

Statement of
The Honorable Chuck Grassley

United States Senator
Iowa
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Prepared Statement of Ranking Member Chuck Grassley
U.S. Senate Committee on the Judiciary
Hearing on Oversight of the Department of Justice
Wednesday, May 4, 2011

Mr. Chairman, thank you for holding today's oversight hearing. It has been over a year since this committee last held an oversight hearing with the Attorney General so there is much ground to cover. In that intervening year, many developments at the Justice Department have raised serious questions about whether the department is putting politics before the interest of the American people. These are serious issues and I plan to ask a number of questions about why the department has applied the law inconsistently in certain areas, such as prosecuting national security leaks, and whether the department has provided apparently false information in response to congressional inquiries.

ATF Investigation:

I am extremely disappointed in the Justice Department's response to my inquiry into the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I sent a letter to the ATF on January 27, 2011, seeking a response to allegations I received from whistleblowers that the ATF was allowing guns to be illegally smuggled to Mexico. Rather than allowing the ATF to respond to my letter, on February 4, 2011, I received a letter from the department which claimed the whistleblower allegations were "false" and that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." I personally expressed my concern to the Attorney General about the accuracy of the department's replies to my inquiries in our telephone conversation on Monday, May 2.

I was stunned that just a few hours after our conversation, the department sent another letter repeating the denial in slightly different words. According to Monday's letter, "ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico." It is particularly disturbing that the department would renew its denial at this late date in light of the growing evidence that the department's claims are patently false.

Documents and witness testimony from employees at ATF show that the ATF knowingly allowed the sale of semi-automatic weapons to many straw purchasers, even after the ATF knew that guns they previously purchased were recovered in Mexico. I have in my possession a document which the ATF specifically requested be drawn up on March 29 of this year, apparently in response to this controversy. This document shows that just 15 defendants indicted on January 25 were

responsible for purchasing one thousand, three hundred and eighteen (1,318) guns from Arizona dealers after being identified as targets in the ATF's Operation Fast and Furious investigation. Of those guns, only 250 have been recovered in the United States. And that's just from these fifteen straw buyers--the ATF enabled this pattern to recur many more times through additional buyers and guns. At the very least, this means that over 1,000 semi-automatic weapons are on the street because the ATF decided to wait and watch rather than getting in the way of the criminals' plans.

The ATF also clearly knew that these guns were being exported south of the border to Mexico. According to internal ATF correspondence, as of June 15, 2010, the ATF was aware that at least 179 guns--traced back to sales which the ATF allowed to occur--had been recovered in crimes in Mexico.

While it appears that the ATF did make an effort to tally the number of the guns they allowed to walk, the reality is that those recovered represent just a small percentage of the total number of these guns the ATF has lost track of. Worst of all, on December 15, 2010, Border Patrol Agent Brian Terry was killed in an incident at the border where two of these weapons that the ATF knowingly allowed to be sold to criminals were found at the crime scene. At best, the ATF was careless in authorizing the sale of thousands of guns to straw purchasers; at worst our own government knowingly participated in arming criminals, drug cartels, and those who later killed federal agents.

Aside from categorical denials that are clearly contradicted by the evidence, I have received absolutely zero substantive information from the department on this issue. On the contrary, the Department of Justice has intervened in every inquiry I have made with other agencies under the department and instructed them that the Justice Department alone is allowed to respond. The actions of the Department have only served to impede and frustrate this investigation. In fact, I have provided more information to the Attorney General than he has provided to me.

After ten letters to the department or the ATF, I have received five responses--two which provided false information, one which provided no information, one which sought to deter me from seeking information from other sources, and one which partially responded to my concern about attempts to prevent communications between whistleblowers and Congress.

Although the ATF is a separate entity, it has done these things under the Attorney General's watch. The witnesses that were interviewed under subpoenas from the House Oversight and Government Reform Committee have made clear that Acting Director Melson was intimately involved in Operation Fast and Furious, lauding it as an extremely successful operation. However, even more troubling is that it is clear that individuals at the Justice Department were involved in certain aspects of Operation Fast and Furious.

The evidence that I and Congressman Issa have gathered is clear--the ATF sanctioned the sale of guns to straw purchasers that were then used in crimes on both sides of the Southwest border. Officials at both the Department and ATF knew of and approved the operation. Now, the Attorney General argues that this congressional investigation threatens the ongoing criminal prosecution of the straw purchasers. Yet, the department and the ATF chose to wait and watch those same straw purchasers do business for over a year before charging them with any of the criminal conduct. It was only after the death of Border Patrol Agent Brian Terry that the straw

purchasers were finally charged. I take exception to the notion that Congress must hold off on an investigation on the grounds that discovering the truth could hinder prosecutions. The goal of a trial is a search for the truth. The department is required to turn over any exculpatory evidence to criminal defense attorneys in any event. If our system of justice works the way it should, then the department cannot ultimately prevent the truth from coming to light. Congress should not allow its fact finding efforts to be stonewalled just because the details might be embarrassing to certain officials in the Justice Department.

