION: Justice Department components look to senior Department officials for leadership and guidance. It is critically important that these senior leaders provide such leadership and guidance. Justice Department officials also must take responsibility for supervising and managing the Department's component agencies.

¹⁸² Wilkinson Transcript at 95-97 (Exhibit 72).

¹⁸³ Letter from Attorney General Eric Holder to Chairman Darrell Issa et al. (Oct. 7, 2011), at 3.

¹⁸⁴ E-mail from David Voth to Hope MacAllister, et al. (Mar. 10, 2010) (emphasis added) (Exhibit 73); E-mail from Brian Kenrick to David Voth (Mar. 31, 2010) (emphasis added) (Exhibit 74); E-mail from William Newell to George Gillett (Oct. 5, 2010) [HOCR 001349-001352] (Exhibit 75).

E. Supervision and Role of U.S. Attorney's Office

1. Lack of U.S. Attorney's Office Supervision

FINDING:	When U.S. Attorney Dennis Burke reported to officials at Justice Department headquarters that his office had obtained a Title III wiretap in a firearms trafficking case – an unusual step and aggressive tactic – no one at Justice Department headquarters probed deeper.
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ATF was not the only component of the Justice Department which had inadequate supervision during Fast and Furious. The U.S. Attorney's Office for the District of Arizona also operated without effective supervision by the Justice Department.

U.S. Attorney Dennis Burke testified:

Q. You're obviously a presidentially appointed, Senate confirmed U.S. Attorney, so do you even have a boss? I know we talked about the administrative agency that sort of controls some of the finances, but you basically, I mean, do you report to somebody at DOJ who is your boss?

A. Yes, **technically** I report to the Deputy [Attorney General].

Q. Okay. And who was that? Who is it now?

* * *

A. [I]t was Gary Grindler and now it's James Cole. I got all the last names right.

Q. Very good. Is that your relationship with them then, are they really your boss? Do you have to give reports to them?

A. No, no. It's org chart. I don't mean to diminish the role that I report to the Deputy at all, but I think what you were saying earlier in your lead-up to your question, you're pretty independent as a U.S. Attorney in making decisions, and I think that's accurate. But on an org chart and for reporting requirements the U.S. Attorneys report to the Deputy on the org chart.

Q. And if the Attorney General puts out a directive, you're bound by it?

A. Yes.

Q. Okay. So as independent as you obviously are in the policies, there is a connection between you and the Department of Justice? You're not a free floating atom?

* * *

Q. [D]uring your almost 2 years . . . **did you have a lot of contact** with Mr. Ogden, Messrs. Ogden, Grindler, and now Cole?

A. **No, I would not say a lot.**¹⁸⁵

Although Burke testified that the Justice Department did not conduct oversight of his office, he made clear the possibility existed. He stated:

[R]ecently we've been working on this issue of medical marijuana, and that is an issue the Department wants to make sure that it's a coordinated policy, even though several U.S. Attorneys have written, you know, separate letters out there that the Department wanted to coordinate it. So there is an attorney in the DAG's office who, you know, can call a meeting or, you know, or ask to review your letter before it goes out, and you don't, you know—you and I have been talking for the last few minutes about the independence of U.S. Attorneys' offices, but if the DAG's office says, you know, you're not sending a letter out on this issue unless we review it, then they're obviously going to review it.¹⁸⁶

Although the Deputy Attorney General and others in the ODAG did not interact with Burke personally, Burke participated in frequent conference calls coordinated by that office in late 2009 and 2010, which included the participation of Criminal Division Chief Lanny Breuer. He testified:

A. Deputy Attorney General Ogden would have southwest border conference calls, and he would chair them, and I think my recollection was Lanny was the cochair, Lanny Breuer, the Chief of the Criminal Division, the Assistant Attorney General for the Criminal Division, that they would—they were cochairing these, and they would have all the DOJ, law enforcement components on the call or in the room with them, more likely in the room, and then they would have the five southwest border U.S. Attorneys on the call, too, and then we would have to report up at some point in the call what was going on in our districts.

¹⁸⁵ Burke Aug. Transcript at 35-36 (emphasis) (Exhibit 34).

¹⁸⁶ *Id.* at 36-37.

Q. “Report up” means?

A. Meaning that this was a conference call, David Ogden would say the southwest border is important to us, you know, we really want to focus on the cartels, we have a cartel strategy, this is what we’re doing. Okay, DEA, what are you doing? Okay, ATF, what are you doing? FBI? And then they would give updates. Then at the end of the call they would say now we’re going to hear from our U.S. Attorneys, and then they would go through the U.S. Attorneys. So I would give an update to this call of what was going on.

Q. So “up” didn’t mean up the chain, it just meant you were going to report, you were going to tell them what was happening in the district?

