

**Senator Chuck Grassley
Questions for the Record**

**Byron Todd Jones
Nominee - Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives**

1. In your hearing, you told me that you were aware that the Office of Special Counsel has an open complaint against you, but that you did not know the substance of the complaint.

a. At the time of the hearing, you had not seen the complaint. Have you seen it now?

RESPONSE: No, I have not seen the complaint.

b. Are you aware that the process is currently in a mediation phase?

RESPONSE: Yes, I have been advised of that.

c. Did you personally agree to mediation?

RESPONSE: No, but I did consult with my United States Attorney's Office (USAO) staff about mediation.

i. If no, who did on your behalf?

RESPONSE: The First Assistant U.S. Attorney for the District of Minnesota.

ii. If yes, why did you agree to this without knowing the substance of the complaint?

RESPONSE: Based on publicly available information, I am aware of the general nature of the allegations. I believe that it is best to make every effort to resolve personnel matters informally if possible. Doing so serves the best interests of the Office and the employee.

2. In your hearing, I asked you about a letter signed by "Employees of the United States Attorney's Office for the District of Minnesota". You said that you had seen a copy of the letter.

a. Did you at any time learn who these individuals were? If so, explain the details of how you learned this information.

RESPONSE: No.

- b. I asked you if you had taken any adverse action against them and you said that you had not. I then said I was including “unwanted, retaliatory transfer as an adverse action” and asked if that changed your answer. I did not get a clear answer from you. Please answer this question.**

RESPONSE: I am unaware of the identity of the author or authors of that letter, or if any authors are actually employees of the USAO. Regardless, I do not believe that I have ever engaged in a prohibited personnel practice.

- c. Are there any other individuals in your office who believe you have retaliated against them for complaining about your management of the U.S Attorney’s Office for the District of Minnesota?**

RESPONSE: I am not aware of any at this time.

- 3. In your hearing, I asked you about when you first took over the U.S. Attorney’s Office in Minnesota in 2009. I asked three times if you removed the chief of the Narcotics and Violent Crime section at that time. You said that you made some reassignments and management changes.**

- a. Did Thomas Hollenhorst resign, as you implied in the hearing, or was he demoted?**

RESPONSE: All Assistant United States Attorney (AUSA) management positions within a USAO are temporary appointments and it is the prerogative of all United States Attorneys to select their management teams. Upon becoming United States Attorney in August 2009, I met with all AUSAs individually and, after these meetings, I decided to reassign the AUSA who had been serving as chief of the Narcotics and Violent Crime Section to the OCDETF/Violent Crime Section at the same pay.

- b. If he resigned, was this resignation of his own volition or was it after you had had a conversation with him? Did you ever suggest that he resign or he would be removed?**

RESPONSE: Please see the response to Question 3a. Consistent with the Privacy Act, it would not be appropriate to disclose the contents of my conversation with him.

- c. Please identify by name and title the several individuals you received resignations from in 2009 who had been serving in supervisory roles. Recall that 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof.”**

RESPONSE: Consistent with the Privacy Act, I am able to provide the following information: AUSAs who were serving as the First Assistant United States Attorney, two Senior Litigation Counsels, and the Criminal Chief resigned those positions and were reassigned as line AUSAs at the same pay. The Civil Chief and two Deputy Criminal Chiefs remained in the positions that they occupied prior to my arrival. Over the past four years, I have made further changes in my management team.

- d. You appointed a new Chief of this section in 2009. I asked you how you knew her and you said that you had known many of your new employees for over 20 years. How, specifically, did you know your new Narcotics and Violent Crime Section Chief?**

RESPONSE: I primarily knew her through the outstanding professional reputation she enjoyed within the office before I returned as U.S. Attorney. She joined the United States Attorney's Office for the District of Minnesota after working as a career prosecutor (an AUSA in the Northern District of Georgia) and as a county prosecutor in Georgia. She was not a personal friend; I had only briefly met her in a social setting on one or two occasions while I was in private practice several years before I returned to the U.S. Attorney's Office.

- e. Is it true that her father was a former partner of yours?**

RESPONSE: Yes.

- f. You said that she had "some" previous management experience. Please describe in detail her management experience.**

RESPONSE: When I promoted her to OCDETF/Violent Crime Section Chief, she brought with her 20 years of experience as a lawyer, 13 of them as a state or federal prosecutor who had done extensive work in the area of guns, drugs, and violent crime. As a state and federal prosecutor, the Section Chief routinely managed investigative task forces and prosecution teams consisting of agents from multiple agencies targeting large, multi-state, drug trafficking organizations. She also had served periodically as an acting Section Chief for the asset forfeiture, gun, and narcotics sections in the Northern District of Georgia during absences of the assigned Chief.

- 4. According to the complaint filed with the Special Counsel, prosecutions in the unit are down significantly since you took over as U.S. Attorney. Why are the prosecutions down?**

RESPONSE: When I returned to the Office in 2009, I immediately prompted a review of all criminal cases to better understand the caseload of the office. During the review, I learned that the USAO was expending significant resources prosecuting street level drug dealers that I believed were more appropriately prosecuted by state and local law enforcement.

Although these small drug prosecutions provided a rise in the office's statistics, they did not substantially improve public safety, and they diverted federal resources from the prosecution of

other important federal law enforcement priorities, including complex frauds, national security matters, Indian country cases, and child exploitation cases. After the review, I redirected prosecution resources to address these more significant federal interest cases that could not be addressed by state and local law enforcement. Prosecuting cases in these priority areas requires a substantial commitment of prosecutorial resources, but often results in a smaller total number of defendants. For instance, the average criminal defendant prosecuted in 2007 required about 150 hours of AUSA time.¹ In 2012, the average criminal defendant required about 300 hours. This doubling of prosecutorial time reflects the redirection of prosecutorial resources to larger, more complex federal cases that may involve fewer individual defendants.

For example, we needed to dedicate prosecution resources to address several of the largest, most complex cases brought in the history of the District of Minnesota, including: U.S. v. Thomas Petters (\$3.5 billion dollar Ponzi scheme with 13 convicted defendants to date); U.S. v. Trevor Cook (\$190 million dollar fraud with 6 convicted defendants); U.S. v. Wakinyon McArthur (Native Mob organized crime case with over 25 convicted defendants); and the Operation Rhino Somali terrorism case (9 defendants convicted to date). Many of these complex cases resulted in lengthy trials requiring enormous commitments of time by AUSAs and staff.

