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OPERATION FAST AND FURIOUS: THE OTHER SIDE OF THE BORDER

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 26, 2011

Serial No. 112–100

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

72–802 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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OPERATION FAST AND FURIOUS: THE OTHER SIDE OF THE BORDER

TUESDAY, JULY 26, 2011

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

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Burton, Jordan, Chaffetz, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Gowdy, Ross, Guinta, Farenthold, Kelly, Cummings, Maloney, Norton, Kucinich, Tierney, Connolly, Quigley, Davis, Welch, Murphy, and Speier.

Staff present: Robert Borden, general counsel; Steve Castor, chief counsel, investigations; John Cuaderes, deputy staff director; Carlton Davis, Henry J. Kerner, Jonathan J. Skladany, and Jessica L. Laux, counsels; Kate Dunbar, staff assistant; Adam P. Fromm, director of Member liaison and floor operations; Linda Good, chief clerk; Jean Humbrecht, professional staff member; Ashok M. Pinto, deputy chief counsel, investigations; Laura L. Rush, deputy chief clerk; Ashley Etienne, minority director of communications; Carla Hultberg, minority chief clerk; Justin Kim, Scott Lindsay, Donald Sherman, and Carlos Uriarte, minority counsels; Dave Rapallo, minority staff director; and Susanne Sachman Grooms, minority chief counsel.

Chairman ISSA. The hearing will come to order.

Today's hearing continues the committee's ongoing investigation into the reckless program known as Operation Fast and Furious.

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

We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and to reform the government's bureaucracy. Thus far, the committee has heard testimony from ATF agents who reported that they were ordered to let guns destined for Mexican drug cartels to walk away from the hands of known criminals.

Today this committee will have the opportunity to question supervisors of these agents who knew about and believed these tactics were appropriate. The committee will also hear from ATF agents who worked in Mexico and who were horrified to learn ultimately about this program.

The task before the committee is very serious. The acting director of ATF in a transcribed interview with investigators has said that the Justice Department is trying to push all of us away from its political appointees. Indeed, the Justice Department continues to withhold key information and has inappropriately interfered with this investigation.

Let me be clear, the Justice Department is not our partner in this effort. They are the subject of this investigation, and their continued interference will not be allowed to derail the committee's work.

Last month, members of this committee traveled to Mexico on a factfinding mission where we were briefed on how the United States and Mexican law enforcement agents are working together to fight the drug lords who are responsible for more than 34,000 deaths in the last 4½ years.

That effort cannot be derailed by the fallout of Fast and Furious. One of our goals is to ensure that the Mexican Government can have confidence in its partner here in the United States from this date forward that we in fact will not let guns walk, that we will be as open and transparent as possible.

In the time ATF officials in Mexico have been increasingly alarmed by both volume and location of weapons that have been recovered, after reporting these concerns to ATF and Justice Department officials in Washington, these agents were told nothing about Fast and Furious. Again, our trip to Mexico City taught us that ATF agents and, more importantly, likely DEA agents and likely two U.S. Ambassadors were not informed about a program that was causing an increase in violence and an increase in guns arriving throughout Mexico, from Tijuana to Mexico City to Sonora and beyond.

We have before us today witnesses who worked in Mexico for years, and they will tell the committee their frustration about being kept in the dark by officials in Washington and in Phoenix and about what really happened as a result of Operation Fast and Furious. They are going to have the opportunity to tell this committee about what happens when the Justice Department intentionally lets weapons flow across the border and how Mexican officials reacted when they began to learn the truth.

The committee will also offer ATF supervisors the opportunity to publicly explain why they thought it was okay to let weapons flow from Phoenix to Mexican drug cartels without making an effort to interdict them.

The committee is eager to know why one particular suspect was permitted to purchase 685 weapons before he was arrested. We are also eager to hear justifications for decisions that have created deep divisions within the ATF and outrage in both the United States and Mexico.

We have yet to—we have not yet seen the end of the violence from Operation Fast and Furious. The deadly consequences of this

irresponsible program could last for years to come. Today the committee estimates at least 1,600 weapons, including .50-caliber sniper rifles, are still out there waiting to kill. The possibility that administration officials perhaps at the highest level of the Justice Department approved this strategy and are now trying to cover up their own involvement by stonewalling the committee is alarming.

Today we are focusing primarily on the effects of Fast and Furious in Mexico. President Obama is keen to talk about who didn't know about the program and who didn't authorize it. But the American people have a right to know once and for all who did authorize it and who knew about it.

The ranking member and I both pledged the Terry family that we would focus our efforts on finding out who was responsible for Fast and Furious. Until we have those answers, the committee will remain focused on these basic questions.

And with that, I yield to the ranking member for his opening statement.

[The prepared statement of Chairman Darrell E. Issa follows:]

Chairman Darrell Issa Opening Statement
Operation Fast and Furious: The Other Side of the Border
July 26, 2011

- This hearing continues Committee's ongoing investigation into the reckless ATF program, "Operation Fast and Furious."

- Thus far, the Committee has heard testimony from ATF agents who reported that they were ordered to let guns – destined for Mexican drug cartels – to walk away into the hands of known criminals.

- Today, this Committee will have the opportunity to question the supervisors of these agents who knew about and believed these tactics were appropriate. The Committee will also hear from ATF agents who worked in Mexico and whose horror intensified as they learned more about this operation and the violence it fueled in Mexico.

- The task before this committee is very serious. The Acting Director of the ATF, in a transcribed interview with investigators, has said that the Justice Department is trying to push all of this away from its political appointees.

- Indeed, the Justice Department continues to withhold key information and has improperly interfered with the investigation.

- Let me be clear: the Justice Department is not a partner in this effort, they are the subject of this investigation and their continued interference will not be allowed to derail the Committee's work.

- Last month, members of this Committee travelled to Mexico on a fact-finding mission, where we were briefed on how U.S. and Mexican law enforcement agents are working together to fight the drug lords who are responsible for more than 34,000 deaths in the last 4 ½ years.

- In that time, ATF officials in Mexico have been increasingly alarmed by both the volume and the location of weapons they have recovered. After reporting these concerns to ATF and Justice Department officials in Washington, these agents were told ***nothing*** about "Operation Fast and Furious."

- We have before us today witnesses who worked in Mexico for years and will tell the Committee their frustration about being kept in the dark by officials in Phoenix and Washington about what was really happening in "Operation Fast and Furious."

- They're going to have the opportunity to tell this committee about what happens when the Justice Department intentionally lets weapons flow across the border and how Mexican officials reacted when they began to learn the truth.

- The committee will also offer ATF supervisors the opportunity to publicly explain why they thought it was okay to let weapons flow from Phoenix to Mexican drug cartels without making efforts to interdict them.

- The Committee is eager to know why one particular suspect was permitted to purchase 685 weapons before he was ever arrested. We are also eager to hear the justifications for decisions that have created deep division within the ATF and outrage in both the Unites States and Mexico.

- We have not yet seen the end of the violence that "Operation Fast and Furious" has caused. The deadly consequences of this irresponsible program will reverberate for years to come.

- The possibility that Administration officials – perhaps at the highest level of the Justice Department – approved this strategy and are now trying to cover-up their own involvement by stonewalling this Committee is alarming.

- Today, we are focusing primarily on the effects that Operation Fast and Furious had on the country of Mexico.

- President Obama is keen to talk about who ***didn't*** know about the program and who ***didn't*** authorize it, but the American people have a right to know – once and for all – who ***did*** authorize it and who knew about it.

- The Ranking Member and I both pledged to the Terry family that we will focus our efforts on finding out who is responsible for Operation Fast and Furious. Until we have those answers, the Committee will remain focused on these basic questions.

- With that, I yield to the Ranking Member for an opening statement.

###

Mr. CUMMINGS. I want to thank the chairman for this hearing. And I want to thank all of our witnesses for your service to our country and for what you do every day to protect so many lives.

We have an important responsibility in this committee to thoroughly investigate allegations of waste, fraud and abuse and to follow evidence wherever it may lead and to base our conclusions on the evidence before us.

The committee has now been investigating allegations relating to Operation Fast and Furious for 5 months. The committee staff have conducted 16 transcribed interviews of ATF managers and field agents in Phoenix, Washington and Mexico.

During these interviews, officials at various levels have acknowledged mistakes in the planning, execution and oversight of this operation. That is most unfortunate.

Although key questions remain, I would like to make four points. First, the head of ATF Acting Director Ken Melson stated during his transcribed interview on July 4th that he did not become aware of any allegations about so-called gun walking until they were reported publicly. And this is what he said: That issue had never been raised; it had never been raised to our level by the whistleblowers in Phoenix that stayed in-house down there.

Second, the officials interviewed by the committee did not support the allegation that the controversial tactics allegedly employed in this operation, such as suspending surveillance or failing to interdict weapons, were part of a top-down strategy devised by senior ATF management or the Justice Department. Again, Acting Director Melson said that no Justice Department officials ever told him or anyone at ATF that these tactics were part of a new strategy to let guns go. He stated, "we never discussed those types of tactical strategies."

William Hoover, the acting director of the ATF, is the principal liaison between ATF and the Deputy Attorney General's Office. He also rejected this allegation. When asked whether these tactics were part of a top-down policy, he responded, "no, sir, it is my firm belief that the strategic and tactical decisions made in this investigation were born and raised with the U.S. Attorney's Office and with the ATF and the OCDETF strike force in Phoenix."

He added, "there's been reports that deputy attorney—the department attorney general's office was aware of the techniques being employed in Fast and Furious; that's just not—that's not the case, because I certainly didn't brief them on the techniques being employed."

Third, although these tactics may not have originated in headquarters of ATF or the Justice Department, the evidence before the committee indicates that after receiving briefings in March 2010, Deputy Director Hoover and other senior ATF officials became seriously concerned about the number of weapons being trafficked by the suspects. As a result, Deputy Director Hoover ordered an exit strategy, those are his words, to close the case and seek indictments within 90 days.

Although this exit strategy was developed, there were no indictments until this past January. One question I hope to explore today is why it took nearly 10 months, from March 2010 to January 2011, to close this operation and bring indictments.

Finally, nearly all of the officials interviewed by the committee strongly supported additional law enforcement tools to combat the flood of high-powered military grade assault weapons from the United States into Mexico. Mexico is our neighbor, our ally and our friend; yet U.S. weapons are arming the world's most violent and powerful international drug cartels, costing the lives of 40,000 Mexicans in the last 4—5 years.

While I will continue to work with Chairman Issa to investigate the facts of Operation Fast and Furious, we must also examine opportunities for reform. And I look forward to, again, following the evidence where it may lead.

And with that, Mr. Chairman, I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

Opening Statement
Ranking Member Elijah E. Cummings

"Fast and Furious: The Other Side of the Border"

July 26, 2011

Thank you, Mr. Chairman. We have an important responsibility in this Committee to thoroughly investigate allegations of waste, fraud, and abuse, to follow the evidence where it leads, and to base our conclusions on the evidence before us.

The Committee has now been investigating allegations relating to Operation Fast and Furious for five months. Committee staff have conducted 16 transcribed interviews of ATF managers and field agents in Phoenix, Washington, and Mexico. During these interviews, officials at various levels have acknowledged mistakes in the planning, execution, and oversight of this operation.

Although key questions remain, I would like to make four points.

First, the head of ATF, Acting Director Ken Melson, stated during his transcribed interview on July 4 that he did not become aware of any allegations about so-called "gun-walking" until they were reported publicly. He said this:

> "That issue had never been raised. It had never been raised to our level by the whistleblowers in Phoenix that stayed in-house down there."

Second, the officials interviewed by the Committee did not support the allegation that the controversial tactics allegedly employed in this operation, such as suspending surveillance or failing to interdict weapons, were part of a "top-down" strategy devised by senior ATF management or the Justice Department.

Acting Director Melson said that no Justice Department officials ever told him or anyone at ATF that these tactics were part of a new strategy to "let the guns go." He stated that "we never discussed those types of tactical strategies."

William Hoover, the Acting Deputy Director of ATF, is the principal liaison between ATF and the Deputy Attorney General's office. He also rejected this allegation. When asked whether these tactics were part of a "top-down" policy, he responded:

> "No, sir. It's my firm belief that the strategic and tactical decisions made in this investigation were born and raised with the U.S. Attorney's Office and with ATF and the OCDETF strike force in Phoenix."

He added:

"There's been reports that the Deputy Attorney General's office was aware of the techniques being employed in Fast and Furious, and that's not the case, because I certainly didn't brief them on the techniques being employed."

Third, although these tactics may not have originated at the headquarters of ATF or the Justice Department, the evidence before the Committee indicates that, after receiving briefings in March 2010, Deputy Director Hoover and other senior ATF officials became seriously concerned about the number of weapons being trafficked by these suspects.

As a result, Deputy Director Hoover ordered an "exit strategy" to close the case and seek indictments within 90 days. Although this exit strategy was developed, there were no indictments until this past January. One question I hope to explore today is why it took nearly ten months—from March 2010 to January 2011—to close this operation and bring indictments.

Finally, nearly all of the officials interviewed by the Committee strongly supported additional law enforcement tools to combat the flood of high-powered military-grade assault weapons from the United States into Mexico. Mexico is our neighbor, ally, and friend. Yet U.S. weapons are arming the world's most violent and powerful international drug cartels, costing the lives of 40,000 Mexicans in the last five years alone.

While I will continue to work with Chairman Issa to investigate the facts of Operation Fast and Furious, we must also examine opportunities for reform.

Thank you.

Chairman ISSA. I thank the ranking member.

All Members will have 7 days to submit opening statements and extraneous material for the record.

We now recognize our first panel of witnesses. Darren Gil is a former ATF attache in Mexico. Jose Wall is ATF Senior Special Agent in Tijuana, Mexico. Carlos Canino—I'll get better in time—is the ATF acting attache in Mexico. Lorren Leadmon is the ATF team leader, Field Intelligence Support Team Southwest Border. William Newell is the former ATF Special Agent in Charge of the Phoenix Field Division. And William McMahon is the ATF Deputy Assistant Director For Field Operations West.

And I apologize, as usual, for never getting names quite right.

Pursuant to the rules of this committee, all witnesses must be sworn.

Would you please rise and raise your right hands to take the oath?

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative.

Thank you. Please be seated. Now, even for this committee, this is a large panel, so if each of you take 5 minutes, we have 30 minutes. If you take more than 5 minutes, the guy next to you will also take more than 5 minutes. So, please, observe the green, yellow and red light. Realize that any official material or even additional material you choose to submit will be put into the record. So you can provide us what is exactly in your opening statement, which often happens, read in a verbatim way, or you can summarize and get it all done in 5 minutes or less. It is your choice. And I appreciate your staying within the time so that we can have maximum time for questions.

Mr. Gil.

STATEMENTS OF DARREN GIL, FORMER ATF ATTACHE TO MEXICO; JOSE WALL, ATF SENIOR SPECIAL AGENT, TIJUANA, MEXICO; CARLOS CANINO, ATF ACTING ATTACHE IN MEXICO; LORREN LEADMON, ATF INTELLIGENCE OPERATIONS SPECIALIST; WILLIAM NEWELL, FORMER ATF SPECIAL AGENT IN CHARGE, PHOENIX FIELD DIVISION; AND WILLIAM MCMAHON, ATF DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS WEST, INCLUDING PHOENIX AND MEXICO

STATEMENT OF DARREN GIL

Mr. GIL. Thank you, Chairman Issa, Ranking Member Cummings and——

Chairman ISSA. You're going to have to pull the mic close. They're deliberately designed to be somewhat insensitive, so you almost have to kiss them to make them work.

Mr. GIL. Very well. Well, thank you again for inviting me to the conference hearing this morning.

First, I offer my sincere condolences to the families of agents Brian Terry and Jaime Zapata. I'm deeply sorry for their loss and for the grief that this ill-conceived operation may have caused.

Also, I thank ICE Special Agent Victor Avila for his services and sacrifices in fighting the narco-violence in Mexico and along the border. I can only imagine the horror of helplessly watching a brother law enforcement officer die in the line of duty.

As a former head of ATF in Mexico, I also would like to apologize to my former Mexican law enforcement counterparts and to the people of Mexico for Fast and Furious. I hope they understand it was kept secret from me and my colleagues.

Unfortunately, as a result of this operation, it is the Mexican people who will continue to suffer the consequences of narco related firearms violence. I have no doubt, as recent media reports have indicated, that American citizens will also face more firearms related violence as a result of this operation.

I would like to provide the committee with a brief description of my background. I received a bachelor's degree in criminology from the University of Maryland, a master's degree in criminal justice from the University of Alabama and am currently completing my dissertation at the University of Southern Mississippi focusing on international affairs and security studies.

I've been in service to our Nation since my enlistment in the U.S. Army in 1980. After service in the Army I joined the Las Vegas Metropolitan Police Department and later received my commission as an ATF Special Agent in 1987. I then served for 23 years in various positions in ATF, including intelligence and assignments and as attache to Mexico, until I recently retired.

I chose ATF because it was a small organization with a focused mission, combatting the most violent offenders in America. During my first 12 years as a field agent, I participated in or directed investigations that targeted the worst of the worst. For the remainder of my career, I supervised, managed and led agents who conducted similar investigations.

Throughout my career, not once never did firearms walk from any investigations I directed or fell under my command. This includes my services as ATF attache in Mexico. To put it bluntly, it is inconceivable in my mind or the mind of any competent ATF agent to allow firearms to disappear at all. Furthermore, it is even more inconceivable that a competent agent would allow firearms to cross an international border knowing that they are destined for the worst of the worst criminals in the Western Hemisphere.

I recall my first days at the ATF academy where it was drilled into us that under no circumstances would any firearms in any investigation leave the control of ATF. Instructors stressed that even if a weapon was lost by accident, the agent was still subject to termination.

My point is that ATF agents don't allow and ATF as an organization has not tolerated firearms to disappear. Yet apparently that happened here.

After retiring from ATF, I started receiving inquiries from former colleagues, including Special Agents Vince Cefalu and Jay Dobyns, as well as from the press. They all wanted to know whether I was aware that ATF had allowed firearms to walk into Mexico. I advised my former colleagues that I was not aware but I refused to speak to the media without a complete understanding of the issue.

After talking with several agents, I became convinced that firearms might have been walking to Mexico by ATF. Thankfully, Congress and the media continued to investigate, and Fast and Furious began to receive greater notoriety. Nonetheless I remained reluctant to speak out about what I had come to suspect since retiring from ATF but was never told about this operation.

When I later learned that ATF executive staff would not make statements exonerating my former staff in Mexico of any knowledge of the gun walking aspects of this operation, only then did I decide to speak to the press. My understanding is that my initial interview with Sharyl Atkinson of CBS News did have some calming effect on relations between the Mexico government and ATF personnel in Mexico. To this day, I do not understand the failure of ATF executive staff to provide their own support in this matter to their personnel in Mexico.

During dissertation research, I came across a study entitled "The Waco, Texas, ATF Raid and Challenger Launch Decision: Management, Judgment and the Knowledge Analytic." The paper's title could have been substituted "Operation Fast and Furious" for "Waco, Texas, ATF Raid," and the conclusions would have been the same, namely poor management, poor judgment and poor leadership resulted in disaster.

Operation Fast and Furious is indeed a disaster. I'm here today to answer the committee's questions, but I also have a few questions of my own. For example, who actually presented this operation for implementation? What was the objective? My staff was already working with Mexico in tracing thousands of firearms recovered from crime scenes. Why the need to introduce even more firearms into a country that is seized by narco-violence? Why did ATF leadership fail to exercise oversight of this disaster? And why were ATF personnel in Mexico kept in the dark from this operation, which has now imperiled trust and cooperation between United States and Mexican law enforcement at a time when trust and cooperation is more essential than ever?

During my tenure in Mexico, I observed firsthand the extraordinary changes occurring there. The heads of the agencies leading these changes are some of the bravest people I ever met. As a result of their leadership, they have become targets of Mexican drug organizations. I find it grotesquely ironic that as a representative of U.S. law enforcement in Mexico, my staff and I were asked to expose ourselves and our families to the same sort of risks while speaking to our American counterparts of integrity, rule of law, honor and duty in policing. Meanwhile, members of our own ATF and Department of Justice, for whatever reason, appear to have refused to follow the same principles.

As a career Special Agent, I believe in the mission of people of ATF. The men and women of ATF go to work every day with a strong sense of duty. I hope that once all the facts are known about this operation, that ATF will emerge a stronger, more effective organization, focused on its core mission, taking the worst of the worst armed violent offenders off the streets.

Thank you, Mr. Chairman and members of the committee. I'll be happy to answer your questions.

[The prepared statement of Mr. Gil follows:]

Statement of Darren D. Gil
Former ATF Attaché to Mexico
Hearing before the House Committee on Oversight and Government Reform
July 26, 2011

Thank you, Chairman Issa, Ranking Member Cummings and members of the Committee for inviting me to participate in this important hearing regarding the serious ATF matter known as "Operation Fast and Furious."

First, I would like to offer my sincere condolences to the families of Agents Brian Terry and Jaime Zapata. I am deeply sorry for their loss, and for the grief that this ill-conceived operation may have caused. Also, I would like to thank ICE special agent Victor Avila for his services and sacrifices in fighting the narco-violence in Mexico and along the border. I can only imagine the horror of helplessly watching a brother law enforcement officer die in the line of duty.

In addition, as the former head of the ATF contingent in Mexico, I would like to apologize to my former Mexican law enforcement counterparts and to the Mexican people for Operation Fast and Furious. I hope they understand that this operation was kept secret from most of ATF, including me and my colleagues in Mexico. Unfortunately, as a result of this operation, it is the Mexican people who will continue to suffer the consequences of narco-related firearms violence. I have no doubt, as recent media reports have indicated, that American citizens will also be exposed to more firearms-related violence as a result of this operation.

I am grateful for the opportunity to be here today and would like to provide the Committee with a brief description of my background. I received a Bachelors degree in Criminology from the University of Maryland, a Masters degree in Criminal Justice from the

University Alabama, and am currently completing my dissertation at the University of Southern Mississippi, focusing on international affairs and security studies. I have been in service to our nation since my enlistment in the U.S. Army in 1980. After my tour in the Army, I joined the Las Vegas Metropolitan Police Department, where I served until I received my commission as an ATF Special Agent in 1987. I then served for 23 years in various positions in ATF, including intelligence assignments and as Attaché to Mexico, until I retired in December 2010.

I chose ATF for my career because it was a small organization with a focused mission that I found appealing: combating the most violent offenders in America. During my first 12 years as a field agent, I participated in, or directed investigations that targeted the worst of the worst. For the remainder of my career, I supervised, managed and led agents who conducted similar investigations. Throughout my career at ATF, not once, never, did firearms "walk" from any investigations I directed or which fell under my command. This includes my service as ATF Attaché in Mexico. Put bluntly, it is inconceivable in my mind, or the mind of any competent ATF Special Agent, to allow firearms to disappear at all. Furthermore, it is even more inconceivable that a competent ATF Special Agent would allow firearms to cross an international border, knowing that they are ultimately destined for the hands of the "worst of the worst" criminals in the Western Hemisphere.

I recall my first days at the ATF academy, where it was drilled into us as new agents that under no circumstances would any firearms, in any investigation, leave the control of ATF. Instructors stressed that even if a weapon was lost "by accident," the agent was still subject to termination. Even today, if an agent loses their ATF-issued firearms, they are

subject to termination. My point is that ATF agents don't allow - and ATF as an organization historically has not tolerated - the notion that firearms could simply disappear. Yet, that apparently is what was allowed to happen here.

In early 2011 after retiring from ATF, I started receiving inquires from former ATF colleagues, including Senior Special Agents Vince Cefalu and Jay Dobyns, as well as from numerous media organizations. They all wanted to know whether I was aware that ATF had allowed firearms to walk into Mexico. I advised my former colleagues that I was not aware, but refused to speak with the media without a complete understanding of the issue. After talking with several ATF agents in the field and at headquarters, I became convinced that firearms might have been walked into Mexico by ATF. Thankfully, Congress and the media continued to investigate the matter and Operation Fast and Furious began to receive greater notoriety. Nonetheless, I remained reluctant to speak out about what I had come to suspect since retiring from ATF, but was never told, about this operation. After discussions with my former staff in Mexico and employees at ATF Headquarters, I learned that ATF executive staff would not make statements exonerating my former staff in Mexico of any knowledge of the gun walking aspects of this operation. Out of a desire to set the record straight and protect my colleagues in Mexico, it was only then that I decided to speak to the media. My understanding is that my initial interview with Sharyl Atkinson of CBS News did have some calming effect on relations between the Government of Mexico and ATF personnel assigned to Mexico. To this day, I do not understand the failure of the ATF executive staff to provide their own support in this matter to ATF personnel serving in Mexico.

During my dissertation research I came across a study that provided some insight into how an operation like Fast and Furious could arise and be supported. Interestingly enough, it is titled *The Waco, Texas, ATF Raid and Challenger Launch Decision: Management, Judgment and the Knowledge Analytic* by Terence Garret (2001). The paper could have substituted "Operation Fast and Furious" for "Waco, Texas, ATF Raid" in the title and the study's conclusions would have been the same: namely, poor management, poor judgment and poor leadership resulted in disaster. Operation Fast and Furious, as I have come to understand it, is indeed a disaster.

I know the Committee has asked me to testify and to answer questions today, which I look forward to doing. But, I also have a few questions of my own which I hope this committee may someday be able to answer. For example, who actually presented this operation for implementation? What was the objective? My staff in Mexico was already working with the Government of Mexico in tracing thousands of cartel-related firearms recovered from crime scenes that had been smuggled into Mexico illegally. Why the need to introduce even more firearms into a country being besieged by narco- violence? Also, what supervisor approved this plan? Who thought this was a good idea? Why did the ATF leadership in Washington fail to exercise oversight of this disaster? And, why were ATF personnel in Mexico kept in the dark on this operation, which has now imperiled trust and cooperation between U.S. and Mexican law enforcement at a time when that trust and cooperation is more essential than ever?

During my tenure in Mexico, I observed firsthand the extraordinary changes occurring in that country. Mexico is indeed working towards improvements in the rule of law, a transition to an adversarial court system, and improvement of their police forces.

The heads of the agencies leading these changes for Mexico are some of the bravest people I have ever met. As a result of their leadership and implementation of change, they become marked targets by the Mexican Drug Organizations. I find it grotesquely ironic that as representatives of United States law enforcement in Mexico, my staff and I were asked to expose ourselves and our families to the same sort of risk while speaking to our Mexican counterparts of integrity, rule of law, honor and duty in policing. Meanwhile, members of our own ATF and Department of Justice for whatever reason, appear to have refused to follow the same principles.

As a career ATF Special Agent, I believe in the mission and the people of ATF. ATF is an organization that constantly operates under political and budgetary constraints. Despite these constraints, the men and women of ATF go to work around the world every day with a strong sense of mission and duty. I hope that once all the facts are known about this operation and whatever necessary managerial changes are made in response to it, that ATF will emerge a stronger, more effective organization and that it will continue to focus on its core mission: taking the worst of the worst armed violent offenders off the streets in America.

Again, thank you Mr. Chairman and members of the committee for inviting me to testify today. I would be happy to answer any questions you may have.

Chairman ISSA. Thank you.
Mr. Wall.

STATEMENT OF JOSE WALL

Mr. WALL. Thank you, Chairman Issa, Ranking Member Cummings and members of the committee for inviting me to speak today.

I am saddened by the circumstances that bring me here today. As an employee of ATF, I know that this situation is an anomaly and not reflective of the good work that ATF does in the service of this country. And I am hopeful that this process will shed light on what has occurred so that we in ATF do not have to travel down this path again.

This year marks my 26th year of Federal service and my 19th as an ATF Special Agent. During my years as an ATF Special Agent, I have been involved in hundreds of firearms trafficking investigations. These investigations date back to the early 1990's. I have seen firearms trafficked internationally from the United States to countries as diverse as the Netherlands, Canada and Macau. These international investigations were as unique as the places to where the guns were going. However, one aspect shared by most of these investigations was the fact that most international gun trafficking is being done in the interest of organized crime.

In late 2007, I became the border liaison officer for the Phoenix Field Division. My duties allowed me to develop a working relationship with Mexican authorities and to travel into Mexico to examine guns or meet with officials. It was at this time that the struggle against the drug trafficking cartels was started by the government of Mexico. Large scale gun battles and murder became a daily occurrence in Mexico.

To me and other agents, it became apparent that the level of firepower being used was more than we had ever seen. As the level of firearms trafficking increased, we in the Phoenix Field Division realized that this was an arms race between the various cartels, an arms race that could very well determine the future of Mexico and tremendously impact our own country's future.

Phoenix agents initiated many good investigations during this time. These investigations served to disrupt the trafficking of guns and prevented them from reaching Mexico, but the urgency displayed by the agents in stopping these gun traffickers was not apparent in the prosecution of these cases. As we saw, some of our best trafficking cases languish at the U.S. Attorney's Office.

In an effort to do more against this tide of weapons, in the fall of 2009, I transferred to the newly opened ATF field office in Tijuana, Mexico. There I worked closely with ATF and other agents. I also traveled to some of the most heavily fought for areas in Mexico. In these contested areas I examined hundreds of firearms. Among these, I examined some that can now be traced to the Fast and Furious investigation.

The majority of these firearms had been seized from criminals engaged in drug trafficking, kidnapping, extortion and other crimes. Having firsthand knowledge of the reality in Mexico, I was skeptical when the first whistleblower came to this committee with allegations of hundreds, maybe thousands of guns being allowed to

walk into the country of Mexico. I could not believe that someone in ATF would so callously let firearms wind up in the hands of criminals, but it appears that I was wrong, that hundreds and quite possibly thousands of guns have been allowed to reach the hands of organized crime in Mexico, and that this activity has seemingly been approved by our own Justice Department and ATF management in the misguided hope of catching the big fish.

Having had enough experience with gun trafficking investigations, I can only imagine that once the DOJ OIG report was released, a report that was critical of ATF efforts in stopping gun trafficking, the emphasis changed to following the food chain up to the leaders. What the persons approving this debacle failed to realize is that the end does not justify the means.

These firearms that are now in the hands of people who have no regard for human life pose a threat to all of us, a threat to which none of us is immune. I am especially concerned for the brave law enforcement officers and military in Mexico and here in the United States. I fear these firearms will continue to exact a terrible toll long after these hearings are over.

Finally, I have a request of this committee that the serious problem of gun trafficking not be forgotten. I don't believe we need another toothless law. What we need is vigorous enforcement and prosecution of those that would traffic in firearms. A policy of no tolerance for straw purchasers and a change in the sentencing guidelines that would dictate mandatory sentences for these crimes would go a long way in curbing this criminal activity. I thank you.

[The prepared statement of Mr. Wall follows:]

Statement of Jose Wall
ATF Senior Special Agent
Hearing before the House Committee on Oversight and Government Reform
July 26, 2011

Thank you, Chairman Issa, Ranking Member Cummings and members of the committee for inviting me to speak today.

I am saddened by the circumstances that bring me here today. As an employee of ATF, I know that this situation is an anomaly and not reflective of the good work that ATF does in the service of this Country. And I am hopeful that this process will shed light on what has occurred, so that we in ATF do not have to travel down this path again.

This year marks my 26th year of federal service and my 19th as an ATF Special Agent. During my years as an ATF Special Agent, I have been involved in hundreds of firearms trafficking investigations. These investigations date back to the early 1990s. I have seen firearms trafficked internationally from the United States to countries as diverse as the Netherlands, Canada, and Macau to name just a few. These international investigations were as unique as the places to where the guns were going. However one aspect shared by most of these investigations, was the fact that most international gun trafficking is being done in the interest of organized crime.

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In an effort to do more against this tide of weapons; in the fall of 2009, I transferred to the newly opened ATF Field Office in Tijuana, Mexico. There I worked closely with ATF and other US Agents. I also traveled to some of the most troubled areas of Mexico.

In these contested areas I examined hundreds of firearms. Among these I examined some that can now be traced to the "Fast and Furious Investigation." The majority of these firearms had been seized from criminals engaged in drug trafficking, kidnapping, extortion and other crimes. Having firsthand knowledge of the reality in Mexico, I was skeptical when the first whistle-blower came to this committee with allegations of hundreds maybe thousands of guns being allowed to "walk" into the Country of Mexico. I could not believe that someone in ATF would so callously let firearms wind up in the hands of criminals. But it appears that I was wrong, that hundreds and quite possibly thousands of guns have been allowed to reach the hands of organized crime. And that this activity has seemingly been approved by our own Justice Department and ATF management in the misguided

hope of catching the "big fish". Having had enough experience with gun trafficking investigations, I can only imagine that once the DOJ OIG report was released, a report that was critical of ATF efforts in stopping gun trafficking; the emphasis changed to following the food chain up to the leaders. What the persons approving this debacle failed to realize is that the end does not justify the means. These firearms that are now in the hands of people who have no regard for human life, pose a threat to all of us, a threat to which none of us is immune. I am especially concerned for the brave law enforcement officers and military in Mexico and here in the United States, I fear these firearms will continue to exact a terrible toll long after these hearings are over.

Finally, I have a request of this committee, that the serious problem of gun trafficking not be forgotten. I don't believe we need another toothless law. What we need is vigorous enforcement and prosecution of those that would traffic in firearms. A policy of "no tolerance" for straw purchasers and a change in the sentencing guidelines that would dictate mandatory sentences for these crimes would go a long way in curbing this criminal activity.

I Thank You

Chairman ISSA. Thank you.
Special Agent Canino.

STATEMENT OF CARLOS CANINO

Mr. CANINO. Thank you, Chairman Issa, Ranking Member Cummings and members of the committee for inviting me to speak today. I want to thank you for taking the time and effort to visit Mexico last month to get a boots-on-the-ground perspective.

On behalf of Charge' John Feeley, I want to convey his deep appreciation for your interest in Mexico and U.S.-Mexico relations. I'm not here today to lay blame, point the finger or assign punishment; that will be for others to determine. I am simply here to discuss these events as I know them and let the committee and the American people know what the ATF Mexico Country Office, referred to as the MCO, knew and when we knew it.

During my 22 year career with ATF, I proudly spent 15 years as a street agent investigating violent crime and gun trafficking and the last 7 supervising others doing the same. I'm a recipient of the U.S. Attorney General's Award for Excellent Law Enforcement, two ATF Distinguished Service Medals and two Medals of Valor. I mention this not to boast but to illustrate my recognized dedication to ATF and public service. I paid my dues.

I can say with authority that walking guns is not a recognized ATF investigative technique. These guns went to ruthless criminals. U.S. law enforcement and our Mexican partners will be recovering these guns for a long time to come as they continue to turn up at crime scenes in Mexico and the United States. It infuriates me that people, including my law enforcement, diplomatic and military colleagues, may be killed or injured with these weapons.

In my professional opinion, this investigative strategy was flawed. It was allowed to continue due to ineffective oversight in the Phoenix Field Division and possibly beyond. It's alleged that over 2,000 guns were trafficked in this investigation. To put that in context, upon information and belief the U.S. Army 75th Ranger Regiment has approximately 2,500 rangers. That means that as a result of this investigation, the Sinaloa cartel may have received almost as many guns that are needed to arm the entire regiment. Under these 2,000 weapons, 34 were .50-caliber sniper rifles. That is approximately the number of sniper rifles a Marine infantry regiment takes into battle; that's 3,000 men.

For the MCO, this case is one of the many ATF traffic investigations with a U.S.-Mexico nexus. I would like to inform this committee and the American public that I believe what happened here was inexcusable and we in Mexico had no part in it. We were aware of this investigation, but we were never aware of the policy to walk guns in this investigation.

Since these questions have surfaced, I have become aware that critical details were deliberately kept from the MCO as well as ATF's Office of Strategic Intelligence. I have reason to believe that we were kept in the dark because the ATF leadership in Phoenix feared that we would tell our Mexican partners.

Reasonable people can disagree on investigative techniques, but there is no room for walking guns. This goes against everything we

are taught at ATF. And I hope the committee gets to the bottom of these allegations.

In Mexico, ATF has been doing great work, and I'm proud of our efforts in combatting violent crime with our Mexican counterparts. The whole point of law enforcement mission in Mexico is to liaise with Mexican government officials and support their efforts to combat the transnational organized crime that plagues both our countries and threatens the security of our people. These allegations stemming from this case that a few ATF agents and supervisors deliberately allowed guns to walk have destroyed ATF's credibility with our Mexican law enforcement partners and the Mexican public.

As this committee knows, Mexico is plagued by terrible violence. Time and again, my Mexican counterparts blame the United States for contributing to that violence. But paramount to ATF, they blame us for an uncontrolled flow of weapons that end up in the hands of Mexican criminals.

I do not endorse the view of the Mexican government that American indifference is responsible for the violence and deaths. I make mention of it because it is what I hear on a daily basis in my dealings with my Mexican colleagues. However, in this particular case, with these specific guns, I'm unable to defend this position.

This case has made my life more difficult for me personally. Imagine my shame when my mother called me on the telephone and said, please tell me you weren't involved in this. My mother is a very wise person. She may not know much about law enforcement, but she knows right from wrong. Even at great risk—even at great distance, she could see that walking guns was a terrible risk.

The public safety must always come first. Please remember, regardless of good intentions, walking guns will never be right.

The ATF rank and file know this, and we have not been given a satisfactory explanation for what happened. So what I would like to say to my ATF colleagues is simply this: Stand tall. Hold your heads high. We work for a great agency. Look around, because there are heroes at ATF. We do not quit. We will not lie down. We will continue to honor our commitment to each other and to the public.

I thank you for your time, and I welcome any questions the committee may have.

[The prepared statement of Mr. Canino follows:]

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I thank you for your time, and I welcome any questions the committee may have of me.

Chairman ISSA. Thank you.
Mr. Leadmon.

STATEMENT OF LORREN LEADMON

Mr. LEADMON. Good morning, Chairman Issa, Ranking Member Cummings and designated—excuse me, distinguished members of the committee.

My name is Lorren Leadmon, and I'm honored that you've summoned me here today to serve as a witness for the citizens of the United States. I'm an intelligence operation specialist with the Bureau of Alcohol, Tobacco, Firearms and Explosives and a law enforcement veteran with 40 years of dedicated service.

I'm appearing before you today with a heavy heart, laden with sorrow, to provide this committee with testimony that I hope will prove to be useful.

First, I would like to express my grief by extending a sincere apology on behalf of myself and likeminded ATF colleagues to the family of Border Patrol Agent Brian Terry.

Likewise, I offer an apologize to all Mexican law enforcement officers and military personnel placed in harm's way while confronting the violent criminals armed by the targets and their associates in the Fast and Furious investigation.

I started my employment with ATF in December 2004 in the Office of Strategic Intelligence and Information. I was designated to support ATF's Project Gunrunner from the inception of the initiative in April 2005. In July 2008, I became the team leader of the newly established Field Intelligence Support Team For the Southwest Border. The team works in partnership daily with OSII personnel assigned to the El Paso Intelligence Center and ATF personnel working in Mexico.

Each of the partners work toward a common goal to determine the location and circumstances surrounding firearms recovered throughout Mexico, identifying the criminal element associated with the firearms, collecting intelligence pertaining to the criminal elements and ensuring the firearms are traced. The team coordinates the information with case agents and the field intelligence groups. A major function of the team is to identify the firearms trafficking trends and patterns and to establish links between firearms trafficking cases and seizure events in Mexico.

The team is dedicated to ATF's strategic mission as set forth in the 2007 Project Gunrunner Southwest Border Initiative Report that is summarized as follows: Working with its domestic and international law enforcement partners ATF will deny the tools of the trade to the firearms trafficking infrastructure of the criminal organizations operating in Mexico through proactive enforcements of its jurisdictional areas in the affected border States in the domestic front, as well as through assistance and cooperative interaction with the Mexican authorities in their fight to effectively deal with the increased violent crime.

The report had the following strategic outcome: Suppression of the firearms and explosives related violence occurring on both sides of the border through effective law enforcement collaboration involving the focused training, investigation and interdiction of the

illicit trafficking and illegal use of firearms, explosives and ammunition.

The Southwest Border Team first learned of the Fast and Furious investigation November 20, 2009. I had located the seizure event in Sonora. The Mexican authorities had recovered 42 guns from two transporters in a vehicle that just crossed the border from Arizona. With the assistance of the U.S. Immigration and Customs Enforcement, I was able to obtain the information on the firearms, submit traces, and the results of the—ascertain the results of the investigation.

From those firearms, there were 37 that related back to the Fast and Furious investigation. And the information—this information became the foundation for the fact that all the firearms obtained in the Operation Fast and Furious investigation were potential crime guns and murder weapons predestined to be utilized by outlaws and assassins affiliated with a violent criminal organization in Mexico.

In the months leading up to February 2010, the Fast and Furious purchasers were buying the types of firearms preferred by drug trafficking organizations in record numbers. By this time, they had purchased over 1,000 firearms and some of the purchases were procuring them in lots of 10 to 20 at a time. At the same time, approximately 200 firearms in this investigation were recovered in the United States and Mexico.

The types of firearms and the volumes of the purchases, the seizures and circumstances surrounding the seizures, along with the information provided by our law enforcement partners fully corroborated the fact that these firearms were being acquired by a violent criminal organization in Mexico.

In December 2009, I began—to the beginning of March 2010, I conducted numerous briefings on the investigation with the ATF senior management staff in headquarters. During each briefing, I provided detailed information depicting the progression of the acquisition of firearms and described the location, number, type and identity of the purchaser for each firearm recovered.

I provided the briefing to acting director—the acting director in the first part of 2009 concerning firearms trafficking to Mexico in which he was briefed on the upstart of the Fast and Furious investigation. He later attended one of the field operations briefings in the first part of January. In March 2010, I conducted a video conference briefing with the managing officials from the four ATF border divisions; an attorney from the Department of Justice and every one of the ATF senior management staff, except for the acting director.

With the assistance of the group supervisor in charge of the Fast and Furious investigation, I provided a briefing outlining the amount of firearms purchased and the expenditures up to the end of February along with the number of firearms seized and seizure locations. The totals briefed were the same as previously stated here. The issue of the firearms not being seized by the case agents was brought up briefly and discussed. From this point on——

Chairman ISSA. If you could summarize, the rest will be placed in the record.

Mr. LEADMON. All right. So, basically, what we are talking about is by the end of it, we had the 2,000 guns. To date, there's about 590 that have been recovered; 363 in the United States; 227 in Mexico. And they're still coming.

I would just like to say at the end here, the strategy of the Fast and Furious investigation did not take into account the public safety of the citizens of the United States and Mexico and blindly concentrated only on the goals of the investigation. The blatant disregard for public safety has had tragic consequences that will continue in the unforeseen future. And the rest of my testimony you can see.

[The prepared statement of Mr. Leadmon follows:]

TESTIMONY OF INTELLIGENCE OPERATIONS SPECIALIST
LORREN D. LEADMON, SR.

ON JULY 26, 2011, BEFORE
THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Good morning, Chairman Issa, Ranking Member Cummings and distinguished members of the committee. My name is Lorren Leadmon, and I am honored that you have summoned me here today to serve as a witness for the citizens of the United States. I am an Intelligence Operations Specialist with the Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF) and a law enforcement veteran with 40 years of dedicated service.

I am appearing before you today with a heavy heart, laden with sorrow, to provide this committee with testimony that I hope will prove to be useful. First, I would like to express my grief by extending a sincere apology on behalf of myself and likeminded ATF colleagues to the family of Border Patrol Agent Brian Terry. Likewise, I offer an apology to all the Mexican law enforcement officers and military personnel placed in harm's way while confronting the violent criminals armed by the targets and their associates in the Fast and Furious investigation.

I started my employment with ATF in December 2004 in the Office of Strategic Intelligence and Information (OSII). I was designated to support ATF's Project Gunrunner from the inception of the initiative in April 2005. In July 2008, I became the team leader of the newly established Field Intelligence Support Team for the Southwest Border (SWB FIST). The team works in partnership daily with OSII personnel assigned at the El Paso Intelligence Center and ATF personnel working in Mexico. Each of the partners work toward the common goal of determining the location and circumstances surrounding firearms recovered throughout Mexico, identifying the criminal element associated with the firearms, collecting intelligence pertaining to the criminal elements and ensuring the firearms are traced. The team coordinates the information with the case agents and the field intelligence groups. A major function of the team is to identify firearms trafficking trends and patterns and to establish links between firearms trafficking cases and seizure events.

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Working with its domestic and international law-enforcement partners, ATF will deny the "tools of the trade" to the firearms-trafficking infrastructure of the criminal organizations operating in Mexico through proactive enforcement of its jurisdictional areas in the affected border States in the domestic front, as well as through assistance and cooperative interaction with the Mexican authorities in their fight to effectively deal with the increase in violent crime. In the report, the expected strategic outcome was to be the following: *Suppression of the firearm and explosive-*

related violence occurring on both sides of the border through effective law-enforcement collaboration involving the focused training, investigation, and interdiction of illicit trafficking and illegal use of firearms, explosives, and ammunition.

The Southwest Border Field Intelligence Team first learned of the Fast and Furious investigation on or about November 20th, 2009, after I located a related seizure event in Sonora, Mexico. The Mexican authorities recovered 42 firearms from two transporters in a vehicle that had just crossed the border from Arizona. With the assistance of U.S. Immigration and Customs Enforcement (ICE), I was able to obtain the firearms information, submit the traces and ascertain the results of the investigation. Thirty-seven (37) of the firearms were initially determined to have been purchased by persons in the Fast and Furious investigation. The investigation in Mexico revealed that the firearms were to be delivered to a person that was affiliated with a violent criminal organization. This information became the foundation for the fact that all the firearms obtained in the Operation Fast and Furious investigation were potential crime guns and murder weapons predestined to be utilized by outlaws and assassins affiliated with a violent criminal organization in Mexico.

