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To: Reich, Steven (ODAG); Axelrod, Matthew (ODAG)
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Highlighted in the two stories below are comments from USAO (also looks like Newell gave an interview to AZ paper as well)

ATF Director Testifies On Bungled Gun Operation (WP)
By Jerry Markon And Sari Horwitz
Washington Post, July 6, 2011

The investigation into a controversial U.S. gun-trafficking investigation took an unexpected turn last weekend when the ATF head met secretly with congressional aides and conceded that his agency made mistakes in directing ♦Operation Fast and Furious,♦ officials said Wednesday.

Kenneth E. Melson, acting director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, had been scheduled to speak to congressional investigators next Wednesday, in the presence of Justice Department and ATF lawyers. Instead, he brought his own attorney and was interviewed twice over the Fourth of July weekend.

Melson's decision, which took ATF and Justice Department officials by surprise, was the latest fallout from the Fast and Furious sting. That now-defunct operation targeted Mexican gun traffickers, but it has been linked to the killing of a Border Patrol officer. Congressional Republicans have criticized ATF over the operation and are pushing to learn whether senior Justice Department officials were involved.

The transcript of Melson's interview has not been publicly released, but people familiar with it said that the ATF leader indicated that Attorney General Eric H. Holder Jr. did not know about the operation, that it would be unusual for other Justice Department officials in Washington to know the details and that the U.S. attorney's office in Phoenix was overseeing the program.

Yet the ATF chief also said he moved to reassign managers involved in Fast and Furious and became ♦sick to his stomach♦ upon learning ♦the full story♦ of the operation, according to a letter sent Tuesday to Holder by Rep. Darrell Issa (R-Calif.) and Sen. Charles E. Grassley (R-Iowa). They are leading the congressional probe.

Issa and Grassley added in their letter, released Wednesday, that Melson said that he and other ATF officials wanted to cooperate more with Congress but that the Justice Department, which oversees the agency, prevented that.

♦ATF leadership appears to have been effectively muzzled while the DOJ sent over false denials and buried its head in the sand,♦ the lawmakers wrote. ♦That approach distorted the truth and obstructed our investigation.♦

That triggered a sharp response from Assistant Attorney General Ronald Weich, who wrote in a letter to the two Republicans that the department has produced or made available for review more than 2,000 pages of documents. ♦Regrettably, your letter unfairly criticizes both the Department's efforts to address the Committee's concerns and the integrity of the professionals at the department who have worked long hours to make responsive information available to you,' Weich said Wednesday.

The Justice Department's inspector general is investigating the allegations surrounding the operation. **Robert Sherwood, a spokesman for the U.S. attorney's office in Phoenix, said Wednesday, ♦The U.S. attorney's office gives case-related legal advice to federal agencies, it doesn't direct them. ATF agents and their tactical decisions are all supervised by ATF.♦**

Fast and Furious allowed the suspected illegal purchase of hundreds of semiautomatic firearms in Arizona gun shops so ATF agents could watch where the guns ended up, with the hope of bringing down a Mexican cartel. Under pressure to snag bigger players in trafficking organizations, ATF launched the operation in late 2009.

It has led to 20 indictments. But two of the AK-47s recovered near the scene of the fatal shooting of U.S. Border Patrol Agent Brian A. Terry in December were bought in Fast and Furious. And several ATF agents recently told Congress that they were ordered not to stop people they suspected of having the illegal guns.

Issa and Grassley said that Melson acknowledged ATF agents had witnessed the transfer of weapons from so-called straw purchasers to third parties without following the guns further.

Melson's interviews, on Sunday and Monday, followed weeks of pressure on ATF's leadership over Fast and Furious. Some news organizations have reported that Melson a former federal prosecutor and longtime Justice Department official who moved to ATF in 2009 would probably be ousted soon or resign over the operation.

But Issa and Grassley's letter said that Melson has not been asked to resign, and law enforcement officials said Wednesday that they knew of no current efforts to remove him. One source who was present for Melson's questioning said the agency leader came forward on his own because he thinks the Justice Department's handling of the controversy has been problematic and was harming ATF.

Melson told investigators that it was only after the operation became controversial that he personally reviewed hundreds of documents in the case, Issa and Grassley said. Other information given to Congress indicates that Melson was briefed on Fast and Furious and asked questions about it, according to sources familiar with the material. But Melson denied that he knew the details.

Congressional investigators are also probing whether some of those suspected of gun trafficking in Fast and Furious were already known to the FBI and the Drug Enforcement Administration and may have been informants for those agencies.