5. Mr. Oswald wrote that he is “one of the few voices able to publicly express our complete discontent with Mr. Jones’ ineffective leadership and poor service provided to the federal law enforcement community without fear of retaliation or retribution from him”.

a. Have you heard of complaints about you or the U.S. Attorney’s Office for the District of Minnesota by federal or state law enforcement in Minnesota? If yes, please detail these complaints, as well as when and how they were brought to your attention and what you did to address them.

RESPONSE: In any working relationship, it is not uncommon for disagreements to arise as to agency priorities and missions. These disagreements are usually resolved through communication and coordination between line staff and supervisors. When that is ineffective, it is my practice to meet with the appropriate agency head. By doing this, I have been able to resolve specific issues, although that does not mean others agree with the decisions or policy adjustments I have implemented as U.S. Attorney. As several of the letters submitted to the Committee in support of my nomination make clear, I have always valued collaboration and communication with law enforcement and prosecution partners. My goal has always been to represent the interests of the United States and to protect its citizens in a collaborative manner.

b. The complaint filed with the Special Counsel alleges, “at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed.” Have any federal judges spoken to you about the way

¹ For guilty pleas, the time needed to prosecute case would be less, for trials, the time would be substantially more. These statistics reflect an average across all cases.

the office was being managed? If so, please describe those contacts in detail.

RESPONSE: I have not seen the complaint and, hence, do not know what you mean by “the situation.” I have had periodic discussions with the Chief federal judge and other federal judges about various matters during my tenure, but I do not recall that any of these conversations has included complaints about the USAO. I have not “rebuffed” any inquiry from a federal judge.

6. Were complaints about the Narcotics Chief ever brought to your attention by anyone in the U.S. Attorney’s office? If so, by whom?

RESPONSE: Consistent with the Privacy Act, I am not in a position to answer this question.

7. The complaint filed with the Special Counsel alleges, “at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed.” Do you recall federal judges reaching out to you? If so, please describe those contacts in detail.

RESPONSE: Please see the response to Question 5b.

8. The complaint alleges, that in October 2012 the Assistant U.S. Attorney wrote you a memo dated September 4, 2012 titled “Office Situation.” Did you receive and review such a memorandum? Please explain fully.

RESPONSE: Yes, I received, via email, a memorandum entitled “Office Situation” on about that date.

9. Did you investigate these allegations to determine if they were in fact true? If so, please describe all your investigative efforts.

RESPONSE: I did not conduct any independent investigation of allegations in the AUSA’s memorandum as I was recused from the decision making process related to disciplinary matters with the AUSA.

10. The memorandum describes a conversation between you and an Assistant U.S. Attorney about four incidents of unwarranted discipline against him. Do you recall a conversation about these actions?

RESPONSE: Without more information as to the circumstances of the conversation, I am unable to answer this question. Further, consistent with the Privacy Act, it would not be appropriate to

disclose the contents of a conversation with this AUSA concerning discipline imposed against him.

11. The memorandum discusses concerns about the Narcotics Chief. Please describe any efforts you took to review these allegations?

RESPONSE: Please see the response to Question 9.

12. What did you do to document any investigative efforts?

RESPONSE: Please see the response to Question 9.

13. Please identify with whom you discussed this memorandum at the U.S. Attorney's Office.

RESPONSE: I shared this memorandum with the First Assistant U.S. Attorney (FAUSA).

14. Did you talk to anyone at the Department of Justice in Washington D.C.? If so, whom?

RESPONSE: No. I believe that the FAUSA emailed a copy of the AUSA's September 4, 2012, memorandum to EOUSA's Office of General Counsel, on about September 10, 2012.

15. Did you speak with the Narcotics Chief about this memorandum?

- a. If so, please describe the nature of your conversations and your interactions with her.
- b. Please provide all written communications with the Narcotics Chief regarding the memorandum.

RESPONSE: No.

16. The memorandum also states that the Assistant U.S. Attorney would like to report to a new supervisor, but not transfer sections. Why didn't you grant this request?

RESPONSE: Please see the response to Question 17.

17. Ultimately, the complaint alleges that you transferred the Assistant U.S. Attorney to the Appellate Section, against his wishes. Why did you make this transfer?

RESPONSE: I made the transfer in part because the Appellate Section was understaffed. Consistent with the Privacy Act, I am not in a position to discuss internal conversations with the AUSA about this matter.

18. Please provide to the Committee any memoranda, email, notes or documents related your decision to make this transfer. If no documents exist, please explain why you did not document this action.

RESPONSE: I believe I have explained my decision and the reason for it above. Additionally, I am not in a position to disclose internal documentation regarding this matter, consistent with the Privacy Act.

19. The complaint also alleges that in addition to the transfer, that you suspended the Assistant U.S. Attorney for five days without pay. Please provide to the Committee any memoranda, email, notes or documents related to this decision. If no documents exist, please explain why you did not document this action.

RESPONSE: Consistent with the Privacy Act, I am not in a position to disclose the requested documents.

20. Both the Special Agent in Charge of the FBI and an AUSA in your office have informed me that the Narcotics Chief is responsible for the disenfranchisement and destruction of relationships between the USAO and the federal agencies involved with guns and drugs. Will you describe the professional relationship that the Narcotics Chief has with these federal agencies?

RESPONSE: I believe that the OCDETF/Violent Crimes Section Chief, acting consistent with my instruction, has focused on transitioning the Office's prosecutions from street level narcotics investigations to targeting sophisticated criminal organizations. She and other members of my management team are dedicated to improving the quality of narcotics investigations in the District. Please see also the response to Question 24a.

21. Sometime in either 2011 or 2012, your office was presented with a case that involved the seizure of 16.1 pounds of methamphetamine, two hand guns and half a million dollars in cash. According to reports, your office did not take this case because it was "undersold" to the Narcotics Chief.

- a. Did you ever discuss the handling of this case with her, either before or after her decision not to prosecute?
- b. If no, why not?
- c. If yes, what was the explanation for declination?

RESPONSE: The USAO had formally opened the matter and assigned prosecutors to work with agents on it. The decision to ultimately remove the case from the U.S. Attorney's Office and present the case to the County Attorney was that of the federal agents. The USAO concurred in the decision at the request of the agents. Fortunately, in the District of Minnesota, we have very strong prosecution partners at the state and local level. These local prosecutors effectively handle narcotics cases day in and day out. By way of example, the case in question resulted in a 30 year sentence for the lead defendant when prosecuted by the Hennepin County Attorney's Office.