In the months leading up to the end of February 2010, the Fast and Furious purchasers were buying the types of firearms preferred by drug trafficking organizations in record numbers. By this time, they had purchased more than 1,000 firearms with some of the purchasers procuring them in lots of 10 to 20 firearms at a time. At the same time, approximately 200 firearms from this investigation were recovered in the United States and Mexico. The types of firearms, the volume of the purchases, the seizures and circumstances surrounding the seizures, along with information provided by our law enforcement partners, fully corroborated the fact that these firearms were being acquired by a violent criminal organization in Mexico.

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discussed. From this point on, our team continued to monitor the case and offered assistance but only briefed the status of the case a few times.

The Fast and Furious case agents and managers continued the practice of not interdicting any firearms. Over the course of this investigation, the targets and associates of the Fast and Furious investigation have purchased in excess of 2,000 firearms. Our team identified a total of 34, .50 caliber rifles purchased by these individuals. Two weeks ago, the reported amount of firearms recovered stood at 590. There were 363 firearms, to include one .50 caliber rifle, reported seized in the United States. The vast majority of these firearms were recovered by other Federal, State and local law enforcement agencies at stash houses, while being transported to the border, while attempting to cross the border or at holding locations along the border. At the time, there were 227 firearms, to include five (5) .50 caliber rifles, reported recovered in Mexico. However, the number of firearms is continually rising. There are approximately 1,430 firearms, to include twenty-eight (28) .50 caliber rifles, in this investigation that have yet to be recovered. I am saddened by the fact that these firearms are in the hands of violent criminals. The vast majority of them, if not all of them, are in Mexico. It will take years to determine the extent of the carnage that all the Fast and Furious firearms will inflict throughout Mexico and the United States.

From the point we first learned of this investigation, the SWB FIST and OSII management strived to assist the Phoenix Field Division in this investigation. However, the Phoenix team did not engage our team in the spirit of cooperation. It became evident that they were reluctant to exchange information with us. Shortly after making the initial contact with the case agent, our team was restricted from accessing the case file, asserting that Rule 6(e) of the Federal Rules of Criminal Procedure applied. After intervention on the part of OSII managers, I was given access to the file, but it took several weeks and additional prodding before my other team members were allowed access.

In November 2010, our team began to collect intelligence surrounding the kidnapping of the brother of the ex-attorney general for the State of Chihuahua. Several suspects were arrested, and several firearms were recovered in Mexico. The Mexican authorities did not trace the firearms; however, our team was able to obtain limited information on the firearms. Our team notified the Phoenix team after we determined that two of the firearms recovered in this incident had been purchased by individuals in the investigation. Within a couple of hours, our access to the case file was cut off. After another intervention from OSII managers, our access was restored the next day.

An ATF agent from another field division and an agent from another agency with investigations connected to the purchasers in the Fast and Furious investigation contacted me for assistance. They complained that the Phoenix agents would not provide them with the purchase information of the firearms in their cases. I saw that they were provided the information.

The strategy in the Fast and Furious investigation did not take into account the safety of the citizens of the United States and Mexico and blindly concentrated only on the goals of their investigation. The blatant disregard for public safety has had tragic consequences that will continue into the unforeseen future. It will take years to determine how many people will be affected and how egregious the affects will be. I regret that I did not find a way to stop the flow of these crime guns. In hindsight, I should have been more aggressive in voicing within ATF—and, if need be, all the way up to the Attorney General—that this practice was ludicrous. I had the opportunity, for more than 20 years, to observe the Attorney General while he served the citizens of the District of Columbia. In 1994, my homicide cold-case squad suffered a tragic loss when a gunman entered our office armed with a fully automatic machine gun and murdered two (2) agents, a detective sergeant and wounded my partner. I will never forget the concern and support the Attorney General gave us during these troubled times. Six months later, he was by our side again after the loss of another agent by another crazed gunman armed with a machine gun. From these interactions, I am fully aware of his stance concerning the interdiction of crime guns and public safety. I firmly believe that if he was aware of the circumstances surrounding the flow of firearms in this investigation, he would have halted them in their tracks.

In spite of all of this, I want to make it absolutely clear that I am proud of the Bureau of Alcohol, Tobacco, Firearms and Explosives and the men and women with whom I serve. Each of us at ATF is enduring the public shame and embarrassment brought about by the actions on the part of the handful of agents, attorneys and their supervisors who orchestrated this operation. It is truly a sad time for each of us at ATF, and the impact of all this has been devastating. I hope that once this committee moves past this investigation, you will return to the task of finding ways to deny all criminal organizations from obtaining U.S.-sourced firearms.

Chairman ISSA. I thank you very much.

Special Agent Newell.

STATEMENT OF WILLIAM NEWELL

Mr. NEWELL. Thank you, Mr. Chairman.

Chairman Issa, Representative Cummings and distinguished members of the committee, I am William Newell of the Bureau of Alcohol, Tobacco, Firearms and Explosives. As a former Special Agent in charge of the Bureau's Phoenix Field Division from June 2006 to May of this year, I oversaw ATF operations in the States of Arizona and New Mexico, which includes 552 miles of the U.S.-Mexico border.

I appear before you today to discuss ATF's Operation Fast and Furious, an ongoing and active OCDETF strike force investigation of a large-scale firearms trafficking organization. For the past 23 years, I fully dedicated myself to confronting violent crime, especially firearms related violent crime along the Southwest border.

Having served 15 of these years along the Southwest border combatting firearms trafficking, I am keenly aware that this violence, fueled largely by Mexico's drug cartels, poses a serious challenge for U.S. law enforcement—United States and Mexican law enforcement, threatens the safety of innocent civilians and law enforcement personnel on both sides of the border.

At the conclusion of every investigation of this magnitude, a thorough review is appropriate in order to determine whether tactics—whether changes in tactics and strategy are in order. With that in mind, I recognize that in this case and future large-scale investigations, it is imperative that there exists an effective flow of information between the field and headquarters elements to ensure that critical investigative information is being shared timely.

Second, in retrospect, in a case of this magnitude it is incumbent upon me to communicate a greater sense of urgency to my staff and the U.S. Attorney's Office as to the need for the return of expeditious charges.

Finally, I now recognize that in these types of investigations, more frequent risk assessments would be prudent. Firearms trafficking investigations are not always easy to conduct for a variety of reasons, including a lack of a Federal statute that specifically prohibits firearms trafficking related activity, the fact that firearms, unless altered in some way, are not in and of themselves contraband, a lack of adequate punishment for straw purchasers, thus impacting our ability to identify the leadership of the criminal organization and the limited resources at our disposal.

These types of investigations are made even more challenging when none of the individuals in the firearms trafficking chain are presumptively prohibited by law possessing firearms. Consequently, in order to identify and investigate the responsible higher-level individuals, agents must use a wide variety of investigative techniques. This can take time and considerable effort.

Throughout this case conscientious and dedicated agents pursued numerous leads in order to determine who the decisionmakers of this organization were in an effort to get beyond the straw purchasers and thus potentially disrupt and dismantle the entire organization.

Through experience, we have learned that the arrest and prosecution of straw purchasers alone does little to frustrate the capacity of the Mexican cartels to continuously obtain firearms, as new straw purchasers are easily recruited to replace those arrested and continue the cycle of purchasing firearms.

Finally, our conduct of this investigation, as with any large scale OCDETF investigation, was coordinated with ATF's supervisor at headquarters in Washington, DC, and with Federal firearms prosecutors at the Phoenix U.S. Attorney's Office.

In October 2009, the Department of Justice proposed a Southwest border strategy to combat Mexican cartels, which was finalized in January 2010 and which outlined successful strategies related to the identification, disruption and dismantlement of Mexican cartels through comprehensive multi-agency criminal enforcement operations with an emphasis on impacting the leadership and command structure of such organizations in order to have a substantial and sustained impact.

The DOJ strategy recognized the ineffectiveness of merely interdicting weapons absent identifying and eliminating the sources and networks responsible for transporting them. It was with this guidance in mind that Operation Fast and Furious originated.

To be clear, Fast and Furious was a no-step operation designed to, one, identify the purchasers, financiers, transporters and decisionmakers in a Mexican cartel-based firearms trafficking organization; two, to interdict, when lawfully possible, firearms presumptively destined for Mexico; three, to share, when appropriate, relevant information with United States and Mexican law enforcement authorities; four, to develop intelligence on other firearms trafficking organizations; and five, to charge, arrest and dismantle the entire organization.

In this regard, there are some key points I would like to make. One, it was not the purpose of the investigation to permit the transportation of firearms into Mexico, and to the best of my knowledge, none of the suspects in this case were ever witnessed by agents crossing the border with firearms.

Two, our agents, in compliance with ATF policy, were engaged in the strategic effort to determine who the decisionmakers and actual purchasers of the firearms were in order to disrupt the entire criminal organization. The effectiveness of this strategy has been recognized by the Department of Justice Office of Inspector General in a review—in their review of Operation Gunrunner.

Three, we attempted to be innovative in tracking and seizing firearms purchased by the suspected straw buyers. Four, when appropriate during the investigation, we made reasonable effort to share and coordinate the relevant investigative details to our Mexican law enforcement counterparts.

Finally, throughout my past 23 years in law enforcement, I have lost some very good friends to firearms related violent crime. I witnessed firsthand the grief and despair suffered by families who have lost loved ones in the law enforcement profession. That is why I take very seriously my responsibility and dedicated myself to doing everything within my authority to confront and curtail these criminal organizations that would seek to do harm to my peers and

innocent civilians. I did not discard that responsibility in the conduct of this investigation.

The death of Border Patrol Agent Brian Terry is one I will mourn for the rest of my life, as I do for all those brave heroes who have taken up the badge to serve and protect and then made the ultimate sacrifice.

I express my deepest condolences to the Terry family and may our Heavenly Father bless him and the Terry family through this very difficult time.

Distinguished Members, I now stand ready to answer your questions, and thank you for the opportunity to make this opening statement.

[The prepared statement of Mr. Newell follows:]

Statement of William Newell, former Special Agent in Charge
Phoenix Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
Before the United States House of Representatives
Committee on Oversight and Government Reform
July 26, 2011

Chairman Issa, Representative Cummings and distinguished Members of the Committee, I am William Newell of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). As the former Special Agent in Charge (SAC) of the Bureau's Phoenix field division from June of 2006 to May of this year, I oversaw ATF operations in the States of Arizona and New Mexico, which includes 552 miles of the U.S.-Mexico border. I appear before you today to discuss ATF's Operation "Fast and Furious," an ongoing and active OCDETF Strike Force investigation of a large scale firearms trafficking organization.

For the past twenty-three years I have fully dedicated myself to confronting violent crime especially firearms related violent crime along the Southwest Border. Having served fifteen of these years along the Southwest Border combating firearms trafficking I am keenly aware that this violence, fueled largely by Mexico's drug cartels, poses a serious challenge for U.S. and Mexican law enforcement and threatens the safety of innocent citizens and law enforcement personnel on both sides of the border.

At the conclusion of every investigation of this magnitude a thorough review is appropriate in order to determine whether changes in tactics and strategy are in order. With that in mind I recognize that in this case and future large scale investigations it is imperative that there exists an effective flow of information between the field and headquarters elements to ensure that critical investigative information is being shared

timely. Second, in retrospect, in a case of this magnitude it was incumbent upon me to communicate a greater sense of urgency to my staff and the U.S. Attorney's Office as to the need for the return of expeditious charges. Finally, I now recognize that in these types of investigations more frequent risk assessments would be prudent.

Firearms trafficking investigations are not always easy to conduct for a variety of reasons including the lack of a Federal statute that specifically prohibits firearms trafficking related activity; [1] the fact that firearms unless altered in some way are not, in and of themselves, contraband; the lack of adequate punishment for "straw" purchasers thus impacting our ability to identify the leadership of the criminal organization; and the limited resources at our disposal. These types of investigations are made even more challenging when none of the individuals in the firearms trafficking chain are presumptively prohibited by law of possessing firearms. Consequently, in order to identify and investigate the responsible higher-level individuals, agents must use a wide variety of investigative techniques; this can take time and considerable effort. What we know now about the complexity of the firearms trafficking organization in the "Fast and Furious" investigation is much different than what our agents knew when they began this case in November of 2009. Throughout this case conscientious and dedicated agents pursued numerous leads in order to determine who the decision makers of this organization were in an effort to get beyond the "straw" purchasers and thus potentially disrupt and dismantle the entire organization. Through experience we have learned that the arrest and prosecution of "straw" purchasers alone does little to frustrate the capacity

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1/ In reporting on "Gun Trafficking and the Southwest Border" to Congress, the Congressional Research Service specifically identified the lack of a federal firearms trafficking statute as hampering prosecution of "wider criminal conspiracies [that are] often involved in gun trafficking schemes that include multiple straw purchasers." CRS Report for Congress, July 29, 2009.

of the Mexican cartels to continuously obtain firearms as new straw purchasers are easily recruited to replace those arrested and continue the cycle of purchasing firearms.[2/] Finally, our conduct of this investigation, as with any large scale OCDETF investigation, was coordinated with ATF Supervisors at Headquarters in Washington, D.C. and with federal firearms prosecutors at the Phoenix United States Attorney's Office.

In October 2009 the Department of Justice proposed a Southwest Border strategy to combat Mexican Cartels, which was finalized in January of 2010, and which outlined successful strategies related to the identification, disruption, and dismantlement of Mexican cartels through comprehensive, multi-agency criminal enforcement operations with an emphasis on impacting the leadership and command structure of such organizations in order to have a substantial and sustained impact.[3/] The DOJ Strategy recognized the ineffectiveness of merely interdicting weapons absent identifying and eliminating the sources and networks responsible for transporting them[4/]. It was this guidance in mind that Operation "Fast and Furious" originated.[5/]

To be clear, "Fast and Furious" was an OCDETF operation designed: (1) to identify the purchasers, financers, transporters and decision makers in a Mexican Cartel based firearms trafficking organization; (2) to interdict, when lawfully possible, firearms presumptively destined for Mexico; (3) to share, when appropriate, relevant information

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[2/] *See* ATF Memorandum: *Project Gunrunner, A Cartel Focused Strategy, September 2010* at pp. 11-12.

[3/] DOJ Strategy for Combating Mexican Cartels (January 7, 2010).

[4/] In a section entitled "Attacking the Southbound Flow of Firearm" the DOJ Strategy emphasizes that "merely seizing firearms through interdiction will not stop firearms trafficking to Mexico. We must identify, investigate, and eliminate the sources of illegally trafficked firearms and the networks that transport them". It further states that "OCDETF co-located Strike Forces, ensure[] that scant ATF resources are directed at the most important targets".

[5/] This DOJ and ATF Strategies were not the exclusive strategies relied upon in the conduct of this investigation. For example, in June of 2009 the Office of National Drug Policy also issued a *National Southwest Border Counternarcotics Strategy* which strongly supported the effectiveness of building firearms cases against the criminal organizations in order to bring their leaders to justice.

with U.S. and Mexican law enforcement authorities; (4) to develop intelligence on other firearms trafficking organizations; and (5) to charge, arrest and dismantle the entire organization. In this regard, there are some key points I would like to make. One, it was not the purpose of the investigation to permit the transportation of firearms into Mexico and to the best of my knowledge none of the suspects in this case was ever witnessed by our agents crossing the border with firearms. Two, our agents, in compliance with ATF policy, were engaged in a strategic effort to determine who the decision makers and actual purchasers of the firearms were in order to disrupt the entire criminal organization. The effectiveness of this strategy has been recognized by the Department of Justice Office of Inspector General in their review of Project Gunrunner. [6/] Three, we attempted to be innovative in tracking and seizing firearms purchased by the suspected "straw" buyers. Four, when appropriate, during the investigation we made reasonable efforts to share and coordinate relevant investigative details with our Mexican law enforcement counterparts.[7/] Again, the DOJ OIG Report specifically identified the Border Liaison Program as a "key element of Project Gunrunner's information sharing strategy" and recognized the Phoenix Field Division as unique in having effective guidelines.[8/]

I would also like to further detail our unique efforts to cooperate with Mexico in this investigation which I understand to be the focus of this hearing. During my five years as Phoenix SAC I focused much of my efforts on establishing a much closer working relationship with my U.S. and Mexican law enforcement peers in order to address this

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[6/] *See* November 2010, DOJ OIG Review of Project Gunrunner, Parts I and III; *see also* DOJ OIG Report at p. 53. It should be noted that the report specifically acknowledges the Phoenix Field Division's effective use of the OCDETF Program. *See* p. 57.

[7/] On March 2, 2011 I received a Certificate of Appreciation from the Mexican Consular General in Phoenix in recognition of my cooperation and assistance in stemming the flow of firearms into Mexico.

[8/] *See* OIG Report at pp. 48-50.

very serious issue. This included but is not limited to hosting in Phoenix several joint U.S./Mexico law enforcement meetings and training sessions, the assignment of a Mexican PGR liaison representative in the field division, conducting countless training sessions for our U.S. local, State, Tribal and Federal partners, and attendance at numerous bi-lateral meetings with our U.S. and Mexican State and Federal peers to advance a more effective joint working relationship. During this time I was also asked by my superiors to represent ATF at numerous high-level meetings in both the U.S. and Mexico on our efforts to combat firearms trafficking as well as steps that could be taken to work more effectively toward this common goal. My efforts over these past several years to forge more effective working relationships with my U.S. and Mexican peers to combat firearms trafficking is not only based on a professional desire to do so but also a very personal one. Born and raised in Latin America as well as married into a Mexican-American family for the past fifteen years, I have a deep personal interest in seeing that we in ATF do everything possible to assist Mexico with their continuing struggle to combat the drug cartels that plague their great nation. That is why I volunteered for and was selected for the assignment in Mexico as the Country Attaché.

From the beginning of this investigation in late 2009 to the first indictments in January of 2011 I made every reasonable effort to keep the Phoenix PGR representative and my ATF colleagues in Mexico briefed on this investigation. I am also aware of numerous discussions throughout this investigation between the agents working this case with their ATF peers in Mexico, dialogue which I encouraged. In addition, and in conjunction with our Mexico Country Office, I extended an invitation for Mexican Federal prosecutors to participate in briefings in order to provide them with essential

facts of the case. I was determined that if and when we ever identified the key decision makers of the criminal organization, most likely cartel members in Mexico, that we would be fully supportive of providing this information to our Mexican counterparts in order for them to pursue criminal charges there.

Finally, throughout my past twenty-three years in law enforcement I have lost some very good friends to firearms related violent crime. I have witnessed first-hand the grief and despair suffered by families who have lost loved ones in the law enforcement profession. That is why I take very seriously my responsibility and have dedicated myself to doing everything within my authority to confront and curtail those criminal organizations that would seek to do harm to my peers and innocent civilians. I did not discard that responsibility in the conduct of this investigation. The death of Border Patrol Agent Brian Terry is one I will mourn for the rest of my life, as I do for all those brave heroes who have taken up the badge to serve and protect and then made the ultimate sacrifice. I express my deepest condolences to the Terry family and may our Heavenly Father bless him and the Terry family through these very difficult times.

Distinguished Members, I now stand ready to answer your questions. Thank you for the opportunity to make this opening statement.

Chairman ISSA. Thank you.
Special Agent McMahon.

STATEMENT OF WILLIAM MCMAHON

Mr. MCMAHON. Good morning, Mr. Chairman, Ranking Member Cummings, and distinguished members of the committee.

I am Bill McMahon, deputy assistant director, Office of Field Operations for of Bureau of Alcohol, Tobacco and Firearms and Explosives. Thank you for inviting me to this important hearing.

Let me be clear from the onset, as the ATF senior executive in charge of the West Region, I share responsibility for mistakes that were made in the Fast and Furious investigation. The advantage of hindsight, the benefit of a thorough review of the case clearly points me to things that I would have done differently. However good our intentions, regardless of our resource challenges, and notwithstanding the legal hurdles we face in fighting firearms traffickers, we made mistakes.

But know that I am very proud of the men and women who risked their lives investigating this case. Under tremendous pressure, they continue to work this case and many others we have in the American Southwest. Please do not let our failings impact their noble deeds.

Mr. Chairman, I was the Assistant Special Agent in charge of New York City on September 11, 2001. Our offices were in the World Trade Center. I have witnessed great human suffering brought to bear by those to whom violence is a stock and trade. This is one of the reasons I was so committed to bringing down the complex network of criminals operating in our homeland and bringing violence on both sides of the southern border. But in our zeal to do so and in the heat of battle, mistakes were made, and for that, I apologize.

Mr. Chairman, I am no stranger to the great and ultimate sacrifices made by my fellow law enforcement officers. I have lost friends in the line of duty, whether it was in the rubble of the World Trade Center, on the streets of our communities, or in the desert Southwest. Nothing hurts more than losing a fellow law enforcement officer in the line of duty.

With that in mind, I want to express my sincere condolences to the Terry family. And while the investigation into his tragic murder remains ongoing, and because of this, I may not be able to comment on that investigation, please know that I honor his great sacrifice, and I am truly sorry for his family's loss.

With that in mind, I appear before you today of my own free will to answer to the best of my ability questions you have regarding this operation and my role in it. Thank you.

[The prepared statement of Mr. McMahon follows:]

STATEMENT OF WILLIAM G. MCMAHON
DEPUTY ASSISTANT DIRECTOR, OFFICE OF FIELD OPERATIONS
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

JULY 26, 2011

Good morning Mr. Chairman, Ranking Member Cummings, and distinguished Members of the Committee. I am Bill McMahon, Deputy Assistant Director, Office of Field Operations at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Thank you for inviting me to this important hearing.

Let me be clear from the outset; as the ATF Senior Executive in charge of the Western Region, I share responsibility for mistakes that we made in the Fast and Furious investigation. The advantage of hindsight and the benefit of a thorough review of this case - clearly points me to things that I would have done differently. However good our intentions, regardless of our resource challenges, and notwithstanding the difficult legal hurdles we face in fighting firearms traffickers - we made mistakes.

But know that I am very proud of the men and woman who risked their lives investigating this case. Under tremendous pressure, they continue to work this case and many others we have in the American southwest. Please do not let our failings impact their noble deeds.

Mr. Chairman, I was the Assistant Special Agent in Charge in New York City on September 11, 2001. Our offices were in the World Trade Center. I have witnessed great human suffering brought to bear by those to whom violence is a stock in trade. This is one of the reasons I was so committed to bringing down the complex network of criminals operating in our homeland and bringing violence on both sides of our southern border. But in our zeal to do so, and in the heat of the battle, mistakes were made. And for that I apologize.

Mr. Chairman, I am also no stranger to the great and ultimate sacrifices made by my fellow law enforcement officers. I have lost friends in the line of duty. Whether it is in the rubble of the World Trade Center, on the streets of our communities, or in desert southwest; nothing hurts more than losing a fellow law enforcement officer in the line of duty. With that in mind, I want to extend my sincere condolences to the Terry family. And while the investigation into his tragic murder remains ongoing, and because of this, I may not be able to comment on that investigation, please know that I honor his great sacrifice and am truly sorry for his family's loss. With that in mind, I appear before you today of my own free will, to answer to the best of my ability questions you have regarding this Operation and my role in it. Thank you.

Chairman ISSA. Thank you all.

Before we begin, I have been made aware that all of you, or presumably all of you, received from the Department of Justice counsel a letter that speaks specifically to your testimony here today, and it's from Barry S. Orlow. Did all of you receive that letter?

Mr. GIL. No, sir.

Chairman ISSA. You did not?

Mr. GIL. No, I did not.

Mr. MCMAHON. No, sir. Those letters were only issued to people that were actually under subpoena. And that is normal for any case we have agents that are under subpoena by defense or others.

Chairman ISSA. Okay.

I want to make some clarifications. The letter infers that you may not be able to answer certain questions here today. And I want to make sure it is clear that where it says, for example, you may not reveal any information covered by Rule 6(e) of the Federal Rules of Criminal Procedure related to a manner that occurred before a Grand Jury, and it goes on, up and above.

Now, we have a former 20-year defense attorney to my right. We have a former prosecutor in Mr. Gowdy down below; Mr. Meehan, a former U.S. attorney; and a number of other people who have worked before they came here in law enforcement. I am asking all of them, if a question occurs from any of us that clearly would lead to something believed to involve compromising the ongoing investigation or the actual chances of convicting somebody, that we take a pause. I am not beyond that.

If you believe, any of you, that you are asked a question that in this format would, by it being open to the public, would compromise the ability to convict any of the 20 people now charged or others who you reasonably believe will be charged, I want you to take a pause.

On the other hand, I want you to understand, every question we ask, you are compelled to answer, unless you assert your Fifth Amendment rights. There is no executive order or executive branch decision that can stop us from compelling that answer.

If you believe that you are protecting the ability to reach convictions or to save somebody who is undercover in any other way would be harmed by your giving an answer in open hearing, I want you to assert that we need to be in executive session.

The committee can go to executive session at any time by a simple vote of the committee or concurrence of the chairman and ranking member. We probably will not go to executive session at that moment but would pend that question until the end.

So understand our intention is to be very clear. We know that in fact the cartels continue to operate. We do not want to have material here unreasonably disclosed.

I want to make one other thing clear before we start, and then I will recognize the ranking member. This committee has been made aware that there were wiretaps in this Fast and Furious investigation. That was not by the Justice Department turning over material required by subpoena. We will not be going into the details of any subpoena in our questioning, and we do look forward to Justice providing the subpoenaed material in a timely fashion they have not yet done.

But again, those are under seal. So their existence, which was obtained and has been fairly widely understood, is no longer under seal. But the details of those at this point, including Kenneth Melson's statement that when he read the details, he was sick to his stomach, is as far as we are going to go on the details of wiretap at this time.

This hearing is about our relations with Mexico, what they knew in Mexico, what they didn't know, how the agency did or didn't communicate.

That doesn't mean that we may not want other information from you in due time, but I think we want to be very careful that today we have no reason to go into some of these areas, and so we are going to avoid them.

With that, if the ranking member has any comments.

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

Just some clarifying items. First of all, Mr. Chairman, I want to thank you for what you just said.

I think that is a very balanced approach to take, and we are all concerned about ongoing investigations and putting people in jeopardy that should not be as a result of our efforts here.

But I just want to, there may be some things, Mr. Chairman, where, say, for example, these gentlemen may not even know that they are crossing a line. And I know that we are looking into the Justice Department. I have no problem with that.

But if we have a situation where Justice, and I understand we have some Justice attorneys here, where they think that there may be a crossing of the line, is there a way that we can at least pause and just make sure that we are not crossing over into some territory, the very type of territory you are talking about?

Chairman ISSA. And I appreciate the gentleman's question.

Although I want that very carefully and sparingly used, and the Justice is not an invited guest here today, if you believe that a line of questioning is going down that way, we will entertain a request from representatives of Justice.

Again, this investigation is about Justice. It is about your bosses. We believe that in fact there are people culpable for what happened for the mistakes, as Special Agent McMahon said, the mistakes that were made, besides Special Agent McMahon, so we do intend to get to those errors and mistakes.

But for the ranking member, absolutely, we want to make sure that if somebody inadvertently starts down a line of questioning, whether you see it, somebody from Justice brings this to our attention, Mr. Gowdy, who certainly understands what it takes to preserve a prosecution, Mr. Meehan or anyone else, that I want this to be a little bit like the quality control line on a Toyota production, anybody can pull the stop if you see a mistake about to happen.

Now, that doesn't change the fact that this letter is a little out of line, and it may be boiler plate, but it implies that you don't have to answer. Yes, you do have to answer, but we will use executive session or another setting to get additional information so as to ensure that what we must do does not get in the way of what you all must do.

Mr. CUMMINGS. Mr. Chairman, just one other thing.

Chairman ISSA. Of course.

Mr. CUMMINGS. I was just looking at the expression, particularly of Special Agent McMahon.

I want to make sure that they understand what you just said. I mean, can you inquire? Do you all understand what he just said? All right. Very well. I just want to make sure.

Chairman ISSA. And I use the English language so poorly that sometimes my wife does mention that perhaps just because I say what I mean doesn't mean that they can figure out what it means, too.

But again, set it off at the right tone because this is important that we get to where we have to get to, but do it in a respectful way for the fact that there are lives at stake on both sides of the border of many of your brethren.

I will now recognize myself for a line of questioning.

Mr. McMahon, you said that you made mistakes, that people made mistakes. Would you like to give us just one of those mistakes?

Mr. MCMAHON. Sure. Again, as I said, after a thorough review of everything after the fact, I do see that one of the mistakes that I made personally was maybe more thoroughly reviewing some of the documents that were coming across my desk on this case. And I think that has been brought out in my review, and it is something that I know will not happen again.

Chairman ISSA. Special Agent Newell, as recently as yesterday, you called this, you said, Fast and Furious is a phenomenal program. Now, it was, I hope not is. Do you stand by that?

Mr. NEWELL. I am sorry, Mr. Chairman?

Chairman ISSA. This was quoted in the Washington Post. It came out yesterday, that, and they quoted you by name as having called this a phenomenal program. Do you think—did you at one time think and do you think today that Fast and Furious was a phenomenal program?

Mr. NEWELL. Chairman, that quote, I don't know the date of that quote, it wasn't yesterday, it was—I am sorry.

Chairman ISSA. But it came out. Okay. Let me rephrase the question. This is back to my inability to work with the English language. Did you ever think that Fast and Furious was a phenomenal program?

Mr. NEWELL. Well, Mr. Chairman, to answer your question, I believe that Fast and Furious was conceived with the idea of disrupting and dismantling an entire organization.

Chairman ISSA. But let's get into the details. Fast and Furious was at its heart about letting guns walk. Your agency knew that if you let guns leave—be bought by straw purchasers, who you knew in fact were straw purchasers, including two felons, and in the opening statement when people talk about people that had every right to buy them, felons at that moment that they bought them were criminals; they could have been stopped. They could have been arrested. There was an inherent crime. So at least in the case of two of the buyers, they were felons. They bought guns. They committed a crime by buying them. They were allowed to move on and eventually turn those weapons over to intermediaries who got them to the drug cartels. That was always part of the program. Do

you think that that was in fact, whether you say phenomenal, do you think that that was a good idea?

Mr. NEWELL. Well, Mr. Chairman, with all due respect, I am unaware of two felons involved in this case.

Chairman ISSA. I am informed they became felons during the pendency of the case, so I may not know the exact date. But let's go on beyond that.

Even if they weren't felons, documents that we have seen provided by whistleblowers show that in fact all along in this program, you knew that the weapons purchased were destined for drug cartels. You knew all along that the weapons—that someone buying over 600 weapons was not buying them for sport hunting, especially 50 calibers. So do you, and my time is running lean on trying to get an answer, did you think it was a good program? It appears as though you thought it was a good program at some time.

Mr. NEWELL. Sir, as I said in my statement, I acknowledge now that we did make some mistakes in this initiative, in this program.

Chairman ISSA. Okay. I think we all acknowledge that you are right on that.

When I was in Mexico, I observed a lot of things. And, Special Agent Canino, my understanding, I was told in Mexico by a number of your colleagues—you were not there at the time—that when they entered into the data base, into the trace data base Fast and Furious weapons, they got a system error. In other words, they didn't get a hit or a miss, they got a network error. Are you aware of that?

Mr. CANINO. Yes, sir.

Chairman ISSA. So when your agents, your Federal agents, with 20 or more years entered in the information that would have allowed them to contact a special agent in Phoenix, they did not get the information that would have allowed them to contact the special agent in Phoenix; isn't that correct?

Mr. CANINO. That's correct, sir.

Chairman ISSA. So you were blocked.

Mr. Gil, and I have run over a lot of my time with the other questions, but for both you and Mr. Canino, if you had known about this program, were you or were you not obligated to tell the Ambassador?

Mr. GIL. Sir, upon my arrival, I had discussions with the Ambassador about arms trafficking being the number one issue. The second call I would have made would have been on the Ambassador. The first call I would have made would have been directly to the Acting Director of ATF to find out exactly what this case was all about.

Chairman ISSA. So in my remaining time—and, Special Agent Wall, this would, of course, apply to Tijuana, too—if you are operating in a foreign nation as an American law enforcement individual, as a liaison invited on behalf of a government, not having law enforcement power in that country, don't you owe it to the Ambassador to keep him or her fully informed of anything you learn? Because you're not there to do law enforcement, you're there to help them do law enforcement through the embassy. So for all three of you, first three witnesses, isn't it reasonable to believe that one of the reasons that you were not told about Fast and Furious

is had you been told, in addition to the Acting Director, the Ambassador and the rest of the State Department would have had to have been read into this program considering its magnitude?

Mr. CANINO. Sir, to follow what Darren said, we weren't aware of the technique that ATF agents were actually following known gun traffickers away and letting them go. That is insane. It was inconceivable. You would never think that because ATF does not do that. If I had known that that was, in fact, occurring, I would have called ATF headquarters. And if we did not get relief from them, we would have gone upstairs and told the Ambassador, and hopefully he would have been able to stop it.

Chairman ISSA. Thank you.

Mr. Cummings.

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

Gentlemen, from early on in this case, various ATF agents and officials raised concerns about the number of guns purchased by Fast and Furious suspects that were flowing from Arizona to Mexico. Mr. Leadmon, you testified in March 2010 that you provided a detailed briefing about Fast and Furious to Acting Deputy Director Hoover, Assistant Director Chait, and several others; is that correct?

Mr. LEADMON. Yes, sir.

Mr. CUMMINGS. Now, Mr. McMahon, after this March 2010 briefing, Mr. Hoover directed the Phoenix field office to prepare an exit strategy to shut down the operation within 90 days; is that correct?

Mr. MCMAHON. That's correct, sir. We did ask for an exit strategy, a 30–60–90-day exit strategy.

Mr. CUMMINGS. And in his interview Mr. Hoover told the committee that this was the first time in his career he had ever asked for an exit strategy, but that he felt that he needed one because he was very concerned about the large number of guns being purchased by these suspects.

Mr. McMahon, did you share Mr. Hoover's concern about the large number of weapons in this case with others?

Mr. MCMAHON. Absolutely, sir. I think we were all concerned about the large number of case. But this magnitude of a case was something we had never encountered before in my career.

Mr. CUMMINGS. And did you ask Mr. Newell, Special Agent Newell, to provide with you an exit strategy?

Mr. MCMAHON. I did, sir.

Mr. CUMMINGS. And when did the exit strategy envision indictments arriving?

Mr. MCMAHON. We received the exit strategy, I believe, the end of March.

Mr. CUMMINGS. Of what year? Of 2010?

Mr. MCMAHON. Of 2010, I am sorry. And we had a 30–60–90-day plan. If certain things were accomplished by 30 days, we would be able to seek an indictment. If certain things were accomplished by 60 days, we would obtain indictments. That sort of thing.

Mr. CUMMINGS. So you had more or less some sort of a time schedule; is that correct?

Mr. MCMAHON. That's correct.

Mr. CUMMINGS. Were you following that schedule? In other words, were you checking back every 30 days, 60 days, whatever?

Mr. MCMAHON. We were actually—I was checking back more than that. Bill and I were probably talking weekly about the activity of what was going on in the case and how much closer we were to completing our investigation.

Mr. CUMMINGS. Well, according to that strategy from the very beginning, what was the day that you expected, envisioned indictments arriving? You did it in March, what, 2010?

Mr. MCMAHON. Correct. We were expecting indictments sometime in the summer of 2010.

Mr. CUMMINGS. Now, I want to understand why it took from March 2010, when Mr. Hoover ordered the operation to be shut down, until January 2011, when indictments were finally issued. Can you help with us that?

Mr. MCMAHON. Well, again, we were working day to day with the U.S. Attorney's Office. And it is a partnership when you put a case like this together. And we thought we had enough. Obviously, we have to prove that to the prosecutors that we have enough, and that does take a little bit of extra time.

Mr. CUMMINGS. That was more than a little bit of extra time; was it not? I mean, you were talking initially, I guess, about the summer of 2010, and you end up January 2011. You're approaching a year as opposed to a few months. Is that right?

Mr. MCMAHON. It was about 6 months, sir, yes.

Mr. CUMMINGS. Now, Mr. Newell, when did you eventually shut down ATF's investigative portion of this operation?

Mr. NEWELL. Well, sir, the investigation is ongoing as we speak.

Mr. CUMMINGS. But at some point—I am talking about what we were just talking about, Special Agent Newell.

Mr. NEWELL. Yes, sir.

Mr. CUMMINGS. There was a plan to shut this piece down, an exit strategy. And I am asking you to refer to what I just asked Special Agent McMahon, Mr. McMahon, about.

Mr. NEWELL. Yes, sir.

Mr. CUMMINGS. What was the plan?

Mr. NEWELL. The plan was end of July present to the U.S. Attorney's Office what we believed to be the evidence that we needed to secure the first round of indictments. And as the exit strategy said, the 30, 60, 90 days was not a firm, depending upon, you know, what type of investigative material or information we get, depending on each 30–60–90-day timeframe. So it was roughly about—I believe about mid-August when we felt that we presented to the U.S. Attorney's Office all the evidence we needed to secure the first round of indictments. So in essence we probably went over a couple of weeks.

Mr. CUMMINGS. So, I assume, Mr. McMahon, did you approve this going beyond the time period that you initially stated for the exit strategy? Is that right?

Mr. MCMAHON. There was nothing to approve, sir. I was getting updates from Bill about his work with the U.S. Attorney's Office.

Mr. CUMMINGS. So basically if he said, look, we need more time, you just assumed you needed more time?

Mr. MCMAHON. And he would give me a reason why we needed the more time. Correct.

Mr. CUMMINGS. And so Mr. Issa, Chairman Issa, said the purpose of the program was to let guns walk. And I just want Mr. Newell and Mr. McMahon to be clear. We are trying to get to the bottom of this. We have been going ring around the rosy forever. What was the purpose of this operation to the best of your knowledge, Special Agent Newell, and then yours, Mr. McMahon?

Mr. NEWELL. Mr. Cummings, thank you for the question. The purpose of this investigation was to identify, and disrupt and dismantle an entire firearms-trafficking organization that was linked to Mexican drug cartels. That was the purpose. And to do so we needed an extraordinary amount of work on the part of the agents to, in fact, achieve that goal.

Mr. CUMMINGS. But it was not to let guns walk; is that correct?

Mr. NEWELL. No.

Mr. CUMMINGS. Go ahead.

Mr. NEWELL. No, sir. As I said in my statement, sir, one of the things that I—that frustrates me to some extent is there is that belief. And at no time in our strategy was it to allow guns to be taken to Mexico. No, sir.

Mr. CUMMINGS. I don't know if you heard Special Agent Canino, but he was almost in tears and very frustrated because he felt that all of this went against the very things that he stands for and these other agents stand for.

With that, Mr. Chairman, I would just like Mr. McMahon to just answer my question, and then I'll——

Chairman ISSA. Without objection.

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

Mr. MCMAHON. I totally agree with you, sir. That is not in the makeup of an ATF agent. We do not allow guns to walk. What we did in this investigation was investigate a large group of individuals that were breaking the law, and we were trying to put our case together so that we could actually make an impact. If we pick off these one or to two straw purchasers, they get replaced in a day, and we have even more guns going into Mexico. That was the plan.

Chairman ISSA. I thank the gentleman.

We now recognize Mr. Burton for his 5 minutes.

Mr. BURTON. First of all, Agent Newell, what was the origin of this program? Who came up with this idea? Where did it come from?

Mr. NEWELL. Well, sir, it was based on—it was based on the fact that when we—the OCDETF Strike Force was initiated, the idea of the OCDETF program is to disrupt and dismantle entire organizations.

Mr. BURTON. Who came up with this idea? Was it you or Mr. McMahon or somebody higher up the food chain?

Mr. NEWELL. Idea for what, sir?

Mr. BURTON. For the whole program.

Mr. NEWELL. It is one investigation, sir. Fast and Furious is one investigation.

Mr. BURTON. Where was—I mean, the selling of the guns, or the giving of the guns in Fast and Furious, where did that come from? Who made that decision?

Mr. NEWELL. Well, sir, we have a policy that allows for the transfer of firearms in order to pursue targets in investigation, identify——

Mr. BURTON. As I understand it, there was as many as 2,000 firearms; is that correct?

Mr. NEWELL. That's approximately—yes, sir.

Mr. BURTON. And you were allowed—you allowed 2,000 firearms to go in the system, this Fast and Furious program. How were you tracking those?

Mr. NEWELL. Well, sir, Fast and Furious—I apologize, but Fast and Furious was not a program, it was an investigation that was——

Mr. BURTON. Okay. How did you track the weapons, the 2,000 weapons?

Mr. NEWELL. Depending on how the information got to us. Sometimes the information got to us after the sale. Sometimes it got to us through investigative means that firearms were——

Mr. BURTON. Did you have a set of records that showed who got them and who reported to you where they went and all that?

Mr. NEWELL. Through our tracing system we have a way to determine when firearms were seized. And we also received information from——

Mr. BURTON. On all the firearms did you get this information?

Mr. NEWELL. No, I don't believe so, sir, no.

Mr. BURTON. Why not?

Mr. NEWELL. Why not we didn't get all the information?

Mr. BURTON. Yeah. If you have 2,000 firearms that are out there that are going in the program or the investigation, and you're putting them out there, it seems to me you would want to—if you are trying to make a case, you would want to track those and know where all of them went.

Mr. NEWELL. Well, we did track the ones that we knew about, yes, sir.

Mr. BURTON. Well, there were 2,000 firearms. Did you have control of those at any time?

Mr. NEWELL. We seized, sir, over approximately 300 guns in this case in the United States through our efforts. And the other firearms we put into our suspect gun data base.

Mr. BURTON. I must be missing something. You had 2,000 firearms.

Mr. NEWELL. Yes, sir.

Mr. BURTON. You put them into the system, into the investigation, correct?

Mr. NEWELL. I did not, no, sir.

Mr. BURTON. Who did?

Mr. NEWELL. Agents in the group, agents in Group VII.

Mr. BURTON. Okay. Who kept records of that? The agents that were doing it, did anybody keep records who they were giving the guns to?

Mr. NEWELL. Sir, I am a little—the weapons were being purchased by a criminal organization.

Mr. BURTON. Okay.

Mr. NEWELL. So when we found out about that information, be it through weapons seizures, or through cooperating dealers, or through other means, we would keep track of that, yes, sir.

Mr. BURTON. So you have a record of all of the weapons that were put into—that were sold.

Mr. NEWELL. To this day we are still discovering more, because this was a very prolific firearms-trafficking organization. When we first initiated this investigation in November 2009, I believe the number was—they had already purchased that we believe to this date, and the number changes, something like 400 firearms. By the time we initiated our OCDETF strategy to focus on the entire organization, I think it was close to 1,000 firearms by the time we opened up our OCDETF.

Mr. BURTON. I must have missed something, because it seems to me if there were 2,000 weapons that were sold and went into the—and you were investigating this, and you were trying to find the criminals that were buying them, that there would be a record of all of the weapons that were sold.

Mr. NEWELL. We have a record of——

Mr. BURTON. All of the weapons that were sold.

Mr. NEWELL. No, sir, because we are still to this date discovering firearms that were purchased by these individuals that we weren't aware of.

Mr. BURTON. Okay. So do you have a record of the ones that purchased those weapons, the individuals that purchased those weapons?

Mr. NEWELL. The ones we are aware of, yes, sir, we do have them.

Mr. BURTON. You have the records of all those?

Mr. NEWELL. I do believe so, yes, sir.

Mr. BURTON. And you're still in the process of making the case on this?

Mr. NEWELL. Because we are identifying additional suspects as we go, yes, sir.

Mr. BURTON. I will yield to you.

[The prepared statement of Hon. Dan Burton follows:]

Opening Statement for Rep. Dan Burton
"Operation Fast and Furious: The Other Side of the Border"
Tuesday, July 26, 2011

Thank you, Mr. Chairman for holding today's hearing, which is a follow-up to the Committee's previous hearing on June 15th, entitled "Operation Fast and Furious: Reckless Decisions, Tragic Outcomes," that focused on the Bureau of Alcohol, Tobacco, and Firearms' (ATF) controversial program known as Operation Fast and Furious. Allegedly intended to stop weapons originating in the United States from ending up in the hands of Mexican drug cartels, this program instead facilitated the sale of hundreds of firearms to known illegal buyers who transferred those firearms – under the watchful eye of ATF – to criminals in other parts of the United States and Mexico.

Based on the evidence gathered by the Oversight and Government Reform Committee to date, it appears that Operation Fast and Furious ignored major crimes in pursuit of an undefined greater good. The three ATF Special Agents who testified previously before the Committee all attested that never before in their careers had they ever let even one gun "walk" – disappear from the Agency's surveillance – however in Operation Fast and Furious they were ordered to do nothing to monitor these guns even after voicing serious concerns about the program.

In addition to betraying the trust of the American people – especially those engulfed by the violence along the southwest border - Operation Fast and Furious had also damaged US-Mexican relations. The Mexican government was not informed or warned of this program that was facilitating the flow of weapons into their country. President Felip Calderòn has been very critical of American involvement in the drug trade and is quick to blame America's dependence on drugs and sales of firearms for the current levels of violence being experienced.

For months, I have been calling on President Obama to take serious action against the worsening violence and to collaborate with the Mexican government to improve our relationship and create a plan to work together and solve our mutual problem. It is unthinkable that the United States sponsored a project that knowingly allowed thousands of weapons to enter Mexico without its government's knowledge or consent; especially as we need Mexico's cooperation to defeat the cartels terrorizing Mexico and our southwestern communities.

Mr. Chairman, I applaud your determination to uncover the whole truth behind Operation Fast and Furious. Based upon the DOJ's cooperation on this matter to date, and my own experience investigation FBI corruption in Boston back in 2003, I believe that the Administration will throw up every obstacle, no matter how flimsy, to thwart the Committee's investigation. The Committee must be vigilant.

The American people and the Mexican government deserve to know why Operation Fast and Furious existed, who authorized it, and how we plan to recover the massive number of weapons that were purchased under false pretenses.

I look forward to today's testimony. Again, thank you Mr. Chairman.

