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IG REPORT: THE DEPARTMENT OF JUSTICE'S OFFICE OF THE INSPECTOR GENERAL EXAMINES THE FAILURES OF OPERATION FAST AND FURIOUS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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IG REPORT: THE DEPARTMENT OF JUSTICE'S OFFICE OF THE INSPECTOR GENERAL EXAMINES THE FAILURES OF OPERATION FAST AND FURIOUS

Thursday, September 20, 2012,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 9:36 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Burton, Platts, Chaffetz, Walberg, Lankford, Amash, Gosar, Labrador, Meehan, DesJarlais, Gowdy, Ross, Farenthold, Kelly, Cummings, Towns, Maloney, Norton, Kucinich, Clay, Lynch, Connolly, Quigley, Davis, Braley, and Murphy.

Also Present: Representatives Adams and Barber.

Staff Present: Ali Ahmad, Majority Communications Advisor; Robert Borden, Majority General Counsel; Molly Boyl, Majority Parliamentarian; Lawrence J. Brady, Majority Staff Director; Sharon Casey, Majority Senior Assistant Clerk; Steve Castor, Majority Chief Counsel, Investigations; John Cuaderes, Majority Deputy Staff Director; Carlton Davis, Majority Counsel; Jessica L. Donlon, Majority Counsel; Kate Dunbar, Majority Legislative Assistant; Linda Good, Majority Chief Clerk; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Henry J. Kerner, Majority Senior Counsel for Investigations; Beverly Britton Fraser, Minority Counsel; Kevin Corbin, Minority Deputy Clerk; Ashley Etienne, Minority Director of Communications; Susanne Sachsman Grooms, Minority Chief Counsel; Devon Hill, Minority Staff Assistant; Carla Hultberg, Minority Chief Clerk; Adam Koshkin, Minority Staff Assistant; Una Lee, Minority Counsel; Dave Rapallo, Minority Staff Director; Donald Sherman, Minority Counsel; and Carlos Uriarte, Minority Counsel.

Chairman ISSA. The Committee will come to order.

The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. It is our job to work

tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is our mission.

Today we are dealing with exactly that kind of a situation. The IG's report, issued yesterday, began with watchdogs and whistleblowers making us aware of a fatally flawed operation known as Fast and Furious.

Before I begin with my opening statement in earnest, I want to first take time to thank Mr. Horowitz. On behalf of the Committee on Oversight and Government Reform, I want to congratulate him on, in fact, delivering an extremely comprehensive, strong, and independent report.

Mr. Horowitz is not new to the Department, but he is new to this job, and, as inspector general, a Senate-confirmed nomination of March 29th; and when you were sworn in on August 16th we all asked the question can you pick up and do this kind of a job on such a monumental task that had already languished for a period of time before your entrance. Yesterday you proved to both sides of the aisle that you could, and I want to personally thank you.

I note that, in fact, IGs serve a purpose that, in fact, we do not get and have not gotten from any administration. If not for the 74 IGs and the 12,000 men and women that work for them, the level of transparency, accountability over waste, fraud, abuse of power, abuse of discretion, and the like would not be possible. This Committee, more than any other in the Congress, relies on their work, and yesterday we were not disappointed.

The 471-page report released yesterday is a huge step forward toward restoring the public faith in the Department of Justice. I was impressed with the professionalism and thoroughness and scope of the report. I know, having been, only the day before, with Brian Terry's family in Arizona, where we dedicated the Border Patrol station he worked out of before his untimely murder in 2010, that they too undoubtedly were impressed that a great deal of the closure they wanted by responsible parties at all levels was met yesterday.

The conclusions after 19 months of hard work, of course, are greater than some would want and fall short of what others would want. They cannot, by definition, bring complete closure because even the IG, in his report, still has some questions. There were some individuals and some documents that are not yet available. But like any document, you have to, at some point, cut it off, come as you are and bring what you have. I think this was the appropriate time. I am particularly pleased that we waited an additional week to allow for materials that otherwise might not have been in the report.

This Committee has had a difficult relationship with Justice, much of it because the attorney general, no matter how many times we asked, no matter how many times we subpoenaed, no matter how many meetings our staff had, were unable to get a level of cooperation necessary even to the information that the IG received. I hope in the next Congress, whoever sits in my chair will face an administration that understands that openness to Congress, openness to the Freedom of Information Act, and particularly

openness to the inspector general's offices is critical if the American people are to have confidence in their government.

Much of what is in the report, but not the main subject of the report, has to do with the February 4th, 2011, letter in which, admittedly now, Justice Department falsely stated that in Operation Fast and Furious guns did not walk. As I have often said since that time, the only way that statement could be true is if you believed, for guns to walk, they had to have legs.

Operation Fast and Furious is a poster child for what you don't do with deadly weapons. You don't lose track of them. You don't allow more and more and more of them to go while, in fact, you're already seeing the effects of those weapons killing people in Mexico. And let's make no mistake, weapons had already been found at deadly scenes of crimes in Mexico before Fast and Furious shut down. Only the tragic loss of Brian A. Terry brought an end to Fast and Furious.

Although this report will not bring a complete end to the need for us to work with Justice to bring genuine reform to their process, it goes a long way towards that. I will particularly note that I am pleased that in some cases the executive privilege, invalidly claimed by the President of the United States, was not asserted in this discovery. Some materials contained in this report do help us because they are in fact many of the items that we wish we had received, in some cases were told we received, but in fact we later found were provided to the IG and not to us.

The conclusions in any report by an IG are in fact respectful and less than conclusions as to what management must do. But already since yesterday two top individuals whose time to resign had come, 14, 16, 18, 19 months ago, resigned. We expect that all 14 would find a way to find appropriate new occupations, ones in which their poor judgment, or lack of dedication, or unwillingness to actually read documents they were required to read would not be held accountable.

There is no place in our government for people who, under statute, are required to do something and then say I didn't do it, but I didn't need to do it because somebody else did it below me. That is exactly why Congress puts in place a number of safeguards at what level things such as wiretaps can be authorized.

For the American people who know that ultimately a wiretap application is trusted by a judge, in most cases, who grants it, the only protection for the American people is in fact knowing that there are safeguards in the application; that an agent or an individual simply can't tap your phone by running up an application. The very safeguards that failed in Fast and Furious to know what was already known and that wiretaps would tell you in no uncertain terms that guns were walking, that same lack of safeguards could also cause anyone to see their phone tapped when in fact it should not be under the law.

So I look at the protections not granted to safeguard against a fatally flawed tactic like Fast and Furious, but I look at it to know, as the IG noted in his report, that there need to be material changes in controls in how wiretap applications go through a process for approval.

Now, over the next several hours we will hear an awful lot from our witness, and I rely on our questions to be germane to our witness's 471-page report. I believe that, in fact, given an opportunity to have fair question and answer, we will understand, first of all, why Jason Weinstein resigned yesterday, why Kenneth Melson retired yesterday, and why there is much work to be done to reform the Department of Justice and the Alcohol, Tobacco, and Firearms Agency in order for the American people and, I might note, the people of Mexico to have confidence in this Government.

Lastly, nothing in this report vindicates anyone. If you touched, looked, could have touched, could have looked, could have asked for information that could have caused you to intervene, to complain, to worry, to talk to people and you didn't, and you are in our Government, or even if you aren't in our Government but were aware of it, you fell short of your responsibility. We all have a responsibility to protect against firearms ending up in the hands of dangerous criminals.

With that I want to thank, again, our IG for being here today, and I yield to Mr. Cummings for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and I thank you for calling this hearing.

Let me welcome our witness, Mr. Horowitz, and to thank you and your staff, everybody from the clerk to you. I want to make it very, very clear I join the Chairman in expressing our appreciation. It is a thorough report. Your staff has done an outstanding job. I know that they missed a lot of vacation days and missed time with their families, but I want them to understand that we truly, truly appreciate not only their work, but the excellent way in which they did it, and I hope they are listening, and thank you again.

Your office has worked for more than a year and a half on this investigation. They reviewed more than 100,000 pages of documents and interviewed 130 witnesses in compiling this very comprehensive report. They did it under the microscope of a highly politicized environment in which public accusations were sometimes made before the search for evidence even began. It was a difficult task, but he and you and your office did an admirable job and, again, we thank you.

In my opinion, one of the most important things we can do here today is recognize the service of Border Patrol Agent Brian Terry, who gave his life for his Country. Although it cannot truly offer any solace to his family, I hope this report provides at least some of the answers they have been searching for since Agent Terry's murder.

Let me next commend Chairman Issa. We have had many disagreements about how this investigation should proceed, but the fact is that the Committee uncovered a severe problem that was festering since 2006 in the Phoenix office of ATF and the U.S. Attorney's Office in Arizona that allowed criminals in Mexico and the United States to obtain hundreds of guns. This Committee played an important role in exposing and halting these flawed operations.

I also want to commend the attorney general. I have lost count of how many times he has testified on this issue, but he has remained evenhanded, respectful, and always true to the daunting and critical mission of the department he leads. He requested this

IG investigation and he has already put numerous reforms in place.

To that end, I note that the Administration did not assert executive privilege over any part of the inspector general's report over any of the documents relied on by the inspector general. In fact, the Department went a step further: yesterday, it sent to this Committee more than 300 pages of additional documents that were withheld previously.

I think this is a positive development. I have always believed, and I continue to believe, that the Committee and the Department can resolve any lingering issues without further conflict. With this action by the Department, I urge the Committee to reconsider its position and settle the remnants of this dispute without resorting to unnecessary and costly litigation that nobody in this Country wants.

With that, let me turn to the report in order to highlight several key points and raise some very specific questions.

There can no longer be any doubt that gun-walking began under the Bush Administration. The IG report goes into great detail about Operation Wide Receiver and it finds that ATF agents simply let guns walk. It also finds that wiretap affidavits in Operation Wide Receiver contained just as much detail as those in Fast and Furious. The IG report concludes, "These tactics were used by ATF more than three years before Operation Fast and Furious was initiated."

There can also no longer be any doubt that gun-walking was never authorized or approved by the attorney general or senior Department officials, especially as some sort of top-down scheme or conspiracy against the Second Amendment. The IG report found that gun-walking "was primarily the result of tactical and strategic decisions by agents and prosecutors."

As the IG says in his written testimony for today's hearing, ATF and the U.S. Attorney's Office in Arizona "share equal responsibility for the strategic and operational failures in Operations Wide Receiver and Fast and Furious."

With these points in mind, I have two broad questions, Mr. Horowitz, which I hope you will address. First, how could this tactic have been used for so long, over the course of five years and two administrations, without the ATF field office in Phoenix or the U.S. Attorney's Office in Arizona stepping in to halt it? What allowed it to go on for so long unchecked?

Second, what should we do now to ensure that this never ever happens again? I know the IG has made his recommendations, and I have also made my own. Which of these recommendations have ATF and the Department already implemented? Which should be prioritized? And which may require legislation?

Again, Mr. Horowitz, I thank you again, and your staff, for an excellent job.

With that, Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

I now ask unanimous consent that the gentleman from Arizona, Mr. Barber, be allowed to participate in today's hearing. Without objection, so ordered.

I also would reserve the right to waive additional members in, as they arrive. Pursuant to our rules, members sitting on the dais will be recognized only after all other individuals on their side of the aisle have previously been recognized on a back-and-forth basis.

With that, I also would like to thank Mr. Barber for making the effort to be there for the Brian Terry naming and for representing that area of Arizona that I think is so affected by Fast and Furious.

Pursuant to the rules, all witnesses before this Committee will be sworn, so I would ask that our witness please rise to take the oath. Please raise your right hand.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witness responds in the affirmative.]

Chairman ISSA. With that, the record will recognize that Mr. Horowitz answered in the affirmative.

General, we normally talk a lot about the five minutes. Take the time you need to give us your opening, recognizing that it will be a long day of additional opportunities for you to answer questions not in your opening. With that, the gentleman is recognized.

STATEMENT OF THE HONORABLE MICHAEL E. HOROWITZ

Mr. HOROWITZ. Thank you, Mr. Chairman. I ask that my full statement be made a part of the record.

Chairman ISSA. Without objection, so ordered.

Mr. HOROWITZ. And I have pared that down somewhat, so that I don't go on for 20 or 30 minutes, and I will try to stick to the five minutes, certainly.

Good morning, and thank you to the members of the Committee for inviting me to testify today about our report, a report that we released yesterday which details a pattern of serious failures in both ATF's and the U.S. Attorney's Office's handling of the investigations in Fast and Furious and Wide Receiver, and the Justice Department's response to congressional inquiries about those flawed operations.

This is my first opportunity to testify before the Congress since I was sworn in five months ago, and it is an honor to be here today.

During the confirmation process, I made a commitment to the Congress and to the American people that I would continue the strong tradition of my office for independence, nonpartisanship, impartiality, and fairness. Those are the standards that I and my office applied in conducting this review and in preparing this report.

As in all of our work, we abided by one bedrock principle: to follow the facts and the evidence wherever they led. And as indicated previously, this report could not have been done without the extraordinary dedication of the staff and the employees in my office; they worked long nights, weekends, through vacations, and I couldn't thank them enough, and I appreciate the Committee's thanking them for their hard work.

As indicated, we reviewed over 100,000 pages of documents here. We interviewed over 130 witnesses, many on multiple occasions. The witnesses we interviewed served at all levels of the Department, from the current and the former attorneys general to the line agents in Arizona who handled the investigations. Very few wit-

nesses refused our request to be interviewed, and where they did refuse we noted those in the report. The Justice Department provided us with access to the documents we requested, including documents from post-February 4th concerning the Department's response to the congressional inquiries.

We operated with complete and total independence in our search for the truth, and the decision about what to cover in this report and the conclusions that we reached were made by us and our office, and by no one else.

I am pleased that we have been able to put forward to the Congress and to the American people a full and complete recitation of the facts that we found and the conclusions that we reached, with minimal redactions by the Department to our report. The Administration made no redactions for executive privilege, even though our report evaluates in detail and reaches conclusions about the Department's post-February 4th actions in responding to Congress.

Additionally, at our request, the Department has agreed to seek court authorization to un-redact as much of the wiretap information that we included in this report as possible. If the court agrees to the Department's request, we will shortly issue a revised version of the report with that material un-redacted.

The investigation that became known as Operation Fast and Furious began on October 31, 2009. By the time the indictment was announced on January 25th, 2011, over a year later, ATF agents had identified more than 40 people connected to a trafficking conspiracy that was responsible for purchasing over 2,000 firearms for approximately $1.5 million in cash. Yet, ATF agents seized only about 100 of those firearms that had been purchased.

Numerous firearms that had been bought by straw purchasers were recovered by law enforcement officials at crime scenes in Mexico and in the United States. One such recovery occurred on December 14th, 2010, in connection with the tragic shooting death of a federal law enforcement agent, U.S. Customs and Border Protection Agent Brian Terry. Shortly thereafter, the flaws in Operation Fast and Furious became known as a result of the willingness of a few ATF agents to come forward and tell what they knew about it, and as a result of the conduct of the investigation by the Congress.

On February 28th, the attorney general requested my office to conduct a review of Operation Fast and Furious, and we agreed to do so. During the course of your review, we received information about other ATF firearm trafficking investigations that raised serious questions about how they were conducted. Our report reviews one of them, Operation Wide Receiver.

We conducted that both Operation Wide Receiver and Operation Fast and Furious were seriously flawed and supervised irresponsibly by ATF's Phoenix Field Division, by the U.S. Attorney's Office, and by the ATF Headquarters, most significantly in their failure to adequately consider the risk to the public safety in the United State and Mexico.

Both investigations sought to identify the higher reaches of firearms trafficking networks by deferring any overt law enforcement action against the individual straw purchasers, such as making ar-

rests or seizing firearms, even when there was sufficient evidence to do so.

The risk to the public's safety was immediately evident in both investigations. Almost from the outset of each case, ATF agents learned that the purchases were being financed by violent Mexican drug trafficking organizations and that firearms were destined for Mexico. Yet, in Operation Fast and Furious, we found that no one responsible for the case, either at the Phoenix Field Division or at ATF's Headquarters or in the U.S. Attorney's Office, raised a serious question or concern about the government not taking earlier measures to disrupt a firearm trafficking operation that continued to purchase firearms with impunity for many months.

We also did not find any persuasive evidence that supervisors in Phoenix, at the U.S. Attorney's Office, or at ATF Headquarters raised serious questions or concerns about the risks to the public safety posed by the continuing firearm purchases or by the delay in arresting individuals who were engaged in the trafficking activity. This failure, we found, reflected a significant lack of oversight and urgency by both ATF and the U.S. Attorney's Office, and a disregard by both for the safety of individuals in the United States and in Mexico.

Our review revealed a series of misguided strategies, tactics, errors in judgments, and management failures that permeated ATF headquarters and the Phoenix Field Division, as well as the U.S. Attorney's Office and the headquarters of the Department of Justice. In the course of our review, we identified individuals ranging from line agents and prosecutors in Arizona, to senior ATF officials in Washington, D.C. who bore a share of responsibility for ATF's knowing failures in both of these operations to interdict firearms illegally destined for Mexico and for pursuing this risky strategy without adequately taking into account the significant danger to public safety that it created. We also found failures by Department officials related to these matters, including failing to respond accurately to a congressional inquiry about them.

Based on our findings, we made six recommendations designed to increase the Department's involvement in and oversight of ATF's operations, to improve coordination among the Department's law enforcement components, and to enhance the Department's wiretap application review and authorization process. The inspector general's office intends to closely monitor the Department's progress in implementing these recommendations.

Finally, we recommended that the Department review the conduct and performance of the Department personnel that are referenced in the report and determine whether discipline or other administrative action with regard to each of them is appropriate.

Thank you again for the opportunity to be here, and I look forward to answering any questions that the Committee may have.

[Prepared statement of Mr. Horowitz follows:]

Good morning Mr. Chairman, Ranking Member Cummings, and Members of the Committee,

I appreciate having the opportunity to appear before you today to testify about the findings of my Office's report into ATF's Operation Fast and Furious and related matters, a report that details a pattern of serious failures in both ATF's and the U.S. Attorney's Office's handling of the investigations and the Department of Justice's response to Congressional inquiries about those flawed operations. This is my first opportunity to testify before the Congress since I was sworn in as the Department of Justice's Inspector General just five months ago.

During the confirmation process, I made a commitment to the Congress and the American people that I would continue the strong tradition of the Office of the Inspector General for independence, nonpartisanship, impartiality, and fairness. Those are the standards that I and the Office of the Inspector General applied in conducting the review of Operation Fast and Furious and related matters, and in preparing this report. As in all our work, we abided by one bedrock principle – to follow the facts and the evidence wherever they lead.

Methodology

As the report indicates, we reviewed over 100,000 documents and interviewed over 130 witnesses, many on multiple occasions. We decided what documents to request, and what interviews to conduct. The witnesses we interviewed served at all levels of the Department, ranging from the current and former Attorneys General, to the line agents serving in the field offices in Phoenix and Tucson, Arizona. Very few witnesses refused our request to be interviewed, and we have noted those instances in our report. The Justice Department provided us with access to the documents we requested, including post-February 4 material concerning the Department's representations to Congress.

We operated with complete and total independence in our search for the truth, and the decision about what to cover in this report and the conclusions that we reached were made by me and my Office, and by no one else.

I am pleased that we have been able to put forward to the Congress and the American people a full and complete recitation of the facts that we found, and the conclusions that we reached, with minimal redactions by the

Department to our report. The Administration made no redactions for Executive Privilege, even though our report evaluates in detail and reaches conclusions about the Department's post-February 4 actions in responding to Congress. Additionally, at our request, the Department has agreed to seek court authorization to unredact as much of the wiretap information as possible (consistent with privacy and ongoing law enforcement interests). If the court agrees to the Department's request, we will shortly issue a revised version of the report with this material unredacted.

Let me now turn to the substantive findings in our report.

Background

On October 31, 2009, special agents working in the Phoenix office of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) received information from a local gun store about the recent purchases of multiple AK-47 style rifles by four individuals. Agents began investigating the purchases and soon came to believe that the individuals were so-called "straw purchasers" involved in a large-scale gun trafficking organization responsible for buying guns for transport to violent Mexican drug trafficking organizations. This investigation was later named "Operation Fast and Furious."

By the time ATF and the U.S. Attorney's Office for the District of Arizona (U.S. Attorney's Office) publicly announced the indictment in the case on January 25, 2011, ATF agents had identified more than 40 subjects believed to be connected to a trafficking conspiracy responsible for purchasing over 2,000 firearms for approximately $1.5 million in cash. The vast majority of the firearms purchased by Operation Fast and Furious subjects were AK-47 style rifles and FN Herstal 5.7 caliber pistols. During the course of the investigation, ATF agents seized only about 100 of the firearms purchased, the result of a strategy jointly pursued by ATF and the U.S. Attorney's Office that deferred taking overt enforcement action against the individual straw purchasers while seeking to build a case against the leaders of the organization.

Numerous firearms bought by straw purchasers were later recovered by law enforcement officials at crime scenes in Mexico and the United States. One such recovery occurred in connection with the tragic shooting death of a federal law enforcement agent, U.S. Customs and Border Protection Agent Brian Terry. On January 16, 2010, one of the straw purchasers, Jaime Avila, purchased three AK-47 style rifles from a Phoenix-area gun store. ATF agents

learned about that purchase 3 days later and, consistent with the investigative strategy in the case, made no effort to locate Avila or seize the rifles even though ATF had identified Avila as a suspect in November 2009. Two of the three rifles purchased by Avila on January 16 were recovered 11 months later at the scene of the murder of Agent Terry, who was shot and killed on December 14, 2010, as he tried to arrest persons believed to be illegally entering the United States.

The next day, and in response to Agent Terry's murder, ATF agents arrested Avila. Several weeks later, on January 19, 2011, the U.S. Attorney's Office indicted 20 Operation Fast and Furious straw purchasers and gun traffickers. As of September 1, 2012, 14 defendants, including Avila, have entered guilty pleas to one or more counts of the indictment.