22. The number of drug cases your office has charged in FY 2012 dropped 42 percent. What is the reason for this?

RESPONSE: Please refer to the response to Question 4. After arriving at the United States Attorney's Office, I conducted a total review of prosecutorial policies and determined that the USAO had to more closely scrutinize the drug cases being referred to us since many of them, particularly those that focused on local drug trafficking, could—and should—be prosecuted by the County Attorney's Office. I also determined that while it was incumbent upon us to vigorously litigate large-scale drug trafficking cases, the USAO had to ensure that those referrals demonstrated an actual or potential link to regional, national, or international drug trafficking or money laundering organizations, as mandated for OCDETF designation and the investigative funding that includes overtime dollars. To that end, training was provided to case agents that focused on, among other things, the financial investigation component necessary in OCDETF cases. This strategic pivot was necessary to ensure the appropriate use of limited federal investigative resources in a manner that complemented existing state law enforcement efforts. The Special Agent in Charge of the Chicago Division of DEA, which includes the District of Minnesota, has concurred with this more focused approach to drug prosecutions and has worked proactively with me to address deficiencies in previous investigations.

23. A common complaint I've heard within ATF is that U.S. Attorney's Offices are unwilling to pursue straw purchasing charges. Yet according to one account, you reportedly said of gun and drug cases, "We could do that all day, but we've chosen not to because that's not the best use of our resources."

a. If this statement is accurate, why did you not see gun cases as a good use of your resources?

RESPONSE: As noted above, serious gun and drug cases are an appropriate priority for federal prosecution, and have been aggressively prosecuted. However, given the limited resources available, we must choose wisely and prioritize cases.

b. How do you expect to be able to encourage agents in ATF to pursue gun crime when you wouldn't even prosecute it yourself as a U.S. Attorney?

RESPONSE: The District of Minnesota has focused on prosecuting those offenders who pose the greatest threat to public safety, such as felons with significant criminal histories who possess and use firearms. The State of Minnesota has robust laws to address gun crimes. In making a decision to bring a prosecution, my staff closely examines the merits of handling a case at the federal level or deferring to state prosecution. Through this process, and the wise allocation of limited resources, the gun prosecution program has substantially advanced public safety in Minnesota. In fact, this past year saw a 21.4% increase in the number of defendants found guilty of firearms offenses, and a 55.3% increase in the number of defendants receiving sentences in excess of 61 months. These statistics reflect my focus on targeting the most serious threats – the most effective approach to improving public safety. Please see also the response to Question 27b.

- c. You indicated in the hearing that the drop in prosecutions of gun and drug cases involved both resources and “collaboration with state and locals.” Please identify the annual staffing levels of the Narcotics and Violent Crime Section from 2008 to 2013.**

RESPONSE: Staffing in the Narcotics and Violent Crime Section has remained roughly stable over the past five years: between 8-10 total AUSAs are assigned to cover the entire District of Minnesota. I am not aware of a drop in the prosecution of gun cases. The drop in the prosecution of narcotics cases has been addressed in previous responses.

- d. If the staffing levels remain relatively constant between 2008 and 2013, what does your reallocation of resources away from guns and drugs consist of? If you have not shifted more Assistant U.S. Attorneys over to the White Collar Section or other sections of the Criminal Division, what exactly are roughly the same number of Assistant U.S. Attorneys doing in the Narcotics and Violent Crime Section if they are not prosecuting gun and drug cases?**

RESPONSE: Please see the response to Question 4.

24. Your opening statement indicated your desire to strengthen ATF on its mission of working with partners to combat violent crime. Yet according to multiples sources of information in Minnesota, including the former FBI Special Agent in Charge in Minnesota, your office has failed to provide law enforcement with support on violent crime, as well as gang and drug matters. Reportedly, the situation has deteriorated to the point that federal agencies have opted to bring their cases to Dakota, Hennepin, and Ramsey counties for prosecution in state court.

- a. When did you first become aware of this deterioration in relations with law enforcement agencies in Minnesota?**

RESPONSE: I do not believe any such deterioration occurred. As evidenced by the numerous letters the Committee received in support of my nomination, I believe my relationship with the

Minnesota law enforcement community—federal, state and local—is outstanding. Upon assuming responsibility as the Chief Law Enforcement Officer of the District of Minnesota, I implemented significant changes to improve the quality of federal criminal investigations with an emphasis on more robust risk management. The changes that we have implemented are intended to serve the public interest with integrity and efficiency.

b. When you first learned of this, what actions did you take to investigate it?

RESPONSE: Please see the response to Question 24a.

c. What did you do to try to remedy relations with law enforcement agencies?

RESPONSE: Please see the response to Question 24a.

d. Did you personally meet with any specific state or federal law enforcement agencies to discuss their concerns regarding the office? If so, please describe the circumstances of the meeting.

RESPONSE: As U.S. Attorney, I meet regularly with the leadership of all federal law enforcement agencies in the District of Minnesota. I also periodically meet with the leadership of state law enforcement agencies and county prosecutors. These meetings provide an open forum where any concerns of law enforcement can be heard and addressed. These meetings have included productive and open discussions of prosecution priorities, ensuring appropriate venues for certain prosecutions and resource allocation. They also have fostered, not hindered, the outstanding relationships that exist among law enforcement in the District of Minnesota.

25. You have attributed the diminishing prosecutions to a shift in priorities, stating at different times that you have refocused resources on white-collar cases and on terrorism cases. Yet the numbers show white-collar defendant charges dropped from 125 in Fiscal Year 2011 to 86 in Fiscal Year 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

RESPONSE: After assuming responsibility as the United States Attorney, and as noted above, I directed that prosecutors focus on cases of substantial federal interest not capable of being handled by our state and local partners. As a result, the USAO has successfully prosecuted a series of the largest, most complex white collar cases in the State's and Nation's history. Our focus on these extremely large, complex cases, many of which proceeded to trial, has limited the resources of our fraud prosecutors in charging and investigating new matters. However, we have developed fraud working groups with the metropolitan area County Attorneys to triage the prosecution of fraud cases to ensure that fraud cases are efficiently handled. Our state prosecutor partners have stepped up to the challenge, handling fraud cases. With the severe reduction in available resources as a result of sequestration, partnership building with state and local law enforcement is now paramount. The number of cases prosecuted does not necessarily reflect the

enormous importance of prosecuting more complex and significant cases or our diligence in this effort.

