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Congress of the United States

House of Representatives

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Special Agent William Newell
Bureau of Alcohol, Tobacco, Firearms
and Explosives
99 New York Avenue, NE, Room 5S 144
Washington, DC 20226

Dear Special Agent Newell:

Thank you for appearing before the Committee on Oversight and Government Reform on July 26, 2011, at the hearing entitled, "Operation Fast and Furious: The Other Side of the Border." We appreciate the time and effort you gave as a witness before the Committee.

Pursuant to the Chairman's directions, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from Chairman Issa, Member of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's questions along with your response.

Please provide your response to these questions by August 30, 2011. Your response should be addressed to the Committee office at 2157 Rayburn House Office Building, Washington, DC 20515. Please also send an electronic version of your response by e-mail to Kate Dunbar, staff assistant, at kate.dunbar@mail.house.gov in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Henry Kerner at (202) 225-5074.

Sincerely,



Darrell Issa
Chairman

Attachment

Questions for Special Agent William Newell
Bureau of Alcohol, Tobacco, Firearms and Explosives

Rep. Darrell Issa
Chairman of the Committee on Oversight and Government Reform

Hearing on "Operation Fast and Furious: The Other Side of the Border."

Lessons Learned from Fast and Furious

- 1) In your opening statement you stated, "at the conclusion of every investigation of this magnitude, a thorough review is appropriate in order to determine whether tactics – whether [changes] in tactics and strategy are in order." Have you had the chance to review Operation Fast and Furious?
 - a) If so, what changes in tactics and strategy did you order as a result of this review?
 - b) If not, when do you plan to do so?
- 2) The exit strategy for Operation Fast and Furious, promulgated in late April 2010, set out 30, 60, and 90-day benchmarks, with the end goal of concluding the operation within 90 days. Fast and Furious, however, did not end within 90 days. What caused this delay?
- 3) During the hearing, you stated that mistakes were made during Operation Fast and Furious. You also stated that you should have conducted risk assessments as to whether or not the Operation Fast and Furious strategy was still prudent. Was it ever a prudent strategy to allow known criminals to buy guns and transfer them to criminal syndicates?
- 4) You stated that in retrospect, you would have conducted more "risk assessments to determine where we were in the investigation."
 - a) What type of risk assessments would you have conducted? Please provide details regarding what a risk assessment would have entailed.
 - b) How often would you have conducted these risk assessments?
 - c) When did you actually conduct risk assessments?
 - d) What did these risk assessments reveal?
 - e) How did the grave threat to public safety factor into the strategy of "allowing the transfer of firearms to continue"?

- 5) As Chairman Issa requested, please provide a list of the things that you would have done differently under Operation Fast and Furious.
- 6) At the hearing, you admitted broad errors, such as the lack of risk assessments and "failures of communication." Do you take responsibility for any specific mistakes made during the course of the investigation?

Lack of Interdiction of Weapons

- 7) In your opening statement, you asserted that "none of the individuals in the firearms trafficking chain [we]re presumptively prohibited by law [to] possess[] firearms."
 - a) After ATF agents witnessed the transfer of firearms to third parties, what efforts did ATF make to determine whether the third party was a prohibited possessor?
 - b) Conversely, were there ever any instances during Operation Fast and Furious in which ATF agents witnessed a transfer of firearms but did not attempt to determine whether the third party was a prohibited purchaser?
- 8) How many times in 2010 did ATF agents in the Phoenix Field Division seize weapons from individuals who later filed claims for return of property? For each claim, please indicate whether ATF ever returned these weapons to the individuals. If not, indicate the reason.
- 9) Is it necessary for ATF to have lawful authority to seize weapons simply in order to initiate contact with a suspect who has purchased guns? Can lawful authority to seize weapons result from talking with suspects who have purchased guns?
- 10) At the hearing, you stated you were aware of one instance during Operation Fast and Furious in which supervisors denied an agent's request for permission to make an arrest "because of the overall objective of the plan."
 - a) Please describe in detail the circumstances of this instance.
 - b) When did it occur?
 - c) Who denied the agent permission to arrest the suspect?
 - d) How many weapons did that suspect have in possession at that time?
 - e) When did you become aware of this instance?

f) Did you personally suggest any corrective action?