The flaws in Operation Fast and Furious became widely publicized as a result of the willingness of a few ATF agents to publicly report what they knew about it, and the conduct of the investigation became the subject of a Congressional inquiry. On January 27, 2011, Senator Charles E. Grassley wrote to ATF Acting Director Kenneth Melson that the Senate Judiciary Committee had received allegations that ATF had "sanctioned the sale of hundreds of assault weapons to suspected straw purchasers," who then transported the firearms throughout the southwest border area and into Mexico. On February 4, 2011, the Department of Justice (Department) responded in writing by denying the allegations and asserting that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." However, after examining how Operation Fast and Furious and other ATF firearms trafficking investigations were conducted, the Department withdrew the February 4 letter on December 2, 2011, because it contained "inaccuracies."

Also on January 27, 2011, Senator Grassley's staff brought the allegations of one ATF agent to the attention of the Office of the Inspector General (OIG). We interviewed the agent and began a preliminary inquiry into the matter. On February 28, 2011, Attorney General Eric Holder requested the OIG to conduct a review of Operation Fast and Furious, and we agreed to conduct the review.

During the course of our review we received information about other ATF firearms trafficking investigations that raised questions about how those investigations were conducted. Our investigation included a review of one of

them, Operation Wide Receiver, which was conducted by the Tucson office of ATF's Phoenix Field Division with the assistance of the U.S. Attorney's Office in 2006 and 2007, but which was later prosecuted by the Department's Criminal Division.

Findings

- **ATF and the U.S. Attorney's Office Share Equal Responsibility for the Strategic and Operational Failures in Operations Wide Receiver and Fast and Furious**

    - **The Failure to Adequately Consider Public Safety and the Lack of Sufficient Controls**

We concluded that both Operation Wide Receiver and Operation Fast and Furious were seriously flawed and supervised irresponsibly by ATF's Phoenix Field Division and the U.S. Attorney's Office, most significantly in their failure to adequately consider the risk to the public safety in the United States and Mexico. Both investigations sought to identify the higher reaches of firearms trafficking networks by deferring any overt law enforcement action against the individual straw purchasers – such as making arrests or seizing firearms – even when there was sufficient evidence to do so. The risk to public safety was immediately evident in both investigations. Almost from the outset of each case, ATF agents learned that the purchases were financed by violent Mexican drug trafficking organizations and that the firearms were destined for Mexico.

Yet, in Operation Fast and Furious, we found that no one responsible for the case at either the ATF Phoenix Field Division or the U.S. Attorney's Office raised a serious question or concern about the government not taking earlier measures to disrupt a trafficking operation that continued to purchase firearms with impunity for many months. We also did not find persuasive evidence that any supervisor in Phoenix, at either the U.S. Attorney's Office or ATF, raised serious questions or concerns about the risk to public safety posed by the continuing firearms purchases or by the delay in arresting individuals who were engaging in the trafficking. This failure reflected a significant lack of oversight and urgency by both ATF and the U.S. Attorney's Office, and a disregard by both for the safety of individuals in the United States and Mexico.

In addition to the sheer volume of firearms purchasing activity in both investigations, the challenges agents faced in conducting surveillance should

have called into question the wisdom of a longer-term approach whose success was dependent on being able to observe how the firearms were crossing into Mexico and to know what happened to them once they got there. We believe the limitations and the ineffectiveness of the surveillance should have prompted ATF and U.S. Attorney's Office personnel responsible for conducting and supervising the case to assess whether they could responsibly conduct investigations as large and ambitious as Operations Wide Receiver and Fast and Furious.

- **The Inappropriate Use of Cooperating Federal Firearms Licensees to Advance the Investigations**

Agents in Operation Wide Receiver and Operation Fast and Furious used the substantial cooperation of Federal Firearms Licensees (FFL) to advance the investigations. The relationships with the FFLs in these two investigations created at least the appearance that ATF agents approved or encouraged sales of firearms that they knew were unlawful and that they did not intend to seize. In Operation Wide Receiver, agents clearly sanctioned the unlawful sale of firearms because the FFL was a paid ATF informant; in Operation Fast and Furious, we found that agents emphasized to the cooperating FFLs the value of their cooperation and sought additional cooperation that could be satisfied only by completing sales, at least giving the impression to these FFLs that ATF wanted the sales to continue. We also believe that, while there may be circumstances where the government can appropriately seek the cooperation of an FFL, there is a potential conflict between the ATF's regulatory and criminal law enforcement functions with respect to FFLs when the ATF seeks their ongoing and extensive assistance in an investigation.

- **Issues Regarding Coordination with Other Law Enforcement Agencies in Operation Fast and Furious**

In Operation Fast and Furious, ATF missed an early opportunity to advance the investigation when it failed to exploit information provided by the DEA in December 2009 that may have led to the identification of a significant individual connected to its investigation. Among other things, ATF failed to conduct a potentially important surveillance because it did not have enough agents available to staff a surveillance operation due to the approaching holidays. ATF would later learn that this individual was a subject of an unrelated joint FBI-DEA investigation. We also found instances where ATF

resisted efforts by ICE to conduct independent or coordinated investigations even though ATF had insufficient resources to handle such a large case and ICE has primary jurisdiction over export violations involving munitions and firearms.

- **Former Attorney General Mukasey Was Not Made Aware That ATF Had Allowed Guns to "Walk" in Operation Wide Receiver or Any Other Investigation**

Former Attorney General Mukasey became Attorney General after investigative activity in Operation Wide Receiver was concluded. We found no evidence that he was informed that ATF, in connection with Operation Wide Receiver, was allowing or had allowed firearms to "walk." We found that Mukasey was briefed on ATF's attempts to use controlled deliveries – a law enforcement technique that witnesses told us differs significantly from "walking" in that it involves the delivery of contraband under surveillance or other control by law enforcement agents, with arrests and interdictions at the point of transfer – in a different ATF firearms trafficking investigation involving a lead subject named Fidel Hernandez. While the briefing paper mentioned that ATF's attempts to conduct controlled deliveries had been unsuccessful, we found no basis to conclude that this briefing put Mukasey on notice of Operation Wide Receiver or of "walking" as a tactic employed in ATF investigations.

- **The Wiretap Applications Submitted to the Department's Criminal Division in Operation Wide Receiver and Operation Fast and Furious Contained "Red Flags" Regarding the Conduct of the Investigations**

We reviewed all 14 wiretap affidavits in both Operation Wide Receiver and Operation Fast and Furious and concluded that the affidavits in both cases included information that would have caused a prosecutor who was focused on the question of investigative tactics, particularly one who was already sensitive to the issue of gun walking, to have questions about ATF's conduct of the investigations. However, during our review we found no evidence that any of the 5 Deputy Assistant Attorneys General (DAAG) who reviewed the 14 wiretap applications in connection with Operations Wide Receiver and Fast and Furious identified any issues or raised any concerns about the information contained in the applications. In light of the explicit statutory assignment of responsibility for authorizing wiretap applications, we were concerned by the statements of the three DAAGs we interviewed that they did not regularly

review wiretap applications, instead relying on summary memoranda they received. Our report recommends that DAAGs should be required to conduct a review of wiretap applications and affidavits that is sufficient to enable them to form a personal judgment that the application meets the statutory criteria.

We further found that given DAAG Weinstein's discovery in March and April 2010 of "gun walking" issues in Operation Wide Receiver, coupled with the information he learned about Operation Fast and Furious in April and May 2010, his review of the first cover memorandum to the wiretap application and affidavit that he received in Operation Fast and Furious in May 2010 should have caused him to read the affidavit and ask questions about the operational details of Operation Fast and Furious.

- **ATF Headquarters' Failure to Provide Meaningful Oversight in Operation Fast and Furious**

We found that Operation Fast and Furious received little or no supervision by ATF Headquarters, despite its connection to a dangerous narcotics cartel in Mexico, the serious risk it created to public safety in the United States and Mexico, and its potential impact on the country's relationship with Mexico. Sufficient information was available to ATF's senior leadership, up to and including Acting Director Melson, about the investigative tactics used and the corresponding risk to public safety, yet ATF leadership repeatedly failed to act in a timely fashion on this information. Further, ATF senior officials ignored warnings about gun walking from their own employees. We determined that, by the first months of 2010, ATF Headquarters' deference to the Phoenix Field Division imperiled the agency's obligation to protect the public. We concluded that ATF's senior leadership should have recognized that its agents were failing to take adequate enforcement action as straw purchasing activity continued at an alarming pace, and should have instituted measures to promptly conclude the case, even if over the objections of its Phoenix Field Division or the U.S. Attorney's Office. We also determined that ATF's senior leadership failed to seek timely closure of the investigation, even after its Deputy Director recognized the need to conclude the investigative phase and asked for an "exit strategy." We found that Deputy Director Hoover and Acting Director Melson did not review the exit strategy until 2011, after the Fast and Furious investigation was publicly announced on January 25, 2011. We concluded that the "exit strategy" that Deputy Director Hoover asked for was never implemented and that the first arrest did not occur until December, immediately after Agent Terry's murder.

- **The Failure by the Department's and ATF's Senior Leadership to Sufficiently Inquire About Operation Fast and Furious After Agent Terry's Shooting**

Senior leadership at both the Department and ATF did little in the immediate aftermath of Agent Terry's shooting to try to learn how two weapons that had been purchased 11 months earlier by a previously-identified subject of Operation Fast and Furious ended up at the murder scene. While ATF Acting Director Melson and ATF Acting Deputy Director Hoover promptly requested information after learning of the connection, and promptly notified the Office of the Deputy Attorney General about the information, they failed to initiate a review of the matter. Similarly, when stories appeared on the Internet alleging that ATF had allowed firearms to "walk" to Mexico and that one of the firearms may have been linked to the death of a federal law enforcement officer, Acting Director Melson expressed concern about ATF employees leaking information and forwarded the matter to ATF Internal Affairs for investigation after being assured by four or five supervisors that the allegation on the Internet was false.

We further concluded that although Attorney General Holder was notified immediately of Agent Terry's shooting and death, he was not told about the connection between the firearms found at the scene of the shooting and Operation Fast and Furious. We determined that Attorney General Holder did not learn of that fact until sometime in 2011, after he received Sen. Grassley's January 27 letter. Senior Department officials were aware of this significant and troubling information by December 17, 2010, but did not believe the information was sufficiently important to alert the Attorney General about it or to make any further inquiry regarding this development. We concluded that an aggressive response to the information was required, including prompt notification of the Attorney General and appropriate inquiry of ATF and the U.S. Attorney's Office. However, we found that senior Department officials who were aware of the information took no action whatsoever.

Had the Department's senior leadership taken immediate action after learning that weapons found at the scene of a federal law enforcement agent's murder were linked to a straw purchaser in an ATF firearms trafficking investigation, the Department likely would have gathered information about Operation Fast and Furious well before it received the inquiry from Sen.

Grassley about the very same issue in late January 2011. The Department, however, did not do so.

- **Attorney General Holder Was Not Made Aware of the Potential Flaws in Operation Fast and Furious Until February 2011**

We found no evidence that Attorney General Holder was informed about Operation Fast and Furious, or learned about the tactics employed by ATF in the investigation, prior to January 31, 2011. We found it troubling that a case of this magnitude, and one that affected Mexico so significantly was not directly briefed to the Attorney General. We would expect such information to come to the Attorney General through the Office of the Deputy Attorney General. However, we found that neither ATF nor the U.S. Attorney's Office sufficiently advised the Office of the Deputy Attorney General about the investigation itself or of any operational concerns regarding the investigation.

- **The Failures in the Department's Responses to Congressional Inquiries**

We concluded, as did the Department, that its February 4, 2011, response letter to Senator Grassley contained inaccuracies, particularly its assertion that ATF "makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." However, we also found that, by March or April 2011, senior Department officials knew or should have known that ATF had not made "every effort to interdict weapons that [had] been purchased illegally and prevent their transportation to Mexico," either in Operation Fast and Furious or other firearms trafficking investigations and therefore the February 4 letter contained inaccuracies.

  - **The Department's February 4 Letter Contained Inaccuracies Due to a Significantly Flawed Drafting Process**

We found that a poorly executed information gathering and drafting process, as well as questionable judgments by Department officials, contributed to the Department's inclusion of inaccurate information in its February 4 response letter to Senator Grassley. In preparing this letter, Department officials relied on information provided by senior component officials that was not accurate, primarily from U.S. Attorney Burke, ATF Acting Director Melson, and ATF Deputy Director Hoover. These officials failed to exercise appropriate oversight of the investigation, and to some extent were

themselves receiving incorrect or incomplete information from their subordinates about it. These deficiencies contributed substantially to the provision of inaccurate information to Department officials who were responsible for responding to Congressional inquiries.

We further concluded that the Department officials who had a role in drafting the February 4 letter should have done more to inform themselves about the allegations in Sen. Grassley's letter and should not have relied solely on the assurances of senior officials at ATF and the U.S. Attorney's Office that the allegations were false. While the Department should be able to rely on the representations of its senior component officials in responding to Congressional inquiries, we do not believe that the gravity of the allegation in this instance was met with an equally serious effort by the Department to determine whether ATF and the U.S. Attorney's Office had allowed the sale of hundreds of weapons to straw purchasers. This was particularly the case here because the Department knew that hundreds of assault weapons had indeed been sold to straw purchasers during Operation Fast and Furious and that two of those firearms had in fact been found at the scene of Agent Terry's murder. Under these circumstances, we believe that the Department should have independently assessed the facts surrounding the related allegations by Sen. Grassley in late January 2011, rather than relying on ATF's and the U.S. Attorney's Office's assurances that they were baseless.

- **The Failure by AAG Breuer and DAAG Weinstein to Draw a Connection Between the Allegations in Senator Grassley's Letters and Their Knowledge of Operation Wide Receiver**

We also found that a critical deficiency in the Department's knowledge of relevant information resulted from the failure by AAG Breuer and DAAG Weinstein to draw a connection between the allegations in Sen. Grassley's letters and their knowledge of Operation Wide Receiver, an investigation in which ATF employed similarly flawed tactics. At the Department, Breuer, Weinstein, and a few other Criminal Division attorneys knew about Operation Wide Receiver. Additionally, Weinstein knew about Operation Fast and Furious from his discussions with a senior ATF official in April and May 2010 and his review and authorization of three wiretap applications in May and June 2010. Weinstein also was directly and substantially involved in drafting the Department's February 4 response letter to Sen. Grassley.

Breuer testified before Congress on November 1, 2011, that he made mistakes by not telling senior Department leadership about the problems with Operation Wide Receiver when he learned of them in April 2010, and by failing to draw a connection between those problems and the allegations concerning the conduct of Operation Fast and Furious in January and February 2011. We agree with this assessment. Weinstein, by contrast, told the OIG that Operation Wide Receiver "had not come to mind as being possibly relevant to this response" because he believed Sen. Grassley's allegations were limited to Operation Fast and Furious.

- **The Department Knew or Should Have Known by the Date of its May 2 Letter That it Could Not Reaffirm the Accuracy of the Entire February 4 Letter.**

We found that the Department's statement – "It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico" – in its May 2 letter responding to another inquiry from Sen. Grassley reasonably could have been understood by Congress and the public as at least a partial reaffirmation of the Department's February 4 letter. However, we determined that senior Department officials knew or should have known by that date that, while ATF may not have allowed straw purchasers to buy firearms so that they themselves could take the guns to Mexico, ATF had in many instances allowed straw purchasers to buy firearms knowing that a third party would be transporting them to Mexico. Thus, we concluded that the May 2 letter was true only in the most literal sense.

We further concluded that, by the date of its May 2 response letter, senior Department officials responsible for drafting the letter also knew or should have known that ATF had not made "every effort to interdict weapons purchased illegally and prevent their transportation to Mexico," either in Operation Fast and Furious or other firearms trafficking investigations, and that the Department's February 4 letter contained inaccuracies and could no longer be defended in its entirety.

Indeed, we noted that the Department, in its first four responses to Congressional questions following its February 4 letter, appropriately made no substantive comments about the investigation in light of the additional information it had learned and its referral of the matter to the OIG in February. Given that senior Department officials' confidence in the accuracy of the February 4 letter was decreasing rather than increasing as their internal review progressed, we found it troubling that the Department's subsequent May 2

letter to Sen. Grassley included a substantive statement – albeit a qualified one – regarding the Fast and Furious investigation that could have been read to reaffirm the prior questioned letter. We believe that the Department should have continued to refrain from making substantive statements about both the February 4 letter and the Fast and Furious investigation, as it did in its four prior letters to Congress, or state that there were significant concerns about the accuracy of the February 4 letter and that Department officials would not respond to further inquiries until they determined the actual facts.

Similarly, we found that the Department should not have provided testimony on June 15 before the House Committee on Oversight and Governmental Reform in a manner that created ambiguity and uncertainty regarding whether the Department was still defending its February 4 and May 2 letters.

Conclusion

Our review of Operation Fast and Furious and related matters revealed a series of misguided strategies, tactics, errors in judgment, and management failures that permeated ATF Headquarters and the Phoenix Field Division, as well as the U.S. Attorney's Office for the District of Arizona and at the Headquarters of the Department of Justice. In this report, we described deficiencies in two operations conducted in ATF's Phoenix Field Division between 2006 and 2010 – Operation Wide Receiver and Operation Fast and Furious. In the course of our review we identified individuals ranging from line agents and prosecutors in Phoenix and Tucson to senior ATF officials in Washington, D.C., who bore a share of responsibility for ATF's knowing failure in both these operations to interdict firearms illegally destined for Mexico, and for pursuing this risky strategy without adequately taking into account the significant danger to public safety that it created. We also found failures by Department officials related to these matters, including failing to respond accurately to a Congressional inquiry about them.

Based on our findings, we made six recommendations designed to increase the Department's involvement in and oversight of ATF operations, improve coordination among the Department's law enforcement components, and enhance the Department's wiretap application review and authorization process. The OIG intends to closely monitor the Department's progress in implementing these recommendations.

Finally, we recommend that the Department review the conduct and performance of the Department personnel as described in this report and determine whether discipline or other administrative action with regard to each of them is appropriate.

Chairman ISSA. Thank you, Mr. Horowitz.

I will now recognize myself for a few questions.

You were given a great deal of access in order to do this, over 100,000 pages. Would you characterize—I realize you didn't look at every page every day, but would you characterize were all 100,000 pages ones that you would have made available to this Committee were you deciding to have us see those documents? As you know, we received less than 8,000 pages.

Mr. HOROWITZ. Well, as we went through, personally, I didn't obviously go through myself the 100,000-plus pages.

Chairman ISSA. I will ask it in reverse, maybe; it is probably better. Do you know of pages that you saw that Congress should, for good cause, be denied?

Mr. HOROWITZ. Every document we asked for and reviewed and cited in this report we found to be relevant and important. In fact, we don't cite in this report every single relevant document; we obviously had to pick and choose. So certainly what we have seen and we asked for and saw we determined was relevant.

Chairman ISSA. So it would be fair to say the documents from post-February 4th which you evaluated, saw, and helped you prepare this report in which executive privilege was not claimed, were relevant, you used them, and they should have been provided to Congress in the ordinary course. They are being provided indirectly at this time.

Mr. HOROWITZ. We certainly found they were relevant, which is why we insisted on reporting on them, Mr. Chairman.

Chairman ISSA. Now, there were a number of people you didn't get to speak to. I will note, I guess, Mr. Cunningham spoke to you and then later would not speak to you. Mr. Horowitz, can you tell us a little bit about your efforts to try to interview Kevin O'Reilly, a member of the National Security Team?

Mr. HOROWITZ. We reached out to his lawyer, requested an interview. We have no basis to compel interviews from individuals who are outside the Department of Justice. He does not work in the Department of Justice, so we had to ask for a voluntary interview. His lawyer told us he would not appear voluntarily.

Chairman ISSA. Would it surprise you that he has been in Afghanistan and we have been denied even the ability to serve a subpoena on him?

Mr. HOROWITZ. I was not aware of where he was, but I was told by his lawyer——

Chairman ISSA. I am sorry, Iraq. Sorry.

Mr. HOROWITZ. As I said, I don't recall knowing, myself, where he was, but we were told by his counsel he would not appear voluntarily.

Chairman ISSA. Okay. Also, there was a full-time employee of the Department of Homeland Security. Would you explain to us your efforts to interview that individual?

Mr. HOROWITZ. Yes. There was an agent from Department of Homeland Security that was assigned to the operation. As part of our effort to be thorough and interview all people who might have relevant information, we reached out. He, again, is outside the Department of Justice, so he declined our voluntary request to be interviewed by us. We sought, through the Department of Home-

land Security, to speak to him and we understood that, absent being compelled and given immunity, that he would not speak voluntarily, and that was request was declined, is my understanding.

Chairman ISSA. Now, pursuant, and this is outside, I admonished everyone to stay on to this, but I think for this particular case I want to go outside the scope of this somewhat. We are the Committee that will oversee a change in the IG Act, if there is one. In your opinion, if the IG Act had created a mechanism for you to fully vet these requests, even if these were individuals outside of your particular narrow agency, is that something you believe would be helpful, speaking as an IG, for future investigations?

Mr. HOROWITZ. Certainly, we would have used whatever authorities we had to seek testimony from individuals, as we were able to do internally within the Justice Department. So having expanded authority would have certainly allowed us to take additional actions here.

Chairman ISSA. Were you ever made aware why Secretary Napolitano, Department of Homeland Security, was unwilling to have an individual who worked in an OCDETF of such a fatally flawed event, one that killed one of her charges, one of the border patrol that falls under her cabinet position, why she wouldn't insist that that individual speak to you in this investigation?

Mr. HOROWITZ. I don't know, personally, that information, Mr. Chairman.