26. Numbers I have seen show 15 counter-terrorism cases in Fiscal Year 2009 and 13 in 2010. The numbers then drop to 2 in 2011 and 2 in 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

RESPONSE: In collaboration with the Minneapolis Division of the FBI, and its Joint Terrorism Task Force (JTTF), we have investigated, charged, and obtained convictions in one of the broadest anti-terrorism cases in the history of this country. This investigation and many other terrorism investigations are ongoing. I have assigned two AUSAs to work full time on terrorism matters, and have trained other AUSAs to step in to assist in terrorism matters if necessary. Deterring, investigating, and prosecuting terrorism is our lead priority. The numeric reduction of terrorism cases is not indicative of a shifted priority, but rather reflects the serious and dedicated work of the JTTF and the USAO to combat terrorism in the District.

27. You were chair of the Attorney General's Advisory Committee from 2009 to 2011. In that capacity, you were a member of the Southwest Border Strategy Group. In October 2009 that group decided to distribute a draft strategy for combating the Mexican cartels. The draft stated: "Merely seizing firearms through interdiction will not stop firearms trafficking to Mexico." The draft strategy goes on to emphasize identifying the members of arms trafficking networks. The implication is clear. The strategy placed a higher value on gathering intelligence about trafficking networks than on arresting straw purchasers.

a. You said that you did not attend the October 26, 2009 meeting of the Southwest Border Strategy Group. Did you approve of any strategy to de-emphasize straw purchasing cases?

RESPONSE: As I have said before, I was not involved in formulating the Department's Cartel Strategy. I would note the Department's Office of Inspector General concluded that it was "not reasonable" to interpret the border strategy memoranda "as supportive of a strategy that deferred overt action against subjects as they continued to traffic hundreds of weapons with impunity." See Report at 436. I agree with this conclusion, and under my leadership, the U.S. Attorney's office and ATF have pursued, and will continue to pursue, straw-purchasing investigations and prosecutions. That said, however, I must note that the prosecution of straw purchasers poses significant challenges.

b. Do you think it is an appropriate strategy to go for big cases instead of putting a stop to straw purchasers whenever you can?

RESPONSE: Public safety is the number one priority in all criminal investigations. Developing evidence to prosecute larger firearm trafficking organizations and drug cartels instead of

individual offenders is a valuable law enforcement approach that is essential to dismantling these trafficking networks. Development of such cases, however, should never compromise public safety. As Acting Director of ATF, I have strongly reinforced that public safety outweighs collection of evidence for prosecution of cases. On November 3, 2011, I issued a memorandum clarifying ATF policy regarding firearms transfers. This policy was formalized on March 19, 2013, in an ATF Order and was broadcast to all ATF employees on March 26, 2013. The policy states that interdiction or other forms of early intervention may be necessary to prevent the criminal acquisition, trafficking, or misuse of firearms, and that, during the course of an investigation, protecting the public and officer safety should be the primary considerations.

Under the policy, an agent must take all reasonable steps to prevent a firearm's criminal misuse. In this regard, the policy expressly prohibits a firearm involved in a government-controlled transfer from leaving ATF's control. A government-controlled firearm transfer (also known as a controlled delivery) occurs when the Government actively participates in the transfer of a firearm to any person, whether associated with a drug cartel or otherwise, believed to be unlawfully acquiring or possessing the firearm. The firearm(s) involved in the controlled delivery may or may not be owned by the Government. Continuous physical (onsite) surveillance by ATF is required for a firearm to be considered within ATF's control. Any exception to this policy must be approved in writing in advance of the operation by the Director. This policy was instituted to ensure that ATF is effectively pursuing those individuals involved in firearms trafficking schemes while protecting the public.

28. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

- a. I understand that in October 2012, ATF's Internal Affairs Division issued a report regarding the fire at Special Agent Jay Dobyns' home.
- b. What were this report's findings regarding George Gillett?
- c. Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Gillett?
- d. What were this report's findings regarding William Newell?
- e. Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Newell?
- f. Separate from discipline that may have been contemplated against Mr. Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?
- g. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the

- h. What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.
- i. Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?
- j. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
- k. What date was Mr. Newell notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.

RESPONSE: I understand that Special Agent Dobyns is currently in litigation with the Department over issues relating to this fire. Accordingly, and consistent with the Privacy Act, I am not in a position to answer these questions.

29. Why didn't you impose any discipline for Operation Fast and Furious when you became the Acting Director of ATF?

RESPONSE: Discipline is not ordinarily proposed at the Director's level, but rather by a lower level supervisor of the employee to be disciplined, or by the ATF Professional Review Board. Consistent with standard practice, I did not personally propose or impose disciplinary action in connection with the deficiencies identified in the Office of Inspector General's Report on Operation Fast and Furious and related matters; however, other ATF officials did propose or impose disciplinary action.

Moreover, as you are aware, at the time I became the Acting Director of ATF, Operation Fast and Furious was the subject of an ongoing investigation by the Department of Justice Office of Inspector General. During the pendency of that investigation, and prior to the release of the Inspector General's findings, it would have been premature and inappropriate for me or anyone else at ATF to take disciplinary action against ATF employees. Taking action prior to the issuance of the OIG findings and the review of those findings through the established ATF disciplinary process would have been inconsistent with federal employment law principles and standards of due process.

30. Have any ATF employees been terminated based solely on their involvement in Operation Fast and Furious? If so, who, and on what date?

RESPONSE: Consistent with the Privacy Act, I am able to provide the following information: of the Senior Executive Service (SES) employees involved in Fast and Furious, one voluntarily

separated from Federal service before the disciplinary process was complete; a second was removed from Federal service for misconduct unrelated to Operation Fast and Furious; a third was disciplined, but not removed from service; and, a fourth voluntarily separated from Federal service before the Office of the Inspector General issued its report in the matter.

31. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the jurisdiction of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

I have heard that Fast and Furious Case Agent Hope MacAllister grieved her discipline for Fast and Furious to the Merit Systems Protection Board, and won.

a. Is this true?

RESPONSE: Please see response to Question 31b.

b. What disciplinary measures did ATF propose for Ms. MacAllister as a result of her role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.

RESPONSE: I have not been involved in a disciplinary process regarding Special Agent MacAllister and, consistent with the Privacy Act, I am not in a position to answer this question.

c. Where is Ms. MacAllister now, and what is her current GS-level?

RESPONSE: Special Agent MacAllister is a GS-13 serving in the field. ATF is not prepared to disclose her location for security reasons.

32. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

I asked you in the hearing about David Voth, the Group Supervisor who oversaw Operation Fast and Furious. You responded: “Special Agent Voth was subject to the internal disciplinary process and there were repercussions.”

- a. **What disciplinary measures did ATF propose for Mr. Voth as a result of his role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.**

RESPONSE: I was not involved in a disciplinary process regarding Special Agent Voth and, consistent with the Privacy Act, I am not in a position to answer this question.

