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**From:** Miller, Matthew A (SMO)  
**To:** **Attorney General** Grindler, Gary (OAG)  
**Sent:** 5/4/2011 6:46:20 PM  
**Subject:** Fw: NEWS CLIPS - TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

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**From:** Ortiz, Jacqueline I. (SMO)  
**Sent:** Wednesday, May 04, 2011 06:44 PM  
**To:** Miller, Matthew A (SMO)  
**Subject:** NEWS CLIPS - TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

**NEWS CLIPS – ATTORNEY GENERAL HOLDER  
TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE  
MAY 4, 2011**

**Lawmakers Step Up Probe of Gun Trafficking Operation**

Wall Street Journal – Evan Perez

May 4, 2011

A Justice Department office that oversees criminal probes signed off on wiretaps used in a gun trafficking investigation that is the subject of growing controversy over tactics that allowed guns bought in the U.S. to enter Mexico illegally.

The finding is from documents released Wednesday by Rep. **Darrell Issa** (R., Calif.), chairman of the House Oversight and Government Reform Committee. It's the first document released so far that indicates high-level Justice Department involvement in the operation.

Mr. Issa has been investigating the Justice Department's Bureau of Alcohol Tobacco Firearms and Explosives' conduct in the investigation, dubbed "Operation Fast and Furious," which was run out of the U.S. Attorney's and ATF's Phoenix offices. The documents, however, do not indicate that anyone beyond local Phoenix ATF and Justice Department officials knew specifics about the tactics being used.

Republican lawmakers see the makings of a political scandal as they press Attorney General **Eric Holder** to explain why ATF agents in Phoenix lost track of guns they were supposed to be monitoring, letting the weapons pass into the hands of Mexican cartels and perhaps be used to kill U.S. officials.

One particular case has drawn scrutiny: a December shooting in Arizona that killed a U.S. Border Patrol agent. Authorities suspect traffickers or bandits operating near the border killed the agent. Weapons recovered near the scene were traced to a suspect who was already under investigation by the ATF, according to documents released by congressional investigators.

The ATF documents released by Mr. Issa include a January 2010 memo that details the operation, which centered on allowing straw purchasers to buy weapons, mostly variants of AK-47s rifles, in hopes of following the weapons to top Mexican cartel gun smugglers. The ATF memo says that Phoenix U.S. Attorney **Dennis Burke** and ATF Phoenix chief **William Newell** "both are in full agreement with the current investigative strategy."

The January 2010 memo also notes that ATF agents were advised by Phoenix prosecutors at the time that there wasn't enough evidence to prosecute targets of the probe and that "additional firearms purchases should be monitored and additional evidence" gathered.

The March 2010 Justice Department wiretap approval came from the office of **Lanny Breuer**, assistant attorney

general who heads the criminal division. It was signed by one of his deputies, **Kenneth Blanco**. The office handles a large volume of such requests and the Justice Department says a wiretap approval doesn't include a review of investigative tactics.

**Tracy Schmalzer**, Justice Department spokeswoman, said the wiretap approvals are "a narrow assessment of whether a legal basis exists to support a surveillance request that ultimately goes before a judge for decision. These reviews are not approval of the underlying investigations or operations."

Iowa Sen. **Charles Grassley**, the top Republican on the Senate Judiciary Committee and who is also investigating the ATF operation, questioned Mr. Holder about the operation at a hearing today. In [a letter to Mr. Holder](#), also released today, Mr. Grassley added a hand-written post-script that read: "You should check to see if you are getting accurate information from your staff. You might be ill-served."

Mr. Grassley on Wednesday [released ATF documents](#) that show that the targets of the Phoenix probe purchased 1,318 weapons after ATF agents began monitoring them, and a total of 1,725 in 2009 and 2010 before and during monitoring.

At a House hearing Tuesday, Mr. Holder said the Justice Department's policy is to stop weapons from being trafficked to Mexico. "Under no circumstances should guns be allowed to be distributed in an uncontrolled manner," he said, describing his instructions to ATF and other agencies under his charge.

In the aftermath of the controversy, **James Cole**, deputy attorney general, issued a directive saying: "We should not design or conduct undercover operations which include guns crossing the border," according to a Justice Department memo circulated to agents March 10, 2011. That document was also released by Mr. Issa.

Mr. Issa asked Mr. Holder whether he or top lieutenants were aware of the tactics. Mr. Holder said he became aware of the probe only in recent weeks. In a letter to lawmakers in April, the Justice Department said the probe was approved by the Phoenix U.S. attorney, the local ATF office and a regional task force to combat organized and drug crimes.

The Fast and Furious operation targeted top gun traffickers who are believed to funnel weapons bought in Texas, Arizona and other border states to Mexican drug cartels. The traffickers often depend on a network of buyers who are paid to purchase guns in small quantities.

#### **Holder: Info seized from bin Laden compound being analyzed**

USA Today - Kevin Johnson

May 4, 2011

Holder, in testimony before the [Senate Judiciary Committee](#), said he fully expected that the information -- contained in a mix of documents, computer hard-drives and discs -- would yield new names that will expand the nation's terror watch list.

"We probably will add people to the watch list," Holder said.

The attorney general said investigators, intelligence analysts and military authorities were reviewing the information seized in the early-Monday raid in Pakistan.

Holder also reiterated his concern that the U.S. faces the possibility of retaliatory attacks for bin Laden's death, saying that he has been meeting with federal prosecutors and other law enforcement officials around the country to alert them to the prospect.

On Monday in New York City, the police department reported there were 62 reports of suspicious packages, compared with the previous Monday when the 24-hour total was 18.

On Tuesday, the bomb squad was dispatched after someone left a black suitcase on a subway platform near Penn Station with a front page of bin Laden stuffed in a side pocket. The bag contained nothing but clothing.

"We anticipate that with increased public vigilance comes an increase in false alarms for suspicious packages," Kelly said at a Monday news conference. "This typically happens at times of heightened awareness. But we don't want to discourage the public. If you see something, say something."

Holder was under a second day of oversight questioning on Capitol Hill on Wednesday; Tuesday he was questioned by the House Judiciary Committee.

He told the committee the raid was "entirely lawful and consistent with our values."

"Let me make something very clear: The operation in which Osama bin Laden was killed was lawful," Holder told the senators. The raid "was justified as an action of national self-defense" against "a lawful military target."

President Obama in an interview with CBS's "60 Minutes" on Wednesday said he would not release a photo of bin Laden after he was killed.

Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee, said Wednesday that he was concerned that the photo could be seen as a "trophy" that inflames U.S. critics and makes it harder for members of the American military deployed overseas to do their job.

"Conspiracy theorists are going to see the pictures and find 10 reasons why they think it's someone else," Rogers said on ABC's *Good Morning America*.

"I don't know what we gain by showing this picture," he said.

"A graphic image such as that has the potential to inflame a community just out of its sheer shock value," said John Ulyot, a former Republican Senate Armed Services Committee aide and Marine intelligence officer. "Even the release of a graphic photo might not close the book in some people's minds. It's a delicate balance, and the president has real downside either way he decides on this."

Ari Fleischer, press secretary to President George W. Bush, also cautioned against releasing explosive photographs. "This story already has an exclamation point on it," he said.

When the U.S. military released pictures of the bodies of Saddam Hussein's slain sons in 2003, it was to prove that they were dead and to stem attacks on U.S. soldiers in Iraq. But many experts says photos of bin Laden's body present some thornier issues.

CIA Director Leon Panetta had said on Tuesday that a photograph would be released.

"The government, obviously, has been talking about how best to do this, but I don't think there was any question that, ultimately, a photograph would be presented to the public," Panetta said in an interview with NBC Nightly News.