Chairman ISSA. Okay. Now, one of the two last areas, it has been said by many, mostly on the other side of the aisle, that there is nothing in these wiretap applications that would have caused senior officials to see any red flags as to the reckless tactics.

Now, realizing these documents are not unsealed, would you characterize for us whether you would say, as your report does, and I quote, and I will read this, but I would like you to elaborate, "among the report's other conclusions, your findings that wiretap applications approved by senior officials did contain red flags about reckless tactics who should have acted on this information." And it goes on.

That line, are we to conclude that, in fact, if you read one or more of these 14 wiretap applications, you should have known that guns were walking?

Mr. HOROWITZ. Yes. As we said in the report, and I also, myself, reviewed the 14 applications, believe that if you were focused and looking at the question of gun-walking, you would read these affidavits and see many red flags, in our view.

Chairman ISSA. Okay, I ask unanimous consent for just one more question. Without objection.

In your report there was an area that I focused on a little bit where it implied that Lanny Breuer did not respond or did not acknowledge the February 4th letter. Isn't it true that Lanny Breuer, in fact, answered good job as at least an answer to the February 4th letter, acknowledging that he had received it and obviously made that comment?

Mr. HOROWITZ. That is correct.

Chairman ISSA. And on that day, on February 4th, wasn't he in fact on his way to Mexico City to sell the Mexican government on

what was effectively a gun-walking program coordinated with them?

Mr. HOROWITZ. Well, my understanding is he was actually in Mexico and my understanding was that he had raised the possibility of some program involving cross-border cooperation about gun trafficking activity, but, frankly, I don't have more knowledge than that at this point.

Chairman ISSA. Thank you.

Recognize the Ranking Member for his questions.

Mr. CUMMINGS. Thank you very much.

Mr. Horowitz, I want to walk through some quick points with you and then ask you to respond in more detail to some broader questions. You examined Operation Wide Receiver, which was during the Bush Administration, and Operation Fast and Furious, which was during this Administration, is that correct?

Mr. HOROWITZ. Correct. We looked at both of those matters.

Mr. CUMMINGS. In your report you found that gun-walking occurred in both operations, is that right?

Mr. HOROWITZ. That is correct.

Mr. CUMMINGS. We are not talking only about a botched coordination efforts with Mexico; we are talking about ATF agents stopping surveillance in the United States and letting guns walk in both operations, is that correct?

Mr. HOROWITZ. Correct.

Mr. CUMMINGS. In fact, your report said this, "Operation Wide Receiver was noteworthy because it informed our understanding of how these tactics were used by ATF more than three years before Operation Fast and Furious was initiated." Is that what your report said?

Mr. HOROWITZ. That is.

Mr. CUMMINGS. Now, you also found that neither Attorney General Mukasey nor Attorney General Holder authorized or approved gun-walking, is that right?

Mr. HOROWITZ. That is correct, although I would note Attorney General Mukasey was sworn in after the completion of Operation Wide Receiver's investigative portion of the activity.

Mr. CUMMINGS. You also found that there were wiretap applications in both operations and that the wiretap applications in Wide Receiver included the same kinds of potential red flags you found in Fast and Furious affidavits, is that correct?

Mr. HOROWITZ. We found red flags existing in Wide Receiver as well.

Mr. CUMMINGS. But deputy assistant attorney generals from both administrations did not routinely read these affidavits, according to your report. You interviewed officials from both administrations and they told you their normal practice was to read only summary memos, is that correct?

Mr. HOROWITZ. We interviewed three of the five deputy AGs who reviewed the 14 wiretaps, and all of the three that we interviewed.

Mr. CUMMINGS. I understand. I want you to just tell us what happened.

Mr. HOROWITZ. I don't want to suggest that all three indicated that they did not routinely read the affidavits when they came to them.

Mr. CUMMINGS. I want to make it clear that I believe that we need to, if there is reform, and I think your assistants mentioned this yesterday, and I am sure the Chairman would agree with me, we need to make sure folks read the affidavits. Would you agree?

Mr. HOROWITZ. I agree and I actually formerly was a deputy AG in the Criminal Division, so I have 12 years out of date, but I remember reviewing them.

Mr. CUMMINGS. Now, for both operations you also found that gun-walking was not ordered from the top but, instead, was "primarily the result of tactical and strategic decisions by the agents and prosecutors." Is that right?

Mr. HOROWITZ. That is right.

Mr. CUMMINGS. You said in your testimony that the ATF and U.S. Attorney's Office in Arizona "share equal responsibility for strategic and operational failures in Operations Wide Receiver and Fast and Furious."

So here are my questions, and I think these questions will go to the heart of the reform that I hope that we will be able to get underway.

How could these tactics have continued in Phoenix over a span of five years and two administrations without being stopped either by ATF or the U.S. Attorney's Office in Arizona?

My second question is how should it have worked? And if an ATF agent came to his superiors in Phoenix with this kind of plan today, how should it be examined and vetted now?

Mr. HOROWITZ. Well, as to the first question, I think there were serious lack of controls in place in both the U.S. Attorney's Office and ATF operation, primarily ATF because they are the law enforcement agency that needs approval. We highlighted one of them as an example. Even though ATF, for eight years, has been in the Department of Justice, the attorney general guidelines for use of undercover operations were never amended to cover ATF.

So there were a series of failures in the controls. We have made significant recommendations in that area. The Department and ATF have put in place additional tools and controls already, but there has to be a serious review in vetting of operations like this that impact not only the number of guns in the communities that are impacted by these, but that involve a foreign operation involving guns going to a foreign country. That wasn't there at the time. So there needs to be a serious look at that.

And how to prevent that going forward is watching carefully to make sure, in fact, the reforms we are all talking about aren't lost once the headlines of the report go away; that there is oversight, follow-up by the Inspector General's Office and I am sure by the Congress in this regard.

Mr. CUMMINGS. Just one last question. It seems as if Mr. Melson, who was heading ATF, seems like, from reading the report, seems like he may have fallen asleep at the switch. I mean, from what you saw—again, this is the head of ATF.

Mr. HOROWITZ. Right.

Mr. CUMMINGS. Can you tell us about what your report says about that?

Mr. HOROWITZ. Yes. We found, in Operation Fast and Furious, that there was significant information coming to ATF Head-

quarters. In fact, by March of 2010, the deputy director of ATF, who was an experienced agent and had served in the ATF for a considerable period of time, for the first time in his career asked for an exit strategy because of his concern about what he had seen. He asked for it, it didn't come to headquarters for six weeks, and it wasn't reviewed by the deputy director until almost a year later, after the shooting of Agent Terry and after the indictment occurred.

The fact that the deputy director could see the need for an exit strategy in March of 2010 and not receive it and review it until 2011 I think speaks volumes about what happened here in terms of failures of oversight.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

With that, we recognize the distinguished—oh, with that, I ask unanimous consent the gentlelady from Florida, Mrs. Adams, be allowed to participate in today's hearing. Without objection, so ordered.

With that, we now go to the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you, Mr. Chairman. I appreciate your tenacity in continuing to go after this. We have a dead Border Patrol agent, nearly 2,000 AK–47s released, hundreds of dead Mexicans, a Mexican helicopter shot down at one point, a dead Border Patrol agent, hundreds of guns that are still unaccounted for, untold number of crimes that have been committed with these guns, and an attorney general whose best guess and best argument is a plea of ignorance. So I think Mr. Cummings, the Ranking Member, asked the most salient question: How does this go on for so long without somebody saying something is wrong here?

I have a fundamental problem and challenge with the fact that the acting ATF director, Mr. Melson, is in that position for two years and met with the attorney general one time. One time. That is inexcusable in my book.

I also think what happened, part of the conclusion, I think, validates what we have been concerned about for so long, that the adults in the room, the head of the Criminal Division, is supposed to be Lanny Breuer, but Lanny Breuer, having been briefed on what happened previously, knew about gun-walking, knew about these straw purchases, and said nothing about it. He didn't issue a new edict that says we are not going to do this anymore. In fact, you would be led to believe that by just allowing it to continue on, no new directive, that he was actually endorsing this. That is what I take from it.

I think this is a wonderful report. I appreciate the thoroughness. I think you are a professional and did a great job. I think you were a little soft on Lanny Breuer. To suggest, as you did, on page 314, moreover, Breuer did not supervise Operation Fast and Furious and did not authorize any activities in the investigation I think is, I would disagree with that statement.

Jason Weinstein reported to Lanny Breuer, and as this report clearly highlights, Jason Weinstein is being made as the key person that was probably most responsible here.

I would also point out to my colleagues that on February 4th, 2011, of all the days, the day that we are issued, specific to Senator

Grassley, a letter that was totally false about ATF's activities. By the way, this letter doesn't even mention Fast and Furious, it says that these guns were allowed to walk, that ATF does not allow guns to walk, any way, shape or form. I would point to the February 4th memorandum about the Assistant Attorney General Breuer going to Mexico.

As a synopsis to that, in Mexico, he proposed to the Mexican government, Assistant Attorney General Breuer suggested allowing straw purchases cross into Mexico. We have in black and white a document suggesting that he is not only approving of these types of activities, he is advocating for these types of activities.

So to answer Mr. Cummings' question, it is crystal clear; the head of the Criminal Division was down there pitching the Mexican government that we ought to be doing more of this. That is why it continued, because the person in charge was advocating for it. He knew about it previously. And when he did hear about it, he did nothing about it.

In fact, when that letter, on February 4th, goes out the door, he had seen it and he said nothing about it. And then what is worse is, after the letter goes out, everybody at the Department of Justice knows that it is wrong; it takes 10 months for them to fess up on it. In fact, they issue another letter, in May, again compounding the problem, hiding from the American people and this Congress the truth.

Mr. Chairman, I would also highlight what is said on page 277 by the inspector general: We found that the affidavits described, we are talking about the wiretap applications. We found that the affidavits described specific incidents that would suggest to a prosecutor who was focused on the question of investigative tactics that the ATF was employing a strategy of not interdicting weapons or arresting known straw purchasers.

Nevertheless, June 7th, 2012, the attorney general testifying in the Judiciary Committee, in response to Congressman Quayle, I have looked at these affidavits, I have looked at the summaries; there is nothing in those affidavits, as I reviewed them, that indicates that gun-walking was allowed, a direct contradiction and very different from what the inspector general looked at. I appreciate you seeking the unsealing of these documents so that we can all see them.

Mr. Chairman, I am also concerned that there was a culture and environment where people were either afraid or not willing or didn't want to share with the attorney general key information specific to what we were doing with Mexico, and what I would highlight, and I am running out of time here, the culture and the environment was not conducive to have the truth surface.

It is shocking and troubling to me that we did not, that the Department of Justice never communicated to the senior people at Homeland Security, where one of their agents was dead, and still hasn't, to this day, I have questioned them. The secretary of Homeland Security didn't ask the attorney general what was going on, nor did we ever communicate with the Secretary of the State Department so that she could deal with this situation.

We pour thousands of weapons into Mexico and we never bothered to tell the Secretary of the State? Isn't that her job, role and

responsibility? That is one of the things I think we also have to look at because that is one of the compounding problems that happened along this way, even after we knew all these facts, and still to this day I don't think the Department of Justice ever solved.

Chairman ISSA. Would the inspector general want to answer any implied question there?

Mr. HOROWITZ. No.

Chairman ISSA. Okay, with that we recognize the gentlelady from New York, Mrs. Maloney, for five minutes.

Mrs. MALONEY. First of all, I would like to welcome the IG and note that he is from the great State of New York. We are very proud of you even though you are now a Washingtonian, and congratulations on your public service. We appreciate very much your report.

First of all, on guns. If you were so concerned about guns on the border, then my colleagues could have supported the bills that we put forward, the Democrats, really for gun safety. So, in my opinion, you are not serious. If you were worried about guns at the border, then let's make it a federal crime to traffic guns. Let's make it a crime to forestall vast sales of these guns. Let's ban assault weapons that aren't used to do anything but kill people. They don't kill animals, they just kill people. There are a number of things that we could do right now that would get the guns off of the border.

And the Mexican government supports it. They have asked us to do so. When we came forward with our bills, we got a letter from the president of Mexico saying this is wonderful; that will help guns on the border.

But I would like to do what the Chairman wanted, which is to focus on this excellent report that Mr. Horowitz came out with, and I would like to refer that in December of 2011 our attorney general explained to the House Judiciary Committee that gun-walking and Operation Fast and Furious, I like to call it Vast and Curious, originated with the local Phoenix office of the ATF and the U.S. attorney, and that it was not the result of any strategy or directive from main Justice.

And he said, in May, "I mean, the notion that people in Washington, the leadership of the Department approved the use of those tactics in Fast and Furious is simply incorrect. This was not a top-to-bottom operation; this was a regional operation that was controlled by ATF and by the U.S. Attorney's Office in Phoenix."

Mr. Horowitz, your report reaches a similar conclusion, pointing back to the genesis of these tactics by the field agents and prosecutors in Phoenix, and this is what your report says about Operation Wide Receiver: "In sum, the evidence demonstrated that the decision to not interdict the firearms, despite having probable cause to do so, was a decision made by the ATF Phoenix Field Division and was intended to advance ATF's broader goal of identifying additional participants in the conspiracy."

So my question to you, Mr. Horowitz is, and I believe it is the main question that we have had as a Committee, is how is it that these tactics started? What went wrong? Can you explain what you found in your investigation that would explain how these tactics first started being used in Operation Wide Receiver?

Mr. HOROWITZ. In Operation Wide Receiver, what appears to have occurred is that information came to the agents in the Tucson Office of the Phoenix Field Division and they made a conscious decision to not take any action to stop the trafficking with the straw purchasers because they wanted to follow the guns and figure out to whom they were ultimately going. And that was a decision made early on in the investigation, almost at the outset, and it was done with the acquiescence and approval of the U.S. Attorney's Office. So that is why we found that there was a failure by both offices.

Mrs. MALONEY. And that was the office in Phoenix, right?

Mr. HOROWITZ. Correct, U.S. Attorney's Office for Arizona, for the District of Arizona.

Mrs. MALONEY. Okay. What about the Operation Fast and Furious? Did the agents have bad motives or did they just fail to consider the public risk involved? What were they thinking?

Mr. HOROWITZ. They did not have bad motives as far as we found. What we heard from the agents was they had made a conscious decision that the long-term effort, that having a long-term investigative strategy that dismantled a large organization was the greater good that they were undertaking; to dismantle the organization, stop the trafficking, and that that was what they believed was in the best interest of the public safety.

As we found, that was an incorrect calculation. Law enforcement's primary objective is to protect the public. You can't take action to let guns walk that will harm people for the greater good.

Mrs. MALONEY. What can we do to make sure that this does not happen again?

Mr. HOROWITZ. Well, I think, first and foremost, there needs to be the serious reform and controls we have outlined at ATF. There has to be an internal change in how cases are managed there. There needs to be supervision; there needs to be oversight, and thoughts about investigations like this need to be carefully reviewed at the highest levels of the organization at the outset, not deferred to to the line agent or to their line supervisors. That, to me, is the first and most important effort.

Mrs. MALONEY. So you would say that that is the most important reform that you think the Department could take?

Mr. HOROWITZ. Initially. I think that is a step that is apparent that has to happen. I think there are many other reforms that we have outlined, including, for example, making sure that, at the Department of Justice, in the Criminal Division, deputy AGs are reviewing the wiretap applications when they get them. That is another reform we have put forward. There needs to be clear policies in place within ATF as to what is allowed and what isn't allowed, so that it is not just reviewing and vetting; it is a clear line as to what is or is not permitted.

Chairman ISSA. I thank the gentlelady.

We now recognize the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Inspector General, when I met with you several weeks ago, I left that meeting cautiously optimistic that we would receive a thorough, balanced report, and my optimism was rewarded because of you and your staff. I also shared, in no small part, I am sure,

because of your exemplary service in the Southern District of New York and with the Department of Justice. Your career as a prosecutor gave me that cautious optimism. And I shared with you this was never about politics to me. I don't care which party is in power. It was about a dead Border Patrol agent and holding the institutions of government responsible for what they have done.

And I think it is wonderful, at one level, that we have an independent entity like you to investigate. I just naively thought that is what the Department of Justice was. I naively thought the attorney general, as the top law enforcement official in the Department of Justice, was that independent entity that we could trust. And whether it is the letters in March and February of 2011, whether it is testimony that has been delivered to committees of Congress, sadly, the Department of Justice was not vindicated, despite some of the headlines this morning.

Wiretap applications. I specifically asked the attorney general are you sure that someone reading these wiretap applications and the summaries would not be left with the conclusion that gun-walking was a tactic that was used? And he said yes, he was sure. And your report debunks that. You used to read wiretap applications, correct?

Mr. HOROWITZ. Correct.

Mr. GOWDY. And your conclusion, with that background, is that a reasonably prudent person reading these applications and summaries would have been on notice way back when that the tactic of gun-walking was being used, is that correct?

Mr. HOROWITZ. Yes. For someone who is watching it, looking for it in that context of gun-walking, I agree that they would have seen those red flags.

Mr. GOWDY. That was a startling conclusion that you reached. Another starting fact, I don't want to say it is a conclusion, but a fact that you included in your report, and you correct me if I am mischaracterizing what you wrote, but the attorney general, even today, does not believe that a dead Border Patrol agent from an agency that he doesn't supervise, who was killed by a weapon as part of an investigation of an agency he does supervise is something that should be brought to his attention. Does your report not include a paragraph that even today the attorney general is not sure that this fact pattern should have been brought to his attention?

Mr. HOROWITZ. As we included in the report, the attorney general told us that it would not necessarily be something he would be expected to be notified of. And we are talking about not the death, because he was notified about the death, but about the fact that two firearms were found at the scene that were connected to Operation Fast and Furious.

Mr. GOWDY. Right. But, inspector general, you were a prosecutor, I was a prosecutor, others up here have been prosecutors. When you have a dead law enforcement officer, the next words out of your mouth are I want to know everything there possibly is to know about how this happened. I don't just want to know what the autopsy says; I want to know how we got to this point, which does speak to management, and it does speak to a duty to supervise; not just a commonsensical duty.

I want to ask you specifically about the code of professional responsibility. Is there a duty to supervise, for supervisory attorneys to supervise the work of those underneath him? Not a common law or a commonsensical obligation, but is there a code of professional responsibility obligation to supervise?

Mr. HOROWITZ. I am not sure I could speak directly to the code of professional responsibility in that regard because we were looking at obviously whether there was supervisory failures. We clearly found there was an obligation as part of the performance responsibilities of the agents and the prosecutors to supervise, and the failure to do that was a serious management failure, in our estimation, in our view.

Mr. GOWDY. All right, there are two letters, one in February and one in May, both of which were demonstrably false. You can argue that they were calculated to mislead, but there can be no argument that they were false. They were signed by Ronald Weich, but I guess the largest exception I take to your report is the same one that Mr. Chaffetz had.

Lanny Breuer was the criminal chief. Lanny Breuer was responsible, at some level, for the approval of the wiretap applications. Lanny Breuer forwarded this February 4th letter, which was demonstrably false, to a home computer, and you don't have to be a real good prosecutor to deduce that you forward something to a home computer because you are going to read it.

I can't think of any other reason to forward a letter other than to read it, unless you are a historian or an archivist, and I don't think he is either one of those. And then he confirms our suspicions by writing, good job.

So given the duty to supervise, given the false letters, given the failure to connect the dots, as he said and you concluded, I can't imagine a headline that reads, passengers charged with speeding, driver exonerated. I can't imagine that headline. But, yet, we have DOJ people that were under Lanny Breuer who are either resigning or being disciplined. How does he escape discipline?

Mr. HOROWITZ. As our report outlines, we found that Mr. Breuer, back in April 2010, knew about, learned about the gun-walking tactics in Wide Receiver, and, as we outlined in the report, it was a failure by him to alert the deputy or the attorney general to that, because ATF reports to the deputy, not to him. So it was incumbent upon him, in our view, to report it to the deputy and the attorney general.

And, again, when the letter came in from Senator Grassley nine months later or so, in January 2011, we believed, as he ultimately testified, that he should have alerted the Department to that. Those were two findings we made.

As to what the discipline or decision is as to discipline or administrative or other conduct or other related failures, that is really a decision ultimately under our system to the attorney general. I have authority to investigate, make the findings, which I did, and then it is up to the attorney general to decide what, if any, discipline to impose.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from the District of Columbia, Ms. Norton, for five minutes.

Ms. NORTON. Thank you, Mr. Chairman.

And I especially thank you, Mr. Horowitz, for a very thorough job where you had to dig into a lot of weeds. And I do appreciate the way you connected the dots and drew the lines so that we understood where the responsibility went. My line of questions really go to why this investigation has gone on for so long and why the public was concerned about it.

The face of this investigation, the poster boy, as it were, has been the attorney general of the United States, and the Committee has had hearings where over and over again it was alleged that the gun-walking was known at the highest levels, even by the attorney general, and that this was an approved plan, approved by, to quote from a recent record, at the highest levels of the Obama appointees.

Now, I think it is only fair, when the attorney general, over and over again, has been the face of this investigation, the one held responsible for the gun-walking, to put on the record what you have found with respect to the attorney general of the United States. Now, you have indicated that you received cooperation from the highest levels of the Justice Department in doing your investigation.

Mr. HOROWITZ. Yes. We received the documents that we asked for and, as indicated, other than the handful of individuals who refused to speak with us, we generally were able to speak with everybody we wanted to.

Ms. NORTON. Did you speak with the attorney general of the United States?

Mr. HOROWITZ. We did.

Ms. NORTON. You did not?

Mr. HOROWITZ. We did.

Ms. NORTON. You did. May I ask you did you find any evidence that Attorney General Holder approved of the gun-walking tactics that have been under investigation by this Committee?

Mr. HOROWITZ. As we outlined in the report, we found no evidence that the attorney general was aware, in 2010, before Senator Grassley's letter, of Operation Fast and Furious and the tactics that were associated with it.