- b. **Where is he now, and what is his current GS-level?**

RESPONSE: Special Agent Voth is a GS-13 who will be reporting for duty in the field in July. ATF is not prepared to disclose his location for security reasons.

33. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated at the hearing that James Needles currently serves in another capacity within ATF.

- a. **What is that other capacity, and where is Mr. Needles assigned?**

RESPONSE: Special Agent Needles currently serves as Deputy Division Chief in the Firearms Operations Division.

- b. **Were any disciplinary measures proposed for Mr. Needles by ATF as a result of his role in Operation Fast and Furious? If so, please provide a copy of the disciplinary proposal.**

RESPONSE: I have not been involved in a disciplinary process regarding Special Agent Needles and, consistent with the Privacy Act, I am not in a position to answer this question.

34. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated at the hearing that George Gillett had retired from ATF.

- a. **Separate from discipline that may have been contemplated against George Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?**

RESPONSE: I did not participate in a disciplinary process regarding Special Agent Gillett and, consistent with the Privacy Act, I am not in a position to answer this question.

- b. **What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**

RESPONSE: Special Agent Gillett voluntarily separated from service on December 29, 2012.

- c. **What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.**

RESPONSE: Please see the response to Question 34a.

- d. **On what date did Mr. Gillett retire?**

RESPONSE: December 29, 2012.

- e. **Did Mr. Gillett retire with any ATF benefits? If so, what do Mr. Gillett's retirement benefits consist of?**

RESPONSE: Special Agent Gillett retired with the benefits to which he was entitled under applicable federal law.

- f. **Why was Mr. Gillett allowed to retire with his benefits, given his role both in Operation Fast and Furious and in the investigation into the fire at Special Agent Dobyns' home?**

RESPONSE: Please see the response to Question 34e.

35. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof" ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated that the discipline proposed against former Special Agent in Charge William Newell “is a matter that has come quickly into resolution” and that “[t]here is still a resolution pending that should be forthcoming.”

- a. Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF’s Professional Review Board propose to ATF’s Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?**

RESPONSE: Please see the response to Question 35b.

- b. What disciplinary measures did ATF’s Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**

RESPONSE: I was not involved in a disciplinary process regarding Special Agent Newell and, consistent with the Privacy Act, I am not in a position to answer this question.

- c. What date was Mr. Newell notified of the discipline ATF’s Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.**

RESPONSE: Please see the response to Question 35b.

- d. Has Mr. Newell had any formal complaints pending against ATF in the past two years? If so, how were those resolved?**

RESPONSE: Consistent with the Privacy Act, I am not in a position to answer this question.

- e. Did Mr. Newell conduct any type of settlement agreement with ATF in connection with proposed discipline? If so, what date was the settlement agreement concluded, and what did it consist of? Please provide a copy of any such settlement agreement.**

RESPONSE: Please see the response to Question 35b.

- f. What aspect of Mr. Newell’s proposed discipline is still currently pending, as you stated in the hearing?**

RESPONSE: Please see the response to Question 35b.

- g. Where is Mr. Newell now, and what is his current GS-level?**

RESPONSE: Special Agent Newell is currently assigned to the Tactical Operations Branch, and is a GS-13.

h. On what date will Mr. Newell be eligible to retire with his full ATF benefits?

RESPONSE: June 19, 2013.

i. What will Mr. Newell's retirement benefits consist of?

RESPONSE: Special Agent Newell will retire with the benefits to which he is entitled under applicable federal law at the time of his retirement.

36. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

In response to questions regarding former Deputy Assistant Field Director for Field Operations William McMahon, you first stated in the hearing, "Bill McMahon has retired from ATF." You then later said, "Mr. McMahon was one of the individuals terminated. He was not allowed to retire. He was terminated."

a. Did Mr. McMahon retire from ATF, or was he terminated?

RESPONSE: I removed Special Agent McMahon from federal service, effective on November 27, 2012, for conduct unrelated to Operation Fast and Furious.

b. Either way, what date did Mr. McMahon leave ATF?

RESPONSE: Please see the response to Question 36a.

c. Separate from discipline that may have been contemplated against Mr. McMahon for other reasons, what disciplinary measures for Mr. McMahon did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?

RESPONSE: Consistent with the Privacy Act, I am unable to provide information in response to this question other than to note that Special Agent McMahon was removed from federal service

before the Professional Review Board made any disciplinary proposal regarding his involvement in Operation Fast and Furious.

37. In the hearing, I asked you three questions, and you only answered one. I asked: “How was McMahon’s status resolved? How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company, and what does that say about how you’re running the agency?” You failed to answer the latter two questions, so I will ask them again.

a. How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company?

RESPONSE: We provided Special Agent McMahon with a fair, thorough, and even-handed disciplinary process, and when that process was complete, I concluded that it was appropriate to remove him from the ATF.

b. What does that say about how you’re running the agency?

RESPONSE: I believe that it demonstrates that I am committed to leading an agency that conducts the disciplinary process and addresses performance issues in a deliberate, fair, and even-handed way.

38. When I asked whether Mr. McMahon was only terminated after I brought his employment status to your attention, you answered: “The issue that you raised about his leave status and his prior employment status were all subject to a process. We very much appreciate the information enhancing our level of knowledge about things that were already in play internally.”

a. What was already in play internally with respect to Mr. McMahon in August 2012, when I brought his double-dipping to your attention?

RESPONSE: I am not in a position to provide additional information about this matter, consistent with the Privacy Act.

b. Please provide copies of the personnel proposals prior to August 21, 2012 that you were referring to regarding Mr. McMahon.

RESPONSE: Please see the response to Question 38a.

39. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made “to either House of Congress, or, to the extent of

matter within its jurisdiction, any committee or subcommittee thereof . . .” ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

During your tenure as Acting Director, ATF engaged in a disastrous undercover storefront operation in Milwaukee, Wisconsin called Operation Fearless. The Office of Professional Responsibility and Security Operations (OPRSO) internal review of Operation Fearless recently found at least 11 problem areas, including poor planning in designing the case and insufficient management during the case. Operation Fearless included many of the same flaws as Operation Fast and Furious, suggesting that ATF’s new leadership had learned nothing from that debacle.

