

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

CHARLES E. GRASSLEY, IOWA
ORRIN G. HATCH, UTAH
JON KYL, ARIZONA
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

July 3, 2012

Via Electronic Transmission

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

The investigation into Operation Fast and Furious has focused on two specific areas: (1) When did individuals within the Department of Justice (DOJ/Department) become aware of the tactics and (2) How did DOJ provide false information to Congress regarding the allegations of gunwalking.

I believe the Department should have been abundantly aware of allegations of gunwalking as there was more than one ATF agent providing information to Department components before the February 4, 2011, letter was sent to Congress.

Specifically, on February 2, 2011, my investigators contacted an ATF Special Agent who worked out of the Phoenix Field Division, Group VII office, and was familiar with Operation Fast and Furious. The conversation centered on the ATF Agent's recollection of how Fast and Furious was executed and his recollection confirmed the allegations my office had heard from other ATF whistleblowers. What was unknown until late 2011 was that this ATF Agent produced a memorandum on February 3, 2011, which documented his discussion about Fast and Furious. The subject of the memorandum is, "Contact with Congressional Investigators," and I have enclosed it within this letter.

This Fast and Furious memorandum traveled rapidly through ATF's chain of command. The memorandum was emailed on February 3, 2011, from the Dallas Field Division to Phoenix SAC William Newell and Deputy Assistant Director for Field Operations William McMahon. Records that the Justice Department has withheld from Congress, which were only made available for review *in camera*, show an email chain attaching this memorandum was sent to Assistant Director of Field Operations Mark Chait at ATF headquarters by the afternoon of February 3, 2011.

According to ATF personnel, the memorandum was discussed by high level ATF personnel and possibly forwarded to DOJ headquarters on February 3, 2011. Specifically, it has been alleged that individuals within the Deputy Attorney General's (DAG's) office and the Office of Legislative Affairs (OLA) at the Department were aware of or actually read the memorandum before the Department's February 4, 2011, letter was sent. Some individuals

who spoke with my office claim they were “alarmed” by the substance of the memorandum and it caused such a stir that ATF planned to put a panel together to address the allegations but someone within DOJ suppressed the idea.

The possibility that DOJ was aware of this memorandum on February 3, 2011, and still sent the erroneous letter to Congress on February 4, 2011, raises more questions about DOJ’s claim that faulty information from Department components inadvertently led to the false letter. This was direct, documented information from street level agents in a far better position to know the facts than the senior supervisory personnel whom DOJ claims to have relied upon for information about the allegations.

Discovering how high up the chain of command inside the Justice Department the memorandum was reviewed has not been easy. The Department has not made available certain individuals who could corroborate what my office has been told. Moreover, it is unclear whether the set of “deliberative” materials about the drafting of the February 4, 2011, letter that the Department produced to Congress constitutes a complete set of all relevant documents or whether other relevant documents from the pre-February 4th timeframe may have been withheld. Consequently, please answer the following questions:

- 1) Have all records relating to the February 3, 2011, memorandum been gathered and preserved by the Justice Department? If not, why not? If so, please describe the nature and volume of those records.
- 2) Will you produce those records to Congress? If not, please explain why not.
- 3) Which DOJ personnel received a copy of the February 3, 2011, memorandum prior to February 4, 2011?
- 4) Which DOJ personnel were aware of the memorandum before the February 4, 2011 reply was sent to me? Please provide all records related to these questions, or certify that all relevant documents have already been provided.

I would appreciate a written response by no later than July 17, 2012. If you have any questions concerning this matter, please contact Brian Downey of my staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

Enclosure

cc: The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary, U.S. Senate

The Honorable Darrell E. Issa, Chairman
Committee on Oversight and Government Reform, U.S. House of Representatives

The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform, U.S. House of Representatives

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

B. Todd Jones, Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

www.atf.gov

February 3, 2011

MEMORANDUM TO: Special Agent in Charge
Dallas Field Division

THRU: Resident Agent in Charge ^{JL}
Lubbock Field Office 2-3-2011

FROM: Gary M. Styers
Special Agent
Lubbock Field Office

SUBJECT: Contact with Congressional Investigators

On February 2, 2011, at approximately 1500 hours, ATF Special Agent Gary Styers was contacted telephonically by Robert Donovan and Brian Downey, representing United States Senator Chuck Grassley and the Senate Judiciary Committee. Downey and Donovan after identifying themselves asked Special Agent Styers if he would be willing to answer some questions regarding the time Special Agent Styers spent on a detail to the Phoenix Field Division, Phoenix Group VII Office. Special Agent Styers said he would be willing to answer questions to the best of his knowledge.

Special Agent Styers was asked if he was familiar with the large firearms trafficking case in Phoenix Group VII and Special Agent Styers said he was. Downey and Donovan asked if Special Agent Styers knew the name of the case and he responded that it was "Fast and Furious". Downey and Donovan then asked if Special Agent Styers knew who the case agent was and Special Agent Styers said it was Special Agent Hope McAllister. Special Agent Styers was also asked who the supervisor of the group was and Special Agent Styers said it was Group Supervisor David Voth. Downey and Donovan also asked who helped Special Agent McAllister, Special Agent Styers said that Special Agent McAllister had a Co-Case Agent from Immigration and Customs Enforcement (ICE) as well as an agent from Group VII. Downey and Donovan asked who was the Agent from ICE and Special Agent Styers told them it was Lane France.

Downey and Donovan asked Special Agent Styers if he knew what the agents were assigned to do on the investigation. Special Agent Styers explained that a group of agents were assigned to the case and that since the case was in the stage of an active wiretap, some agents were working within the group and

others were working at various functions related to the wire. Special Agent Styers further said that he did not specifically know the role of each individual agent.

