Questions for the Records for
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Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate

"Combating International Organized Crime: Evaluating Current Authorities, Tools and Resources"
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Questions from Senator Patrick Leahy

Question 1:

During the hearing, you were interrupted as you attempted to answer a question from Senator Grassley. Would you like to complete your answer? The question is below:

> **Senator Grassley. On February 4, 2011, the Department sent me a letter also assuring me that allegations of gun walking were untrue. It reads, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." That statement is absolutely false, and you admitted as much last night, that you knew by April 2010 that ATF walked guns in Operation Wide Receiver. That is correct, yes?**
>
> **Mr. Breuer. Yes, Senator. What I—**
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> **Senator Grassley. That is all I need to know, if that is correct.**

Response:

Thank you for the opportunity to complete my response.

In April 2010, one of my Deputy Assistant Attorneys General (DAAG), Jason Weinstein, informed me about certain misguided tactics that had been used in Operation Wide Receiver in 2006 and 2007, which had resulted in the ATF losing control of guns that then crossed the border into Mexico. DAAG Weinstein became aware of these misguided tactics in the course of his supervision of the Criminal Division's Gang Unit, which had agreed, in September 2009, to assume responsibility from the United States Attorney's Office in Arizona for prosecuting Operation Wide Receiver.

When I learned of these misguided tactics in April 2010, the operative phase of the Wide Receiver investigation was approximately four years old and had been complete for well over two years; the Acting Directors of the ATF in 2006 and 2007 – when Operation Wide Receiver was investigated – were no longer leading the ATF; and the U.S. Attorneys in Arizona in 2006 and 2007 – whose Office handled Operation Wide Receiver until the Gang Unit became involved in 2009 – were no longer leading the U.S. Attorney's Office. Once I became aware of the inappropriate tactics that had resulted in the ATF losing control of guns that then crossed the border into Mexico, I directed DAAG Weinstein to meet with the leadership of the ATF to convey my concerns about the investigation. Based on the meeting DAAG Weinstein subsequently had with the ATF's Deputy Director, I had no reason to believe that the new leadership of the ATF approved of, or that it would ever continue to endorse, the tactics that had been used years earlier in Operation Wide Receiver. In addition, after the allegations regarding Operation Fast and Furious became public, the leadership of both the ATF and the U.S. Attorney's Office in Arizona – who held supervisory responsibility for the investigation – repeatedly and vigorously assured individuals throughout the Justice Department that those allegations were false.

Based on the information I had at the time the Department sent its February 4, 2011 letter, I had no reason to believe that the leadership of the ATF approved of, or that it would ever continue to endorse, the misguided tactics that had been used years earlier in Operation Wide Receiver, which had resulted in the ATF losing control of guns that then crossed the border into Mexico. In recent weeks, I have seen reports suggesting that, during my November 1, 2011 testimony, I acknowledged knowing that the February 4 letter was inaccurate at the time it was submitted. I want to make clear that such an interpretation of my testimony is absolutely incorrect. I testified that, at the time the Department sent its February 4 letter, I did not make a connection between Operation Wide Receiver and the allegations being made about Operation Fast and Furious. But, as I have stated, knowing what I now know was a pattern of unacceptable and misguided tactics used by the ATF, I regret not having drawn a connection between the allegations relating to Operation Fast and Furious and the inappropriate tactics used years earlier in Operation Wide Receiver.

Question 2:

You testified that you regretted not alerting others in the Justice Department after you became aware, in April of 2010, of investigative tactics that were used in a previous ATF investigation entitled Operation Wide Receiver, which occurred in 2006 and 2007. That testimony has been misconstrued by some as if about Operation Fast and Furious. When did you become aware of the unacceptable tactics being used in Operation Fast and Furious?

Response:

I first became aware of allegations regarding the use of unacceptable tactics in Operation Fast and Furious when those allegations became public earlier this year. Before that time, I was unaware of any such tactics in connection with Operation Fast and Furious.

Questions from Senator Charles Grassley

Department Letter of February 4, 201[1]

Last week when asked whether you saw a draft of the February 4 letter sent to me that contained the false statement, "ATF makes every effort to interdict weapons that have been purchased illegally, and prevent their transportation to Mexico," you responded: "I cannot say for sure whether I saw a draft of the letter that was sent to you. What I can tell you, senator, is at that time, I was in Mexico dealing with the very real issues that we are all so committed to."

Question 3(a):

Did your Deputy Assistant Attorney General (DAAG) Jason Weinstein review the Department's February 4, 201[1] letter to me?