A. Exactly.¹⁸⁷

Burke testified that he frequently promoted Fast and Furious to senior Department officials. He stated:

We’re not just focusing on the drugs and the humans, we’re focusing on the guns and the money, and that was a mantra I was often using, you know, we’re going to focus at port of entries and with the agencies on guns and money heading to Mexico, and so **I would definitely have a lot of conversations with people in the Department about that because that was kind of how we wanted to be viewed, and then I would pivot that to say, and we have a big Title III case.**¹⁸⁸

Despite the priority that Justice Department officials claimed they placed on the cartel strategy, neither Grindler nor any other officials in his office, including Ed Siskel, dug any deeper into Fast and Furious when Burke made such comments. This lack of interest in specifics emanating from ODAG extended to its interactions with U.S. Attorney Burke as well as their interactions with ATF.

¹⁸⁷ *Id.* at 38-39.

¹⁸⁸ *Id.* at 37-38 (emphasis added).

2. Delay in Indictments

FINDING: ATF officials asked both the Justice Department’s Criminal Division and ODAG for assistance in speeding up the indictments in Fast and Furious. The Justice Department, however, took no action to intervene. Instead, officials at Department headquarters were only concerned with preparing for the press impact of the indictments.

The delay of the Fast and Furious indictments demonstrated a lack of supervision over the U.S. Attorney’s Office for the District of Arizona. Hoping to have the indictments done, at the latest, by the end of July pursuant to the exit strategy, ATF became upset as the U.S. Attorney’s Office dragged its feet and allowed the indictments to fester well into the fall of 2010 and beyond. Dennis Burke testified:

I was aware how long the case took. In fact at times I had said we need to hurry the case up, but . . . our position in the office would be if you’ve got a case of this magnitude with 3,000 documents, then it’s going to take a while, you know.¹⁸⁹

He acknowledged:

I have a greater appreciation for maybe ways we could have sped it up. . . . I mean, there are judgment decisions that we should have learned from that that if one AUSA is working on a case of this size, is provided that many documents, are there additional prosecutors who should be assigned to the case.¹⁹⁰

Both the Criminal Division and ODAG realized the importance of the indictments in this case. ATF leadership approached both offices about the delay in the indictments. In the end, neither office intervened in any way to speed up the process.

As the U.S. Attorney’s Office continued to delay the indictments, with a target indictment date of December 7, 2010, the Criminal Division trumpeted Fast and Furious as a great case. Sometime in October 2010, Assistant Attorney General Lanny Breuer visited Mexico.¹⁹¹ ATF’s then-Deputy Attaché to Mexico, Carlos Canino, testified about the visit:

[T]he Ambassador [to Mexico, Carlos Pascual] was saying hey, you know what . . . we need a big win [with] . . . some positive cases. And Lanny Breuer says, yeah, . . . there is a good case out of Phoenix . . . [I] thought, oh, okay, . . . [h]e knows about this case.¹⁹²

¹⁸⁹ Burke Aug. Transcript at 89-93.

¹⁹⁰ *Id.*

¹⁹¹ Telephone interview of Carlos Pascual (Sep. 29, 2011).

¹⁹² Transcript, Interview of Carlos Canino by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Jun. 16, 2011), at 23 (Exhibit 76).

On October 17, 2010, Deputy Assistant Attorney General Jason Weinstein e-mailed Gang Unit Acting Chief James Trusty about whether Breuer should participate in a press conference relating to Fast and Furious.¹⁹³

<p>From: Weinstein, Jason Sent: Sunday, October 17, 2010 11:07 PM To: Trusty, James Subject: FW: OCGS Weekly Report</p> <p>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</p>	<p>"It's a tricky case, given the number of guns that have walked, but it is a significant set of prosecutions."</p>
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Weinstein has since argued that he was only referring to Operation Wide Receiver ("Laura's Tucson case"), but the e-mail also clearly references Operation Fast and Furious, and Weinstein refers to a "significant set of prosecutions." Trusty responded:¹⁹⁴

<p>From: Trusty, James Sent: Monday, October 18, 2010 9 21 AM To: Weinstein, Jason Subject: RE: OCGS Weekly Report</p> <p>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.."</p>	<p>"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'."</p>
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Perhaps in light of these discussions, AUSA Hurley's reports to his supervisors in Phoenix began obfuscating facts. In an October 21, 2010, memorandum on Fast and Furious, Hurley wrote:

Investigating agents have pursued interdiction of the firearms transferred to the conspirators where possible. Agents have not purposely let guns "walk." Interdiction in some cases has been hampered by counter-surveillance used by the targets. **By looking at firearms transaction records historically, it is believed that the organization has acquired more than 1800 firearms.**¹⁹⁵

As discussed in Part I of this report, ATF and the Arizona U.S. Attorney's Office had *not* been simply "looking at firearms transaction records historically" to become aware of the straw

¹⁹³ E-mail from Jason Weinstein to James Trusty (Oct. 17, 2010) [HOCR 002864] (Exhibit 77).

¹⁹⁴ E-mail from James Trusty to Jason Weinstein (Oct. 18, 2010) [HOCR 002864] (Exhibit 77).