11) At the hearing, you agreed that straw purchasing is against the law. You also stated you did not go back to purchasers of weapons recovered in Mexico and interrogate them.

a) Why did Group 7 agents fail to interrogate these individuals after weapons they purchased were recovered in Mexico?

b) Why did Group 7 agents fail to interrogate these purchasers after these same individuals continued buying weapons?

12) At the hearing, you stated that if "you just focus your investigations on straw purchasers, you're not having a lasting impact."

a) Didn't Operation Fast and Furious neglect straw purchasers entirely in a misguided attempt to reach the "higher ups"?

b) To date, how many "higher ups" have been indicted as a result of Fast and Furious?

c) To date, how many straw purchasers have been indicted as a result of Fast and Furious?

d) What lasting impact has the operation had on firearms trafficking organizations?

13) At the hearing, you stated that "throughout the investigation we had information that . . . Mr. Patino was working with Mr. Acosta throughout the investigation."

a) Did ATF agents ever initiate contact with either Mr. Patino or Mr. Acosta during Fast and Furious?

b) Why didn't you "make a run" at either individual, well before 700 weapons ended up in the possession of Mexican drug cartels?

14) You stated that "[d]uring the summer of '10, we finally convinced certain individuals in the Judiciary that we had a very strong -- we believe we had a very strong ability or theory on being able to seize firearms civilly in order to stem the flow, and we got that approved, I would say, September of '10."

a) Please provide all documentation related to these seizures.

- b) Why did it take so long for ATF to begin conducting civil forfeitures of guns?
 - c) What new evidence supported the ability to seize firearms at this juncture?
 - d) Why did ATF need permission to begin seizing weapons from suspects?
 - e) Has ATF utilized criminal forfeitures in prior investigations?
 - f) Does the U.S. Attorney's Office in Phoenix have to approve all civil forfeitures by ATF's Phoenix Field Division? If so, does it provide these approvals on a case-by-case basis?
- 15) In response to a question about guns going into Mexico, you stated "Absolutely. We didn't want any guns [going to Mexico]." If that is so, why didn't you stop the operation once it was clear that the guns linked to Fast and Furious were being recovered in Mexico?
- 16) At the hearing, you stated, "[t]he investigation first began in November of 2009 under the name of Jacob Chambers, who at that time was identified as one of the more prolific straw purchasers."
- a) How did ATF first discover that Jacob Chambers was a straw purchaser?
 - b) Why did you believe that Jacob Chambers was "one of the more prolific straw purchasers?" How many guns had he purchased as of November 2009? How many guns did he purchase after he became a suspect in November 2009?
 - c) If Mr. Chambers was a prolific straw purchaser, why didn't ATF arrest him earlier? Why did ATF knowingly allow him to continue purchasing weapons?
- 17) How do you reconcile your statement that the Phoenix Field Division would "make every effort" to conduct lawful seizures of firearms with your statement during the same line of questioning that "our efforts to allow the transfer to identify additional coconspirators was so that we could further the investigation"?

Involvement With Other Agencies

- 18) Were DEA, FBI, IRS, or ICE aware of the specific investigative techniques utilized in Operation Fast and Furious? Did any of these agencies question these techniques?
- 19) What information did DEA provide to ATF regarding Operation Fast and Furious suspects or seizures of weapons purchased by Fast and Furious suspects? Please list, in detail, the dates on which DEA furnished information to ATF about these suspects or seizures and the nature of the information shared.

- 20) Operation Fast and Furious targeted drug trafficking organizations. Why didn't DEA play a primary role in this investigation?

Informing Mexico of Fast and Furious

- 21) In your opening statement, you asserted that Operation Fast and Furious was designed to "share, when appropriate, relevant information with U.S. and Mexican law enforcement authorities."

- a) Did ATF ever share information with Mexican law enforcement authorities? If so, when, and what specific information?
- b) With whom in Mexican law enforcement did you share information?

- 22) You stated that "absolutely, the group that we were working, we knew that that was their intention to funnel guns to Mexico."

- a) If so, what steps did you take to ensure that the guns did not actually go to Mexico?
- b) If you knew guns were going to Mexico, why did your agents break off surveillance of these weapons, rendering them unable to determine to whom the guns were being transferred and who was transporting them into Mexico?
- c) How did ATF plan to find out the methods used by traffickers to smuggle guns to Mexico, and the identities of these smugglers?

- 23) You stated that "[o]ne of the things we wanted to do was as soon as we had solid information on the drug kingpin, if you will, was, to share that information with Mexico."