Response:

Yes, DAAG Weinstein reviewed the letter; he also participated in its drafting.

I understand from documents being produced by the Justice Department, and from conversations I have had with DAAG Weinstein, that he offered to assist in drafting the February 4 letter because, having been unable to go on his planned trip to Mexico with me and other Department officials, he had the time to do so. I further understand that during the drafting process, he relied on the unequivocal assertions of the leadership of the ATF and the Arizona U.S. Attorney's Office – officials who held supervisory responsibility for Operation Fast and Furious and who were therefore in the best position to know the actual facts concerning the operation.

DAAG Weinstein has expressed to me that, in hindsight, he wishes he had not relied on those assertions and that, because he did rely so heavily on them, he viewed, incorrectly, the misguided tactics used in Operation Wide Receiver – which resulted in the ATF losing control of guns that then crossed the border into Mexico – as having no relation to the allegations that were being made about Operation Fast and Furious.

Before joining the Criminal Division in 2009, DAAG Weinstein had been an Assistant United States Attorney (AUSA) for ten years, prosecuting violent and other criminals in Manhattan and Baltimore. He rose to become Assistant Criminal Chief and Violent Crime Chief in the Baltimore U.S. Attorney's Office, where he prosecuted some of Baltimore's most violent offenders and created the Maryland Exile program, which contributed to a significant reduction in murders and shootings in the Baltimore area. In 2007, he and others received an award from the Justice Department for having built the nation's best violent crime task force. In 2009, I selected Mr. Weinstein for his position as Deputy Assistant Attorney General overseeing the Gang Unit and other Criminal Division sections because of his years of experience in fighting violent crime and because of his stellar reputation in the law enforcement community. He has made enormous contributions to the Division and to the Department over the past two-and-a-half years and during his long career with the Department. I consider him to be an extremely talented, ethical, and devoted prosecutor.

Question 3(b):

Who else in the Criminal Division reviewed the letter?

Response:

Based on the documents being produced by the Justice Department, it is my understanding that several individuals within the Criminal Division received drafts of the February 4 letter. However, I am not aware of anyone in the Division apart from DAAG Weinstein who participated in any meaningful way in drafting or reviewing it.

Question 3(c):

What were the dates you were in Mexico in late January and early February 20[1]?

Response:

I was in Mexico on an official visit from February 1-3, 2011.

Question 3(d):

When did you first become aware that the Department denied in its February 4 letter allegations that guns had been walked?

Response:

Like many others in the Department, I was aware, at the time, that the Department was drafting a response to your January 2011 letters and that officials at the ATF and the U.S. Attorney's Office in Arizona felt strongly that the allegations being made were untrue. I was also aware, like many others in the Department, that based on the unequivocal statements of the ATF and the Arizona U.S. Attorney's Office, the Department intended to deny the allegations. I did not, however, participate in drafting or editing the Department's February 4, 2011 letter.

Based on the documents being produced by the Justice Department, I understand that two emails attaching drafts of the letter were sent to me by DAAG Weinstein on February 2, while I was in Mexico, and that I forwarded one of those emails to my personal email account on that day; I also understand that on February 4, after I had returned from Mexico, I received two emails attaching signed versions of the letter, including the final version, and that on February 5, I forwarded both emails to my personal email account. However, as I testified, I cannot say for sure whether I saw a draft of the letter before it was sent to you. I have no recollection of having done so and, given that I was on official travel that week and given the scope of my duties as Assistant Attorney General, I think it is exceedingly unlikely that I did so.

In recent weeks, I have seen erroneous reports suggesting that, during my November 1, 2011 testimony, I acknowledged knowing that the February 4 letter was inaccurate at the time it was submitted. I want to make clear that such an interpretation of my testimony is absolutely incorrect. I testified that, at the time the Department sent its February 4 letter, I did not make a connection between Operation Wide Receiver and the allegations being made about Operation Fast and Furious. As I explain more fully in response to Senator Leahy's Questions for the Record, based on the information I had at the time the Department sent its February 4, 2011 letter, I had no reason to believe that the leadership of the ATF approved of, or that it would ever continue to endorse, the misguided tactics that had been used years earlier in Operation Wide Receiver, which resulted in the ATF losing control of guns that then crossed the border into Mexico. But, as I have also stated, knowing what I now know was a pattern of unacceptable and misguided tactics used by the ATF, I regret not having drawn a connection between the allegations relating to Operation Fast and Furious and the inappropriate tactics used years earlier in Operation Wide Receiver.