Some doctored images purporting to be bin Laden already have surfaced on the Internet. The FBI also warned Tuesday to use caution upon receipt of e-mails that purport to show photos or videos of bin Laden's death because some are being used to spread viruses.

"I would advise against releasing the photos," said John Radsan, a national security law expert, former assistant general counsel for the CIA and now a professor at William Mitchell College of Law in St. Paul, Minn.

"It will be seen as disrespectful or intended to humiliate by some audiences, and I doubt that it will satisfy the skeptics," said Radsan, formerly from Detroit and whose parents were born in Iran. "We are a visual society, and people want visual confirmation. But, at times, we have to take the word of our government, our military and our

intelligence agencies."

But Imad Hamad, regional director of the American-Arab Anti-Discrimination Committee in Dearborn, Mich., said he has no problem if the government releases the photo.

"I'm fine either way," he said. "I can understand the logic that says we want to see the body ... but it could also spark more violence."

*Contributing: ; Carolyn Pesce in McLean, Va.; Associated Press.*

### **US Attorney General Eric Holder says killing bin Laden was 'an act of national self-defense'**

New York Post

May 4, 2011

WASHINGTON -- US Attorney General Eric Holder said Wednesday that the killing of Usama bin Laden was lawful, describing it as "an act of national self-defense."

Testifying before the Senate Judiciary Committee, Holder said bin Laden was the head of al Qaeda, the organization responsible for the 9/11 attacks, and had admitted involvement.

"The operation against bin Laden was justified as an act of national self-defense," Holder said.

Holder also said the US would have accepted bin Laden's surrender, if he had chosen to do so, but stressed there was "no indication" the terrorist leader wished to be taken into custody.

"He made no attempts to surrender," Holder reiterated.

The attorney general also said he was proud of the actions of the team of US Navy SEALs that carried out the operation.

"The loss of life was minimal or as minimized as it could be," Holder said. "Substantial numbers [of] women and children were not impacted during [the SEALs'] entry into those buildings, and I'm proud of what they did, and I really want to emphasize that what they did was entirely lawful and consistent with our values," Holder said.

The White House on Tuesday amended its initial account of the raid, clarifying that bin Laden was unarmed when he was shot dead in the three-story compound in Abbottabad, Pakistan.

On Monday, White House counterterrorism adviser John Brennan said bin Laden "engaged in a firefight with those that entered the area of the house he was hiding in."

White House press secretary Jay Carney said Tuesday that US forces were "met with a great deal of resistance" at the compound.

"It was a highly volatile firefight," Carney said, but he revised Brennan's narrative of the raid and said bin Laden was not armed.

Carney said a woman thought to be bin Laden's wife rushed at an American member of the raid team, and said that while bin Laden did not brandish a weapon, he did resist. Carney did not describe the resistance, but said, "Resistance does not require a firearm."

### **Holder says Osama bin Laden shooting was "justified"**

Los Angeles Times - James Oliphant

May 4, 2011

Testifying before a Senate committee Wednesday, Attorney General Eric Holder stated the shooting of Osama bin Laden was “justified as an act of national self-defense.”

Responding to questions from Sen. Lindsey Graham (R-S.C.), a member of the Senate Judiciary Committee, Holder said the killing of the Al Qaeda leader, who according to U.S. officials was unarmed, was “lawful.”

“He was the head of Al Qaeda, an organization that had conducted the attacks of September the 11th. He admitted his involvement,” Holder said. “It’s lawful to target an enemy commander in the field.”

Holder said there was “no indication” that Bin Laden wanted to surrender. “Therefore, his killing appropriate.”

Graham suggested that even if Bin Laden had appeared to have wanted to surrender to the Navy SEAL team conducting the raid at the compound north of Islamabad, Pakistan that was hiding Bin Laden, accepting such a surrender was fraught with risk. “The moment they saw Bin Laden, they had to consider him a threat,” said Graham, a former member of the Judge Advocate General corps, who called Bin Laden a possible “walking IED.”

“Exactly,” Holder said.

“So to those out there who question what happened here, the intelligence and the statements from the man himself said he would never be taken alive, that he had bombs strapped to himself,” Graham said. “I think the Navy SEAL team had to believe that the moment they encountered Bin Laden, whether he raised his hands or not, that could be a fake surrender, that they were well within their rights.”

In his testimony, the attorney general reiterated that Bin Laden’s death could led to retaliatory terror attacks on American targets, saying he had held a conference call this week with U.S. attorneys nationwide to ensure “federal investigative agencies were on their toes.”

Holder called on Congress to reauthorize three provisions of the USA Patriot Act that expire at the end of May, including a controversial section that allows national security agents to obtain business records and records for internet service providers.

“Now, more than ever, we need access to the crucial authorities in the Patriot Act, and I call on Congress to reauthorize them for a substantial period of time before they expire at the end of this month,” Holder told the committee.

### **Attorney general says he has serious concern about revenge attack over bin Laden’s death**

Associated Press – Nedra Pickler

May 4, 2011

WASHINGTON — Attorney General Eric Holder expressed serious concern Wednesday about the possibility of attacks on Americans as revenge for Osama bin Laden’s death. He also predicted the terrorist watch list will be expanded based on evidence collected in the al-Qaida leader’s home.

Holder also said the raid was “entirely lawful and consistent with our values.”

Holder told the Senate Judiciary Committee that he held a conference call earlier this week with U.S. attorneys nationwide to go through steps he wants them to take to be prepared for any attempts at revenge. He did not specify what those steps are.

“I think that we will ultimately be more safe as a result of his death, but in the short term I think we have some serious concerns that we have to be ready to address,” Holder said.

Holder also said officials from his department are working with intelligence officers to examine evidence collected from bin Laden’s residence in Pakistan. He said he expects names will be added to the terrorist watch list and no-fly list because of it.

The attorney general agreed with Sen. Lindsey Graham, R-S.C., that there was a sound legal basis for the raid.

“Let me make something very clear: The operation in which Osama bin Laden was killed was lawful,” Holder told the senators. The raid “was justified as an action of national self-defense” against “a lawful military target,” he said.

White House officials earlier said the team that carried out the raid was prepared to take bin Laden alive if he was willing to surrender but instead he resisted capture. Holder reiterated that.

“It was a kill-or-capture mission,” Holder said. “He made no attempt to surrender. And I tend to agree with you that even if he had, there would be a good basis on the part of those very brave Navy SEAL team members to do what they did in order to protect themselves and the other people who were in that building.”

Holder said the SEALs minimized the loss of life as much as possible. “I’m proud of what they did,” Holder added. “And I really want to emphasize that what they did was entirely lawful and consistent with our values.”

Holder was under a second day of oversight questioning on Capitol Hill; Tuesday he was questioned by the House Judiciary Committee.

Iowa Sen. Chuck Grassley, the panel’s ranking Republican, questioned Holder about a chart he said was prepared by the Justice Department’s Bureau of Alcohol, Tobacco, Firearms and Explosives in response to a controversy over the efforts of U.S. agents who hunt gun traffickers along the U.S. border with Mexico.

The chart showed 15 people indicted in January were responsible for buying 1,318 guns from Arizona dealers after being identified as targets of Fast and Furious, the agency’s name for its anti-gun-trafficking program. The chart dated March 29 said only 250 of these weapons have been recovered in the United States.

Holder replied that he was seeing the document for the first time at the hearing so he could not answer questions about whether the department knows where the other guns are.

Grassley and fellow GOP panel member Sen. Jeff Sessions of Alabama also criticized Holder for the decision not to prosecute one of Justice’s former attorneys who tipped off the media about the Bush administration’s warrantless eavesdropping program. They said they were disappointed to read news reports last week that Thomas Tamm will not be prosecuted for the leak that he acknowledged making to The New York Times and that then-President George W. Bush called a breach of national security.

