
From: Cole, James (ODAG)
To: Goldberg, Stuart (ODAG)
CC: Schmaler, Tracy (OPA); **Attorney General** Grindler, Gary (OAG)
Sent: 9/6/2011 8:50:32 AM
Subject: Re: WSJ - Grenades Case Hits Justice

Is **ATF** retaliation claim centered on his not being moved into Inspections? Sounds like he may be concerned about his role in the November 2009 delivery and he's trying to take preemptive action.

Jim

On Sep 6, 2011, at 7:52 AM, "Goldberg, Stuart (ODAG)" <Stuart.Goldberg@usdoj.gov> wrote:

On Friday we received a carbon copy of a letter **ATF** FEOLA lawyer sent to Grassley and Issa, which claims that **ATF** was retaliated against because of his testimony. It mainly accuses the USAO of attacking his credibility, largely in connection with **ATF**. But it also complains that "the DAG office came to Phoenix on a fact-finding mission and seemed less concerned with the lack of initiative and follow-up on the part of the U.S. Attorney's Office, than they did with ATF failing to interdict items which, as a matter of fact, it could not do since possession of the items at issue **is not** and **was not** illegal." The lawyer also does not like it that DAG investigators, as he calls them, focused on a November 2009 delivery of grenade hulls. He concludes by saying that **ATF** has been treated fairly by ATF management but that his concerns are with the USAO and the DAG's office, which have acted "in a manner that is, at minimum, unethical." While he claims at various points in the letter that the USAO has misrepresented facts, he makes no such allegations against the DAG's office. I asked Reich on Friday to put together a response to this letter.

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From: Cole, James (ODAG)
Sent: Tuesday, September 06, 2011 6:35 AM
To: Schmaler, Tracy (OPA); **Attorney General** Grindler, Gary (OAG); Goldberg, Stuart (ODAG)
Subject: Re: WSJ - Grenades Case Hits Justice

Doesn't clearly describe the two deliveries. What is the story about **ATF** claiming he was retaliated against for his testimony?

Jim

From: Schmalzer, Tracy (OPA)
Sent: Monday, September 05, 2011 10:09 PM
To: Attorney General Cole, James (ODAG); Grindler, Gary (OAG); Goldberg, Stuart (ODAG)
Subject: WSJ - Grenades Case Hits Justice

Here's the story – in paper tomorrow. Got a good amount of detail. Pretty straightforward -- follows chronology of events leading up to arrest and makes tie to recent personnel changes ... note, Committee and ATF comments criticizing Hurley.

SEPTEMBER 6, 2011

Grenades Case Hits Justice

Blunders After U.S. Arrest of Suspected Supplier Had a Part in High-Level Ousters

By EVAN PEREZ

Federal authorities are probing why the U.S. in 2010 let go an Arizona man accused of supplying grenades to a Mexican drug cartel, a case that played a role in the ouster last week of the nation's top firearms regulator and the U.S. attorney in Phoenix.

U.S. officials said missteps in the case, which hasn't been previously disclosed, are being investigated by the Justice Department and Congress. Federal agents in 2009-10 at the Phoenix office of the Bureau of Alcohol, Tobacco, Firearms and Explosives led the case against the suspect, who they believed was dealing grenades to cartels in Mexico. The case was overseen by prosecutors in the Arizona U.S. attorney's office, the U.S. officials said.

The Arizona U.S. attorney's office and the Phoenix ATF office are the Justice Department units behind another botched operation, called Fast and Furious, which has been the subject of intense congressional interest this year. The Fast and Furious program allowed suspected smugglers to buy about 2,000 firearms, some of which later turned up at drug-related crime scenes in Mexico and the U.S.

Jean Baptiste Kingery, the suspect in the grenades case, was arrested Aug. 31 in Mexico and has been charged with violating that nation's organized-crime laws, according to U.S. officials.

Mexican police raided his home in Mazatlan and other locations nearby where they reported finding materials that could be used to construct 500 grenades, the officials said. A confidential informant told U.S. investigators last month he had provided Mr. Kingery with components for 2,000 grenades, they said. Mexican authorities, who haven't made the arrest public, didn't respond to repeated requests for comment. An attorney for Mr. Kingery couldn't be located.

U.S. prosecutors say they continue to pursue possible charges against Mr. Kingery.

Like Fast and Furious, the grenades case has exposed severe discord between federal agents and

prosecutors in Arizona over how to pursue the trafficking of drugs, weapons, people and cash between the U.S. and Mexico.