¹⁹⁵ Memorandum from Emory Hurley to Carol Stachan-Noonan, "Fast and Furious" (Oct. 21, 2010) [HOCR 003047] (emphasis added) (Exhibit 78).

purchases in Fast and Furious. Quite the opposite, cooperating FFLs were informing ATF in real-time, and ATF was receiving e-mail notifications from the FBI's National Instant Criminal Background Check System (NICS) for many of the purchasers.

Discussions continued over how to explain walked guns. On October 22, 2010, Laura Sweeney, the press official who attended Jason Weinstein's April 2010 meeting with ATF about Operation Wide Receiver, e-mailed two Criminal Division attorneys:¹⁹⁶

From: Sweeney, Laura (SMO) RC-1
Sent: Friday, October 22, 2010 10:57 AM
To: Gwinn, Laura
Cc: Trusty, James; Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

Thanks Laura - Jim, is this the case we discussed previously with ATF?

I did a quick look at the indictment - these people moved well over 200 weapons, right? Let's keep in touch on this one - its a good case but the only obstacle will be explaining why we let them continue to send guns to Mexico while we were investigating. I know that we have to make those calls all the time, but we'll just need to be ready to answer press questions on it.

Is it joint with the USAO?

“[T]he only obstacle will be explaining why we let them continue to send guns to Mexico while we were investigating.”

James Trusty wrote back:¹⁹⁷

From: Trusty, James (CRM)
Sent: Friday, October 22, 2010 1:06 PM
To: Gwinn, Laura (CRM); Sweeney, Laura (SMO)
Cc: Finelli, Alisa (SMO)
Subject: RE: Tucson gun-trafficking case/indictment

I think we can navigate through this stuff fine – bottom line is bad guys who trafficked guns into MX are being targeted and indicted, so I don't see any of these questions as being so dreaded as to negate the good news component.

“I think we can navigate through this stuff fine.”

Sweeney replied: “Agree—just want to start thinking about the questions. Definitely agree it shouldn't deter us from doing press.”¹⁹⁸

While the Department was considering the press implications of Fast and Furious, ATF's frustration with the slow pace of the indictments boiled over. On October 29, 2010, Assistant Director Chait e-mailed Phoenix SAC Newell: “Any news on a quicker indictment?”¹⁹⁹ Newell responded, “No, they pushed it to December 7, 2010. I was supposed to meet with the USA this coming week to discuss the delay but he canceled due to an ‘unexpected’ DC trip.”²⁰⁰

Acting ATF Director Kenneth Melson scheduled a November 9, 2010, meeting with Assistant Attorney General Lanny Breuer to address the issue, along with difficulties in general

¹⁹⁶ E-mail from Laura Sweeney to Laura Gwinn (Oct. 22, 2010) [HOCR 003529-003532] (Exhibit 79).

¹⁹⁷ E-mail from James Trusty to Laura Gwinn (Oct. 22, 2010) [HOCR 003529-003532] (Exhibit 79).

¹⁹⁸ E-mail from Laura Sweeney to Laura Gwinn (Oct. 22, 2010) [HOCR 003529-003532] (Exhibit 79).

¹⁹⁹ E-mail from Mark Chait to William Newell (Oct. 29, 2010) [HOCR 001912-001913] (Exhibit 80).

²⁰⁰ E-mail from William Newell to Mark Chait (Oct. 29, 2010) [HOCR 001912-001913] (Exhibit 80).

about getting U.S. Attorneys’ Offices to prosecute straw purchasing cases. The day before the meeting, Amy Pope, Breuer’s Deputy Chief of Staff and Counsel to the Assistant Attorney General, asked Weinstein if he was preparing materials for the meeting.²⁰¹ He responded with his impressions of the meeting topic based on his conversations with ATF Deputy Director William Hoover:²⁰²

2. Drop-off in U.S. prosecutions for firearms trafficking

“If it’s a lack of will/priority (unlikely), the only thing we can do is encourage the offices to pursue these cases vigorously.”

“Ken is also frustrated by the pace of the USAO in AZ in bringing charges in the ‘Fast and Furious’...case (multiple wires, huge # of guns)”

Ken apparently wants to discuss an apparent reduction in the number of straw purchaser/gun trafficking cases being pursued in certain USAOs (including at least SDTX) and the reluctance on the part of some offices (again, including at least SDTX) to be aggressive in charging conspiracies in such cases; he will apparently ask if we have any suggestions about how to get the numbers up

What we can do here depends on whether the drop in cases/less aggressive approach is based on a lack of priority placed on such cases by the USAOs, a good faith concern about the quality of the evidence, or a lack of resources

- o If it’s a lack of will/priority (unlikely), the only thing we can do is encourage the offices to pursue these cases vigorously

- o If it’s a good faith disagreement with the agents about the strength of a particular case, there’s nothing we can or should do

- o If it’s a lack of resources, perhaps we can offer to provide assistance in the form of a Gang Unit prosecutor, as with Laura Gwinn in AZ

Ken is also frustrated by the pace of the USAO in AZ in bringing charges in the “Fast and Furious” gun-trafficking case (multiple wires, huge # of guns) – the AUSA has apparently told the agents that it will take a couple of months to draft the indictment; it appears that the AUSA on the case is not the fastest worker, and Laura Gwinn, our prosecutor on the case, is going to try to push things along, including by offering to draft the indictment

Ken is apparently going to address the USAs at the US Atty conference to emphasize the importance of pursuing gun trafficking, particularly with a SWB nexus – he may ask Lanny to help him get that message across

ATF Deputy Director William Hoover testified that he also raised the pace of indictments with Ed Siskel in ODAG:

A. We had conversations with . . . Ed Siskel, I had conversations with Ed, speaking to the possible delay of the indictment. . . .