Connection Between Operation Wide Receiver and Operation Fast and Furious

In your testimony of November 1, you stated: "I regret that in April of 2010 that I did not draw the connection between Wide Receiver and Fast and Furious." However, it is clear that at that time, your own staff considered them related components of the same case.

On February 22, 2010, Gang Unit prosecutors Laura Gwinn and Joe Cooley, assigned respectively to Wide Receiver and Fast and Furious, emailed back and forth with each other about the connection between the two cases when some of the guns being trafficked in Fast and Furious were tracked to a stash house of one of the targets in Wide Receiver. HOGR WR 003422.

Because of those overlapping targets, Wide Receiver and Fast and Furious were considered associated cases. When the ATF Phoenix Field Division assembled a PowerPoint presentation on Fast and Furious in March 2010, one of the slides listing "Associated Cases" with Fast and Furious listed Operation Wide Receiver. This same PowerPoint was presented at ATF headquarters on March 5, 2010. HOGR ATF 002091. According to a March 11, 2010, memo from Gang Unit Chief Kevin Carwile, Gang Unit member Joe Cooley attended that briefing. HOGR DOJ 003311.

Concerns about those overlapping targets also led to delay in unsealing the ndictments in Wide Receiver, as the U.S. Attorney's Office in Arizona had concerns that when the Wide Receiver indictments were unsealed it would tip off targets in

Fast and Furious. As the Department wrote in its October 31, 2011, letter to Senator Leahy: "The documents produced today reflect that the Gang Unit prosecutor was ready to indict the Wide Receiver cases and unseal them beginning in the spring of 2010, but that the Assistant U.S. Attorney in the U.S. Attorney's Office in Arizona handling Fast and Furious believed that if the Wide Receiver indictments became public at that time they would negatively impact his case. The Assistant U.S. Attorney therefore requested that the indictments and/or the unsealing of the indictments in Wide Receiver be delayed. HOGR WR 003480, 003489. As a result of that request, Wide Receiver 1 was indicted under seal in May 2010, Wide Receiver 2 was indicted under seal in October 2010, and both cases were unsealed in November 2010. HOGR DOJ 003260, 63."

In a July 1, 2010, memo to DAAG Weinstein, Principal DAAG and Criminal Division Chief of Staff Mythili Raman, and Criminal Division Deputy Chief of Staff Steven Fagell, the connection between Fast and Furious and Wide Receiver was referenced when Gang Unit Chief Kevin Carwile described "a gun trafficking case with apparent ties to the Tucson case already indicted by [the Gang Unit]." HOGR DOJ 003327.

Finally, an October 18, 2010, memo under your name that is addressed to the Attorney General and Acting Deputy Attorney General reads: "On October 27, the Organized Crime and Gang Section (OCGS) plans to indict eight individuals under seal relating to the trafficking of hundreds of firearms into Mexico. The sealing will likely last until another investigation, Phoenix-based Operation Fast and Furious, "is ready for takedown." HOGR DOJ 003263.

Question 4(a):

In light of all of these connections, how is it credible for you to claim that you "did not draw the connection between Wide Receiver and Fast and Furious"?

Response:

None of the documents cited in your question indicates a connection between the misguided tactics used by the ATF in 2006 and 2007 in Operation Wide Receiver – which resulted in the ATF losing control of guns that then crossed the border into Mexico – and any inappropriate investigative tactics being used in Operation Fast and Furious, and I was not aware of any such connection.

Indeed, the fact that I did not connect what I knew about Operation Wide Receiver with the allegations relating to Operation Fast and Furious is perhaps best reflected in the reaction I had when I learned, in April 2010, of the unacceptable tactics used years earlier in Operation Wide Receiver that had resulted in the ATF losing control of guns that then crossed the border into Mexico – namely, to ensure that the leadership of the ATF was promptly apprised of the misguided tactics used in the investigation, which had been conducted long before I became Assistant Attorney General and long before the Criminal

Division assumed responsibility for prosecuting the Wide Receiver defendants. I am confident that had I drawn a connection between what I knew about Operation Wide Receiver and the allegations relating to Operation Fast and Furious, I would have taken action.

As I testified, knowing what I now know was a pattern of unacceptable and misguided tactics used by the ATF, I regret not having drawn a connection between the allegations relating to Operation Fast and Furious and the inappropriate tactics used years earlier in Operation Wide Receiver.