Melson, when asked, told the investigators that that may be true and that he recently learned that other federal agencies may not have shared important information with ATF, Issa and Grassley said.

But it is unclear whether the FBI and DEA were involved with the suspects in the ATF operation and whether such involvement would have changed its outcome. On Wednesday, some federal law enforcement officials played down the possibility, which congressional investigators continue to explore

Questions Of Blame Remain In ATF Gun-trafficking Investigation (AR)

By Robert Anglen, The Arizona Republic

Arizona Republic, July 6, 2011

In recent weeks, lawmakers and conservative pundits have blasted U.S. Department of Justice officials over a gun-trafficking investigation that put hundreds of rifles and handguns from Arizona into the hands of criminals in Mexico.

Republican members of Congress say agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives stepped aside as guns purchased in Valley stores by "straw buyers" were given to smugglers. The lawmakers accused Justice Department officials, appointed by the Obama administration, of authorizing an operation that deliberately let guns enter Mexico.

U.S. Attorney General Eric Holder denies his office had that intent.

The goal of the program, known as Operation Fast and Furious, was to follow the guns, which included assault weapons, up the chain to Mexican drug-cartel leaders.

Among those now catching heat is Arizona U.S. Attorney Dennis Burke. His office provided legal guidance to the ATF on Fast and Furious. One congressman last month blamed Burke, an Obama appointee, for not trying to halt the program in light of the risks.

Conservative bloggers have called for top officials to resign, and at least one lawmaker has sought the resignation of the ATF director.

But the fate of Burke and other Justice officials may hinge on questions of law and how much they knew about the operation.

It's unclear, for example:

- Whether officials could have stopped the sales of guns to suspected straw buyers. Critics have blasted the program because agents sometimes encouraged dealers to keep selling, but Justice officials say Arizona and federal laws didn't allow them to block such sales.

- Whether ATF agents would have had probable cause to arrest straw buyers before guns moved south. A Justice official and testimony from ATF agents conflict as to whether agents were authorized to make such arrests.

- Whether the ATF told prosecutors everything it knew about where the weapons went. An official for Burke's office said it was assured guns wouldn't cross the border.

The Justice Department itself has not stepped forth in explicit defense of Burke's office, saying the ATF operation is now under investigation. There's no indication so far that Burke, Holder or other officials are on the verge of losing their jobs.

Fallout from the operation will likely continue as members of Congress, as well as the Justice Department's Office of the Inspector General, investigate what happened.

Operation Fast and Furious began in 2009 as part of a multiagency federal drug-enforcement task force and involved the Phoenix ATF running gun surveillance and the Arizona U.S. Attorney's Office overseeing arrests and prosecutions.

The operation marked a departure for the ATF, which for years had focused on straw buyers of weapons without making cases against the drug cartels funding the gun-trafficking rings. The new plan was to let the straw buyers proceed and track the weapons. 1,500 guns sold

Over the next year, federal records show, more than 1,500 guns were sold to apparent straw buyers. Many of those guns disappeared and later turned up at crime scenes on both sides of the border.

Two guns bought at a Glendale store were found at the scene of a shootout in Rio Rico in December where Customs and Border Protection Agent Brian Terry was killed. Another weapon was used in the murder of a prominent lawyer in Mexico.

Patrick Cunningham, chief of the criminal division for the U.S. Attorney's Office in Phoenix, who supervised Fast and Furious prosecutions, denied that his office knowingly allowed guns to cross the border.

Cunningham said agents with the ATF, who took the lead in day-to-day operations, repeatedly assured his staff that guns were not being allowed to go to Mexico, which is referred to as walking guns across the border.

"(ATF agents) were telling us point blank" that they were not allowing guns to get that far, he said.

Moreover, Cunningham said, his office gave agents a green light to seize guns every time they requested permission, save one, where it was determined by agents and prosecutors that agents lacked probable cause.

Cunningham laid out the legal hurdles federal agents had to overcome in order to seize guns. For instance, none of the gun sales was illegal when they were made, even when someone would come in day after day and buy dozens of weapons.

In Arizona, nearly anyone can walk into a gun store and buy as many rifles as he wants without having to report it to the federal government. Buyers must pass a federal background check and sign a form declaring they are purchasing the guns on their own, not for someone else.

The decision to sell dozens of rifles to the same customer day after day is up to gun dealers.

Under Arizona and federal law, it is also legal for buyers to transfer the weapons to another individual within the state.

Cunningham said guns can be seized only if the purchaser is a known felon or if the agents had evidence the gun was involved in a crime or that it would be used in a future crime.