Ms. NORTON. So the attorney general cold not have approved because he did not even know about the gun-walking tactics before 2010.

Mr. HOROWITZ. We found no evidence that he had been told in 2010.

Ms. NORTON. Now, let's go to other high levels of the Justice Department. Did you find any evidence that the acting deputy, Gary Grindler, knew or authorized gun-walking?

Mr. HOROWITZ. We found that the acting deputy attorney general was briefed about Operation Fast and Furious in March of 2010, but we concluded, after looking at what that briefing involved, which was item 4 of a 7 item agenda in a 45-minute briefing, that it wasn't a sufficient briefing to put him on notice, directly and expressly, that gun-walking had occurred.

It did, we thought, it was sufficient to trigger questions, but not sufficient to put him on notice. And we were particularly troubled by the fact that he was never briefed again by ATF, when, within

two weeks after that briefing, the deputy director had asked for the exit strategy that I referenced earlier; that no one went back to him to tell him that information.

Ms. NORTON. So this controversy centered in the U.S. Attorney's Office and at the ATF. Your last answer, does that mean that you think they deliberately tried to keep the acting deputy attorney general from knowing about the parts of Fast and Furious that perhaps were most controversial?

Mr. HOROWITZ. We didn't find any evidence of deliberateness. Again, this is a situation where the deputy director of ATF had asked for an exit strategy in March and never looked at it until 2011. So it would be hard to explain what was going on or what people were thinking given that level of failure of oversight.

Ms. NORTON. Mr. Horowitz, to your knowledge, is anyone at the Justice Department looking into perhaps the most important new tool the attorney general, the U.S. attorney could have, a tool that might have been useful to the U.S. attorney in dealing with the gun-walking, or are we left, at the end of this investigation, with gun-walking and whatever else anybody can think of to do something about it?

Is there any work going on in the Justice Department, as a result of your investigation, to give ATF or the U.S. attorney, Arizona here, the kinds of tools that would in fact mean that nobody would even think about a surreptitious way to get at guns like gun-walking and Fast and Furious?

Mr. HOROWITZ. What I have been told about the Department's response to this is, as we have highlighted in the report, are the reforms that are needed within ATF, within the Justice Department's review of wiretaps, within its law enforcement operations generally. Beyond that, I haven't been informed of any additional steps the Department has taken.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Arizona, Mr. Gosar. And I would ask if you would yield for 15 seconds.

Mr. GOSAR. I will.

Chairman ISSA. Following up on the previous two democratic questions, isn't it true that the then chief of staff, when asked if the DAG knew, the deputy attorney general knew, then the attorney general should have been briefed related to what they knew about Fast and Furious and obviously the question of whether Fast and Furious weapons were found at the scene of Brian Terry's murder?

Mr. HOROWITZ. That is correct, and also that is what we found in our report.

Chairman ISSA. Thank you.

Mr. Gosar.

Mr. GOSAR. Thank you, Mr. Horowitz. Thank you. As my previous colleague had said that I grilled you when you came to talk to me, and thank you very, very much for instilling some trust.

In your discovery with witnesses, paperwork, did anyone within your findings, within the DOJ system, raise questions about the truthfulness and possible misleading testimony that was being presented by the attorney general in his testimony to Congress?

Mr. HOROWITZ. No one indicated that in their interviews with——

Mr. GOSAR. Did you directly ask the question?

Mr. HOROWITZ. I would have to go back, frankly, and look at the transcripts.

Mr. GOSAR. We would like you to ask that question. Okay?

In detailing up with Lanny Breuer, it is my understanding that Lanny, or Mr. Breuer, and Wide Receiver closed in 2007, if I am not mistaken.

Mr. HOROWITZ. The investigative activity ended in 2007.

Mr. GOSAR. Right. So we should know something about it. So Mr. Breuer sent members from the Criminal Division to review the auspices and directives of Operation Wide Receiver, true?

Mr. HOROWITZ. Correct.

Mr. GOSAR. Isn't this like having a prior? I am a dentist, but this is like even worse than what Operation Wide Receiver would have been, because you know the outcomes here and you are still permitting it to go. And if I am not mistaken, that is in March of 2010, right?

Mr. HOROWITZ. March and April. I believe it is April of 2010 that the meeting occurs where Mr. Breuer is informed that there is going to be a meeting and his deputy goes to that meeting to discuss gun-walking and Wide Receiver.

Mr. GOSAR. And that is with Mr. Voth, right?

Mr. HOROWITZ. That is with Mr. Hoover, the deputy director.

Mr. GOSAR. Then it gets better.

Mr. HOROWITZ. And the deputy assistant director, McMahon.

Mr. GOSAR. So then it gets even better, because if I am not mistaken, Mr. Voth comes to Washington, D.C. and does a presentation on March of 2010, March 5th, if I am not mistaken. I think Joe Cooley was at that presentation, right, at the direction of Mr. Breuer?

Mr. HOROWITZ. On the March 5th presentation, that is correct.

Mr. GOSAR. So all these pieces are pointing to Mr. Breuer, that he knows about this early on. I have a problem with this, with Mr. Breuer, because he is directly in the line of fire, from what I am seeing here; and we have problems. Because not only does he go to send somebody back to Arizona, and listens to Mr. Voth's presentation and almost gets the thumbs up, no caution flags at all. And just like the wiretaps, these are alarming discoveries.

Mr. HOROWITZ. It is clear that Mr. Breuer was aware, in April 2010, about the gun-walking and Wide Receiver, which is why we were troubled by his decision to not tell the deputy attorney general or the attorney general about it, because they have authority over ATF; he does not. So that is why we found he should have done that.

Mr. GOSAR. It seems to me, but it is very alarming, because I think the scrutiny on Fast and Furious is much higher than what Wide Receiver is. They are both egregious, don't get me wrong, but this is, to me, you already know the results and then you are making the results even worse.

Mr. HOROWITZ. Well, and that is why we were troubled when the information came to the Department from Senator Grassley, in

January of 2011, that those dots weren't connected by Mr. Breuer and by his deputy, Mr. Weinstein.

Mr. GOSAR. Okay. The day after Brian Terry was killed, the attorney general actually emailed three people asking for details, did he not?

Mr. HOROWITZ. That is correct. I believe it was the day after, but I remember——

Mr. GOSAR. This includes Gary Grindler, Monty Wilkinson who failed to inform the attorney general in connection with the Brian Terry murder with weapons from Fast and Furious, true?

Mr. HOROWITZ. That is correct, the failure to notify him about the connection between the two guns found at the scene, that they had been bought 11 months earlier by a subject that had been identified in fast and furious.

Mr. GOSAR. Now, going back to my colleague from South Carolina, you know, when a law officer is murdered, there is a lot of raised tensions and a lot of questions being asked. We have a whole scenario of things that occurred here. I mean, the questions should have been asked and we should have had a better outcome. But there was another incident in Arizona, late January, my understanding with even Congressman Giffords, is questions were abounding was one of these guns being used, was that not?

Mr. HOROWITZ. I believe so.

Mr. GOSAR. So we should have known. I mean, the attorney general's testimony, to me, seems flawed. We would have been asking and should have known much earlier about these questions about Fast and Furious based upon the inquisition of the witnesses to these crimes and the nature of these crimes and the audacity of these crimes, particularly to higher members like Congress, right?

Mr. HOROWITZ. Well, as I indicated in the report, we certainly believed that when that information about the guns connected to the shooting scene of a law enforcement agent, that that kind of information needs to go to the attorney general of the United States.

Mr. GOSAR. So it was covered up.

Mr. HOROWITZ. Well, I don't know whether it was covered up or not, but it was not told to him.

Mr. GOSAR. Okay.

Thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Massachusetts, Mr. Lynch, for five minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I thank the witness for a very, very thorough report, extremely thorough. Churchill might say that this report defends itself against the risk of being read by its very length.

[Laughter.]

Mr. LYNCH. However, I am working my way through it. Started with the conclusions and going through it in great detail. But you do address a lot of the questions that we have raised here in five or more hearings.

I do want to ask you one point, though, about vindication. Some are saying people are vindicated; some people are not. But in prior hearings the accusations were against the attorney general, and Attorney General Holder had come before the Committee several

times, also over in the Senate, and the accusation was that he knew, he knew about this operation, he ran it, and the blame lies with him.

Now, I read your report and it says that there was no evidence, no evidence that he knew. You do, I think accurately, pinpoint some people who were ultimately responsible. You name them. You identify the flaws in their thinking, their misguided strategies, their misguided tactics, and how they made mistakes during this whole process, and it was a terrible and tragic mistake. You are also highly critical of some others.

And, in fairness, there were cross-allegations against Attorney General Mukasey as well, that he knew more about Wide Receiver when he was in office as attorney general. Yet, after this very thorough analysis, you say there was no evidence that either Attorney General Holder or Attorney General Mukasey knew of those operations.

So I am asking you do you believe that this report vindicates Attorney General Holder and, fair enough, Attorney General Mukasey, given their lack of information about what was going on?

Mr. HOROWITZ. I think the report speaks to what we found and didn't find in our conclusions, and I will stand by the very lengthy, I agree with you, report, and not trying to re-characterize or characterize it today, myself.

Mr. LYNCH. Okay.

Chairman ISSA. Would the gentleman yield? Perhaps I can assist.

Mr. LYNCH. Sure.

Chairman ISSA. I think from the Chair's standpoint, I think your point is extremely good, that nowhere in this report did we find specific incrimination of they knew, either one of these attorneys general; and I think that is an important point and it is one that I think, for the record, the Committee should be aware of, is that I don't think anyone should have assumed that they knew.

We certainly would all wish that any attorney general would ask to know more and would have known more, and I think the inspector general's report does cast blame for high-ranking people not asking more questions. But I agree with the gentleman that neither attorney general was found to know it.

Mr. LYNCH. Right. Reclaiming my time.

Chairman ISSA. We stopped the clock for that question, by the way.

Mr. LYNCH. I appreciate that. Thank you. Thank you for that courtesy.

Look, this is a big agency; we have thousands of employees. We have, at least the report indicates and identifies, an assistant deputy attorney general in one division who failed to report, failed to inform his superior. So the implication is that the U.S. attorney general should know what every single assistant deputy attorney general knows and fails to report.

I didn't vote for him, but this Congress has just held the attorney general in contempt, the House did, and I just think based on this report, the suggestion by many, and some in this Committee, was that the attorney general was withholding information to protect himself because he was involved, and this report, this very thorough, very professional, very well done report, impartial, very ob-

jective, based on the facts, based on documents not available to this Committee, based on interview of 130 witnesses, many not available to this Committee, interviewed multiple times, have concluded that that was wrong. That was wrong. This attorney general, while not perfect, was not guilty of the things that people on this Committee and others in the press accused him of, and that is secondary. That is secondary.

Final responsibility here——

Chairman ISSA. The gentleman's time has expired. Could you get to primary?

Mr. LYNCH. The primary is the changes that have been made at ATF, because ultimately the primary objective here was to pay respect to Brian Terry's service to this Country and to his family. So can you tell me whether the reforms to ATF that would prevent another agent who puts on the uniform for this Country and serves this Country could be protected now because of the changes that have been adopted by the ATF so that something like this doesn't happen to another American in service of his Country on the Customs and Border Patrol?

Chairman ISSA. The gentleman's time has expired, but please answer.

Mr. HOROWITZ. ATF steps, as we indicated, are important first steps. We thought there needed to be additional steps taken, and we recommended those and we will follow up to make sure those are put in place.

Chairman ISSA. Thank you. And the gentleman's other question about people informing or should have informed the attorney general or the other up, I think he would like to have an answer to, the up chain failure.

Mr. HOROWITZ. And we found, as we outlined in the report, we struggled to understand how an operation of this size, of this importance, that impacted another country like it did, could not have been briefed up to the attorney general of the United States. It should have been, in our view. It was that kind of a case.

Mr. LYNCH. Okay.

I thank you for the indulgence.

Chairman ISSA. Thank you.

Mr. LYNCH. Thank you.

Chairman ISSA. Of course.

We now go to the gentleman from Pennsylvania, Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman.

And thank you, Mr. Horowitz, for your continuing good work on behalf of the Department of Justice and certainly the United States of America. You couldn't have teed off my questioning any better than asking about the failure to report this up the chain.

I am going back to an April 12th. This is an email that comes from Deputy Attorney General Weinstein and it is with respect to a prosecution memo that he gets on Operation Wide Receiver, and these are his words: "I am stunned. Based on what we have had to do to make sure that not even a single operable weapon walked in undercover operations I have been involved in planning, I think we need to make sure we go over these issues with our front office. We owe it to ATF Headquarters to preview these issues before anything gets filed."

So let me ask a predicate question. With complete knowledge that guns had been walked, that there were implications that had been crimes committed in Mexico based on a prior activity, did you ever ask why they continued to prosecute that case and send agents that actually re-invigorated that investigation and prosecution on the prior bad act?

Mr. HOROWITZ. I would have to go back and check the transcript on exactly what was asked and what was answered, and I am happy to do that. I do think it is evident from the email traffic that we looked at, which was a belief that this was a good case, there were people that they had evidence on, but that there would be the possibility of embarrassing the agency by press stories about the gun watch——

Mr. MEEHAN. We are more worried about embarrassing agencies than we are about the public safety and issues of that nature.

Mr. HOROWITZ. From our standpoint, that appeared to be the outcome of that meeting that happened just two weeks later, which was about managing what the public's reaction might be to learning about gun-walking.

Mr. MEEHAN. What I find about this statement is in his own words the degree to which Mr. Weinstein believes that there is a responsibility to inquire with regard to an investigation.

So now let's move forward a little bit to the next matter, in which he is now in charge of the oversight of the Fast and Furious. And there are certainly communications that take place with regard to certain higher level individuals who are engaged in the review of information and others. What responsibilities did he have at that point in time to inquire as to the activities that may have taken place during Fast and Furious, appreciating that by his own language he had already understood, first, that the ATF had already engaged in this kind of activity improperly and, second, his own articulation that even a single gun being walked was a violation of what he considered to be his sense of a properly run case, and, third, his own desire to assure that inquiries were made?

Mr. HOROWITZ. Well, what occurred is in that late April into May time period, in connection with or immediately after the discussion he had about Wide Receiver and the gun-walking in Wide Receiver, he learned information about Fast and Furious. Perhaps not gun-walking was going on, but he learned information about the case sufficient enough to write an email to the head of the internal office at the Justice Department that handles wiretaps, to refer to it as the most or one of the most important cases involving the U.S.-Mexico trafficking activity. And he did that in the context of trying to ensure the wiretap applications were being reviewed promptly.

He then, two weeks later, had one of those wiretap applications land on his desk for approval. He indicated to us he never read it; he only read the cover memo. As we indicate in our report, we thought there was sufficient evidence and information even in the cover memo to warrant him to inquire into that affidavit.

Mr. MEEHAN. I thank you for your language, because this is his language. This is perhaps the most significant Mexico-related firearms trafficking investigation ATF has going. So he knew not only that, but the importance and the significance of it. Where is the duty to inquire with regard to you have notice. Now, we know as

attorneys, under the tort law, people are being sued all over the United States because they had prior notice of a condition, failed to act, and now they are being responsible because subsequent somebody else has been harmed.

I have already identified the standards that this particular individual had, and we know he has explicit information about prior activities of this sort. We know that there is information that is contained within, according to your report, the affidavits of probable cause that he is responsible for reviewing, maybe not in complete, but the failure to inquire and the communications that take place between he and Breuer and one more in which there is this, well, I judged from his, effectively, demeanor that he understood, when he was talking to the ATF. Where is the duty to inquire that would have led to a clear articulation of what was going on with Operation Fast and Furious?

Mr. HOROWITZ. And that, I think, is a very important question and precisely the reason why we have the recommendation in the report about deputy AAGs needing to review the affidavits. They are not looking at it just as robotic lawyers to check a box about is this statutory purpose met, is another statutory purpose met. Deputy AAGs are SES, members of the SES; they are involved in policy issues. They have an appreciation, or should have an appreciation of broader issues. And if they notice a problem, their obligation, I believe, as a deputy AG, is to then ask follow-up questions.

Mr. MEEHAN. Mr. Horowitz, you get the ability—I am running out of time. You get the ability to be—and I think you did well here. You are judge, jury, fact-finder, and writer of the opinion, so you are able to classify things in a variety of different ways. Is it your opinion that Mr. Weinstein should have specifically and unambiguously questioned whether there were improper tactics on Fast and Furious that mirrored those that had taken place in the prior operation?

Mr. HOROWITZ. We found there was sufficient information in the cover memo he saw to either ask questions or to go into the affidavit and read it, which would have triggered, in our view, more red flags.

Chairman ISSA. I thank the gentleman. I thank you for that line of questioning.

We now go to the gentleman from Illinois, Mr. Quigley, for five minutes.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Thank you for your work. We appreciate all your staff and the extraordinary amount of work that took place here.

You were talking a little bit about the wiretap analysis. Is it your sense, in talking to them, they thought this was because of the sheer volume that junior level people were only reading the summaries of these wiretap applications?

Mr. HOROWITZ. That is what we had heard, which is the sheer volume of wiretap applications that came before deputy AAGs, with all the other items they needed to deal with, that they could rely on the memos from their subordinates, which we are not taking issue with the thoroughness of the memos that they received, but that was what we had heard.

Mr. QUIGLEY. But the memos, the summaries weren't—were the summaries enough to create red flags, in your mind, or the actual wiretap applications, the full body?

Mr. HOROWITZ. Well, in our view, the summary memo that was received by Mr. Weinstein, given what had just occurred within the prior few weeks regarding Wide Receiver, were sufficient, in our view, to trigger him to inquire further.

Mr. QUIGLEY. But going back to your point of avoiding this in the future, which is what we should really be about, unless there is something like you just described that triggers a more thorough analysis, how do you get through the volume that we talk about here in all these cases, and many more instances across the Country and other scenarios that you can only imagine? What is it you have to do, take a random number of a particular type and do a more thorough analysis to see if there is something more significant there?

Mr. HOROWITZ. I think, in our view, in each instance the Congress has authorized what is a very intrusive law enforcement technique, electronically wiretapping an individual's phone or other personal device. Congress put very tight strictures on that. That is a Fourth Amendment right that is being invaded.

In our view, in each instance, a deputy assistant attorney general, which is the person to whom the statute Congress has given authority to authorize that intrusion, should look at each affidavit in a manner sufficient to allow them to perform a personal judgment on whether they are comfortable that that application, that affidavit meets the statutory criteria. We recognize that the level of scrutiny they give to the affidavit can well be informed by what they read in the memo their staff has provided to them, but that they can't and shouldn't just rely on that staff memo.

Mr. QUIGLEY. But again, back to your own experience, the sheer volume alone, is the staffing sufficient?

Mr. HOROWITZ. Certainly, there can always be more staffing, and the volume has grown since I was in the Criminal Division 12 years ago, so I understand why there may be a need for more resources. But I think, regardless of whether there is a need for more resources, in our view, this is such a significant event that is being authorized that this deserves the highest priorities.

Mr. QUIGLEY. Let me skip to another point. In your analysis, what is your estimate of the total number of guns that were walked under both administrations?

Mr. HOROWITZ. As we put in the report, rough estimate in Fast and Furious was about 2,000; rough estimate in Wide Receiver was about 400. That is total guns. There were about 100 firearms in each case that were interdicted by ATF.

Mr. QUIGLEY. But now analyzing this as much as you did, and analyzing what Agent Forselli said, that straw purchasers are punished about like a moving violation, when he testified before this Committee, your best guess, in reviewing these applications, on the number of guns that are transported through straw purchases?

Mr. HOROWITZ. I am sorry, the number of guns——

Mr. QUIGLEY. That go to Mexico due to straw purchases.

Mr. HOROWITZ. Well, we did a report in Project Gunrunner a couple years ago that outlined the significant flow of firearm trafficking, so there is a substantial flow of firearms.

Mr. QUIGLEY. But your guess in numbers annually, thousands and thousands and thousands?

Mr. HOROWITZ. As I sit here, I am sorry, I don't have that.

Mr. QUIGLEY. But best guesses are—and this is a tragedy, and that is what we are about. But if the concern is, as the Chairman said earlier, to keep guns out of the hands of dangerous criminals, this issue isn't going to stop today, because straw purchases are happening today. And as the agent who testified in front of this Committee said, they are not punished any more than doing 65 in a 50.

I know, because of your hard work, you appreciate this, but it cannot be lost upon you, sir, that the fact is we haven't solved this problem if thousands, the numbers dwarfing what happened in this tragedy, are still taking place.

Mr. HOROWITZ. Clearly, as we outlined in our previous report, in Project Gunrunner, there is a need to take serious action, law enforcement action to address this problem.

Mr. QUIGLEY. Thank you.

Chairman ISSA. I thank the gentleman.

I only ask you to maybe correct your statement about one thing. You used the word interdicted. Do you mean recovered or interdicted, when you said 100 weapons in each?

Mr. HOROWITZ. I am sorry. I am limiting that to ATF interdiction of 100 out of 2,000——

Chairman ISSA. Were recovered or covered?

Mr. HOROWITZ. I am sorry, 100 interdicted or stopped by ATF. Many additional recovered at crime scenes or in other locations. But only 100 in total of the 2,000.

Chairman ISSA. And just because I think the gentleman's point was very good, when you are using that term, it is a term where they lost control, but then regained control.

Mr. HOROWITZ. In some instances that is the case. It is hard to generalize on the 100 because there were several different events that occurred as to how they got them, some of which I actually can't even talk about because it is still under——

Chairman ISSA. I appreciate that. I just think that this Committee has spent an inordinate amount of time, as has the Judiciary, in trying to define what gun-walking is. If you grab them before they lose your control, we generally believe that is not gun-walking. And if you deliberately allow it to leave your control, that is gun-walking.

Mr. HOROWITZ. And the definition we operated under generally was you have an opportunity to interdict and a legal basis to do so, and you don't.