Chairman ISSA. Would the gentleman yield?

Yes. So let me understand. From previous testimony, agents were there at the scene. Videotape or video observance, digital video observance, occurred as they bought them. The agents in many, many cases followed the suspect leaving with 6, 10, 20 weapons for a period of time. And then they were ordered by this task force to break off and let those weapons continue going. And you have charged Mr. Acosta, one of the 20 defendants, the only one that is not just a meth user, who was straw buying, you have charged him with being trafficking.

When did you know that Acosta was trafficking weapons—his intent was to traffic weapons into Mexico? And when weapons occurred in Mexico that you knew Acosta had received from straw buyers, and they turned up at crime scenes in Mexico, then what did you do?

Mr. NEWELL. Sir, regarding Mr. Acosta, I believe it was Mr. Acosta, sir, or——

Chairman ISSA. Acosta.

Mr. NEWELL. Mr. Acosta.

Chairman ISSA. He is the money man.

Mr. NEWELL. Actually Mr. Acosta in this investigation right now is the head of the Phoenix cell of this trafficking organization.

Chairman ISSA. Right.

Mr. NEWELL. So——

Chairman ISSA. And you knew he was trafficking. You knew he was receiving these weapons. You knew these weapons were showing up at crime scenes. I am just trying to understand, and my time has expired, but why you couldn't seem to answer the gentleman's question straightforward? You knew guns that you had watched be delivered or bought to be purchased went to third parties and ended up in Mexico, and yet this program continued as though you somehow didn't know they were—that the purchasers, the same purchaser who had purchased guns that were already in Mexico, was purchasing more.

I yield back. Who do we have next? Mr. Davis is next for 5 minutes.

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

Mr. Leadmon, you have been at ATF for 7 years studying gun trafficking on the southwest border. Before that you were a homicide detective here in Washington, DC, for many years. Can you describe to us briefly how the Mexican drug cartels get firearms from the United States?

Mr. LEADMON. Yes, sir. I guess one way to kind of summarize this, this came to light to me several years ago when an individual describing it to me put it as follows: He says the Mexican people have been trafficking drugs into the United States since 1880. They have also been buying Sam Colt's guns since 1880. So that kind of gives you a groundwork of the culture and the reason why we have this problem, because we have these firearms being sold, and the Mexicans are coming up, these cartels, and they are purchasing these weapons. That is a fact.

Mr. DAVIS. In your experience, what type of weapons are in demand by the cartels?

Mr. LEADMON. Like I alluded to in my written testimony, which I didn't get to finish, but there is a—we have actually gone in and identified a lot of what we call DTO-preferred weapons. And these are usually your AKs, your ARs. They like the .38 Supers, the .45s. We have a list of them. And in this particular case, the firearms are being purchased by—all the firearms being purchased by these individuals were——

Mr. DAVIS. Let me ask you, why do you think they focus on these type weapons?

Mr. LEADMON. Because they are weapons to use to—one, they have to protect theirselves against their rivals. Two, they are confronted by law enforcement in Mexico and the military, so they need this type of firepower and that heavier firepower to exist down there.

Mr. DAVIS. Thank you.

Mr. Wall, you have spent the last 19 years as an ATF special agent and have most recently served as the ATF representative in Tijuana, Mexico. We have heard a lot today about the problem of gun trafficking in Mexico, and I am hoping that you can help me better understand the problem. Based on your experiences in Mexico, where are the cartels' guns coming from?

Mr. WALL. From my experience, the majority come from the United States.

Mr. DAVIS. Are you seeing a representative sample of all guns used in crimes in Mexico, or are the Mexican authorities just maybe showing you firearms that they believe come from the United States?

Mr. WALL. They make them available to us. In the last 4 years since 2007, I have probably looked at slightly over 2,000 firearms in Mexico. These are firearms that I went out, and soon after they were seized at a crime scene or a stash house, I went out and examined the guns. And of those 2,000, less than 50—let's just say 50 of them I could tell were from foreign manufacture, meaning outside the United States, possibly from South America, guns that maybe were tied back to even the guerilla wars in Central America.

Mr. DAVIS. So you believe that these statistics are accurate, that they are real?

Mr. WALL. I know guns, and I know what I see. And I am the person on the ground, yes, sir.

Mr. DAVIS. Are you finding many of the weapons coming from Central America? Some people seem to think that some actually are coming from Central America. Do you think that many of them are?

Mr. WALL. Some do, yes, especially with some groups. Certain cartels have more of a tendency to acquire their firearms in Central America or South America, possibly even from guerilla groups. However, the other cartels, the ones that I am familiar with, most of their firearms are U.S.-sourced firearms.

Mr. DAVIS. So you think the United States is the main source of these weapons?

Mr. WALL. Yes, sir, I do.

Mr. DAVIS. Thank you very much, Mr. Chairman. I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Utah Mr. Chaffetz for 5 minutes.

Mr. CHAFFETZ. Thank you, Chairman.

Agent Newell, when did you first become aware, know, anticipate, or maybe even suspect that these firearms in this program were being transported or transferred into Mexico?

Mr. NEWELL. Sir, I think we started getting the first traces I want to say I believe sometime in November 2009, yes, sir.

Mr. CHAFFETZ. So in November 2009 you believed they were being transferred or transported into Mexico. Did that cause you any concern?

Mr. NEWELL. Yes, sir. It always does.

Mr. CHAFFETZ. But you say here the program continued on, knowing full well that these guns were going to Mexico. You said in your opening statement here, it is not the purpose of the investigation to permit the transportation of firearms into Mexico.

Mr. NEWELL. When we were lawfully able to seize firearms in this case, and the many, many firearms-trafficking cases we conduct in Phoenix and Arizona and across the southwest border, we take every effort to stop that, yes, sir.

Mr. CHAFFETZ. But in January, coming out of your office, in a January 2010—I mean, you testified today in your opening statement it was not the purpose of the investigation to permit the transportation of firearms into Mexico. That's today.

Mr. NEWELL. Yes, sir.

Mr. CHAFFETZ. Yet in March—I am sorry, January 8, 2010, in this memo, point number 13, you write, or it is written, "Currently, our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexico drug-trafficking organizations." So it was the goal, it was the intention of the program to allow guns to be trafficked to Mexico based on this memo; is that correct?

Mr. NEWELL. No, sir.

Mr. CHAFFETZ. What is wrong—that is from your statement. It also says in here, a number of different seizures in Mexico. It seems very inconsistent, at best, to suggest that it was not the purpose to allow them to go to Mexico, yet you know in 2009 that they are going to Mexico, and you put it in a memo in 2010, January 2010. How are those statements compatible?

Mr. NEWELL. Well, sir, if I may, and I am glad I am given the opportunity to clarify that paragraph that has been obviously well publicized. The wording in that, the way my understanding was when that briefing paper was drafted, was that our efforts to allow the transfer to identify additional coconspirators was so that we could further the investigation, take out the whole organization. Otherwise, these individuals would, in fact, continue as part of a larger——

Mr. CHAFFETZ. So you allowed is it hundreds or is it thousands of weapons to continue to flow through this program and go into Mexico?

Mr. NEWELL. I am sorry, can you repeat the question, sir?

Mr. CHAFFETZ. How many hundreds or thousands of weapons did you allow to be purchased, knowing that they were going to Mexico?

Mr. NEWELL. Sir, the purchase was being done by a criminal organization, a large——

Mr. CHAFFETZ. But you facilitated it. You allowed it; did you not? I mean, that was part of the program, allow these straw purchases to happen so that the guns could end up in Mexico. And you know in 2009 that that is happening.

Mr. NEWELL. Sir, again, the goal of the organization, the goal of the investigation was to disrupt and dismantle the entire organization.

Mr. CHAFFETZ. I know. I understand the goal. But the problem is you're purposely, knowingly allowing the guns to go to Mexico, and you have information in 2009 that it is being successful, yet you never put a stop to it. It is meeting the goals and intentions you laid out in this memo in January 2010, and it continued on and on. And consequently, there were thousands of weapons that ended up in Mexico, killing people. Killing people. That's the reason that we're here today.

When did you first know or think that guns were walking?

Mr. NEWELL. Sir, in this investigation, as best of my knowledge, we didn't let guns walk for that perspective.

Mr. CHAFFETZ. When did you first think that they were?

Mr. NEWELL. Were what, walking?

Mr. CHAFFETZ. Walking, yes. Did you ever—have you ever thought that they were walking?

Mr. NEWELL. Sir, the policy regarding transfer of firearms regards the fact that we were trying to develop an investigation.

Mr. CHAFFETZ. I know what you are trying. When did you first think that guns were walking?

Mr. NEWELL. Sir, again, the goal of the investigation——

Mr. CHAFFETZ. When did you first think that guns were walking? Did you ever think that? Do you think that here today?

Mr. NEWELL. I truly believe, as I have said before, that we didn't intentionally let guns walk.

Mr. CHAFFETZ. Let's go to slide two, if we could, please. This is an email from Mr. Newell to Mr. McMahon on December 21, 2010, 6 days after Brian Terry was killed. "Since I don't like the perception that we allowed guns to walk, I had David Voth pull the numbers of the guns recovered in Mexico, as well as those we had a direct role in taking off here in the U.S."

So you're telling me you didn't suspect that the guns were walking?

Mr. NEWELL. As my email says, it is about the perception. There was—I didn't want people to think there was a perception, because in my mind that was not the case.

Mr. CHAFFETZ. How were guns not walking?

Mr. NEWELL. Sir, knowing and proving that the transfer or purchase of firearms is illegal are two different things.

Mr. CHAFFETZ. I am asking. This is 1 month before the indictments and 2 months before John Dodson went on CBS News with the accusations that the case was still an active investigation. Why did you have Mr. Voth pull the numbers 1 day after the Terry mur-

der for the number of guns recovered in Mexico and the United States? Did you know Fast and Furious was about to come under massive scrutiny?

Mr. NEWELL. I did not know at that time that it was going to come under this level of scrutiny, no, sir.

Mr. CHAFFETZ. What is the difference—explain to me why you don't think that guns were walking. You obviously thought that others had that perception.

Chairman ISSA. Mr. Chaffetz, could you summarize?

Mr. CHAFFETZ. My apologies. I am way over. Thank the gentleman.

Chairman ISSA. We now go to the gentleman from Vermont Mr. Welch for 5 minutes.

Mr. WELCH. Thank you very much.

Mr. Newell, I am also trying to justunderstand the sequence here that some of my colleagues were asking about. As I understand it, agents would watch a straw purchaser purchase guns. Correct?

Mr. NEWELL. Yes.

Mr. WELCH. They would follow the straw purchaser and come, in some places, to another location where they would observe that the guns were left. Correct?

Mr. NEWELL. Left. Yes, sir. I believe.

Mr. WELCH. They were dropped off by the straw purchaser and delivered to whoever the middleman was. Right?

Mr. NEWELL. Yes, sir.

Mr. WELCH. All right. And then on a couple of occasions the agents called in for permission to make an arrest, and they were denied that permission because of the overall objective of the plan. Correct?

Mr. NEWELL. I am aware of that in one instance, yes, sir.

Mr. WELCH. All right. So the question I have, and I think Mr. Burton and Mr. Issa were asking this, what procedures did you have in place to follow where the guns went from that point where they were dropped off to wherever they ended up?

Mr. NEWELL. I know we had surveillance teams out there that their job was to do that, yes, sir.

Mr. WELCH. But you got a report. I am an agent. I observe a straw purchaser. I watch the purchaser go to a delivery point. So the next step is following the guns from that delivery point to wherever they may end up. Now, I understand how this plan worked from the point of watching the straw purchaser make the purchase, watching the straw purchaser make the drop, but I don't understand what happened after that or what your system was in order to follow where those guns went.

Mr. NEWELL. Well, sir, it wasn't my system, it was decisions that were made in the field by dedicated agents that——

Mr. WELCH. No, no. There has to be a system. What is the system? Whoever's system it is.

Mr. NEWELL. Well, agents in the field do the best they can to follow firearms, follow loads and see where they are going and——

Mr. WELCH. I don't get that. Trained law—you guys have plans, right, about how you're going to execute a complicated and very dangerous situation? So I am just wondering what it is. A load of assault rifles has been delivered to a middleman. Was there an ex-

plicit plan by which you would follow where those guns went after the drop to the middleman?

Mr. NEWELL. The best of my knowledge, we did everything possible to, in fact, do that with the resources we had out in the field.

Mr. WELCH. Right. But I am asking how you did it.

Mr. NEWELL. With surveillance, with agents on the ground, boots on the ground.

Mr. WELCH. Well, if you had boots on the ground, how is it that you wouldn't know where those guns went from the drop to the next step?

Mr. NEWELL. Because in some instances guns would go to a home. And unless we had any—unless we had any lawful basis to approach those individuals, we sat on surveillance as much as resources would allow. And then other priorities, other cases would take them away from that house.

Mr. WELCH. All right. So then basically there was not either the resources to follow those guns from the drop to wherever they ended up.

Mr. NEWELL. Not in every instance, but in some instances, yes, sir.

Mr. WELCH. All right. Mr. Leadmon, in your testimony you discussed the 2007 Project Gunrunner. You highlighted the strategic mission of the ATF and the need to cooperate with domestic and international law enforcement partners to deny the tools of the trade to the firearms-trafficking infrastructure. Can you clarify one important issue about what happened? Do you have an opinion that it was a mistake in this operation to focus on the Mexican cartels, the criminal organizations that are trafficking firearms? Or was it a mistake or a failure to prioritize public safety as ATF targeted the cartels?

Mr. LEADMON. It is not an opinion, it is my observation. What I will say is that I think there is a term here, everybody said, "Let these guns walk." I personally believe our agents walked away from the guns as they were traveling down the road, similar to seeing something off at a train station.

To skirt around this, to me, is ludicrous. These firearms, right, like I testified earlier, were crime guns, murder weapons. We knew it in 2009. We knew that based on our information out of Mexico. We knew where these guns were ending up by our partners in Mexico down there recovering them and researching them. There is no doubt that this was going to a criminal organization as early as 2009. As every day went on thereafter, it became more and more substantiated.

My thing here is we have been talking about lawful ways of arresting or going in. Well, we have an obligation to the Mexican people and the U.S. Government and the citizens of the United States. There is other ways to stop the flow of guns other than arresting people. You can go and seize the guns. You don't have to arrest them. You can approach the people, right, and put an obstacle in front of them so they will stop the purchase of these firearms, instead of allowing thousands of guns to be purchased and try to tie the cases to make it a big case because you have big numbers.

What we should have done is broke these people down as they came up before we let these guns go south, and then through our

intelligence assets, and through our hard work of our other agents and networking from the other divisions, we could tie these cases together and go after and get the big people. That's how our law enforcement partners do it, and that's how we should do it.

Mr. WELCH. Thank you.

My time has expired. I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from South Carolina Mr. Gowdy for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Special Agent Newell, you said firearms are not in and of themselves contraband. That's true unless they are sold to, possessed by, or acquired by a prohibited person, which would include a straw purchaser. So my question to you is this: Did ATF have contemporaneous or preknowledge of any straw purchasers purchasing weapons in Arizona?

Mr. NEWELL. Well, sir, straw purchasers are not prohibited individuals unless they have been convicted of some crime.

Mr. GOWDY. No, it is against the law to purchase a gun knowing you're going to transfer it to someone else to therefore get around the fact that the person you're going to give it to is a prohibited person. Agreed?

Mr. NEWELL. Yes, sir.

Mr. GOWDY. Okay. Well, that's a straw purchaser. Someone who is going to give the gun to a prohibited person is a straw purchaser.

Mr. NEWELL. Yes.

Mr. GOWDY. So now that we have that cleared up, did you know that anyone who was acquiring firearms from firearms dealers in Arizona were straw purchasers? Contemporaneous with the acquisition, did ATF know it?

Mr. NEWELL. We have to prove that, in fact, that it's a violation, yes, sir. We presented to the U.S. Attorney's Office evidence that we believed that these individuals were, in fact, straw purchasers.

Mr. GOWDY. Let's do it another way. The very first weapon recovered in Mexico through a trace, did you go back to the purchaser of that weapon and interrogate them?

Mr. NEWELL. I did not, no, sir.

Mr. GOWDY. Did anyone with ATF?

Mr. NEWELL. I am not aware of that, no, sir.

Mr. GOWDY. Why not?

Mr. NEWELL. I don't know, sir.

Mr. GOWDY. You've got a gun that was purchased in Mexico—that was purchased in the United States that makes it into Mexico. You know through your trace that that's the gun. Did you go back to the person who purchased it? That's an old-fashioned investigative technique. It is not as complicated as letting guns walk. It is more effective, though, to actually go interrogate the person who made the acquisition. Did you do that?

Mr. NEWELL. Sir, as I stated earlier, in this investigation, realizing that if you take out one straw purchaser you're not making an impact on the greater organization——

Mr. GOWDY. I want to ask you about the greater investigation, because I have read now four different times you have said "disrupt, dismantle, destroy."

Mr. NEWELL. Yes, sir.

Mr. GOWDY. How are you going to extradite drug kingpins from Mexico?

Mr. NEWELL. We don't have plans do that, no, sir.

Mr. GOWDY. So once the guns make it to Mexico, there was nothing you were going to do about those drug kingpins.

Mr. NEWELL. Yes, sir, there was.

Mr. GOWDY. What?

Mr. NEWELL. One of the things we wanted to do was as soon as we had solid information on who the drug kingpin, if you will, was, to share that information with Mexico.

Mr. GOWDY. But you didn't share the information with Mexico ahead of time. So they are supposed to trust American law enforcement, who has been conducting an investigation and knows firearms are going into Mexico, and you tell them after the fact, and they are supposed to thank you and be partners in this endeavor?

Mr. NEWELL. Sir, it wasn't only until we had information on who the specific recipient or the drug kingpin was that we felt it was prudent to share that information, because we weren't——

Mr. GOWDY. How are you going to dismantle Mexican drug cartels if you are not going to extradite the kingpins back to the United States?

Mr. NEWELL. Because we hoped that the Mexican officials would, in fact, prosecute them for that.

Mr. GOWDY. So you're doing this to help the Mexican criminal justice system. You're just not going to tell the Mexican criminal justice system about it.

Mr. NEWELL. No, sir, I disagree with that premise.

Mr. GOWDY. That's exactly what you just said, Special Agent, that you were going to tell them about it after the fact.

Mr. NEWELL. We had to know it first. We had to know who the drug—we had—through this investigation, and as it continues——

Mr. GOWDY. Okay. You have the first trace that tells you a U.S. gun is found in Mexico. Why did you not go interview the person who acquired the gun? Why not do the investigation the old-fashioned way, with car stops, with search warrants, with active surveillance? Why do it this way? It was never going to work.

Mr. NEWELL. Well, again, years of experience have shown us, sir, that removing one straw purchaser will not have an effect on the larger investigation.

Mr. GOWDY. Well, Special Agent, the only way it possibly could have worked would have been if Mexico had extradited these kingpins. If you want to disrupt, dismantle, destroy, the only way it could work is if you told Mexico—or I would have settled for you just telling your own fellow agents about it ahead of time. Because ATF and Mexico didn't know about it, did they?

Mr. NEWELL. Well, sir——

Mr. GOWDY. Yes or no? Did Mexico ATF office know about this?

Mr. NEWELL. They were aware of the investigation, yes, sir.

Mr. GOWDY. They were aware that weapons were going into Mexico and you knew about it?

Mr. NEWELL. That we knew about it? Sir, weapons go into Mexico all the time.

Mr. GOWDY. From straw purchasers that you knew about. Let me ask you this: If Mexico were to ask us to extradite the law enforcement officers who knowingly aided and abetted weapons going into Mexico, what would your reaction to that be?

Mr. NEWELL. I would explain to them that our concern in an investigation of this type is to take out the whole organization so we have the greatest impact possible. If you just take off one straw purchaser, you're not having an impact on the greater effort, which is the whole organization.

Mr. GOWDY. Special Agent, my time is up. I will just say this in conclusion. I worked with ATF for 6 years directly. I worked with ATF indirectly for 10 years as just a State D.A. This is one of the saddest days in my 6 months in Congress. It may be the saddest day. ATF has a wonderful reputation in South Carolina. We never once contemplated letting firearms walk ever. A first-year Quantico or Glencoe person knows that.

I will yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentlelady from California Ms. Speier.

Ms. SPEIER. Thank you, Mr. Chairman.

Special Agent Newell, what were you thinking? I think that's what we are all scratching our heads about here today. And the embarrassment that you have put on ATF generally, an outstanding organization of line agents, is deeply troubling to all of us. But what I am really concerned about is but for the fact that there were whistleblowers, but for the fact those whistleblowers went to Senator Grassley, but for the fact CBS did an investigation, this travesty would still be going on today. That's my big objection.

Who did you tell? Did Mr. Melson know about this?

Mr. NEWELL. About the investigation?

Ms. SPEIER. Yes.

Mr. NEWELL. My belief is yes. I briefed him and——

Ms. SPEIER. When did he know about it? When you started it? When you were conceiving it?

Mr. NEWELL. I am not exactly sure when the first time he was made aware of the investigation.

Ms. SPEIER. Who did you make aware of the idea of this investigation?

Mr. NEWELL. Well, when the investigation first initiated, in, I believe, November, we sent up—or I sent up a briefing paper, we sent up a briefing paper, I believe, the first part of December.

Ms. SPEIER. To whom?

Mr. NEWELL. To my supervisor.

Ms. SPEIER. Who is?

Mr. NEWELL. Mr. McMahon.

Ms. SPEIER. And, Mr. McMahon, what did you then do?

Mr. MCMAHON. When I was briefed on the initiation of this investigation, I passed it up the chain. This is the initiation of an investigation. We had a—pretty early on, that is why the title Fast and Furious came on it, we had a large group of people that were buying a lot of guns in a short period of time. And then we were having recoveries in Mexico. What we had was purchases in the

United States, recoveries in Mexico. We didn't have what was in between, and that's what the agents in Phoenix were trying to prove.

Ms. SPEIER. So you all thought this was a great idea.

Mr. MCMAHON. To stop guns going into Mexico, yes, ma'am.

Ms. SPEIER. No, this particular investigation of letting guns walk into Mexico.

Mr. MCMAHON. We didn't have an investigation of letting guns walk. We had an investigation into a group of individuals who were breaking the law and trafficking guns into Mexico.

Ms. SPEIER. All right. So 2,000 guns walked into Mexico. You have retrieved maybe 300; is that correct?

Mr. NEWELL. I believe the current number is roughly 600 firearms have been recovered.

Ms. SPEIER. And my understanding is that the way you were, "surveilling them," is that you were putting GPS systems on them; is that correct?

Mr. NEWELL. On the firearms or on vehicles? Depends on—we used all kinds of investigative techniques to further the investigation to try to determine if, in fact, the firearms were going into Mexico.

Chairman ISSA. Would the gentlelady yield? We have previous testimony that three times and only three times were any electronic tracking devices placed on the products.

Ms. SPEIER. Only three times?

Chairman ISSA. That's correct.

Ms. SPEIER. And that those batteries ran out is what I was told as well; Is that correct?

Chairman ISSA. Exactly.

Ms. SPEIER. All right. What Peter Forcelli, the special agent, testified earlier said that in his opinion, you know, if we monitor money being wired to the Middle East, and we take down actual information about people who buy Sudafed, because we are concerned about meth labs, we know that gunrunning is coming from the United States into Mexico, that is the source of it, why aren't we required—why aren't we requiring people who purchase multiple long arms from reporting that? And my question to each of you is should we be doing that? We do it for things like Sudafed, but we don't do it for long arms.

Mr. MCMAHON. I believe that we put forward a demand letter requiring gun dealers along the southwest border to report the sale of two or more firearms that fire from the shoulder at greater than .22-caliber that accept a detachable magazine.

Ms. SPEIER. What's the penalty if they don't?

Mr. MCMAHON. If the FFL doesn't? It would be part of the revocation process if they don't follow our rules.

Ms. SPEIER. They would lose their license.

Mr. MCMAHON. Correct.

Ms. SPEIER. That's like a slap on the hand, isn't it?

Mr. MCMAHON. That's all that we have at our disposal.

Ms. SPEIER. I am asking you if there should be a law passed requiring the reporting of long arms that exceed a certain number.

Mr. MCMAHON. I think that is the job of this body.

Ms. SPEIER. No, we are asking you. You are out in the field. You are telling us that the gunrunning into Mexico, the drug cartels are getting those guns from the United States. They are originating here. So I want everyone on the panel to just answer that question.

Mr. MCMAHON. Demand letter three that is going forward is going to be a great tool for us to combat this.

Ms. SPEIER. All right. Mr. Newell.

Mr. NEWELL. Thank you, Congresswoman.

Yes. Yes, any tool that we have to assist us in detecting early on, to detect, help us assist to detect early on a firearms-trafficking organization that is trafficking in large quantities of multiple—of assault-type weapons would help.

Ms. SPEIER. Thank you.

Next.

Mr. LEADMON. Yes, ma'am. I think that if we are going to do this, it should be in a balanced approach, maybe through legislation. But we also have to take in mind that we do have Second Amendment rights. And this needs to be balanced. And I think that we should approach this with caution.

Ms. SPEIER. What does that mean? Either you think we should have one or we shouldn't.

Mr. LEADMON. That means to me that there is a common good in this idea and this legislation, but there is a responsibility for us to balance it also.

Ms. SPEIER. Next?

Mr. CANINO. Yes, ma'am, it would help.

Mr. WALL. Yes, ma'am. I agree with Mr. Leadmon, though, we need to balance it with the Second Amendment rights. We require purchases of handguns within—two or more handguns within a 5-day period to be reported to us. However, the situation in Mexico right now and along the southwest border, I think it is an exigency that we have some type of—well, some help along that line with the assault weapons or the long guns.

Mr. GIL. I would disagree to some extent that that would be beneficial. I would rather have a relationship with the Federal firearms licensee for when an individual does come in and wants to purchase multiple weapons of any sort, handguns or long guns, that they would work with us on that. And that would provide us some information targeting those individuals. So I would somewhat disagree with that.

Ms. SPEIER. My time has expired.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman Mr. Walberg for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman. And I thank you for also giving us the opportunity to go to Mexico City and meet with the officials down there, both our hardworking agents and agencies, as well as the Federal police in Mexico. I just—hearing some of the responses this morning, I am kind of surprised that the Mexico Federal Police met us with such openness in providing information to us of what they are attempting to do when it is apparent we let them down.

I guess to try to come at it from the other side to get some answers, let me ask Mr. Canino—and thank you for your service——

Mr. CANINO. Thank you.

Mr. WALBERG. When did you first learn that a large number of guns were being seized in Mexico and traced back to Phoenix?

Mr. CANINO. Well, sir, it was around November or so. My intel officer in Mexico reported to me that there was a large amount of weapons in the suspect gun data base.

Mr. WALBERG. What was your reaction to that?

Mr. CANINO. Well, sir, I looked at it. I thought three things about this case. Number one, I thought that the case was out of Phoenix. Anybody who has ever talked to any agents in Phoenix or worked in Phoenix knows that the U.S. Attorney's Office there has been reluctant to prosecute firearms cases. That's number one.

Number two, I thought that our agents in Phoenix had stumbled upon a gun-trafficking group, and in their due diligence were finally realizing, okay, these guys have beat us for these many guns.

And number three, I thought somehow our agents are losing these loads, or a combination of all three.

Never, never in my wildest dreams would I think that ATF agents were ordered or participated in actually following known gun traffickers and just walking away. That is, to me, inconceivable. And to this day I still am trying to get my head around this.

What happened in this case is this is the ATF gun trafficking book, something we have done since 1972, and we do it well, and they went in Phoenix to the shredder and shredded the best practices, all the techniques that you use to investigate a gun-trafficking case. It is not rocket science. If it was, I wouldn't be here.

Mr. WALBERG. Had you received any warning from ATF in Phoenix or Washington about the possibility of a spike in guns showing up in Mexico?

Mr. CANINO. No. I was talking with Lorren and the folks at the Office of Strategic Intelligence, you know. We became aware, okay, there is a gun-trafficking case in Phoenix. The first guns that I became aware of that were related to that case were in November 2009, where nine guns turned up in a seizure of 42 guns in Sonora, Mexico.

Mr. WALBERG. So no warning.

Mr. CANINO. Once those guns came up and we traced them, hey, okay, now we found out there was a case out of Phoenix. But out of that case, out of those nine guns, that person who purchased those nine guns purchased close to 700 guns. So in 2009, we knew—"we" meaning ATF, ATF Phoenix, ATF Mexico—we knew that at least one person involved in that case had guns recovered in Mexico. And like I said, that person was allowed to buy 700 guns.

Mr. WALBERG. Mr. Gil, let me ask you the same questions. When did you first learn that a large number of guns were being seized in Mexico and traced back to Phoenix?

Mr. GIL. Sir, I learned actually during the same event that Mr. Canino just referred to. He and my chief analyst, Dennis Fasciani, came into my office. And I had just arrived in early October, and this event came across. So they briefed me at that time.

Mr. WALBERG. And your reaction to that?

Mr. GIL. I picked up the phone. We discussed it. I picked up the phone. I called the Phoenix Field Division to find out what was going on with this investigation, we were recovering an abnormal

number of weapons, and if they were aware of it, and if so, what was going on.

Mr. WALBERG. And you received no warning prior to that?

Mr. GIL. No, sir.

Mr. WALBERG. In the few remaining seconds let me move over to Mr. Leadmon. What's eTrace?

Mr. LEADMON. It is the ATF's electronic tracing system. It is the system we use to submit traces and to get the results.

Mr. WALBERG. Was the data base useful for tracing guns, or did you face obstacles with the tracing system?

Mr. LEADMON. Well, within the tracing system we have a flagging system called "suspect guns." And in that suspect gun data base, right, it is utilized to notify case agents when a weapon that they suspect is being used in a criminal—a crime gun, that it is flagged, and then the agent's notified.

Mr. WALBERG. Were they any delays in the uses of eTrace on this particular issue?

Mr. LEADMON. No, the tracing comes out of—especially the Mexico guns or the U.S. guns—that comes from the recovering officers or their agency. But the flagging system has a mechanism in it—or it did in the inception of Gunrunner—excuse me, project—this project, Fast and Furious, it had a system that was—we couldn't have it through our electronic system.

Mr. WALBERG. Why was that?

Mr. LEADMON. It was just a matter of just merging the systems together. It is now part of our eTrace system, and it is all fully available.

Chairman ISSA. The gentleman's time has expired.

We now go to the gentleman from Illinois Mr. Quigley for 5 minutes.

Mr. QUIGLEY. Thank you, Mr. Chairman. I apologize. There is several committee meetings going on. So if I ask a question that's been answered, I apologize.

But perhaps the most obvious, Special Agent McMahon, was it your intention to go back and get these weapons after this all took place? People left these stores with guns. Your intention was to go back and get all these weapons. Correct?

Mr. MCMAHON. Our intention was to prove that they were doing something illegally when they bought those weapons, and that's easier said than done. Proving that someone's a straw purchaser actually means that you have to prove the day that they came in to fill out that form, that they lied when they answered one of the questions. And proving that, we had to prove that they knowingly lied when they filled out that form. So once we have determined that someone is a straw purchaser, yes, we want to be able to get the weapons that they are responsible for as quick as possible.

Mr. QUIGLEY. Did you believe that you could get these weapons back, if that was the case, regardless of where they went?

Mr. MCMAHON. Again, I think our problem with this case is proving that a violation occurred in the United States and then determining how those weapons were being transported into Mexico. We know that of all the people we identified in this case that are purchasers, none of them were actually physically taking the weapons into Mexico. We were checking border crossings, all of those

sort of things, and that was not happening. So there was a great unknown at the beginning of this case trying to figure out what the size of this network was and how it was operating.

Mr. QUIGLEY. Well, if you and Special Agent Newell have used the line, if we pick off one or two straw purchasers today, they simply get replaced, in your words, in your mind, why is that the case?

Mr. MCMAHON. Well, because I think the way I understand firearms trafficking into Mexico, which is totally different than any type of firearms trafficking we have ever done before—I am from New York. I worked firearms trafficking cases all the time, but it is totally different in Mexico. What you will have is a plaza boss that orders guns from the United States. He will give someone in the United States, say, $70,000 and says, I want $70,000 of guns. And he expects to get $70,000 worth of guns.

Mr. QUIGLEY. How do they find each other typically?

Mr. MCMAHON. That's an established network from the drug trade of drugs going north. So that individual——

Mr. QUIGLEY. I am sorry, so that relationship is already there because of the drug trade?

Mr. MCMAHON. Absolutely.

Then that person will recruit individuals that have clean records that are U.S. citizens to buy weapons. Now, if we start picking off one or two people, that hurts the money in the person in the United States, but the person in Mexico is still going to get his $70,000 worth of guns. And that's what happens. So knocking off straw purchasers one by one, yeah, it makes life hard on the money person in the United States, but it doesn't make an impact in Mexico. And that's the key to what we're trying to do at ATF. And there has to be that balance, obviously.

As I said, the mistakes—in no way should we have ever allowed anyone to get up into the 600 purchases without talking to that person, trying to find out what they were doing, seeing if they would cooperate. But again, I think we learn things in every case we ever do, and we are learning an awful lot from this one.

Mr. QUIGLEY. Well, this is a network. People talk. So they would talk about what it is like to be a straw purchaser from an economic point of view. They encourage someone else, as you say, to do this. What would discourage someone from being a straw purchaser that we could do?

Mr. MCMAHON. I think obviously, you know, stiffer sentences for some of these individuals. We are tied to—when we make a case against these individuals, obviously they have all clean records. The Federal system is tied into punish individuals that have a criminal history. Obviously, straw purchasers will not have a criminal history. That makes them viable to purchase weapons. That would help us an awful lot to have a hammer over their head to either cooperate or ultimately never do this.

Mr. QUIGLEY. We've heard the expression that many feel like this is doing 60 in a 55, or some reference to that, that it is not particularly strongly punished, and typically not with a jail term. Is that your understanding?

Mr. MCMAHON. It is. It shouldn't be. Every time I talk about this, whether it is through the media, or other people, or Members of Congress, always trying to stress that these individuals that

think they are just doing maybe a paper violation are actually causing havoc in another country or else here in the United States, because the people that need them to buy guns aren't using them to protect their store or protect their residence. They're using them to create mayhem.

Mr. QUIGLEY. And the last question. Editorials about the Second Amendment aside, if you go into a store, a gun store, in Arizona, how many AK–47-type weapons can you buy?

Mr. MCMAHON. As many as he has.

Mr. QUIGLEY. Thank you.

I yield back.

Mr. CUMMINGS. Would the gentleman yield?

Mr. QUIGLEY. Yes.

Chairman ISSA. Ask unanimous consent the gentleman have 30 seconds.

Mr. CUMMINGS. Thank you very much.

Special Agent Newell, I must tell you that your testimony has been quite frustrating, I think, for both sides. I just want you to answer one question. Mr. Leadmon said the way this should have been conducted. Do you remember hearing what he said? He said the way this should have been done.

Mr. NEWELL. Yes.

Mr. CUMMINGS. I just wanted to know your reaction to that.

Mr. NEWELL. Well, sir, as I said in my opening statement, I recognize that in retrospect there were mistakes made in how we handled this investigation. We should have—one of the things I said in my opening statement was it was incumbent upon me to have more risk assessments throughout the investigation. I acknowledge that. I acknowledge the fact that one of the things I should have done was more frequently throughout the investigation conduct risk assessments to ensure whether this was still a prudent strategy to occur.

But I will tell you, sir, that from years and years of experience, as Mr. McMahon just said, these Mexican drug cartels are going to get their firearms. They're going to get them. So we have to do everything we can in terms of taking out the infrastructure that manipulates the straw purchasers. Straw purchasers are the lowest rung on the ladder. They are like a street-corner drug dealer. If you just focus your investigations on straw purchasers, you're not having a lasting impact.

But to answer your question, sir, I acknowledge that yes, in fact, that there should have been more frequent risk assessments. I acknowledge that fact.

Chairman ISSA. Thank you.

We now go to the gentleman from Tennessee, Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman. And I thank the panel for appearing here today.

Regretfully, I have to attend a teleconference, but I would like to yield my time back to the chair, as it is very important we continue this discussion.

Chairman ISSA. I thank the gentleman for yielding.

I would like to follow up somewhat along the lines that the ranking member was on. Mr. Patino bought 730 weapons is our best count right now. He worked through Mr. Acosta. For both of Spe-

cial Agent Newell and McMahon, was there a time in which either one of you were aware that Mr. Acosta, buying weapons, the total of 730 from this particular straw buyer, who was on food stamps, who had no income—was there a time that you became aware Mr. Acosta intended on transporting those weapons to the drug cartels to sell them? You have charged 19 straw purchasers, who are all out on their own recognizance right now just waiting for trial sometime next year. You have charged one person with trafficking. Was there a time you became aware that, in fact, you had a known group of buyers, including Mr. Patino at 730 weapons, and you knew that the purchaser, the money man, intended on transporting those to Mexico? Was there ever a time that you knew that? Mr. McMahon first.

Mr. MCMAHON. There was never a time that I knew that, no.

Chairman ISSA. Mr. Newell.

Mr. NEWELL. There was never a specific time that we knew that, no, sir.

Mr. ISSA. Please stay awayfrom words like "specific." They worry me. Was there ever a time? Did you get to an understanding that you had a known buyer buying from these people with an intent to traffic them to the cartels? Was there a time?

Mr. NEWELL. Throughout the investigation we had information that——

Chairman ISSA. What was the first time that you had that information?

Mr. NEWELL. That this group was trafficking firearms to Mexico?

Chairman ISSA. That you had a known buyer, Mr. Acosta or that group, and that the purchasers—some of the straw purchasers they were buying from were, in fact, providing to these people for their purpose of transporting?

I ask you this question very simply. Now, wait a second. You have been here as a paid not answerer so far. And I appreciate that you have been here as a paid not answerer, but there comes a point where I go, wait a second, 730 weapons bought by a man who had no money. Every penny he bought with he had to get from somebody. You knew that at some point. You knew who was buying them, and you allowed it to continue.

Now, there comes a point where, as we go through the rest of the investigation—and this was about Mexico, and I want to get back to that very quickly—but there comes a point where we have to have more than just mistakes were made. My understanding is you knew from credible information, your organization knew that, in fact, you had a buyer providing the money to Patino and others, that he was taking possession of those weapons, and you knew with specificity that those weapons, some of them had already ended up in Mexico; is that correct?

Mr. NEWELL. Yes, sir.

Chairman ISSA. And what was the first date; 2009, what was the first date?

Mr. NEWELL. Sir, to answer your question, throughout the investigation we had information that Patino was—Mr. Patino was working with Mr. Acosta throughout the investigation.

Chairman ISSA. Okay. So from day one you had a straw purchaser with no means of support buying hundreds of weapons, pro-

viding them to his intermediary, which meant that both of them were very much a part. You didn't have a buy and lie situation at this point, you had an individual who could be charged with his participation in the actual trafficking of weapons. You had somebody who was trafficking specifically for the intent of getting it to the drug cartels, providing huge amounts of information—I'm sorry, huge amounts of money. You had that early on. We're now 2 years later, and you've only charged 18 other people with buy and lie and the one person you knew early on was doing this.

Where, quite frankly, is any semblance of roll-up or any semblance of going further? It looks like you knowingly allowed these to be sold, waiting to see if the other end in Mexico would give you information. It seems like you knowingly allowed these weapons to get out of your control knowingly to someone you knew was trafficking into Mexico. You saw the results, you allowed it to continue, and now you're telling us, we don't let guns walk.

Well, I've got to tell you, before this investigation ends, I've got to have somebody in your position or at Justice admit you knowingly let guns walk, because right now your agents, both the agents here today from Mexico and the agents that were part of Phoenix and part of this program who became whistleblowers, had told us you were letting guns walk. It's only you and Mr. McMahon and other people at Justice who continue to come before this committee and say, we don't let guns walk. Are they lying, or are you lying?

Mr. NEWELL. Sir, in this investigation it is my opinion that we did not let guns walk.

Chairman ISSA. You're entitled to your opinion, not to your facts.

With that we go to the gentleman Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Mr. Wall, before you were transferred to the ATF field office in Tijuana, Mexico, you were in the Phoenix office; is that correct.

Mr. WALL. Yes, sir, I was.

Mr. TIERNEY. And you said in your written testimony that you personally saw some of the AFT's best trafficking cases languish in the U.S. Attorney's Office. Is that an accurate statement?

Mr. WALL. Yes, that's accurate, sir.

Mr. TIERNEY. Now, we also had other ATF agents tell us the same thing, that there was a lagging of proceeding on these cases in the U.S. Attorney's Office.

When was that period of time that you were assigned to the Phoenix office?

Mr. WALL. Well, I was working primarily gun trafficking to Mexico from 2007 until I left for Tijuana in 2009, fall of 2009.

Mr. TIERNEY. Mr. Newell, a number of ATF witnesses that the committee interviewed have said that this case was ready for indictment probably in August 2010, but the U.S. Attorney's Office didn't really seek the indictments until January 2011. Is that an accurate reflection of your memory?

Mr. NEWELL. Yes.

Mr. TIERNEY. Do you know why you experienced these delays?

Mr. NEWELL. I think that's a question better asked of the U.S. Attorney's Office, sir.

Mr. TIERNEY. Did they ever give you an understanding of why it was that they were seeking to delay?

Mr. NEWELL. That they were continuing to put together information they needed to seek indictments.

Mr. TIERNEY. And it was that broad an explanation, no certain specifics?

Mr. NEWELL. Certain specifics regarding financial for the money laundering statutes that are in the—money laundering violations that are in the indictment.

Mr. TIERNEY. Did you consider those reasons to be legitimate, or did you think that they were somewhat suspect?

Mr. NEWELL. I believe that they were legitimate in the sense of the return on some subpoenas, yes, sir.

Mr. TIERNEY. Now, Mr. McMahon, you said that a number of your agents were certainly frustrated from time to time with the U.S. Attorney's Office in Phoenix, correct?

Mr. MCMAHON. That's what was being relayed to me from Bill, yes.

Mr. TIERNEY. But you didn't have direct knowledge of that; agents hadn't expressed it to you?

Mr. MCMAHON. I shouldn't say that. Yes, there is a personal friend that I had that works in Phoenix that I hired in New York. He did express his frustration with the U.S. Attorney's Office, yes.

Mr. TIERNEY. Now, at some point in time when, Mr. Newell and Mr. McMahon, you thought that the case was ready for indictment, the August 2010 and after that, did you start using seizure warrants to interdict some of the weapons?

Mr. NEWELL. Yes, sir. We started doing that, I believe, in September 2010 in an effort to seize firearms as we were waiting for the indictment.

Mr. TIERNEY. All right. So——

Mr. NEWELL. Civilly. Seize firearms civilly.

Mr. TIERNEY. So once you thought that the case had been made——

Mr. NEWELL. Yes.

Mr. TIERNEY [continuing]. Then you started to take extra actions to make sure that the weapons didn't get beyond a certain point. All right. And when would you exercise the seizure warrants in relation to this whole trafficking activity that was going on?

Mr. NEWELL. Well, sir, I thank you for the question. During the summer of 2010, we finally convinced certain individuals in the Judiciary that we had a very strong—we believe we had a very strong ability or theory on being able to seize firearms civilly in order to stem the flow, and we got that approved, I would say, September 2010.

Mr. TIERNEY. Now, this problem with the U.S. Attorney's Office in Phoenix, the lag of time between when the people in the field thought that they had their case made and waiting for the indictments to go down, is that a problem that exists with the current U.S. attorney?

Mr. NEWELL. I will say, sir, that having been there 5 years when I was there from 2006 to 2011, the current U.S. attorney has been much more aggressive and much more proactive than previous administrations, yes.

Mr. TIERNEY. The previous administrations, however, were insistent in having that issue, a lag on that?

Mr. NEWELL. Yes, sir.

Mr. TIERNEY. Mr. McMahon, you told the committee that ATF agents had secured confessions from straw purchasers to develop certain cases, but that your agents presented those cases to the U.S. Attorney's Office in Phoenix, and the assistant U.S. attorney declined to prosecute and said there was no violation. Do you remember telling the interviewers that?

Mr. MCMAHON. I do remember speaking about a single case that was relayed to me by Bill Newell, yes.

Mr. TIERNEY. Can you give us some specifics of what it was you related?

Mr. MCMAHON. What was told to me was we were working an operation at a gun show. Our agents observed someone that looked suspicious pushing a baby carriage with a couple of long guns in it. They followed her out to the parking lot where she actually transferred that to an individual, and our agents saw a transfer of money. We had other agents follow the car that had the guns now out of the parking lot, pulled him over, did a traffic stop, identified him as a multiple convicted felon with not only the two guns this woman gave him, but also a third gun. We also confronted the woman, and she confessed that she was paid to purchase these weapons. I believe it was a Saturday or Sunday when this happened. Bill relayed to me that it was presented to the duty agent in Phoenix, and they suggested that we take the case to State court.

Mr. TIERNEY. Thank you.

I'm going to yield back to the ranking member at this point in time.

Mr. CUMMINGS. Thank you very much.

Chairman ISSA. We will ask that you also have another 30 seconds.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Special Agent Newell, I want to go back to something the chairman asked you, because I want to make—I want us to be real clear, and this is for the benefit of the entire committee.

I've got a—I'm trying to figure out what your definition of "walking guns" is. Maybe that's part of the problem. I think we—because I think almost everybody up here has our opinion about this, and I'm just wondering if there's a difference between your definition of walking—allowing guns to walk and ours.

Mr. NEWELL. Well, thank you. I appreciate the opportunity to answer that.

My definition of walking, and I believe it's the common law enforcement term, is when a law enforcement agency, be it ATF, be it DEA, be it a State and local agency, actually puts some sort of evidence into the hands of a suspect in furtherance of an undercover operation, in furtherance of an investigation, and then does nothing with that property. That property, for instance, with ATF it can be a prop gun, one of our evidence guns. You put it in the hands of that suspect and then don't take—don't do the follow-up, don't attempt to determine where that gun is going.