Q. Ed Siskel was the associate deputy attorney general handling ATF matters?

²⁰¹ E-mail from Amy Pope to Jason Weinstein (Nov. 8, 2010) [HOCR 003533-003534] (Exhibit 81).

²⁰² E-mail from Jason Weinstein to Amy Pope (Nov. 8, 2010) [HOCR 003533-003534] (Exhibit 81).

A. Yes.

* * *

Q. What did you tell him?

A. I just told him that we were hoping to have this case indicted much more quickly than it is being indicted. The information we were getting back through field ops was that it's the normal process through the indictment stage, and that they needed this to be able to run, or draft the indictments on 20 individuals, and we were obviously concerned about the time it was taking.²⁰³

Like virtually all other matters related to Fast and Furious, Siskel was unable to recall this:

Q. Were you aware at the time that after the ATF agents took the case to the prosecutor's office in the Phoenix U.S. attorney's office to prepare the indictments, there were significant delays that occurred at the U.S. Attorney's office?

A. I don't recall hearing anything about that.

Q. Do you recall whether anyone asked for you to intervene with the U.S. attorney's office to see if you could help speed up the indictments?

A. Not that I recall.²⁰⁴

Siskel testified that because ATF never raised any problems with him, he never paid ATF any attention.²⁰⁵ When ATF did raise a concern with Justice Department headquarters—in two different Department offices no less—it received no assistance whatsoever.

As early as September 2010, there were warning signs that problems existed with the Fast and Furious indictments. Yet, the Justice Department failed to supervise the Arizona U.S. Attorney's Office adequately and failed to prod it to action regarding the indictments. Despite ATF's requests to both the Criminal Division and ODAG to help accelerate the indictments, it took the death of Border Patrol Agent Brian Terry to make the indictments a reality.

²⁰³ Hoover Transcript at 74-75 (Exhibit 4).

²⁰⁴ Siskel Transcript at 45-46 (Exhibit 8).

²⁰⁵ *Id.* at 38-39.

VII. Connection of Fast and Furious to Brian Terry's Murder

The connection between the murder of Border Patrol Agent Brian Terry and Fast and Furious had drastic effects inside the Department of Justice. For the first time since the investigation began over a year earlier, a Fast and Furious straw purchaser was finally arrested. ATF rushed a memorandum to Acting Deputy Attorney General Grindler notifying him of the connection. Perhaps most significantly, Justice Department headquarters abandoned plans to have various Department officials appear at the Fast and Furious take-down press conference in Phoenix, including Attorney General Holder.

A. "AG'[s] office is now expressing interest in the AG coming out for it"

FINDING: Deputy Chief of Staff to the Attorney General Monty Wilkinson inquired about Attorney General Holder participating in the press conference announcing the take-down of Operation Fast and Furious.

On December 14, 2010, before Brian Terry was killed, Holder's Deputy Chief of Staff Monty Wilkinson e-mailed Dennis Burke. The subject of the e-mail was "You available for a call today?"²⁰⁶ There was no text in the message:

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From: Wilkinson, Monty (OAG) (SMO)
Sent: Tuesday, December 14, 2010 11:18 AM
To: Burke, Dennis (USAAZ)
Subject: You available for a call today?
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An hour later, Burke e-mailed his colleagues in the Arizona U.S. Attorney's Office. The subject of the message was "Fast and Furious." Burke wrote:²⁰⁷

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----- 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.

"AG'[s] office is now expressing interest in the AG coming out for it."

Burke responded to Wilkinson at 2:14 the following morning:

²⁰⁶ E-mail from Monty Wilkinson to Dennis Burke (Dec. 14, 2010) [HOGR 003074] (Exhibit 82).

²⁰⁷ E-mail from Dennis Burke to Patrick Cunningham (Dec. 14, 2010) [HOGR 003070] (Exhibit 83).

----- Original Message -----

From: Burke, Dennis (USAAZ)

Sent: Wednesday, December 15, 2010 02:14 AM

To: Wilkinson, Monty (OAG) (SMD)

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.

Within hours of Burke's response to Wilkinson, Brian Terry died from wounds he sustained in a firefight with bandits armed with Fast and Furious guns.

The e-mail traffic that day shows that Wilkinson left Burke a voicemail message about Attorney General Holder's plan to travel to Arizona for the press conference announcing the Fast and Furious take-down. Burke and Wilkinson, however, remembered the details differently. Dennis Burke, represented by personal counsel after he had left his position as U.S. Attorney, recalled that the Attorney General's office suggested the trip:

Q. But who was Monty interested in having come out? It wasn't going to be Monty Wilkinson showing up at the press conference, right?