Chairman ISSA. A great standard, and it should be the standard. I thank the gentleman.

We now go to the former chairman of the full Committee, the gentleman from Indiana, Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman.

On page 455 of your report you refer to Lanny Breuer failing to report the gun-walking to the deputy attorney general and you say,

we believe Breuer should have promptly informed the deputy attorney general or the attorney general about the matter in April 2010, and he failed to do so.

The question I have is the public relations office over there, I guess the lady's name is Tracy Schmaler, on June the 5th she said, the Committee also knows full well that Assistant Attorney General Lanny Breuer did not review the wiretap applications in Fast and Furious. That does not stop the Committee, however, from falsely asserting that Breuer was responsible for authorizing them.

There is a real inconsistency there. And the last part of my question is I understand that there is a Media Matters. I am sure you are familiar with what that is. This Ms. Schmaler evidently sent an email to them about somebody that ought to be investigated or ought to get a little pressure put on them. Are you familiar with any of that?

Mr. HOROWITZ. I have read the reports and I have seen them. I have not looked at it, Congressman, beyond that at this point.

Mr. BURTON. So that was not involved at all in your—the reason I ask is if this kind of an email was sent for, I guess, Justin Phillips, were any other emails sent to Media Matters about the Chairman or members of this Committee who were conducting the investigation? Because she was pretty vocal and vociferous when she said, on June 5th, the Committee also knows full well that Assistant Attorney General Lanny Breuer did not review the wiretap applications in Fast and Furious. And then she went on to say, that does not stop the Committee, however, from falsely asserting Breuer was responsible for authorizing them.

If this example of going to Media Matters about this Mr. Phillips is a way that they normally do things over there in the public relations department, I was concerned that maybe they were trying to do that to the members of this Committee that were working so hard on the investigation or possibly the Chairman. But you have no knowledge of that?

Mr. HOROWITZ. I don't know about the interaction between Office of Public Affairs and Media Matters other than what I have read in the press in the last few days about it.

Mr. BURTON. Okay. Thank you very much.

I will yield to the Chairman.

Chairman ISSA. I thank the gentleman.

Speaking of retaliation against the Administration's enemies or the attorney generals, if in fact federal funds are used in order to dissuade members of Congress or members of the Judiciary Branch, that would be a violation of law, wouldn't it? You are not allowed to use federal funds to essentially try to attack your political opponents. That is kind of a no-no, isn't it?

Mr. HOROWITZ. That is my understanding.

Chairman ISSA. IG 101.

Well, to that extent, I would like to talk to you about the whistleblowers. As you said in your opening statement, and I think both sides of the aisle have called them courageous, your report does not spend much time discussing whistleblowers who exposed Fast and Furious, although you do mention it. Have you been able to determine whether the whistleblowers have in fact been dealt with fairly and protected under the Whistleblowers Act?

Mr. HOROWITZ. That is a matter, as we indicate in the report, we are still finalizing and reviewing, and I agree, Mr. Chairman, the efforts of the ATF agents in this case to come forward and acknowledge what was not public—and having done law enforcement cases in the Southern District of New York, it takes a lot of courage to come forward, if you are in a law enforcement agency, and explain what the agency has done wrong.

Chairman ISSA. And in your report would you feel that you have vindicated the whistleblowers? In other words, initially, when Dobson and others came forward, they were accused of, in fact, false allegations, etcetera. Would you say that at the end of your investigation, those 471 pages, as succinct as it is, pretty well does a job of vindicating their concerns that they raised publicly?

Mr. HOROWITZ. It certainly, from my standpoint, and there were a lot of people who came forward, so let me just say——

Chairman ISSA. Right. I realize it is a broad group now.

Mr. HOROWITZ. The folks who came forward, the agents who came forward and said guns were being walked and they could have had an implication in Agent Terry's death is what some of the earliest information was on the Internet, and more publicly beyond that, I think it is pretty clear that that is what happened here, is that guns were walked in quite a substantial way.

Chairman ISSA. Now, notwithstanding the fact that Brian Terry had to be gunned down for them to come forward in ever increasing numbers, wasn't this an example of exactly why whistleblowers are to be protected and why whistleblowers should be encouraged to come forward sooner, rather than later? And I want to particularly mention ones who are not looking for a qui tam case, but, in fact, are truly just trying to get something bad stopped.

Mr. HOROWITZ. I agree. I think this is an example of the importance of employees in all parts of the government, in this case law enforcement, to come forward if they have information and be comfortable doing that. And that is one of the reasons, as you know, I have put in place a whistleblower ombudsman position in my office, because of this and other events that I have seen that people need to be comfortable to come forward and talk, and we need to do a good job of following up on their concerns.

Chairman ISSA. Well, I want to thank you and I want to particularly thank you for the fact that more whistleblowers go to IGs. IGs run down more of these problems, by far, than Congress ever does, so we often get noted when whistleblowers come to us, but most of the cases that we see come through your offices when whistleblowers have come within the agency.

With that, I would note that one of the UCs that will be on the floor today will in fact be a whistleblower reform, so there couldn't be a better time to remind the members of Congress that we depend on whistleblowers and we need to protect them.

With that, I am pleased to go to the gentleman from Illinois, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman.

And thank you, Mr. Inspector General. I want to thank you for your very informative and clarifying information. I think what you have delineated gives the average citizen a great deal of confidence that what they are hearing is what has actually happened. I know

that Lanny Breuer, the head of the Criminal Division at the Department of Justice has been severely criticized by some members of Congress for what they considered to be his actions here. Senator Grassley has called for his resignation, the Chairman of this Committee has said Mr. Breuer "clearly had culpability," and Mr. Chaffetz even said that Mr. Breuer started this up in 2009.

So I want to ask you a few questions to see if we can't really clarify and understand what Mr. Breuer's role in these two programs. One, Mr. Horowitz, did you find that Assistant Attorney General Breuer authorized or directed gun-walking in either Operation Fast and Furious or Wide Receiver?

Mr. HOROWITZ. We did not.

Mr. DAVIS. Did you find that Mr. Breuer review or approved the wiretap applications in either operation?

Mr. HOROWITZ. No. In each of the 14 instances it was a deputy assistant attorney general who authorized the applications.

Mr. DAVIS. Did you find any evidence that Mr. Breuer was aware that gun-walking occurred in Operation Fast and Furious before the information became public?

Mr. HOROWITZ. Prior to Senator Grassley's letter, we did not find information that he was aware of gun-walking in Operation Fast and Furious; it was only with regard to Wide Receiver that we were aware of that information.

Mr. DAVIS. In April 2010, Mr. Breuer did learn about the gun-walking tactics that had been used during the Bush Administration in Operation Wide Receiver, but only after the operation had been completed. So, Mr. Horowitz, what did Mr. Breuer do when he learned that gun-walking occurred in Operation Wide Receiver?

Mr. HOROWITZ. What we were told by Mr. Breuer and Mr. Weinstein, and perhaps others that we interviewed, was that there would be a meeting with ATF and at that meeting ATF would be told that the gun-walking tactics were unacceptable. We found that there was no, however, admonishing at the meeting. Mr. Breuer was not at that meeting, but we found that there was no, in fact, admonishing of ATF for that conduct.

Mr. DAVIS. What additional steps, if there were any, do you think Mr. Breuer should have taken when he learned that gun-walking occurred in Operation Wide Receiver?

Mr. HOROWITZ. Well, as indicated, one of the things we sought out to do here was address the facts that we found and not go beyond those, and in this case we found he knew about Wide Receiver in April of 2010. He did not have direct authority over ATF, it was the deputy attorney general and the attorney general who had authority. Those tactics were unacceptable and he should have told the two people, one or both of the people, who could have taken action to stop or to correct what was happening.

Mr. DAVIS. Mr. Breuer testified publicly before Congress, has acknowledged and apologized for his oversight, and explained that he regretted the fact that he did not raise concerns about Operation Wide Receiver with other senior leaders at the Department of Justice. Chairman Issa has also alleged that Mr. Breuer was actively advocating gun-walking to the Mexican government.

As evidence for this claim, Chairman Issa points to notes from a meeting with senior officials for the Mexican government on Feb-

ruary 2nd, 2011, that stated that Mr. Breuer discussed controlled deliveries. Here is what the note said: "Mr. Breuer suggested allowing straw purchasers to cross into Mexico so the Mexican federal police force can arrest the Mexican, attorney general's office can prosecute and convict. Such coordinated operation between the United States and Mexico may send a strong message to armed traffickers."

Chairman ISSA. I would ask unanimous consent the gentleman have an additional minute. Without objection.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Horowitz, in your report you draw a sharp distinction between gun-walking and controlled deliveries. Do you consider advocating for coordinated operations with Mexico to be the same as advocating for gun-walking?

Mr. HOROWITZ. We found, as you noted in our report, that controlled deliveries are different from gun-walking, and we would draw a distinction between the two, and a distinction was drawn between the two for us by a number of witnesses.

Mr. DAVIS. I thank you very much for your testimony.

Chairman ISSA. Would the gentleman yield?

Mr. DAVIS. Yes.

Chairman ISSA. Isn't it true that Wide Receiver, as an intent stated, was a controlled delivery? The actual gun-walking that occurred was when agents abandoned their watch of the weapons for any number of reasons, including they had been there for hours, they were tired, they went home. But the actual program that Assistant Attorney General Breuer was advocating, in fact, reads right on what was Wide Receiver.

Mr. HOROWITZ. And in Wide Receiver there first was a failure to interdict, then there was this effort of controlled deliveries, then there was a failure again. And the controlled deliveries that, as I understand it, and we did not investigate this further, that Mr. Breuer had talked about in February of 2011 was an effort to do coordinated interdiction with Mexican authorities. That was stopped by the deputy attorney general's order a few weeks later.

Chairman ISSA. But, in fact, if he had succeeded and they had gone to do it, they would have been essentially repeating a history of something that had failed, the transborder crossing interdiction.

Mr. HOROWITZ. Right. Well, they clearly failed in Wide Receiver, and I guess, as with all things, the devil is in the details as to how the plan of action would be. So I am hesitant to speculate as to what the outcome would be, but that was the idea in Wide Receiver, was to try and do an effective controlled delivery, which never happened.

Chairman ISSA. Thank you.

I thank the gentleman for yielding.

We now go to the gentleman from Florida, Mr. Labrador, who is not from Florida, but from Idaho.

Mr. LABRADOR. Or wherever I am from, right?

Chairman ISSA. Well, we could go on and on, but you are just lucky Ross was out of the room. The gentleman is recognized.

Mr. LABRADOR. Good morning. Thanks for being here. And I thank you for your report. I think it is very thorough. You know, this morning and yesterday we have heard a lot of media reports

about how this is a vindication for Mr. Holder, and you have already said that you are not going to go there, you are just going to let the report speak for itself. But I find it fascinating that the only way some of the people here and in the media are saying that this is a vindication for Mr. Holder is by creating a strawman argument.

They are saying that what this Committee was investigating was whether Mr. Holder knew or participated in Fast and Furious from the beginning. That is a strawman argument. We didn't know what Mr. Holder knew. And why didn't we know? Because he came to Congress on several occasions and he misled Congress. Whether it was intentional or whether it was unintentional, the facts in your report show that he, on several occasions, didn't tell the truth to Congress, isn't that true?

Mr. HOROWITZ. We don't draw a conclusion as to his testimony to Congress; I think that, obviously, is for the members——

Mr. LABRADOR. But in the letters that were sent from the Attorney General's Office twice, right, memos, the statements in those memos were either misleading or false, isn't that correct?

Mr. HOROWITZ. We didn't look at that as part of our review, Congressman, so I am not in the position today to speak to the representations to Congress in those letters.

Mr. LABRADOR. No, in the memos that were sent. The letters you have are on, he stated on May 3rd Holder testified, well, you didn't look at the statements, but he did give two memos to Congress through his office. There were two specific memos that were given to Congress that had to be retracted, isn't that correct?

Mr. HOROWITZ. I am not aware of that, Congressman. Again, we didn't question the Department about what they did or didn't provide to Congress.

Mr. LABRADOR. Okay.

Chairman ISSA. Would the gentleman yield for just a second?

Mr. LABRADOR. Yes.

Chairman ISSA. Yesterday, in the briefing, you might want to check with your own staff, we were talking about the February 4th, which was later corrected, and the May 2nd, I believe.

Mr. HOROWITZ. Okay.

Chairman ISSA. Those two you do have an opinion on.

Mr. HOROWITZ. Yes. I am sorry. The reference to memo, I was confused.

Chairman ISSA. I know. I apologize. We will call them letters.

Mr. LABRADOR. Yes, letters. So let's call them letters.

Mr. HOROWITZ. Yes. I am sorry about that.

Mr. LABRADOR. You are aware of the two letters, correct?

Mr. HOROWITZ. Correct.

Mr. LABRADOR. The February 4th and the May 2nd letter.

Mr. HOROWITZ. Correct.

Mr. LABRADOR. And those had to be retracted.

Mr. HOROWITZ. The February 4th letter was retracted. I think, as the Committee's own report indicated, as to the May 2nd letter, there is an argument that it is literally true, but that is what in part troubled us, as we wrote.

Mr. LABRADOR. And you wrote in your report that that troubled you.

Mr. HOROWITZ. Right.

Mr. LABRADOR. Because it was literally true. I don't know if you used the word misleading, but it could mislead.

So let me just ask you a simple question, and really quickly tell me how much time, how many people do you have on your staff working on this report?

Mr. HOROWITZ. I don't know the number precisely because so many people had worked on it for 18 months.

Mr. LABRADOR. Approximately.

Mr. HOROWITZ. It was, I am guessing, north of 20, but it would be a pure guess.

Mr. LABRADOR. And how many man-hours do you think were spent on this report?

Mr. HOROWITZ. The good news is I wasn't here for the first 13 months, so I can't tell you. The last five months I can tell you there were a lot of man-hours. I actually don't know the exact number.

Mr. LABRADOR. And as we just heard from Mr. Lynch, your report is so long that it may encourage some people not to read it. We have over 451 pages in your report. Do you think your time spent on this report, your time spent investigating this would have been necessary had the Department of Justice provided this Congress the same information that they provided to you in your investigation?

Mr. HOROWITZ. That would be hard to speculate on. I will say this. Regardless of what had happened along the way, I think the facts of Wide Receiver and Fast and Furious, the work we did was important to bring out and address. The agents brought forward very significant information before the letter writing that occurred that you have referenced. So I think we probably would have spent a lot of hours on it; our time might have been different. Obviously, chapter 6 in our report would have changed.

Mr. LABRADOR. And in your investigation, you said you were a deputy attorney general before. In your time you are always asking the question what does somebody know about an investigation; what does somebody know about what you are investigating; all we were trying to get to was the bottom line of what the attorney general knew, what his department knew, and we spent countless hours here trying to figure that out.

And in your report it says that they should have done a better job. I just find it fascinating that people are trying to exonerate anybody of any wrongdoing, when clearly there has been blissful ignorance, there has been blissful avoidance of the truth. And I just think it is time for us to get to the bottom line of what happened here.

I really thank you for your report. I thank you for your time. And I thank you for doing the job that we asked you to do.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Arizona, Mr. Barber.

Mr. BARBER. Thank you, Mr. Chairman, for allowing me to sit in on this hearing. And I also want to thank you for coming to Arizona this week, when we gathered to honor Brian and to have a Border Patrol station named for him. This young man sacrificed the ultimate sacrifice for our Country, and your presence there, I think, gave the family a sense that the Congress was concerned

and was trying to do their best to find answers to the questions that they have.

I have talked with the family, and when I met with them this week, they had one question and one request from us. They asked that we make sure that they get the information that they have been waiting for, that has been on their minds and in their hearts for 21 months. To me, it is outrageous that they haven't gotten answers sooner. They want to know what happened to Brian; why were guns that were allowed to go into Mexico with the full knowledge of personnel in the Federal Government and that ultimately ended up at the scene of his murder in Rio Rico, Arizona. They want to know who made the decision to launch Fast and Furious. They want to know who should be held accountable for these decisions and what consequences they will face.

Mr. Horowitz, I want to thank you and your staff for what is obviously a tremendous amount of work in preparing this report. It is, in my view, a report that has tremendous credibility and objectivity. And I think, finally, the Terry family is beginning, but just beginning, to get the answers they deserve that are long overdue, but I don't believe they have yet received the answers to all of their questions, and I would like to address those in just a moment.

Agent Terry, as we know, made the ultimate sacrifice for his Country. Nothing we can do will bring him back, but he and his family deserve to know what happened and who was responsible. Your findings prove that serious flaws in policy and inadequate oversight, and flagrant disregard for public safety allowed American weapons to fall in the hands of violent Mexican criminals and drug cartel members as a part of Operation Fast and Furious. It should never have been the policy of this Government to allow these firearms to be smuggled knowingly into Mexico, and the program should never have been approved and it must never happen again.

So I have a question or two for you, Mr. Horowitz. You said that steps have been taken already to prevent a reoccurrence. Can you say specifically a couple of those steps that you believe will prevent a reoccurrence that are already in place?

Mr. HOROWITZ. Well, as we have put in our report, the ATF has instituted a variety of restrictions on when this type of activity can occur, so that is first. Second, there have now been put in place steps to require various levels of supervisory review that didn't exist before. So, for example, those are two that ATF has done, as identified. We have suggested others and a more thorough review of the policies and practices to make sure that others are caught, such as requiring ATF to abide by the undercover operation rules that the attorney general has in place.

Mr. BARBER. Thank you for that. The family believes, and I agree with them, that they may have been deliberately kept in the dark about Brian's death and the circumstances surrounding it. Did your investigation reveal that this was discussed within the Department, and why it was not determined that the family should know more sooner?

Mr. HOROWITZ. I don't recall us seeing evidence of discussion specifically about what to tell the Terry family. I would have to go back and refresh myself on that, but I don't recall that being the

basis, if that was occurring, if that was what was being discussed in the emails we saw.

Mr. BARBER. And one more question in the remaining time. We have heard that there were internal disputes within the Department of Justice at the field level that allowed Fast and Furious to walk guns into Mexico, specifically that there was a dispute between the ATF and the U.S. Attorney's Office. Can you speak to what you found regarding this issue, please?

Mr. HOROWITZ. Yes. That is a very important issue that we take on and address, because there has been the suggestion from agents that while they couldn't seize or take action because the U.S. Attorney's Office had a restrictive view on what they could do or not do. That was an issue and that was a concern in other cases.

What we found here in Fast and Furious was that didn't exist. From the outset, both the U.S. Attorney's Office and the agents at ATF decided they wanted to get to the top of the organization, and the way to do that was to take no action as to the straw purchasers. It wasn't, in our view, a legal problem, an issue about the evidence; it was a tactical decision that was made by both entities.

Mr. BARBER. I want to thank you for your testimony.

Chairman ISSA. Would the gentleman yield?

Mr. BARBER. Mr. Chairman?

Chairman ISSA. Would the gentleman yield for just a quick question?

Mr. BARBER. Please.

Chairman ISSA. You have commented several times on this bottom-up, the agents deciding to do it. In your opinion and your staff's opinion, was any part of it, if you will, the arrogance and the ambition, the our job is limited to we go after guns, alcohol, tobacco, and firearms, but basically guns, and they ran up the chain of drugs and drug cartels by this ambition that they were going to roll up people and entities that were well outside their basic jurisdiction? Was there any sort of a feeling by your people that this was the exuberance of ambition; I am going to get a big hit and I am going to move up and I am going to be director at the ATF, or something like that?

Mr. HOROWITZ. Well, I think there was a concern that we saw about a desire early on, for example, to go for a wiretap. That is generally thought of as a very sophisticated technique and shows sophistication in a case, even though we found there was all this evidence, by that point, hundreds of guns, lots of cash from people who had no income. So the question was why not take action then, but instead focus on the wiretap? So that concerned us.

Another concern, and perhaps evidence of that thinking, although no one, of course, told us that was a reason.

Chairman ISSA. No one ever brags about their ambition.

Mr. HOROWITZ. Right. As shocking as that may be. But right at the outset, the effort to keep ICE out of the case. As indicated, their emails right away, in November, at the outset of this, we have to keep ICE at bay; don't have them investigate. Well, they have an important piece of the law enforcement effort in gun trafficking at the border, and you can't take that position if you want to be effective at the border, in my estimation.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Texas, Mr. Farenthold.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

Mr. Inspector General, I apologize if I sound terse or hostile. I am a huge fan of the inspector general program; I think it is a great asset. But there do remain some questions that I have gotten in my office, about is this investigation just the fox guarding the hen house. I think your report does go into great depth, but I do want to hit the outlines of it and some things that may lead to where we need to go further in this Committee in continuing to investigate Fast and Furious.

My first question is the Supreme Court has made very clear with respect to executive privilege, there is not an unqualified presidential privilege. The deliberative process privilege requires that the protected material be both limited to communications occurring before the policy adoption and deliberately reflecting the process by which the policy alternatives are assessed at the highest level.

As you know, the President has claimed executive privilege to a broad group of documents this Committee has subpoenaed, some of which I imagine you looked at in your investigation. You have had access to thousands more documents than we have.

My first question is roughly how many of these documents, in your opinion, would be covered by executive privilege?

Mr. HOROWITZ. Congressman, we, fortunately, didn't have to make a decision about what we thought was or was not within executive privilege because our decision right at the outset was to ask for all the documents that we needed, we got them, and to include them in the report.

Mr. FARENTHOLD. But you all looked at them.

Mr. HOROWITZ. We looked at everything that was relevant.

Mr. FARENTHOLD. Gut feeling, then, if you can't answer specifically. Were there some in there covered by executive privilege?

Mr. HOROWITZ. I don't know that. That was never our call. We were never shared with any information about that.

Mr. FARENTHOLD. All right. You noted also in your report that the White House refused to share internal communications with you during your investigation of Fast and Furious. We have noted a connection into the White House through Kevin O'Reilly at the National Security Council. Do you think the White House's refusal to share these documents limited the scope of your investigation and would this Committee be well served by pursuing an investigation in that avenue?