The weapons trade is bustling along the border because of a ready market in Mexico, where legal private firearms ownership is severely restricted, and easy supplies on the U.S. side. U.S. authorities say cases are hard to prove because they must guard against infringing on legal gun-owner rights. In the case of inert grenades, the parts are legal to possess and an infraction occurs only when someone tries to export them without a license.

This account is based on interviews with three U.S. officials and others familiar with the case as well as documents describing it.

ATF agents arrested Mr. Kingery in Arizona in June 2010 after months of surveillance and seized 116 grenade hulls and parts in his possession, the officials said.

The suspect told investigators he helped operate a mill in Mexico manufacturing improvised explosive devices made from the U.S.-sourced grenade components, they said. Mr. Kingery allegedly said he supplied the weapons to a cartel called La Familia Michoacana and also helped the cartel convert semiautomatic rifles into military-style machine guns.

Nonetheless, he walked free without being charged after just hours in custody, officials said.

That decision is at the crux of a bitter fight between ATF agents and prosecutors at the U.S. attorney's office in Phoenix. The lead ATF agent on the grenades case, Peter Forcelli, "was horrified with the thought of releasing this individual" and "practically begged" senior prosecutor Emory Hurley "for permission to arrest the suspect on a criminal complaint," according to an Aug. 31 letter sent to a congressional committee on Mr. Forcelli's behalf by an attorney with the Federal Law Enforcement Officers Association, a group that provides legal assistance to law enforcement officers.

Officials from the U.S. attorney's office dispute that Mr. Hurley, who oversaw both Fast and Furious and the Kingery cases, declined to prosecute, according to officials familiar with the accounts provided to investigators. These officials said prosecutors wanted to continue following the case and possibly bring charges at a later date.

Officials from the U.S. attorney's office also have told investigators that the ATF agents freed Mr. Kingery because the agents wanted to make him an informant. Mr. Kingery maintained contact with agents for several weeks, then disappeared, the U.S. officials familiar with the case said.

The prosecutors involved also accuse the ATF agents of a misstep at an earlier stage. In January and February 2010, U.S. and Mexican agents devised a sting that allowed Mr. Kingery to take delivery of hundreds of grenade parts in the U.S. and cross the border into Mexico, officials said. U.S. agents lost Mr. Kingery on the highway to the border and Mexican authorities failed to stop him at the crossing, they said.

The Kingery case is now under scrutiny by investigators from the Justice Department inspector general's office. Lawyers from the office of Deputy Attorney General James Cole in recent weeks gathered information on the case. The findings helped decide the fates of Kenneth Melson, acting

director of the ATF, and Dennis Burke, the U.S. attorney in Arizona, who were ousted from their posts last week, people familiar with the matter said. Mr. Hurley, who didn't respond to requests for comment, was reassigned.

Mr. Burke said in a statement released to employees last week that he resigned to pursue other opportunities. Mr. Melson said in a statement that he was taking a new post in another division of the Justice Department.

Messrs Burke and Melson didn't respond to requests for comment on the Kingery matter.

Investigators from the House Oversight and Government Affairs Committee, led by Rep. Darrell Issa (R., Calif.), and the office of Sen. Chuck Grassley (R., Iowa), are also probing the Kingery case as an extension of their Fast and Furious probe. "Information suggesting that a prosecutor, who exercised dubious judgment in Operation Fast and Furious, also made similar decisions in a separate case is certainly disconcerting," a committee spokesman said.

Mr. Forcelli is among ATF agents who provided testimony earlier this year about missteps in the Fast and Furious operation. The officers association's letter alleges that he is the victim of "whistleblower retaliation" because of that testimony.

A key point of contention is whether Mr. Forcelli and his team got proper clearance for the operation that led to the botched sting in February 2010. In October 2009, a prosecutor in the Kingery case told ATF agents that "We cannot approve [allowing] the illegal export to be accomplished," according to an email read to The Wall Street Journal. Prosecutors and Justice Department officials have cited the email to investigators to contend that the ATF agents failed to get clearance.

But the ATF agents disagree and cite a January 2010 email exchange that appears to show high-level approval. The latter email described the operation in detail, including a plan to let Mexican authorities track the suspect in hopes of finding a grenade-manufacturing facility in Mexico.

Mr. Burke, then the U.S. attorney in Arizona, is among the officials in the email exchange and responds to the summary of tactics: "Agree [with] the course of action as the variables play out." The email exchange was reviewed by The Wall Street Journal.

Mr. Forcelli said in a statement, "I am very proud of the work the ATF did in this case and I can assure you that at no point did we ever endanger the safety of the public with our actions." The statement said he described aspects of the case in a deposition with congressional staffers and the Justice Department inspector general's office.

Write to Evan Perez at evan.perez@wsj.com