A. No, it was the Attorney General.

Q. Okay. **So this email is specifically in regard to the Attorney General coming out to join you for the take-down of Fast and Furious?**

A. **Correct.**

* * *

Q. And then there is an answer from Mr. Cunningham back to you, also cc'ing Miss Scheel and others, You bet, good opportunity to see if January 6 and 7 are still our target dates for indictment and take-down press event. The AG's office, was that Mr. Holder himself who was expressing interest in coming out?

A. No, not to my knowledge. It was, I think when I said AG's office, I am indicating Monty.²⁰⁸

²⁰⁸ Transcript, Interview of Dennis Burke by the Joint Staff of the House Committee on Oversight and Government Reform and Senate Committee on the Judiciary (Dec. 13, 2011), at 86 (emphasis added) [hereinafter Burke Dec. Transcript] (Exhibit 84).

Monty Wilkinson, a personal friend of Attorney General Holder,²⁰⁹ represented by Department counsel, testified that that it was Dennis Burke who wanted the Attorney General to come to Phoenix:

Q. Did Dennis Burke ever reach out to [you] requesting the Attorney General visit his district?

A. I have a vague recollection of Mr. Burke—a communication with Mr. Burke, and I don't recall exactly when it was, but expressing an interest in the Attorney General coming to Arizona to announce an indictment in a gun trafficking case.

Q. Is that something that he reached out to you for, or you reached out to him about?

A. **I don't see why I would have reached out to him about it.**²¹⁰

Burke adamantly disputed Wilkinson's insistence that Burke wanted the Attorney General to announce the Fast and Furious press conference. After Wilkinson contacted him about the prospect of Attorney General Holder traveling to Arizona, Burke claims he was delighted, but believed that a Fast and Furious press conference would not be the best use of Holder's time. In addition, Burke had other ideas if the Attorney General were to visit Arizona. Burke testified:

A. My recollection was that the impetus for the Attorney General to come out to a press conference was coming from ATF. **And Monty asked me, is this a trip you recommend for the Attorney General. And my response was something to the effect that if the Attorney General is going to come out to our district, which you know is very limited opportunities, I would recommend that he do a border tour or we do something in Indian country instead of doing this case.**

* * *

Q. So did you tell Mr. Wilkinson not to have him come out for this?

A. No, I didn't—I don't think I have the prerogative to say he can't come out. **I think I was saying my recommendation is if he is going to come out to Arizona, it is better that he comes for a border tour than for this case.**²¹¹

²⁰⁹ Wilkinson Transcript at 9-10 (Exhibit 72).

²¹⁰ Wilkinson Transcript at 26-27.

²¹¹ Burke Dec. Transcript at 88-90 (emphasis added) (Exhibit 84).

Just one week later, Justice Department headquarters decided not to have the Attorney General visit Arizona or announce the Fast and Furious indictments when it discovered that Fast and Furious guns were found at the scene of a Border Patrol agent's murder.

B. Justice Department Leadership Alerted to Fast and Furious Connection

FINDING: Both Monty Wilkinson and Gary Grindler were informed about the connection between Operation Fast and Furious and U.S. Border Patrol Agent Brian Terry's murder. Grindler received detailed information about the connection. He took no action, however, to investigate the operation.

After Wilkinson and Burke exchanged preliminary e-mails about the potential visit to Arizona, the situation quickly changed. On the morning of December 15, 2010, Burke alerted Wilkinson to Agent Terry's death. He forwarded an e-mail with information about the death to Wilkinson at 9:41 a.m.²¹² Wilkinson responded a few minutes later:²¹³

**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.

In his transcribed interview, when asked about this e-mail, Wilkinson claimed he could not even remember whether he notified the Attorney General of the murder of Agent Terry. He testified:

- Q. Did you communicate that—the information reached you in advance of reaching the Attorney General. Would that be fair?
- A. I actually don't know for sure if he heard it first from me. All I can go on is the fact that I told Dennis [Burke] that I had alerted the AG and some other folks that I did that. I don't remember how I did it.
- Q. So as you sit here today you don't have any recollection of a conversation, email or any other method?
- A. No, I don't.

²¹² E-mail from Dennis Burke to Monty Wilkinson (Dec. 15, 2010) [HOCR 005872] (Exhibit 85).

²¹³ E-mail from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOCR 005872] (Exhibit 85).

Q. Let me finish—communication between you and Mr. Holder—

A. Correct.

Q. —regarding the Terry murder?

A. Correct.

* * *

Q. But in terms of your practice, how would you have alerted him?

A. **I don't know, because I don't know what, I just, I don't remember you know what was going on that day.** I just, you told me at the beginning to be honest, if I don't remember to be honest and I'm being honest. I don't remember.²¹⁴

Wilkinson wrote Burke back again that morning at 11:15 a.m.:²¹⁵

From:	Wilkinson, Monty (OAG) (SMO)
To:	Burke, Dennis (USAAZ)
Sent:	12/15/2010 11:15:51 AM
Subject:	RE: INITIAL TELEPHONIC - SHOT FIRED - Nogales, AZ

Please provide any additional details as they become available to you.