Mr. HOROWITZ. Well, as we noted in the report, and as you know, Congressman, we did not get internal communications from the White House, and Mr. O'Reilly's unwillingness to speak to us made it impossible for us to pursue that angle of the case and the question that had been raised.

Mr. FARENTHOLD. So it would probably be worthwhile for us to pursue.

Mr. HOROWITZ. Well, certainly, we have sought to pursue every lead we could, so I can just tell you from our standpoint it was a lead we wanted to follow.

Mr. FARENTHOLD. Thank you very much. As Mr. Burton pointed out, the DOJ has been accused of cooperating with outside groups like Media Matters for advice and spin on stories so they will come

out in a positive manner. And I imagine the press office and all of the DOJ is concerned about that. It actually kind of troubles me that there is such a political facet to what goes on in the DOJ. Of all the executive agencies, you would hope DOJ would be the one most above politics.

But my question is do you know if the DOJ shared this report, prior to its release yesterday, with any outside groups and/or who within the DOJ that would have made substantive changes to the report?

Mr. HOROWITZ. We provided, for purposes of our comment and review, a draft of the report to the Department. We allowed the Department, internally, to share it with people who had relevant information, but to tightly control who saw it, and that it was not to be shared outside the Department.

Mr. FARENTHOLD. Okay, so, to the best of your knowledge, Media Matters didn't vet this.

Mr. HOROWITZ. They should not have, and if they had been allowed to see it, it would have been a violation of the understanding that we had about the review.

Mr. FARENTHOLD. All right, great. Now, I have been approached by commentators and constituents alike who question possible political motives behind allowing something like Operation Fast and Furious to continue. Some of them have claimed that there may have been a desire at some level to create a public outcry for stricter gun laws. Would your investigation have been able to uncover political motives behind allowing the operation to continue, and did it? Or is the entire fiasco a result of just gross mismanagement?

Mr. HOROWITZ. We did look at that issue and that question to see if we had documents or other evidence on that point. We didn't, obviously, go into the investigation looking for the emotive specifically, but we did think it was important to address it. We do highlight in the report those instances where there is talk about perhaps changing rules, regulations, or laws. What we found is all of those incidences came after the investigation had begun. So the notion was, well, maybe this is a good example to show why we need to change the laws. But we didn't find evidence at the outset that that was what was driving.

Mr. FARENTHOLD. Did you find evidence that at any point where the Fast and Furious Operation was in effect that this was happening?

Mr. HOROWITZ. There was suggestion, later on in the investigation, that it might be a good example to show why rules, laws, regulations as an example of why they might need to be changed.

Mr. FARENTHOLD. I see my time has expired.

Chairman ISSA. Would the gentleman yield?

Mr. FARENTHOLD. Certainly.

Chairman ISSA. So to characterize, they were opportunistic after the fact, but you found no evidence that before the fact they did Operation Fast and Furious in order to get laws changed.

Mr. HOROWITZ. Correct. In the documents we reviewed, we did not see at the outset. In fact, the documents we saw indicated at the outset the notion was let's not take action to get to the top, simply because they wanted to get to the top.

Chairman ISSA. Is Fast and Furious, 2,000 weapons being knowingly allowed to walk and leading to the death of Brian Terry, is that a good poster child for why you need to have tighter rules on gun dealers, since gun dealers were in fact ordered or coerced into participating in this, rather than listening to them when they say this guy is a straw buyer and arresting him?

Mr. HOROWITZ. Well, we found that in terms of a law enforcement technique or law enforcement tactics, that the decision-making that justified what was going on just failed in the primary mission of law enforcement, which was to protect the public.

Chairman ISSA. I thank the gentleman. I thank the IG and I thank the gentleman.

We now go to that splendid individual from the great State of Missouri for his questions and probing. With that, Mr. Clay is recognized for five minutes.

Mr. CLAY. Thank you, Mr. Chairman. I am so glad to be back after the August break and to get right down to business.

Mr. Chairman, I think we can all agree that gun-walking, whether during Operation Wide Receiver or Operation Fast and Furious, was an incredibly reckless tactic that put both American and Mexican lives at risk.

In February, the attorney general testified before this Committee that the Department had removed, reassigned, or accepted the resignation of a number of people within ATF and the U.S. Attorney's Office in Phoenix that had operational oversight of Operation Fast and Furious, including the Acting ATF Director, Ken Melson, and U.S. Attorney for Phoenix Dennis Burke.

Mr. Horowitz, it is my understanding that ATF has been under new leadership since August of last year, when the attorney general announced the appointment of B. Todd Jones, a former military prosecutor and U.S. attorney for the district of Minnesota, to serve as acting director of ATF. Is that correct?

Mr. HOROWITZ. That is my understanding, Congressman.

Mr. CLAY. And the attorney general also stated on several occasions that he was waiting for the release of your final report to make final determinations about further personnel actions. Is it consistent with prior practice for agency leadership to reserve certain personnel actions regarding individuals under investigation for alleged misconduct until there is an expected general report?

Mr. HOROWITZ. Well, since I am only five months on the job, Congressman, I am not sure I can speak to the experience.

Mr. CLAY. So you are not clear on the history of it?

Mr. HOROWITZ. I don't know what prior instances where my office has done reviews, what different approaches might have been taken, if any.

Mr. CLAY. Well, your report not only makes policy recommendations for the Department of Justice, but also assessed "the performance of each of the Department employees who were most involved in Operation Wide Receiver and Operation Fast and Furious." Several media outlets have reported that you recommended individuals for discipline by the attorney general. Mr. Horowitz, did your office make any specific personnel recommendation in light of Operation Wide Receiver and Operation Fast and Furious?

Mr. HOROWITZ. No. We simply reported on the facts of what we found and where we thought there were failures or other issues related to the performance, but not made specific recommendations as to what should or shouldn't happen as to the——

Mr. CLAY. And is that common practice, to not make recommendations on personnel?

Mr. HOROWITZ. Again, being fairly new in the job, my understanding is that on occasions there may be instances where we have in the past, so I am not sure I can speak to the history of that.

Mr. CLAY. I see. Okay. Yesterday the attorney general announced that former Acting ATF Director Melson is retiring and that Deputy Assistant Attorney General Jason Weinstein has resigned. The attorney general also stated that there may be more personnel actions for career employees at ATF and the Phoenix U.S. Attorney's Office, although for Privacy Act reasons he cannot disclose them at this time.

He stated, "Those individuals within ATF and the U.S. Attorney's Office for the District of Arizona whom the OIG report found to have been responsible for designing, implementing, or supervising Operation Fast and Furious have been referred to the appropriate entities for review and consideration of potential personnel actions. Consistent with the requirements of the Privacy Act, the Department is prohibited from revealing any additional information about these referrals at this time."

Mr. Chairman, looking at how this has all developed, it gives me pause and makes me wonder did this Committee shoot from the hip? Did we move too soon?

Chairman ISSA. Would the gentleman yield?

Mr. CLAY. I mean, that is just food for thought for you, Mr. Chairman, and the rest of the Committee who voted so recklessly when it was time to take action against our attorney general. I yield.

Chairman ISSA. I thank the gentleman. I might note that contempt was narrow; it was for the attorney general's refusal to give us the very documents that the IG required in order to do this very comprehensive report. I would say just the opposite, that contempt was most appropriate, in retrospect, when in fact the very documents we now know and are applauding in this report were the documents denied us.

Mr. CLAY. Well, reclaiming my time, Mr. Chairman.

Chairman ISSA. Before you came in——

Mr. CLAY. Reclaiming my time.

Chairman ISSA. Of course.

Mr. CLAY. This report seems very thorough. What is it, about 1,400 pages? It seems like the OIG got all of the information——

Chairman ISSA. We previously noted that it is thorough at the minimum possible number of pages.

Mr. CLAY. Well, thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman. And I guess we are going to agree to continue to disagree on this. I wish you had been here earlier when the IG was explaining that he did need the documents he got and was happy to have them, and felt that we should have gotten them too.

Mr. CLAY. And better late than never.

Chairman ISSA. Well, Jason Weinstein should have resigned a year and a half ago. The house cleaning should have happened a year and a half ago, if in fact Justice was going to have good judgment sooner, rather than later. But I respect the gentleman's desire to disagree and I thank you.

Now we go to a gentleman with whom I am more likely to agree at the moment, the distinguished gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Thank you, Mr. Chairman. And, yes, it would have been nice to have all these same documents that you had access to when we asked for them a very long time ago. I think a lot of people have asked these same questions and just wanted some answers. So thank you for your work and thank you for pulling that together, and I look forward to our Committee continuing to work, to be able to finish our reports out as well and hopefully have access to those same documents.

Let's get to the issue of fixing it. It is one of my primaries. When the attorney general was here, he and I had a conversation about how do we resolve this, the issue of putting out a statement that gun-walking is now forbidden, of any type. We will interdict weapons every time, okay, great, that is a first step.

But there are multiple other issues. We start dealing with fixing it, things like the supervision of the process of investigations is very different for the FBI than it is for ATF, and my basic question is why. Why does FBI have one process supervising investigations; ATF has a very, very different process on that? It is overseen by the same DOJ. Why do we have these two different sets?

The scope of the task that you mention in your report with ATF, that there is a regulatory function and a criminal function overlap at times, and there were obvious issues that happened at this. I will allow you to make a comment on one of those, then I have one more issue as well, the size of the agency and what they were trying to accomplish.

As I read through your report, I got to page 338 and there was a very interesting comment there that basically alluded to the fact that ATF in Phoenix was over their head. They had too few people, they were trying to take on this massive task, and it looked like they were trying to accomplish something big, but they didn't have the right people, were not coordinating; that this particular group of ATF agents were in way over their head and should not have been engaged in that. Again, it begs back to the scope of the task.

So I have one more issue I want to visit on, but I want to talk a little bit about the issue of this, whether to reverse its criminal responsibility and the task that has been given to ATF and the number of agents they have on it. Do you have recommendations on that based on your investigation?

Mr. HOROWITZ. We do. And I think each of the issues you identified, Congressman, are very important and reforms that need to happen. The Department has four large law enforcement agencies under it: the FBI, the DEA, the ATF, and the Marshal Service. They should have consistency among their rules and requirements, of course, taking into account their different missions. That needs to happen. The fact that ATF was not brought under the attorney

general guidelines for undercover operations eight years into their tenure in the Department I think was significant, from our standpoint.

So we have recommended and our second recommendation is for the Department to go back and review the other components, look at who has the best practices. You have an organization, you have multiple law enforcement agencies. There needs to be some effort to look at best practices and figure out who has them. If it is ATF, the other components should use them. If it is the FBI, the other components should use those. So I agree with you completely.

Mr. LANKFORD. So you are talking about a downsizing of their task. Let's make their task more specific and clearer, and also have clear parameters of supervision as you do with the other departments.

Mr. HOROWITZ. There shouldn't be four different rules if one is better than the other.

Mr. LANKFORD. Right.

Mr. HOROWITZ. They should conform.

Mr. LANKFORD. And if this is redundant, then let's make it clear from there.

Mr. HOROWITZ. Correct.

Mr. LANKFORD. There also seems to be, as I read through your report, a bunker mentality, that as soon as Grassley's letter hits, there is a shutdown and a let's not allow Melson to go out and talk to them right away, let's try to limit this and let's try to work through the process, and try to limit it and dial that down.

When Senator Grassley's letter mentions Gunrunners, like, okay, let that sit out there when we really know it is Fast and Furious so we don't start to get into the details. And the stunning one was not just the February letter of 2011, it is the May letter and it is the June 15th testimony here to this Committee that it was apparent, by that point, that they either knew or should have known at that point, in senior leadership, that what they were writing to Congress and what they were testifying was not the whole truth; it was a limited form of that that if you interpreted it the right way it might actually stand up under light, but now, in retrospect, wasn't clear.

That is a treatment to Congress and to those investigating that we are going to close in and surround ourselves with the wagons, and we are not going to let anyone in. Did you get that sense at all?

Mr. HOROWITZ. Well, when we looked at that May 2nd letter, again, we reached the conclusion, as you noted, that by that point there was enough information in the Department that it knew or should have known that it could not stand by that February 4th letter.

Mr. LANKFORD. And they were not telling us, they were writing in such a way to make it look like they were saying one thing, when they were really saying something different.

Mr. HOROWITZ. Well, from our standpoint, the letter does appear to be literally true, as the Committee itself, I think, indicated in a report, but our concern was knowing the information they knew after four letters between February 4 and May 2nd where the Department made no substantive comments, but by that point the ap-

propriate response either was to continue saying no substantive comments until the IG report comes out or to acknowledge the information it had already found.

Mr. LANKFORD. Right. And when senior leadership, they do not inform the attorney general when Brian Terry is murdered, that there is a federal nexus to this as well in this ongoing investigation, again, that seems to be we are just kind of surrounding it and we are trying to make sure we are closing the information down, rather than letting the information get out. It seems to be from the very beginning this was a shutdown of information.

Mr. HOROWITZ. There were many points in this case, at all levels, where information flow not only wasn't what it should have been, but in some instances, as we outline in there, was inaccurate, even when information was flowing.

Mr. LANKFORD. Thank you.

I yield back.

Chairman ISSA. I thank the gentleman.

I want to make sure I go correctly here. We now go to the gentleman from Pennsylvania, Mr. Kelly.

Mr. KELLY. Thank you, Mr. Chairman.

Mr. Horowitz, thanks for being here. I think what we have difficulty with—and I know as attorneys talk to each other it makes sense to them, but people in their regular world can't begin to understand what the heck it is that we're talking about. In my world, any answer but a yes is a no, so if it takes a long time to explain it, it is because you are hitting on stuff that is a little sensitive.

You have done this for a long time. I know you have only been on this for five months and 13 months before it. How long does it take to do an investigation? Is this one of such a magnitude that we couldn't come to a conclusion quicker than this?

Mr. HOROWITZ. I will tell you my understanding is in prior investigations, like the U.S. attorney investigation, that was a two-year or so investigation by the IG's office. Given the volume of documents that we had, 100,000-plus documents, and the scope we wanted to undertake, which was to take it through the congressional responses, it took a lot of time to do that.

And very importantly for us, this report had to be thorough, it had to be fair, and it had to be accurate, and it just took—I can tell you from the five months I was there working nonstop on this, it was an extraordinary amount of documents. But we wanted to make sure, and this is the commitment I made, I wanted this report to lay out all the facts.

Mr. KELLY. And I think—I don't speak for myself, but also for the Committee, that the 18 months that we were waiting to find out, and being stonewalled time after time after time, and requesting information and not being able to get it, and getting documents delivered in pickup trucks in the thousands with most of the pages redacted, this one just doesn't pass the smell test. There is something wrong here that we are not getting to.

And I listened to Jason Weinstein; he has resigned. Lanny Breuer, Gary Grindler, other officials at the Department are not going to receive any disciplinary action? Is that a disappointment to you after looking through what you have looked through for the last five months and building on the 13 months before that?

Mr. HOROWITZ. The way the operations are set up and the law is set up by Congress, we investigate, we then hand over our findings to the Department, and it is for the Department head to make those decisions.

Mr. KELLY. And so in this case the Department head would be whom?

Mr. HOROWITZ. The attorney general.

Mr. KELLY. Okay.

Mr. HOROWITZ. And then it is up to the public and the Congress to decide?

Mr. KELLY. Well, not so much. I think we can because perception, I think, in many cases is reality, and I think when you sit back and you watch as this unwound or did not unwind, and as the Chairman continued to ask questions and was stonewalled, you begin to get a feeling that, you know what? While we keep saying this isn't political in nature, I have found very few things in this town that aren't political in nature.

And especially we talked about an administration, remember, this was going to be the most clear and transparent administration we have ever had. But when you ask questions and you can't get the answers, when you have the attorney general come here and he can't answer the questions, when you look at things that are going on, I think the American public deserves better than that. I mean, they have the right to know and we certainly have the responsibility to find out for them.

But at some point the buck has to stop somewhere. The attorney general is appointed by the President of the United States. He comes in and he gets vetted, but all of these different agencies, when there is a turnover in administrations, there is a whole group of people that come in with them. In other words, if I am taking over a company, I also come in, I bring in all the managers I want in all the departments.

Now, there may be some of those people still working in the same departments, but there is a way that we do things differently. And the law may not have changed, but maybe the policy and the way we enforce it and the way we go about it changes according to the philosophy or the methods of that administration.

So I look at this, and Jim has talked about and we have all talked about it. Why? Why so long? Why so hard to get information that should have been very basic? And one may ask questions that at least required a yes or a no. And, again, a simple yes would have been fine, but the dragging out and dragging out. Is there any wonder why the American people have lost faith in the way we do things here?

So you have looked at this and I have to tell you I don't know. I watch it and I look at all the things that have happened, and whether it is Melson or Weinstein or whatever, if I am a whistleblower, you know what I am thinking? I will probably never do that again. Instead of these people being given a plaque and being brought forward, say thanks for what you did, they get thrown under a bus.

So we have to understand that is part of the process, because what we have to do is we have to make sure the people at the top get protected, but you people at the bottom are very vulnerable. I

would really be, as a person who worked in those departments, I would be very lax, I would be very aware as I go forward.

You looked through this whole thing. Anything you see in your place? Are you disappointed that it looked more political?

Mr. HOROWITZ. Well, I have that concern precisely, Congressman. There needs to be an assurance that people who want to come forward come forward and don't feel like they are going to be retaliated against, demoted, action taken against them, whatever it is. This case is an example of the importance of people willing to step forward.

Mr. KELLY. And I was very moved, I have to tell you. One of the first hearings here was Agent Terry's family was here and the people that worked with him were here. They came here with a complete disregard for their future, but a complete dedication to the fact that this should not have happened to Brian Terry, and they needed to get to the bottom of it.

It is just troubling to me that after 18 months things that we could have known way back then, and things that have been distorted and manipulated didn't need to be done; and it just, to me, is, again, an indication of if we really mean what we say and say what we mean, we have to do it. We just can't do words and think that that is the way to placate people.

With that, Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

Mr. Horowitz, you have called for, in your report, the unsealing of portions of the wiretaps that you sum in your report. I would like to also ask you to take possession of letters, exchanges in which this Committee has some difference of opinion, but concludes that wiretap affidavits describe specific incidences that would suggest the prosecutor who was focused on the question investigating tactics at the ATF would have recognized that there was an intent not to interdict weapons from straw buyers, and particularly ones in which straw buyers who were known to already be doing it were allowed to continue doing it, including the weapon sales that ultimately led to Brian Terry's death.

I would ask you to receive these letters. They are also, arguably, speaking about items under seal, but in hopes that you would expand your request for the Justice Department to unseal portions that may be also covered by those letters.

Mr. HOROWITZ. I have been given the letters and I will take a look at them.

Chairman ISSA. I thank the gentleman.

With that, we go to the ever patient Mr. Walberg, who, of course, represents my alma mater, so I may have recognized you last in the order, but certainly not least.

Mr. WALBERG. I thank the Chairman.

Also, I represent a district in the great State of Michigan which is proud of a favorite son or homegrown son, Brian Terry, and we take that as important.

Also appreciate very much, Mr. Horowitz, your work, extensive work, but valuable work.

Representative Lankford touched on the May 2nd Grassley letter and I appreciated that, and your response to that saying you were very troubled with the Department's response as well. Do you be-

lieve your office had complete and unfettered access to the documents that you required to ensure a thorough review?

Mr. HOROWITZ. I do, Congressman. We asked for everything we thought was responsible and we ultimately got everything we asked for.

Mr. WALBERG. So you believe everything that was necessary you received?

Mr. HOROWITZ. That was represented to us, including, as noted in the report, we asked for some personal emails, given the fact that, in at least one instance, we were aware of a transfer to a personal email account.

Mr. WALBERG. Well, again, I would reiterate that was all we were asking here in this Committee as well, for those same type of documents so we could have done this review, and I think it would have ultimately brought about a substantiating report to what you were able to bring.

As I understand it, you personally reviewed the Fast and Furious wiretap applications.

Mr. HOROWITZ. That is correct.

Mr. WALBERG. Former ATF Director Ken Melson said that after he read the wiretaps, he was sick to his stomach. Did you have a similar reaction?

Mr. HOROWITZ. Well, after I read them, I came to the conclusion that there was, in my view, more than enough red flags to identify serious questions about the tactics being used in the case.

Mr. WALBERG. In relation to that, your report recommends that "the Department should require that high level officials who were responsible for authorizing wiretap applications conduct reviews of the applications and affidavits that are sufficient to enable those officials to form a personal judgment that the applications meet the statutory criteria." That was on page 431.

Has the Department given you any feedback on this recommendation or indicated that it will implement it?

Mr. HOROWITZ. Well, in their letter to us that is attached as Exhibit A, they have indicated they agree with all our recommendations, and one of the things we have asked for is a report back in 90 days on the status of the response to our recommendations. So they have indicated they are supportive of the recommendation. That is important. And now we will follow up in 90 days.

Mr. WALBERG. Do you know whether Assistant Attorney General Lanny Breuer agrees with this recommendation?

Mr. HOROWITZ. I don't know personally. The letter is from the Department on behalf of the Department as a whole.

Mr. WALBERG. So we would assume that Attorney General Holder agrees with the recommendation?

Mr. HOROWITZ. That is my understanding.

Mr. WALBERG. I appreciate that. We will wait to see. And thank you for your response.

I yield to Mr. Gowdy.

Chairman ISSA. Are you going to yield to Mr. Gowdy?

Mr. WALBERG. I was going to do that, Mr. Chair.

Chairman ISSA. Okay.

Mr. GOWDY. I am not real smart, but I am smart enough to let the Chairman go if he had a question.

Chairman ISSA. No. I just wanted to make sure I didn't get it yielded back. The gentleman is recognized.

Mr. GOWDY. I thank the Chairman; I thank the gentleman from Michigan.