“It just seems to me that it sends a very, very bad signal that leaking is OK and you aren’t going to get prosecuted for it,” Grassley said.

Holder said the decision was made by career attorneys in the department and he did not sign off on it and couldn’t comment on why Tamm wasn’t prosecuted.

### **Justice Department asks NCAA why there’s no playoff system for college football**

Associated Press – Nedra Pickler

May 4, 2011

WASHINGTON — The Justice Department wants to know why the NCAA doesn’t have a college football playoff system and says there are “serious questions” about whether the current format to determine a national champion complies with antitrust laws.

Critics who have urged the department to investigate the Bowl Championship Series contend it unfairly gives some schools preferential access to the title championship game and top-tier end-of-the-season bowl contents.

In a letter this week, the department’s antitrust chief, Christine Varney, asked NCAA President Mark Emmert why a playoff system isn’t used in football, unlike in other sports; what steps the NCAA has taken to create one; and whether Emmert thinks there are aspects of the BCS system that don’t serve the interest of fans, schools and players.

“Your views would be relevant in helping us to determine the best course of action with regard to the BCS,” she

wrote.

“Serious questions continue to arise suggesting the current Bowl Championship Series system may not be conducted consistent with the competition principles expressed in the federal antitrust laws,” Varney said.

Varney noted that the attorney general of Utah, Mark Shurtleff, has said he plans an antitrust lawsuit against the BCS, and that 21 professors recently wrote the department requesting an investigation.

Shurtleff, who met with department officials last fall to discuss a possible federal probe, said at the time that such an investigation was critical to the effort to get a playoff system.

The NCAA said Wednesday it would respond to the government’s questions when it receives the letter.

Spokesman Bob Williams said Emmert consistently has said the NCAA is willing to move to a playoff format if schools with the nation’s major football programs want to go that route.

Bill Hancock, the BCS executive director, was confident the current system complies with the law.

“Goodness gracious, with all that’s going on in the world right now and with national and state budgets being what they are, it seems like a waste of taxpayers’ money to have the government looking into how college football games are played,” he said.

Under the BCS, the champions of six conferences have automatic bids to play in top-tier bowl games; other conferences don’t. Those six conferences also receive more money than the other conferences.

Attorney General Eric Holder referenced Varney’s letter at a Senate hearing Wednesday, in response to a statement from Sen. Orrin Hatch, a Utah Republican and BCS critic. Hatch called the BCS a “mess” and said that “privileged conferences” have tremendous advantages over the unprivileged.

“And I just hope that you’ll continue to follow up on that particular issue,” he said. “It’s an important one, I think.”

“I don’t disagree with you,” Holder responded. “You and I have talked about this issue, and I think I’m free to say that we have sent a letter to the NCAA about this issue and will be following up.”

Before he was sworn in as president, Barack Obama said in 2008 that he was going to “to throw my weight around a little bit” to nudge college football toward a playoff system.

### **Bin Laden data seized seen increasing U.S. watch lists**

Reuters – Jeremy Pelofsky, James Vicini

May 4, 2011

WASHINGTON - The treasure trove of information seized from al Qaeda leader Osama bin Laden's compound will likely lead to adding more names to U.S. terrorism watch lists, Attorney General Eric Holder said on Wednesday.

"My guess is that we probably will," Holder told the Senate Judiciary Committee in response to a question about whether the information taken during the operation in Pakistan would mean more names would be put on watch lists and the no-fly list.

Holder told the committee that interagency teams from the CIA, Justice Department and other intelligence agencies are reviewing the material to glean any new information and make decisions about what to do with it.

### **Bin Laden killing was U.S. self-defense: Attorney General**

Reuters – Jeremy Pelofsky, James Vicini

May 4, 2011

WASHINGTON - The killing of al Qaeda leader Osama bin Laden by U.S. military forces was an act of national

self-defense and he made no attempt to surrender, U.S. Attorney General Eric Holder said on Wednesday.

"It was justified as an act of national self-defense," Holder told the Senate Judiciary Committee, citing bin Laden's admission of being involved in the September 11, 2001 attacks in New York, Washington and Pennsylvania.

"If he had surrendered, attempted to surrender, I think we should obviously have accepted that, but there was no indication that he wanted to do that and therefore his killing was appropriate," he said.

#### **Attorney general confirms Sony data breach probe**

Reuters – Jeremy Pelofsky, James Vicini  
May 4, 2011

WASHINGTON (Reuters) - U.S. Attorney General Eric Holder said on Wednesday that the U.S. Justice Department had an open investigation into the Sony Corp data breach.

"We have open investigations with regard to those hacking situations that have gotten publicity over the last few weeks, the Sony incident among them," Holder told the Senate Judiciary Committee.

The FBI is working with federal prosecutors in San Diego as agents try to determine the facts and circumstances of the alleged crimes, an FBI spokesman has said. Analysts have said the incident, in which customers could decide to replace their credit cards, could cost Sony more than \$1.5 billion.

#### **Bin Laden raid 'lawful': US attorney general**

AFP  
May 4, 2011

WASHINGTON — The US raid against Osama bin Laden in which the Al-Qaeda leader was shot dead was "lawful" and "an act of national self-defense," US Attorney General Eric Holder said Wednesday.

The operation against bin Laden's Pakistani hideout "was lawful and consistent with our values," Holder told Senate lawmakers during a hearing in Congress.

Holder was being questioned after it emerged that bin Laden was unarmed when he was shot and killed by elite US commandos in Sunday's raid.

Senator Lindsey Graham asked whether a Navy SEAL "had to believe" the world's most wanted man "was a walking IED" or bomb.

"Exactly," Holder agreed.

#### **Bin Laden killing was legally justified, Holder says**

*'It was a kill or capture mission ... He made no attempts to surrender'*

MSNBC – Pete Williams  
May 4, 2011

The killing of Osama bin Laden was legally justified, and would have been even if the al-Qaida leader had made some sign that he wished to surrender, Attorney General Eric Holder said Wednesday.

"The operation in which Osama bin Laden was killed was lawful," Holder told the Senate Judiciary Committee. "He was the head of al-Qaida, an organization that had conducted the attacks of September 11th. He admitted his involvement and he indicated that he would not be taken alive. The operation against bin Laden was justified as an act of national self defense."

Holder said bin Laden was a legitimate military target and he had made no attempt to surrender to the U.S. forces

that stormed his fortified compound near Islamabad on Monday. He was shot in the chest and head.

It was lawful to target an enemy commander in the field and the mission was conducted in the way that was consistent with U.S. laws and values, Holder testified, adding that it was a "kill or capture mission."

"If he had attempted to surrender, I think we should obviously have accepted that, but there was no indication that he wanted to do that. And therefore his killing was appropriate," Holder said.

U.S. acknowledgment on Tuesday that bin Laden was unarmed when killed had raised accusations Washington had violated international law. Exact circumstances of his death remained unclear.

#### Story: Was it right to kill bin Laden?

Five people were killed in the raid, officials said: bin Laden; his son, Khalid; his most trusted courier, a man who used the nom de guerre Abu Ahmed al-Kuwaiti; and al-Kuwaiti's wife and brother. The latest White House account leaves open the question of whether there was any gunfire from bin Laden's defenders in his room before the commandos shot him.

Bin Laden was buried at sea from a U.S. Navy ship scant hours after his death.

#### Story: Should bin Laden have been captured and tried?

Sen. Lindsey Graham, R-S.C., said "you have to believe this guy was a walking IED," and that any of the Navy SEALs would have wanted to kill bin Laden as far away as possible from the other members of the American team.

The attorney general agreed with Graham that there was a sound legal basis for the raid.