Mr. CUMMINGS. So you don't think there was any walking allowed in this based on that definition in this case?

Mr. NEWELL. Based on that definition, yes, sir.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Arizona Mr. Gosar for 5 minutes.

Mr. GOSAR. Thank you, Chairman.

Mr. Newell, one of my colleagues on the other side brought it up about new laws. Now, I want to emphasize, it wasn't the gun sales operator. And let me emphasize that again. It wasn't, was it, because they were alarmingly bringing forth these sales; were they not?

Mr. NEWELL. I'm sorry, Congressman.

Mr. GOSAR. Oh, here we go again.

Mr. NEWELL. Well, I didn't understand.

Mr. GOSAR. It seems like this is the Moe, Curly and Larry show, and we're looking for Larry. I mean, it's disruptive to actually see what I'm seeing here. As a business person coming from Main Street America to actually see what I'm seeing here, you've got to be disgusted about this. And to go round and round the corner, it's ridiculous.

Agent Canino, I watch your body language. I'm a health care physician.

Mr. CANINO. Yes, sir.

Mr. GOSAR. I watch body language like crazy. Tell me what you disagree with that man right there.

Mr. CANINO. On this specific case?

Mr. GOSAR. Yes. Talking about records. Let's talk about records. Are there adequate records being kept?

Mr. CANINO. At the FFLs?

Mr. GOSAR. Yes.

Mr. CANINO. Yes, sir.

Mr. GOSAR. And how they relate between the sale of these guns and Mexico.

Mr. CANINO. I think ATF does a great job in regulating the firearms industry.

Mr. GOSAR. But in this case in tracking, were they actually able to track them? They had no idea where they were going, did they?

Mr. CANINO. No, sir. The reason—you've got to put this in context. Everybody is saying, oh, this case was so big, it was complicated. Firearms-trafficking cases are not complicated, sir, okay? They're not complicated. The reason this case was so big was because we didn't do anything, plain and simple. Everybody wants to make this bigger than it is.

Like I said earlier, you don't have to—I spent 19 years, 15 as a street agent, 4 leading a street group, okay? You don't have the luxury or the right, in my opinion, as an ATF agent to say, I like this law, I like that law, okay? That's you guys set the law; we follow it. Now, it's up to me as an ATF agent how best to make up an investigative technique and best practices so I can make a case and present it to the U.S. attorney. I've done my job. Now it's up to the U.S. attorney if he wants to prosecute it or not. I'm going to bring him the best case I can.

In this case, like I said earlier, we have the ATF trafficking guidelines and best practices, and we just threw it out the window. Nobody got stopped. Like I said earlier, how can you let somebody

buy 730 guns, and at what point are you going to stop them? I mean, I am embarrassed, sir. I have agents, guys who I consider American heroes, my friends, who I never thought I would hear this, who they've told me since this broke, Carlos, I'm ashamed to carry an ATF badge, to me. I have cried over that literally, and I'm unashamed to say that. This is not a job to me, it's a profession. I don't have a hobby. My hobby is being an ATF agent. I love this job. I hit the lottery when I came on. And I'm proud of what I do, and I'm proud of the ATF agents in this country. We have heroes, we really do. But—and I've been watching your body language, too, and Mr. Burton's. I'm sorry, sir, but that's all I could say. I have no other way to describe this.

Mr. GOSAR. Well, I mean, I look at this, and I look at—you know, when we're doing medical procedures, we look at what's our end game and what's all the processes in between, and there's collateral damage. And the problem is that collateral damages are crimes, and there are going to be deaths like we just saw, and there are going to be many more. And they're on this side, and they're on that side. And do you know what that tells me? That tells me that when you were in this planning stage, we've got a problem. It's not on the field, it's right there in the office, in the head office coming up with this. This was absurd to even have this idea. And to hear this merry-go-round bantering back and around where we can't get an answer from Mr. Newell, I mean, the buck stops to somebody. Who is it? It's obviously to me. It's not these two gentlemen right here.

I want to find out who Larry is. That's where we're going to have to go with this. But this is absurd. And the fact that we used people's lives and their—and our friends from Mexico as pawns in this without even discussing it, how absurd. It's reprehensible to even conceive of what's transpired here. And I hope the buck stops, and I hope you take accountability all the way through, because this can't go on again. This is—I mean, both sides of the aisle are furious, and the American people ought to be furious at you. If this is what you would get for higher ups in ATF or the Department of Justice, shame on you.

And I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Virginia for his 5 minutes, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. And I'm sure all of our panelists are so pleased to be here today.

I guess I have a slightly different take on the subject. I don't defend Fast and Furious, and I don't defend the actions of the U.S. Attorney's Office at the time in Phoenix, and I certainly believe that it was a botched attempt that led to a tragedy, perhaps many tragedies. And I think this committee and this chairman are right to raise those issues and to try to assign blame.

But there's another part of the story I doubt very much the press will print in tomorrow's headlines, because it's so much easier to print who screamed the loudest at ATF and that you got beat up. But what the press won't print tomorrow, sadly, is the fact that Congress' hands are hardly clean on this subject. We have done everything to make sure that the "F" in "ATF" is nullified. We have

made sure that you haven't got a permanent Director for 6 years. We laud the private sector. What private company would think it's okay to lack a permanent CEO for 6 years? We have done everything in our power in Congress to try to defang the ATF to make sure that it's toothless. We've done everything we can to fight your budget and reduce it so that you don't have the resources to do the job. We're not criticizing you for not doing well. We had testimony before this committee by one of your colleagues called by the committee majority who said there are more New York police officers per square mile in New York than there are ATF agents in all of the State of Arizona, and yet somehow we're going to stop the hemorrhaging of arms trafficking going into Mexico with that kind of paltry set of resources. But that won't be in the headline tomorrow.

Some of the loudest critics of ATF today are also on a bill misnamed the Bureau of Alcohol, Tobacco, Firearms and Enforcement Act. What does that bill do? It allows firearms dealers to liquidate their inventories after having their arms dealer license revoked, and would decriminalize gun sale recordkeeping violations even if they contributed to cross-border gun trafficking. How does that help ATF and its mission? Where is the accountability here in Congress on this subject?

It's easy to beat up on you, it's easy to look for a scapegoat when the agenda really is to make sure that we make it harder, not easier, to enforce gun trafficking. We had testimony from one of your colleagues before this committee who said there's more regulation on over-the-counter Sudafed than there is in arms trafficking going into Mexico. And he testified, and was interrupted in this testimony because it wasn't welcome, that he believed we needed to toughen enforcement laws as a tool for ATF to be able to fulfill its mission along the border.

So I have no doubt that we can all pile on, and correctly, criticizing ATF for a botched mission. But what isn't said, and sadly what the press isn't going to bother to write about, but they should, is the fact that Congress for 6 long years and maybe longer has done everything in its power to make sure, in fact, you can't do your job. And this set of hearings needs to explore that, too.

With that I yield back the balance of my time to the ranking member.

[The prepared statement of Hon. Gerald E. Connolly follows:]

Statement of Congressman Gerald E. Connolly
Fast and Furious II
July 26th, 2011

Chairman Issa, at the last hearing on Mexican gun trafficking ATF agents testified that there is more federal regulation of Sudafed purchases than of guns trafficked across the border. ATF agents told us that the penalty for gun trafficking is often no worse than for a speeding ticket. These answers didn't fit into your narrative, which would pin the blame for gun trafficking on a single ATF program. Obviously—as the ATF agents who *you* invited pointed out—we have a systemic problem caused by lack of regulation and enforcement of gun trafficking laws. In addition, the ATF lacks the resources even to enforce these weak laws. As they testified at the last hearing, there are more police officers in one square mile of New York City than ATF agents in the entire state of Arizona. Finally, although you criticized the Attorney General for not stopping this program, the Washington *Post* has reported that you did not object to it either when you were given "highly specific information" about Fast and Furious in April of 2010. If Fast and Furious represented "felony-stupid bad judgment" as you claimed, then why didn't you object to it 15 months ago when the ATF provided you with a briefing?

Incredibly, in response to this dire public safety threat some members of Congress want to weaken ATF even more by passing the misnamed "Bureau of Alcohol, Tobacco, Firearms, and Enforcement Act," which would allow firearms dealers to liquidate their inventory after having their arms dealer license revoked, and would decriminalize gun sale record keeping violations, even if they contributed to cross-border gun trafficking. This dangerous bill, of which Chairman Issa is a cosponsor, would exacerbate gun trafficking and further weaken the ATF.

We need much stronger regulation and enforcement of gun sales that could contribute to border violence or arm narco-traffickers. Ranking Member Cummings has introduced legislation, of which I am an original cosponsor, to strengthen penalties for straw purchasers of guns. This committee should be holding a hearing on systemic weaknesses of our border state gun policies rather than attempting to blame gun violence on a single program in an agency which has been crippled by opponents of gun control. As Acting ATF Director Kenneth Melson has stated, stronger penalties for straw purchasers and tracking of long gun purchasers would "absolutely" help stop narco-terrorists.

We have the opportunity to strengthen those gun control laws now. A pending ATF rule, about which I look forward to hearing witness testimony, would require tracking of multiple long gun sales. Currently, gun traffickers can purchase dozens of AK-47s without being subject to tracking. As the ATF witnesses testified at the last hearing, tracking these purchasers could stymie the flow of guns to narco-traffickers. Unfortunately, opponents of gun control in Congress are trying to block the ATF from implementing this modest improvement to our gun control policies.

Ranking Member Cummings, thank you for providing leadership on this issue by attempting to crack down on straw purchasers of guns. It is unfortunate that the Chairman Issa has demonstrated zero interest in understanding systemic failures of our gun control policies, even while supporting legislation to weaken the ATF.

Mr. CUMMINGS. There is no currently no Federal statute that criminalizes firearms trafficking. Instead traffickers are often prosecuted under 18 U.S.C. Section 922, which prohibits engaging in firearms business without a license. The need for a Federal firearms trafficking statute was also a common refrain of law enforcement agents interviewed by the committee, as Mr. Connolly said. They told us that a dedicated firearms trafficking statute would give them the ability to address patterns of activity by traffickers who divert firearms from legal to illegal commerce.

Mr. Leadmon, based on your decades in law enforcement, do you believe a Federal firearms trafficking statute would be helpful in disrupting the flow of guns to Mexican drug cartels?

Mr. LEADMON. Yes, sir. I have viewed your proposed legislation. I agreed with it wholeheartedly. One of the things I think that might be added to that is a little more emphasis on international trafficking. Maybe we can tighten it up a little bit as far as going to drug cartels. I, too, think that if you reach a certain amount of weapons, that can even be a life offense.

Mr. CUMMINGS. Thank you very much.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Texas Mr. Farenthold, also a Member who went to Mexico City.

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

I would like to take a moment to address something I heard, before I asked the questions, from the other side. They were talking about how much more difficult it is and how much more regulated the purchase of Sudafed is. I don't see anywhere in the Constitution where we're guaranteed the right to bear Sudafed, but we are guaranteed the right to bear arms. So I think that is an inappropriate distinction.

Mr. McMahon, when my friend the former prosecutor, the gentleman from South Carolina, asked you what the goal of this was, you said that it was to bring down a drug kingpin in Mexico. Is that a fair assessment?

Mr. MCMAHON. Did I say that, sir?

Mr. FARENTHOLD. I'm sorry, I guess that was Mr. Newell.

Did you say that, Mr. Newell.

Mr. NEWELL. I believe what I said was the goal of the investigation was to disrupt and dismantle an entire firearms-trafficking network, yes, sir.

Mr. FARENTHOLD. And so I believe you said a drug kingpin.

Let me ask Mr. Gil—and to identify some drug kingpins. Let me ask Mr. Gil, does the Mexican Government know who the drug kingpins are in Mexico?

Mr. GIL. Sir, they are aware of the heads of the organizations. To answer your question shortly, yes.

Mr. FARENTHOLD. And so let me go ahead and ask you another question there, Mr. Gil. In your time working with the Mexican Government as a former ATF attache in Mexico, did they ever ask us to do anything like that; you know, you let guns come across the border so they could track them or find or bring down government king—or drug kingpins?

Mr. GIL. No, sir.

Mr. FARENTHOLD. All right. Let me go on to Mr. Canino. I want to applaud your service and your candor with this committee. We've heard that we're trying to bring down the drug kingpins, or whatever the words were, as far as stop the trafficking. If you were put in charge of developing an investigation to do that, how would you do that? Would your plan involve letting firearms move across the border, or how would you do it?

Mr. CANINO. To stop a drug kingpin?

Mr. FARENTHOLD. Or if you want to go even more simply with the firearms, stop the firearms trafficking?

Mr. CANINO. Well, to stop a drug kingpin, I would call DEA because that's what they do, number one. Number two, you work the traffic investigations paint by the numbers. It's frustrating to be an ATF agent. That comes with the badge, okay? Trafficking investigations, the laws, like I said, you have to be open-minded, I guess is the word I'm looking for. I don't know if that's the best description.

But like I said, it's paint by the numbers. You have to work—it's like building a house. You start building a foundation; you work from the bottom up. In this case nobody got stopped. They didn't grab somebody and say, okay, hey, we're going to roll you. And I don't want to get into sources and methods, but there's a whole—you know, we have schools on this.

Mr. FARENTHOLD. If you watch a cop show, you know how it's done.

Mr. CANINO. Right.

Mr. FARENTHOLD. You follow the guns, or you arrest them at the first stop and try to flip them both. Or if you really want to partner with the Mexican Government, you follow the guns until it crosses the border and radio across to your colleagues in Mexico, and they move it up the line there. It seems like common sense to me.

Let me ask—I want to ask this question to everybody on the panel, because I think this is really important. We've seen Operation Fast and Furious. We've recently heard about Operation Castaway, a similar program in Florida. Are any of you all aware at this time of any similar operations going on that allow guns to flow across the border to friendly countries now? Are you all aware of those, and if you are, are we doing anything to stop them? And if you could just come on down the line. We'll start with Mr. McMahon.

Mr. MCMAHON. I am not aware of any case like that of friendly or unfriendly government, no.

Mr. NEWELL. Neither am I, sir.

Mr. FARENTHOLD. Is anybody?

Mr. LEADMON. No.

Mr. CANINO. No, sir. I'm unaware of any.

Mr. WALL. No, sir.

Mr. GIL. No, sir.

Mr. FARENTHOLD. And we only found out about this one through whistleblowers. And my prayer is that if there is anybody watching this committee hearing, ATF or another agency, that knows of something going on like this, that they let this committee know about it. This is one of the most shameful moments, I think, in our

government's history when we are letting guns go across the border to our friends in Mexico.

Let me just ask another—I only have 32 seconds left. I'm going to stick around for a second round of questioning, so I'll yield back my remaining 30 seconds.

Chairman ISSA. And I'll pick it up.

Special Agent Newell, what did this program expend in money; millions of dollars, right?

Mr. NEWELL. The program or the network?

Chairman ISSA. Well, Fast and Furious. Up on this side we think of it as a program, you think of it as a simple investigation. The investigation, you spent millions of dollars over the course of 2 years, correct?

Mr. NEWELL. I don't believe it was millions of dollars, sir.

Chairman ISSA. Hundreds of thousands?

Mr. NEWELL. Probably a couple hundred thousand dollars, yes, sir.

Chairman ISSA. Agents were camped out in some cases for a period of time at a drop location?

Mr. NEWELL. Yes, sir.

Chairman ISSA. So when you were trying to do the big hit, the big fix, the big get the roll big guys, why is it that testimony shows us that only three times were there any kind of detection plants? And I don't want to get into sources and methods either, but only three times we have been told that they tried to do any detection, and one of these, GPS tracking, was a Radio Shack make-it-yourself. Why in the world would the quality and the quantity of agents and time, video cameras planted with Internet connections, etc., why is it there wasn't some tracking to track the weapons?

Mr. NEWELL. We had trackers on vehicles, sir. We had the trackers you mentioned on weapons. But again, it goes to resources. I mean, it's resources. We have agents that are out there working 16-, 18-, 20-hour days.

Chairman ISSA. Unfortunately you have just made my case, and time has expired. Eighteen hours of an agent's time is so much more money than one of these tracking devices that you were penny wise and pound foolish by not having sophisticated devices.

With that we go to the gentlelady from the District of Columbia for her 5 minutes. Ms. Norton.

Ms. NORTON. Well, suppose you had had a tracking device. Then what would have been the next step?

Mr. NEWELL. Well, ma'am, it depends on how long the firearms stayed in the area. For instance, many of the—in many of the transactions here, the firearms never left the Phoenix area, and trackers, the battery life of a tracker is only good depending on——

Ms. NORTON. So if it didn't leave the Phoenix area, what could you charge this so-called trafficker? This law-abiding citizen who doesn't have a record, but he's buying many, many guns, what could you charge him with?

Mr. NEWELL. There's nothing to charge him with at that point. We have to prove a violation has existed, has occurred.

Ms. NORTON. I just want to say, to sit in a hearing and hear people beat up on the ATF is very, very interesting to me. You sit in a Congress where the gun lobby controls the Congress of the

United States. On the Republican side of the aisle, they're totally controlling; on my side of the aisle, they are virtually controlling. And the Second Amendment is cited as you try to do your job to keep guns from essentially bringing down the government of an ally.

So when it comes to Mexico, let me ask you, what kind of gun control laws does Mexico have? Any of you know about their gun control laws? Yes, sir.

Mr. CANINO. Yes, ma'am, I do.

Ms. NORTON. Yes, sir. Would you speak up?

Mr. CANINO. Civilians could buy nothing greater than a .38-caliber. Anything after that is for the exclusive use of the military and the police.

Ms. NORTON. So here is Mexico who does its job on its side of the border. It says—essentially it makes it very difficult for anyone except someone in law enforcement or the military to get a gun. So they come to the United States where trafficking is wide open.

Let me ask you this: We are concentrating on Mexico now. Let me ask you about trafficking to Chicago. Let me ask you about trafficking to the District of Columbia, to Baltimore. Let me ask you about trafficking to L.A. Do these same traffickers operate as effectively in our country as we have now seen them operate taking guns to Mexico?

Mr. MCMAHON. Well, I believe that the organizations are a little bit different. That's why I said earlier about we've never encountered an organization like this for Mexico. Trafficking in the United States, my experience anyway, is a little bit different. It's a little bit more association-related. But obviously trafficking domestically is a major issue for us. And I spent the majority of my career working those kind of cases.

Ms. NORTON. If a person, let's say, buys 200 guns, and here you made mistakes. If I had a dollar for every mistake this Congress has made when it came to guns, I would be a very rich woman. You made a mistake. It was a fatal mistake, it was a mistake for which you are being held accountable. Let's say you hadn't made a mistake, that someone without a record bought guns. That's me. You found me with 200 guns. What could you do to me?

Mr. MCMAHON. Nothing at all, ma'am.

Ms. NORTON. Did you feel disarmed in your fight against this wholesale movement of guns from our country to Mexico, or did you feel you were equipped to, in fact, by law enforcement to do what was necessary?

Mr. MCMAHON. I think in my experience, ATF agents are very resilient. You have to be to make the case. And that's what our people do. And they do that every day, and they're out there doing that today.

Ms. NORTON. And they may design tactics to try to make them—to make themselves more effective on the ground?

Mr. MCMAHON. I think that's what we should always be doing, yes.

Ms. NORTON. Could I ask each of you, would you feel better able to stop this traffic if the Congress passed a law that made it and added to our Criminal Code a section that prohibited the transfer of a gun when an individual knows the gun will be transferred to

a person who is prohibited from carrying a gun or intends to actually use the gun illegally?

Mr. MCMAHON. We currently do have a statute that does handle that. That's the whole "lying on the Federal form" violation.

Ms. NORTON. But lying on the Federal form gets you to where?

Mr. MCMAHON. Gets us to—if we can prove that someone knowingly filled out that form incorrectly or lied——

Ms. NORTON. Can you seize guns? We've been talking about seizures here. In order to seize guns, what does the ATF have to show?

Mr. MCMAHON. That a violation of law is committed with that firearm.

Chairman ISSA. The gentlelady's time is expired, but if anyone else wants to answer the question——

Ms. NORTON. What's the law that's been violated?

Chairman ISSA. If anyone else wants to answer.

Mr. NEWELL. Yes, sir. Thank you, Mr. Chairman.

We have to prove beyond a reasonable doubt that that firearm was somehow used in the violation of a—furtherance in violation of a crime or in violation of a crime. We can't just go out and randomly seize firearms from individuals. Firearm are in themselves not contraband. If we stop someone on the street with 5 AKs, 10 AKs, 20 AK–47s——

Ms. NORTON. Or 100 AKs.

Mr. NEWELL [continuing]. Or 100, and they're not prohibited, as frustrating as that may be, and believe me it is extremely frustrating, but as frustrating as that may be, we may not have any legal ability to take those—to seize those firearms.

Chairman ISSA. Does anyone else want to answer that? Mr. Gil.

Mr. GIL. Yes, Mr. Chairman.

In my experience, and as I look around the room here, I've had the opportunity to work in pretty much every State of the Union, and I've always been able to use the current laws to success in investigations. Whether you're pulling somebody over with 100 AK–47s, I found that ATF special agents are very qualified in interviewing techniques; 99.9 percent of the time we'll get confessions from those individuals, we'll take those guns. And if not that case, then we would at least end up getting an abandonment from them for those weapons so they don't hit the streets.

So there are other avenues to approach versus—that we could use under the current laws.

Chairman ISSA. Thank you.

We now go to the most qualified person on the committee to ask questions, the gentleman from Pennsylvania Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman.

Special Agent, you're a trained special agent for ATF. Are you trained in the issue of walking guns?

Mr. CANINO. No, sir.

Mr. MEEHAN. With regard to walking guns, when you are in training, what do you know about—what does ATF tell you about walking guns?

Mr. CANINO. You don't walk guns. Sir, I teach at the ATF National Academy, I teach at our first-line supervisor school, I teach at our command-and-control school for GS–15s and above.

Mr. MEEHAN. Are you aware of anybody who has been disciplined for walking a gun in ATF?

Mr. CANINO. No, sir. But Darren was talking to me last night and put it in perspective. If you're an ATF agent, and you lose your gun, it's 3 days, no questions asked, up to termination on the circumstance if you lose your gun.

Mr. MEEHAN. If you lose your gun.

Mr. CANINO. If it was your gun, it's 3 days.

Mr. MEEHAN. What do you define as walking a gun?

Mr. CANINO. What exactly happened in this case.

Mr. MEEHAN. In your words what do you think walking a gun is?

Mr. CANINO. Walking a gun is when you have custody and control of that firearm, and you let it get in the hands of a suspect, and you don't interdict that suspect. In this case we had cooperators at the gun stores, so they're acting as agents of the government. So it doesn't matter if those guns came out of an ATF prop vault or——

Mr. MEEHAN. Thank you.

Agent Newell, is that what you meant when you said that if ATF puts evidence into the hands of the gun—or into the hands of a suspect, there's a distinction somehow between a straw purchaser getting it or ATF putting it? Please explain to me what you talk—what you meant by the distinction of ATF putting it in the hands of a suspect.

Mr. NEWELL. The distinction for me, Congressman, is that it's ATF actually putting evidence or some sort of prop firearm in the hands of a suspect.

Mr. MEEHAN. So that's a distinction from a straw purchaser who goes and under your observation?

Mr. NEWELL. In that aspect, yes, sir, it is.

Mr. MEEHAN. So you're suggesting here that the distinction is because you did not put the hand—the gun in the hands of the purchaser here, that somehow there's a distinction from allowing a gun to walk?

Mr. NEWELL. Well, Congressman, I disagree with something Mr. Canino just said regarding the fact that the FFLs were acting as agents of the government. My recollection of this case, two FFLs in particular were clearly instructed as to follow the letter of the law, to abide by the rules and regulations.

Mr. MEEHAN. Let's move on because that's a distinction. The strategy. You were asked a specific question who defined the strategy for Fast and Furious?

Mr. NEWELL. Well, a case like Fast and Furious goes through several levels of approval, sir.

Mr. MEEHAN. Who originated the strategy for Fast and Furious?

Mr. NEWELL. I believe it was at the street level.

Mr. MEEHAN. Tell me who the person is who created the strategy for Fast and Furious? You are the special agent in charge of your area. It emanated from your district.

Mr. NEWELL. Right.

Mr. MEEHAN. Who originated the concept for Fast and Furious?

Mr. NEWELL. Sir, it's not one person who did that, it was a group of individuals who looked at the set of facts in this case and determined that this was the best strategy to follow to take——

Mr. MEEHAN. Where did it start? Where does the stream start?

Mr. NEWELL. It starts——

Mr. MEEHAN. Tell me who participated in that conclusion.

Mr. NEWELL. Well, it's several individuals. It was a group supervisor, assistant special agent in charge, myself and individuals in headquarters.

Mr. MEEHAN. Okay. So there were a number of people who were very learned in this process. Now, you testified here today earlier no part in the strategy to allow guns to be taken to Mexico. It was no part in the strategy to allow guns to be taken to Mexico; is that right?

Mr. NEWELL. To knowingly allow guns to go to Mexico, yes.

Mr. MEEHAN. To knowingly allow guns to go to Mexico.

Mr. NEWELL. Sir, in this case we did everything. We had seizures in this case. When we had evidence——

Mr. MEEHAN. I asked you a specific question. I said that there was no part in the strategy to allow guns to go to Mexico; is that accurate?

Mr. NEWELL. Yes, sir.

Mr. MEEHAN. Would Mr. McMahon have participated in any way in the development of this policy or this the Fast and Furious strategy?

Mr. NEWELL. I know he was aware of it, yes.

Mr. MEEHAN. He was aware of it.

Mr. McMahon, you testified a plaza boss. He has $70,000, he wants $70,000 worth of guns. What's a plaza boss?

Mr. MCMAHON. It's someone who controls an area for a cartel.

Mr. MEEHAN. And where is that plaza boss?

Mr. MCMAHON. In Mexico.

Mr. MEEHAN. So you testified that part of the theory here, your words, is the plaza boss expects $70,000 worth of weapons.

Mr. MCMAHON. Correct.

Mr. MEEHAN. Mr. Newell, the strategy Mr. McMahon identifies that you expect, you understand that he expects $70,000 worth of weapons, where does that get in that there was no part in the strategy to allow guns to be taken to Mexico?

Mr. NEWELL. Yes, sir. We still—during the beginning parts of this case, we did not know who the plaza boss was. We didn't know who——

Mr. MEEHAN. That's not my question about who the plaza boss was. The question is is there a plaza boss? Agent McMahon just said he's in Mexico.

Mr. NEWELL. Right.

Mr. MEEHAN. And the plaza boss expects $70,000 worth of guns. Now you're saying no part of this strategy was allow the guns to go into Mexico. Who is right here?

Mr. NEWELL. Sir, the strategy wasn't to allow guns to go to Mexico.

Mr. MEEHAN. But what did Agent McMahon just say? This was an OCDETF case.

Mr. NEWELL. Yes.

Mr. MEEHAN. Who else participated in this, in the form of this going up the chain——

Chairman ISSA. I ask unanimous consent the gentleman be allowed to have another 30 seconds.

Mr. MEEHAN. Thank you.

Was this an OCDETF case?

Mr. NEWELL. Yes, sir, it was.

Mr. MEEHAN. Okay. That implies that at a certain point in time, it moves beyond your agency; does it not?

Mr. NEWELL. Yes, sir.

Mr. MEEHAN. What does that mean with regard to OCDETF? What kind of other participants were there as part of OCDETF?

Mr. NEWELL. Well, there are other agencies who are involved in this.

Mr. MEEHAN. Other agencies. What other agencies were involved in this?

Mr. NEWELL. In this investigation, they were full partners in this case, was the Immigration and Customs Enforcement, now known as Homeland Security Investigations; we had Internal Revenue Service; and we had assistance to some level from DEA.

Mr. MEEHAN. So are you saying DEA, IRS and ICE all knew about this program to participate in the OCDETF?

Mr. NEWELL. They participated in the investigation, yes.

Mr. MEEHAN. In the investigation. Were they aware that guns were being walked to Mexico?

Mr. NEWELL. Sir, again, I'm assuming that they—I mean, I know they would know of the strategy.

Mr. MEEHAN. They were aware of the strategy?

Mr. NEWELL. Yes, sir.

Mr. MEEHAN. Which included what Special Agent McMahon talked about, allowing $70,000 worth of guns to go to the plaza boss?

Mr. MCMAHON. Sir, I never said that we were allowing $70,000 worth of guns to go on.

Mr. MEEHAN. You said it was the expectation.

Mr. MCMAHON. I was giving a scenario of how it works. There's a plaza boss in Mexico that's requiring $70,000 worth of guns. So if he's not getting it from the network we're investigating, he's getting it from somewhere else. It wasn't—the $70,000 example I gave you wasn't specific to this investigation, it was an over-real generalization of how trafficking to Mexico works.

Mr. MEEHAN. But we're talking about plaza bosses, we're talking about plaza bosses in Mexico.

Chairman ISSA. The gentleman's time has expired. We are going to have a second round in just a moment.

The gentlelady from New York Ms. Buerkle.

Ms. BUERKLE. Thank you, Mr. Chairman.

I'm uncertain as to where to start here because of what I've heard. I think that I'll start with Mr. Canino.

Mr. Canino, your comments were that it's inconceivable to let guns go, it's not the way the ATF does things. So in your experience is what happened in Operation Fast and Furious an aberration from the usual way that ATF does business?

Mr. CANINO. This is the first time I've ever heard of anything like this in 20—I start my 22nd year on Friday. This is the first time I've heard anything like this.

Ms. BUERKLE. And during the course of this operation, were you advised that there was going to be—at one point did you become aware that there was going to be a different method of operation?

Mr. CANINO. Ma'am, I need to put this in context. I didn't—the first time I ever heard of someone accusing ATF agents of actually watching suspected gun traffickers just drive away was when Special Agent Dodson was on CBS. I had—and I didn't believe them, and I was very vocal about that. I didn't become aware until it started coming out little by little, talking to fellow agents. And then mid-April I saw some documents, and that convinced me that what Special Agent Dodson was alleging was, in fact, correct.

Ms. BUERKLE. Thank you.

And the other special agents that are here, Mr. Gil, Mr. Wall, Mr. Leadmon, in your experience is this the first time you've ever seen ATF operate this way?

Mr. GIL. Again, I recently retired. And after—going on 23-plus years. It's inconceivable. And again, I didn't believe it even after seeing Mr. Dodson as well. And I still didn't believe it until after I talked with Mr. Dodson and others that then I became convinced that perhaps ATF did walk these weapons.

Ms. BUERKLE. And Mr. Wall.

Mr. WALL. As I stated in my opening remarks, yes, it's the first time I have ever seen it. And I was very skeptical. I didn't believe Mr. Dodson at all.

Ms. BUERKLE. And Mr. Leadmon.

Mr. LEADMON. Ma'am, part of my duties and functions is to look at the southwest border cases, all of them, and this is the first one I've seen.

I would like to add something that the panel was asking earlier. You asked when we first became aware that Mr. Acosta, right, was involved as the leader of the straw purchasing ring and some of the other issues as to Mr. Patino. That was in 2009, and it was early on. I briefed it to my senior directors January 2010. And we know this, and one of the driving forces behind how we know that these were going to Mexico and there were Mexico people involved is because our other law enforcement partners provided us with information, specific information, that allowed us to know exactly what was going on and to what cartel it was going to. This was not a mystery. We knew this in December 2009. I briefed it in 2010, January.

Ms. BUERKLE. Thank you, sir.

So, Special Agent Newell and Special Agent McMahon, we'll get to you because you're his supervisor. So at some point, based on the IG's report and DOJ, they said, we're going to try something different here. I'm assuming, because that's the way things work in government, and maybe I'm wrong, that someone said, we need to have this operation, and we're going to make a determination that for the first time ATF is going to conduct business this way, we're going to let these guns walk. Now, maybe he didn't say it, but in essence that's really what happened, because this is a different way of conducting business with ATF.

Where would that plan have come from? Somebody—and I know you said you sat down with this group, Mr. Newell, but somebody higher up than you made a determination that for the first time ATF was going to run this. We've heard from this panel, we've heard from the panel prior to today that this is a complete aberration from the way ATF has done business. Where would that have come from?

Mr. NEWELL. Well, ma'am, in putting a strategy together for this case, the strategy came from several places. The Department of Justice issued originally in a draft in 2009, October 2009, and January 2010 about how to combat southwest border drug trafficking by Mexican drug cartels, and one of them dealt with firearms trafficking, which said through use of the OCDETF colocated strike forces, mere interdiction is not the answer; you have to go after the structure of the organization of the—whatever it be, firearms, human, drug-trafficking organization to make the biggest impact.

Ms. BUERKLE. Okay. And who would that memo have come from?

Mr. NEWELL. I do believe that memo came down from the Deputy Attorney General's Office.

Ms. BUERKLE. And then—so this is now we're going to change strategy. This is going to be a different way to conduct an operation. So you get your directive from them. And then these groups that you talked about, you sat down and you came up with a plan, or did that plan come from up on high?

Mr. NEWELL. The plan figured into—or the memo figured into how we were going to address this. When we first looked at it in November 2009, it was already a very active, prolific firearms-trafficking organization, as Mr. McMahon testified. In my 23 years we have never seen an organization that was this prolific in buying firearms in such a short period of time. So we felt that at that time, in conjunction with the OCDETF Strike Force where this Group VII was located, that the best way to attack this organization was through the use of a multiagency, conspiratorial-type investigation would dismantle the whole organization.

Chairman ISSA. The gentlelady's time is expired.

We now go to the gentleman from Michigan Mr. Amash.

Mr. AMASH. Thank you, Mr. Chairman. I'm going to yield my time to Mr. Gowdy.

Mr. GOWDY. I thank the gentleman from Michigan.

Mr. Leadmon, for those who are perhaps watching and not familiar with the full panoply of investigative techniques, surveillance is a tried and true investigative technique, correct?

Mr. LEADMON. Yes, sir.

Mr. GOWDY. What about consensual encounters where you just do a knock and talk, where you walk up to somebody and ask them? There's a reason Dostoevsky wrote Crime and Punishment, there's a reason Edgar Allen Poe wrote The Tell-Tale Heart. Sometimes people confess, don't they?

Mr. LEADMON. Yes, sir. There's several tools in the toolbox, especially when you're faced with the fact that we know that these weapons are going to be used in such carnage down in Mexico and the United States. We should have pulled every tool out of that toolbox, not just to make our case. Our case should not have been the priority here. The stopping the flow of those firearms should

have been the number one priority. And we should have reached into that toolbox, we should have conducted interviews, or we should have done interviews to surrounding people. We should have tracked these weapons better. We should have followed everything by the letter to stop them. I mean, just where do we stop with the number of guns; 1, 5, 10?

Mr. GOWDY. Have you ever heard tell of a law enforcement officer stopping someone for speeding when really they may have had another purpose in mind?

Mr. LEADMON. I have heard that——

Mr. GOWDY. It happens from time to time, doesn't it? Crossing the yellow line?

Mr. LEADMON. Sooner or later you are going to make a mistake.

Mr. GOWDY. Exactly. And when you do a lawful, nonpretextual car stop, it also opens up a full panoply of other search options, right, like searching the vehicle or a pat-down?

Mr. LEADMON. Yes.

Mr. GOWDY. How about a proffer? Is that in your toolbox to go to a U.S. attorney and say, I would like to proffer this person, I would like to send them a grand jury subpoena?

Mr. LEADMON. Correct.

Mr. GOWDY. It's the same way you conduct every other investigation other than this one, right?

Mr. LEADMON. Correct.

Mr. GOWDY. From shoplifting to murder, we do them all the same way except this one?

Mr. LEADMON. Correct.

Mr. GOWDY. Special Agent Newell, I happen to think this was ill-conceived from its inception. You have testified repeatedly that the purpose was to destroy and dismantle drug cartels. So I'm going to ask you again, how would this ever have succeeded? What was your purpose? How would we have known, hey, this was a great investigation, it succeeded?

Mr. NEWELL. Sir, you said to disrupt a dug cartel. The purpose of this investigation was to disrupt and dismantle a firearms-trafficking organization that was feeding firearms——

Mr. GOWDY. In Mexico.

Mr. NEWELL. In the United States. A firearms trafficking organization in the United States. Not only the straw purchasers; the middlemen, the transporters, the financiers.

Mr. GOWDY. Well, then, when the guns were going into Mexico, you should have known that this was an abject failure, because that's not what you wanted, right?

Mr. NEWELL. Absolutely. We didn't want any guns.

Mr. GOWDY. So when you found out the first gun went into Mexico, why did you not abort the investigation?

Mr. NEWELL. Because we were still putting the facts together to be able to convict all——

Mr. GOWDY. When is the very first time you knew or should have known that firearms were going to Mexico?

Mr. NEWELL. Well, I believe it was when I got the—when we got the first traces, I was advised of the first traces, which I believe was November 2009.

Mr. GOWDY. 2009. And when did you abort the investigation?

Mr. NEWELL. The investigation is ongoing, sir.

Mr. GOWDY. Right. That's my point. So you knew the weapons were going to Mexico?

Mr. NEWELL. Right.

Mr. GOWDY. Were you at some point going to let Special Agent Canino know about it?

Mr. NEWELL. Mr. Canino knew about the investigation.

Mr. GOWDY. He knew that weapons were going into Mexico?

Mr. NEWELL. Well, absolutely, yes.

Mr. GOWDY. When were you going to let your Mexican counterparts know about it?

Mr. NEWELL. I'm assuming they knew that firearms—because I have—you know, sir, one of the issues about that is there's only one field division in this country, only one, that has a PGR representative in it. That's the Mexican Department of Justice. In all my years of working with Mexico—I spent 4 years in Bogota, Colombia, representing ATF in South America. I am very, very, very key on the fact that we need to share information with our foreign law enforcement partners.

Mr. GOWDY. Well, you testified earlier that you were going to turn the information over to Mexican prosecutors and let them prosecute. Because I asked you were you also going to allow U.S. law enforcement officers to be extradited to Mexico for breaking their law, and you said no. So my question to you is this: How in the world are you going to get our brothers and sisters in law enforcement to trust—why would you trust the prosecution if you don't trust them during the investigation?

Mr. NEWELL. Sir, to answer your question about the drug cartel, the kingpin, or—in your words, the kingpin that we're going to get the guns in Mexico, we did not have information until late in this case, an ongoing part of this case, who that individual was. And I invited with Mr. Canino, we invited in December 2010, as well as in January, Mexican prosecutors to come in. And I don't think that's ever been done before. And I'm the one that requested it.

Mr. GOWDY. Did you debrief them on Fast and Furious?

Mr. NEWELL. Yes.

Mr. GOWDY. Did you tell them the guns were going into Mexico?

Mr. NEWELL. Well, yes.

Mr. GOWDY. You told them when?

Mr. NEWELL. Well, my PGR representative that I have in my office who has been there for 2 years knew about this case, not in specifics.

Mr. GOWDY. When the first gun showed up in Mexico that you knew was from Phoenix, the first one that was connected to this showed up in Mexico, did you go interview the straw purchaser?

Mr. NEWELL. No, sir, we did not.

Mr. GOWDY. Why not?

Mr. NEWELL. Because, again, our strategy was that we, knowing from years of experience, you take off one straw purchaser, you're not having an effect on the greater organization, which is at that point—in November 2009 you have to realize it wasn't——

Mr. GOWDY. Have you ever flipped a cooperating witness before?

Mr. NEWELL. Yes, I have.

Mr. GOWDY. How do you do it without asking them? How do you do it without interviewing him?

Mr. NEWELL. It depends on what your goals in investigation are.

Mr. GOWDY. Your goal is to bring down an organization. It's very compelling testimony to have someone from within the organization testify against his comrades, right?

Mr. NEWELL. Yes, sir.

Mr. GOWDY. So why didn't you go—why didn't you approach him?

Mr. NEWELL. Approach who, sir, the one straw purchaser?

Mr. GOWDY. Yes, the straw purchaser.

Mr. NEWELL. Again, the goal, sir, in this case was to take out the whole organization. We felt that by just trying to flip one straw purchaser, if he, in fact, did flip, it would not affect the overall goal.

Chairman ISSA. The gentleman's time is expired. We'll have a second round.

We now go to the gentleman from Idaho Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman.

Special Agent Canino, I just think I just heard Special Agent Newell say that you knew about this gun walking. Can you please——

Mr. CANINO. Yes, sir. I want to make it perfectly clear to you, the American people, the Mexican Government, my family, my friends, at no time ever did I know that ATF agents were following known suspected gun traffickers, one of which bought 700 guns, and we knew about his guns showing up in Mexico 6 weeks after we opened up that investigation—never, ever would I imagine that we were letting that happen. We have 4,000 investigations, plus or minus, with a Mexico-U.S. nexus. There are guns coming in. That's trafficking, that guns are coming into Mexico. I had no clue that we were allowing these guys to operate like this.

Like Mr. Gowdy said, there was no interdiction to start any case. You have to—you have a toolbox. We have classes. Jose Wall teaches those trafficking classes. I've been to them. It's like building a house. You start from the bottom, and you try to work your way up, you know. At one point you're only going to reach so far. And then you come in and you have a meeting and you say, okay, how can we advance this? You meet with the U.S. attorney. From what I see here, none of this was done, or if it was, it wasn't very effective.

Mr. LABRADOR. So when did you first realize that the gun-walking allegations were true?

Mr. CANINO. April.

Mr. LABRADOR. Of this year?

Mr. CANINO. Yes. April—I mean, I was starting to lean that way, and then I was at ATF bureau headquarters in April for a meeting, and I sat down with Mr. Leadmon, and he convinced me.

Mr. LABRADOR. Did you come across any specific evidence to prove that ATF had taken part in these actions?

Mr. CANINO. One more time. Sorry.

Mr. LABRADOR. Did you come across any specific evidence to prove that ATF had taken part in these actions?

Mr. CANINO. Well, from the totality of the circumstances, and then speaking with different agents and speaking with Mr. Leadmon, yeah. And, you know, the guns showing up in Mexico.

Mr. LABRADOR. Did you review any documents or anything?

Mr. CANINO. You know, sir, when I visited Mr. Leadmon, I saw—I took a look at the management log, and if I read it correctly, there are three instances in the first two pages where we walk away from guns. At that point I was so disgusted, I didn't even want to look at the case file anymore.

Mr. LABRADOR. And when was that?

Mr. CANINO. That was in mid-April or so of this year.

Mr. LABRADOR. Why were you so upset with this information?

Mr. CANINO. Because it goes against everything we're taught. I mean, like I was explaining earlier, you don't do that. We're not taught to do that from the first day we walk into the academy all the way until you leave this job, like Darren said. It's not a recognized investigative technique. This is not a special case, this is just a trafficking case that we do. This is what we do, you know, amongst other things. But trafficking is what we do, especially on the southwest border. This was—this wasn't a one of, this wasn't a who done it. This was, you know—this was a ground ball.

Mr. LABRADOR. Just a basic case?

Mr. CANINO. Yeah.

Mr. LABRADOR. What you do every day?

Mr. CANINO. Exactly.

Mr. LABRADOR. Special Agent Newell, do you know who Kevin O'Reilly is?

Mr. NEWELL. Yes, sir.

Mr. LABRADOR. What's the nature of your relationship with him?

Mr. NEWELL. I've known Kevin for, I would say, probably 10 or 12 years.

Mr. LABRADOR. How often do you communicate with him?

Mr. NEWELL. I haven't communicated with him in a while, but probably three or four times a year, something like that, or maybe more depending on him reaching out to me.

Mr. LABRADOR. Isn't it a little bit unusual for a special agent in charge of an ATF field division to have direct email contact with the national security staff at the White House?

Mr. NEWELL. He's a friend of mine.

Mr. LABRADOR. How many times did you talk to him about this case?

Mr. NEWELL. The specifics of this case? I don't think I—I don't think I had one specific conversation with him about the specifics of this case.

Mr. LABRADOR. Who——

Chairman ISSA. Would the gentleman allow me to help him a little? Not that you need it. But could you take the word "specific" out and answer the general, did you talk to him about this case?

Mr. NEWELL. I might have talked to him about this case, yes, sir.

Mr. LABRADOR. Do you know when that was?

Mr. NEWELL. I was probably—as I recall, I think it was during the summer. It might have been the summer or early fall of 2010.

Mr. LABRADOR. So, Special Agent McMahon, you took responsibility this morning here for the actions of the agency, and I appre-

ciate that. Who at the highest levels—I can't imagine that this is something that you decided to do on your own. Who did you communicate with at the highest levels about this case?

Mr. MCMAHON. I communicated to my chain of command within ATF. We were all very much made aware of this investigation and what was going on.

Mr. LABRADOR. And who was aware at—who was aware that this investigation was occurring and that guns were being walked to Mexico?

Chairman ISSA. You can answer that question. The time has expired, but go ahead.

Mr. MCMAHON. I mean, no one was aware that guns were walking at my level or above me. And again, we're getting caught up in this whole definition of "walking." But even given whatever the definitions are, no one from my level up knew of any gun walking.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Florida Mr. Ross for 5 minutes.

Mr. ROSS. Thank you, Mr. Chairman.

Mr. McMahon, I had an opportunity to read your opening statement. I apologize, I have been in and out of here.

First of all, appreciate your service. And I understand your remorse with what is going on here. I have to talk to you a little bit about your interview that you had, your transcribed interview. And I would like to review some of that with you.

In fact, if I could get slide six brought up. This is a transcript of your interview that you had for the committee when you were asked whether you read the wiretap applications for the Fast and Furious. And you responded, "No, I did not." Do you recall that question and that answer?

Mr. MCMAHON. I do.

Mr. ROSS. Okay. Then you were asked if it was your job to sign off on the wiretap applications, you stated, "No, I never signed off on a memo for a wiretap application."