Additionally, as I have explained more fully in response to Senator Leahy's Questions for the Record, based on the information I had at the time the Department sent its February 4, 2011 letter – including the information that senior officials at the ATF and the U.S. Attorney's Office in Arizona, who held supervisory responsibility for Operation Fast and Furious, provided to the Department at the time – I had no reason to believe that the leadership of the ATF approved of, or that it would ever continue to endorse, the misguided tactics that had been used years earlier in Operation Wide Receiver, which had resulted in the ATF losing control of guns that then crossed the border into Mexico.

Question 4(b):

Since the Criminal Division believed in the spring of 2010 that both Wide Receiver and Fast and Furious involved overlapping targets, when you learned in April 2010 that guns were walked in Wide Receiver, did you ask whether they were also walked in Fast and Furious? If not, why not?

Response:

Please see response to Question 4(a) above.

<u>**Question from Senator Amy Klobuchar**</u>

Question 5:

In connection with this hearing, the witnesses submitted written testimony which asserted a significant link between terrorism financing and transnational organized crime. A White House Fact Sheet from July 25, 2011 also asserted such a link, citing Department of Justice data on the matter. However, not all statements from Administration officials have indicated there is a significant link. Please briefly clarify what you see as the level of coordination between terrorist financing and transnational organized crime.

Response:

The Department of Justice believes that a link exists between terrorist financing and transnational organized crime, and in particular between terrorist financing and international narcotics traffickers. Further, the potential for continued and increased overlap between these crimes and the entities that engage in them is substantial. Indeed, only days ago, on November 15, 2011, a defendant, Oumar Issa, a citizen of Mali, pleaded guilty in federal court in Manhattan to his role in transporting cocaine through West and North Africa with the intent to support the drug trafficking activities of al-Qa'ida, al-Qa'ida in the Islamic Maghreb, and the Revolutionary Armed Forces of Colombia (FARC). Each of these organizations has been designated by the U.S. Department of State as a Foreign Terrorist Organization.

Transnational organized crime groups can, and do, offer illicit goods and services vital to terrorist operations –including false identifications and travel documents and weapons. These groups are also available to smuggle aliens and launder funds for terrorists. Among other means, international narcotic trafficking groups have transferred funds to terrorist organizations through international banking channels. In February 2011, the DEA and the Department of the Treasury obtained evidence that The Lebanese Canadian Bank SAL and its subsidiaries (LCB) facilitated the money laundering activities of an international narcotics trafficking and money laundering network and, as a result, identified LCB as a financial institution of primary money laundering concern under Section 311 of the USA PATRIOT Act. The investigation revealed that the network in question moved illegal drugs from South America to Europe and the Middle East via West Africa and that it laundered hundreds of millions of dollars monthly through accounts held at LCB. The network also laundered funds through trade-based operations involving consumer goods throughout the world, including used car dealerships in the United States. The Treasury Department's finding concluded that it had reason to believe that Hizballah derived financial support from the criminal activities of the network and that LCB managers were complicit in the network's money laundering activities.

The links between transnational organized crime and terrorist financing are not new. From approximately 1990 through January 2005, Mohammad Essa was a member of an international heroin trafficking organization that was responsible for manufacturing and transporting hundreds of kilograms of heroin in Afghanistan and Pakistan. The organization was closely aligned with the Taliban in Afghanistan, and provided financial support to the Taliban and related Islamicextremist organizations there. In return, the Taliban provided the organization with protection for its opium crops, heroin laboratories and drug-transportation routes. Essa managed the organization's heroin distribution operation in the United States, the proceeds of which directly supported the insurgency in Afghanistan and a "jihad" against the United States. Essa was charged in May 2007 principally for conspiring to import into the United States $25 million worth of heroin from Afghanistan and Pakistan. In May 2009, a federal judge in the Southern District of New York sentenced Essa to 103 months incarceration.

In another example, Dawood Ibrahim has reigned as one of the pre-eminent criminals in the Indian underworld for most of the past two decades. Ibrahim's syndicate is involved in large-scale shipments of narcotics in the United Kingdom and Western Europe. His criminal enterprise engages in a wide range of criminal activities, sharing his smuggling routes from South Asia, the Middle East and Asia with al-Qa'ida and funding attacks by Islamic extremists aimed at destabilizing the Indian government. He is currently wanted by India for the 1993 Bombay Exchange bombings, which killed hundreds of Indians and injured over a thousand more. Further, he is known to have financed the activities of Lashkar-e-Tayyiba (Army of the Righteous), a group designated by the Department of State as a Foreign Terrorist Organization and as a Specially Designated Global Terrorist entity in 2001. In October 2003, the Treasury Department designated Ibrahim as a Specially Designated Global Terrorist pursuant to Executive Order 13,224 — effectively forbidding United States financial entities from working with him and blocking any assets he may have under U.S. jurisdiction. He is also listed under U.N. sanctions requiring all U.N. member states to take similar actions.