- a. Operation Fearless was part of a Monitored Case Program that was designed to give greater headquarters oversight to sensitive cases. Why did that oversight fail in this case?**

RESPONSE: The Monitored Case Program (MCP or Program) was established to provide enhanced, headquarters-level oversight of sensitive and high-risk investigations. Since its inception, the MCP has been continually refined and improved as we have learned from experience. On learning of the troubling allegations of problems in Operation Fearless, I directed OPRSO to conduct a thorough review of the investigation to identify deficiencies and recommend measures ATF could take to better protect the public. One of the identified deficiencies was that the MCP missed indicators that the investigation was in several respects poorly planned and executed. Consequently, the problems with the investigation were not briefed to appropriate headquarters personnel. As a result of OPRSO’s findings about deficiencies in the MCP’s performance, we have taken several steps to further refine and improve the Program. These steps include changes in permanent staffing, issuance of an updated Program directive, enhanced training for MCP personnel, and a requirement that field supervisors and case agents participate directly in select monitored case briefings to ATF headquarters.

- b. Please provide a copy of the OPRSO report on Operation Fearless, as Chairman Issa, Chairman Goodlatte, Chairman Sensenbrenner and I requested on May 10, 2013.**

RESPONSE: As the Department advised you in its letter of May 31, 2013, ATF is not in a position to release the OPRSO report, as it contains substantial sensitive law enforcement information, details regarding open criminal matters, and information relating to ongoing personnel matters.

- 40. According to the Justice Department, you were provided with Internal Affairs Division summaries regarding the theft of three ATF-issued firearms from a government vehicle and the burglary of the Operation Fearless storefront. However, the Department said**

you do not recall reading either of those summaries. Do you normally read summaries that are provided to you by the Internal Affairs Division? If not, why not?

RESPONSE: I often review the summaries. I also rely on my staff to bring information in the summaries to my attention when they believe it appropriate.

41. I understand that the Special Agent in Charge of Milwaukee during Operation Fearless, Bernard Zapor, was promoted last fall to Deputy Assistant Director for Field Operations (Central). In a briefing providing to Committee staff on April 15, 2013, ATF indicated that disciplinary action was underway against Mr. Zapor. However, I have now heard that as a result of his failed management of Operation Fearless, Mr. Zapor was made the new Special Agent in Charge of the Phoenix Field Division, where his family was residing and he owns a home.

- a. Is this true? If so, why would you put him in charge of an office that so clearly needs good leadership?
- b. What disciplinary measures for Mr. Zapor did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the OPRSO report on Operation Fearless? What date did the Professional Review Board make its proposal?
- c. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
- d. What date was Mr. Zapor notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Zapor.
- e. What disciplinary measures for the Milwaukee Field Division counsel named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
- f. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
- g. What date was the field division counsel notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the field division counsel.
- h. What disciplinary measures for the Resident Agent in Charge named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
- i. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the

disciplinary measures proposed by the Professional Review Board, please explain why.

- j. What date was the Resident Agent in Charge notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the Resident Agent in Charge.
- k. What disciplinary measures for the Operation Fearless case agent did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
- l. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
- m. What date was the Operation Fearless case agent notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the case agent.
- n. What disciplinary measures for any other employee has ATF's Professional Review Board (PRB) proposed to ATF's Deciding Official as a result of the OPRSO report? Please name each employee for whom discipline was proposed, the date the Professional Review Board made its proposals, the discipline proposed by PRB, the decision made by ATF's Deciding Official, and the date the employee was notified of the proposed discipline. Please also provide a copy of the disciplinary proposal provided to each employee.

RESPONSE: Consistent with the Privacy Act, I am not in a position to disclose some of the information requested by this question. I can state that I am confident that Mr. Zapor is well qualified to provide strong and effective leadership in Phoenix.

The OPRSO review of Operation Fearless led to the referral of several matters to IAD. For consistency, IAD will refer all these matters to the PRB at the same time. Several investigations are still ongoing and should they indicate that an employee engaged in misconduct, the matter will be referred to the PRB upon the completion of all related IAD investigations.

42. In Reno, Nevada, relations between ATF and the U.S. Attorney's Office completely fell apart in the fall of 2011. Things got so bad that that U.S. Attorney's Office refused to take cases from ATF. Whistleblowers within ATF say that when these problems in Reno were brought to your attention, you stated that you had bigger things to worry about. Ignoring the underlying issues, you simply moved most of ATF's agents out of Reno.

- a. You stated in the hearing: "I was very dismayed when I first heard of a disconnect between the federal prosecution office and Reno. . . . [W]e currently have two full-time and soon to be three agents in Reno. We're

on a good path in Reno to fix whatever concerns historically existed there.”

b. What was the cause of the disconnect between the U.S. Attorney’s Office and the Reno ATF office?

RESPONSE: Through a collaborative effort of ATF and the Nevada United States Attorney’s office, difficulties in the working relationship between the offices in Reno have been identified and addressed.

c. In a letter of April 23, 2013, ATF stated that the San Francisco Field Division learned of this situation in August 2011 and engaged with the U.S. Attorney’s Office and the Reno ATF office in an effort to resolve it. Why was the San Francisco Field Division unsuccessful?

RESPONSE: Upon learning of the situation between the Reno field office and the U.S. Attorney’s office, the leadership of the ATF San Francisco Field Division actively engaged the U.S. Attorney’s Office to address the issues. The new ATF San Francisco Special Agent in Charge and the U.S. Attorney have met several times and have re-established an effective working relationship.

d. ATF indicated in its April 23, 2013 letter that ATF headquarters became aware of these issues in November 2011. When and how did you first personally become aware of these issues?

RESPONSE: I first became personally aware of the issues in Reno in early March 2012, when the Assistant Director of Field Operations provided me a summary of the situation.

e. What did you do to address these issues when you first became aware of them?

RESPONSE: On becoming aware of the issues, I directed the Office of Field Operations to undertake additional fact-finding and sent a senior headquarters manager to Nevada to address the situation with the U.S. Attorney directly.

f. ATF indicated in its April 23, 2013 letter that you had discussions in March 2012 with the U.S. Attorney for the District of Nevada. What was discussed, and why couldn’t the matter be readily resolved at that time?

RESPONSE: My discussion with the Nevada U.S. Attorney focused on taking all steps necessary to resolve the situation as soon as possible. I advised the U.S. Attorney that I had directed the new Assistant Director of Field Operations to review the situation and then travel to Nevada to meet directly with him to address and resolve the areas of concern.

- g. Why were agents moved out of Reno? Wouldn't it have been more cost-effective to address the issues in Reno rather than simply transferring four agents out of the office?**

RESPONSE: ATF Headquarters became aware of the issues in Reno in November 2011 and after separate discussions in March 2012 involving the U.S. Attorney for the District of Nevada, myself, and the Assistant Director for Field Operations, it became apparent that the issues could not be readily resolved at that time in a manner that would allow ATF to best utilize its limited agent resources. ATF subsequently decided to reassign four special agents from ATF Reno to duty posts with pressing needs for additional agents. These moves were made with minimal permanent change of station (PCS) costs.