Mr. Inspector General, I hate to inject facts as predicates for questions that members of Congress ask, but the record will reflect, I know you already know this, the attorney general was never held in contempt of Congress because of his actions with Fast and Furious; he was held in contempt of Congress because he failed to turn over documents to committees of Congress, documents which he turned over to you; documents, some of which he is now beginning to turn over to us, 300 pages we got yesterday. So I hate to make the record clear, but he was never held in contempt of Congress because he sanctioned gun-walking. He was held in contempt of Congress because he thwarted our attempts to find out what you found out.

Secondly, you said the February 4th letter was reviewed by dozens of people, including people within the Criminal Division at the Department of Justice. Do you know whether Lanny Breuer read the February 4th, 2011, letter before it was delivered to Senator Grassley?

Mr. HOROWITZ. We found no evidence that he had reviewed it. He told us he did not recall reviewing it, and we found nothing in the emails indicating he had actually reviewed it or made a comment about the content of the letter.

Mr. GOWDY. Did he give you any indication as to why he would forward a draft of that to his personal private email account?

Mr. HOROWITZ. I would want to go back to precisely answer that and look at the transcript. My general recollection is for purposes of reading it, but he didn't recall whether he had read it after it had been sent out on February 4th.

Mr. GOWDY. Now, you have been around the block a time or two; white collar cases. You twice have used the word recall. That is not the same as saying I didn't read it; that is saying I don't recall reading it. There is a difference, is there not?

Mr. HOROWITZ. There is.

Mr. GOWDY. Again, I am stumped as to what reason you would forward a letter to your personal email account if you are not an historian, you are not an archivist, you are not teaching grammar to the person writing or drafting the letter. What other explanation is there for forwarding it, other than to read it?

Mr. HOROWITZ. And that, you would assume, would be the reason to do it.

Mr. GOWDY. Well, my time is up. I have more questions, but I will yield back, and I thank the gentleman from Michigan for his time.

Chairman ISSA. Mr. Horowitz, just to make the record clear, you said that he didn't comment. But isn't the response good job a comment? And, if so, did that come before, during, or after the letter went out?

Mr. HOROWITZ. The comment you are referring to came, I believe, on February 2nd, while the letter was still in draft form. I think, from our standpoint, it didn't indicate an understanding of the con-

tent. And if we didn't use the precise words in the report that we should have, I understand that.

Chairman ISSA. I am concerned only because the attorney general's office, and Lanny Breuer as part of it, lied to Congress and he said good job with a draft that had the lie in it, and yet he is able to say I don't remember reading it. Now, you are a former prosecutor, maybe one again someday. Do you accept that you are able to respond good job, able to do, as Mr. Gowdy said, forward it to your personal email, able to allow 10 months to go by?

As an attorney and an officer of the court by definition, you are able to do all of that and yet say, well, I would have known it was a lie if I read it, but I didn't read it? Would you accept that as a prosecutor, or would you go forward and at least let the jury decide?

Mr. HOROWITZ. Well, I think in doing this review, our standard was whether we could draw a decision, a judgment based on the evidence we had to put it in this report ultimately, and what we decided was we needed to put out the facts of what we found; others can draw conclusions. We didn't feel like we could draw that conclusion in this report, and I didn't speculate as to what I might do as a prosecutor.

Chairman ISSA. But you did reach a conclusion that he knew or should have known. He was in that lump group that was at least somewhat derelict in a letter going out that he received, he forwarded, he commented on, and then says he doesn't remember reading, and in fact was a lie to Congress and for 10 months was all over the front page of newspapers as we insisted that we had been lied to, that there was gun-walking, and that our whistleblowers were telling the truth while they were being retaliated against by the attorney general's representatives.

Mr. HOROWITZ. Well, what we found as to Mr. Breuer was, frankly, regardless of whether he read the letter or not, given what he knew about Wide Receiver, his responsibility should have been to come forward and explain what happened in Wide Receiver, because the people who were drafting the letter told us it would have made a difference, and that is what troubled us.

Chairman ISSA. Thank you.

Mr. HOROWITZ. It didn't really whether he read the letter, frankly.

Chairman ISSA. Thank you. At this time, to make the record complete, I ask unanimous consent that the email trains of 2011, House Oversight and Government Reform DOJ date stamp number 004022, be placed in the record. These items regarding ATF Gunrunner are between Dennis Burke and a number of people, Ron Weiss and so on, but including Lanny Breuer.

Also Bates Stamp House Oversight and Government Reform DOJ 004449, dated 2/2/2011, in which Lanny Breuer placed into his personal email, the address being redacted, forward revised Grassley letter, Grassley ATF clean, 5 p.m. docs, in which there are a number of comments we have already alluded to. Without objection, so ordered.

With that, we now recognize as our final questioner in the first round the gentlelady from Florida, Mrs. Adams.

Mrs. ADAMS. Thank you, Mr. Chairman. I want to thank you and the Committee for allowing me to sit in and join the Committee.

Mr. Horowitz, I have sat here and, as you know, I come from a law enforcement background, so I sit here and I listen, and I am very concerned that we had an operation that appeared to have no true oversight from anyone in an upper level, and when an exit strategy is requested in March of 2010 and nothing happens. I have a few questions as to what happened to this agency.

I think I need to go back to maybe even before, because, as I worked with this agency years ago in law enforcement, they had these oversight protections. You could not get a wiretap without going and getting someone from above to review it and approve it, and then have it taken to a judge to be signed.

So do you happen to know when they decided to do away with that practice?

Mr. HOROWITZ. I can provide you with the answer; I don't recall as I sit here. But there was an evolving practice, as you indicated, at ATF that removed that requirement.

Mrs. ADAMS. That would be nice to know, as to when they decided to remove those practices, because apparently those supervisors that should have been reviewing it did not review, or claim to have not reviewed it, and therefore we have a loss of a life of one of our own Border Patrol agents and many weapons across the border and people being harmed everyday.

I, too, wanted to ask you, because I was reading on page 265 a statement about Mr. Hoover. He said he told us he did not recall attending the briefing on March 5th or the briefing from Melson on March 11th, although his Outlook calendar indicates that he was invited to the meetings and, as mentioned earlier, other witnesses placed him at both those briefings.

I have heard many of your comments about, well, people could not recall, people could not recall. As an attorney, someone who has prosecuted cases, when someone tells you they can't recall, what is your first impression, as an attorney?

Mr. HOROWITZ. Well, it probably depends on the context.

Mrs. ADAMS. In the context of something like this?

Mr. HOROWITZ. When you have Outlook invites and other people recalling you were there, it probably means you were there.

Mrs. ADAMS. It means you were there. And so in the case of Mr. Breuer, when he had this email that was forwarded from himself to himself on a private account, and he sends back good job, as an attorney, step aside from, and if this had been a case that you were investigating as an attorney and prosecuting, what would your impression be? Do you believe he would have sent it to read it?

Mr. HOROWITZ. The only thing that causes me hesitation there is that when you go through the email string, you do have Mr. Weinstein, when he sends the draft at the bottom of that string, Mr. Breuer isn't one of the people to whom he sends, and there can be a tendency at times, I am not drawing a judgment in this case, but there can be a tendency at times when someone sends you an email or reporting on your good work to say back good job or something like that.

So one of the things I wanted to be careful of in this case is to make sure everything was well founded, in our view, that we had

something to support it, but to put out the evidence and let people draw their own views and conclusions about that. So I respect the varying views that I have heard today about that issue.

Mrs. ADAMS. I appreciate that. Your friendship with Mr. Breuer would not impact your decision-making on any of this, would it not?

Mr. HOROWITZ. It had zero impact. When I took the oath to take this office, I took an oath to do this job, and as I committed before the Senate Judiciary Committee, the only thing that was going to make my decisions here were the facts and the law, period.

Mrs. ADAMS. And I appreciate the fact that you were asking for personal emails, because I did ask that question in Committee.

And I know that my colleague would like to ask another question, so, if I may, I will yield the rest of my time to Mr. Gowdy.

Mr. GOWDY. I thank the gentlelady from Florida.

Mr. Horowitz, I want to ask you this. I only have about 30 seconds, so I will do the quickest one that I have. Is your investigation still ongoing?

Mr. HOROWITZ. There are pieces of this investigation that are ongoing, as we have reflected in the report.

Mr. GOWDY. All right. And I will not ask you anything more beyond that.

Contrary to the assertions of my colleagues, many of us have never asserted that the attorney general knew about the tactic of gun-walking. We have asserted that he should have. And what kind of leadership or management style you have does reflect on what kind of information is brought to you. Did you make specific recommendations with respect to creating a culture within the Department of Justice where information like this would work its way up the command chain?

Mr. HOROWITZ. Well, one of the things that I hope to do through the whistleblower ombudsman position is to make sure that there is an understanding and appreciation and a willingness for people to come forward and to get that information forward. That is one of the tasks I want to undertake, is to look at that culture issue, because, I agree with you, I think it is important.

Mr. GOWDY. I thank the gentlelady.

My time is up, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We will now take a short second round. We won't keep you much longer.

One of the areas of particular interest, Mr. Horowitz, you received 100,000 documents; we got about 7,000, many of them documents we didn't ask for. But one particular one that appeared in your report discussed emails between Jason Weinstein, the head of the Office of Enforcement or Operations, and William McMahon, who has been unavailable to us, in May of 2010 regarding applications and a possible roving wiretap. It is on page 271 of your report. You are familiar with it?

Mr. HOROWITZ. I am.

Chairman ISSA. These documents were explicitly asked for in our subpoenas, but the Department never failed to hand them over. Do you think it is appropriate for the Department to deliberately withhold these documents without citing any reason or privilege for

doing so and, I might note, claiming that they had turned over extensive, unprecedented documents before February 4th? Would this document be unprecedented to send over, in your opinion?

Mr. HOROWITZ. Well, let me just say they were clearly, to us, highly relevant. I, frankly, don't know the back and forth that occurred or the decision-making that occurred within the Department, so I don't think I am in a position to answer precisely that question without understanding that.

Chairman ISSA. I will rephrase. This document was relevant and important to your investigation that occurred before February 4th, is that correct?

Mr. HOROWITZ. That is correct.

Chairman ISSA. So when the attorney general has repeatedly said that he made unprecedented levels of documents available to us, he was thorough and complete, and he came before Congress so many times before February 4th and then omitted this, he omitted something which was clearly relevant and important to the investigation.

Mr. HOROWITZ. As I said, I think these documents were, to us, highly relevant and important, which is why we spent so much time discussing them.

Chairman ISSA. Now, as a former prosecutor, if you deliver a subpoena and somebody simply doesn't mention a document, doesn't turn it over and it is relevant to the subpoena, but yet they assert that they have fully complied with the subpoena, isn't that actually a violation of the law, to simply not turn something over that you know you have?

Mr. HOROWITZ. Well, without understanding all the facts——

Chairman ISSA. Well, I am just talking about the hypothetical as a prosecutor. As a prosecutor, you serve a subpoena; you either get it or the counsel, the lawyers for the other side have an obligation to assert a privilege, provide a law, do all these things. You don't simply not deliver it.

Mr. HOROWITZ. That would certainly be the expectation.

Chairman ISSA. Are you considering or pursuing or investigating criminal referrals related to whistleblower retaliation? And I am making all of those so you don't have to answer any one of them.

Mr. HOROWITZ. Let me say we are actively investigating a variety of the whistleblower issues, some of which the Committee has referred to us and Senator Grassley has referred to us. I would be hesitant to say what we are going to do, but I think you will find the reports will be coming in the not too distant future, and we are taking them very seriously.

Chairman ISSA. Thank you. Now, I am going to go against sometimes the advice of folks who say, well, you know, don't link the constant allegations that Wide Receiver and Fast and Furious are two peas in a pod. I am going to ask you a question that I think is at the kernel of my concern.

You discovered in your report extensively that a number of people, including people at Justice, at the highest levels, were aware of Wide Receiver; they knew it had failed, they knew it had been shut down, they had U.S. attorney records. And yet they allowed Fast and Furious, whether through commission or omission, to do the same and more, correct?

Mr. HOROWITZ. There was no action apparent to try and change any policies, I agree with you, Mr. Chairman.

Chairman ISSA. Okay. So the Justice Department knew that guns were walking, by their definition, at least in retrospect, and they didn't take steps to stop it. We have a lot of people dead on both sides of the border. Aren't you very concerned that these are the very elements that it takes for the Federal Government, for our government, for Congress's appropriated dollars to be paid out in damages, whether to the hundreds of people dead in Mexico or at least one U.S. Border Patrol agent dead in the U.S.? Isn't this kind of failure one that exposes the Federal Government to huge potential damages?

Mr. HOROWITZ. I am sure that is the case, and it troubled us very much, that so many people understood and knew what happened in Wide Receiver, took no actions, and, frankly, in Fast and Furious again so many people knew about it as the investigation was going on. Put aside what happened after the agents came forward, just as it was going on that so many people knew and no one seemed to take action, even the deputy director, again, when he noticed the needed for an exit strategy.

Chairman ISSA. Now, you interviewed Lanny Breuer.

Mr. HOROWITZ. Correct.

Chairman ISSA. One of your people interviewed him. After Brian Terry was killed, after the February 4th letter, Lanny Breuer looked me dead in the eye and told me that, in fact, there was nothing wrong with Fast and Furious; it was bad work on the ground. When you interviewed him, was that still his feeling, that there was nothing wrong with Fast and Furious, but simply the ATF agents had bungled it?

Mr. HOROWITZ. I don't recall his precise answers to those questions. I am happy to go back and get that for the record for you.

Chairman ISSA. Okay.

I am going to yield to the Ranking Member. This continues to be my reason that I have so much doubt about Lanny Breuer's judgment and his ability to continue doing his job, is that he believed that after February 4th, he believed it after Brian Terry was dead, and I can't understand, for the life of me, how he could have believed it and still have his job.

With that, I recognize the Ranking Member.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Horowitz, I have a kernel of concern myself. After you have been here around here a few years, like I have, you get concerned about effectiveness and efficiency. I started my discussion off by thanking you and your staff for all that you have done, but the question is where does this lead. All those hours, all that effort. My mother, a former sharecropper, used to teach us, she had limited education, second grade education. She would tell us you can't have motion, commotion, and emotion, and no results. Motion, commotion, emotion, no results.

There are moments in life, and even in legislative life, where things come together and it presents a moment which is pregnant with the possibility of change. And if change does not take place at that moment, things usually get worse. This is one of those moments. I give the Chairman credit; he has brought all of this to

light. We have a great picture. You all have painted the picture quite accurately for us. I don't think anybody up here likes the picture that we see.

To be frank with you, knowing Eric Holder the way I know him, the honorable man he is, I don't think he likes this picture. So for all of us, you know, reform is so very, very, very important, and in that light, because I want to be effective and efficient. I don't want to leave here, looking back at my tenure in Congress, and say I was involved in one of those moments where we did nothing and it just got worse; where we did nothing and folks continued to be killed in Mexico with guns flowing from the United States; where we did nothing where neighborhoods like the one I live in, where it is easier to get a gun than it is to get a cigarette; where we did nothing.

So as to the reforms, I want to ask you just a few questions. The Department of Justice has made significant changes in ATF and DOJ policy to ensure that the mistakes made in Operation Wide Receiver and Operation Fast and Furious never happen again. While new permanent leadership within ATF is an important step to ensuring accountability, Acting Director Todd Jones has also implemented several policy changes at ATF to improve case supervision and communication between field agents and ATF management. In November 2011, Acting Director Jones issued a memo clarifying ATF's policy regarding firearms transfers, reinforcing the importance of interdiction, and directing agents to take all reasonable steps to prevent firearms criminal misuse.

Mr. Horowitz, your report describes this memo as explicitly stating that "If law enforcement officials have any knowledge that guns are about to cross the border, they must take immediate action to prevent that from occurring, even if it means jeopardizing an investigation."

I ask you now what do you think of this guidance? Is it sufficient or would additional guidance be helpful?

Mr. HOROWITZ. I think it is an important piece of guidance, but I think more has to be done. And I couldn't agree with you more, Congressman, about the opportunity to effect change in light of these events. We put out reports not just to put out reports, but to see change happen when it needs to happen.

And I didn't come back to take this job to write a report and have nobody follow through and no one listen to what we say and what we recommend, which is why our recommendations are bigger than just this case. For example, recommending to the Department that it create a regular interagency law enforcement coordination effort among its own law enforcement agencies, because I think, as you see here, there was a failure to coordinate among agencies, sharp elbows, a variety of things happened, and I am guessing, from what I understand, and we will see when the inspector general's report comes out from DHS, that you will see more of that from the ICE standpoint. And that has to go away, and that is an issue that we have to think about.

Mr. CUMMINGS. Well, I just want—again, I want to thank you all for your efforts, and I know that—and I can assure you that all of us up here want to make sure that your efforts have not been in vein. I don't know, just how much jurisdiction do you have with re-

gard to trying to make sure that the recommendations actually happen? I know we have some pressure points up here, but how about you? You talked about things that you are going to follow up on. How do you see that playing out?

Mr. HOROWITZ. What we do, and as we have outlined here, is we have asked the Department and the attorney general to report back to us within 90 days on the status of the efforts, and with a time line for implementing it, because, as we all know, if there is not a time line in place, things drag.

So our goal is to follow up, make sure things happen, because, as an IG, our strength is in a report like this and then following up on it; and, if recommendations aren't followed, to go and report back, whether it is to Congress or the attorney general or to others that they haven't been followed through.

Mr. CUMMINGS. Mr. Chairman, I don't know what will happen in the election, but I hope that both sides will agree to bring back the appropriate parties, he said 90 days, but maybe in four months so that we can actually have that accountability that we are talking about, so that we can have that effectiveness and efficiency.

Chairman ISSA. I agree with the gentleman. I would hope that Mr. Horowitz would keep his calendar open in mid to late January.

I forgot to do something at the open, before I recognize Mr. Gowdy. As is the custom, I ask unanimous consent that all members have seven days to insert written statements and extraneous matter into the record. Without objection, so ordered.

Mr. Gowdy, other than closing, you get the last word.

Mr. GOWDY. Thank you, Mr. Chairman. I want to have just a little potpourri here at the end; I am going to bounce around, and it is not designed to fool you, although I don't think I could if that were my design.

Do you know when the Mexican government was informed about Fast and Furious, or if they have been debriefed on it? Because I could imagine it would impact our relationship with law enforcement in Mexico.

Mr. HOROWITZ. I don't know when they were debriefed and I don't know the extent to which they were debriefed about it. There were some indications in emails that we saw about the possibility of alerting the Mexican authorities, but I don't know.

Mr. GOWDY. All right. There has been some discussion this morning about changes. Mr. Cummings, as he always is, was extremely eloquent talking about the desire to not see this moment pass. I also don't want to see this moment used for purposes that are duplicative. Did you ever prosecute 924(c) cases?

Mr. HOROWITZ. Yes, although infrequently.

Mr. GOWDY. The penalty for 924(c), which is using a firearm during a drug trafficking crime or another violent crime is five years consecutive to any other sentence, and each subsequent 924(c) is a consecutive five years. And depending on the nature of the weapon, if it is semiautomatic, it could be up to 20 years; and the third offense would be life.

By virtue of the fact I went to law school, I am not good at math, but five years times 1,000 weapons just strikes me that unless your name is Methuselah, that is going to be a really long sentence. And I would also be curious, and I may ask you at some point to look

into whether or not line AUSAs are asking for upper departures in lying and buying cases.

The remedy is not always to raise the statutory maximum if we are never coming close to the statutory maximum in the first place.

Finally, I want to say this, because I want to conclude on a more harmonious note. Your job was to identify facts, and you do draw some conclusions, and almost all of your conclusions I agree with. And I am not suggesting we disagree on this.

I have a little different analysis with respect to the Criminal Division chief. I think it is without question that he knew the tactic of gun-walking existed within the Department, whether he wants to say Wide Receiver or Fast and Furious is irrelevant to me. He knew the February 4th letter was false as drafted.

I appreciate the fact that there could be explanations, other than reading a letter, that you would forward a letter to your private personal email account, and I appreciate the fact that from time to time we don't read emails in full; we just say good job or thanks for sending it. I just have a higher expectation for that department and for the criminal chief.

I think it is wonderful that we have someone of your independence. I actually thought that is what prosecutors and ministers of justice were to begin with. So I am going to conclude by saying the same thing when I started. You have an incredibly hard, important job. You were exceedingly candid in our personal conversations and you have been exceedingly professional in your public testimonies, and I wish you and the people that work with you all the best, because on this we can agree: the Department of Justice is not just another political entity.

When we lose confidence in that blindfolded woman holding a set of scales and a sword, we are finished. It is not about politics; it never was. I appreciate the fact that Mr. Cummings would compliment Mr. Issa. This is a very politically charged environment that we work in and that you work in, and the fact that our work could draw bipartisan support is a testament to you and your staff.

With that, I would yield back, Mr. Chairman.

Chairman ISSA. Would the gentleman yield for just a second?

Mr. GOWDY. Yes, sir.

Chairman ISSA. Thank you. I never thought we would actually get through your questions. You were good.

I want to summarize a couple things. Obstructing Congress is a crime. I will make the statement; you don't have to evaluate that one. Clearly, Justice, during this time, obstructed Congress. They made an untruthful statement on February 4th, they doubled-down by having, at a minimum, an extremely deceiving statement.

As I have often said, the only way it is truthful they didn't let guns walk is that the guns didn't physically have legs and feet and shoes. They, in multiple areas, did not respond honestly and truthfully to a subpoena, leaving information out, information they made available to you. And, of course, the separate contempt question of refusing afterwards. But in that case I will accept that they were going to argue the question of presidential executive privilege.

What do you think we should do, and what can you do, when agencies outright refuse to provide information pursuant to an investigation of a crime?

