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THE NEW YORK TIMES

Report by House Democrats Absolves Administration in Gun Trafficking Case

By CHARLIE SAVAGE

January 31, 2012

WASHINGTON -- Democrats on the House Oversight and Government Reform Committee on Tuesday are expected to publish a report on the disputed gun trafficking investigation called Operation Fast and Furious, concluding that agents in Arizona -- not Obama administration officials -- were responsible for the tactics used in the inquiry and for providing misleading information relayed to Congress.

In an 89-page report, titled "Fatally Flawed: Five Years of Gun-walking in Arizona," the Democratic staff portrays Fast and Furious as the fourth investigation, dating back to 2006, in which Arizona-based agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives employed the tactic "gun-walking" -- failing to interdict illegally purchased guns in an attempt to build a bigger case.

"This report debunks many unsubstantiated conspiracy theories," Representative Elijah E. Cummings, Democrat of Maryland, wrote in a cover letter. "Contrary to repeated claims by some, the committee has obtained no evidence that Operation Fast and Furious was a politically motivated operation conceived and directed by high-level Obama administration political appointees at the Department of Justice."

Still, because the report was written by Democrats, the political impact of its conclusion exonerating high-level officials of wrongdoing may be limited. Its publication comes two days before Attorney General Eric H. Holder Jr. is to testify before the committee. In previous hearings, Republicans have accused the department of sanctioning the tactics and lying to Congress.

In Fast and Furious, which ran from late 2009 to early 2011, A.T.F. officials lost track of about 2,000 guns purchased by suspected "straw buyers." Many weapons are believed to have reached a Mexican drug cartel. Two guns linked to the investigation were found at the site of a shootout in which a Border Patrol agent, Brian Terry, was killed.

Congressional Republicans -- led by Representative Darrell Issa of California, the chairman of the House oversight committee, and Senator Charles E. Grassley of Iowa, the ranking member on the Senate Judiciary Committee -- have been investigating Fast and Furious for the past year, and much of the Democratic report consists of a synthesis of previously released information.

Still, the report fills in some new details. There has been substantial discussion of two other Arizona-based investigations in which guns purchased by suspected straw buyers also reached Mexico -- a 2006-07 case known as Operation Wide Receiver, and a 2007 investigation called the Hernandez case. The report discusses a third, from 2008, called the

Medrano case, in which A.T.F. agents watched suspects cross the border with weapons.

The Democrats also suggested that Arizona-based A.T.F. officials developed the tactic out of frustration because prosecutors refused to charge gun cases, even when they had a level of evidence that would have satisfied prosecutors in other jurisdictions.

The report also explores a Feb. 4, 2011, letter from the Justice Department to Mr. Grassley in response to his early questions about Fast and Furious. The letter falsely denied that A.T.F. had engaged in any gun-walking. The department later retracted the letter and released documents showing that Arizona-based prosecutors and A.T.F. officials, including the United States attorney at the time, Dennis K. Burke, were claiming internally that no guns walked.

It remains unclear whether someone who knew otherwise came up with that false claim, which was then passed up the chain and eventually relayed to Congress, and -- if so -- who that was. The Democratic report says Mr. Burke, who has resigned, told committee staff members that Patrick Cunningham, who was the criminal division chief in his office, had "adamantly denied that gun-walking occurred in Operation Fast and Furious."

It also says a deputy assistant attorney general in the criminal division who has also come under scrutiny over the Feb. 4 letter, Jason Weinstein, told Congressional investigators that Mr. Cunningham had continued to maintain that stance after the letter.

The report, however, does not clear up whether Mr. Cunningham knew otherwise, or whether he, too, was merely passing on bad information. He did not talk to the committee; earlier this month, his lawyer told Congress that his client was innocent but that he would assert his constitutional right against self-incrimination to avoid testifying.

Mr. Cunningham resigned several days ago. On Friday, the department sent Congress a letter outlining a series of changes in response to Fast and Furious, including requiring officials, when responding to Congressional inquiries, to ask questions directly of employees "with detailed personal knowledge of the subject matter at issue" rather than going through intermediaries.