- h. If there are soon to be three full-time agents in Reno, as you said, why was the Reno office ever stripped down to two full-time agents to begin with?**

RESPONSE: Although only two special agents continued to be permanently assigned to ATF Reno, it remains a satellite of ATF's Las Vegas field office, under the San Francisco Field Division. Accordingly, the Las Vegas Resident Agent in Charge provides leadership, oversight, support and other resources, to include nine Las Vegas-based Special Agents, to the ATF Reno office when required. The Special Agents who transferred out of Reno all requested reassignments for various reasons and were placed in understaffed or priority locations at minimal PCS costs.

- i. Now I understand ATF detailed a third agent back to Reno in February 2013 in order to work as a Violent Crime Coordinator with the Northern Nevada Project Safe Neighborhoods (PSN) Task Force. How many PSN cases have been prosecuted by the third agent in his capacity as the Violent Crime Coordinator?**

RESPONSE: The third agent, who is currently detailed to ATF Reno, has been assigned to the United States Attorney's Office's PSN Task Force. He has worked on ATF firearms investigations and prosecutions, as well as multiple pending explosives investigations.

- j. What is the current cost of detailing the third agent to Reno?**

RESPONSE: The total cost to date of detailing a third agent to the Reno satellite office has been approximately \$13,803. The projected cost for the remainder of the assignment, scheduled to end the first week of August 2013, is \$11,158. Therefore, the total estimated cost for the detail will be approximately \$24,962.

- k. What further relocation costs will be incurred by making the detail a permanent assignment?**

RESPONSE: The expense could approach \$163,000 to permanently relocate an agent to the Reno satellite office. Many costs related to a PCS come in significantly under that amount contingent upon multiple factors, such as family size, home ownership status and other factors.

- l. ATF indicated in its April 23, 2013 letter that the cost of relocating the four agents from Reno was approximately \$152,000. Does that figure include the lump sum payment for house hunting trips or the closing costs paid to the two agents who purchased homes during the move?**

RESPONSE: Yes.

- m. ATF indicated in its April 23, 2013 letter that a new Special Agent in Charge (SAC) of the San Francisco Field Division began in August 2012, and that “within weeks of his arrival the SAC met with [the U.S. Attorney for the District of Nevada] in Las Vegas to discuss a mutually agreeable resolution of the outstanding issues between the two offices.” What date did this meeting take place? Was it scheduled before or after my letter to you of September 17, 2012 raising this matter?**

RESPONSE: On August 16, 2012, the newly appointed SAC of the San Francisco Field Division met with the District of Nevada U.S. Attorney to address the issues with the ATF Reno Office. These events occurred prior to ATF’s receipt of Senator Grassley’s letter on September 17, 2012.

- n. ATF indicated in its April 23, 2013 letter that agents in Reno have opened 26 cases in 2013. How many of those were actual criminal cases, and how many were NICS retrievals that have no potential of being submitted for prosecution?**

RESPONSE: By the end of April 2013, the ATF Reno Office had opened 30 criminal investigations, 22 of which were NICS delayed denial cases.

- 43. On October 12, 2012, the House Committee on Oversight and Government Reform subpoenaed “[a]ll agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General’s Advisory Committee of U.S. Attorneys between March 1, 2009 and July 31, 2011, referring or relating to Operation Fast and Furious.” That period specific is the time you were Chair. The Justice Department has never produced any such documents or certified that none exist. When I asked you about this at the hearing, you stated that you didn’t “have any knowledge beyond the fact that relevant documents have been collected internally at the Department . . .” I asked you if you would respond to the question in writing.**

RESPONSE: The Department provided a written response to you on this issue prior to my confirmation hearing. In a letter dated June 5, 2013, the Department explained that, in response to the House Committee on Oversight and Government Reform’s subpoena of October 11, 2011,

the Department had already searched for these materials. It is my understanding that the Department produced on October 31, 2011, the single responsive document located in that search.

- 44. I also asked you about any personal notes from the Advisory Committee that you might have taken regarding Fast and Furious. On April 10, 2013, I sent you personally a letter asking that you meet with my staff for an interview. The letter stated: “In addition, by April 17, 2013, please provide my staff with any personal notes from the Attorney General’s Advisory Committee that you may have taken regarding Operation Fast and Furious.” You indicated to me in the hearing that you didn’t have any recollection of a letter that had this request.**
- a. Do any such agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General’s Advisory Committee exist that refer or relate to Operation Fast and Furious? If so, why haven’t they been turned over pursuant to the subpoena?**
 - b. Did you receive my April 10, 2013 letter? If so, why do you not have a recollection of my request?**
 - c. Do you have any personal notes from the Attorney General’s Advisory Committee in your possession that reference or relate to Operation Fast and Furious? If so, please produce a copy of them to the Committee**

RESPONSE: The single responsive document that the Department located in its search for these materials indicates that I did not attend an AGAC meeting in which Operation Fast and Furious was mentioned. I am not aware of any additional responsive materials.

- 45. Both my staff and the staff of the House Oversight and Government Reform Committee requested a staff interview with you multiple times during our investigation of Operation Fast and Furious. However, you never permitted yourself to be interviewed. You recently agreed to an interview regarding the St. Paul quid pro quo, but refused to answer questions about Fast and Furious or any other topic.**
- a. Your predecessor, Kenneth Melson, participated in a voluntary staff interview. Why couldn’t you?**
 - b. Did anyone at the Justice Department instruct you not to participate in a staff interview? If so, who? Please describe the circumstances.**
 - c. Were you otherwise willing to participate in a staff interview?**

RESPONSE: I welcomed the opportunity during my hearing, and now, in these responses, to answer Committee Members’ questions, including any you may have had about Fast and Furious or any other topic. I am advised that it is unprecedented for a nominee to be asked to participate in a Senate staff interview—which is not a matter of public record—prior to his or her nomination hearing. I believed it would be appropriate to answer the Committee’s questions publicly and under oath, in accordance with the established practice of the confirmation process.

46. On July 9, 2012, you issued a video message in which you told ATF employees: “[I]f you don’t respect the chain of command, if you don’t find the appropriate ways to raise your concerns to your leadership, there will be consequences” I know you have since issued a clarification to ATF employees at the request of myself and Chairman Darrell Issa.