Mr. MCMAHON. That is correct.

Mr. ROSS. That was your statement, and it is still today?

Mr. MCMAHON. Yes, it is.

Mr. ROSS. Slide seven. Could we see slide seven? Okay.

This is a memorandum dated February 5, 2005, addressed to you from the group supervisor of Phoenix Group VII. And the first line states, This memorandum serves to request authorization to initiate a Title III cellular telephone intercept. It is addressed to you. Do you recall that memorandum?

Mr. MCMAHON. I recall seeing it just recently, yes.

Mr. ROSS. Just recently? You don't recall seeing it before?

Mr. MCMAHON. I do not.

Mr. ROSS. At all.

Mr. MCMAHON. I do not.

Mr. ROSS. Okay.

Slide eight. If we could get slide eight up there.

And this is an email from William Newell to you on February 5, 2010. Attached to this email was an email—was a memo that we just saw in the past slide. And the email states that attached to the coverup memo requesting authorization to conduct a T-III

intercept on the main suspect of the OCDETF Strike Force firearms trafficking case out of the Phoenix entitled, "The Fast and Furious." I am FedExing that to you. Do you recall receiving that email?

Mr. MCMAHON. I don't recall, but I mean, I obviously received that email, yes.

Mr. ROSS. Okay.

Mr. MCMAHON. I don't specifically recall receiving this email, no.

Mr. ROSS. Do you recall seeing the attachment that was attached to it?

Mr. MCMAHON. No, I do not. And I think our email records show they weren't able to scan the attachment because it was so large, and they said they were going to FedEx it.

Mr. ROSS. Who said that to you?

Mr. MCMAHON. I think it says it here in this email.

Mr. ROSS. Told you it was too large?

Mr. MCMAHON. That is what I read here. It says, I could not scan the actual affidavit due to its size, so I am FedExing it. So scanning it would mean attach it to this email.

Mr. ROSS. Now, this is a request for a wiretap. Yeah. This is a request for a wiretap that is attached to the email.

Mr. MCMAHON. A wiretap is actually an affidavit that is prepared at the U.S. Attorney's office.

Mr. ROSS. Okay.

So let's go to slide nine then. Okay. This is an affidavit prepared by Special Agent Hope MacAllister in support of an application for authorization to intercept wire communications. It is attached for your review.

Now, the signature block is for Mark R. Chait, but there is someone else's signature there. Do you recognize that signature?

Mr. MCMAHON. I do.

Mr. ROSS. Whose signature is that?

Mr. MCMAHON. That is my signature.

Mr. ROSS. Okay. So you were aware of this request for a wiretap.

Mr. MCMAHON. Absolutely.

Mr. ROSS. Okay. And having seen these documents now, is there anything you—would you like to clarify any of your testimony or your interview at all?

Mr. MCMAHON. Not at all, no. I know that we forwarded the application for the wiretap through the legal counsel process to get their approval before it went back to the Phoenix U.S. Attorney's office and then on to the OEO in Main Justice.

Mr. ROSS. Okay. But you just testified just minutes ago that you weren't—don't recall ever requesting authorization for the T-III intercept.

Mr. MCMAHON. No, I said that I never recall receiving this request. I did get the actual application for the wire—many wiretaps, and then they were forwarded on.

Mr. ROSS. And this is one of those requests for the wiretap that you authorized, the affidavit.

Mr. MCMAHON. The last slide that you put up that had my signature for Mark Chait——

Mr. ROSS. Yes.

Mr. MCMAHON [continuing]. That would transmit the actual application for wiretap, yes.

Mr. ROSS. Okay. Now, in your interview, were you asked about this?

Mr. MCMAHON. Not this specifically, no.

Mr. ROSS. Okay. Did you volunteer it?

Mr. MCMAHON. Not that I recall, no.

Mr. ROSS. Okay. Any reason why not?

Mr. MCMAHON. I am trying to figure out what I need to volunteer. I think I did tell the staff when I was interviewed that I don't recall—I did recall receiving applications.

Mr. ROSS. You downplayed to Mr. Kumar your knowledge about any of this.

Mr. MCMAHON. I downplayed to Mr. Kumar my knowledge about this?

Mr. ROSS. Yes. Didn't you?

Mr. MCMAHON. No, that is not correct. I told Dan Kumar everything I knew about this case.

Mr. ROSS. When was that? In March 2010?

Mr. MCMAHON. It was throughout this investigation. I think Dan sat in on some of the briefings. We discussed it.

Mr. ROSS. I see my time has expired.

Chairman ISSA. I ask the gentleman have an additional 30 seconds.

Would the gentleman yield that 30 seconds?

Mr. ROSS. Yes, sir.

Chairman ISSA. So if I am to understand, just as a lay person, I am one of the nonlawyers up here, so that is why I introduced the qualified people early on. But as a lay person, it looks to me like you had an intimate part in the wiretap request. Your signature was part of a request process. And yet when we asked you about your being involved in them, you did not volunteer to tell us about this part. You simply relied on you didn't actually sign the affidavit. Is that what you are saying? The truth was you didn't sign the affidavit, even though you signed this document and saw other documents and were sent other documents that you may not remember?

Mr. MCMAHON. I signed this document that transmitted the application for the wiretap to our counsel's office for them to review.

Chairman ISSA. But you never looked at it?

Mr. MCMAHON. No, I did not. Again, I think I said earlier on mistakes were made. And one of the first questions you asked me, sir, is what mistakes. And that mistake is not doing a thorough enough review of the documents that were coming across my desk. I accept full responsibility for that.

Chairman ISSA. I thank the gentleman.

Would the gentlelady from New York like to have a round of questions?

Mrs. MALONEY. First of all——

Chairman ISSA. The gentlelady is recognized.

Mrs. MALONEY. Thank you very much.

And I thank you and the ranking member for holding this hearing, and all of you for your service to our country. We appreciate it.

We have had a series of hearings. I regret I was also in a hearing that we are having in Financial Services that I am ranking member on it, so I had to be there. So I wasn't here for most of it. But Mr. Cummings is going to brief me completely on everything that happened.

But in one of our prior hearings, we had Special Agents that basically testified that the enforcement was not strong enough, that that was one of the problems on the border, that there wasn't an express law against trafficking in guns. And that a lot of times the penalties were, to use the terms of one of the agents, he called them toothless, that you really couldn't do anything with it.

And they said that the penalties, even in trafficking guns and very serious offenses, and straw purchases and all kinds of things, really ended up in nothing more than probation. So, therefore, they didn't even feel like pursuing convictions because the penalties were so lax. And it was inadequate either to deter illegal purchases, and it wasn't strong enough to encourage the cooperation of suspects when they were cooperating. They had to have stronger laws.

So I put in a bill with other members of this committee to make trafficking in guns a Federal crime. And I would like to ask Special Agent McMahon and Newell whether or not you think this would help in combating violence, drug trafficking, illegal gun trafficking at the border.

Mr. MCMAHON. Currently, obviously, we have some laws that are in place that we are using and we are enforcing to the best of our ability. I think any extra tool is going to be helpful to us. I think when it gets more specific, as I think some of the legislation that has been presented would be more specific, would make things obviously easier.

Mrs. MALONEY. Do you think it would disrupt the flow of guns on the border? Do you think it would help in that way?

Mr. MCMAHON. I think a tool like that would help, yes.

Mrs. MALONEY. And Newell, would you also like to testify on it?

Mr. NEWELL. Yes, ma'am, I believe, as a matter of fact, the Congressional Research Service in July 2009 published a report which said, I believe the title of it was "Gun Trafficking in the Southwest Border." And in there, they talked about the need for a specific statute to address the trafficking of firearms by a group of individuals that would aid law enforcement, a statute that would aid law enforcement in being able to address the specific activity that is currently not illegal. So any tool that we would have to assist us in that obviously would be welcome.

Mrs. MALONEY. Does everyone else on the panel agree? If you disagree, would you like to express why? Does everyone agree that this would be a tool that would be helpful or——

Mr. GIL. I would somewhat disagree.

As I stated earlier, I think the lying and buying, the straw purchase is by definition itself, you are buying a weapon or purchasing a weapon or obtaining a weapon for transfer to some other third party in and of itself is trafficking. We have some personnel that give outstanding trafficking courses throughout my career, certainly in the last few years. And we provided this training to State and locals, as well as to our Federal partners. And lying and buy-

ing, straw purchasing is of itself is trafficking. And that is what we promoted during these sessions.

Now, I would agree with you that, by definition, a straw purchaser has no criminal history. Therefore, we would have to increase the penalty for those folks that are actually making the initial purchase.

Mrs. MALONEY. That is what the bill does. And I think oftentimes I listen to the people that are in the combat, that are on the streets trying to get the job done, which is our Special Agents. And in several panels, including today, they have said that a strong anti-gun-trafficking bill would help them do their jobs. So I think we should listen to them.

One of the testimonies in our last hearing, one of the agents said that they were military-type weapons, that it wasn't—no one wants to inhibit a hunter for getting a gun to go hunting with or someone to protect themselves. But these were really the type of weapons, like AK–47s, that are used in military combat. And they were training and trading in these very deadly, deadly guns. And I understand even the protective equipment has to be reinforced for military-type guns.

And the rule that was put in place to report on rifles that are being—long guns that are being sold was also, they testified, very helpful. And I would like to hear what your view is from the front lines, Mr. Newell and Mr. McMahon.

Mr. MCMAHON. We were asked that question earlier. We all agreed that the demand letter reporting the multiple sale of those rifles would be helpful for us, yes.

Mrs. MALONEY. Is there any other tool that this Congress could give you that would help you save lives? We are all for the Second Amendment for a lawful person to own a gun. But for a criminal and a drug cartel to have easy access, I think the number was 40,000 deaths last year.

Chairman ISSA. The gentlelady's time has expired. Is there a question?

Mrs. MALONEY. Yes. I just want to know if there are other tools we could give you that would help you combat on the front lines the illegal sale of guns that is leading to the violence on the border.

Mr. MCMAHON. I have testified before Congress a number of times. And it is not my place to ask. I know ATF will do whatever we can with the resources and the laws that Congress provides us.

Mrs. MALONEY. Any others?

Chairman ISSA. With that, we now go to the gentleman from Pennsylvania, Mr. Meehan.

And this is a second round, folks.

Mr. MEEHAN. Thank you, Mr. Chairman.

And Mr. Newell, I am certainly struggling to find out who knew what, when, in the form of the not only formulation of this process, but the approvals as well. So it is my understanding that this was conceptualized in November 20, 2009. Is that correct? Fast and Furious?

Mr. NEWELL. No, sir. The investigation first began in November 2009 under the name of Jacob Chambers, who at that time was identified as one of the more prolific straw purchasers. As the case progressed, and I will say that in November, about mid-November

2009, when the Special Agents started looking into what appeared, obviously, to be some connected activity in terms of straw purchases, she did a phenomenal job in putting a bunch of pieces to the puzzle together, if you will, and noticed that one individual by the name of Jacob Chambers seemed to be at that time one of the more prolific straw purchasers.

At that time, I think when she put all the pieces together, she knew at that time it was something like 350 guns that had been purchased by this group. As the case progressed through December and then early January, we were working out of the OCDETF strike force, I think she realized——

Mr. MEEHAN. When did you begin the process of having this be an OCDETF strike force case?

Mr. NEWELL. In mid-January, yes.

Mr. MEEHAN. In mid-January 2010?

Mr. NEWELL. We submitted it as an OCDETF proposal in January 2010, yes.

Mr. MEEHAN. Okay, 2010. Okay.

Mr. Leadmon, am I correct from your testimony, I just heard you make a comment with respect to you are an intelligence analyst, among other things. Isn't that correct? One of the things that you do is try to take a global perspective on how guns may be moving in the United States and Mexico and anywhere?

Mr. LEADMON. Yes, sir.

Mr. MEEHAN. Okay. So part of this is to follow the flow of guns. Your testimony was that within 6 weeks of the beginning of this, other law enforcement—yeah, other law enforcement providers provided us with information in December 2009, because you were concerned about guns that were in Mexico being found in Mexico.

So, in essence, December 2009, prior to really the beginning of Fast and Furious, you as the analyst are already identifying for people that guns are being trafficked into Mexico that you are concerned are coming from Phoenix.

Mr. LEADMON. Yes, sir. Let me kind of explain that a little bit and bring things in perspective. In November 20, 2009, there was an interdiction by the Mexican authorities in which there was approximately 41, 42 weapons, firearms recovered. The information we got through the assistance of ICE and so forth down there, they covered the interviews——

Mr. MEEHAN. Was this in November 2009, 42 guns were seized?

Mr. LEADMON. Yes.

Mr. MEEHAN. So 42 guns were seized in Mexico.

Mr. LEADMON. Correct.

Mr. MEEHAN. And you are just beginning this OCDETF in January, which means you are moving up the chain and getting approvals from other people beyond you, Special Agent Newell, beyond you, Mr. McMahon. You are getting approvals to pursue this. You know 40 guns have already left Phoenix and gone into Mexico at that point in time. Mr. Newell.

Mr. NEWELL. You are correct.

Mr. MEEHAN. I am correct that in January, when you begin this, you were aware that those guns were trafficked from Phoenix into Mexico.

Mr. NEWELL. Yes, sir. To be clear on that seizure, I believe Mr. Leadmon has better information. I think it was seven of those guns were Fast and Furious guns.

Mr. LEADMON. Thirty-seven.

Mr. NEWELL. Thirty-seven of those guns were Fast and Furious guns. And we did submit in mid-January, for OCDETF approval, of the Fast and Furious plan.

Mr. MEEHAN. What was the plan then? Because you knew at this point in time—before you testified that there was no part of any plan that guns would be known to be going to Mexico. Now you are telling me that you are part of bringing in OCDETF because now you have confirmed that guns are going to Mexico and things are going well. So, at some point in time, I am trying to get clear when it was that you are now participating in helping to get authority from up higher for a broader investigation. OCDETF, as you said, is multiple agencies that are participating in this.

Mr. NEWELL. Yes, sir, like I said, in mid-January 2010, we submitted for OCDETF approval the investigation, which eventually was approved by the Southwest Region OCDETF Office in Houston, I believe, the first week of February.

Mr. MEEHAN. You testified before OCDETF, right here today, including in this OCDETF from DOJ, the Deputy Attorney General.

Mr. NEWELL. Yes, sir.

Mr. MEEHAN. Those are your words. At what point in time are you aware that the Deputy Attorney General became aware of any aspect of this investigation?

Mr. NEWELL. I am not aware at what time he became aware, sir.

Mr. MEEHAN. When do you believe that he became aware?

Mr. NEWELL. I am not sure. I believe it was earlier this year, but I am not sure.

Mr. MEEHAN. But you stated that OCDETF from the beginning, these are your words, as this was being conceived, this is your testimony today, it was not just—I asked you where this came from.

Mr. NEWELL. Right.

Mr. MEEHAN. And then in your subsequent testimony, you identified that this is from DOJ, the Deputy Attorney General. This is the conception phase, Mr. Newell, the conception phase. Your words. The Deputy Attorney General. So when did he know it? What did he know?

Mr. NEWELL. Sir, what I mentioned about the Deputy Attorney General was that, in October 2009, a draft, and then eventually, in January 2010, a formalized strategy on the DOJ strategy to combat Southwest border violence, drug—Mexican drug cartel, Southwest border violence came out, which highlighted, among other things, how to attack different levels of criminality by the Mexican drug cartels, be it firearms, be it drugs, be it full cast smuggling.

When it came to firearms, there was a strategy outlined there which said, you know, mere interdiction is not the only solution. You know, working with co-located OCDETF strike force, it is imperative that we attack the infrastructure, and the command and control infrastructure of these organizations to have a lasting impact. That's not verbatim, but it is something along those lines.

Mr. GOWDY [presiding]. The gentleman's time has expired, the distinguished former U.S. Attorney.

At this point, the chair would recognized the distinguished gentleman from Maryland, the ranking member of the full committee, Mr. Cummings.

Mr. CUMMINGS. Special Agent Newell, I want to pick up on the last questioning. You testified that Fast and Furious originated with street agents and local supervisors of Group VII. Do you remember saying that?

Mr. NEWELL. Yes, sir.

Mr. CUMMINGS. And so what did you mean by that? I mean—go ahead. Because we have a lot of questions as to how this thing came about. And that seems to be leading us somewhere. And I just want to see where we are going.

Mr. NEWELL. Yes, sir. Agents in the field, in pursuit of evidence in further of some investigation, some sort of criminality, be it a firearms case, an explosives case, an arson case, will open up an investigation, with their supervisor's concurrence, into whatever they believe to be, you know, some sort of criminality by one or more individuals. That's how a case is initiated, and that's how this case was initiated. It was initiated under the name of Jacob Chambers, et al.

Mr. CUMMINGS. Okay.

And Special Agent Canino, you testified that you are a senior trainer and instructor for ATF agents, but have never heard of noninterdiction, or gun walking, as an approved tactic. It is just not done?

Mr. CANINO. No, sir. I've never heard of it.

Mr. CUMMINGS. And Mr. McMahon, did anyone at the ATF headquarters instruct Phoenix Group VII to conduct the investigation in the manner that we know it ended up being conducted in and to not interdict weapons of known straw purchasers?

Mr. MCMAHON. No, sir, we did not.

Mr. CUMMINGS. That's a fact?

Mr. MCMAHON. Yes, sir.

Mr. CUMMINGS. So this was not a new DOJ policy?

Mr. MCMAHON. No, sir, it was not a new DOJ policy. I think what we got to realize is guns to Mexico from the United States has been a problem for an awful long time. We have been trying to make an impact, and it is something that we are continuing to try to do.

Mr. CUMMINGS. Now, going back to you, Special Agent Newell, you know, if we listen to all the testimony, this is what it boils down to. I listen to your definition of walking, and you're basically talking about a commission, and it sounds like we have an instance here of omission; in other words, failing to stop guns from going through. So but there is something bigger than that. And that is, it seems like we need to balance, knowing guns are going into Mexico, and this grand plan to try to get to the cartel, and the whole idea if we omit—you know, making sure that these guns don't go in—in other words, we let them go—they go in, let them go in, and stand by and watch them, where these guns end up and the harm that, when they got in the wrong hands, what they would do. Was there ever a balancing of that? Because that seems like what this boils down to.

I mean, I think that is why these agents are so upset. They are trying to figure out, you know, did anybody say, okay, this is going against the policy that we normally do? Our number one goal is to make sure weapons don't get into the hands of the wrong people. But then they are trying to get their arms around it. Was there some greater, greater cause that was worth it, the risk to see these guns actually land in the hands of the wrong people? Can you comment on that? Do you understand the question?

Mr. NEWELL. Yes, sir, I understand the question. And one of the things I said in my opening statement, sir, was that—one of the things I readily admit is that there should have been more—it was incumbent upon me that there should have been more, throughout the case, risk assessments to determine where we were in the investigation. Because as I've said before, the whole plan was to take out the whole organization. But I realize in retrospect that there were times when I should have conducted more risk assessments.

Mr. CUMMINGS. And to your fellow agents here, I think you would agree then that if you truly did a balancing situation, you probably would not have gone along with this the way things went. Is that right? In other words, the omission piece. You follow me?

Mr. NEWELL. Yes, sir.

Mr. CUMMINGS. You know what bothers me here? You got agents here who are very emotional about this. I mean, and I appreciate these are honorable people who go out there and put their lives on the line every day. And then they've got you, who is more of a supervisor type, and they use I guess some of sort of a military style operation where you're supposed to do what the folks over the top of you tell you. But then you start looking at the folks over the top of you, and you say, well, you know, what is this about? So you can comment because I am running out of time.

Mr. NEWELL. Like I said, Congressman, in my opening statement, was I realize now in retrospect there should have been more risk assessments. I realize that. I acknowledge that. And that was one of the mistakes that were made. I should have had more risk assessments throughout the case.

Mr. GOWDY. I thank the gentleman from Maryland.

Special Agent Newell, there has been some talk this morning and this afternoon about tools in the toolbox so to speak. What is the penalty for 924(c), first offense?

Mr. NEWELL. Five years, 60months.

Mr. GOWDY. What is the penalty for the second offense?

Mr. NEWELL. I believe it is 15 years.

Mr. GOWDY. What is the penalty for the third offense?

Mr. NEWELL. I believe it is 30 years.

Mr. GOWDY. And so you are quickly approaching 60 years with the 924(c)'s. And OCDETF, this was an OCDETF case, right?

Mr. NEWELL. Yes, sir.

Mr. GOWDY. What does the D stand for in OCDETF?

Mr. NEWELL. Drug.

Mr. GOWDY. And 924(c) is a Federal statute that proscribes the use of a firearm during the commission of a drug trafficking offense or other Title XVIII offenses, right?

Mr. NEWELL. Yes, sir.

Mr. GOWDY. So this had to have a drug connection, or it wouldn't have been an OCDETF case.

Mr. NEWELL. Actually, sir, I believe in 2008, 2009, the OCDETF office issued guidance which said that you can in fact—you can use the OCDETF program to attack firearms trafficking organizations because the other related crimes.

Mr. GOWDY. These were drug cartels, though, right?

Mr. NEWELL. The firearms trafficking organizations?

Mr. GOWDY. Right.

Mr. NEWELL. It was related to a drug cartel, yes, sir.

Mr. GOWDY. What is the statutory maximum for lying and buying?

Mr. NEWELL. The statutory maximum, I believe, is 5 years.

Mr. GOWDY. What is the statutory minimum for 924(e)?

Mr. NEWELL. Fifteen years.

Mr. GOWDY. What is the statutory maximum for 924(e)?

Mr. NEWELL. It can be up to life.

Mr. GOWDY. Up to life. So if you can get up to life for 924(e), you can get over 60 years in theory for 924(c)'s, and you don't think you have enough tools in the toolbox?

Mr. NEWELL. I did not say that, sir.

Mr. GOWDY. Do you believe you have enough tools in the toolbox?

Mr. NEWELL. I believe the laws that we have now, the ones that we have, that's the ones we have to use. Any additional tool would be welcomed.

Mr. GOWDY. Let me ask you this. When you begin a sentence, "You didn't get this from me," what does that mean to you?

Mr. NEWELL. This means that you didn't get it from me.

Mr. GOWDY. Well, but that's kind of a pleonasm, isn't it? Because you are getting it from them. So it's a—what do you mean by that, you didn't get this from me? I am referring to your email to Mr. O'Reilly.

Mr. NEWELL. Well, obviously, Mr. O'Reilly was a friend of mine. And it's—I shouldn't have been sending him that. Obviously, I recognize that. Being a friend.

Mr. GOWDY. What do you mean, "you didn't get this from me?" Does that mean you should not have been talking to him about it?

Mr. NEWELL. Not that I shouldn't have been talking about it. He is a friend of mine. He asked for information, and I provided it to him.

Mr. GOWDY. Well, then why wasn't it appropriate for you to give it to him? Why would you preface it by saying "you didn't get this from me?" Was it an improper communication?

Mr. NEWELL. No, it wasn't an improper communication.

Mr. GOWDY. Then why would you preface it by that?

Mr. NEWELL. He has been a friend of mine for a long time, and he asked me for information. So I gave him information that just probably is an improper use of the term or phrase.

Mr. GOWDY. Okay. I yield my remaining time to the chairman.

Chairman ISSA [presiding]. So following up on where Mr. Gowdy was, and I apologize, we are trying to keep going during the votes.

Mrs. MALONEY. Are there votes?

Chairman ISSA. Yes. You have 1 minute left. Actually, you have 36 seconds left. You sent something to somebody because they were

a friend that works in the White House on the National Security Team who requested something about a rather esoteric single investigation. Why do you think he asked you for that information that you didn't get these from me? Why do you think he asked for that information you said he didn't get from you?

Mr. NEWELL. Well, sir, the way I am reading the email now, and my recollection, he wasn't asking about a specific investigation, he was asking about our efforts during the Gunrunner impact team over the summer of——

Chairman ISSA. Why do you think he was asking?

Mr. NEWELL. If I recall that email, he was asking for information to brief his boss, I believe, in preparation for a trip to Mexico, in our efforts along, in our area along what we were doing to combat firearms trafficking and other issues.

Chairman ISSA. Okay. So this is September 2010.

Mr. NEWELL. Yes, sir.

Chairman ISSA. Wasn't it already a failed program that you had recognized needed to be shut down, that there was a 30, 60, 90-day shutdown some time ago? Wasn't this after you had been frustrated by a U.S. attorney who couldn't seem to end this thing?

Mr. NEWELL. Well, at this time, sir, I believe our case had been over at the U.S. Attorney's Office now for about probably 2 to 3 weeks.

Chairman ISSA. Okay. Let me go on another line of questioning for you, because I have these ATF agents who don't see the world the way you, Bogota, and your other experience see it. And I just want to understand the difference. You saw this as necessary. You saw that you had to make your case. You saw that 30, 60, 90 days went by even after you recognized that an awful lot of guns had walked. You may not have said you walked them, but they walked. They are in Mexico. They are distributed broadly. So 2,000 weapons are gone and you still think this program was a good program. Right?

Mr. NEWELL. Yes, sir.

Chairman ISSA. Okay. So you would do this program again?

Mr. NEWELL. As I said earlier in my opening statements, I would do several things differently if we were to do something like this again.

Chairman ISSA. But you would do a program in which you contact federally licensed gun sales organizations, tell them, in response to what they believe are suspected straw purchasers, to go ahead and install video cameras, watch these people buy, and follow them to a location and then wait to see where they turned up.

Mr. NEWELL. That would be one of the things in the risk assessments that I would seriously consider changing.

Chairman ISSA. What about the American people? You said risk assessment. You know, that sounds like the doctor telling you that you have non-Hodgkin's lymphoma and there is a zero percent chance, but we think we can operate and get you an extra month. Risk assessment.

Mrs. Maloney, Ms. Norton, they are radically against the Second Amendment. They absolutely, positively do not want anyone having any guns. They are pretty straightforward about it. They will say

they respect the Second Amendment, but they have never seen a gun limitation they don't want.

In your case, your agency has a special, special obligation. Maintain the Second Amendment, law-abiding citizens' rights to keep and bear arms; stop bad people from getting them. Now, you said you need more laws.

I am going to go to some of the other agents for a moment. Mr. Canino, if the U.S. attorney agreed to prosecute every case, or in a State where there were strong gun laws, if he or she only gave up that prosecution if the State agreed to prosecute, would we have dramatically reduced gun violence on both sides of the border if there was 100 percent prosecution of existing laws?

Mr. CANINO. Eliminate gun violence?

Chairman ISSA. No, I said greatly reduce.

Mr. CANINO. I don't think—what is the word I am looking for—I don't think Federalizing—I don't think Federalizing street crime is the answer. I think there's plenty of gun laws. Now, some of them are better than others. Some of them there's really no deterrence; there's no significant time that people are facing. That's the frustrating part.

But in my opinion, you know, the political reality is that right now there is no appetite or will for any substantive legislation. I am an ATF agent. I can't worry about that. I got to worry about catching bad guys. And I'm going to do the best can with what I've got. And that's it.

Chairman ISSA. Agent Wall, you happen to be just south of the San Diego border right now. I am just north of it. President Bush fired Carol Lam to a great extent on my request. I don't worry about the other eight U.S. attorneys that got fired. I helped get her fired because she wouldn't prosecute trafficking in human beings, and she wouldn't prosecute gun crimes. She basically said, turn them over to the State, and then walked away, knowing that in most cases, they wouldn't prosecute. Does it make a difference if you have a U.S. attorney at each of those border areas who takes trafficking in human beings, trafficking in drugs, and trafficking in guns seriously enough to basically not let anyone walk away not being prosecuted just because they might only get 6 months or a year?

Mr. WALL. Yes, sir. Unequivocally. Federal agents, police officers on the Federal task force, and agents in ATF, in my opinion, we have a tremendous effect on crime.

However, when cases don't get prosecuted, when they languish, as I said in my opening statement, and the cases are either declined or given the minimal sentence, it doesn't send a message to the people engaged in this type of activity. Take, for example, gun trafficking. When you have individuals that aren't prosecuted, however maybe there was a search warrant served and guns were taken from them, all they are going to do is tell the next guy, hey, watch out for these guys that do this because this is how I got caught. But there is no deterrent. We need to prosecute people. We need to put them in prison for this. And we need to put them there for a while.

Chairman ISSA. Special Agent Canino, in your experience, if you have somebody dead to rights, you have them with the weapons,

let's just take our 730 man, if you walked in and said, look, we've got you, we know who you've been selling to, we've got you, if you don't give us testimony right now, if you don't roll, you're not leaving here, and you're going away for a very long time; in your experience, is there a high likelihood that they're going to essentially flip on the next guy up in return for essentially the minimum charge of simply buying and lying? Is that an effective tool when you have what we had in this case? We knew that he had sold to a trafficker. We had hundreds. Any jury is going to consider him part of the trafficking charge you can bring. And we had evidence of exactly who he sold to, so we could tell him we already know who you sold to. But if you are not willing to testify, we are going to put you away with him. And by the way, people have died in Mexico. And then we are going to allow you to be extradited to Mexico. Does that technique—and I am not asking you for your techniques, I am giving you the NCIS one, because that way we are not get into sources and methods, but does that work?

Mr. CANINO. Yes, sir. I mean depending. Each individual is different. But if it is done correctly and respectfully, and you treat the person like a human being, and you honestly tell them, hey, you know, these are your choices——

Chairman ISSA. So here it is, I really don't want to hit you with the stick, but I will.

Mr. CANINO. Pretty much. I mean——

Chairman ISSA. Let me go to Mr. Leadmon for a second.

On March 5, 2010, you did a briefing at ATF headquarters on operation Fast and Furious. At that time, did you brief that over 1,000 weapons had been sold?

Mr. LEADMON. Yes, 1,026.

Chairman ISSA. Did you in that presentation brief and show the links between the straw purchasers and the Sinaloa cartel?

Mr. LEADMON. I identified the cartel. And in the briefing, I showed the links toward the seizures in Mexico and how they moved from Sonora over to Juarez area.

Chairman ISSA. So was it clear on March 10th, when you gave that briefing, that everyone in the room that guns were going to gun dealers in Arizona and then going into Mexico?

Mr. LEADMON. Absolutely.

Chairman ISSA. Who was in the room at that time?

Mr. LEADMON. Everybody in senior management, ATF field operations, except for Mr. Melson.

Chairman ISSA. Were there representatives of the Department of Justice?

Mr. LEADMON. Yes.

Chairman ISSA. Who?

Mr. LEADMON. Mr. Joe Cooley.

Chairman ISSA. So Justice was fully informed that guns were walking?

Mr. LEADMON. I don't think he is very high hanging fruit, but he was there.

Chairman ISSA. Did anyone express concern at this meeting that the number of weapons appearing in Mexico, or the number of weapons bought by straw purchasers seemed to be too high?

Mr. LEADMON. Yes, someone on the other end of the—in the video, because we had a video conference, I believe it was somebody out of the Dallas Field Division voiced that concern, and there was some discussion.

Chairman ISSA. And we also have a memo that says we got to close this down, basically, at that same time. So at a thousand, it was too many.

Let me ask our two defenders of this program. And I am sorry, but that does appear as how your role here today has been. Did it ever occur to either one of you after Mr. Leadmon's March 10th, or before, that you could let some of these walk and interdict others? Meaning, quite frankly, when somebody had already bought 100 of them and transported them to him, they weren't going to sell them to somebody different. You knew it was a straw purchaser. He basically usually had one customer. He has made the sale once, twice, 20 times. Did it ever occur to you to go ahead and at least stop these guns a few times?

As you said, Mr. Newell, make it expensive by intercepting some of them?

Just blind dumb luck they had to figure—and this is just me talking, but I think I have lived this thing long enough. The cartels had to realize at some point that you were helping them buy guns because they were having such a good batting average. Isn't that true? The fact that these guys weren't interdicting the guns almost had to be conspicuous at some point. Couldn't you have at least stopped some of these guns to make it look more real?

Mr. NEWELL. Well, sir, as I said in my opening statement, that's one of the things I would do different.

Chairman ISSA. Well, we are going to take a short recess. There will be a little bit of voting. We will come back. And I know you have been patient.

During the recess, our restrooms are available to you. I would suggest that on that side, there is a restroom where you don't have to go out and be accosted by the cameras and so on.

But what I would like you to do, Special Agent Newell and Special Agent McMahon, but for all of you, I would like each of you, if you will agree, to give me back a list of the things that you would do differently.

And Special Agent Newell, I would like your list because you're the one that has most said it.

Special Agent McMahon, I would like yours because you oversaw it and you said some things. But each of the four of you, from your experience, would you each be willing to give me what would be done differently?

Now, I know the easy thing is, I wouldn't have done the damn stupid thing. But short of that, case-by-case breakdown, what would have to be different if this would be done? Because this is the Committee on Oversight and Reform. The minority suggests that we pile on a bunch more gun laws. And maybe that will happen someday. But I am looking for answers that we can do to get effective work that you need to do, effective prosecution. And if it needs legislation, we are happy to look at it and put it into the mix. But I am looking for the kind of reform for the most part that doesn't just assume that a stronger gun law, selectively enforced by

U.S. attorneys who lose interest in these cases, is necessarily the only answer.

So, with that, we stand in recess until about 5 minutes after the last vote.

[Recess.]

Chairman ISSA. The hearing will come to order.

We now recognize the chairman emeritus, Mr. Burton, for his round of questioning.

Mr. BURTON. That means the old guy.

Chairman ISSA. Well, that, too.

Mr. BURTON. First of all, I want to start off by saying that the ATF, the FBI, the CIA, all of our intelligence agencies, we have high regard for all of you. And I know some of my colleagues indicated today that we were beating you over the head. We are not. We are investigating this issue. And we are certainly not investigating the good work that you guys do.

And I know some of your colleagues have been killed; some of you have been injured. We know you lay your lives on the lines for us. And so you have our respect and admiration for what you do.

Now, let me just say to Mr. McMahon and Mr. Newell, you know that you are under oath.

Mr. MCMAHON. Absolutely, sir.

Mr. NEWELL. Yes.

Mr. BURTON. Okay. Both of you know that. What I want to know is do you know who was involved in the decisionmaking process to start this whole program?

Mr. MCMAHON. Again, I think this was not a program; this was a criminal investigation.

Mr. BURTON. Well, okay, this criminal investigation. Do you know who suggested or started this criminal investigation?

Mr. MCMAHON. The agents on the street are the ones that will initiate the investigation.

Mr. BURTON. I know, but someone said this is what we are going to do. Who started it? Where did you get the instructions to do this?

Mr. MCMAHON. We don't give our agents instructions to do things. They go out and produce cases on their own.

Mr. BURTON. So what you are telling me now is that this investigation that we are talking about, what is the name of it again? What is it called?

Chairman ISSA. Fast and Furious.

Mr. BURTON. Fast and Furious, this just came from an agent in the field, and that was it; nobody else had anything to do with it. You didn't get a letter of instruction or anything like that.

Mr. MCMAHON. Absolutely not.

Mr. BURTON. What about this—you say you got a memo. There was a memo from a Deputy Attorney General about this. What was that?

Mr. MCMAHON. I believe that Bill Newell was referencing a memo the Deputy Attorney General put out regarding our strategy on how we are going to combat firearms——

Mr. BURTON. Who was the Deputy Attorney General?

Mr. MCMAHON. I believe that one came from Deputy Attorney General Ogden.

Mr. BURTON. Deputy Attorney General Ogden. When did that come?

Mr. MCMAHON. It had nothing do with Fast and Furious.

Mr. BURTON. What did it have to do with?

Mr. MCMAHON. It had to do with the government's strategy to help combat the violence that is going on in Mexico.

Mr. BURTON. Did it have anything to do with the weapons that were going down there?

Mr. MCMAHON. Absolutely.

Mr. BURTON. Okay. So it did have something do with what we are talking about.

Mr. MCMAHON. Yes, it did.

Mr. BURTON. Okay. And his name is what?

Mr. MCMAHON. I believe it was David Ogden, but I am not positive.

Mr. BURTON. Okay. But you also said earlier in testimony that there were a number of other agencies that were involved in this whole investigation process. You mentioned IRS, Customs, DEA, FBI, and so forth. You remember that? What were the names of the people that were involved in that?

Mr. MCMAHON. Again, I think Bill Newell answered those questions regarding this case being conducted out of——

Mr. BURTON. What I want is the names of the people that were involved in the investigation from each agency.

Mr. MCMAHON. I don't know the names.

Mr. BURTON. Somebody does. Do you know, Mr. Newell?

Mr. NEWELL. I know a couple of the names, yes, sir.

Mr. BURTON. Okay. We want those names. The reason why we want those names is I am going to ask the chairman to talk to them about continuing this investigation to find out how involved everybody was, and why it went on as long as it did when we knew in 2009 that this kind of thing was going on. And if there were IRS agents, FBI agents, DEA agents, Customs, or others, we want to know who was involved so we can question them as well. So I want their names. Do you have any of their names right now?

Mr. NEWELL. No, sir, I don't.

Mr. BURTON. And you don't remember any of their names?

Mr. NEWELL. I remember one of their names.

Mr. BURTON. What's his name.

Mr. NEWELL. I believe that the ICE agent assigned to the case was a young man by the name of Lane France.

Mr. BURTON. Lankford?

Mr. NEWELL. Lane France.

Mr. BURTON. Lane French?

Mr. NEWELL. France, sir.

Mr. BURTON. Okay, you got that. How about the other agencies? Do you remember any of the names? Were there other people involved?

Mr. NEWELL. Yes, sir, but I don't know their names, sir.

Mr. BURTON. Can you find their names for us?

Mr. NEWELL. Yes, sir.

Mr. BURTON. Can you get those names for us?

Mr. NEWELL. Absolutely, sir.

Mr. BURTON. Okay. Will you get those names for us?

Mr. NEWELL. Absolutely.

Mr. BURTON. Okay. And every single one of those names from those various agencies that were involved in the whole thing. We would like to have their names and their titles and the agencies they work for.

Mr. NEWELL. Okay. Yes, sir.

Mr. BURTON. And you will get those for us?

Mr. NEWELL. I will do my best, yes, sir.

Mr. BURTON. No, no, no, no. I don't want you to do your best. I want the names. Can you get us the names?

Mr. NEWELL. Yes, sir, I will.

Mr. BURTON. And you do know who they are and you know how to get their names?

Mr. NEWELL. I will find out who they are, and I will get their names, yes, sir.

Mr. BURTON. Okay.

Chairman ISSA. Would the gentleman yield?

Mr. BURTON. I would be happy to yield.

Chairman ISSA. Would you also include the dates that they were read into this program with sufficient specificity that they would understand the details of how the gun following that you say is not gun walking occurred? In other words, we don't want to just have names of people on lists; we want to have the names of people who were read into the program.

Mr. BURTON. And the dates that they were involved.

Mr. NEWELL. Yes, sir. And if I can clarify a point, sir.

Mr. BURTON. But before you go clarifying, I want to make sure I get all this.

Mr. Chairman, I want to make absolutely sure we have their names, dates, times, places that they were involved in this investigation so that we can trace it all the way back to its origin and see where we went, see who was involved, and how all these weapons, 2,000 weapons got down in there into Mexico, and whether or not somebody higher up in the Justice Department or the food chain might have been involved. And the only way we can get that information is from you two, or the other people who were involved in the investigation from these other agencies. So I just want to say one more time, this is very important that you understand that you are telling us right now that you will get us this information, you can get us the names, times, dates and places that we need. And you will do that.

Mr. NEWELL. Yes, sir.

Mr. BURTON. Okay. Very good. I just want to make sure you're under oath and you understand that. I yield to the chairman.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Cleveland, Mr. Kucinich.

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

Mr. Newell, on June 15, 2011, three agents under your command testified before this committee. And they outlined the very serious allegations that prompted this investigation. The line agents told us that as part of Operation Fast and Furious, one, they were instructed to cut off surveillance of suspected straw purchasers; two, they were ordered to forego arrests of straw purchasers; and three, they were prohibited from seizing or interdicting weapons from

straw purchasers on several occasions when they believed they had the lawful authority to do so.

Mr. Newell, these are very serious allegations. But in your transcribed interview with the committee, you said you never heard these complaints before they became public in February of this year. Is that right?

Mr. NEWELL. Yes, sir.

Mr. KUCINICH. Here is what you said. You said, To the best of my recollection, I don't remember any time ever being advised that there was some discourse amongst the agents. I became aware of that when some of the documents were released that I saw, and I want to say it was probably February, early February, something like that of this year. Isn't that information you would have expected to have received earlier?

Mr. NEWELL. I would have hoped to have received that earlier, yes, sir.

Mr. KUCINICH. Who would have been responsible for bringing these agents' concerns to your attention?

Mr. NEWELL. Well, if they followed the chain of command, I would hope that that information had gotten to me, yes, sir.

Mr. KUCINICH. But who specifically would have been responsible? I mean, there are people in your chain of command. Can you——

Mr. NEWELL. If they had voiced those specific concerns to their supervisor, I would hope that—and they did not get a response that they felt appropriate from their supervisor, then obviously—they obviously have the right to go over his or her head, in this case his head, and go to the second line, and so on from there.

Mr. KUCINICH. Well, obviously, the committee has the names of the people who were in those various lines of command. So Special Agent McMahon, in your interview, you said the same thing, that you didn't hear about these allegations until they were reported in the press. Isn't that right?

Mr. MCMAHON. That's correct.

Mr. KUCINICH. And is that information you would have expected to receive sooner? Did you feel you should have received it sooner?

Mr. MCMAHON. I would have hoped to. If the concerns that were expressed this late on were expressed earlier on, I would hope that if there was so much urgency, it should have been brought to our attention earlier.

Mr. KUCINICH. The line agents testified that they made their concerns known to their group supervisor, David Voth. Yet he, too, told the committee that he knew nothing about their allegations. He said this, "I don't recall people coming to me with those concerns." Now, Mr. McMahon, as the line agents' immediate supervisor, should Mr. Voth have known about the allegations?

Mr. MCMAHON. I am assuming if they were expressed to him, he should have known about them, yes.

Mr. KUCINICH. The committee has apparently identified a conflict in the testimony. Either the line agents are having difficulty being able to communicate the truth or their supervisor is having that difficulty. Now, what steps, Mr. McMahon, did the ATF's management take to ensure that line agents can make headquarters aware of their concerns if their direct supervisor is not responsive? And

can they do that without in effect bringing upon themselves some kind of sanctions for going other the head of a line supervisor?

Mr. MCMAHON. I believe they can. I think the processes that we have set up in ATF headquarters allow that. We have an ombudsman program. We have obviously the chain of command anywhere in there. I think our director, every time he has actually been out to visit offices, he has told people about his open door line of communication. He receives emails from line agents. I have tried do the same thing on my visits to the field divisions that I oversee. You know, you try to make yourself as open as possible to everyone within the Bureau.

Mr. KUCINICH. I thank the gentleman. And I just want to say we all appreciate the very difficult and challenging work that everyone at the agency has to carry out, so I'm sure you can understand the questions that have been raised about the conduct of this particular operation, that things don't fit, and when they don't fit, it makes it difficult for Members of Congress to be able to defend the kind of support that they want to maintain for the Bureau. So I want to thank you for being here.

I yield back.

Mr. MEEHAN [presiding]. I want to thank the gentleman from Ohio. At this point in time I will give myself 5 minutes for further questioning.

Mr. Leadmon, when we last left, you were talking about law enforcement partners providing you information in December 2009 that had given you concern about guns that had actually showed up in Mexico; isn't that correct?

Mr. LEADMON. They didn't provide it to me, they provided it to the Phoenix agents, and it was routed to me.

Mr. MEEHAN. So when you say "other law enforcement partners," is this partners outside of ATF?

Mr. LEADMON. Correct.

Mr. MEEHAN. Can you identify what other partners at this point in time in December 2009 were part of this investigation?

Mr. LEADMON. They weren't part, to my knowledge, but they were running a parallel, and it was DEA. I don't want to get into their investigation, even though they wrapped up that investigation I want to say February or so of 2010, but they were——

Mr. MEEHAN. February 2010, but they became part of the OCDETF case; isn't that right, Mr. Newell, DEA?

Mr. NEWELL. There were several investigations involving DEA. But what Mr. Leadmon is talking about is I believe the information on that seizure came from DEA to us, and then it was routed to Mr. Leadmon.

Mr. MEEHAN. Came to you.

Mr. Gil, at point in time—or, Mr. Canino, while you were in the field doing this, were you aware of any other agencies that had information pertinent to this that you believed was not being shared with you?

Mr. GIL. The only other agency that we worked with while in Mexico would have been ICE, and we actually used them to a certain extent to conduct interviews either with us or on our behalf regarding arms trafficking.

Mr. MEEHAN. Mr. Leadmon.

Mr. LEADMON. A clarification. That investigation was not originating out of Mexico. That was a U.S. investigation that DEA was doing out of the Phoenix area.

Mr. MEEHAN. Okay. Thank you.

Special Agent McMahon, you just responded partially to a question, and unfortunately you weren't allowed to give a full answer, but I was intrigued by what you were beginning to say when, again, there was a once more question about the genesis of the case, and you began to talk about agents in the field. You know, the agents were the ones that begin to make these cases. Can you explain to me what you mean by that?

Mr. MCMAHON. Well, the way ATF works is our agents are the ones that conduct the investigations, they're the ones that generate investigations. Obviously they should get approval from their first-line supervisor of which investigations to open or not.

Mr. MEEHAN. So those agents, what were they investigating, just straw purchasing in general?

Mr. MCMAHON. When you have a division group, the division usually breaks down those groups into specific types of cases. You might have an arson explosives group, you might have a gang group, you might have a firearms trafficking group. If you're out in the field——

Mr. MEEHAN. The agents working on this case.

Mr. MCMAHON. The agents were assigned to a gunrunner group that was specifically assigned to investigate firearms trafficking to Mexico.