Thanks,

Monty

Burke forwarded Wilkinson additional information about the killing at 1:21 p.m. that afternoon. Wilkinson replied 24 minutes later:²¹⁶

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.

²¹⁴ Wilkinson Transcript at 47-48 (emphasis added) (Exhibit 72).

²¹⁵ E-mail from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOGR 005876] (Exhibit 86).

²¹⁶ E-mail from Monty Wilkinson to Dennis Burke (Dec. 15, 2010) [HOGR 005888] (Exhibit 87).

At 5:19 p.m., after attending the press conference in Tucson later that evening announcing Agent Terry's death, the AUSA in charge of the Tucson field office e-mailed Burke.²¹⁷

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 Based on that, we chose not to make a formal statement. RC 5 RC 5 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

Two hours later, at 7:21 p.m., Burke responded: "Thanks. I just talked to Bill Newell about it. The guns tie back to Emory's Fast and Furious case."²¹⁸ Burke also updated Wilkinson:²¹⁹

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 [sic] 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.

Wilkinson responded, "I'll call tomorrow."²²⁰

Meanwhile, the news linking Fast and Furious with Terry's death also reached Justice Department headquarters from a different source. On December 16, 2010, ATF Deputy Director William Hoover e-mailed Brad Smith and Mark Michalic in the Office of the Deputy Attorney General. Hoover's e-mail implied that Smith and Michalic already knew about the connection between Fast and Furious and Agent Terry's death:²²¹

²¹⁷ E-mail from Shelley Clemens to Dennis Burke (Dec. 15, 2010) [HOCR 003076] (Exhibit 88).

²¹⁸ E-mail from Dennis Burke to Shelley Clemens and Ann Scheel (Dec. 15, 2010) [HOCR 003076] (Exhibit 88).

²¹⁹ E-mail from Dennis Burke to Monty Wilkinson (Dec. 15, 2010) [HOCR 005917] (Exhibit 89).

²²⁰ *Id.*

²²¹ E-mail from William Hoover to Brad Smith and Mark Michalic (Dec. 16, 2010) [HOCR 002871-002872] (Exhibit 90).

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

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

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 next morning, on December 17, 2010, Smith forwarded six pages of information he had received from Hoover to Acting Deputy Attorney General Gary Grindler.²²² In the e-mail, Smith informed Grindler that the weapons recovered at the scene of Agent Terry’s murder had been purchased by someone ATF and the U.S. Attorney’s Office *had been investigating since November 2009*.²²³

[INTENTIONALLY BLANK]

²²² E-mail from Brad Smith to Gary Grindler, et al. (Dec. 17, 2010) [HOGR 002875-002881] (Exhibit 91).

²²³ *Id.*

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

RC-2

“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.”

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 linked 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.

Smith flagged for Grindler that Avila had been under investigation for more than a year. One of the briefing papers Smith attached to the e-mail stated that Avila purchased the weapons recovered at the Terry murder scene on January 16, 2010.²²⁴ The same briefing paper also noted that although ATF had recommended Avila to the U.S. Attorney’s Office for prosecution, Avila was arrested—after Agent Terry’s murder—for using a false address that dated back to June 2010. The charges could have been applied to Avila’s earlier November 2009 purchases, since the briefing paper Smith forwarded observed that Avila had not lived at the address for several

²²⁴ Phoenix Group VII, Phoenix Field Division, ATF, *ATF Investigation 785115-10-[redacted], Operation: Fast & Furious* (Dec. 16, 2010) [HOCR 002880-002881] (Exhibit 91).

years.²²⁵ Grindler did not inquire why Avila had not been arrested before the murder even though there had been sufficient evidence to do so.

The materials also informed Grindler that by then, the Fast and Furious straw purchasing organization had by then spent “1.25 million dollars in cash . . . to acquire in excess of 1,900 firearms.”²²⁶ Even after learning that the size of the investigation had *nearly doubled* since he was first briefed nine months earlier in March 2010, Grindler still failed to act or inquire further. This staggering figure did not alert the Acting Deputy Attorney General to the need for closer supervision and scrutiny of the operation.

Grindler instead claimed to be focused on finding Brian Terry’s killers. He testified:

[M]y focus really was on I want to make sure that that investigation is going to give us answers as to what happened [to Agent Terry]. . . . [T]his memo doesn’t say that the ATF was letting guns walk, whatever the words you want to use. What I knew was happening and which was most important to me was that there was an intense investigation headed up by the FBI to find out what happened with respect to Mr. Terry’s death. And that would include the information here. Mr. Avila was arrested on the 15th. That would include that kind of information, whatever the information is that would get us to the answer about what happened.²²⁷

While this was a laudable goal, Grindler had a duty to scrutinize the ATF investigation tied to Terry’s death. He failed in this duty. Attorney General Holder announced on January 3, 2011—two weeks later—that Grindler would be his new chief of staff, effective January 17, 2011.²²⁸

Meanwhile, no one at ATF or the Justice Department notified the family of Border Patrol Agent Brian Terry about the connection between an ATF case and the guns found at the scene of their son’s death. The Terry family did not learn this fact until six weeks after his death, when ATF whistleblowers came forward and Congress launched its investigation.²²⁹

²²⁵ *Id.*

²²⁶ Briefing Paper, Phoenix Field Division [HOCR 002876] (Exhibit 91).