- a) Did ATF plan to extradite the drug kingpins involved in Fast and Furious from Mexico?
- b) If so, when did ATF plan to share information gleaned from Fast and Furious to facilitate such extraditions with the Mexican government?
- c) To date, have any extraditions occurred? Are any currently being considered?

- 24) You stated that ATF "hoped that the Mexican officials would, in fact, prosecute [the drug kingpins]."

- a) When did ATF plan to share information gathered under Fast and Furious with the Mexican government to support prosecutions of these drug kingpins?
- b) Was the primary purpose of Fast and Furious to gather information about these drug kingpins to assist the Mexican government in prosecuting them?

25) At the hearing, you stated that "Mr. Canino knew about the [Fast and Furious] investigation."

- a) Did you ever inform any ATF personnel in Mexico about a significant case out of the Phoenix Field Division, or Operation Fast and Furious specifically? If so, when?
- b) What specific details about this case did you share with ATF officials in Mexico?
- c) If you personally did not inform the ATF officials in Mexico about this case, who did?
- d) At any point, did you get the opinion of ATF Mexico personnel on how to proceed with this case? If not, why?

The Genesis of Fast and Furious

26) A January 8, 2010 briefing paper stated, "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 coconspirators who would continue to operate and illegally traffic firearms to Mexico drug trafficking organizations."

- a) Who drafted that briefing paper? Who approved it? Who sent it to ATF headquarters?
- b) Who reviewed this document? Did anyone express concerns about this statement?
- c) How many additional weapons did Fast and Furious suspects buy after this briefing paper was drafted? How many of these weapons have been recovered in Mexico? The United States?

- d) How many additional co-conspirators were identified as part of the firearms trafficking organization after this briefing paper was drafted? How many of these additional co-conspirators have been indicted?

27) In response to a question about whether Mr. Melson knew about Operation Fast and Furious, you responded, "My belief is yes. I briefed him."

- a) When did you brief Mr. Melson about Operation Fast and Furious?
- b) What were the contents of that briefing?
- c) Who else was present at this briefing?

28) You stated, "Well, a case like Fast and Furious goes through several levels of approval, sir."

- a) Describe the approval process for Fast and Furious.
- b) Identify the specific levels of approval to which you referred.
- c) Provide a list of all individuals who specifically approved Fast and Furious.

29) You stated, "Sir, it's not one person who did that, it was a group of individuals who looked at the set of facts in this case and determined that this was the best strategy to follow. . . ."

- a) Provide a list of all the individuals who devised the strategy behind Fast and Furious.
- b) Did all of these individuals agree that the strategy used during Fast and Furious was the best one to follow?
- c) Was Mr. McMahon simply aware of the strategy or did he have an active role in formulating it? Did he make any specific suggestions as to the strategy?

Investigative Procedures

30) When did you first realize that weapons bought under Operation Fast and Furious were crossing the border or ending up in Mexico? What steps did you take to ensure this would not recur?

- 31) Did Operation Fast and Furious yield any intelligence leads regarding other firearms trafficking organizations?
- 32) You stated that in mid-August 2010, you presented to the U.S. Attorney's Office in Phoenix the evidence needed to secure the first round of indictments.
- a) If this is true, why were the indictments not handed down until late January 2011?
 - b) What additional evidence did ATF obtain between August 2010 and January 2011?
- 33) You expressed concern that traces of Fast and Furious weapons were coming back from Mexico in November 2009. What safeguards and investigative techniques did you put in place after November 2009 to ensure that weapons bought under Fast and Furious would no longer be trafficked to Mexico?
- 34) You steadfastly maintain that no gunwalking took place in Operation Fast and Furious. How would you describe, then, ATF's failure to interdict and properly conduct surveillance on guns bought by known or suspected criminals, in particular when these guns often wound up in the possession of Mexican crime syndicates?
- 35) You stated that "[t]he investigation is ongoing, sir."
- a) Why did you continue this investigation for over a year and a half after the weapons you knew were being illegally purchased began showing up at Mexican crime scenes?
 - b) How many more indictments are expected as a result of Fast and Furious?
 - c) How much longer do you anticipate that Fast and Furious will continue?
 - d) At what point will ATF no longer identify Fast and Furious as "ongoing"?
- 36) In Operation Fast and Furious, straw purchasers bought over 2,000 guns.
- a) In your capacity as Special Agent in Charge for the Phoenix Field Division, what did you do to ensure that proper safeguards were in place to maintain surveillance of the guns?
 - b) What did you do to prevent these weapons from ending up in the possession of individuals linked to Mexican drug cartels?