- a. Other than to keep whistleblowers from going outside their chain of command, what message were you intending to communicate to ATF employees in your original video?**

RESPONSE: Beginning in March 2012, I released a series of videotaped internal messages to ATF employees known as “Change Casts” in an effort to strengthen and improve ATF. The video message quoted above was an excerpt from one of these Change Casts. This excerpt was provided to the media by an unknown source. One of the main employee concerns expressed to me since my appointment has been the lack of accountability for those who do not abide by agency rules. The Change Cast at issue focused on the need for accountability at all levels of ATF, from senior management to the most junior employees, and was not intended to discourage protected disclosures nor to suggest that any prohibited personnel practices would result from protected disclosures. Since my appointment, I have expanded opportunities for ATF employees to raise work-related concerns and stressed the need for attention to those concerns by supervisory ATF officials.

- b. Did you make the clarification the same way you made the initial comment: in a video message to all ATF employees?**

RESPONSE: This message was written, not a video. The message was posted on ATF’s intranet, as were the Change Casts, and was also sent to all employees via email.

- c. Please provide a copy of the clarification you provided to all ATF employees.**

RESPONSE: See attachment.

47. You have stated that on November 3, 2011, you issued a memorandum saying that ATF must take all reasonable steps to prevent the criminal misuse of a firearm. You also agreed in the hearing to provide a copy of that order. Please provide a copy of the order.

RESPONSE: I did commit in the hearing to providing a copy of that Order, and I will honor that commitment. However, because it is a law-enforcement sensitive document, its public disclosure could compromise investigations and officer safety. I respectfully request the opportunity to work with your staff to provide the Order in an appropriate manner separate from these responses.

48. I also asked you about any guidance issued regarding cooperating federal firearms licensees (FFL) and the role they should play in investigations. You indicated that you have updated the confidential informant order. However, one of the issues in the Operation Fast and Furious surrounded the fact that none of the FFLs involved were signed up as confidential informants, including the primary FFL. Nevertheless, ATF agents encouraged the FFLs to continue selling to suspected straw purchasers.

a. Please provide a copy of the revised confidential informant order.

RESPONSE: Enclosed please find a redacted copy of the Order that is appropriate for public release.

b. What have you done to shore up policies dealing with FFLs who are not confidential informants, especially to address encouraging them to go forward with sales that they would not otherwise go forward with?

RESPONSE: On November 3, 2011, I issued a memorandum clarifying ATF policy regarding firearms transfers. The memorandum specifically addressed the issue of FFL inquiries about proceeding with suspect sales by directing ATF Special Agents that they should advise FFLs that FFLs are under no obligation to sell firearms under circumstances that the licensee feels are suspicious, and that FFLs should always use their best judgment in determining whether or not to sell or transfer a firearm; a very narrow and specific exception to this policy exists for authorized controlled deliveries. The policies outlined in the November 3, 2011, memorandum were formalized on March 19, 2013, in an ATF Order, and the Order was broadcast to all ATF employees on March 26, 2013.

49. I asked you in the hearing about ATF keeping a Suspect Gun Database despite the congressional prohibition against keeping a national gun registry. However, you seemed completely unfamiliar with the issue.

a. Had you ever heard of the Suspect Gun Database before this hearing? If not, why not?

RESPONSE: Yes, I was aware of the Suspect Gun Program prior to the hearing.

b. When did ATF first begin using the Suspect Gun Database?

RESPONSE: The Suspect Gun Program is a feature in ATF's Firearms Tracing System (FTS), which enables ATF Special Agents to flag firearms that they suspect to be illegally trafficked or otherwise connected with potential illegal activity that ATF is investigating. If the firearm is subsequently recovered by a law enforcement agency and traced, the Special Agent who flagged the suspect firearm would be notified. A suspect firearm may only be submitted in association with a criminal investigation by ATF. The Suspect Gun Program has been utilized since 1992.

- c. Is there any legal standard that ATF agents are required to meet before adding information on a purchaser to the Suspect Gun Database?**

RESPONSE: Under Federal law, 18 USC 923(g)(7), firearms can only be traced pursuant to a bona-fide criminal investigation. When suspect gun data is entered into FTS, such data must be connected to a criminal investigation.

- d. Is there any criteria for removing information on a purchaser from the Suspect Gun Database, or does information remain on the database indefinitely?**

RESPONSE: A firearm flagged in the Suspect Gun Program may be deactivated and the Special Agent would no longer be notified if that firearm was subsequently recovered and traced. The data, however, remains in FTS so that when future recoveries of those firearms are traced, the investigative lead is preserved.

- e. How does ATF headquarters conduct oversight on the usage of the Suspect Gun Database?**

RESPONSE: Only firearms involved in an open ATF criminal investigation can be flagged in FTS under the Suspect Gun Program. Periodic reviews are conducted to determine if investigations of firearms submitted under the Suspect Gun Program are still active. If the case is no longer active, appropriate administrative steps are taken to remove the notification settings on the flagged firearms.

- f. How many suspect gun purchases are currently recorded in the Suspect Gun Database?**

RESPONSE: There are 173,784 firearms currently listed as suspect firearms in the FTS. Firearms information is not removed from FTS. All firearms were associated with ATF criminal investigations.

- g. How many different purchasers are currently on record in the Suspect Gun Database?**

RESPONSE: There are currently 7,329 individuals who may be purchasers and/or suspects that are associated with a suspect firearm in the FTS. All of the individuals identified were associated with ATF criminal investigations.

- h. How does the usage of the Suspect Gun Database square with the Firearm Owners Protection Act of 1986, which you referenced in the hearing and which makes a national gun registry illegal?**

RESPONSE: ATF does not maintain any type of national firearms registry and is prohibited by statute from doing so. Information under the Suspect Gun Program relates to firearms suspected to be illegally trafficked or otherwise having a connection with potential illegal activity that ATF

is investigating. If the firearm is subsequently recovered by a law enforcement agency and traced, the Special Agent who flagged the suspect firearm will be notified. A suspect firearm may only be submitted in association with a criminal investigation. The information is not used for any other purpose. The GAO has addressed this very issue in a comprehensive report and concluded that the FTS was not a violation of either the Gun Control Act or ATF's appropriations restriction. See U.S. Government Accounting Office Report, "ATF's Compliance with Firearms Licensee Data Restrictions," September 11, 1996 (GAO/GGD 96-174). See also J&G Sales v. Truscott, 473 F.3d 1043 (9th Cir. 2007) and Blaustein & Reich, Inc. v. Buckles, 365 F.3d 281 (4th Cir. 2004).