²²⁷ *Id.* at 35-39.

²²⁸ Department of Justice, “Attorney General Appoints Gary Grindler Chief of Staff,” Jan. 3, 2011, *available at* <http://www.justice.gov/opa/pr/2011/January/11-ag-004.html>.

²²⁹ Anderson Cooper 360, “Exclusive interview with Terry family,” CNN (Jul. 11, 2012), *available at* <http://www.cnn.com/video/#/video/bestoftv/2012/07/12/ac-fast-and-furious-exclusive-terry-family.cnn>.

C. “I would not recommend the AG announce this case”

FINDING: Shortly after the weapons from Brian Terry’s murder traced back to Operation Fast and Furious, Dennis Burke recommended against Attorney General Holder’s announcement of Fast and Furious to Monty Wilkinson.

On December 21, 2010, six days after their initial communications about a possible Attorney General visit, Dennis Burke e-mailed Monty Wilkinson suggesting the Attorney General not announce Operation Fast and Furious at the press conference:²³⁰

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 four minutes later:²³¹

From: Wilkinson, Monty (OAG) (SMO)
To: Burke, Dennis (USAAZ)
Sent: 12/21/2010 7:47:02 PM
Subject: Re: Gun Trafficking case in Az

Ok. Family obligation tonight. I'll call tomorrow. Thanks.

Wilkinson later recalled few details about his communications with Burke regarding Attorney General Holder’s possible trip to Phoenix. Wilkinson testified:

- Q. Dennis Burke emails you, “I would not recommend the AG announce this case. I can explain in detail at your convenience.” And then you respond, “Okay, I will call tomorrow.” . . . And again you have no recollection of having a phone conversation with Mr. Burke on this topic?
- A. No . . . , I don’t recall having a conversation with Mr. Burke on this.

²³⁰ E-mail from Dennis Burke to Monty Wilkinson (Dec. 21, 2010) [HOCR 006614] (Exhibit 92).

²³¹ E-mail from Monty Wilkinson to Dennis Burke (Dec. 21, 2010) [HOCR 006614] (Exhibit 92).

* * *

Q. [W]hen Dennis Burke informs you that the guns found in the desert near the Border Patrol officer are traced back to the investigation we are going to talk about, again you say “I will call tomorrow.” So these are two, at least in my mind, these are two pretty important events. Certainly this is a very important point.

A. Yes.

Q. The guns traced back to the investigation. And then on page 4 recommending the Attorney General would not announce the case. You say on both occasions you will call tomorrow.

A. Right.

Q. I presume if you told him you would call tomorrow, that you did call tomorrow.

A. Correct.

Q. But you only have recollection of one phone conversation?

A. Well, I mean, when people call me and leave messages, I make it a practice to return their calls. If I tell somebody that I am going to call them, I am very good about following up. So I can't say that I didn't attempt to reach Mr. Burke and just wasn't able to connect with him or we played telephone tag. But I am telling you to the best of my recollection, I don't recall connecting with him and discussing this.²³²

Similarly, although the Justice Department did not produce these e-mails until after December 2011, after the Committees had already conducted two transcribed interviews with Dennis Burke, the Department represented to the Committees that Burke did not recall the specifics of his communication with Wilkinson either.²³³ Given the importance and purpose of these calls—to determine whether the Attorney General would travel to Arizona for a press conference—it is difficult to believe that neither Wilkinson nor Burke had any recollection of them. Their failure to recall these conversations is inconsistent with their ability to recall other conversations around the same timeframe.

Wilkinson also could not recall Burke advising against Attorney General Holder announcing the Fast and Furious indictments:

²³² Wilkinson Transcript at 35-37 (Exhibit 72).

²³³ Letter from Ronald Weich, Assistant Attorney General, DOJ, to Darrell Issa, Chairman, House Committee on Oversight and Government Reform (Mar. 16, 2012), at 4.

Q. So do you recall having any conversations with Mr. Burke at any time about why he did not believe that it was a good idea for the Attorney General to announce the investigation?

A. I . . . do not have any recollection of having any such conversation with Mr. Burke.

Q. So other than the email where he says he doesn't think it is a good idea, you never had any indication from any source as to why he thought it wasn't a good idea?

A. I don't have any recollection of having any conversation with him. The problems with the investigation came to light I guess in late January 2011, and that is when I became aware of the tactics that were used.