"It was a kill or capture mission," Holder said, adding "He made no attempts to surrender, and I tend to agree with you that even if he had, there would be a good basis on the part of those very brave Navy Seal team members to do what they did in order to protect themselves and the other people who were in that building."

Holder was under a second day of oversight questioning on Capitol Hill; Tuesday he was questioned by the House Judiciary Committee.

Even as many European leaders congratulated the U.S. government on the operation, many said the slaying was of symbolic value. They pointed out that the terror cells working in Europe have long functioned independently and may try to avenge bin Laden's death.

"The fight against terrorism and extremism has, of course, not ended with this," German Foreign Minister Guido Westerwelle said earlier in the week in Berlin.

#### **The killing of bin Laden: Was it legal?**

CNN

May 4, 2011

Was the killing of Osama bin Laden legal under international law? Experts are unsure.

Attorney General Eric Holder told members of the Senate Judiciary Committee on Wednesday that the U.S. raid on bin Laden's compound was lawful "as an act of national self-defense."

"He was the head of al Qaeda, an organization that had conducted the attacks of September the 11th," Holder said. "It's lawful to target an enemy commander in the field."

Presidents Bill Clinton, George W. Bush and Barack Obama had all issued orders to capture or kill the al Qaeda leader.

But a number of experts have told CNN the question of legality may come down to bin Laden's response at the moment U.S. Navy SEALs burst into his room.

U.S. officials have revised their account of what happened during the assault on the compound in Pakistan. Bin Laden was not armed during the 40-minute raid, they now say, but he put up resistance to U.S. forces.

Officials earlier claimed that bin Laden was an active participant in the firefight that erupted, implying that he was armed and gave the SEALs little choice but to shoot him.

"If a person has his hands in the air, you're not supposed to kill him," said Steven Groves, a fellow at the conservative Heritage Foundation. But Groves, citing the Geneva Conventions and international humanitarian law, told CNN that, based on the most recent White House account, "there is nothing to indicate anything illegal happened."

Bin Laden, considered a combatant by virtue of his position as head of al Qaeda, needed to immediately make clear a desire to surrender, if that was his decision, in order to avoid being shot. That apparently didn't happen, Groves said.

"The United States offered bin Laden the possibility to surrender, but he refused," Martin Scheinin, the United Nations' special rapporteur for human rights, said Tuesday. "Bin Laden would have avoided destruction if he had raised a white flag."

Geoffrey Robertson, a human rights lawyer who has defended WikiLeaks founder Julian Assange among others, made clear that international law requires any killing to be done in self-defense.

If members of the SEAL team "reasonably (believed there was) a risk to themselves, then the killing was justified," Robertson asserted. But given the changing White House account of the raid, "there needs to be an inquiry," he said.

Cherif Bassiouni, head of DePaul University's International Human Rights Law Institute and a former U.N. war crimes investigator, said that the "killing of any individual sought by law enforcement in the course of a lawful arrest is always a question of facts. Did the person resist? Did the person have a deadly weapon? Were the arresting officers in fear of their lives? These are all pertinent questions."

Bassiouni stressed that any "extrajudicial execution of an unarmed person is in violation of international law."

"It is necessary for the Navy to conduct an internal investigation into the appropriateness of the use of armed force," Bassiouni told CNN. "However, it is also important not to make the Navy SEALs be the scapegoats for (any) secret orders which the public is unaware of to simply kill bin Laden no matter what."

Was the incursion of U.S. forces into Pakistani territory without the clear permission of Islamabad legal?

Bin Laden was an indicted international criminal who had evaded all attempts to apprehend him, Robertson said. As a consequence, the operation was legal, he asserted.

Groves argued the use of the SEALs does "present complications," though he noted that there has been a "kind of a wink and a nod game (the U.S. government has) been playing with the Pakistanis for years" in terms of predator drone strikes and other attacks against Islamic extremists on Pakistani soil.

Bassiouni argued that "the mission to capture was legal, even though there are some questions under international law about one state sending its forces into another state to kidnap a person wanted for trial."

The issue first arose in the early 1960s, Bassiouni noted, when notorious Nazi Adolf Eichmann was kidnapped by Israeli agents in Argentina and subsequently brought to Israel for trial.

Half a century later, that issue remains a matter of sharp dispute.

**CNN's Richard Greene contributed to this report**

## U.S. officials combing data from bin Laden compound, Holder says

CNN

May 4, 2011

Washington -- Attorney General Eric Holder predicted Wednesday more names will be added to U.S. terrorist watch lists as law enforcement agencies review the evidence gathered in Pakistan after the raid on Osama bin Laden's compound on Monday.

"The material that was seized from that residence is being reviewed by an inter-agency team: CIA, Justice, other intelligence agencies, other law enforcement agencies are contributing people and machines to go through that material. As we glean information from that material, we will make appropriate decisions with regard to who might we add to the terrorist watch list, the No Fly list, all those things," Holder told the Senate Judiciary Committee.

Sen. Charles Schumer, D-New York, asked, "You expect you probably will add people as a result of what you got?"

Holder replied, "My guess is that we probably will."

The attorney general also told lawmakers the Justice Department is looking at the possibilities of retaliation from terrorists in the short term.

"I had a conference call with all of the United States attorneys, I believe on Tuesday maybe on Monday, going through with them 'think steps' that we wanted them to take, making sure they as well as all the federal investigative agencies, were on their toes and being mindful of the fact that this is a difficult time for this nation after the death of bin Laden," Holder said.

Department of Homeland Security Secretary Janet Napolitano also told Congress Wednesday a "number of actions" have been taken in response to the killing of bin Laden, among them "surging some resources" to U.S. ports, airports and borders.

"These include issuing advisories to fusion center directors, Homeland Security advisers, major city chief intelligence commanders, private sector critical infrastructure owners and operators and other law enforcement entities. We are and have been reviewing all open cases of potential al Qaeda core, AQAP (al Qaeda in the Arabian Peninsula) and AQIM (al Qaeda in the Islamic Maghreb) operatives possibly in the U.S. in conjunction with the FBI," she said at a Senate hearing.

"We are continuing to strengthen our recurrent vetting for visa, asylum and other benefit applicants and recipients in cooperation with the intel community. We are deploying additional officers to non-secured areas at our large airports, the so called category X airports and we are providing additional info to all air carriers," Napolitano added.

Sen. Joe Lieberman, the Connecticut Independent who is chairman of the Homeland Security and Governmental Affairs Committee, asked Napolitano about the data removed by the Navy SEALs from the bin Laden compound. "I assume that as this material is gone over, anything related to Homeland Security will be shared immediately with your department?" he asked. Napolitano responded, "It is being shared (already)."

The new National Terrorism Advisory System, which replaced the color-coded terrorist threat alert last month, has not been changed in the aftermath of last weekend's raid and recovery of computers, hard drives, DVDs, thumb drives and storage devices.

"Right now, we do not have any specific or credible intel that would lead us to issue an alert under this new system, realizing that under this new system the baseline is already elevated," Napolitano said. "In other words, the baseline assumes a continuing and evolving terrorist threat against the United States. We continue to review on an ongoing basis all materials seized during the operation as well as new intel that may be coming in, and I stand ready to issue an alert should intel or information emerge that warrants it under the advisory, the new advisory system," she added.

Sen. Ron Johnson, R-Wisconsin, questioned the purpose of the new system. "If we're always on the same constant level of alert, that just degrades over time. Again, I'm just kind of scratching my head," he said.

Napolitano responded, "If I might, senator. That was the problem with the color code, because we were always at orange and nobody paid any attention. The purpose of the advisory, in my view, is to communicate facts and information so people know what to do. So if we elevate the advisory it will be followed by information, what are the facts that we can disclose, what can people do to protect themselves and their families, where can people go to get updated information, how can people help us help them. So it's not just to be alert.