Others involved in international organized crime have also been arrested for supporting terrorist activities: Monzer Mohammad Al Kassar, a notorious narcotics and arms trafficker, was arrested in Spain at the request of the United States for conspiring to sell millions of dollars worth of weapons to the FARC that were to be used to kill Americans in Colombia. In February 2009, after his extradition to the United States, Kassar was sentenced to 30 years incarceration. In August 2009, international arms trafficker Jamal Yousef was charged with selling military-grade weapons, also to the FARC, in exchange for nearly one metric ton of cocaine. He was arraigned in New York in August 2009.

Terrorist organizations depend on money to recruit, plan, and carry out terrorist attacks and to avoid detection and capture. Like transnational criminal organizations, and sometimes through these organizations, they generate much of this funding from criminal activity. Our anti-money laundering and forfeiture laws are among the most significant tools that the Department has to combat these organizations where they are most vulnerable and to choke off the flow of money to terrorism and transnational criminal activity. The Department has proposed enhancements to our existing statutory authority to further our efforts in this fight.

Question from Senator Richard J. Durbin

Question 6:

I have long been concerned about organized retail crime ("ORC"), a serious problem that has links to international organized crime. ORC involves the coordinated theft of large amounts of items from retail stores by professional shoplifters called "boosters." Boosters then deliver the items to "fences," or middlemen who deliver the goods to warehouses operated by organized retail crime rings. At these warehouse locations, teams of workers re-label, re-package, or modify items, often storing them in substandard conditions. Organized retail crime rings then resell their stolen merchandise at flea markets, swap-meets, and Internet marketplace sites. As ICE has previously indicated, "ORC rings are very sophisticated, compartmentalized and operate similar to criminal organizations involved in drug trafficking or human smuggling. Furthermore, transnational criminal syndicates such as Eastern European street gangs and organized crime elements have become increasingly involved, and utilize traditional money laundering techniques to conceal their profits."

Retailers and the FBI estimate that organized retail crime costs retailers tens of billions of dollars per year and deprives states of hundreds of millions of dollars in lost sales tax revenues. The proceeds of organized retail crime can be used to finance other forms of crime, including gang activity, drug trafficking and terrorism.

Please discuss the steps the Justice Department is taking to combat organized retail crime.

Response:

The Department currently plays a central role in coordinating information-sharing and cooperation with the private sector on organized retail theft. The FBI, through its Organized Retail Theft program, specifically focuses on the most significant retail theft cases involving the interstate transportation of stolen property, and work closely with major retailers across the country to promote the sharing of intelligence.

The Department of Justice, through the United States Attorney's Offices, vigorously pursues appropriate cases of organized retail theft. For example, in October 2010, the United States Attorney's Office for the Northern District of California announced the guilty pleas of 15 defendants in two criminal organizations for their roles in a large-scale fencing operation to buy and sell over-the-counter health and beauty products and to launder the proceeds through complex financial transactions. One of those defendants ultimately agreed to the entry of a money judgment in the amount of more than $14 million (which represents the gross proceeds the organization received from distributors who purchased stolen property during the period covered by the indictment). He also agreed to forfeit the following: real property; five vehicles; approximately $165,000 in cash; nine diamonds, twelve gold bars and other assorted watches and jewelry seized on the day the defendants were arrested; and the funds in ten bank accounts, totaling $81,502.93. Other defendants in the second case agreed to forfeit a money judgment of more than $5 million; two pieces of real property; one vehicle; approximately $24,000 in cash; and the funds in five bank accounts, totaling $84,077.81.

More recently, as of January 2011, five individuals are being prosecuted by the United States Attorney's Office in the Middle District of North Carolina for their alleged roles in a conspiracy to steal baby formula from retail stores in several southern states, including North Carolina, South Carolina, Kentucky, Georgia and Virginia. The stolen products were collected in rented storage units in the High Point/Thomasville, North Carolina area and then transported in bulk to a grocery store in Union City, New Jersey. All defendants have pleaded guilty and four of the five have been sentenced to terms of imprisonment ranging from 15 months to 31 months.

Overall, from 2007 to the present, at least 84 defendants engaged in organized retail theft have been charged by 15 U.S. Attorney's Offices in 20 indictments with a variety of charges ranging from interstate transportation of stolen property to wire and mail fraud and money laundering, as well as conspiracies to commit these crimes.