Downey and Donovan inquired as to the role that Special Agent Styers had in this case and Special Agent Styers advised that he had assisted with some surveillance operations with the case. Special Agent Styers was asked to describe the operations and relayed that one of the operations was a suspected transaction that was to occur at a gas station and detailed agents were asked to cover the transaction. While positioning to observe the suspects, Special Agent Styers and other detailed agents were told by Special Agent McAllister that agents were too close and would burn the operation. Special Agent McAllister told all the agents to leave the immediate area. While the agents were repositioning, the transaction between the suspects took place and the vehicle that took possession of the firearms eventually left the area without agents following it.

Downey and Donovan asked Special Agent Styers if he ever saw guns actually go into Mexico. Special Agent Styers said he did not see any firearms cross the border to Mexico. They also asked if Special Agent Styers had worked with any agencies in Mexico, Special Agent Styers relayed that he had not, but had knowledge that other agents within Group VII spoke of communication with other ATF Special Agents assigned in Mexico.

Downey and Donovan then asked if Special Agent Styers had any knowledge that Federal Firearms Licensees (FFLs) were reporting suspected straw purchasers. Special Agent Styers explained that FFLs were indeed reporting such situations and that Special Agent Styers had numerous contacts with FFLs in the Phoenix area and had also worked inside of an FFL in an undercover capacity, while an individual attempted a large scale straw purchase. Special Agent Styers told Downey and Donovan that in speaking with the FFL holder and owner of the gun shop, he told Special Agent Styers that he had asked ATF to install cameras inside his shop and to have an undercover agent inside on a more regular basis.

Downey and Donovan inquired as to what the procedures were and who handled the calls from the FFLs when they reported such suspected transactions. Special Agent Styers told them that he had no knowledge of any special procedures. If the FFLs called during normal business hours, Special Agent Styers assumed that, if they called the office number, their call was handled by the Group Supervisor. Special Agent Styers also told Downey and Donovan that if the FFLs were calling individual agents within the group, he had no direct knowledge of those calls and what the ATF response was to those reports. However, Special Agent Styers did tell Downey and Donovan that he had heard from within the group that FFLs were calling case agents.

With regards to statistics and reporting, Downey and Donovan, questioned Special Agent Styers as to whether he had any knowledge of "padding of statistics or inconsistent reporting". Special Agent Styers advised them that he had no knowledge of a wide scale effort to skew statistics. However, Special Agent Styers relayed that he did question the Group Supervisor as to why he wanted Special Agent Styers to trace firearms that had not been recovered. Special Agent Styers was assigned to the investigation and provided the ATF Form 4473s, the Firearms Transaction Record, and told to trace said firearms. Special Agent Styers asked as to why, when ATF has the Suspect Gun Database, which is designed for such firearms that have yet to be recovered by law enforcement. Group Supervisor Voth said he wanted them traced so that if someone else traced the firearms, they would know the firearms were connected to the case Special Agent Styers was assigned. Special Agent Styers relayed that even though he disagreed with the requested procedures, he follow the request of Group Supervisor Voth. Special Agent Styers also informed Donovan and Downey that he asked several agents also assigned to Group VII if they had to submit similar firearms traces and they replied that they in fact also were told to trace all firearms in a similar fashion.

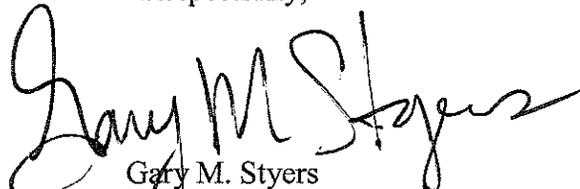
Special Agent Styers was then asked about his general impression of the Fast and Furious case. Special Agent Styers stated that the case had systematically divided and isolated agents from the group. The case agent had solicited the advice of numerous experienced agents, including Special Agent Styers, regarding how to conduct and end the wiretap operations and case overall. Special Agent Styers gave the case agent his honest opinion and advice since Special Agent Styers had worked two wiretap investigations in his career. Special Agent Styers felt that his advice and opinions, as well as other agents' advice and opinions were widely disregarded. Along with other agents within the group, Special Agent Styers explained that he was no longer asked to assist with Fast and Furious and concentrated on his assigned cases and provided necessary assistance to fellow agents within the detail and group.

Downey and Donovan asked Special Agent Styers what he felt was incorrect about the way the Fast and Furious case was conducted. Special Agent Styers explained that first and foremost, it is unheard of to have an active wiretap investigation without full time dedicated surveillance units on the ground. Special Agent Styers relayed that no agents in the group were assigned to surveillance on the Fast and Furious case. Special Agent Styers said that other agencies or task force officers may have been used to conduct surveillance and respond to calls of FFLs, but it seemed that either the case agent or Group Supervisor would poll the office for agents who were available to respond at short notice.

Secondly, Special Agent Styers said that it appeared odd to have a majority of ATF Agents working on a wiretap investigation, who had never worked such a case. Especially, when numerous, permanent Group VII agents and detailers had previous wiretap experience.

Special Agent Styers was provided with contact information for Downey and Donovan and the conversation was ended. Special Agent Styers contacted the Lubbock Resident Agent in Charge, Jim Luera at 1545 hours after the conversation with Downey and Donovan ended, to inform him of the contact. Special Agent Styers was later asked to document the conversation herein and attempted to do so to the fullest extent possible.

Respectfully,



Gary M. Styers
Special Agent, ATF