"We are always on alert, that's the elevated base, but now we would be providing additional facts based on the intel we receive that tells people what to do."

### **Justice Department has 'serious questions' for NCAA on college bowl process**

CNN

May 4, 2011

In a letter to the NCAA disclosed Wednesday, the Justice Department said it has received several requests for an antitrust investigation into the current Bowl Championship Series system, and it wants information to help it decide what to do.

That controversial system makes it very difficult for teams in some athletic conferences to qualify for major bowl games, potentially costing millions of dollars in revenue to those not chosen.

"Serious questions continue to arise suggesting that the current BCS system may not be conducted consistent with the competition principles expressed in federal antitrust laws," Assistant Attorney General Christine Varney told NCAA President Mark Emmert.

The decision to release the letter came hours after Sen. Orrin Hatch, R-Utah, a major opponent of the current system, demanded further consideration of the issue in a face-to-face appearance with Attorney General Eric Holder at a Senate Judiciary Committee hearing.

Holder responded by disclosing the Justice Department had sent a letter to the NCAA on the issue Tuesday.

### **Holder: bin Laden Mission Was Legal And "Act Of National Self Defense"**

FOX News – Mike Levine

May 4, 2011

The nation's top law enforcement official Wednesday tried to dismiss questions over whether Sunday's killing of Osama bin Laden was legal, saying in no uncertain terms he is "proud" of the assault and it "was justified as an act of national self defense."

"Let me make something very clear," Holder told the Senate Judiciary Committee. "The operation in which Osama bin Laden was killed was lawful. He was the head of al Qaeda, the organization that had conducted the attacks of September 11th. He admitted his involvement ... [and] he said he would not be taken alive."

Holder said it's lawful to "target an enemy commander in the field," just as U.S. forces did during World War II when it shot down a plane carrying Japanese Adm. Isoroku Yamamoto.

Bin Laden was "by my estimation, and the estimation of the Justice Department [1], a lawful military target, and the operation was conducted consistent with our law [and] with our values."

Bin Laden made no attempts to surrender and there was "no indication he wanted to do that," Holder said. Even if the Al Qaeda leader had surrendered, there would have been a "good basis" for "those very brave Navy SEALs" to

shoot bin Laden "in order to protect themselves and the other people who were in that building," including "substantial numbers of women and children" who were not harmed in the raid.

Both Democrats and Republicans on the Senate Judiciary Committee supported Holder's assessment, with Sen. Lindsey Graham, R-S.C., saying the Navy SEALs who killed bin Laden "had to believe the moment they encountered bin Laden -- whether he raised his hands or not -- that could be a fake surrender."

"They were well within their rights in shooting him as soon as possible," Graham said.

Holder was not with President Barack Obama, Secretary of State Hillary Clinton and other administration officials as they monitored events from the White House [2] Situation Room on Sunday. A Justice Department spokesman did not return emails seeking comment or explanation.

Also at Wednesday's hearing, Holder said he has "serious concerns" that bin Laden's death could inspire attempts of retaliation.

Earlier this week, he held a conference call with U.S. Attorneys from across the nation, outlining additional steps they should take and "making sure that they ... were on their toes."

"This is a difficult time for this nation after the death of bin Laden," Holder said Wednesday.

"We will ultimately be more safe as a result of his death, but in the short-term I think we have some serious concerns that we have to be ready to address."

Holder said more names will "probably" be added to the nation's terrorism watch-lists, particularly the no-fly list, after authorities "glean information" from material seized inside bin Laden's compound in Pakistan. In addition, Holder suggested the number of overseas wiretap requests by the Justice Department is likely to rise from the new information.

### **DOJ's Breuer authorized wiretap in ATF Fast and Furious case**

CBS – Sharyl Attkisson

May 4, 2011

Congressional investigators have just released documents in the so-called gunwalking scandal at the Bureau of Alcohol, Tobacco and Firearms (ATF). This in advance of a Senate hearing in which Attorney General Eric Holder will testify.

One document indicates a Holder Asst. Attorney General, Lanny Breuer, authorized a wiretap in the controversial gun trafficking case headquartered in Phoenix. In that case, called "Fast and Furious," multiple sources say ATF allowed thousands of guns to hit the streets, destined for Mexican drug cartels.

Yesterday, at a House hearing, Rep. Darrell Issa (R-CA) asked Holder who authorized Fast and Furious. President Obama has previously said neither he nor Holder authorized the operation.

"What about the Asst. Attorney General of the Criminal Division, Lanny Breuer? Did he authorize it?" Issa asked Holder.

"I'm not sure," answered Holder.

Another newly-released document is an ATF Briefing Paper dated Jan. 8, 2010, just four months into Fast and Furious - which continued for over a year. It indicates that ATF knew early on that so-called "straw purchasers" who bought guns for personal use were illegally transferring them to third parties, and that some of the guns were already

showing up in Mexico.

## Gunrunner scandal uncovered at the ATF

Critics say this counters claims of ATF and Dept. of Justice officials who have recently argued nobody was intentionally letting guns "walk," that there was simply no evidence to stop people who legally purchased guns.

The Briefing Paper says more gun purchases were to be allowed and "monitored."

The practice of law enforcement allowing guns to hit the streets is known as letting guns "walk."

Critics say it's a dangerous practice that is virtually unprecedented in law enforcement because it's deemed too dangerous to ever be allowed, even for a larger goal.

## Agent: I was ordered to let U.S. guns into Mexico

The ATF Briefing Paper also states that Arizona US Attorney Burke was in "full agreement with the current investigative strategy."

In response to the controversy, Holder issued directives to US Attorneys in recent weeks making it clear that guns should never be allowed to "walk" even if intercepting them jeopardizes a bigger investigation.

## **Holder: No 'Double Standard' in Decision Not to Prosecute DOJ Leaker**

Main Justice – Andrew Ramonas

May 4, 2011

### **Holder: No 'Double Standard' in Decision Not to Prosecute DOJ Leaker**

Posted By [Andrew Ramonas](#) On May 4, 2011 @ 1:34 pm In [News](#) | [No Comments](#)

A former Justice Department lawyer who admitted leaking information to The New York Times about the once-top secret warrantless wiretapping program was not spared prosecution because of a "double standard," Attorney General **Eric Holder** said Wednesday.

Responding to questions from Sen. **Charles Grassley** (R-Iowa) at a Senate Judiciary Committee oversight hearing, Holder declined to provide specifics on why **Thomas Tamm** was not prosecuted for disclosing the controversial **George W. Bush** administration program. But the Attorney General said decisions on national security cases are often made by balancing national security interests with the advantages of prosecuting an individual. Former Public Integrity Section chief **William Welch** handled the leak investigation.

"But I can say, with regards to this matter, the decision was made on the merits by career professionals without any notion of a double standard," said Holder, who has spoken out in the past about the danger of leaks.

Grassley, the top Senate Judiciary Committee Republican, said the decision not to prosecute Tamm "sends a very, very bad signal."

"I am concerned that the decision not to prosecute anyone related to this specific leak may indicate a reluctance to enforce the law," Grassley said. "Leaks of classified information threaten the lives of our agents and allies in the field. They also threaten the integrity of our government, especially in the foreign relations context."

The revelation of the warrantless wiretapping program made national headlines in 2005, earning The Times a Pulitzer Prize. Bush personally urged the newspaper not to publish its report, saying that its publication might endanger American lives.

Sen. **Jeff Sessions** (R-Ala.) asked Holder to provide him with all the information he could related to the decision not to prosecute Tamm.

"I know The New York Times has been a fan of your terrorism policy and the president's terrorism policy," Sessions said. "I'm not in agreement with that. It causes me concern that what appears to be an admission of wrongdoing was not prosecuted."