Mr. HOROWITZ. What I did when I walked into this job, and was committed to doing, was pressing forward and writing a report that covered everything, and putting it forward and letting, if folks thought there was material to redact, that was their responsibility. My job was to get to the facts and put it out there so the Congress, the American public could see what we saw, understand what we saw, hear the facts that we found and the conclusions that we reached. That is my job as inspector general. I wanted that out there and I am glad it is out there. And now, obviously, as to what occurred or didn't occur in terms of productions in other instances, the evidence is there as to what we saw and we found.

Chairman ISSA. But will you be looking into or doing any potential criminal referrals, which is within your authority, related to the February 4th letter and those who either lied or who became aware, particularly lawyers, officers of the court, became aware that an untruthful statement had been made and sought to make no effort to correct the record?

Mr. HOROWITZ. And let me just touch on that, on the February 4th letter, because that is important. We looked at that and tried to figure out what people's intent was and state of mind, because so much of that is driven by intent; and the difficulty with that letter, as we outline in the report, is it was such a disorganized and problematic process that you had people who didn't know information making substantive edits to a letter, along with people who did know information providing inaccurate information.

Sorting out how that letter ended up the way it did and blaming one person or two people for the particular information that came forward was the difficulty we had. It was such a problematic process, as we try and lay out, that you couldn't disentangle, from our standpoint, all the different pieces as to who offered what and how changes were made. That was the difficulty we had with the intent issue.

Chairman ISSA. Thank you.

Mr. Cummings, do you have any closing remarks?

Mr. CUMMINGS. Yes, I just have one question.

Since I was just listening to the question the Chairman asked, on page 395 of the report the inspector general's report did not find that senior Justice Department officials engaged in an intentional effort to mislead Congress. Instead, the inspector general found "Department officials relied on information provided by senior component officials that was not accurate." I am reading that from your report.

Mr. HOROWITZ. That is correct.

Mr. CUMMINGS. And that goes to what you were just saying?

Mr. HOROWITZ. Right.

Mr. CUMMINGS. I see.

Mr. HOROWITZ. And the problem is they were getting information in some instances was inaccurate, in some instances was accurate, and then the people finally drafting the letter, who didn't know the underlying factual scenario, were actually making changes that they didn't realize were substantive to the letter.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

In closing, this concludes a major chapter in Fast and Furious and the false statements made to Congress, particularly to Senator Grassley afterwards. As we turn the page, it is this Committee's hope that we will, in the coming days, see a level of cooperation that we have not thus seen. I was encouraged that the 300 or so pages that the attorney general personally said he would give me if I dropped further action on the subpoena were delivered without that subpoena being dropped. Notwithstanding that, I hope, in the days to come, that most, if not all, of those 100,000 pages that were made available to you, Mr. Horowitz, would be made available to this Committee, or, in the alternative and perhaps better, a willingness by the attorney general to allow a side-by-side evaluation by our Committee so that we could save the redundant time that you and your staff have used a great deal of in gleaning the facts and figures of these documents that we haven't seen. It would be hopeful that that kind of willingness to have our investigators see what you have seen would in fact allow this to come to a quicker close and perhaps eliminate the need for a protracted fight in the courts.

Lastly, I look forward to the American people having an opportunity to read as much of the material as can be made unsealed as possible. I believe the American people and the Terry family have an absolute right to have as much transparency as possible. I think particularly when we look at the failure of the safeguards of the Fourth Amendment rights, as you so aptly said, that, in fact, all groups, groups who have nothing to do with Fast and Furious, but have everything to do with civil liberties, are going to want to know how these failures occurred in detail and, like the Ranking Member said, in a nonpartisan way we are going to want to make sure there is change so this does not happen again.

I might note that ATF is not the only law enforcement agency that requests wiretaps. Wiretaps are requested on a daily basis from many organizations. Through this investigation, I have, as a non-lawyer, gleaned a better understanding that wiretaps are presented to judges normally as a nearly complete decision. Judges rely on the honesty and integrity of the process at the Justice Department in order to authorize these. That does not mean they don't have the right to question or to reject, but for the most part they are quickly dispensed with based on a trust that the documents are complete. Often, judges have told me that in fact their clerks look through a number of these and they rely on the completeness of that.

To me, that says that the American people's constitutional protections are perhaps delegated to individuals who ultimately do not exist in the statute as the responsible parties. I think Mr. Horowitz's statement of his own experience at a time when he was reading these wiretap requests tells us that this has not always been so much a beneath me, even though the statute requires me standard. For that reason, both for those of us on both committees, Judiciary and Oversight, I pledge to work with both those committees to see that there is strict adherence to the statute in the future. And we do so not because of the Terry family's suffering, but, in fact, because the American people have a right to expect that government respects greatly the limited and necessary invasion into people's privacy, and that it must be both necessary and limited.

In the case of Fast and Furious, it was not necessary. And if nothing else has been told, the understanding that these operations continued long after a wiretap was not the source of additional information was a lesson.

Lastly, I would be remiss if I didn't think Mr. Horowitz and your entire team who have worked tirelessly for perhaps more months than some people would like, including those of you who worked on it for so many months. But I think for the Terry family, who is trying to deal with the striking down of their son, their brother, their cousin, at the tender age of 40, for those over here, very tender age of 40, in a way that he shouldn't have been, this will bring partial closure, and for that I would like to thank you and I know the Terry family would like to.

With that, I thank Mr. Cummings for his efforts today. I thank all the members who participated.

And, Mr. Horowitz, again, for those not sitting behind you and the many who have worked so long, please express our thanks for your thorough and complete work.

With that, we stand adjourned on this and we will immediately reconvene, after you leave, for a quick markup.

[Whereupon, at 12:45 p.m., the committee was adjourned.]

September 20, 2012

Chairman Darrell Issa Hearing Preview Statement

"IG Report: The Department of Justice's Office of the Inspector General Examines the Failures of Operation Fast and Furious"

- *The 471-page report released yesterday by the Department of Justice's Inspector General Michael Horowitz is a step toward restoring the public's faith in the Department of Justice. I was impressed by the professionalism, thoroughness and scope of the report.*

  It confirms what the Oversight Committee has known for quite some time: the Department of Justice has let the American people down. Specifically, it confirms the fundamental conclusions we have found in our 19-month investigation into Operation Fast and Furious. This includes the inexcusable response from senior Department officials to legitimate inquiries from Congress.

- *Fast and Furious was a breach of the public trust. It contributed to the tragic murder of Border Patrol Agent Brian Terry and the deaths of countless innocent Mexican citizens.*

- *In fact, just this Tuesday, the U.S. Border Patrol Station, in Naco, Arizona was dedicated to Brian's memory.*

- *Our work is not yet done.*

  Left with no other options, on June 28 – eight months after the Committee issued its subpoena to Attorney General Holder – the House held the Attorney General in civil and criminal contempt for failing to comply.

- *On August 13, the Committee filed a civil action to compel Attorney General Eric Holder to produce documents related to Operation Fast and Furious subpoenaed by the Committee on October 11, 2011.*

  Our legal action seeks to obtain documents covered by the subpoena that will show why the Justice Department took ten months to retract a February 4, 2011 letter. This letter contained false denials of the reckless investigative tactics used in Operation Fast and Furious.

  The report's finding that statements denying reckless conduct made to Congress by the Justice Department were "troubling" and that senior officials "knew or should have known" they were false or misleading only underscores the importance of the legal action underway to overturn an invalid assertion of Executive Privilege by President Obama.

- *Among the report's other conclusions, the finding that wiretap applications approved by senior officials did contain red flags about reckless tactics who should have acted on this information is among the most important.*

- *This conclusion contradicted specific denials by Attorney General Holder and Members on the other side of this dais who used their credibility to falsely assure the public that the sealed*

wiretap applications contained no such information.

From Agents on the ground in Arizona, up to and including the Attorney General's office, the IG's report describes widespread dysfunction and a lack of leadership. These forceful conclusions are already having an impact.

- *Yesterday, as we understand it, Deputy Assistant Attorney General Jason Weinstein was asked to resign from the Department. When mistakes of this magnitude occur, senior officials must be held accountable.*

- *This Committee sincerely hopes that the Department heeds OIG's recommendation: it must review the conduct and performance of all officials faulted in the report to determine the appropriate discipline or other administrative action. This includes all the numerous members of Attorney General Holder's own inner circle who were singled out by name in the report for their failures.*

  Finally, the report vindicates ATF whistleblowers who stepped forward to allege and end serious wrongdoing. I hope the Department will finally recognize these brave men for their contributions and your office acts aggressively to hold those who tried to intimidate them to account.

- *I look forward to hearing the Inspector General's testimony at today's hearing.*

DARRELL E. ISSA, CALIFORNIA
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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Hearing on "IG Report: The Department of Justice's Office of Inspector General Examines the Failures of Operation Fast and Furious"

September 20, 2012

Thank you Mr. Chairman. Let me welcome our witness, Mr. Horowitz. His office has worked for more than a year and a half on this investigation. They reviewed more than 100,000 pages of documents and interviewed 130 witnesses in compiling this comprehensive report. They did it under the microscope of a highly politicized environment in which public accusations were sometimes made before the search for evidence began. It was a difficult task, but he and his office did an admirable job.

In my opinion, one of the most important things we can do here today is recognize the service of Border Patrol Agent Brian Terry, who gave his life for his country. Although it cannot truly offer any solace to his family, I hope this report provides at least some of the answers they have been searching for since Agent Terry's murder.

Let me next commend Chairman Issa. We have had many disagreements about how this investigation should proceed, but the fact is that the Committee uncovered a severe problem that was festering since 2006 in the Phoenix office of ATF and the U.S. Attorney's Office in Arizona that allowed criminals in Mexico and the United States to obtain hundreds of guns. This Committee played an important role in exposing and halting these flawed operations.

I also want to commend the Attorney General. I have lost count of how many times he has testified on this issue, but he has remained even-handed, respectful, and always true to the daunting and critical mission of the Department he leads. He requested this IG investigation, and he has already put numerous reforms in place.

To that end, I note that the Administration did not assert executive privilege over any part of the Inspector General's report, or over any of the documents relied on by the Inspector General. In fact, the Department went a step further. Yesterday, it sent to this Committee more than 300 pages of additional documents that were withheld previously.

I think this is a positive development. I have always believed—and I continue to believe—that the Committee and the Department can resolve any lingering issues without further conflict. With this action by the Department, I urge the Committee to reconsider its position and settle the remnants of this dispute without resorting to unnecessary and costly litigation that nobody in this country wants.

With that, let me turn to the report in order to highlight several key points and raise some specific questions.

There can no longer be any doubt that gunwalking began under the Bush Administration. The IG report goes into great detail about Operation Wide Receiver, and it finds that ATF agents simply let guns walk. It also finds that wiretap affidavits in Operation Wide Receiver contained just as much detail as those in Fast and Furious.

The IG report concludes: "these tactics were used by ATF more than three years before Operation Fast and Furious was initiated."

There can also no longer be any doubt that gunwalking was never authorized or approved of by the Attorney General or senior Department officials, especially as some sort of top-down scheme or conspiracy against the Second Amendment.

The IG report found that gunwalking "was primarily the result of tactical and strategic decisions by the agents and prosecutors." As the IG says in his written testimony for today's hearing, ATF and the U.S. Attorney's Office in Arizona "share equal responsibility for the strategic and operational failures in Operations Wide Receiver and Fast and Furious."

With these points in mind, I have two broad questions I hope the Inspector General will address.

First, how could this tactic have been used for so long—over the course of five years and two administrations—without the ATF field office in Phoenix or the U.S. Attorney's Office in Arizona stepping in to halt it? What allowed it to go on for so long unchecked?

Second, what should we do now to ensure that this never happens again? I know the IG has made his recommendations, and I have also made my own. Which of these recommendations have ATF and the Department already implemented? Which should be prioritized? And which may require legislation?

Mr. Horowitz, thank you again for your office's work on this investigation, and I look forward to your testimony.

Contact: Ashley Etienne, Communications Director, (202) 226-5181.

From: Breuer, Lanny A.
To: Raman, Mythili
Sent: 2/1/2011 1:47:21 PM
Subject: Re: ATF GunRunner

Let's help as much as we can.

From: Raman, Mythili
To: Breuer, Lanny A.
Sent: Tue Feb 01 11:55:37 2011
Subject: FW: ATF GunRunner

From: Burke, Dennis (USAAZ) RC-1
Sent: Tuesday, February 01, 2011 11:55 AM
To: Burton, Faith (SMO); Smith, Brad (ODAG) (SMO); Johnson, Deborah (SMO)
Cc: Weinstein, Jason; Pings, Anne (USAEO); Raman, Mythili; Dinan, James (SMO); Welch, Ron (SMO); Gaston, Molly (SMO); Gonzales, Mary (OLA) (SMO)
Subject: Re: ATF GunRunner

ATF already got smoked in the Az Republic this morning. No clue why they refused to comment to the reporter. Makes no sense.

From: Burton, Faith (SMO)
Sent: Tuesday, February 01, 2011 11:49 AM
To: Smith, Brad (ODAG) (SMO); Johnson, Deborah (SMO)
Cc: Weinstein, Jason (CRM); Pings, Anne (USAEO); Raman, Mythili (CRM); Burke, Dennis (USAAZ); Dinan, James (SMO); Welch, Ron (SMO); Gaston, Molly (SMO); Gonzales, Mary (OLA) (SMO)
Subject: FW: ATF GunRunner

We've been talking with ATF about this, including the letter that came in yesterday. We'll work with them to draft responses, which we'll circulate to all before they go. We'll reach out to Jason and Dennis, or his designee, in the meantime. Thanks. FB

From: Welch, Ron (SMO)
Sent: Tuesday, February 01, 2011 10:52 AM
To: Gonzales, Mary (OLA); Burton, Faith (SMO)
Cc: Gaston, Molly (SMO); Agrast, Mark D. (SMO); Scott-Finan, Nancy (SMO)
Subject: RE: ATF GunRunner

Yes, Grassley raised it with the AG and the AG promised to look into it.

From: Gonzales, Mary (OLA)
Sent: Tuesday, February 01, 2011 9:26 AM
To: Burton, Faith (SMO)
Cc: Gaston, Molly (SMO); Welch, Ron (SMO); Agrast, Mark D. (SMO); Scott-Finan, Nancy (SMO)
Subject: Fw: ATF GunRunner

Faith and Molly, see below. I am a bit delayed this morning due to school delays.

Can you let the group know that you are handling and how you want to proceed? Thanks, M

From: Smith, Brad (ODAG)
Sent: Tuesday, February 01, 2011 08:18 AM
To: Johnston, Deborah A. (ODAG); Gonzales, Mary (OLA); Dinan, James
Subject: Re: ATF GunRunner

I believe that ATF, working with OLA, started preparing a response and briefing last week, and I believe some of these issues may have come up when the AG met with Grassley yesterday. Mary may know more on that front. I can check with Billy Hoover today.

From: Johnston, Deborah A. (ODAG)
Sent: Tuesday, February 01, 2011 08:04 AM
To: Gonzales, Mary (OLA); Dinan, James; Smith, Brad (ODAG)
Subject: Fw: ATF GunRunner

Looks like Jason will work on it.

From: Weinstein, Jason (CRM)
Sent: Monday, January 31, 2011 09:14 PM
To: Burke, Dennis (USAAZ); Pings, Anne (USAEO); Johnston, Deborah A. (ODAG); Breuer, Lanny A. (CRM)
Cc: Raman, Mythili (CRM)
Subject: Re: ATF GunRunner

I agree completely. This is a really important briefing for ATF - they need to nail it. Since I won't be in Mexico this week after all, I'd be happy to work with ATF on the prep for this if it would be helpful.

Jason M. Weinstein
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Office: RC-1
Cell: RC-1

From: Burke, Dennis (USAAZ) RC-1
To: Pings, Anne (USAEO) RC-1 Weinstein, Jason; Johnston, Deborah A. (ODAG) (SMO) RC-1
Sent: Mon Jan 31 20:29:51 2011
Subject: FW: ATF GunRunner

Grassley's assertions regarding the Arizona investigation and the weapons recovered at the BP Agent Terry murder scene are based on categorical falsehoods. I worry that ATF will take 8 months to answer this when they should be refuting its underlying accusations right now.

From: Breuer, Lanny A.
To: L. Breuer personal email address redacted
Sent: 2/2/2011 8:50:02 PM
Subject: Fw: Revised Grassley letter
Attachments: grassley atf clean 5pm.docx

From: Weinstein, Jason
To: Breuer, Lanny A.; Burke, Dennis (USAAZ)
Cc: Raman, Mythili
Sent: Wed Feb 02 17:20:29 2011
Subject: FW: Revised Grassley letter

The Magna Carta was easier to get done than this was. Have a cerveza or two for me....

From: Weinstein, Jason
Sent: Wednesday, February 02, 2011 5:17 PM
To: Burton, Faith (SMO); Hoover, William J. (ATF); Burke, Dennis (USAAZ); Rasnake, Gregory R. (ATF); Pings, Anne (USAEO); McDermond, James E. (ATF); Melson, Kenneth E. (ATF); Johnson, Deborah (SMO); Smith, Brad (ODAG); Colborn, Paul P (SMO)
Cc: Gaston, Molly (SMO); Gonzales, Mary (OLA)
Subject: Revised Grassley letter

Attached is a revised draft of a letter to Sen. Grassley. Please take a look and let us know if this version is OK with you.

Faith is tied up in a meeting, but she asks that ATF reach out to Grassley's staff to let them know that we'll be sending a response shortly (we expect tomorrow, but shouldn't say that specifically) and that you look forward to briefing them on Gunrunner.

Thanks.

Jason

U.S. Department of Justice

Office of the Inspector General

OCT 17 2012

October 16, 2012

Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2347 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing in response to your letter dated September 28, 2012, regarding the hearing on September 20 before the House Committee on Oversight and Government Reform (Committee) on the Office of the Inspector General's report on Operation Fast and Furious and related matters. The letter forwarded for response the following three questions raised by Congressman Gosar:

1. *Did your investigation reveal the identities of any persons inside or outside the Department of Justice (DOJ), including the Attorney General, who reviewed the testimony by DOJ officials provided at Congressional hearings related to Operation Fast and Furious, either before or after the testimony was provided?*
2. *Did your interviews with any of these witnesses or your review of any relevant documentary evidence raise questions about the truthfulness of the testimony given to Congress, in particular by the Attorney General of the United States and/or any other witness from the DOJ who testified before Congress?*
3. *If so, what evidence led you this conclusion and what was inaccurate about the testimony?*

Our responses are provided below.

The OIG's September 2012 report, *A Review of ATF's Operation Fast and Furious and Related Matters*, focused on ATF's firearms trafficking investigations referred to as Operations Wide Receiver and Fast and Furious. We also reported on the Department of Justice's (Department) knowledge about those matters, as well as the Department's statements to Congress about them. We did not specifically examine as part of the scope of our investigation whether anyone reviewed congressional testimony by a Department official

before or after it was provided to Congress. Our report did address certain testimony and information provided to Congress in 2011. Nevertheless, we did not become aware of evidence during our review which demonstrated that witness testimony had been improperly influenced by Department officials.

During the course of our investigation, we reviewed the public testimony that the Department leadership provided to Congress relating to Operations Wide Receiver and Fast and Furious, as well as the testimony that former U.S. Attorney Dennis Burke provided to the Committee in a closed session (which testimony had been provided to the OIG by the Committee). We did not make any findings that the testimony we reviewed was untruthful. However, we did reference some of this testimony in our report and addressed it in our analysis. For example, we described in our report Attorney General Holder's testimony on June 7, 2012, before the House Committee on the Judiciary in which he stated that former Attorney General Mukasey was briefed on the transmission of guns to Mexico and "did far less than what I did." Attorney General Holder testified before the Senate Committee on the Judiciary on June 12, 2012, and stated that "[a]n [A]ttorney [G]eneral who I suppose you would hold in higher regard was briefed on these kinds of tactics in an operation called Wide Receiver and did nothing to stop them – nothing. Three hundred guns, at least, walked in that instance." As stated in our report, we found no evidence that former Attorney General Mukasey was made aware of Operation Wide Receiver or of the investigative tactics that were employed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) during the investigation. As noted in the report, Attorney General Holder told us that while preparing for his Congressional testimony, he was informed that Attorney General Mukasey had been briefed on an ATF firearms trafficking investigation that Attorney General Holder misidentified as Operation Wide Receiver.

We also described in the report former Assistant Attorney General Ronald Weich's testimony before the House Committee on Oversight and Governmental Reform on June 15, 2011. Assistant Attorney General Weich was asked about the Department's statement in its February 4, 2011, letter to Congress that ATF did not allow the sale of firearms "to a straw purchaser who then transported them into Mexico," and the Department's statement in its May 2, 2011, letter that "[i]t remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico." Assistant Attorney General Weich testified:

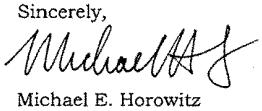
> As the committee's report pointed out, there is a technical explanation for why the allegation that ATF sanctioned the sale of guns to straw purchasers who then transported them to Mexico is not an accurate statement, and so we said that it was false. However, serious allegations have come to light, including the testimony of the agents here today, that cause Attorney General Holder to want there to be an independent review

of this matter, and he has initiated that review. So we are not clinging to the statements in those letters.

Our report recognized the difficult situation Weich was in during his testimony because as the Assistant Attorney General for the Office of Legislative Affairs, he was not in a position to provide informed responses to the substantive questions that were being asked about the details of Operation Fast and Furious. However, as to the Department's position about the accuracy of the February 4 and May 2, 2011 letters – a subject on which he could be expected to provide authoritative responses – we found that Assistant Attorney General Weich's testimony sent a confusing message to Congress and the public about whether the Department's leadership was embracing in full the February 4 and May 2 responses as accurate.

I hope that this information is helpful for the Committee's purposes. Thank you for your interest in this matter.

Sincerely,



Michael E. Horowitz
Inspector General

cc: The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform

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