Further, the department has tried to avoid questions by referring to the Acting Inspector General's investigation. That inquiry does not preclude an independent congressional investigation. Moreover, it has become clear that conduct by attorneys at the U.S. Attorney's office has been called into question. As you know, that is a matter that the Inspector General is statutorily precluded from investigating. So, unless the Attorney General has requested an independent review by the department's Office of Professional Responsibility, the questionable conduct by department attorneys may go unchecked.

The conduct in question by both the ATF and the department is serious. It may have led to the death of at least one federal agent and countless other crimes in the U.S. and Mexico. The department should not stonewall Congress or seek to intimidate whistleblowers or other potential witnesses in congressional proceedings. This cannot simply be swept under the rug. I plan to continue my work with the help of Congressman Issa and get to the bottom of who signed off on this operation that failed so tragically.

Prosecution of Leaks of Classified Information

Two years ago, Attorney General Holder stated that "unauthorized leaks of classified and other sensitive information are a real threat to our national security." He added, "Leaks endanger the lives of Americans serving overseas. They also endanger all those Americans who depend on a properly functioning intelligence apparatus to protect the homeland." In November, he added that, "[To] the extent that we can find anybody involved in breaking American law who has put at risk the assets and the people that I have described...they will be held responsible. They will be held accountable." These statements are in line with the beliefs of many on the committee, including me. Unfortunately, they do not appear to represent the realities at the department when it comes to prosecuting those who leak classified information.

Just this week, it was reported in the press that the department had dropped the prosecution of a former Department of Justice Attorney, Thomas Tamm, who admitted to leaking classified national security information to the New York Times. While the department wouldn't comment, Tamm's attorney told the press that he received a letter from the department confirming that the investigation and prosecution of Mr. Tamm had concluded. However, the department continues to prosecute another suspect in this case on unrelated additional charges. Thus, it appears that the department has essentially concluded that no individual will be prosecuted for leaking the classified information related to the Terrorist Surveillance Program.

I am concerned that the decision not to prosecute anyone related to this specific leak may indicate a reluctance to enforce the law. Leaks of classified information threaten the lives of our agents and allies in the field. They also threaten the integrity of our government--especially in the

foreign relations context. I want to ask the Attorney General about this decision not to prosecute one of the department's own because it is starting to look like there may be a double standard for leakers at the department. I also want to know whether the Attorney General thinks we need to make any changes to our laws to ensure that those who leak are brought to justice.

Decision Not to Defend the Defense of Marriage Act:

I also want to inquire about the department's decision not to defend the Defense of Marriage Act (DOMA). DOMA was signed into law by President Clinton and passed Congress with bi-partisan support. The February 23 decision by the Attorney General not to defend section 3 of DOMA based on a heightened review standard conflicts with prior circuit court cases that applied the same reasonable basis standard that the department had previously used to defend the legislation. I want to know more about how the Attorney General reached this decision, notwithstanding the case law opposing his position. I also want to ask him about how he determines what statutes the department will and will not defend and how the House should fund those efforts to defend a statute that has broad bi-partisan support.

Integrated Wireless Network (IWN):

I would also like to discuss what appears to be a new failed IT procurement at the department. The integrated wireless network program (IWN) was recently suspended by the Department of Justice and it appears that the project will end without completing its original goal to integrate the wireless radios for all federal law enforcement agencies. The IWN program was designed to implement a key recommendation of the 9/11 Commission and create a single interoperable communication system between federal law enforcement agencies. However, the Inspector General, the Government Accountability Office (GAO), and the Office of Management and Budget have all expressed concerns with the program and labeled it as high risk. To date, hundreds of millions of dollars have been spent, and there is no part of the country where all federal law enforcement radios are interoperable. The contractors have argued, as expected, that they just need more money and time and there are rumors that the department now wants to issue sole source contracts to companies just to buy equipment. I want to know more about this stop work order and whether the stop work order will simply be used to sole source a contract for radios to vendors outside the original IWN program. I am concerned that this program is starting to look a lot like other failed IT programs at the department--hundreds of millions of taxpayer dollars spent with nothing to show for it.

There is a lot of ground to cover and time permitting I'd like to bring up a number of other topics, including the new State Secrets Policy, the fiscal 2012 budget, bankruptcy administration matters, and other national security matters such as the transfer of detainees back to the Department of Defense, the reauthorization of the USA PATRIOT Act, and efforts to reform critical laws such as the Communications Assistance to Law Enforcement Act and the Electronic Communications Privacy Act. I expect candid answers to these very serious questions. Thank you.