#### RELATED POSTS:

- [A Double Standard?](#) <sup>[1]</sup>
- [Holder: Bush Administration Declined to Prosecute CAIR Case](#) <sup>[2]</sup>
- [Mukasey Slams Decision To Prosecute KSM In New York](#) <sup>[3]</sup>
- [Holder Defends KSM Trial Decision](#) <sup>[4]</sup>
- [Ex-DOJ Lawyer Disciplined Over Lindh Denies 'Double Standard'](#) <sup>[5]</sup>

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## DOJ and Issa Fight Over Whether Document Shows Breuer Knew About Gun Probe

Main Justice – Andrew Ramonas

May 4, 2011

### **DOJ and Issa Fight Over Whether Document Shows Breuer Knew About Gun Probe**

Posted By [Andrew Ramonas](#) On May 4, 2011 @ 5:48 pm In [News](#) | [No Comments](#)

The Justice Department is disputing claims that a DOJ document released by the House Oversight Committee shows that Assistant Attorney General **Lanny Breuer** of the Criminal Division knew about and played a role in a controversial Bureau of Alcohol, Tobacco, Firearms and Explosives gun smuggling program.

The panel under Chairman **Darrell Issa** (R-Calif.) on Wednesday released a March 10, 2010, [memorandum](#)<sup>[1]</sup> from Breuer and signed by Deputy Assistant Attorney General **Kenneth Blanco** approving an application to wiretap an individual who was allegedly a suspect in "Operation Fast and Furious," which allowed guns to fall into the hands of Mexican drug cartels in an effort to track them. The committee said in a [news release](#)<sup>[2]</sup> that the memorandum showed that Breuer had "participation in and knowledge of Operation Fast and Furious."

DOJ officials disputed that assertion. The Criminal Division Office of Enforcement Operations receives thousands of applications each year related to law enforcement investigations, they said. The applications are typically approved by Deputy Assistant Attorneys General except for roving wiretaps, which require the approval of the Assistant Attorney General.

DOJ spokeswoman **Tracy Schmalzer** said wiretap application reviews are "a narrow assessment of whether a legal basis exists to support a surveillance request that ultimately goes before a judge for decision."

"These reviews are not approval of the underlying investigations or operations," Schmalzer said.

She said the Arizona U.S. Attorney's Office and the ATF Phoenix Field Office, in addition to the multi-agency Organized Crime and Drug Enforcement Task Force, approved "Operation Fast and Furious." A Jan. 8, 2010, DOJ [briefing paper](#)<sup>[3]</sup> obtained by Issa shows that Arizona U.S. Attorney **Dennis Burke** and ATF Phoenix chief **William Newell** had met several times to discuss the program. Newell [has been sent](#)<sup>[4]</sup> to D.C. to help handle inquiries from Congress and the Office of Inspector General about the operation.

The ATF program allowed suspected smugglers to buy more than 1,700 firearms, almost 800 of which were recovered in Mexico and the United States after they were used in crimes. Of those crime guns, about 200 were recovered in Mexico. And two firearms traced to the program were found near the body of U.S. Border Patrol Agent **Brian Terry**, who was murdered in December.

Issa and Sen. **Charles Grassley** of Iowa, the top Republican on the Senate Judiciary Committee, have sent several letters to the Justice Department and the ATF, a DOJ agency, requesting records and documents about the program. Issa has threatened to try to hold ATF officials in contempt of Congress because they have not responded to his questions. They also deployed congressional investigators Arizona as part of their investigation.

"Two federal agents are dead," Issa said in a statement. "While Attorney General [**Eric Holder**] and other top officials at the Justice Department have refused to address the reckless decisions made in Operation Fast and Furious that have created a serious public safety hazard, investigations led by Sen. Charles Grassley and I continue to receive information from deeply concerned insiders who believe those responsible for what has occurred cannot be trusted to investigate themselves."

Testifying before the House Judiciary Committee Tuesday, Holder [said](#)<sup>[5]</sup> he took "great exception" to the implications that DOJ officials are responsible for the deaths. The Attorney General said he did not learn about the program until just recently and the DOJ Office of Inspector General is investigating the gun smuggling operations.

The DOJ has maintained that it did not knowingly allow guns to cross into Mexico as part of "Operation Fast and Furious." In a May 3 [letter](#)<sup>[6]</sup> to Holder from Issa and Grassley, a handwritten postscript says, "You should check to see if you are getting accurate information from your staff. You might be ill-served."

At a Senate Judiciary Committee hearing Wednesday, Grassley questioned Holder about a March 9 [memorandum](#)<sup>[7]</sup> from Deputy Attorney General **James Cole** that advised DOJ officials not to "design or conduct undercover operations which include guns crossing the border." The senator asked the Attorney General why the memorandum was necessary if the DOJ didn't knowingly allow guns to enter Mexico.

Holder said the memorandum was issued to provide clarification that allowing guns to cross the border in an uncontrolled way is unacceptable.

"The memo was issued because the allegation had been raised and I take those allegations seriously," Holder said.

## **Holder: names likely to be added to 'no-fly' list**

AFP

May 4, 2011

WASHINGTON — US Attorney General Eric Holder said Wednesday the government would most likely add names to its terrorism blacklist after studying the cache of documents seized from Osama bin Laden's compound.

Holder, the nation's top law enforcement officer, told the Senate Judiciary Committee that the material taken during a raid in which the Al-Qaeda leader was killed is being reviewed by an "interagency team" which includes the CIA,

Department of Justice and other intelligence and law enforcement agencies.

Asked by New York Democratic Senator Charles Schumer whether that information would lead to additions to the terrorism blacklist, also known as the "no fly" list, Holder said: "My guess would be that we probably will."

Meanwhile, Transportation Security Administration chief John Pistole told legislators on the House of Representatives Committee on Homeland Security that the United States was entering a period of uncertainty.

"We are in one of those periods of time when there are so many unknowns," said Pistole. "Without entering into the details, there is no specific threat to mass transit right now," Pistole told the legislators.

"The bottom line is that we are concerned today, we were concerned yesterday, and we will be tomorrow," he said.

Holder and Pistole's remarks came after President Barack Obama announced late Sunday that bin Laden had been shot and killed in a US commando raid on a villa in Pakistan.

### **Holder: New names likely for watch list**

UPI

May 4, 2011

WASHINGTON -- U.S. Attorney General [Eric Holder](#) said Wednesday the intelligence found at [Osama bin Laden's](#) compound likely will provide new names for the terror watch list.

At a Senate Committee on the Judiciary hearing on Justice Department oversight, Holder told Sen. [Chuck Schumer](#), D-N.Y., he expects the trove of information seized during Monday's raid in Abbottabad, Pakistan, will yield new names for the government to track.

"We congratulate the administration and all of you on capturing bin Laden and killing him," Schumer said during the hearing. "But we also learned that there's a treasure trove of intelligence material found in his compound, that's sort of great and a gold mine, I guess, for us. ..."

"Can you tell me whether the FBI is coordinating with the State Department and Homeland Security to add names to the terrorist watch list, revoke the visas of anyone who's found in the material confiscated in the bin Laden residence, what is happening there, and has anyone already been ... added to watch lists and had visa revocations because of that intelligence?"

"The material that was seized from that residence is being reviewed by an interagency team -- CIA, Justice, other intelligence agencies, other law enforcement agencies are all contributing people and machines to go through that material," Holder replied. "As we glean information from that material we will make appropriate decisions with regard to who might be added to the terrorist watch list, the no-fly list, all those things."

"You expect you probably will add people as a result of what you've found?" Schumer asked.

"My guess would be that we probably will," Holder replied.