Mr. MEEHAN. At what point did the gunrunner group take it up higher to the chain as part of this? Did they include the assistant U.S. attorney? Was there an assistant U.S. attorney appointed to that group?

Mr. MCMAHON. I'm not sure if it was appointed to that group, but I know we usually try to get an assistant U.S. attorney onto the case as early as possible.

Mr. MEEHAN. How early do you think, Mr. Newell, do you recollect, that an assistant U.S. attorney was assigned to this case?

Mr. NEWELL. From the very beginning.

Mr. MEEHAN. From the very beginning?

Mr. NEWELL. Yes.

Mr. MEEHAN. Okay. Did the assistant U.S. attorney to you knowledge communicate with the U.S. attorney about this case?

Mr. NEWELL. To my knowledge, I don't know, sir.

Mr. MEEHAN. You don't know the answer. But this case began somewhere in November 2009, and we have testimony that by December 2009, there was already concern about scores of weapons that were being recovered in Mexico. But what was the response of the assistant U.S. attorney to that revelation?

Mr. NEWELL. Well, as outlined in the January 8th briefing paper, they felt that there was not enough evidence at that time to secure anymore—or to secure for prosecution, so to continue monitoring the sales.

Mr. MEEHAN. They continued monitoring the sales, but were they aware and did they believe that guns, ultimately thousands, were continued to be trafficked with the approval of the assistant U.S. attorney?

Mr. NEWELL. I'm not sure exactly what they were aware of, sir, but I know they were informed.

Mr. MEEHAN. Mr. Gil, at any point in time, did you get a visit from anybody? And who was the highest person that visited you from the Department of Justice with respect to this matter?

Mr. GIL. To a certain extent it would have been a DOJ contingent to business, I believe, during the summer or spring, and I believe it was Kevin Carlisle. Lanny Breuer visited.

Mr. MEEHAN. Lanny Breuer is the head of the Criminal Division; is that not right?

Mr. GIL. At that time. I don't know where he is today.

Mr. MEEHAN. When did Mr. Breuer visit you in Mexico with respect to this case?

Mr. GIL. I would have to check.

Mr. MEEHAN. What's your recollection?

Mr. GIL. I think it was the summer of——

Mr. MEEHAN. The summer. That would be after we already know that thousands of guns had been trafficked?

Mr. GIL. Yes.

Mr. MEEHAN. Was that communicated to him?

Mr. GIL. By me, no.

Mr. MEEHAN. By anybody, to your awareness?

Mr. GIL. No, sir.

Mr. MEEHAN. My time has passed.

At this point in time the chair would recognize the gentlelady Mrs. Maloney.

Mrs. MALONEY. Well, I thank you for recognizing me. And I am deeply concerned that while I was on the floor voting, that the chairman, for whom I have tremendous respect, made derogatory remarks about Ms. Norton and myself. And as I hear, I would like to quote what he said: Mrs. Maloney and Ms. Norton, they are radically against the Second Amendment. They absolutely positively do not want anyone having any guns. They're pretty straightforward about it. They'll say they respect the Second Amendment, but they've never seen a gun limitation they do not like.

I would like to say that I support the Second Amendment, and I support legal guns for sportsmen, for law defense, for hunters, for self-defense. Just recently one of our colleagues, Leonard Boswell, literally someone broke into his home, and he thought his life was in danger. His grandson took a legal registered gun and got the intruder out of the home. I respect the right to own legal guns for self-defense, for other reasons, but I do not support illegal guns that are fueling drug wars and putting lives at risk.

In testimony before this committee it was told that 40,000 people have died in the last 5 years on the border of Mexico. What we have put forward is a simple statute that would prohibit gun trafficking in illegal guns to people who want to use them for illegal purposes. I think that is respecting law enforcement, helping law enforcement, and protecting lives on both sides of the border. And I must also say that the ATF agents who testified and were called by the majority to testify, they indicated that this would help them do their job and help them to protect innocent people in Mexico and in the United States of America.

And I just really wanted to clarify that since I feel that Ms. Norton and myself were attacked unfairly. And I do not think that legitimate debate or ideas or legislation should be attacked in this unfair way. So I just would like to clarify that.

Chairman ISSA [presiding]. Would the gentlelady yield?

Mrs. MALONEY. Absolutely.

Chairman ISSA. Well, I stand corrected if, in fact, you're for the Second Amendment. And I will not consider the same with Ms. Norton, who said that my entire side of the aisle was owned by the NRA in some of hers, or somebody in the District of Columbia continues to support basically this being a gun-free zone in violation of the Second Amendment. But I take you at your word, and I'm sorry that I exaggerated to include you.

Mr. CUMMINGS. Will the gentlelady yield very briefly?

Mrs. MALONEY. Absolutely.

Mr. CUMMINGS. I want to thank the chairman for his apology, but I can attest to the fact, Mr. Chairman, that when the gentlelady and I introduced our recent bill, she basically said what she just said, that she had no problem. And I think the confusion comes in those of us who have seen over and over again the result of gun violence, those of us who go to the funerals, those of us who listen to the ATF agents who beg to make sure that we help them because they're fighting weapons of war. And that's what we are concerned about. We didn't debate it. The ATF agents came in here and said it. Some of them have said it today.

So I yield back to the gentlelady, and I want to thank the chairman.

Mrs. MALONEY. I just want to also add that I think we both agree on both sides of the aisle that mistakes were made in the handling of Operation Fast and Furious, and we are legitimately trying to get answers and to look at this. But the larger issue that I feel is in danger of possibly being overlooked is the flow of illegal weapons. And we're not talking about regular guns. In the testimony from the agents, they called them military-style weapons. They were AK–47s, very special deadly rifles. So these aren't normal guns, these are our military guns. And this is an even larger issue than Fast and Furious is, to stop the flow of illegal guns. And I believe that on both sides of the aisle we can agree that illegal guns flowing into America or Mexico is something we need to address and stop as quickly as possible.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Texas Mr. Farenthold for his round.

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

I'm going to kind of bring it more back to where we were going, I think, with the investigating Operation Fast and Furious as opposed to discussing the merits of any proposed new gun regulations or gun laws. Let me ask some of the gentlemen from ATF, if you remembered the lessons we learned from 9/11, we found that we probably would have had a much better chance of stopping the attacks on the World Trade Center had the various organizations within our government been communicating with each other better. We've spent millions of dollars on fusion centers for information sharing among agencies. And then I'm troubled to find here that

you're basically running an investigation covering some of the same suspects, basically parallel investigations, with the Drug Enforcement Administration, and there was an unwillingness to or a failure to coordinate among those agencies. Would that be a fair assessment of what happened: There were multiple investigations, and the DEA didn't know what you were up to, and vice versa?

Mr. MCMAHON. Sir, as far as I'm concerned, that is the complete opposite of that. I think when we received funding to get our gunrunner groups up and running, one of the first things we did was assign them to strike force groups so they could work hand in hand with the other agencies. And I think this case is an example of how that was one of the positive things out of this case. DEA had some information that they shared with us that helped us in our investigation and actually helped foster it even more so.

Mr. FARENTHOLD. Then why weren't you all coordinating, and there were two different investigations going on? At the very least that seems wasteful of the taxpayers' money.

Mr. MCMAHON. I don't think from what I've seen that there were two different investigations. It was two parallel investigations. DEA obviously is going to focus on the narcotics. We focus on the firearms.

Mr. FARENTHOLD. I've got a couple other questions. I ran out of time last time going off on things that just struck me as odd.

Mr. McMahon, during the pendency of the Operation Fast and Furious, did you ever get the chance to go down to Mexico and visit with any of our folks down in Mexico?

Mr. MCMAHON. I did. Yes.

Mr. FARENTHOLD. Did you speak to Mr. Canino?

Mr. MCMAHON. I did.

Mr. FARENTHOLD. And did he raise any concerns about some of the guns tracing back to Phoenix?

Mr. MCMAHON. Not that I recall, no.

Mr. FARENTHOLD. Mr. Canino, did you all discuss that, do you recall?

Mr. CANINO. Yeah. It wasn't anything specific, it was in passing. Like I said earlier, you know, when—and Mr. McMahon has been very supportive of our office in Mexico and me personally. But like I stated earlier, when this case was going on, and when Darren asked me, what do you think is going on, like I stated earlier, I thought the U.S. Attorney's Office in Phoenix is reluctant to let our guys make any arrests. Our guys have stumbled onto a drug trafficking—I mean, a gun-trafficking ring, they're doing their due diligence, and that's why so many guns have turned up in the suspect gun data base so quickly. And three, I thought that our guys were just losing them on surveillance, not being able to get to the gun store in time. That's what I thought at that time. You know, I didn't know that we had cooperators in a couple of the gun stores. So my—our concern, and I just said, hey, how come there's so many guns turning up so quickly?

Mr. FARENTHOLD. And he didn't share with you what was going on?

Mr. CANINO. Well, like I say, we have a drug-trafficking case in Phoenix, and, you know, all the guys are doing a good job.

Mr. FARENTHOLD. All right. Mr. McMahon, did Mr. Gil ever raise concerns over the number of weapons that were being recovered in crime scenes in Mexico?

Mr. MCMAHON. Congressman, I think it's important to realize that guns were being recovered in Mexico for quite a while, and we were all concerned about that. Guns were coming from Phoenix, they were coming from Texas, they were coming from—I mean, that's what we did, that was our main focus in Mexico and obviously along the southwest border. For the past 4 years, that's where all of our resources, our new resources, have gone. Guns being recovered in crime scenes in Mexico from the United States is something that ATF has been putting everything we have into for the past quite a few years, as long as I've been in headquarters.

Mr. FARENTHOLD. All right. Well, I see I once again have run out of time, and I realize we are getting late, so I yield back. Thank you very much.

Chairman ISSA. I thank the gentleman.

Mr. CUMMINGS. You know, as we wind this hearing down, I was just sitting here and I was just thinking, you know, this agency is very important, and we've heard now from two sets of agents, all of whom seem to be, I know, very dedicated to their jobs. And I think one of my greatest concerns as we go forward, Special Agent Newell and McMahon, since you're in supervisory-type positions, you know, I just hope this does not hurt the morale of the organization.

When I look at the emotions of Special Agent Canino and others, I mean, in some kind of way we've got to make sure that we get back on track. I just think it's so important because the job that you do is—what, there's only 1,800 of you all? It's not many.

Mr. MCMAHON. That's correct, sir.

Mr. CUMMINGS. It's a small agency. And we can't afford to have division in this kind of agency. Would you agree, Special Agent McMahon?

Mr. MCMAHON. I totally agree, sir. That's the highest priority for us right now is to get our people back on track. Not a lot of us can have or show the passion that Carlos has, but I guarantee you we all have that. We might keep it inside a little bit more than Carlos does, but this is a passionate thing for all of us.

We talk about the Second Amendment, and I believe that we, ATF, are the defenders of the Second Amendment. And we have to follow a very fine line of what's part of the legal commerce and what's part of the illegal commerce, and that's part of the challenge, a challenge that we fully accept. And that's something that we were—drilled into us from early on while in the academy. It's something we fully accept, and it's something that we do every day. And as I said in my statement, I am very proud of the people that are out there now and have been out there in the past and the work that they're doing.

Mr. CUMMINGS. I'm going to go back to a July 12, 2011, letter to the Attorney General. Chairman Issa and Senator Grassley wrote these words. They said, there has been public speculation that gun control politics may have been a motivating factor behind approving the risky strategy used in Operation Fast and Furious. In other words, by allowing straw purchasers to continue to oper-

ate, and by encouraging gun dealers to go through with what were obviously suspicious sales, the ATF helped create a big case in order to justify additional regulatory authority. The letter notes that the committee has seen no evidence to support this speculation, but goes on to ask the Department of Justice to respond anyway.

Mr. Newell, you were the special agent in charge who oversaw this operation and the agents who worked it for the last year. What is your reaction to this speculation when you were engaged in Operation Fast and Furious? I ask you for the record, were you deliberately attempting or do you know others that were deliberately attempting to send guns to Mexico to justify additional firearms regulations?

Mr. NEWELL. In response to your question, sir, I don't recall saying that.

Mr. CUMMINGS. I didn't say you did. I'm just saying do you believe that——

Mr. NEWELL. No, I don't.

Mr. CUMMINGS [continuing]. Based on everything you know?

Mr. NEWELL. No, sir, I don't.

Mr. CUMMINGS. Okay. Mr. McMahon.

Mr. MCMAHON. Absolutely not, sir.

Mr. CUMMINGS. And did you see any evidence that your line agents acted out of anything but a sincere desire to combat a major trafficking network in this case? Mr. McMahon.

Mr. MCMAHON. Not at all, sir.

Mr. NEWELL. Not at all, sir. That was their goal, and that was—they are very dedicated agents out in the field who are doing that every day in this case and many other cases.

Mr. CUMMINGS. While it's fair to question the judgment used in the case, and I certainly question it, and again we are trying to get to the bottom of all of this, suggesting a conspiracy to harm others goes beyond the pale. And I think that—you know, I just—I just want to make sure that the American people are clear that we have an ATF which is operating and doing what it is supposed to do. Obviously some mistakes have been made, very unfortunate mistakes. And I think the one thing we have to do is we have to learn from those mistakes and not let them happen again, because they can have very, very, very tragic consequences.

And so with that, Mr. Chairman, I yield back.

Chairman ISSA. Thank you. And I'll try to be brief in a couple of last questions.

First of all, I ask to include some additional documents that were shared and partially redacted with Justice so that we can keep them in the record and potentially ask you questions afterwards. Would all of you be willing to answer additional questions based on what's in the record afterwards if we have follow-ups? Okay. Thank you.

Mr. Newell, on January 8, 2010 you produced a memo that in line 13 said, currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow the identification of additional coconspirators who would continue to operate illegally trafficking firearms to Mexico DTOs.

Now, if I read that correctly, in addition to later where it says, DEA has specifically requested that the ASAC and SAC level at the ATF continue the investigation, if I read this memo of yours correctly, at least by January 10th or January 8, 2010, you knew that these weapons were going to—specifically weapons that you were allowing to be sold were going to the drug cartels in Mexico, and that you lobbied for in this memo the continuation partially because of DEA's request? Is there anything in plain English that I don't understand here?

Mr. NEWELL. Yes, sir. As I stated earlier in the testimony, I think that sentence about who would—that part of the sentence "who would" is—"who would continue" is based on the fact that we believe that if we didn't take the necessary steps to disrupt the whole organization, this group would continue to traffic in large quantities of firearms to Mexico.

Chairman ISSA. Agent, we're not disagreeing that these are determined, incredibly rich, billions-of-dollars-of-drug-money groups that have the power to corrupt the Mexican Government, at times corrupt U.S. officials, to buy anything they want anywhere in the world in vast quantities. Certainly I don't think anyone on the dais fails to understand that we have a narcostate almost being formed in Mexico the way we had in Colombia, and that they and we are fighting to push back on a terrible tragedy that has occurred in Mexico.

But the question here is as of January 8th, I find this document to be irrefutable evidence that you knew that weapons you continued to sell, quote, albeit at a slower pace—although actually the evidence is it didn't slow down right away, but eventually it did—were, in fact, going to Mexico. You knew it. You knew that when you sold to particularly some of the specific individuals whose weapons had already been found, you knew that the straw buyer was buying it, you knew who they were transporting it to, who was paying for it and where it was ending up. Isn't that true as of January 2010?

Mr. NEWELL. Well, we didn't sell the firearms, sir.

Chairman ISSA. Well, you came pretty close. You told the firearm dealer to go ahead and sell it. You knew who the buyer was. You knew there was a repeat buyer. You knew who the intermediary was that was the supplier of money, and you knew where they were ending up. Isn't that all true?

Mr. NEWELL. We believed that obviously we were working a firearms-trafficking organization that——

Chairman ISSA. Wait a second. Look, we're not talking about what you had to prove to a jury of 12. I'll go over these agents, and they're going to make you look like a fool here if you don't answer this honestly. You knew that A was going to B, and B was going to the cartels. You knew that outright. So did the DEA as of January 8th—and that's what this briefing says, doesn't it? Answer me honestly just once, clearly and simply.

Mr. NEWELL. Sir, with all due respect, when it comes to the DEA portion of that, it was the fact that DEA had an ongoing investigation from which we gathered the information which led to the initiation of our case. So that sentence there discusses the fact that

DEA said, hey, whatever you do, don't do anything to compromise our case, which we respected.

In response to your other question is absolutely, the group that we were working, we knew that that was their intention to funnel guns to Mexico.

Chairman ISSA. Wait a second. Intention. Not intention. It was a pattern of success that had occurred for a year; isn't that true? You had watched straw buyers, repeated straw buyers, make purchases, deliver them, and those weapons had shown consistently in the hands of specific cartels, and, as you know, you knew who was paying for them. Isn't that all true?

Mr. NEWELL. Well, you said a year, sir. When that memo was written in January, we were probably, I would say, 2 months into the investigation at that point.

Chairman ISSA. Three months earlier, I apologize. The previous year.

Mr. NEWELL. Three months.

Chairman ISSA. Okay. So 3 months into this program, about 1,000 weapons or less in, you knew that the weapons you were telling gun dealers to go ahead and sell to the same straw buyers again and again—you already had 20, the number 20 is here. So I'm kind of going, well, you've indicted 20, 19 of whom were the straw buyers, so you knew the straw buyers and the repeats kept coming after you knew starting point, bag man or money man, and end point; isn't that true?

Mr. NEWELL. Sir, what we believed and what we suspected is far short of what we could prove.

Chairman ISSA. Okay. Finally you've given me the answer I wanted. You knew everything you needed to know to understand everything that led to the charges. What you didn't have was enough to make a case, so you went on month after month for 1,500 more weapons while you were trying to make a case; isn't that correct?

Mr. NEWELL. Sir, in January we didn't know all 20 at that point. The 20 that we indicted, we had a large group of straw purchasers, and we were continuing to build a case throughout. But we still—in full conjunction with the U.S. Attorney's Office, we still needed the evidence to be able to prove that these individuals were, in fact——

Chairman ISSA. Who at the U.S. Attorney's Office wanted this investigation to go on past January 8, 2010?

Mr. NEWELL. When?

Chairman ISSA. Who? Did Lanny Breuer—was he briefed by January 8, 2010?

Mr. NEWELL. I don't know if he was, sir.

Chairman ISSA. But his office approved the wiretaps under his authority. You said you didn't read the wiretaps. I guess neither one of you read the requirements. But somebody had to be briefed who signed it on his behalf, on his authority. Did either of you ever brief Lanny Breuer or anyone else that could sign on his behalf?

Mr. NEWELL. I did not, no, sir.

Mr. MCMAHON. I did not, no.

Chairman ISSA. Okay. So I guess we're just going to figure that you knew on January 8th that you had the same people buying

weapons repeatedly, leading to the same cartel, and you didn't quit because you hadn't made your case, so we continued selling until we had a dead Federal agent and a scandal? That's pretty much what I've heard here today. Any of the agents that work in the field, did any of you see something different then? This thing kept going after everything was known, except maybe if we keep doing it long enough, we'll get better cases for the U.S. attorney; and then it began falling apart after Brian Terry was murdered? Does anyone in the first four see anything different? Correct me if I've missed something.

Mr. GIL. Chairman, I'm still sitting here listening to the conversation, and it's still unbelievable to me, and to be quite honest with you, I still don't know what to believe, why this investigation was initiated, and why it continued for so long. I can't. I know you look speechless. I'm speechless. I just don't know.

Chairman ISSA. Well, words escape me to try to do any better than you don't know why and I don't know why either.

The gentlelady from New York for an additional round.

Mrs. MALONEY. Thank you.

I would like to follow up on the line of questioning of Congressman Farenthold when he was talking about the lack of communication, which after 9/11 we had many commissions, we had many studies. And what came out of these commissions was that our intelligence wasn't working, and we weren't communicating. And we then overhauled our government, the most major overhaul of our intelligence since 1948. And it seems to be a little bit of the same thing of what I am hearing about these hearings, because people are saying they didn't know anything, and people are saying they told people and it's not getting through, so the communication is not taking place.

When you mention 9/11, the mayor of New York, and we are about to come upon the 10th anniversary of that tragic day, has been airing TV ads in New York where they use the words of an al-Qa'ida leader who is talking to his followers and saying, go to America. It's so easy to get a gun. Go to America, get all the guns you need in our fight for the al-Qa'ida. So this is an ad about how illegal people who want to hurt Americans are being instructed literally to come to America and get guns in order to combat democracies. And so I think this hearing is very, very serious about the flow of illegal guns.

Earlier we had a hearing and we had several agents who seemed very brave, very frustrated and very courageous. And they testified that they were concerned about the sale of the guns to straw agents; they were concerned about not having arrests, about being ordered not to make arrests and not to conduct surveillance. And I understand that you were asked, Mr. Newell and Mr. McMahon, and you did not hear any of their frustrations. They testified that they reported this to their supervisors, and nothing happened, and that's why they were so frustrated.

So I think we've got to figure out what happens when someone reports something they feel is illegal, wrong, dangerous or harmful to life. And I'm not just talking about what happened in Fast and Furious, I'm talking about going forward. Agents on the ground who think that someone should be arrested, and they're being told

not to make an arrest, or when they're being told not to make a surveillance, and a supervisor says don't do it, and they're saying we should do it, and they're complaining to someone else, that information has to go up the line in order to have proper law enforcement and proper protection for our citizens.

So I ask anyone on the panel to comment, but I see this as a very serious, a very serious blockade or a very serious problem. If people who feel something wrong and harmful to the safety of Americans or Mexicans is taking place, then someone should be listening. And if a chain of command is not listening, maybe there should be an alternative chain of command put in place or something, because this type of concern has to get to the proper authorities in order to make proper decisions to make arrests, continue the surveillance and do the proper things to stop illegal activity.

So I just would ask any of you to comment on what we've been hearing. People say they asked for help, and other people say they never heard anything, so what's going on? Is there some, you know, black hole that complaints fall into? What is the chain of command? Why did not the complaints or concerns of the on-the-line defenders of justice, why didn't their concerns about what they thought was illegal and dangerous get to the proper authorities?

Mr. MCMAHON. I can take that, if I could. That is a concern, a major concern. ATF is my family, and obviously when I heard agents criticize things that were happening on the street and obviously there's a communication breakdown, that's very concerning to me.

One of the things I wrote down here, the things that I would like to improve on, is my access to people in the field, maybe even just sitting down, hey, what can you tell me, what's going on, that sort of thing. I'm actually going to be going into a new position soon that's going to be talking about—I'll be overseeing the review of our office and the effectiveness andefficiency.

Mrs. MALONEY. Well, what happened now? Are you conducting an investigation to find out why the information from the agents on the street didn't get to the proper authorities?

Mr. MCMAHON. Well, I believe the inspector general is conducting that investigation, and we look forward to the results of that.

Mrs. MALONEY. And when do you expect that to come back?

Mr. MCMAHON. I don't know.

Mrs. MALONEY. Thank you.

Chairman ISSA. I thank the gentlelady.

I will recognize myself for another round. I'm going to go down the row as we often do here and just pose a single question for each of you to answer. Special Agent Newell answered it already. If it was January 9th, you had just written that briefing; you knew what Special Agent Newell and Special Agent McMahon knew about what had happened, what was happening; you knew about the DEA's request; but you also knew about where these guns were ending up. Mr. Gil, start with you. If we put you in charge of the Phoenix field office on that day, what would you do?

Mr. GIL. Mr. Chairman, that investigation would have been closed, come to a conclusion.

Chairman ISSA. In 30, 60, 90 days?

Mr. GIL. No, sir, immediately. That part of an investigation on a trafficking is not—you have the trafficker, you have him there, you have the probable cause, you have the intelligence, you have everything you need to make the arrest; and as the discussion occurred earlier, the other tools in the toolbox are there, interviews, phone records, interviews of cohorts and so forth. The investigation with these guns, they're not a disposable product. These weapons, they're going to be out there for years, decades, and they're a durable good, they're a marketable item. And that's why historically ATF, my career, my training officer educated us on this, as I trained my young agents on, it's just—it's inconceivable that you would let weapons walk.

Chairman ISSA. Agent Wall.

Mr. WALL. The same thing, Chairman. Letting one gun walk is a huge risk. Again, a gun can last 10, 20, 30 years. A gun in the hands of criminals, virtually it's a loaded weapon that's out there that's uncontrollable. We in ATF typically—I just—I'm dumbfounded by just the number of weapons and how it got to that point, and really just supporting what Mr. Gil said.

Chairman ISSA. Agent Canino.

Mr. CANINO. Thank you, Mr. Chairman.

As you know, we've met now a couple of times. You can see I'm kind of passionate about what I do. I don't want to give you the impression, or the ranking member, or the committee the impression that I never made mistakes. I was a street agent for 15 years, very active street agent. Anybody who knows me knows my reputation. They know I've made mistakes.

You know, I respect Gil and Bill. I consider them friends. I know it's not easy for them to be here today. But hopefully this won't happen again. And hopefully when the committee finally issues their report, our agency will be the better for it, and we can move on down the line.

I agree. I think the first order of business for our agency right now is to build the morale, close ranks and move forward and support each other.

Chairman ISSA. Thank you.

Mr. Leadmon.

Mr. LEADMON. Yes, sir. I would like to expand and say that I think Congressman Maloney kind of touched on what the underlying problem is for our agency in these major investigations. She talked about 9/11, the lessons we've learned, the lack of sharing of information, the intel. Well, from my perspective, in my law enforcement career involved in major case investigations in the District of Columbia, I learned some things with my task forcing with other agencies, FBI, DEA and ATF. And one of the things that I see in ATF that we're lacking, we're lacking on the intel-led investigative side of the house. Our intel structure within the ATF is very limited. Our field FIGs need resources. Our headquarters entities need resources also.

Now, to put this in perspective, ATF now, with the battle that Calderon is waging against the drug cartels in Mexico, we need to meet that challenge. And that challenge is they're going out and they're taking off these guns in these seizure events. We have to stop the flow because they can't win if they keep getting replen-

ished. So with that in mind, we have to start taking some of the best practices of our other agencies. And, i.e., under an intel-led investigation, I'm not just talking about single investigations. In ATF we have silo systems. We have divisions that work out of their divisions. Everything comes out of the division. This has to stop. There has to be headquarters; not oversight, "get all in their business" type thing. But it has to do like our other agencies are that exchanges the information freely, partners up with outside agencies at all levels, not just in the divisions, but all the way up into headquarters. And to do that we have to build a structure, an intelligence structure, to support not only our agents in the field, but our partners in Mexico and our other Federal agencies.

Chairman ISSA. I'm going to cut you off only because of time limitations. We have a subcommittee coming in in a short time.

But first of all you're singing, I think, on a bipartisan basis to what we need to do. And we probably will have you back as we get into the corrective phase, the reorganization, if appropriate.

Let me just ask one closing question. Jaime Avila, Panino—Patino, I'm sorry, Chambers and Stewart, they're all on the street today. They have not been convicted of a crime as straw buyers. If they walked into a gun shop today, just because they've been arrested, does that mean they can't buy? Would they be able to buy a weapon today?

Mr. MCMAHON. They wouldn't be able to buy the weapon because they're under indictment. But I'm not sure if the NICS system in Phoenix would capture that if they did attempt to buy a weapon.

Chairman ISSA. So today you know that they shouldn't be able to buy, they shouldn't be on the street, but 20 straw buyers are on the street, and you're not sure if all 20 are, in fact, presently in the system where any federally licensed gun store would stop them immediately; is that correct?

Mr. MCMAHON. Well, that's not our system, sir. The NICS system is run by another agency.

Chairman ISSA. No, I understand that. But right now you don't have full confidence that these people are not out doing straw purchases again?

Mr. MCMAHON. No, sir. They were granted bail, as everyone is entitled to.

Chairman ISSA. They were also granted a speedy trial that I understand is delayed at least until February of next year, so they continue to be out there?

Mr. MCMAHON. That's correct. The trial was scheduled for June, and then it's been postponed until February.

Chairman ISSA. Okay. With that I'm afraid we have to adjourn. I thank you all.

Ms. NORTON. Mr. Chairman, a point of personal privilege.

Chairman ISSA. Yes, a point of personal privilege.

Ms. NORTON. Since my position was mischaracterized in this hearing, I have come back to state my true position, and I wonder if I may be given a few minutes to do that.

Chairman ISSA. If you want to state your true position, bearing in mind that you told us that all of us on this side of the aisle were owned by the NRA——

Ms. NORTON. If I could be heard from you, if I could state my position. I was here for some time, Mr. Chairman, and I note that I didn't hear anyone speak up then. I can understand that——

Chairman ISSA. Actually the gentlelady left before——

Ms. NORTON. I was here for about 15 or 20 minutes. But it's the right of any Member to speak up. And I can only be grateful, Mr. Chairman, that you didn't say that I was vile or words of a kind that were uttered when another Member was outraged that in his absence his position was characterized.

Yes, as I heard pontificating before law enforcement officers who risked their lives, I was moved to indicate that we had not given ATF agents the tools that they deserve. Indeed I indicated that the issues spread even into our cities.

As for the District of Columbia laws, which apparently were raised, the District of Columbia barred guns in light of carnage over the decades. Those laws had been found to be constitutional, and for decades every appellate court had so found for the District's laws and for the laws of other States until an activist and much more conservative Supreme Court overturned the findings of prior Supreme Courts for the first time.

The District of Columbia proceeded to obey the new law and enacted a set of gun laws, which have since been found constitutional, and yet Members of this body have filed bills seeking to overturn the laws of a local jurisdiction not their own simply because they disagree with the way they approach gun control. You can approach gun control any way you like in Arizona or California, but you are not at liberty to tell the people of the District of Columbia who have to live with the carnage how to approach it, particularly when the laws have been declared constitutional.

Yes, I stand by the notion that the reason that the ATF agents don't have the laws they need is because the Republicans have over and over again introduced laws that would, in fact, keep them from getting those laws and have stood in the way of their acquiring those laws. And I have been bipartisan because there have been some in my own party who have stood with them.

Mr. Chairman, having taken the agents to the woodshed, it does seem to me then the Congress—they're entitled to something from us. So I would like to ask you, in light of the fact that they have all testified that they need more tools in order to do their job, whether you would cosponsor the bill that has been introduced that would, in fact, give them a trafficking tool so that this would not happen again to them or to us, and would you be willing to sponsor that bill, Mr. Chairman?

Chairman ISSA. No, ma'am.

Ms. NORTON. Enough said.

Chairman ISSA. And with that, gentlemen, you bear witness to the other side of the aisle at work.

With that, we stand adjourned.

[Whereupon, at 3:05 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

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September 21, 2011

Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-614

Dear Sir/Madam:

Enclosed please find the Supplemental Statement of Special Agent William Newell, supplementing and clarifying his testimony before the Committee on July 26, 2011. Please feel free to contact me if you have any questions.

Very truly yours,

Paul E. Pelletier (gmg)

Paul E. Pelletier

cc: Steve Castor (w/enclosures)
Chief Counsel, Investigations
Committee on Oversight and Government Reform

Susanne Sachsman Grooms (w/enclosures)
Chief Counsel, Democratic Staff
Committee on Oversight and Government Reform

cc: Bill Newell (w/enclosures)

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Supplemental Statement of William D. Newell,
Former Special Agent in Charge of the Phoenix Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives, To Testimony
Given Before the United States House of Representatives
Committee on Oversight and Government Reform
On July 26, 2011

I am William D. Newell of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I testified before the Committee on Oversight and Government Reform on July 26, 2011. After taking time to reflect and review my testimony from the hearing on July 26, 2011, I realize I could have given clearer, more complete and more direct responses to some questions. It was not my intention to give answers that lacked the clarity everyone on the panel deserved from a federal law enforcement agent in my position. It is not an excuse but a reality that the pressure I have been under over the last several months has been nothing like I have ever experienced; this inquiry and the way it has been handled has taken a physical toll on my family, me and the dedicated men and women who continue to pursue the goals of this investigation. The format of the hearing also was not conducive to providing answers which include the depth and breadth necessary for a full understanding of the underlying facts. As a consequence and in retrospect, some of my answers could have been more detailed and clearer. I would therefore like to take this opportunity to expound upon and clarify some of these answers through this supplemental statement in hopes that you will be better able to evaluate the principal goals underlying the Fast and Furious investigation for the purpose of assisting the inquiry.

Ranking Member Cummings asked whether the errors in Fast and Furious relating to ATF's inability to seize guns during the investigation were errors of omission or errors

of commission. To be clear, any errors were unintentional errors of omission and are rooted in the laws we have at our disposal in attempting to address this type of illegal activity, the inherent risks posed by the nature of these investigations and the rapid progression of this investigation, which I will attempt to summarize below.

As I stated in my opening statement at the hearing, throughout the course of this investigation we attempted to be innovative in tracking and seizing firearms purchased by the suspected "straw" buyers while simultaneously being engaged in a strategic effort to identify the decision makers, the financiers and an ever expanding network of "straw" purchasers of the firearms in order to ultimately disrupt the entire criminal organization. Ensuring the safety of the citizens of the United States and, concomitantly the citizens of Mexico, underlied the fabric of all of our law enforcement decisions in this investigation. To be clear, the main objective of the Fast and Furious investigation was to find a way to ***eliminate*** the flow of firearms to Mexico by this criminal organization. As such, those searching for the secret or hidden "high level" authorization to "permit guns to flow south," an objective antithetical to our OCDETF investigation, ultimately will remain unsatisfied. Upon reflection and review, my efforts in the hearing to expound upon the bases and practical application of the law enforcement goals lacked a completeness which was difficult for me to effectuate in that forum.

The Inception of the Investigation

The operational phase of this ATF investigation was formally initiated by the case agents on November 16, 2009 under the title "Jacob Chambers, et al." At that time, approximately seven (7) suspects had been identified as possibly being engaged in concerted firearms trafficking. During the next seven weeks, diligent ATF field agents

aggressively investigated these individuals, leading to the identification of other suspected "straw" purchasers and numerous firearms purchases that occurred both before and after the ATF investigation opened. The agents also conducted numerous queries of law enforcement databases which identified a potential link between these suspected firearms traffickers and a Phoenix area drug trafficking ring with ties to a Mexican drug trafficking organization. During this time there was active coordination, discussion, and assessment of the investigative information, strategy, and progress with the U.S. Attorney's Office (USAO). Based on the limited information and evidence up to this point in the investigation regarding the suspected illegal trafficking activity, the organization, its members, and the methods, routes and suspects by which firearms had been diverted from lawful commerce, including some recovered in the U.S. and Mexico, additional investigation was required. The investigation, which initially focused on a few suspected "straw" purchasers, quickly ballooned to an expansive and expanding firearms trafficking network. It was believed that it was important to adopt an investigative plan to terminate this organization's ability to traffic in firearms.

It is well established that many firearms trafficking organizations operating in the Southwest Border states are sophisticated transnational criminal enterprises involving multiple layers of criminal operators, including fungible "straw" purchasers. These purchasers have no prohibitive criminal history, and if arrested, generally refuse to cooperate and, indeed, have little ability to assist law enforcement in furthering the investigation through cooperation due to the insular design of the organization. They also have little incentive to cooperate based on the obvious prosecutive challenges and the nominal sentencing guidelines associated with the falsification of information required on

federal firearms transaction forms. Another disincentive for cooperation is the significant and well-founded fear of violent physical retaliation by the Mexican drug cartels. Thus, the premature arrest of "straw" purchasers prior to the identification and arrest of the organizers and financiers of the enterprise would have permitted the unabated trafficking of guns, as, in addition to potentially fatally exposing the investigation, the arrested "straw" purchasers would have been quickly replaced by new purchasers, unknown to law enforcement. Moreover, even if the USAO would have authorized the piecemeal arrest and prosecution of individual suspected "straw" purchasers, I am certain such arrests would literally have empowered the organization to continue to operate and illegally traffic firearms in virtual anonymity, undetectable to law enforcement and frustrating ATF's ability to staunch the flow of guns by charging all of the organization's members.[1/]

As I stated at the hearing, with 20/20 hindsight I now see that I should have conducted more frequent assessments during the course of the investigation in order to determine whether our surveillance and seizure efforts were effective in those instances where we had advance knowledge of an attempt by a suspected member of the firearms trafficking organization to purchase weapons. This was not an intentional omission of either myself or the agents who were doing their level best under trying and difficult circumstances while seeking to effectuate these, and other, legitimate law enforcement objectives: (1) the desire to establish to the satisfaction of the USAO that the suspects were indeed unlawful "straw" purchasers[2/] and members of the criminal enterprise; (2) to

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[1/] Experience dictates that decisions about arrest and seizure are best made by agents on the scene in accordance with the law and in consultation with their supervisors and federal prosecutors.

[2/] It is my understanding that to lodge criminal charges against "straw" purchasers in the District of Arizona we must be able to produce for federal prosecutors sufficient evidence to establish beyond a

identify the breadth, scope and methodologies of the criminal enterprise; and (3) to seize firearms and arrest the criminally culpable members of the organization when lawfully permitted to do so.

Although we suspected that this organization was in the business of purchasing firearms for a Phoenix area drug trafficking ring with ties to a Mexican drug trafficking organization, we did not stand idly by and watch more than 2000 guns be transported to Mexico. When ATF had advance notice that a suspected "straw" purchaser would be purchasing guns,[3/] the agents used available resources to track, surveil and seize the guns as permitted under existing laws and policies of ATF and the USAO.[4/] ATF also, contrary to insinuations at the hearing, used a wide variety of well-established law enforcement investigative techniques during the investigation in an effort to identify the participants, locations, vehicles, financing and operating methods, to interdict and seize firearms, and to gather the evidence necessary to support a successful federal prosecution in the District of Arizona. In fact, new and innovative techniques were used during the course of this investigation in an effort to track the movement of firearms as well as seize them lawfully, including the use of Federal civil forfeiture warrants for firearms. ATF

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reasonable doubt that the person suspected of "straw" purchasing a firearm intended to falsify the ATF F 4473 Firearms Transaction Record. A confession absent supporting evidence that the "straw" purchaser was buying guns for another does not rise to the level of proof beyond a reasonable doubt in this District. Furthermore, each substantive "straw" purchase violation must be proved with independent evidence related solely to that transaction; evidence of similar past behavior, to my understanding, will not be sufficient to support a prosecution in this District.

3/ For example, we did not receive notification that an FFL had sold 3 firearms to Jaime Avila on January 16, 2010 until three days later - - January 19, 2010. As such, ATF agents could not have surveilled the purchase, storage and/or transportation of those firearms. Two (2) of those firearms were later found on the scene of Agent Terry's murder.

4/ It is frequently the practice in these types of trafficking rings for the weapons to change hands several times before ultimate transfer across the border, with guns occasionally being stored at stash houses, sometimes for weeks and months at a time, and comingled with guns acquired from other purchasers. Recoveries related to this case in the U.S. and Mexico indicate that this was indeed the practice of this organization.

also, contrary to other insinuations at the hearing, conducted numerous interviews with suspected "straw" purchasers throughout the course of the investigation, but gained minimal information and cooperation during these interviews as to their culpability and the structure of the criminal organization. Furthermore, during the investigation ATF also attempted to insert an experienced undercover agent into the organization in a proactive attempt to gain valuable insight and evidence as to the inner workings, means and methods of this criminal enterprise. This undercover attempt, which was well-planned by dedicated and experienced agents, ultimately was not successful. As such, Fast and Furious was not an ATF undercover operation but a proactive investigation using the previously noted law enforcement techniques. I want to further reiterate, in most instances we did not have advance notice of the firearms purchases by suspected members of the organization.

We also routinely shared information regarding this investigation with the ATF Country Office in Mexico, other ATF field divisions along the Southwest Border, ATF HQ, and our Mexican counterparts including the PGR Representative stationed in the ATF Phoenix Field division office.[5/]

At the time ATF Phoenix Field Division opened this investigation in November of 2009, Phoenix ATF agents believed that suspects in this criminal enterprise had acquired more than 300 firearms. Though we did not know its scope or all of the players in the

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[5/] As part of "Project Gunrunner" ATF instituted a bi-weekly Southwest Border Briefing Paper which provides a wide ATF audience with information of active investigations, training efforts, and other Gunrunner related matters. Beginning in early December, 2009, when this investigation was then titled "Jacob Chambers, et al", this report began providing bi-weekly updates on the investigation, including, *inter alia*, the number of guns purchased by the organization, investigative techniques being used, coordination with other law enforcement agencies, and the recovery of firearms in the U.S. and Mexico, to Darren Gil, the ATF Mexico Attaché, and to Carlos Canino, the Deputy Attaché. Mr. Gil would have continued to receive these bi-weekly Briefing Papers until his removal from that post in the Fall of 2010. Accordingly, I cannot reconcile Mr. Gil's statement to the Committee that Operation Fast and Furious "was kept secret from [him] and his colleagues."

enterprise, on November 20, 2009,[6/] we learned that there had been a seizure in Naco, Sonora, Mexico of 42 firearms, of which 37 ultimately[7/]were traced to the criminal enterprise we were investigating. At that time, Group VII of the ATF Phoenix Field Division had only three (3) agents, yet they continued to build an investigation into this previously unknown yet burgeoning firearms trafficking criminal enterprise. On December 8, 2009, ATF agents learned that one of the suspected "straw" purchasers, Sean Steward, had sought to purchase 20 AK-47 type rifles at a Federal Firearms Licensee (FFL) in the Phoenix area. ATF agents surveilled Steward's eventual purchase of the 20 firearms at approximately 9:00 pm that evening. An ensuing traffic stop was conducted and Steward maintained to the law enforcement officers at the scene that he had purchased the guns and that they indeed belonged to him. Because Steward was not prohibited by law from purchasing or possessing the firearms, our agents on scene believed there did not exist lawful authority to seize the weapons despite their strong suspicions.[8/] On December 21, 2009, a Phoenix Police Department Gun Squad officer made contact with suspect Jose Polanco who had purchased 3 pistols on November 17, 2009. In answer to questions regarding one of the pistols which had been seized from a convicted felon in Phoenix on November 19, 2009, Polanco specifically denied having

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[6/] As stated previously, "straw" purchasers are fungible; therefore, many of the "straw" purchasers we had identified as members of the organization at the inception of the investigation were no longer being used by the organization when the investigation received OCDETF approval.

[7/] At the time of the seizure agents did not know that all 37 guns were linked to the organization they were investigating. Over the next several months, as ATF Phoenix continued to develop intelligence and work leads in the case, the case agents were able to connect those guns to several different suspected "straw" purchasers they believed were linked to the organization.

[8/] Despite the clarity of 20/20 hindsight so fervently expressed by several Committee members and ATF witnesses at the July 26, 2011 hearing, the determination on the ground at that time was not unwarranted.

purchased the weapon for another individual and claimed he purchased it for himself but then decided to sell it.[9/]

In a January 5, 2010, meeting at the United States Attorney's Office, it is my understanding that a determination was made that the legally sufficient evidence required to make arrests, seize firearms, and successfully prosecute the suspected violations had not yet been obtained. Over the next several weeks ATF continued to collect evidence to support an OCDETF[10/] investigation into this enterprise that we now believed was organized, prolific and supplying firearms to a Phoenix area drug trafficking ring with ties to a Mexican drug trafficking organization.[11/] By the time the United States Attorney's Office and the ATF Phoenix Field Division submitted the OCDETF paperwork to the OCDETF Regional Program Office in Houston, Texas in mid-January, the agents believed they had linked approximately 950 previously purchased guns to the Fast and Furious criminal enterprise.[12/] On February 5, 2010 we were notified by the Houston Regional OCDETF Office that the Fast and Furious investigation had received OCDETF approval.

[9/] In my experience, "straw" purchasers routinely deny the facts necessary to establish that they are indeed "straw" purchasers necessitating the collection of admissible evidence satisfactory to the USAO before charges can be filed. In this regard, Mr. Gil's testimony at the July 26, 2011 hearing that confessions are obtained "99.9%" of the time does not square with my experience or with the events in this case.

[10/] At this time we had hoped that an OCDETF approved operation would provide funding that would allow for additional agents to be detailed to the group to assist in conducting surveillance and enhance other investigative techniques necessary to achieve the objectives of the investigation.

[11/] To illustrate the herculean efforts of the 3 agents assigned to Group VII, during the first 6 weeks of their investigation the agents prepared and submitted more than 55 reports of investigation which recorded their early efforts to determine the scope of the criminal enterprise. This volume of investigative effort was unprecedented in my experience.

[12/] Because there is no central registry of all firearms purchases, there is no way for ATF to immediately identify where, when and how many firearms purchases have been made by a person of interest, not even for those purchases made at federally licensed firearms dealers (FFLs). Therefore "linking" previously purchased firearms to suspects in a firearms trafficking organization involves, but is not limited to, agents reviewing and analyzing information of "after the fact" sales including: reported multiple sales forms, reviewing firearms transaction records at FFLs, information from cooperating individuals, surveillances, lawful interdictions and/or firearms traces by ATF and other law enforcement agencies. It should be noted that evidence of previously purchased firearms by suspects in this investigation is still being uncovered.

The Post-OCDETF Phase

Throughout the OCDETF phase of the investigation we continued to utilize the previously mentioned and well-established law enforcement investigative techniques to assist the agents in determining the size, scope and methods of the criminal enterprise as well as to obtain sufficient evidence to arrest and prosecute the culpable individuals and seize the firearms when we believed we lawfully could do so.[13/] From the time of the inception of the Fast and Furious OCDETF phase of the investigation until the conclusion of the operational phase of the investigation at the end of July, 2010, ATF was able to surveil the purchase of approximately 300 firearms by people suspected of acting as "straw" purchasers for the criminal organization. ATF was able to proactively and lawfully seize approximately 60 of those firearms. For example, on February 13, 2010, ATF agents, because they had advance notice of a pending gun purchase from an FFL, obtained a court order to place a tracking device in the stock of one of the firearms that Uriel Patino purchased later that day. On February 20, 2010, ATF agents were able to track the firearms to the Tohono O'Odham Indian Nation in Arizona heading presumably toward Mexico. Upon coordination with the United States Border Patrol, a vehicle believed to be carrying the firearms was spotted near the border with Mexico. The vehicle was found to be loaded with forty-one (41) AK-47 type firearms wrapped in plastic. Thirty-seven of these firearms were subsequently determined to have been purchased by Uriel Patino between January 15, 2010 and February 13, 2010.[14/] The

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[13/] To be clear, and contrary to statements made at the hearing, I am aware of only one instance in this investigation where ATF agents were prevented from confronting a suspect. In that instance, on April 27, 2010, it is my understanding that, due largely to considerations of agent safety, agents were prevented from stopping a vehicle to confront a suspect.