37) You stated, "as outlined in the January 8th, [2010] briefing paper, [the U.S. Attorney's Office in Phoenix] felt that there was not enough evidence at that time to secure anymore – or to secure for prosecution, so to continue monitoring the sales."

- a) Did you personally believe there was enough evidence to secure prosecutions at that point? If not, what did you feel was lacking at that time?
- b) What evidence did the U.S. Attorney's Office in Phoenix believe to be lacking at that time?

38) According to e-mails provided by the Department of Justice, at 6:45 pm on January 8, 2010, you provided DAD McMahon with a briefing paper that stated, "Currently our strategy is to allow the transfer of firearms to take place."

- a) Did you ever discuss this briefing paper with McMahon? If so, please describe in detail.
- b) Did you provide this briefing paper to anyone else at ATF headquarters? If so, please identify who and describe any accompanying communications in detail.
- c) Did you provide this briefing paper to anyone at the U.S. Attorney's office in Phoenix? If so, please identify who and describe any accompanying communications in detail.
- d) Did you provide this briefing paper to anyone at Main Justice? If so, please identify who and describe any accompanying communications in detail.
- e) Are you aware of anyone else providing this briefing paper to anyone other than McMahon at ATF headquarters? If so, please identify who provided the briefing paper to whom and describe any accompanying communications in detail.
- f) Are you aware of anyone else providing this briefing paper to anyone at the U.S. Attorney's Office in Phoenix? If so, please identify who provided the briefing paper to whom and describe any accompanying communications in detail.
- g) Are you aware of anyone else providing this briefing paper to anyone at Main Justice? If so, please identify who provided the briefing paper to whom and describe any accompanying communications in detail.

39) Representative Ross asked Deputy Assistant Director McMahon about an e-mail that you sent to him on February 5, 2010. In response, McMahon said: "I think our e-mail records show they weren't able to scan the attachment because it was so large, and they said they were going to FedEx it."

- a) How long was the attachment?

- b) Is it typical for a T-III application to be this large?
- c) Why was this particular T-III application so large?
- d) Did you confirm that it was delivered to McMahon?
- e) Did you ever discuss it with McMahon? If so, please describe the conversation in detail.

40) Of the 20 defendants indicted on January 19, 2011, how many of these defendants were already known to ATF on January 8, 2010?

Other

41) On January 31, 2011 you were selected to be the ATF Country Attaché to Mexico, effective May 8, 2011.

- a) What is your current position at ATF?
- b) Did you ever become the Attaché to Mexico?
 - i. Are you collecting a per diem for that assignment?
 - ii. If so, when did you begin collecting this per diem?
 - iii. What is the per diem rate you are receiving?
 - iv. When will this per diem expire?
- c) When do you plan to assume the position of Attaché in Mexico City?

42) During the Full Committee hearing on July 26, 2011, you committed to Chairman Emeritus Burton to provide the names of all the participants from the other agencies that were involved in the planning meetings for Fast and Furious. Please provide the name and title of each person from each agency along with the dates of their participation.

43) You mentioned that you do not recall stating that you deliberately attempted to send guns to Mexico to justify additional firearms regulations.

- a) Did you meet with representatives from the White House on or about March 18, 2009 at the Phoenix Field Division offices?

- b) If so, who from the White House attended that meeting? What was the nature of that meeting? How long did the meeting last? Who else from ATF was present at that meeting?

44) Kevin O'Reilly is a member of the National Security Council staff at the White House.

- a) Did you discuss Operation Fast and Furious with Kevin O'Reilly during the "summer or early fall of 2010"?
- b) Did you exchange e-mail messages with Mr. O'Reilly about southwest border issues in the "summer or early fall of 2010"? If so, how often?
- c) Did you have telephone conversations with Mr. O'Reilly about southwest border issues in the "summer or early fall of 2010"? If so, how often?
- d) Why were you discussing southwest border issues with Mr. O'Reilly in the "summer or early fall of 2010"?
- e) Why did you send an e-mail to Mr. O'Reilly about southwest border issues that began, "You didn't get this from me . . . "?