### **CBS News obtains document linking asst. AG to 'Gunrunner'**

The Examiner - [Dave Workman](#)

May 4, 2011

CBS News is reporting that documents obtained by Congressional investigators looking into the Project Gunrunner scandal include a wiretap authorization from Assistant Attorney General Lanny Breuer dated in March 2010.

Read the CBS story by investigative reporter Sharyl Attkisson [here](#).

Also included in documents released by investigators is a January 8, 2010 "briefing paper" on Project Gunrunner

from the Phoenix, AZ field division of the Bureau of Alcohol, Tobacco, Firearms and Explosives. The documents were released earlier today as the Senate Judiciary Committee convened for an oversight hearing on the Department of Justice.

***One document indicates a Holder Asst. Attorney General, Lanny Breuer, authorized a wiretap in the controversial gun trafficking case headquartered in Phoenix. In that case, called "Fast and Furious," multiple sources say ATF allowed thousands of guns to hit the streets, destined for Mexican drug cartels.—CBS News***

As reported by [this column](#) today, Attorney General Eric Holder professed considerable lack of knowledge about the Gunrunner operation, and its links to the slaying of Customs and Border Protection Agent Brian Terry last December. That prompted the [Citizens Committee for the Right to Keep and Bear Arms](#) to call for Holder's resignation.

During Tuesday's oversight hearing by the House Judiciary Committee, Holder was questioned about Gunrunner by Congressman Darrell Issa, specifically, who authorized the operation. Holder has said he did not authorize the operation, but when asked whether it was authorized by Breuer, Holder could only reply, "I'm not sure."

Independent blogger [Mike Vanderboegh](#), one of two men who initially broke the Gunrunner story and revealed its off-shoot Operation Fast and Furious, has also weighed in on this new revelation.

Congressional investigators were in Arizona last week, interviewing ATF whistleblowers and others connected to the Gunrunner/Fast and Furious controversy. Capitol Hill investigations have been launched by Issa and Senator Charles Grassley. Both have contended that they are being stonewalled by ATF and the Justice Department.

### **New Project Gunrunner documents peg top DOJ officials**

The Daily Caller – Matthew Boyle

May 4, 2011

Three Project Gunrunner documents Rep. Darrell Issa, California Republican and House Oversight Committee chairman, released on Wednesday show high-ranking Justice Department officials were aware of Operation Fast and Furious and that there was a consistent administration policy that allowed American guns to be "walked" into Mexican drug cartels' possession.

One of the documents shows Assistant Attorney General Lanny Breuer [approved a wiretap application](#) for suspects Operation Fast and Furious targeted in March 2010. The wiretap application process is lengthy and cumbersome, and often requires those applying to make strong case as to why they need it. So, Breuer would have been briefed in detail on Operation Fast and Furious before authorizing the wiretap.

Another document, a [briefing paper](#) from January 8, 2010, shows the administration's step-by-step policy decisions and plans. The Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), wrote that the "investigation has currently identified more than 20 individual connected straw purchasers," or those who bought weapons, under ATF surveillance, with the intent to traffic them to Mexican drug cartels. The briefing paper shows that ATF's policy was to allow this to happen. "Currently, our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs [Drug Trafficking Organizations] which are perpetrating armed violence along the Southwest Border."

The briefing paper also shows that the "straw purchasing group" made a "blitz" in weapons trafficking from late September to early December 2009.

The third document, an e-mail from Arizona-based U.S. Attorney Shelley Clemens to Immigration and Customs Enforcement (ICE) official Richard Crocker and FBI official S. Annette Bartlett, shows that the Justice Department has begun scrambling to stop the gun "walking" practice since Issa and Sen. Chuck Grassley, Iowa Republican,

launched investigations into the program. “Yesterday, we received a directive from the DAG [Deputy Attorney General], instructing on DOJ’s policy regarding guns going south into Mexico,” Shelley wrote on March 10, 2011. The directive from the Deputy AG, as she Shelley quotes it, is: “We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation.”

Attorney General Eric Holder has faced GOP heat on Project Gunrunner and Operation Fast and Furious for two straight days now. On Tuesday, Issa questioned him on it during a House Judiciary Committee hearing. Holder told Issa he’s only heard of the controversial gun trafficking programs over the past few weeks.

Then, on Wednesday, before Issa released the three new documents, Grassley grilled Holder about the email from Clemens and the indications of a policy shift during a Senate Judiciary Committee hearing. Grassley pushed Holder on the e-mail from Clemens. “If the ATF, as the agency keeps telling us, did not knowingly allow guns into the hands of traffickers, why was that directive even necessary? Why issue a memo telling people to stop doing something unless you think maybe they have been doing it?” Grassley asked Holder.

“The memo was issued because the allegations had been raised,” Holder said, “the possibility that that happened was sufficient I thought to have clarification sent to the field that we should never allow guns in an uncontrolled fashion to cross the border or actually to leave any investigation in an uncontrolled way,” Holder said.

“I don’t think it represents a change in policy, but I certainly wanted to make sure that people in the field understood that that is in fact the policy. And to the extent there was any confusion, I wanted to make sure there was none,” Holder said.

Issa expressed dissatisfaction with Holder’s appearance of resisting cooperating with his and Grassley’s congressional investigations.

“Two federal agents are dead,” Issa said in a statement. “While Attorney General Holder and other top officials at the Justice Department have refused to address the reckless decisions made in Operation Fast and Furious that have created a serious public safety hazard, investigations led by Sen. Charles Grassley and I continue to receive information from deeply concerned insiders who believe those responsible for what has occurred cannot be trusted to investigate themselves.”

Spokespeople for the DOJ did not immediately return TheDC’s request for comment on the new release.

### **Right-Wing Republicans Again Waste Time on the Defense of Marriage Act**

HRC Back Story - Brian Moulton

May 4, 2011

Yesterday and today, Attorney General Eric Holder appeared before the House and Senate Judiciary Committees for periodic oversight hearings. While Democrats, and most Republicans, on both committees chose to focus on the multitude of issues facing the Justice Department (DOJ), some right-wing Republicans used the Attorney General’s time to grill him about the Department’s decision to stop defending DOMA and threaten to cut DOJ funding to cover the House’s costs of hiring private counsel for its own defense of the discriminatory law.

In yesterday’s House hearing, Representatives Jim Sensenbrenner (R-WI), Dan Lungren (R-CA) and Trey Gowdy (R-SC) all attacked the Attorney General for DOJ’s position. Rep. Sensenbrenner accused the President and Holder of making a purely political decision and usurping Congress’s authority, and called for DOJ’s budget to be cut in order to cover the costs of the House defending the law. Rep. Lungren argued that the President wasn’t up front about his beliefs about the constitutionality of DOMA during his campaign. (The President openly opposed DOMA when he was running for office.) And, perhaps most egregious of all was Rep. Gowdy’s classic attempt to try and change the conversation, rather than talk about how DOMA harms actual LGBT families, by questioning the AG on the level of scrutiny appropriate for laws barring polygamy and incest.

Thankfully, long-standing LGBT ally Rep. Jerry Nadler (D-NY) was there to counter some of his colleagues rhetoric.

Today's Senate hearing was much less focused on DOMA. Only one member of the committee, staunch anti-LGBT Senator Jeff Sessions (R-AL), took the Attorney General to task. He attacked the Justice Department's sound and deliberative reasoning in determining it could no longer defend DOMA, calling that decision a "failure of duty" by Holder and the President. Again, a long-time friend of our community, Judiciary Committee Chairman Pat Leahy (D-VT), stepped in to remind his colleagues that there have been a number of instances, in both Republican and Democratic administrations, when DOJ has determined that it could not defend a law passed by Congress.