[14/] Patino purchased the 37 firearms in the following manner: 10 firearms purchased on January 15, 2010; 10 firearms purchased on February 8, 2010; 5 firearms purchased on February 11, 2010; 2 firearms purchased on February 12, 2010; and 10 firearms purchased on February 13, 2010.

driver of the vehicle, unknown to ATF at that time, was placed under arrest and the firearms seized. Over the next several months agents were able to surveil Patino's purchase of approximately 200 firearms of which they were able to proactively and lawfully seize only 21.[15/] It should be noted that, to date, ATF has seized a total of 231 firearms in this investigation.[16/]

Using ATF and OCDETF resources we detailed several out-of-town agents to assist with surveillance during the period of March 14 to May 3, 2010. These agents often worked seven days a week and logged more than 4,000 hours of surveillance. From early May to mid-August the Phoenix Field Division was tasked with deploying the second Gunrunner Impact Team (GRIT) initiative which involved detailing approximately 85 ATF personnel of different job series from across the country to assist with the numerous firearms trafficking investigations being conducted by the Phoenix Field Division at that time. This included detailing 10 agents to Group VII to assist with firearms trafficking investigations including Fast and Furious. During this time period Phoenix Group VII personnel also continued to conduct numerous surveillances in support of this investigation.[17/] During this period, to my knowledge not a single agent

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[15] At the time, the policy of the United States Attorney's Office for the District of Arizona as understood by me was that ATF did not have lawful authority to seize firearms being transferred between two non-prohibited persons absent articulable and specific proof that the transfer in question was in and of itself unlawful.

[16/] As articulated earlier, in consultation with the United States Attorney's Office for the District of Arizona, ATF made every effort during this investigation to lawfully interdict and seize firearms. In that vein we used many law enforcement tools including trackers, visual surveillances, interviews, search warrants and electronic intercepts.

[17] It should be emphasized, that even with the detailees and the additional manpower available during the GRIT operation, the field agents could not maintain surveillance on every "suspected" resident, suspected "straw" purchaser or dealer premises of interest on an uninterrupted, 24/7 basis. We utilized our human resources, other assets and tools as effectively and efficiently as possible. The agents in the field must be permitted to make judgments as to how to best proceed, particularly when they were dealing with approximately 50 suspected "straw" purchasers and other suspects.

was instructed to decline to make a seizure or interdict firearms when he or she could do so lawfully and safely.

As I stated at the hearing and previously in this supplemental statement I realize that with more regular assessments I could have articulated to my staff the need to be proactive in ascertaining the quantity of guns being purchased that we were not able to intercept and more urgently articulating to the USAO the need to address in some way these now clear facts. These are the unintentional ***omissions*** for which I am, in retrospect, responsible as the then SAC of ATF in Phoenix.

Also, Ranking Member Cumming's statement that Director Melson was not aware of the "so called 'gun walking' [allegations] until they were reported publically" and that "they stayed in-house down there" assumes that allegations of "gun walking" were *actually* raised in Phoenix by the whistleblowers during the operational phase of the investigation. As I stated in my interview with Committee staff and also at the hearing on July 26, 2011, I am unaware of any concerns of alleged "gun walking" raised by the whistleblowers during the operational phase of the investigation until they were being reported publically in or about February 2011.[18] To me, the stark absence of contemporaneous documents voicing concerns to supervisors over "guns walking," establishes quite convincingly that concerns over alleged "gun walking" were not raised with the appropriate supervisors in the Phoenix Field Division during the operational phase of this investigation. Finally, there exists a well-established process within ATF in which employees can contact the Internal Affairs Division or Office of the Ombudsman

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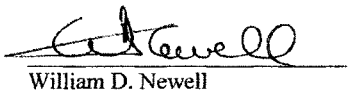
[18/] I have reviewed the statements made by the whistleblowers to this Committee and it is my belief that many of the assertions in these statements are untrue. Certainly the immediate supervisor at the time as well as the lead case agent of the Fast and Furious investigation would have personal knowledge as to the veracity of most of those assertions.

to report activity they believe needs to be addressed immediately or when they believe their concerns are not being addressed in the field by the appropriate supervisors. To the best of my knowledge, at no time during the operational phase of the Fast and Furious investigation did any of the whistleblowers contact the Internal Affairs Division or Office of the Ombudsman with concerns regarding the investigation.

Pursuant to Title 28 United States Code, Section 1746, I declare under the penalty of perjury that the forgoing is true and correct.



William D. Newell

Executed this 20th of September, 2011.

Questions for Special Agent William Newell
Bureau of Alcohol, Tobacco, Firearms and Explosives

Rep. Darrell Issa
Chairman of the Committee on Oversight and Government Reform

Hearing on "Operation Fast and Furious: The Other Side of the Border"

Lessons Learned from Fast and Furious

1) In your opening statement you stated, "at the conclusion of every investigation of this magnitude a thorough review is appropriate in order to determine whether tactics – whether [changes] in tactics and strategy are in order." Have you had the chance to review Operation Fast and Furious?

   a) If so, what changes in tactics and strategy did you order as a result of this review?
   b) If not, when do you plan to do so?

   Response: It is my understanding that the Department of Justice Office of Inspector General is currently conducting a review of the Fast and Furious investigation. Upon completion of this review ATF may conduct additional internal assessments.

2) The exit strategy for Operation Fast and Furious, promulgated in late April 2010, set out 30, 60, and 90-day benchmarks, with the end goal concluding the operation within 90 days. Fast and Furious, however, did not end within 90 days. What caused the delay?

   Response: There was no delay on the part of the ATF agents to end the operational phase of the investigation within the 90-day timeframe set forth in the exit strategy. These agents then worked closely with the U.S. Attorney's Office to provide the specific evidence needed to substantiate firearms related charges for each suspect. By mid-August the agents believed that sufficient evidence existed to bring these specific charges against numerous individuals. It should be noted however that charging decisions ultimately lie within the U.S. Attorney's Office.

3) During the hearing, you stated that mistakes were made during Operation Fast and Furious. You also stated that you should have conducted risk assessments as to whether or not the Operation Fast and Furious strategy was still prudent. Was it ever a prudent strategy to allow known criminals to buy guns and transfer them to criminal syndicates?

   Response: The Fast and Furious investigation did not allow known criminals to buy guns and transfer them to criminal syndicates. The Fast and Furious was a proactive investigation designed to identify the purchasers, financiers, transporters and decision makers in a large scale and complex firearms trafficking organization; to interdict, when lawfully possible, firearms presumptively destined for Mexico; to share, when appropriate, relevant information with U.S. and Mexican law enforcement authorities; to develop intelligence on other firearms trafficking organizations; and to charge, arrest and dismantle the entire organization.

   During the course of this investigation presumptively non-prohibited individuals, believed to be "straw" purchasers, continued to periodically purchase firearms from federally licensed firearms dealers (FFLs). These purchases involved sales by FFLs to presumptively non-prohibited persons adhering to the federal procedures which include a criminal background check. The fact that such

persons may make numerous purchases, including purchases of firearms identified as "weapons of choice" or purchases involving multiple firearms, does not in of itself, establish a violation of federal law. Additional evidence and investigation may be required to establish a violation of federal law to the satisfaction of the U.S. Attorney's Office.

4) You stated that in retrospect, you would have conducted more "risk assessments to determine where we were in the investigation."

   a) What type of risk assessments would you have conducted? Please provide details regarding what a risk assessment would have entailed.
   b) How often would you have conducted these risk assessments?
   c) When did you actually conduct risk assessments?
   d) What did these risk assessments reveal?
   e) How did the grave threat to public safety factor into the strategy of "allowing transfer of firearms to continue"?

Response:

a) In retrospect more in-depth briefings were required which would have addressed the status of the investigation to include the number of purchases of firearms by specific suspects, the efficacy of investigative techniques, the daily resource challenges facing our agents in the field, their interdiction efforts, specifically, identifying those instances where we were able to surveil the purchase of firearms by a putative straw purchaser yet were unable to effect a lawful seizure of those firearms, and the agents interactions with the U.S. Attorney's Office.
b) As often as needed depending on the information received during the briefings regarding the status of the investigation.
c) Because public safety is always our concern we routinely evaluated the efficacy of the investigative techniques being used throughout the course of the operational phase of this investigation.
d) That our agents were dealing with a complex and wide-spread firearms trafficking organization and that we needed additional resources to effectively address the activities of this group in order to establish violations of law to the satisfaction of the U.S. Attorney's Office.
e) Public safety was always on our mind and our primary concern in this investigation. The phrase "allowing transfer of firearms to continue" refers to language in a January 8, 2010 briefing paper which comes from ATF's Firearms Enforcement Program directive under the title "Weapons Transfers". This states that "During the course of illegal firearms trafficking investigations, special agents may become aware of, observe, or encounter situations where an individual(s) will take delivery of firearms, or transfer firearm(s) to others. In these instances, the special agent may exercise the following options: 1) In cases where probable cause exists to believe a violation of law has occurred and the special agent determines there is a need to intervene in the weapons transfer (e.g., the recipient of the firearms is a known felon; it is known the firearms will be used in a crime of violence), the special agent shall do so but should place concerns for public safety and the safety of the involved special agents as the primary determining factor in exercising this option; 2) In other cases, immediate intervention may not be needed or desirable, and the special agent may choose to allow the transfer of firearms to take place in order to further an investigation and allow for the identification of additional coconspirators who would have continued to operate and illegally traffic firearms in the future, potentially producing more armed crime."

The use of this portion of the directive in the January 8, 2010 briefing paper as well as the word "Currently" should be considered in its entirety and within the context that it was presented. When this investigation was first initiated in November, 2009 a handful of suspects had been identified as possibly being engaged in a firearms trafficking organization. During the next seven weeks, the three agents in Group VII aggressively investigated these individuals, leading to the identification of other suspected straw purchasers and numerous firearms purchases that occurred both before and after the ATF investigation opened, and before and after the individual suspects were targeted in the investigation. (Of note is that during the first six weeks of this investigation the three agents in this group produced more than 55 reports of investigation in order to document their early efforts to determine the scope of the investigation, a herculean effort considering their ongoing efforts during this same period to conduct surveillance and pursue multiple sources of information regarding this criminal organization.) As noted within the January 8, 2010 briefing paper, there was active coordination, discussion, and assessment of the investigative information, strategy, and progress with the U.S. Attorney's Office. Based on the limited information and evidence regarding the suspected illegal trafficking activity, the organization, and the methods, routes and suspects by which firearms had been diverted from lawful commerce, including some recovered in the U.S. and Mexico, it was agreed that additional investigation was required and that the legally sufficient evidence required to make arrests, seize firearms, and successfully prosecute the suspected violations had not yet been obtained to the satisfaction of the U.S. Attorney's Office. As the investigation progressed and more evidence was obtained, it is my understanding that the agents made every effort to interdict and seize firearms when lawfully permitted to do so.

5) As Chairman Issa requested, please provide a list of the things that you would have done differently under Operation Fast and Furious.

Response:

a) I would have requested more in-depth briefings on the status of the investigation to include the number of purchases of firearms by specific suspects, the efficacy of investigative techniques, the daily challenges facing our agents in the field, their interdiction efforts, specifically, identifying those instances where we were able to surveil the purchase of firearms by a putative straw purchaser yet were unable to effect a lawful seizure of those firearms, and their interactions with the U.S. Attorney's Office.
b) I would have ensured a more effective flow of information, between the field and ATF headquarters regarding the status of the investigation and the need for additional resources in support of the investigation.
c) I would have communicated a greater sense of urgency to my staff and the U.S. Attorney's Office as to the need for the return of expeditious charges addressing the criminal violations of the organization.

6) At the hearing, you admitted broad errors, such as the lack of risk assessments and "failures of communication." Do you take responsibility for any specific mistakes made during the course of the investigation?

Response:

As set forth above, I recognize several things that I would have done differently. As the Special Agent in Charge in Phoenix at that time, in some sense, I bore the ultimate responsibility when errors occurred within the field division.

Lack of Interdiction of Weapons

7) In your opening statement, you asserted that "none of the individuals in the firearms trafficking chain [we]re presumptively prohibited by law [to] possess firearms."

   a) After ATF agents witnessed the transfer of firearms to third parties, what efforts did ATF make to determine whether the third party was a prohibited possessor?
   b) Conversely, were there ever any instances during Operation Fast and Furious in which ATF agents witnessed a transfer of firearms but did not attempt to determine whether the third party was a prohibited possessor?

   Response:

   a) I am aware that during the course of the investigation the agents conducting the investigation used many investigative techniques in order to determine whether certain individuals were prohibited from possessing firearms. To the best of my knowledge these included querying criminal history databases and conducting field interviews either directly or indirectly. To the best of my knowledge in those instances where the third party transferee was determined to be a prohibited possessor, arrests were effectuated and firearms were seized.
   b) I am aware of one occurrence. On April 27, 2010 agents on surveillance asked for permission to stop a vehicle. Due in part to officer safety concerns, they were denied permission to stop the vehicle.

8) How many times in 2010 did ATF agents in the Phoenix Field Division seize weapons from individuals who later filed claims for return of property? For each claim, please indicate whether ATF ever returned these weapons to the individuals. If not, indicate the reason.

   Response:

   a) I do not possess this information and must defer to the ATF Office of Legislative Affairs for a response.

9) Is it necessary for ATF to have lawful authority to seize weapons simply in order to initiate contact with a suspect who has purchased guns? Can lawful authority to seize weapons result from talking with suspects who have purchased guns?

   Response: There are a number of ways to initiate contact with "straw" purchaser suspects, many of which were used in this investigation. Information derived from these methods can be used to establish the proof needed to effect a seizure.

10) At the hearing, you stated you were aware of one instance during Operation Fast and Furious in which supervisors denied an agent's request for permission to make an arrest "because of the overall objective of the plan".

    a) Please describe in detail the circumstances of this instance.

b) When did it occur?
c) Who denied the agent permission to arrest the suspect?
d) How many weapons did that suspect have in possession at that time?
e) When did you become aware of this instance?
f) Did you personally suggest any corrective action?

Response:

a) To clarify, I became aware of an instance on April 27, 2010 in which agents on surveillance asked for permission to stop a vehicle. I was informed that agents were denied permission to stop the vehicle due in part to officer safety concerns.
b) April 27, 2010.
c) I am not aware that any ATF agent asked for permission to arrest the suspect only to stop the vehicle. To the best of my knowledge Special Agent Tonya English called off the agents request to stop the vehicle due in part to officer safety concerns. As acknowledged by Agent Casa who had sought permission to effectuate the stop in his testimony before the Committee:

> "The guy knew he was being followed, but he didn't know by who. For all we -- he knew, we could have been cartel members trying to rob him of those 10 guns, or we could have been law enforcement. He didn't -- we don't know what he thought. But it caused ***a very serious officer safety issue***." (Emphasis added).

d) To the best of my knowledge it was ten pistols.
e) February, 2011.
f) No. I was not aware of the incident at the time it occurred.

11) At the hearing, you agreed that straw purchasing is against the law. You also stated you did not go back to purchasers of weapons recovered in Mexico and interrogate them.

a) Why did Group 7 agents fail to interrogate these individuals after weapons they purchased were recovered in Mexico.
b) Why did Group 7 agents fail to interrogate these purchasers after these same individuals continued to buy weapons?

Response:

a) I am aware that during the course of the investigation Group VII agents did in fact interview numerous individuals after firearms they purchased were recovered in Mexico.
b) I am aware that during the course of the investigation Group VII agents did in fact interview numerous purchasers after they continued to purchase firearms.

12) At the hearing, you stated that if "you just focus your investigations on straw purchasers, you're not having a lasting impact."

a) Didn't Operation Fast and Furious neglect straw purchasers entirely in a misguided attempt to reach the "higher ups"?
b) To date, how many "higher ups" have been indicted as a result of Fast and Furious?
c) To date, how many straw purchasers have been indicted as a result of Fast and Furious?
d) What lasting impact has the operation had on firearms trafficking organizations?

Response:

a) The current and pending indictments in this case reflect our intention, not misguided, throughout the course of this investigation to address the illegal activities of the entire criminal organization, including the arrest of "straw" purchasers. In fact the first indictment in this case addressed violations of federal law by the fifteen "straw" purchasers who purchased the majority of firearms identified by this investigation.
b) If by "higher ups" you mean those individuals who directed, financed and/or were decision makers in this organization – to date the individuals who were in charge of the straw purchasing, transportation and money laundering network in Phoenix have been indicted. Charges against other individuals are currently being pursued.
c) In the first indictment, dated January 19, 2011, twenty individuals were indicted with firearms, money laundering, narcotics, conspiracy and aid/abetting charges. Of these twenty individuals, nineteen were charged under a conspiracy count with Title 18, United States Code, Section 922(a)(1)(A) – Dealing in Firearms without a License and Title 18, United States Code, Section 924(a)(1)(A) – Making False Statements in Connection with the Acquisition of a Firearms. Of these nineteen, fifteen have been identified as actual "straw" purchasers of firearms. As stated above these fifteen were identified as having purchased the majority of firearms identified in this investigation.
d) The initial indictment of twenty individuals has disrupted the Phoenix based structure of this organization and additional indictments are being sought in an effort to dismantle the entire organization.

13) At the hearing, you stated that "throughout the investigation we had information that…Mr. Patino was working with Mr. Acosta throughout the investigation."

a) Did ATF agents ever initiate contact with either Mr. Patino or Mr. Acosta during Fast and Furious?
b) Why didn't you "make a run" at either individual, well before 700 weapons ended up in the possession of Mexican drug cartels?

Response:

a) Yes, I am aware that contact was made with Mr. Patino and Mr. Acosta during the course of this investigation.
b) As stated above contact was made with Mr. Patino and Mr. Acosta during the course of this investigation.

14) You stated that "[d]uring the summer of '10, we finally convinced certain individuals in the Judiciary that we had a very strong – we believe we had a very strong ability or theory on being able to seize firearms civilly in order to stem the flow, and we got that approved, I would say, September of '10."

a) Please provide all documentation related to those seizures.
b) Why did it take so long for ATF to begin conducting civil forfeiture of guns?
c) What new evidence supported the ability to seize firearms at this juncture?
d) Why did ATF need permission to begin seizing weapons from suspects?
e) Has ATF utilized criminal forfeitures in prior investigations?
f) Does the U.S. Attorney's Office in Phoenix have to approve all civil forfeitures by ATF's Phoenix Field Division? If so, does it provide these approvals on a case-by-case basis?

Response:

a) I do not possess this information and must defer to the ATF Office of Legislative Affairs for a response.
b) To the best of my knowledge this innovative technique to civilly seize firearms was first proposed in the District of Arizona by ATF during this period.
c) It is my understanding that the use of narcotics detection canines to alert on the bills used to pay for particular firearms to support seizure under the Title 21 statute was the method proposed and used in furtherance of these seizures.
d) The seizure warrants are required to be reviewed and approved by the U.S. Attorney's Office before being submitted to a Federal Judge for approval.
e) Yes.
f) The seizure warrants are required to be reviewed and approved by the U.S. Attorney's Office before being submitted to a Federal Judge for approval.

15) In response to a question about guns going to Mexico, you stated "Absolutely. We didn't want any guns [going to Mexico]." If that is so, why didn't you stop the operation once it was clear that the guns linked to Fast and Furious were being recovered in Mexico?

Response: To be clear, discontinuing the Fast and Furious investigation at the initial stages once it was clear that firearms purchased by this organization were being recovered in Mexico would have permitted the continued undetected flow of guns to Mexico. At this point in the investigation ATF had limited knowledge of the hierarchical structure of the criminal enterprise and assuming the U.S. Attorney's Office would have authorized the arrest of the suspected "straw" purchasers, it would not have impacted the organization's ability to continuously purchase firearms. The arrest of the suspected "straw" purchasers, before the organizers and financiers of the criminal network could be detected and identified, would have allowed the conspirators to continue to traffic guns unabated, as the arrested purchasers, facing negligible jail time, have both little incentive and little helpful information to offer law enforcement. Experience dictates that they would have been quickly replaced by new "straw" purchasers unknown to law enforcement. This literally would have empowered the organization to continue to operate and illegally traffic firearms in virtual anonymity; an irresponsible situation we sought to avoid in seeking OCDETF approval.

16) At the hearing, you stated "[t]he investigation first began in November of 2009 under the name of Jacob Chambers, who at the time was identified as one of the more prolific straw purchasers."

a) How did ATF first discover that Jacob Chambers was a straw purchaser?
b) Why did you believe that Jacob Chambers was "one of the more prolific straw purchasers?" How many guns had he purchased as of November 2009? How many guns did he purchase after he became a suspect in November 2009?
c) If Mr. Chambers was a prolific straw purchaser, why didn't ATF arrest him earlier? Why did ATF knowingly allow him to continue purchasing weapons?

Response:

a) This ATF investigation was formally initiated on November 16, 2009 under the title "Jacob Chambers, et al" due to information that ATF agents were pursuing regarding a handful of suspected "straw" purchasers in a yet fully identified firearms trafficking organization.

b) At the initiation of the investigation the agents determined that Mr. Chambers had purchased approximately thirty-seven firearms. After becoming a suspect Mr. Chambers purchased approximately forty-two additional firearms. It should be noted that the last known firearms purchase by Mr. Chambers occurred on December 11, 2009.
c) ATF did not knowingly allow Mr. Chambers to continue to purchase firearms after becoming a target of the investigation. Mr. Chambers was a non-prohibited person adhering to the federal procedures to acquire firearms which included a criminal background check. The fact that he made numerous purchases, including purchases of firearms identified as "weapons of choice" or purchases involving multiple firearms, does not in of itself, establish a violation of federal law. Additional evidence and investigation may be required to establish a violation of federal law to the satisfaction of the U.S. Attorney's Office.

17) How do you reconcile your statement that the Phoenix Field Division "made every effort" to conduct lawful seizures of firearms with your statement during the same line of questioning that "our efforts to allow the transfer to identify additional coconspirators was so that we could further the investigation"?

Response: Given the fact that the U.S. Attorney's Office had made the determination that there did not exist sufficient evidence to charge the putative "straw" purchasers at that time, as evidenced in the January 8, 2010 briefing paper (see response to question 4(e) above), we continued the investigation in accordance with ATF policy to build criminal cases against each member of the organization. During the operational phase of the investigation to the best of my knowledge ATF made every effort to conduct lawful seizures of firearms.

Involvement with Other Agencies

18) Were DEA, FBI, IRS, or ICE aware of the specific investigative techniques utilized in Operation Fast and Furious? Did any of these agencies question these techniques?

Response: To the best of my knowledge no investigative technique used in this investigation was kept from our law enforcement partners. I am also not aware that any of these agencies questioned the use of these common law enforcement techniques.

19) What information did DEA provide to ATF regarding Operation Fast and Furious suspects or seizures of weapons purchased by Fast and Furious suspects? Please list, in detail, the dates on which DEA furnished information to ATF about these suspects or seizures and the nature of the information shared.

Response: It is my understanding that during the initial stages of the investigation the ATF case agents conducted a routine deconfliction query through law enforcement databases of the suspects identified in the investigation at that time. Based on information gained from the response to this query the ATF case agents met with DEA on December 15, 2009 in order to discuss deconfliction of ongoing investigations. It is my understanding that throughout the remainder of the investigation, when requested by ATF, DEA did provide additional intelligence and information regarding individuals associated with targets of the ATF investigation. I am also aware that on or about April 13, 2011 DEA seized sixty firearms during several enforcement operations in the Phoenix area. Subsequent tracing of those firearms and coordination with ATF revealed that fifty-two of the recovered firearms were associated with targets of the Fast and Furious investigation.

With the exception of one firearm purchased in May 2010, the remaining 51 firearms were purchased within a 43-day period between October 25, 2009 and December 8, 2009.

20) Operation Fast and Furious targeted drug trafficking organizations. Why didn't DEA play a primary role in this investigation?

Response: Operation Fast and Furious was an approved OCDETF investigation targeting firearms trafficking activity. The investigation was conducted by Phoenix Group VII which is co-located at the Phoenix OCDETF Strike Force and housed in the Phoenix DEA office building.

Informing Mexico about Fast and Furious

21) In your opening statement, you asserted that Operation Fast and Furious was designated to "share, when appropriate, relevant information with U.S. and Mexican law enforcement authorities."

a) Did ATF ever share information with Mexican law enforcement authorities? If so, when, and what specific information?
b) With whom in Mexican law enforcement did you share information?

Response:

a) I am personally not aware of what information ATF headquarters shared with Mexico. The information that I shared with Mexican law enforcement authorities is identified in Paragraph 21(b) below.
b) As I stated in the hearing, the Phoenix Field Division is the only ATF field division to have a representative from the Mexican Attorney General's Office (PGR). This was due to my efforts and desire to secure a closer and more effective working relationship with our Mexican law enforcement partners. As early as December of 2009 I informed the Phoenix PGR representative that Group VII was conducting a firearms trafficking investigation involving the suspected transportation of firearms from Phoenix to Mexico. On several occasions during the course of the following year I briefed the Phoenix PGR rep on the status of this investigation. In late 2010 as the date for indictment and arrests became more firm, I began to coordinate with the Phoenix PGR rep and our ATF Mexico Country Office regarding having Mexican Federal prosecutors present in Phoenix in order that they may be provided information about the Mexico side of this firearms trafficking network. It is my understanding that the ATF Mexico Country Office coordinated this visit with the specific unit within the Mexican Attorney General's Office that handles firearms prosecution as well as with offices within the U.S. Embassy in Mexico City.

In preparation for this expected visit of Mexican prosecutors the following meetings/briefings took place:

On December 3, 2010, in a meeting at the ATF Phoenix Field Division office, I arranged for the case agent and supervisor to brief our Acting Country Attaché, Carlos Canino, and the head of the Mexican Attorney General's firearms prosecution unit on the status of the Fast and Furious investigation. In this meeting an invitation was extended to our Mexican partners to send personnel they deemed most appropriate, to Phoenix during the initial arrest phase of this investigation in order to obtain information that might be of use to them in pursuing charges in Mexico if possible.

On January 24, 2011, a pre-operational briefing was held for all U.S. law enforcement personnel assisting in the arrest phase of this investigation. Both Mexican Federal firearms prosecutors and the Phoenix PGR representative were present for this briefing.

On January 25, 2011, the Mexican Federal prosecutors and the Phoenix PGR representative were kept fully informed of the arrests being made and were provided useful information gleaned from post-arrest interviews of those individuals who were willing to cooperate with law enforcement.

22) You stated that "absolutely, the group that we were working, we knew that that was their intention to funnel guns to Mexico."

a) If so, what steps did you take to ensure that the guns did not actually go to Mexico?
b) If you knew guns were going to Mexico, why did your agents break off surveillance of these weapons, rendering them unable to determine to whom the guns were being transferred and who was transporting them to Mexico?
c) How did ATF plan to find out the methods used by traffickers to smuggle guns to Mexico, and the identities of these smugglers?

Response: When this investigation was officially opened in November, 2009 it was based on preliminary investigative information that a handful of suspects had been identified as possibly being engaged in illegal firearms trafficking. As the investigation progressed the case agents gathered additional information regarding the suspected firearms trafficking activity of targeted individuals including examining "firearms trafficking indicators," such as frequent transactions involving one or more similar or identical firearms, frequent purchases of one or more "weapons of choice", frequent multiple sale type transactions, frequent purchases involving multiple dealers in which similar or identical firearms are purchased at varying prices on or about the same day, large numbers of firearms purchased in cash transactions, and of course, previously purchased firearms being recovered by law enforcement and traced both in the U.S. and Mexico. It must be noted however that the case agents did not have immediate knowledge of or the ability to identify all previous firearms purchases that these persons had made. This greatly hindered their ability to locate or interdict those firearms if they were in fact purchased for illegal trafficking purposes. Similarly, it must be understood that the case agents did not have "real time" awareness of most purchases of firearms during this investigation. Persons and "suspects" were identified and added to this investigation at various times throughout the investigation, and to date, ATF continues to learn about previously unidentified firearm purchases.

The link between a firearms and narcotics trafficking organization came as no surprise to the case agents in this investigation who on a daily basis investigate firearms trafficking from Arizona to Mexico. Arizona is known to law enforcement as a major gateway north out of Mexico for narcotics trafficking organizations. These criminal organizations are also known to use the same narcotics trafficking routes and distribution networks to purchase, stash and transport firearms south to Mexico.

In our efforts to identify the participants, locations, vehicles, finances and operating methods of this criminal organization, establish criminal violations, interdict and seize firearms, and gather the evidence necessary to support a successful federal prosecution, we conducted an extensive investigation, which continues, through a wide array of both proactive and reactive investigative

techniques. These include but are not limited to the use of mobile and aerial surveillance, electronic surveillance including electronic intercepts, pole cameras, undercover operations, interviews, trackers and other enforcement tactics. In addition, due to our shortage of manpower I tasked the ASACs early in the investigation with bringing in agents from within the division to assist with surveillance and thus give the case agents time to pursue the numerous leads in the expanding investigation. Upon receiving OCDETF approval we were then able to obtain external funding to detail several out-of-town and out-of-state agents to assist in surveillance from approximately March 14 to May 3, 2010. These detailed agents worked surveillances 7 days a week, for 7 weeks, booking nearly 4,000 hours of surveillance. Then from early May to mid-August the Phoenix Field Division was tasked with deploying the second Gunrunner Impact Team (GRIT) during which approximately 85 ATF personnel of different series were detailed to Arizona and New Mexico to assist with on-going ATF operations. During this time we detailed ten agents to Group VII to assist with the numerous on-going firearms trafficking investigations including Fast and Furious. It should be noted that the Phoenix Group VII personnel continued to conduct numerous surveillances prior to the arrival and after the departure of these detailees, to include the GRIT operation period. In order to maximize the efficiency of these multiple surveillance operations the Phoenix Group VII supervisor developed and maintained a detailed surveillance assignment list for the detailees. It should be emphasized, that even with the detailees and the additional manpower available during the GRIT operation, the field agents could not maintain surveillance on every "suspected" residence, suspected "straw" purchaser and dealer premises of interest on an uninterrupted, 24/7 basis. We utilized our human resources, other assets and tools as effectively and efficiently as possible, but when a suspected "straw" purchaser goes into his/her home with firearms and nothing happens for long periods of time, the agents in the field must make judgments as to how to best proceed. In the Fast and Furious case, the case agents were dealing with approximately 50 suspected "straw" purchasers and other suspects.

23) You stated that "[o]ne of the things we wanted to do was as soon as we had solid information on the drug kingpin, if you will, was, to share that information with Mexico."

a) Did ATF plan to extradite the drug kingpins involved in Fast and Furious from Mexico?
b) If so, when did ATF plan to share information gleaned from Fast and Furious to facilitate such extraditions with the Mexican government?
c) To date, have any extraditions occurred? Are they currently being considered?

Response:

a) ATF cannot seek extradition. Extradition is a legal process enforced by the U.S. Attorney's Office.
b) See answer to "a" above. Further it is my understanding that extradition can only be sought after the filing of a charging instrument against the individual whose extradition is being sought.
c) This question needs to be directed to the U.S. Attorney's Office.

24) You stated that ATF "hoped that the Mexican officials would, in fact, prosecute [the drug kingpins]."

a) When did ATF plan to share information gathered under Fast and Furious with the Mexican government to support prosecutions of these drug kingpins?

b) Was the primary purpose of Fast and Furious to gather information about these drug kingpins to assist the Mexican government in prosecuting them?

Response:

a) The appropriate time for sharing relevant information about a drug kingpin is a decision that will be made in consultation with the U.S. Attorney's Office, ATF headquarters and the ATF Mexico Country Office.
b) No.

25) At the hearing, you stated that "Mr. Canino knew about the [Fast and Furious] investigation."

a) Did you ever inform any ATF personnel in Mexico about a significant case out of the Phoenix Field Division, or Operation Fast and Furious specifically? If so, when?
b) What specific details about this case did you share with ATF officials in Mexico?
c) If you personally did not inform the ATF officials in Mexico about this case, who did?
d) At any point, did you get the opinion of ATF Mexico personnel of how to proceed with this case? If not, why?

Response:

a) During the course of the investigation I discussed this case with Mr. Canino on several occasions. In addition, as part of ATF's "Project Gunrunner", ATF instituted a bi-weekly Southwest Border Briefing Paper which provides, among other things, information of active investigations around the country. Beginning in early December, 2009, when this investigation was titled "Jacob Chambers, et al", this report began providing a wide ATF audience, including Carlos Canino, Darren Gil and other ATF personnel in Mexico, with specific information about the investigation including the number of firearms being purchased by suspected "straw" purchasers, the investigative techniques being used, coordination with other law enforcement agencies, the recovery of firearms both in Mexico and the U.S., and other details regarding the progress of the investigation. After this investigation was approved as an OCDETF investigation under the title "Fast and Furious", the bi-weekly reports began to reflect this name change. Mr. Gil would have continued to receive these bi-weekly Briefing Papers as the Mexico Country Attaché until his removal from that post in the Fall of 2010. Accordingly, I cannot reconcile Mr. Gil's statement to the Committee that Operation Fast and Furious "was kept secret from [him] and his colleagues."
b) See "a" above.
c) Besides my discussions with Mr. Canino mentioned previously and the bi-weekly Southwest Border Briefing Papers, I am aware that Assistant Special Agent in Charge Jim Needles, Group Supervisor David Voth, Special Agent Hope MacAllister, Special Agent Tonya English and ATF officials in ATF headquarters informed ATF officials in Mexico about this case.
d) I don't recall ever receiving an opinion from ATF Mexico personnel of how to proceed with this investigation.

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26) A January 8, 2010 briefing paper stated, "Currently, our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and

allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexico drug trafficking organizations."

a) Who drafted this briefing paper? Who approved it? Who sent it to ATF headquarters?
b) Who reviewed the document? Did anyone express concerns about this statement?
c) How many additional weapons did Fast and Furious suspects buy after this briefing paper was drafted? How many of these weapons have been recovered in Mexico? In the United States?
d) How many additional coconspirators were identified as part of the firearms trafficking organization after this briefing paper was drafted? How many of these additional coconspirators have been indicted?

Response:

a) Phoenix Group Supervisor David Voth in coordination and consultation with his supervisor at that time, Assistant Special Agent in Charge George Gillett. It was approved by his supervisor, Assistant Special Agent in Charge George Gillett, and then by me, before I forwarded it to my supervisor in ATF headquarters.
b) The review in the Phoenix Field Division included Assistant Special Agent in Charge George Gillett and myself. As to who reviewed it in ATF headquarters, besides my immediate supervisor, I do not have that information. I am not aware of anyone expressing concerns about that statement.
c) To the best of my knowledge based on information provided to me on September 7, 2011, ATF has identified the purchase of approximately 1076 firearms by suspects in the investigation after January 8, 2010. To the best of my knowledge based on information provided to me on September 7, 2011, of the 1076 firearms 69 have been recovered in Mexico and 255 in the United States.
d) As of August 22, 2011 and to the best of my knowledge forty additional coconspirators were identified as part of the firearms trafficking organization after this briefing paper was drafted. Of these, fourteen were indicted on January 19, 2011.

27) In response to a question about whether Mr. Melson knew about Fast and Furious, you responded, "My belief is yes. I briefed him."

a) When did you brief Mr. Melson about Operation Fast and Furious?
b) What were the contents of that briefing?
c) Who else was present at this briefing?

Response:

a) In preparation for two field visits during 2010 the Phoenix Field Division prepared briefing books for Mr. Melson which included information regarding this and other ongoing significant investigations. Also, during the course of the investigation I received and responded to requests from my immediate supervisor for information on the investigation that he informed me were coming directly from Mr. Melson. These requests pertained to specific information about the investigation to include investigative techniques being used. In addition, during a visit to the Phoenix Field Division in September of 2010 I had a discussion with Mr. Melson regarding the investigation and the fact that we were hoping to secure federal indictments soon. Beginning in

early February, 2011 I participated in several conference calls and meetings with Mr. Melson in which the details of the investigation were discussed.

b) The briefing books contained a brief overview of the investigation, as well as numerous other active investigations in the Phoenix Field Division at that time. The discussion which took place in Phoenix in September of 2010 regarded the status of the investigation as to potential indictment dates. The conference calls and meetings which began in early February, 2011 discussed the details of the investigation in response to Congressional and Departmental inquiries.

c) The briefing books were forwarded to ATF HQ as per standard procedure. As I recall, the September 2010 Phoenix discussion included Mr. Melson, Assistant Director Mark Chait and me. The meetings and conference calls which began in early February, 2011 included several members of the executive staff to include Mr. Melson.

28) You stated, "Well, a case like Fast and Furious goes through several levels of approval, sir."

a) Describe the approval process for Fast and Furious.
b) Identify the specific levels of approval to which you referred.
c) Provide a list of all the individuals who specifically approved Fast and Furious.

Response:

a) Operation Fast and Furious as it has come to be known was initiated as a normal course of business firearm trafficking investigation in ATF's Phoenix Field Division Group VII in November, 2009. Within ATF, the approval to initiate an investigation is held by the case agent and the first line supervisor. In mid-January, 2010 this investigation was submitted and subsequently approved on January 26, 2010 by the U.S. Attorney's Office for the District of Arizona and the local Organized Crime Drug Enforcement Task Force (OCDETF) coordination committee. It was subsequently approved by the regional OCDETF office in Houston, Texas on or about February 5, 2010. After being approved by the OCDETF Program, the case took on the moniker "Operation Fast and Furious" due to several of the initial suspects' membership in a local street car racing club. The investigative activities and techniques in this investigation were conducted in accordance with ATF and DOJ policies. The participating Assistant U.S. Attorney and the U.S. Attorney's Office (District of Arizona) were informed on the activities of these suspects, the investigative techniques being utilized, and the progress of the investigation. In addition, the Title III applications were submitted to and approved by higher level officials at ATF and the Department.

b) Under ATF policy, the case agent and group supervisor were authorized to initiate and conduct this firearms trafficking investigation in the manner it was, with the oversight and concurrence of the Assistant Special Agent in Charge (ASAC) and the Special Agent in Charge (SAC), Phoenix Field Division. The OCDETF phase of this investigation was approved by the U.S. Attorney's Office for the District of Arizona and the local Organized Crime Drug Enforcement Task Force (OCDETF) coordination committee. It was subsequently approved by the regional OCDETF office in Houston, Texas on or about February 5, 2010. In addition, the Title III applications were submitted to and approved by higher level officials at ATF and the Department.

c) The ATF Phoenix personnel include the case agent who initiated this investigation - Special Agent Hope MacAllister, Group VII Supervisor David Voth, the Assistant Special Agent in Charge at that time George Gillett, and myself as the Special Agent in Charge of the Phoenix Field Division at that time. The individuals who participated in the local OCDETF coordination

and approval committee on January 26, 2010, include Glen McCormick from the U.S. Attorney's Office, ASAC George Gillett from ATF, Ramon Figueroa from the Arizona Department of Public Safety, Supervisory Special Agent David Larson from the FBI, ASAC Jason Kidd from ICE/HSI, Special Agent Albert Childress from IRS, Deputy Tom Mertz from the U.S. Marshal's Service, and Special Agent Chris Scheuler from DEA. Other than the ATF Regional OCDETF Representative, Special Agent Chong Gee, I am not aware of who else participated in the Regional OCDETF Coordination meeting in Houston, Texas on or about February 5, 2010.

29) You stated, "Sir, it's not one person who did that, it was a group of individuals who looked at the set of facts in this case and determined that this was the best strategy to follow...."

a) Provide a list of all the individuals who devised the strategy behind Fast and Furious.
b) Did all of these individuals agree that the strategy used during Fast and Furious was the best one to follow?
c) Was Mr. McMahon simply aware of the strategy or did he have an active role in formulating it? Did he make any specific suggestions as to the strategy?

Response:

a) The main objective of the Fast and Furious investigation was stopping the trafficking of firearms by a prolific and large-scale firearms trafficking organization. The concept behind this strategy was based on OCDETF program guidance in April 2009, the Office of National Drug Control Policy's (ONDCP) *National Southwest Border Counternarcotics Strategy* (June 2009), and the Department of Justice's *Strategy for Combating Mexican Cartels* (January 2010), which established priorities related to the identification, disruption, and dismantlement of transnational criminal organizations and Mexican cartels affecting the Southwest Border, through comprehensive, multi-agency criminal enforcement operations with an emphasis on impacting the leadership and command structure of such organizations in order to have a substantial and sustained impact. These documents echo that targeting low level operators within these groups will not significantly impede or disrupt these organizations or achieve the desired results. In June 2009, ATF Field Operations published the National Firearms Trafficking Enforcement Strategy and Implementation memoranda which emphasized ATF's affirmative commitment to addressing U.S. based domestic and international firearms trafficking through a more comprehensive enforcement strategy utilizing the full range of assets, capabilities, and authorities unique to ATF; the identification, investigation, disruption and referral for prosecution of those firearms traffickers responsible for arming violent criminals; and external partnerships with other law enforcement agencies.

In addition, in 2008 the OCDETF Strike Force in Phoenix was created with a primary mission to focus investigations on the various illegal activities of the Sinaloa Cartel cells operating in Arizona with an emphasis on the command and control elements of those cells in order to have the greatest disruptive impact. Phoenix Group VII, the group that initiated the Fast and Furious investigation, is co-located at the OCDETF Strike Force in Phoenix.

With this guidance in mind, in early January 2010, Group Supervisor David Voth, ASAC George Gillett and I discussed the objectives of the investigation which was entitled "Jacob Chambers, et al" at that time. This discussion took place after a determination had just been made by the lead federal prosecutor in this case that minimal evidence existed at this point in the

investigation to support any type of prosecution and that additional evidence should be gathered. It should be noted that at this point in the investigation it was suspected that the firearms trafficking organization under investigation was availing themselves of an expanding group of "straw" purchasers. Through experience we have learned that "straw" purchasers are fungible and their removal does little to frustrate the capacity of firearms trafficking organizations to continuously obtain firearms, as new "straw" purchasers are easily recruited. Based on this experience, the limited information known about the criminal network at that time and the request for more evidence we agreed that a comprehensive and multi-agency investigation out of the OCDETF Strike Force focusing on the identification, disruption and dismantling of the entire criminal organization would have the greatest impact in stopping the trafficking of firearms by this criminal organization.

It should be noted that in November 2010, the DOJ Office of Inspector General (OIG) completed the second of two comprehensive inspections of ATF's Project Gunrunner (I-2011-001). The OIG concluded that historically, ATF has been too focused on investigations targeting straw purchasers, versus more complex, multi-defendant conspiracy cases against higher level gun traffickers and gun trafficking conspirators; was not participating in and exploiting the resources and tools of the OCDETF Program, as directed in the Deputy Attorney General's cartel strategy; and was not coordinating with ICE. Two of the recommendations made by the OIG were that ATF should focus on developing more complex conspiracy cases against higher level gun traffickers and gun trafficking conspirators in order to dismantle firearms trafficking rings and for ATF to participate in and exploit the resources and tools of the OCDETF Program.

b) The strategy behind Fast and Furious is not unique in firearms trafficking investigations or any other OCDETF investigation. It is the goal of every OCDETF case is to work up and across the supply chain of a criminal network in order to identify, disrupt and dismantle the criminal organization and thus have a lasting impact on the organization's abilities to continue to operate. The efforts of the case agents conducting the Fast and Furious investigation were aligned with this OCDETF goal in that they were engaged in a dedicated effort to (1) establish to the satisfaction of the USAO that the suspects were indeed unlawful "straw" purchasers and members of a criminal enterprise; (2) to identify the breadth, scope and methodologies of the criminal enterprise; and (3) to seize firearms and arrest the criminally culpable members of the organization when lawfully permitted to do so.

c) Mr. McMahon was aware of our strategy to disrupt and dismantle the entire organization, if possible, through the efforts of the Phoenix OCDETF Strike Force. I don't recall him making any specific suggestions to the strategy.

Investigative Procedures

30) When did you first realize that weapons bought under Fast and Furious were crossing the border or ending up in Mexico? What steps did you take to ensure this would not recur?

Response: Please refer to the response to question 22 above.

31) Did Operation Fast and Furious yield any intelligence leads regarding other firearms trafficking organizations?

Response:

Yes.

32) You stated that in mid-August 2010, you presented to the U.S. Attorney's Office in Phoenix the evidence needed to secure the first round of indictments.

a) If this is true, why were the indictments not handed down until late January 2011?
b) What additional evidence did ATF obtain between August 2010 and January 2011?

Response:

a) In mid-August 2010, the agents conducting the investigation believed that sufficient evidence existed to bring firearms related charges against numerous individuals targeted in this case. Final charging decisions ultimately lie within the U.S. Attorney's Office.
b) As stated in "a)" above in mid-August 2010, the agents conducting the investigation believed that sufficient evidence existed to bring firearms related charges against numerous individuals targeted in this case.

33) You expressed concern that traces of Fast and Furious weapons were coming back from Mexico in November 2009. What safeguards and investigative techniques did you put in place after November 2009 to ensure that weapons bought under Fast and Furious would no longer be trafficked to Mexico?

Response: The investigative techniques used throughout this investigation included but are not limited to the use of mobile and aerial surveillance, electronic surveillance including electronic intercepts, pole cameras, undercover operations, trackers, suspect interviews, and other enforcement tactics. Please also refer to the response to question 22 above.