Q. Right. I understand you don't recall any specific conversations with him. I asked you a slightly different question and my second question was slightly different. I asked if you had any idea or any indication from any source as to why Mr. Burke communicated to you his view that he didn't think the Attorney General should announce the investigation?

A. Not that I recall, no.

* * *

Q. **Did Mr. Burke ever indicate to you that the reason that he rescinded his request for the Attorney General to come out and visit the District of Arizona was in any way related to the murder of Agent Brian Terry?**

A. Again I don't recall having any conversations or communications with Mr. Burke about this.

Q. Did anyone else make any indications or provide any information to you suggesting that U.S. Attorney Burke's decision to recommend that the Attorney General not come out for a press conference related to a firearms trafficking case in January, 2011, [or] was in any way related to the murder of Agent Brian Terry?

A. I don't recall having any communications with anybody about that.²³⁴

²³⁴ Wilkinson Transcript at 40, 52-53 (emphasis added) (Exhibit 72).

Wilkinson’s failure to recall if the decision about whether the Attorney General would attend the Fast and Furious press conference was linked to Agent Terry’s death is simply not credible in light of the timing and circumstances surrounding the decision.

Although both Wilkinson and Burke testified they had no memory of phone calls or communications about Fast and Furious and Agent Terry’s death, documents suggest that there was an immediate and obvious instinct to protect the Attorney General from being associated with an obviously controversial operation.

D. Amnesia at Justice Department Headquarters

FINDING: No one at Justice Department headquarters has been able to provide answers to the Terry family. During their respective transcribed interviews, Monty Wilkinson stated 38 times that he “did not recall” or “did not know.” In a similar fashion, Gary Grindler did so 29 times, and Ed Siskel 21 times. In two different transcribed interviews, Dennis Burke said he “did not recall” or “did not know” something 161 times.

Given the circumstances surrounding Border Patrol Agent Brian Terry’s death, one would expect Justice Department officials to have some recollection of the event. Instead, Department officials seem to have experienced collective memory loss. During his three-hour interview, Wilkinson stated that he could “not recall” or did “not know” the answer to questions posed 38 times. Gary Grindler provided similar answers 29 times, and Ed Siskel 21 times. In two different interviews, Burke stated that he “did not recall” or “did not know” 161 times.

Brian Terry’s family is still seeking answers 21 months after his death. Wilkinson and Grindler, two senior officials very close to the Attorney General who each had detailed knowledge of Fast and Furious, have been unable and unwilling to provide the Terry family any answers. Their refusal to shed light on the events surrounding these tragic days at the highest levels of the Justice Department are an affront to the legacy of Brian Terry and the loving family he left behind. While the Terry family continues to suffer, Grindler and Wilkinson have both been promoted.

RECOMMENDATION: The Justice Department must provide the Terry family with a complete accounting of how it learned about the connection of their son’s death to Operation Fast and Furious. The Department should also apologize for not personally informing the Terry family or publicly admitting the connection sooner.

VIII. Conclusion

Though Attorney General Eric Holder correctly labeled Operation Fast and Furious as “fundamentally flawed,” he has failed to acknowledge that the operation was not strictly a local aberration. In fact, Fast and Furious had many enablers among the senior levels of the Justice Department.

Senior Justice Department officials developed a new strategy to combat the drug cartels that shifted law enforcement focus from straw purchasers to the leaders of trafficking networks. The Criminal Division, with Lanny Breuer at the helm, supported the prosecution of a past operation, Wide Receiver, which had used this strategy. He also assigned attorneys to assist with Fast and Furious, also born from this strategy. Breuer oversaw the authorization of several wiretap applications, which contained copious detail of the reckless tactics employed in Fast and Furious.

Officials in both the Office of the Attorney General and Office of the Deputy Attorney General refused to inquire about Fast and Furious, even when presented with troubling facts about the number of firearms involved. In the wake of Brian Terry’s murder, these senior Department officials still remained silent and inert regarding Fast and Furious.

In the 19 months since the congressional investigation into Fast and Furious began, the Justice Department has had ample time to address issues that led to the flawed operation. It has failed to do so. Instead, the Department’s senior officials have done what they did during Fast and Furious—nothing.

To prevent a repeat of Fast and Furious, the Justice Department must make changes to ensure that its personnel do not encourage or implement poorly designed operations. The Criminal Division must be actively engaged in the wiretap authorization process. The ODAG must be proactive in overseeing its law enforcement components. Officials tasked with the ATF portfolio must have a meaningful background in its issues and challenges.

Above all, Department officials must actively supervise component agencies. They cannot be absentee managers. While the current management strategy allows for plausible deniability when things go awry, it cannot prevent another Fast and Furious. And the American public will not tolerate another Fast and Furious.

The American people depend on the Department of Justice to faithfully uphold the law and protect the public safety. The Department has failed the American people with the Fast and Furious scandal. It failed to enforce the law, to ensure public safety, to provide leadership, to halt the operation, and to hold accountable those responsible for their conduct in conjunction with this deadly and disastrous operation.

To restore the nation’s confidence in it, the Justice Department must take corrective action immediately.