Perhaps the most surprising thing about these hearings, however, was not the expected rhetoric from our predictable enemies in both the House and Senate, but the fact that most Republicans steered clear of discussing DOMA entirely. Maybe they've finally begun to understand that the American people want them to focus on real issues rather than defending a discriminatory and unconstitutional law that hurts American families, and that a majority of Americans want to see repealed.

### **Justice Dept. Signed Off on Wiretap of ATF Gun Program Long Before it Became Controversial, Document Shows**

ticklethewire.com - Allan Lengel

May 4, 2011

Documents released Wednesday about ATF's controversial "Operation Fast and Furious" program is stirring more controversy.

One document, released by Rep. Darrell Issa (R-Calif), who has spearheaded an investigation into the controversial program, showed that the Justice Department in Washington signed off on a wiretap application more than a year ago for the controversial operation. The document contained the name of Assistant Attorney general Lanny Breuer, but was signed by one of his deputies Kenneth Blanco and does not mention Operation Fast and Furious.

Some media reports suggested that the document proved Breuer, head of the Justice Department Criminal Division, knew about the controversial program long before it morphed into a major controversy. The program, based in Arizona, encouraged gun dealers to sell weapons to the "straw buyers" — with the hope of tracing them to the Mexican Cartels. Some of the weapons may have been used to kill Americans.

"Assistant Attorney General Lanny Breuer knew about and even approved a wiretap application for suspects targeted in Operation Fast and Furious over a year ago," Rep. Issa said on his website.

Justice Dept. spokeswoman Tracy Schamler responded in a statement saying the wiretap authorization — one of thousands the Justice Department reviews each year — was in itself not an authorization for Operation Fast and Furious.

"The review process for wiretap applications is a narrow assessment of whether a legal basis exists to support a surveillance request that ultimately goes before a judge for decision," Schmalder said.

"These reviews are not approval of the underlying investigations or operations. As the department has stated, the Fast and Furious operation was approved by the U.S. Attorney's Office for the District of Arizona and the ATF Phoenix Field Office. The investigation was subsequently approved by the multi-agency Organized Crime and Drug Enforcement Task Force (OCDETF) Program."

The release of the documents come one day after Atty. Gen. Eric Holder Jr. appeared before the House Judiciary Committee and told Issa that he didn't know who had given the green light for the program. He specifically said he didn't know whether Breuer, head of the criminal division, had.

Also released Wednesday was a Jan. 8, 2010 memo from the ATF Phoenix Field Division Office on Operation Fast and Furious, noting that the Phoenix U.S Attorney Dennis Burke was in “full agreement with the current investigative strategy.”

The memo stated that “currently our strategy is to allow the transfer of firearms to continue to take place ... in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican [Drug Trafficking Organizations].”

Issa has repeatedly said that he believes that Border Agent Brian Terry was killed by weapons bought through Operation Fast and Furious, and that the program was a big, deadly mistake.

The program is turning into a highly political, highly controversial matter. Holder and President Obama have both publicly said that they never signed off on the operation.

“The Attorney General takes the allegations that have been raised seriously, which is why he has asked the Inspector General to investigate and made clear to everyone in the Department that under no circumstances should guns be allowed to cross the border,” Schmalzer said.”

## BLOGS

### Holder: Killing of bin Laden legal as 'national self-defense'

Politico – Josh Gerstein

May 4, 2011

Attorney General Eric Holder said Wednesday that the U.S. military mission that killed Osama bin Laden "was justified as an act of national self-defense" and that Navy SEALs would have had good grounds to shoot bin Laden even if he sought to surrender.

"It's lawful to target an enemy commander in the field. We did so for instance with regard to [Japanese Admiral Isoroku] Yamamoto in World War II. He was shot down in an airplane. [Bin Laden] was by my estimation and the estimation of the Justice Department a lawful military target and the operation was conducted in a way that was consistent with our law, with our values," Holder said during a Senate Judiciary Committee hearing.

Holder initially said the U.S. team "obviously" should have accepted if bin Laden attempted to surrender, but after some prodding by Sen. Lindsey Graham (R-S.C) the attorney general said there'd have been a "good basis" for the SEALs to have killed the Al Qaeda leader if he gave some indication of giving up.

"To those out there who question what happened here, the intelligence and the statements from the man himself said he'd never be taken alive, that he had bombs strapped to himself," Graham said. "The Navy SEAL team had to believe from the moment they encountered bin Laden, whether he raised his hands or not--that could have been a fake surrender, that they were well within their rights and shooting him as soon as possible probably protected everybody, including the SEALs and women and children."

"It was a kill or capture mission. He made no attempt to surrender and I tend to agree with you that, even if he had, there'd be a good basis on the part of those very brave Navy SEAL team members to do what they did in order to protect themselves and the other people in that building," Holder replied. "What they did was entirely lawful and consistent with our values."

It seems clear that under international law bin Laden could have been legally shot without warning by U.S. forces in a combat zone, such as Afghanistan. However, some international law scholars contend that outside a declared combat zone, the use of lethal force by the Central Intelligence Agency or the U.S. military is unlawful. These scholars say the U.S.'s extensive use of armed drones in Pakistan violates international law, as, presumably, would another option the U.S. considered to take out bin Laden: dropping large bombs on his suspected hideout.

"The death of bin Ladin should also be the death of extra-judicial killing. Capture-and-trial is the legal and effective option for dealing with the criminals we call 'terrorists,'" Notre Dame law professor Mary Ellen O'Connell wrote Tuesday on Opinio Juris.

"Yes, resistance to capture may have to be met with appropriate force, but it should be police force, acting on the basis of solid intelligence. If we do not stop using drones to pursue terrorist suspects, we will have extended to bin Laden more rights than we do to persons about whom we have far less information. Instead, let's devote appropriate resources to finding, apprehending, and trying these individuals in courts of law, with legal cases built on evidence gathered using police techniques and proper chains of evidence," O'Connell said.

UPDATE: An earlier version of this post said Holder's comment about the SEALs may have been the first on-the-record confirmation by an executive branch or military official of the Navy special operations branch's involvement in Sunday's raid. However, in a speech Tuesday night, Vice President Joe Biden made a couple of comments saluting the SEALs for their work on the mission.

### **Frontiers of international law**

Politico – Ben Smith

May 4, 2011

Gerstein reports:

*Attorney General Eric Holder said Wednesday that the U.S. military mission that killed Osama bin Laden "was justified as an act of national self-defense" and that Navy SEALs would have had good grounds to shoot bin Laden even if he sought to surrender.*

*"It's lawful to target a military commander in the field. We did so for instance with regard to [Japanese Admiral Isoroku] Yamamoto in World War II. He was shot down in an airplane. He was by my estimation and the estimation of the Justice Department a lawful military target and the operation was conducted in a way that was consistent with our law, with our values," Holder said during a Senate Judiciary Committee hearing....*

*It seems clear that under international law bin Laden could have been legally shot without warning by U.S. forces in a combat zone, such as Afghanistan. However, some international law scholars contend that outside a declared combat zone, the use of lethal force by the Central Intelligence Agency or the U.S. military is unlawful. These scholars say the U.S.'s extensive use of armed drones in Pakistan violated international law, as, presumably, would another option the U.S. considered to take out bin Laden: dropping large bombs on his suspected hideout.*

*"The death of bin Ladin should also be the death of extra-judicial killing. Capture-and-trial is the legal and effective option for dealing with the criminals we call 'terrorists,'" Notre Dame law professor Mary Ellen O'Connell wrote Tuesday on Opinio Juris.*

A lawyer remarked to me the other day that this is probably a good week for proponents of a robust, binding international legal regime to stay out of sight, as the theories under which an assassination in Pakistan is legal are, as Holder demonstrates here, pretty exotic and pretty easy to generalize in order to justify pretty much anything.