34) You steadfastly maintain that no gun walking took place in Operation Fast and Furious. How would you describe, then, ATF's failure to interdict and properly conduct surveillance on guns bought by known suspects or suspected criminals, in particular when these guns often wound up in the possession of Mexican crime syndicates?

Response: During the course of this investigation there were numerous interdictions and seizures of firearms by agents when they believed they had lawful authority to do so. Furthermore, agents became aware of most of the firearms purchased in this case after the fact thus limiting their ability to conduct surveillance as well as potentially interdict and seize firearms when lawfully able to do so. When this investigation was first initiated in mid-November, 2009 the agents were able to determine at that time that the suspects in this criminal enterprise had purchased more than 300 firearms. By early January or roughly six weeks later, as the agents worked diligently to piece the breadth of this firearms trafficking organization they linked approximately 950 previously purchased firearms to this continuously evolving firearms trafficking organization. (Because there is no central registry of all firearms purchases, there is no way for ATF to immediately identify where, when and how many firearms purchases have been made by a person of interest, not even for those purchases made at federally licensed firearms dealers (FFLs). Therefore "linking" previously purchased firearms to suspects in a firearms trafficking organization involves, but is not limited to, agents reviewing and analyzing information of "after the fact" sales including: reported multiple sales forms, reviewing firearms transaction records at FFLs, information from cooperating individuals, surveillances, lawful interdictions and/or firearms traces by ATF and other law enforcement agencies.) The pace of purchases by this evolving firearms trafficking organization

was unprecedented in my experience. In addition, throughout the course of this investigation firearms were purchased by presumptively non-prohibited individuals who either took firearms directly to their residences or transferred them to another non-prohibited person. It has been ATF's experience that the U.S. Attorney's Office in Phoenix does not consider "third party" transfers of firearms between non-prohibited persons to be a violation of federal law absent clear and convincing evidence that the transfer was in and of itself unlawful.

As has been noted previously in our efforts to identify the participants, locations, vehicles, finances and operating methods of this criminal organization, establish criminal violations, interdict and seize firearms, and gather the evidence necessary to support a successful federal prosecution, we conducted an extensive investigation, which continues, through a wide array of both proactive and reactive investigative techniques. These include but are not limited to the use of mobile and aerial surveillance, electronic surveillance including electronic intercepts, pole cameras, undercover operations, trackers, interviews and other enforcement tactics. In addition, due to our shortage of manpower I tasked the ASACs early in the investigation with bringing in agents from within the division to assist with surveillance and thus give the case agents time to pursue the numerous leads in the expanding investigation. Upon receiving OCDETF approval we were then able to obtain external funding to detail several out-of-town and out-of-state agents to assist in surveillance from approximately March 14 to May 3, 2010. These detailed agents worked surveillances 7 days a week, for 7 weeks, booking nearly 4,000 hours of surveillance. Then from early May to mid-August the Phoenix Field Division was tasked with deploying the second Gunrunner Impact Team (GRIT) during which approximately 85 ATF personnel of different series were detailed to Arizona and New Mexico to assist with on-going ATF operations. During this time we detailed ten agents to Group VII to assist with the numerous on-going firearms trafficking investigations including Fast and Furious. It should be noted that the Phoenix Group VII personnel continued to conduct numerous surveillances prior to the arrival and after the departure of these detailees, to include the GRIT operation period. In order to maximize the efficiency of these multiple surveillance operations the Phoenix Group VII supervisor developed and maintained a detailed surveillance assignment list for the detailees. It should be emphasized, that even with the detailees and the additional manpower available during the GRIT operation, the field agents could not maintain surveillance on every "suspected" residence, suspected "straw" purchaser and dealer premises of interest on an uninterrupted, 24/7 basis. We utilized our human resources, other assets and tools as effectively and efficiently as possible, but when a suspected "straw" purchaser goes into his/her home with firearms and nothing happens for long periods of time, our agents in the field must make judgments as to how to best proceed. In the Fast and Furious case, the case agents were dealing with approximately 50 suspected "straw" purchasers and other suspects.

35) You stated that "[t]he investigation is ongoing, sir."

a) Why did you continue this investigation for over a year and a half after the weapons you knew were being illegally purchased began showing up at Mexican crime scenes?
b) How many more indictments are expected as a result of Fast and Furious?
c) How much longer do you anticipate that Fast and Furious are "ongoing"?
d) At what point will ATF no longer identify Fast and Furious as "ongoing"?

Response:

a) When this investigation was officially opened in mid-November, 2009 it was based on preliminary investigative information that a handful of suspects had been identified as possibly

being engaged in illegal firearms trafficking. During the course of this investigation presumptively non-prohibited individuals, believed to be "straw" purchasers, continued to periodically purchase firearms from federally licensed firearms dealers (FFLs). These purchases involved sales by FFLs to presumptively non-prohibited persons adhering to the federal procedures which include a criminal background check. The fact that such persons may make numerous purchases, including purchases of firearms identified as "weapons of choice" or purchases involving multiple firearms, does not in of itself, establish a federal violation. Even if the individuals subsequently sold these firearms to another person, or if some of the firearms were recovered in crimes in the U.S. or Mexico, additional evidence and investigation may be required to establish a violation of federal law to the satisfaction of the U.S. Attorney's Office. By mid-August, or approximately nine months after initiating the investigation, the agents conducting the investigation believed that sufficient evidence existed to bring charges against numerous individuals.

b) I am aware that the Phoenix Field Division is currently pursuing with the U.S. Attorney's Office the indictment of numerous additional suspects.
c) I am no longer in a position to answer this question.
d) I am no longer in a position to answer this question.

36) In Operation Fast and Furious, straw purchasers bought over 2,000 guns.

a) In your capacity as Special Agent in Charge for the Phoenix Field Division, what did you do to ensure that proper safeguards were in place to maintain surveillance of the guns?
b) What did you do to prevent these weapons from ending up in the possession of individuals linked to Mexican drug cartels?

Response: Please refer to the responses to 22 and 34 above.

37) You stated, "as outlined in the January 8, [2010] briefing paper, [the U.S. Attorney's Office in Phoenix] felt that there was not enough evidence at that time to secure anymore – or to secure for prosecution, so to continuing monitoring the sales."

a) Did you personally believe there was enough evidence to secure prosecutions at that point? If not, what did you feel was lacking at that time?
b) What evidence did the U.S. Attorney's Office in Phoenix believe to be lacking at that time?

Response:

a) Following the January 5, 2010 meeting at the U.S. Attorney's Office I was briefed by ASAC George Gillett regarding the contents of the meeting and the status of the case. Based on the information provided to me and ATF's prior history in obtaining prosecutions for "straw" purchase violations in the District of Arizona I agreed that further investigation was needed in order to obtain the burden of proof required by the U.S. Attorney's Office.
b) As relayed to me by ASAC Gillett, the U.S. Attorney's Office was seeking clear and convincing evidence of "straw" purchasing by those individuals we had identified at that point in the investigation.

38) According to e-mails provided by the Department of Justice, at 6:45pm on January 8, 2010, you provided DAD McMahon with a briefing paper that stated, "Currently our strategy is to allow the transfer of firearms to take place."

a) Did you ever discuss this briefing paper with McMahon? If so, please describe in detail.
b) Did you provide this briefing paper to anyone else at ATF Headquarters? If so, please identify who and describe any accompanying communications in detail.
c) Did you provide this briefing paper to anyone at the U.S. Attorney's Office in Phoenix? If so, please identify who and describe any accompanying communications in detail.
d) Did you provide this briefing paper to anyone at Main Justice? If so, please identify who and describe any accompanying communications in detail.
e) Are you aware of anyone else providing this briefing paper to anyone other than to McMahon at ATF Headquarters? If so, please identify who provided the briefing paper to whom and describe any accompanying communications in detail.
f) Are you aware of anyone else providing this briefing paper to anyone at the U.S. Attorney's Office in Phoenix? If so, please identify who provided the briefing paper to whom and describe any accompanying communications in detail.
g) Are you aware of anyone else providing this briefing paper to anyone at Main Justice? If so, please identify who provided the briefing paper to whom and describe any accompanying communications in detail.

Response:

a) I recall discussing with Mr. McMahon that a briefing paper was being prepared on the status of the investigation. During this period I was having discussions with Mr. McMahon about the status of this investigation as well as our preparation of a Gunrunner Impact Team (GRIT) proposal. These discussions involved our efforts to date, resource needs and administrative matters related to the preparation of the GRIT proposal.
b) I don't recall providing this briefing paper to anyone else in ATF Headquarters during this period.
c) I don't recall providing this briefing paper to anyone in the U.S. Attorney's Office in Phoenix.
d) I don't recall providing this briefing paper to anyone at Main Justice.
e) I am not aware if anyone else provided this briefing paper to anyone other than Mr. McMahon in ATF Headquarters.
f) I am not aware if anyone provided this briefing paper to anyone at the U.S. Attorney's Office in Phoenix.
g) I am not aware if anyone provided this briefing paper to anyone at Main Justice.

39) Representative Ross asked Deputy Assistant Director McMahon about an e-mail that you sent to him on February 5, 2010. In response, McMahon said: "I think our e-mail records show they weren't able to scan the attachment because it was so large, and they said they were going to FedEx it."

a) How long was the attachment?
b) Is it typical for a T-III application to be this large?
c) Why was this particular T-III application so large?
d) Did you confirm that it was delivered to McMahon?
e) Did you ever discuss it with McMahon? If so, please describe the conversation in detail.

Response:

a. As I recall it was approximately 65-70 pages long.
b. It is not uncommon for them to be this long, depending on the size and scope of the investigation.
c. It was a very detailed document laying out the justification for the T-III application.
d. I recalled having the document FedExed but I do not recall confirming receipt.
e. I recall discussing with Mr. McMahon that Group VII was applying for a T-III, the reasons why we were attempting to secure a T-III, the use of the OCDETF Strike Force to support our T-III efforts and the individuals we were focusing our investigative efforts on through the use of this T-III, if approved.

40) Of the 20 defendants indicted on January 19, 2011, how many of these defendants were already known to ATF on January 8, 2010?

Response: To the best of my knowledge of the 20 defendants indicted on January 19, 2011, 12 had been identified as targets in the investigation as of January 8, 2010.

Other

41) On January 31, 2011 you were selected to be the ATF Country Attaché to Mexico, effective May 8, 2011.

a) What is your current position at ATF?
b) Did you ever become the Attaché to Mexico?
    i. Are you collecting a per diem for that assignment?
    ii. If so, when did you begin collecting this per diem?
    iii. What is the per diem rate you are receiving?
    iv. When will this per diem expire?
c) When do you plan to assume the position of Attaché in Mexico City?

Response:

a. My current position at ATF is Mexico Country Attaché.
b. On January 31, 2011 I was selected as the ATF Country Attaché, effective May 8, 2011.
    i. No
    ii. I am not collecting per diem for this assignment.
    iii. I am not collecting per diem for this assignment.
    iv. I am not collecting per diem for this assignment.
c. I do not plan on physically reporting to the position of ATF Mexico Attaché in Mexico City.

42) During the Full Committee hearing on July 26, 2011, you committed to Chairman Emeritus Burton to provide the names of all the participants from the other agencies that were involved in the planning meetings for Fast and Furious. Please provide the name and title of each person from each agency along with the dates of their participation.

Response: The ATF Phoenix personnel include the case agent who initiated this investigation on November 16, 2009 - Special Agent Hope MacAllister, co-case Special Agent Tonya English, Group VII Supervisor David Voth, Assistant Special Agents in Charge George Gillett and James Needles, and me as the Special Agent in Charge of the Phoenix Field Division at that time. The

individuals who participated in the Phoenix OCDETF coordination and approval committee on January 26, 2010, include Glen McCormick from the U.S. Attorney's Office, ASAC George Gillett from ATF, Ramon Figueroa from the Arizona Department of Public Safety, Supervisory Special Agent David Larson from the FBI, ASAC Jason Kidd from ICE/HSI, Special Agent Albert Childress from IRS, Deputy Tom Mertz from the U.S. Marshal's Service, and Special Agent Chris Scheuler from DEA. In addition, based on information provided to me as well as information contained within ATF's case management system, Special Agent Layne France, ICE/HSI, became an investigative participant on January 8, 2010; Special Agent Linda Wallace, IRS/CID, on December 18, 2009; Special Agent Scott Christian on or about December 15, 2009; and Special Agent Dustin Gillespie on December 17, 2009. These agents are currently assigned in the Phoenix, Arizona area of operations for their respective agencies.

43) You mentioned that you do not recall stating that you deliberately attempted to cross guns to Mexico to justify additional firearms regulations.

a) Did you meet with representatives from the White House on or about March 18, 2009 at the Phoenix Field Division offices?
b) If so, who from the White House attended that meeting? What was the nature of that meeting? How long did the meeting last? Who else from ATF was present at that meeting?

Response:
I response to the statement above I want to make it clear that "gun control politics" in no way played a part in the Fast and Furious investigation. As stated previously this investigation was designed to stop the illegal trafficking of firearms to Mexico by a prolific criminal organization.

a) Not that I recall. My time and attendance records reflect that I was out of the state that entire week on personal leave.
b) See "a" above.

44) Kevin O'Reilly is a member of the National Security Council staff at the White House.

a) Did you discuss Fast and Furious with Kevin O'Reilly during the "summer or early fall of 2010"?
b) Did you exchange e-mail messages with Kevin O'Reilly about southwest border issues in the "summer or early fall of 2010"? If so, how often?
c) Did you have telephone conversations with Mr. O'Reilly about southwest border issues in the "summer or early fall of 2010"? If so, how often?
d) Why were you discussing southwest border issues with Mr. O'Reilly in the "summer or early fall of 2010"?
e) Why did you send an e-mail to Mr. O'Reilly about southwest border issues that began, "You didn't get this from me…."?

Response:

a) I recall having a brief discussion with Mr. O'Reilly during this time period regarding our efforts along the Southwest Border in regards to combating firearms trafficking. I don't recall specifically discussing the Fast and Furious investigation.
b) I recall exchanging several e-mails with Mr. O'Reilly during this time period about Southwest Border issues.

c) As stated above I recall having a brief discussion with Mr. O'Reilly during this period regarding our efforts along the Southwest Border to combat firearms trafficking.
d) As I recall he was inquiring about our efforts along the southwest border to combat firearms trafficking.
e) Because the information he was asking for was from an approved GRIT press conference packet that had not yet been released publically.

Questions for Special Agent William McMahon
Bureau of Alcohol, Tobacco, Firearms and Explosives

Rep. Darrell Issa
Chairman of the Committee on Oversight and Government Reform

Hearing on "Operation Fast and Furious: The Other Side of the Border"

Lessons Learned From Fast and Furious

1) In your opening statement, you said: "Let me be clear from the onset, as the ATF senior executive in charge of the West Region, I share responsibility for mistakes that were made in the Fast and Furious investigation."

   a) What specific mistakes were made during the investigation?

Answer - As with any investigation there are always mistakes made and always things that could have been done differently in hindsight. The Department of Justice Office of the Inspector General (OIG) is currently conducting a thorough review of the investigative activities of Fast and Furious and I am sure OIG will identify the mistakes made as well as corrective actions and I look forward to the completion of its review. As discussed in my transcribed interview, some concerns that I have about the investigation that I am sure the OIG will examine include whether agents broke off surveillance inappropriately, made appropriate decisions about when to interdict weapons, and interacted with Federal Firearms Licensees appropriately.

   b) Who else shares the responsibility for those mistakes?

Answer - I believe that the entire Bureau shares in the responsibility and again I look forward to the OIG completing its review.

2) In your opening statement, you said that "the benefit of a thorough review of the case clearly points me to things that I would have done differently."

   a) What specifically would you have done differently during the operation?

Answer - As I stated during the hearing on July 27, 2011, there are a number of things I could have done better during this investigation. These include a more thorough review of documents that came across my desk; getting more access to line agents in order to hear their concerns; asking more questions to determine what was going on in the case;

and to supply more resources and proactive support to the agents conducting the investigation. I am sure there were other things I could have done differently and I am sure they with will be identified by the OIG. I look forward to its review.

b) Why did you fail to do these things during the operation?

Answer – I do not know why I did not do certain things during this investigation. I do know that the things I did were the things I believed were the right things to do at the time of this investigation. As I tried to explain in my transcribed interview, during the time of the Fast and Furious investigations, I was in charge of overseeing six other Field Divisions in addition to Phoenix. I was not in a position to learn in-depth details of the investigations going on in the field.

c) What steps have you taken to ensure these failures will not recur in future investigations?

Answer – To allow Deputy Assistant Directors (DADs) the time required for more operational oversight, ATF's Field Operations has added an additional DAD overseeing Programs and has discussed adding a Monitored Case Branch which would give the DADs the staff needed to better manage the day-to-day operations in the field.

3) At the hearing, you stated, "I do see that one of the mistakes that I made personally was maybe more thoroughly reviewing some of the documents that were coming across my desk on this case."

a) What documents would you have more thoroughly reviewed? Please describe these in detail.

Answer – One document that I now know I should have reviewed was the Title III Affidavit. I focused on getting the document through the approval process and relied on others to focus on the substance of the product.

b) What actions would you have taken had you more thoroughly reviewed these documents?

Answer – It is difficult to be certain, as I did not review the affidavit, but I believe I likely would have asked more questions of the Field Division as to the progress they were making on the investigation.

c) Given the fact that "the magnitude of [this] case was something [you] had never encountered before in [your] career," why did you fail to review thoroughly all documents coming across your desk pertaining to Operation Fast and Furious?

Answer – I believe I focused much of my attention on processing the documents as opposed to reviewing the substance of the documents.

d) What changes have you implemented to ensure this lack of review will not happen again in the future?

Answer – Please see the answer to question 2c.

4) An exit strategy was prepared for Operation Fast and Furious during the spring of 2010.

a) On what specific day did Mr. Chait or Mr. Hoover instruct you to prepare an exit strategy for Fast and Furious?

Answer – Mr. Chait asked me to obtain a written exit strategy from the Phoenix Field Division. I believe that he did so at the direction of Mr. Hoover. I do not recall the specific day.

b) What was the specific day on which you asked Mr. Newell for an exit strategy for Fast and Furious?

Answer – I do not recall the specific day that I asked Mr. Newell, but I think it probably was soon after Mr. Chait asked me to obtain the written document from the Phoenix Field Division.

c) On what specific day did Mr. Newell present you with an exit strategy?

Answer – April 27, 2010.

d) What did you do with the exit strategy once Mr. Newell gave it to you?

Answer – I believe that I reviewed it and forwarded to Mr. Chait.

5) You stated that you and Mr. Newell frequently discussed in the summer of 2010 "how much closer [you] were to completing [the] investigation."

a) If that was the case, why were the indictments not handed down until January 2011?

Answer – It is my understanding that this was because there were continuous delays from the United States Attorney's Office.

b) Given that you said you were close to completing the investigation in the summer of 2010, why is the investigation currently still ongoing?

Answer – The investigation is currently ongoing because other subjects identified during the investigation may be indicted and new subjects have been developed as a result of the arrests that were made.

6) You stated, "I think we got to realize is guns to Mexico from the U.S. has been a problem for an awful long time."

a) Was the amount of guns linked to Operation Fast and Furious and recovered in Mexico "abnormal"? If so, what was abnormal about it?

Answer – I stated in my transcribed interview that during the course of Fast and Furious, we at ATF headquarters were aware that a large group of suspects was purchasing a large number of firearms, and that that was, for obvious reasons, of concern to all of us. With respect to the number of firearms recovered in Mexico, large amounts of U.S.-sourced firearms have been and are continually being recovered in Mexico. ATF has worked for years, and continues to work today, to stem this tide of firearms across the border.

b) If guns traveling from the U.S. to Mexico have been a problem for a long time, then why did ATF allow hundreds and hundreds of weapons, all linked to a single operation, to cross into Mexico without shutting down the operation?

Answer – The purpose of the Fast and Furious investigation was to make a big dent in guns being trafficked to Mexico by catching those higher in the trafficking chain. We were trying to take down an entire weapons trafficking organization. It is worth noting that ATF did not learn of many of the purchases in Fast and Furious until after they had occurred.

7) Chairman Issa requested that you provide a list of the things that you would have done differently under Fast and Furious. Please provide this list.

Answer – The list I prepared on the day of the hearing included the following: more thorough document review; more access to the line agents; ask the tough questions to get the whole story; and, supply more resources and proactive support.

8) You stated that, "one of the things I wrote down here, the things that I would like to improve on, is my access to people in the field."

a) What steps have you taken to improve your access to people in the field?

Answer – I am no longer working in Field Operations (FO) but I have stressed to the new members of FO the importance of spending time with the street agents to get their perspective as opposed to just relying on the management team of the Field Divisions.

b) In hindsight, what would you have done differently regarding this access under Operation Fast and Furious?

Answer – I would ask to attend a case brief with the entire investigative team, not just the supervisors.

Lack of Interdiction of Weapons

9) You stated, "[i]f we pick off these one or []two straw purchaser, they get replaced in a day, and we have even more guns going into Mexico."

a) Isn't it the job of ATF to pick off straw purchasers one by one, even if you assume they are going to get replaced?

Answer – It is ATF's job to enforce the Federal Firearms Laws, which includes investigating those whom we believe may be "straw purchasers," as well as other firearms traffickers.

b) If you have known straw purchasers illegally purchasing weapons, isn't it ATF's duty to, at a minimum, interdict those weapons and arrest the straw purchasers?

Answer – Absolutely, when there is probable cause to believe a straw purchase has occurred.

10) What is the exact number of firearms purchased by Operation Fast and Furious subjects of which ATF is currently aware, both before and after they were identified as subjects?

Answer – I have been informed by the Phoenix Field Division that as of October 21, 2011, 2040 firearms have been identified as being purchased by Fast and Furious subjects, including those purchased before the investigation began or before purchasers had been identified as subjects.

a) By what date were all of Fast and Furious subjects indicted on January 25, 2011 identified as straw purchasers?

Answer – According to the Phoenix Field Division, the last indicted subject was entered into N-Force as a subject of the investigation on August 10, 2010.

b) How many of these guns have been recovered in the United States?

Answer – According to the Phoenix Field Division, as of October 21, 2011, 389 firearms purchased by subjects from Fast and Furious have been recovered in the United States.

c) How many of these guns have been recovered in Mexico?

Answer – According to the Phoenix Field Division, as of October 21, 2011, 276 firearms purchased by subjects from Fast and Furious have been recovered in Mexico.

d) How many of these guns have yet to be recovered?

Answer – According to the Phoenix Field Division, as of October 21, 2011, 1,375 firearms purchased by subjects from Fast and Furious have yet to be recovered.

11) In how many different seizure events in the United States have Fast and Furious guns been recovered?

Answer – The Phoenix Field Division has informed me that as of October 21, 2011, there have been 55 seizure events in the United States involving at least one firearm related to Fast and Furious.

a) On what dates did these recoveries take place, and how many guns were associated with each recovery?

Answer – The Phoenix Field Division was not able to provide me with that information.

b) In how many different seizure events in Mexico have Fast and Furious guns been recovered?

Answer – The Phoenix Field Division has informed me that as of October 21, 2011, there have been 92 seizure events in the Country of Mexico involving at least one firearm related to Fast and Furious.

c) On what dates did these recoveries take place, and how many guns were associated with each recovery?

Answer – The Phoenix Field Division was not able to provide me with that information.

12) How many Barrett .50 caliber rifles were purchased by suspects in Fast and Furious?

Answer – The Phoenix Field Division informed me that as of October 21, 2011, 35 Barrett .50 caliber rifles were purchased by subjects in Fast and Furious.

a) How many Barrett .50 caliber rifles are in the entire Suspect Gun Database?

Answer – As of October 24, 2011, the National Tracing Center has 124 Barrett .50 caliber rifles in the entire Suspect Gun Database.

b) How many Desert Eagle .50 caliber weapons were purchased by suspects in the Fast and Furious?

Answer – The Phoenix Field Division informed me that as of October 21, 2011, 3 Desert Eagle .50 caliber weapons were purchased by subjects in Fast and Furious.

c) How many Desert Eagle .50 caliber weapons are in the entire Suspect Gun Database?

Answer – As of October 24, 2011, the National Tracing Center has 87 Desert Eagle .50 caliber weapons in the entire Suspect Gun Database.

d) How many FN Five-seveN pistols were purchased by suspects in Fast and Furious?

Answer – The Phoenix Field Division informed me that as of October 21, 2011, 184 FN Five-seveN pistols were purchased by subjects in Fast and Furious.

e) How many FN Five-seveN pistols are in the entire Suspect Gun Database?

Answer – As of October 24, 2011, the National Tracing Center has 1,521 FN Five-seveN pistols in the entire Suspect Gun Database.

Involvement With Other Agencies

13) You stated that, "DEA had some information that they shared with us that helped us in our investigation and actually helped foster it even more so."

a) What was the nature of this information?

Answer – I did not learn the specific information that DEA provided. I know only that they provided information that was helpful with ATF's investigation.

b) When did DEA share this information with ATF?

Answer – I do not know the details of the information or when exactly it was shared. I was informed that DEA shared information with us and it was during the early part of our investigation.

c) Did this information come as a result of DEA participating in the Fast and Furious OCDETF Strike Force, or as a result of an earlier, DEA investigation parallel to Fast and Furious?

Answer – There was never a "Fast and Furious OCDETF Strike Force." The OCDETF Strike Force is a group of people from multiple agencies who are located in the same office, and the Strike Force pre-dated Operation Fast and Furious. Fast and Furious was an OCDETF investigation. I do not know how the information came to be, I only know that DEA shared information with ATF.

Informing Mexico of Fast and Furious

14) You stated that, "I told Dan {Kumor} everything I knew about the case."

a) What did you tell Dan Kumor about Operation Fast and Furious?

Answer – I do not remember specifically what I told Dan Kumor about Operation Fast and Furious. I am sure it was general information about the case because that was the information that I had. I know Mr. Kumor participated in the majority of the briefings that related to Operation Fast and Furious.

b) When did you tell him this information?

Answer – This information was passed along throughout the investigation.

c) Did Mr. Kumor share any concerns or complaints from the ATF Mexico office with you?

Answer – As I stated during my interview with Committee Staff, Mr. Kumor expressed the concerns he was getting from his staff in Mexico regarding the number of firearms

being recovered in Mexico related to the subjects of our Fast and Furious Investigation. As I stated during my interview, I shared the same concerns.

15) On October 21, 2010, Mexican drug cartel members kidnapped Mario Gonzalez Rodriguez, brother of the then-Attorney General of the state of Chihuahua. After the grisly discovery of his body on November 5, 2010, a raid on the gang resulted in the seizure of two guns that traced back to Fast and Furious.

a) When did you become aware of the link between the murder of Mario Gonzalez Rodriguez and the subsequent shootout to Operation Fast and Furious?

Answer – I do not recall when I was informed of this information.

b) Why weren't the Mexican authorities informed of this until June 2011?

Answer – I do not know.

c) Who from ATF told Mexican authorities of the link?

Answer – I do not know.

d) Whom in the Mexican government did that ATF official inform?

Answer – I do not know.

<u>The Genesis of Fast and Furious</u>

16) A January 8, 2010, briefing paper stated, "Currently, our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexico drug trafficking organizations."

a) Who drafted that briefing paper? Who approved it? Who sent it to ATF headquarters?

Answer – I do not know who drafted that briefing paper or who approved it. I am now aware of an email in which Bill Newell transmitted the document to me on January 8, 2010, but as I have stated before, I do not recall seeing the referenced briefing paper then. I saw the document in 2011 during a review of this investigation.

b) Who at ATF Headquarters reviewed this paper? Did anybody at headquarters express any concern about this language?

Answer – As I have stated, I do not recall seeing the referenced briefing during the time frame that it is dated. I do not who, if anyone, reviewed the paper and therefore do not know of any concern expressed by anyone.

c) How many additional weapons were bought by suspects during Fast and Furious after this briefing paper was drafted? How many of these weapons have been recovered in Mexico and the United States?

Answer – I do not know.

d) How many additional co-conspirators were identified as part of the firearms trafficking organization after this briefing paper was drafted? How many of these additional co-conspirators have been indicted?

Answer – I do not know.

17) You stated, "I communicated to my chain of command within ATF. We were all very much aware of this investigation and what was going on."

a) With whom did you communicate in your chain of command about Operation Fast and Furious? What was the nature of these discussions?

Answer – I communicated with my Assistant Director, Mark Chait. The discussions we had were general in nature.

b) When discussing Operation Fast and Furious with your chain of command, did you or anyone else express concerns about the number of weapons showing up in Mexico linked to the operation? What were those concerns?

Answer – As I stated during my interview, the number of weapons being recovered in Mexico that were purchased by subjects of our investigation was a concern to everyone associated with this case in Headquarters. Everyone was concerned by the length of time it was taking to get these subjects indicted.

Investigative Procedures

18) Did ATF intend to recover weapons purchased in Fast and Furious? How could ATF accomplish this once surveillance on them had ceased?

Answer – ATF intended to stop a firearms trafficking organization from operating. Stopping the organization would include seizing weapons destined for Mexico. There are several means of recovering firearms aside from surveillance, such as warranted searches or interviews of suspects in which they surrender firearms.

19) Regarding the authorization for the wiretap application, you stated, "And I think our email records show they weren't able to scan the attachment because it was so large, and they said they were going to FedEx it."

a) How large was the file? Was the file too large to attach because of its length? Does its length suggest the level of detail in the application?

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a) At what point would the NICS system in Phoenix be able to identify that an individual attempting to purchase a firearm was a prohibited person? After an arrest? An indictment? After the individual was incarcerated?

Answer – If an individual has a pending indictment or after he has been convicted of a prohibiting crime, he would be ineligible to purchase a firearm. It is my understanding that NICS should identify him as such.

b) Were any of the suspects or indicted defendants in Fast and Furious legally ineligible to buy or possess weapons at any point during the investigation? If so, when did they become prohibited purchasers?

Answer – I do not know whether any subject or indicted defendant in Fast and Furious was legally ineligible to buy or possess firearms at the time they purchased them. As I explained previously, they became ineligible once they were indicted.

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226
www.atf.gov

JAN 26 2012

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This serves to transmit answers to additional questions sent to William McMahon that you or other Members may have had in response to the hearing held by your committee. An electronic copy has also been sent to Kate Dunbar of your staff as you requested.

Sincerely yours,

Gregory K. Gant
Assistant Director
Office of Public and Governmental Affairs

Enclosure

Lessons Learned From Fast and Furious

1) In your opening statement, you said: "Let me be clear from the onset, as the ATF senior executive in charge of the West Region, I share responsibility for mistakes that were made in the Fast and Furious investigation."

   a) What specific mistakes were made during the investigation?

Answer - As with any investigation there are always mistakes made and always things that could have been done differently in hindsight. The Department of Justice Office of the Inspector General (OIG) is currently conducting a thorough review of the investigative activities of Fast and Furious and I am sure OIG will identify the mistakes made as well as corrective actions and I look forward to the completion of its review. As discussed in my transcribed interview, some concerns that I have about the investigation that I am sure the OIG will examine include whether agents broke off surveillance inappropriately, made appropriate decisions about when to interdict weapons, and interacted with Federal Firearms Licensees appropriately.

   b) Who else shares the responsibility for those mistakes?

Answer - I believe that the entire Bureau shares in the responsibility and again I look forward to the OIG completing its review.

2) In your opening statement, you said that "the benefit of a thorough review of the case clearly points me to things that I would have done differently."

   a) What specifically would you have done differently during the operation?

Answer - As I stated during the hearing on July 27, 2011, there are a number of things I could have done better during this investigation. These include a more thorough review of documents that came across my desk; getting more access to line agents in order to hear their concerns; asking more questions to determine what was going on in the case; and to supply more resources and proactive support to the agents conducting the investigation. I am sure there were other things I could have done differently and I am sure they with will be identified by the OIG. I look forward to its review.

   b) Why did you fail to do these things during the operation?

Answer – I do not know why I did not do certain things during this investigation. I do know that the things I did were the things I believed were the right things to do at the

time of this investigation. As I tried to explain in my transcribed interview, during the time of the Fast and Furious investigations, I was in charge of overseeing six other Field Divisions in addition to Phoenix. I was not in a position to learn in-depth details of the investigations going on in the field.

c) What steps have you taken to ensure these failures will not recur in future investigations?

Answer – To allow Deputy Assistant Directors (DADs) the time required for more operational oversight, ATF's Field Operations has added an additional DAD overseeing Programs and has discussed adding a Monitored Case Branch which would give the DADs the staff needed to better manage the day-to-day operations in the field.

3) At the hearing, you stated, "I do see that one of the mistakes that I made personally was maybe more thoroughly reviewing some of the documents that were coming across my desk on this case."

a) What documents would you have more thoroughly reviewed? Please describe these in detail.

Answer – One document that I now know I should have reviewed was the Title III Affidavit. I focused on getting the document through the approval process and relied on others to focus on the substance of the product.

b) What actions would you have taken had you more thoroughly reviewed these documents?

Answer – It is difficult to be certain, as I did not review the affidavit, but I believe I likely would have asked more questions of the Field Division as to the progress they were making on the investigation.

c) Given the fact that "the magnitude of [this] case was something [you] had never encountered before in [your] career," why did you fail to review thoroughly all documents coming across your desk pertaining to Operation Fast and Furious?

Answer – I believe I focused much of my attention on processing the documents as opposed to reviewing the substance of the documents.

d) What changes have you implemented to ensure this lack of review will not happen again in the future?

Answer – Please see the answer to question 2c.

4) An exit strategy was prepared for Operation Fast and Furious during the spring of 2010.

a) On what specific day did Mr. Chait or Mr. Hoover instruct you to prepare an exit strategy for Fast and Furious?

Answer – Mr. Chait asked me to obtain a written exit strategy from the Phoenix Field Division. I believe that he did so at the direction of Mr. Hoover. I do not recall the specific day.

b) What was the specific day on which you asked Mr. Newell for an exit strategy for Fast and Furious?

Answer – I do not recall the specific day that I asked Mr. Newell, but I think it probably was soon after Mr. Chait asked me to obtain the written document from the Phoenix Field Division.

c) On what specific day did Mr. Newell present you with an exit strategy?

Answer – April 27, 2010.

d) What did you do with the exit strategy once Mr. Newell gave it to you?

Answer – I believe that I reviewed it and forwarded to Mr. Chait.

5) You stated that you and Mr. Newell frequently discussed in the summer of 2010 "how much closer [you] were to completing [the] investigation."

a) If that was the case, why were the indictments not handed down until January 2011?

Answer – It is my understanding that this was because there were continuous delays from the United States Attorney's Office.

b) Given that you said you were close to completing the investigation in the summer of 2010, why is the investigation currently still ongoing?

Answer – The investigation is currently ongoing because other subjects identified during the investigation may be indicted and new subjects have been developed as a result of the arrests that were made.

6) You stated, "I think we got to realize is guns to Mexico from the U.S. has been a problem for an awful long time."

   a) Was the amount of guns linked to Operation Fast and Furious and recovered in Mexico "abnormal"? If so, what was abnormal about it?

Answer – I stated in my transcribed interview that during the course of Fast and Furious, we at ATF headquarters were aware that a large group of suspects was purchasing a large number of firearms, and that that was, for obvious reasons, of concern to all of us. With respect to the number of firearms recovered in Mexico, large amounts of U.S.-sourced firearms have been and are continually being recovered in Mexico. ATF has worked for years, and continues to work today, to stem this tide of firearms across the border.

   b) If guns traveling from the U.S. to Mexico have been a problem for a long time, then why did ATF allow hundreds and hundreds of weapons, all linked to a single operation, to cross into Mexico without shutting down the operation?

Answer – The purpose of the Fast and Furious investigation was to make a big dent in guns being trafficked to Mexico by catching those higher in the trafficking chain. We were trying to take down an entire weapons trafficking organization. It is worth noting that ATF did not learn of many of the purchases in Fast and Furious until after they had occurred.

7) Chairman Issa requested that you provide a list of the things that you would have done differently under Fast and Furious. Please provide this list.

Answer – The list I prepared on the day of the hearing included the following: more thorough document review; more access to the line agents; ask the tough questions to get the whole story; and, supply more resources and proactive support.

8) You stated that, "one of the things I wrote down here, the things that I would like to improve on, is my access to people in the field."

   a) What steps have you taken to improve your access to people in the field?

Answer – I am no longer working in Field Operations (FO) but I have stressed to the new members of FO the importance of spending time with the street agents to get their perspective as opposed to just relying on the management team of the Field Divisions.

b) In hindsight, what would you have done differently regarding this access under Operation Fast and Furious?

Answer – I would ask to attend a case brief with the entire investigative team, not just the supervisors.

Lack of Interdiction of Weapons

9) You stated, "[i]f we pick off these one or []two straw purchaser, they get replaced in a day, and we have even more guns going into Mexico."

a) Isn't it the job of ATF to pick off straw purchasers one by one, even if you assume they are going to get replaced?

Answer – It is ATF's job to enforce the Federal Firearms Laws, which includes investigating those whom we believe may be "straw purchasers," as well as other firearms traffickers.

b) If you have known straw purchasers illegally purchasing weapons, isn't it ATF's duty to, at a minimum, interdict those weapons and arrest the straw purchasers?

Answer – Absolutely, when there is probable cause to believe a straw purchase has occurred.

10) What is the exact number of firearms purchased by Operation Fast and Furious subjects of which ATF is currently aware, both before and after they were identified as subjects?

Answer – I have been informed by the Phoenix Field Division that as of October 21, 2011, 2040 firearms have been identified as being purchased by Fast and Furious subjects, including those purchased before the investigation began or before purchasers had been identified as subjects.

a) By what date were all of Fast and Furious subjects indicted on January 25, 2011 identified as straw purchasers?

Answer – According to the Phoenix Field Division, the last indicted subject was entered into N-Force as a subject of the investigation on August 10, 2010.

b) How many of these guns have been recovered in the United States?

Answer – According to the Phoenix Field Division, as of October 21, 2011, 389 firearms purchased by subjects from Fast and Furious have been recovered in the United States.

c) How many of these guns have been recovered in Mexico?

Answer – According to the Phoenix Field Division, as of October 21, 2011, 276 firearms purchased by subjects from Fast and Furious have been recovered in Mexico.

d) How many of these guns have yet to be recovered?

Answer – According to the Phoenix Field Division, as of October 21, 2011, 1,375 firearms purchased by subjects from Fast and Furious have yet to be recovered.

11) In how many different seizure events in the United States have Fast and Furious guns been recovered?

Answer – The Phoenix Field Division has informed me that as of October 21, 2011, there have been 55 seizure events in the United States involving at least one firearm related to Fast and Furious.

a) On what dates did these recoveries take place, and how many guns were associated with each recovery?

Answer – The Phoenix Field Division was not able to provide me with that information.

b) In how many different seizure events in Mexico have Fast and Furious guns been recovered?

Answer – The Phoenix Field Division has informed me that as of October 21, 2011, there have been 92 seizure events in the Country of Mexico involving at least one firearm related to Fast and Furious.

c) On what dates did these recoveries take place, and how many guns were associated with each recovery?

Answer – The Phoenix Field Division was not able to provide me with that information.

12) How many Barrett .50 caliber rifles were purchased by suspects in Fast and Furious?

Answer – The Phoenix Field Division informed me that as of October 21, 2011, 35 Barrett .50 caliber rifles were purchased by subjects in Fast and Furious.

a) How many Barrett .50 caliber rifles are in the entire Suspect Gun Database?

Answer – As of October 24, 2011, the National Tracing Center has 124 Barrett .50 caliber rifles in the entire Suspect Gun Database.

b) How many Desert Eagle .50 caliber weapons were purchased by suspects in the Fast and Furious?

Answer – The Phoenix Field Division informed me that as of October 21, 2011, 3 Desert Eagle .50 caliber weapons were purchased by subjects in Fast and Furious.

c) How many Desert Eagle .50 caliber weapons are in the entire Suspect Gun Database?

Answer – As of October 24, 2011, the National Tracing Center has 87 Desert Eagle .50 caliber weapons in the entire Suspect Gun Database.

d) How many FN Five-seveN pistols were purchased by suspects in Fast and Furious?

Answer – The Phoenix Field Division informed me that as of October 21, 2011, 184 FN Five-seveN pistols were purchased by subjects in Fast and Furious.

e) How many FN Five-seveN pistols are in the entire Suspect Gun Database?

Answer – As of October 24, 2011, the National Tracing Center has 1,521 FN Five-seveN pistols in the entire Suspect Gun Database.

Involvement With Other Agencies

13) You stated that, "DEA had some information that they shared with us that helped us in our investigation and actually helped foster it even more so."

a) What was the nature of this information?

Answer – I did not learn the specific information that DEA provided. I know only that they provided information that was helpful with ATF's investigation.

b) When did DEA share this information with ATF?

Answer – I do not know the details of the information or when exactly it was shared. I was informed that DEA shared information with us and it was during the early part of our investigation.

c) Did this information come as a result of DEA participating in the Fast and Furious OCDETF Strike Force, or as a result of an earlier, DEA investigation parallel to Fast and Furious?

Answer – There was never a "Fast and Furious OCDETF Strike Force." The OCDETF Strike Force is a group of people from multiple agencies who are located in the same office, and the Strike Force pre-dated Operation Fast and Furious. Fast and Furious was an OCDETF investigation. I do not know how the information came to be, I only know that DEA shared information with ATF.

Informing Mexico of Fast and Furious

14) You stated that, "I told Dan {Kumor} everything I knew about the case."

a) What did you tell Dan Kumor about Operation Fast and Furious?

Answer – I do not remember specifically what I told Dan Kumor about Operation Fast and Furious. I am sure it was general information about the case because that was the information that I had. I know Mr. Kumor participated in the majority of the briefings that related to Operation Fast and Furious.

b) When did you tell him this information?

Answer – This information was passed along throughout the investigation.

c) Did Mr. Kumor share any concerns or complaints from the ATF Mexico office with you?

Answer – As I stated during my interview with Committee Staff, Mr. Kumor expressed the concerns he was getting from his staff in Mexico regarding the number of firearms being recovered in Mexico related to the subjects of our Fast and Furious Investigation. As I stated during my interview, I shared the same concerns.

15) On October 21, 2010, Mexican drug cartel members kidnapped Mario Gonzalez Rodriguez, brother of the then-Attorney General of the state of Chihuahua. After the grisly discovery of his body on November 5, 2010, a raid on the gang resulted in the seizure of two guns that traced back to Fast and Furious.

a) When did you become aware of the link between the murder of Mario Gonzalez Rodriguez and the subsequent shootout to Operation Fast and Furious?

Answer – I do not recall when I was informed of this information.

b) Why weren't the Mexican authorities informed of this until June 2011?

Answer – I do not know.

c) Who from ATF told Mexican authorities of the link?

Answer – I do not know.

d) Whom in the Mexican government did that ATF official inform?

Answer – I do not know.

The Genesis of Fast and Furious

16) A January 8, 2010, briefing paper stated, "Currently, our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional coconspirators who would continue to operate and illegally traffic firearms to Mexico drug trafficking organizations."

a) Who drafted that briefing paper? Who approved it? Who sent it to ATF headquarters?

Answer – I do not know who drafted that briefing paper or who approved it. I am now aware of an email in which Bill Newell transmitted the document to me on January 8, 2010, but as I have stated before, I do not recall seeing the referenced briefing paper then. I saw the document in 2011 during a review of this investigation.

b) Who at ATF Headquarters reviewed this paper? Did anybody at headquarters express any concern about this language?

Answer – As I have stated, I do not recall seeing the referenced briefing during the time frame that it is dated. I do not who, if anyone, reviewed the paper and therefore do not know of any concern expressed by anyone.

c) How many additional weapons were bought by suspects during Fast and Furious after this briefing paper was drafted? How many of these weapons have been recovered in Mexico and the United States?

Answer – I do not know.

d) How many additional co-conspirators were identified as part of the firearms trafficking organization after this briefing paper was drafted? How many of these additional co-conspirators have been indicted?

Answer – I do not know.

17) You stated, "I communicated to my chain of command within ATF. We were all very much aware of this investigation and what was going on."

a) With whom did you communicate in your chain of command about Operation Fast and Furious? What was the nature of these discussions?

Answer – I communicated with my Assistant Director, Mark Chait. The discussions we had were general in nature.

b) When discussing Operation Fast and Furious with your chain of command, did you or anyone else express concerns about the number of weapons showing up in Mexico linked to the operation? What were those concerns?

Answer – As I stated during my interview, the number of weapons being recovered in Mexico that were purchased by subjects of our investigation was a concern to everyone associated with this case in Headquarters. Everyone was concerned by the length of time it was taking to get these subjects indicted.

Investigative Procedures

18) Did ATF intend to recover weapons purchased in Fast and Furious? How could ATF accomplish this once surveillance on them had ceased?

Answer – ATF intended to stop a firearms trafficking organization from operating. Stopping the organization would include seizing weapons destined for Mexico. There are several means of recovering firearms aside from surveillance, such as warranted searches or interviews of suspects in which they surrender firearms.

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25) You stated that an individual would not "be able to buy the weapon because they're under indictment. But I'm not sure if the NICS system in Phoenix would capture that if they did attempt to buy a weapon."

a) At what point would the NICS system in Phoenix be able to identify that an individual attempting to purchase a firearm was a prohibited person? After an arrest? An indictment? After the individual was incarcerated?

Answer – If an individual has a pending indictment or after he has been convicted of a prohibiting crime, he would be ineligible to purchase a firearm. It is my understanding that NICS should identify him as such.

b) Were any of the suspects or indicted defendants in Fast and Furious legally ineligible to buy or possess weapons at any point during the investigation? If so, when did they become prohibited purchasers?

Answer – I do not know whether any subject or indicted defendant in Fast and Furious was legally ineligible to buy or possess firearms at the time they purchased them. As I explained previously, they became ineligible once they were indicted.