

Congress of the United States
Washington, DC 20515

September 20, 2011

VIA ELECTRONIC TRANSMISSION

Cynthia A. Schnedar
Acting Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Inspector General Schnedar:

Thank you for taking the time to meet with members of our staffs last Friday. We wanted to reiterate the deep concerns that we have about your decision to turn over to the U.S. Attorney's Office for the District of Arizona (USAAZ) audio recordings your office obtained in its investigation of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious. These recordings are mostly between a cooperating Federal Firearms Licensee (FFL) and an ATF case agent. The recordings corroborate the cooperating FFL's allegation that personnel at the ATF and the USAAZ sought to recruit him in an effort to obstruct the congressional inquiry and obscure the truth about Operation Fast and Furious from public scrutiny.

We understand that you had not personally reviewed these recordings as of Friday. Nevertheless, you told our staffs that you decided to provide them to the USAAZ before you even obtained them. You cited as your reason for doing so your desire to assist the USAAZ with its discovery obligations in the prosecution of Operation Fast and Furious suspects. However, it is unclear why you did not reconsider that decision after your office obtained the recordings and learned that they corroborate allegations of misconduct on the part of the USAAZ.

For instance, in one tape the FFL describes his concern about statements Assistant U.S. Attorney Emory Hurley made to the FFL's counsel at the time, Christopher Rapp.¹ This tape corroborates what both the FFL and his current attorney have each told our Committees about the USAAZ's initial denials of basic facts surrounding Operation Fast and Furious and the murder of Border Patrol Agent Brian Terry. Specifically, Mr. Hurley allegedly told Mr. Rapp to tell his client, the FFL, that the U.S. Attorney's Office, the ATF and the FFL were "all in the same boat."² On another occasion, the ATF Group Supervisor, David Voth, allegedly told the cooperating FFL, "we are all on the same sheet of music. And if we stay on the same sheet of music, we will be all right."³ These statements were made in the context of discussing our congressional inquiry. As you can imagine, we believe that allegations of USAAZ and

¹ Audio recording, WS600003, 2:00, unidentified date between March 12 and March 17, 2011.

² Interview with Cooperating FFL at 105 (May 18, 2011).

³ *Id* at 55.

ATF personnel seeking to influence the testimony of witnesses in a congressional investigation deserve thorough, aggressive, and independent investigation.

There would have been considerable investigative advantages to questioning the USAAZ and ATF personnel about these issues directly before these recordings were disclosed to them. However, the Justice Department delayed Congress's access to these individuals, and you provided them with copies of the recordings on June 22, 2011.

Sometime after you provided the recordings to the U.S. Attorney's Office, someone provided them to both to the ATF Public Information Officer in the Phoenix Field Division as well as to the ATF case agent who can be heard on the recordings. Then, they were leaked to the press.⁴ Each of these disclosures undermines our ability to assess the candor of witnesses in our investigation and thus obstructs it. Moreover, your decision to immediately disclose the recordings to those you are investigating creates at least the appearance, if not more, that your inquiry is not sufficiently objective and independent.

It appears that you did not consider the significant harm that providing these recordings to the very individuals under investigation could cause to either our inquiry or your own. You did not consult with us about the recordings even though the congressional inquiry and reactions to it are discussed at length. The recordings even contain a glib suggestion by an Executive Branch official that a private investigator be used to investigate Members of Congress to make the issue "go away."⁵

Your conclusion that discovery obligations existed once you were in possession of the tapes was premature. Given that the criminal trial of defendants connected to Operation Fast and Furious who were indicted in January 2011 has been postponed until at least next February, it seems unlikely that disclosure would be required at this point. Even if disclosures pursuant to Rule 16 of the Federal Rules of Criminal Procedure might be required at some point in the future, those obligations certainly are not ripe at this early stage.

Therefore, please answer the following questions:

- 1) After obtaining the recordings and realizing that they contained information about misconduct at the USAAZ, why did you not reconsider your decision to provide them directly to the USAAZ?
- 2) What steps, if any, did you take when you provided the recordings to USAAZ to ensure that they wouldn't be further disseminated, either to ATF or to the press?

⁴ Sharyl Attkisson, *Secret recordings raise new questions in ATF 'Gunwalker' operation*, CBS News, Sep. 19, 2011, available at http://www.cbsnews.com/8301-31727_162-20108240-10391695.html.

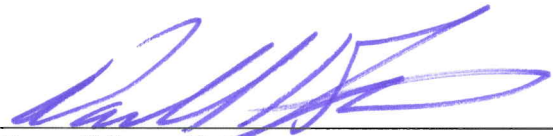
⁵ Audio recording, WS500007, 1:01:20, February 24, 2011.

- 3) How would potential discovery obligations justify the USAAZ providing the tapes to the ATF case agent and numerous other ATF personnel?
- 4) Will you be examining the circumstances of how the recordings made their way from the USAAZ to the ATF to the press as part of your investigation?
- 5) Will the cooperating FFL's allegations of witness tampering or obstruction of the Congressional inquiry by USAAZ personnel be a part of your investigation?

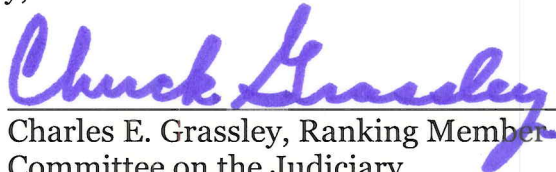
We look forward to your prompt answers on these matters. Furthermore, we request that in the future you notify us immediately if you obtain evidence of obstruction of a congressional inquiry.

Please respond as soon as possible, but by no later than September 26, 2011. Should you have any questions regarding the issues we have raised, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to your response.

Sincerely,



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



Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

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

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