Agents built their cases for gun trafficking using wiretaps, informants and surveillance.

In February, the Arizona U.S. Attorney's Office and the Phoenix ATF announced that more than 20 people had been indicted and that agents had seized hundreds of weapons as part of Operation Fast and Furious.

None of those arrested was a significant cartel figure. But the charges, some involving conspiracy, drugs and smuggling, were far more severe than those for the typical straw buyer.

"We think the indictment of 20 people is a very successful indictment and the case is still ongoing," Cunningham said.

He said that the death of Agent Terry was tragic but that he could not discuss the case.

Dueling accounts

Cunningham's depiction of the operation contrasts vividly with the one painted by congressional members leading the inquiry into Fast and Furious.

In a report last month, Rep. Darrell Issa, R-Calif., who chairs the House Oversight and Government Reform Committee, and ranking Senate Judiciary Committee member Charles Grassley, R-Iowa, blasted the Justice Department. They said the operation yielded only low-level prosecutions and put countless people at risk.

In a statement Friday, Issa singled out Burke's office.

"As the U.S. attorney, Dennis Burke has a responsibility for decisions that have created an ongoing public-safety hazard, endangered the criminal prosecutions of firearms traffickers, and been linked to deaths on both sides of the border," he said.

"While he wasn't the most senior Justice Department official who knew about Fast and Furious, it certainly wouldn't have continued had he objected."

Issa and Grassley pointed to e-mails and other records that indicate high-level Justice Department officials, including ATF Director Ken Melson, were aware that the guns were crossing the border. The lawmakers questioned ATF claims that agents didn't knowingly allow guns into Mexico.

Three Phoenix ATF agents testified in Issa's committee last month that they were ordered by supervisors to encourage gun-store owners to make sales and allow straw purchasers to move the weapons without interdiction.

Agents say they repeatedly warned supervisors that the guns were being used in crimes in Mexico and spoke of their fear that they would

sooner or later be used against American citizens.

Their story is bolstered by some Arizona gun-store owners.

One owner, who spoke to The Arizona Republic on condition of anonymity because he feared reprisals by the ATF, said agents not only encouraged his employees to knowingly sell guns to suspicious buyers but in one case asked the owner to break a strict policy limiting the number of guns a single person can buy in a day.

"(Agents) would always say, 'As long as they are doing nothing illegal, make the sale,' " the Scottsdale gun store owner said. "That's how they covered themselves."

E-mails released by Issa's office show one unidentified gun-store owner told the ATF he had concerns about the volume of weapons the owner was selling as part of the operation and whether any would end up in Mexico.

"I understand that the frequency with which some individuals under investigation by our office have been purchasing firearms from your business has caused concerns for you," ATF Supervisor John Voth wrote to the owner in April 2010, adding, "Just know that we cannot instruct you on how to run your business, but your continued cooperation with our office has greatly aided the investigation so far."

The owner raised concerns again in June.

"I am looking for a bit of reassurance that the guns are not getting south or in the wrong hands," the owner wrote, adding that he wanted to assist but didn't want to put Border Patrol agents' lives at risk.

The fallout to date has mostly hit the ATF. Bill Newell, former special agent in charge of the Phoenix ATF, who before the scandal broke was tapped to be the agency's liaison with Mexico, instead has been transferred to Washington, D.C.

In a brief phone interview last week, Newell suggested the problem with the operation lies with Arizona's gun laws, "or lack thereof."

Newell also pointed to weak gun laws in an interview with congressional investigators. Transcripts of the interview obtained by The Republic show that Newell steadfastly maintained that weak laws stymied agents in their ability to interdict guns.

Investigators grilled Newell on whether agents could have taken other steps short of arresting suspects to stop the guns. Newell replied the agents could have.

Agents have said an example would be to post ATF agents outside gun stores to attempt to spook straw buyers, or follow buyers and attempt to make a traffic stop.

Still, the three agents who testified to Congress said supervisors told them not to intervene.

The investigators also peppered Newell with scenarios involving straw buyers.

He maintained that agents could not legally seize guns based on multiple purchases, cash transactions, ownership transfers or suspicious behavior.

Investigators repeatedly referred to the sales as illegal. Newell disagreed, saying there was no proof of illegality.

"It is not unusual for people in places like Arizona and Texas . . . to go in and buy multiple firearms, multiple handguns, multiple long guns. It is not unusual, and it is not illegal in many instances," Newell said in the interview.

"And so, we have to put the evidence together to prove that, in fact, that transaction is illegal by many different ways. And that's what we struggle with to do all the time on these cases."