

Committee on Oversight and Government Reform Potential

Transcript Excerpts

6/15/11 Full Committee Hearing

Special Agent Lawrence Alt

Alt at 89-90

Q. Second was criticism of the regional office here for only conducting simple straw purchase busts rather than maybe breaking down larger networks?

A. And let me point to some clarification on that. I hear that from the agents that are working here. We don't get traction with the U.S. Attorney's Office, they don't follow through, they don't want to prosecute cases. You know, my perception and experience is that they are not the most aggressive office I have ever been around. They are not, in my opinion, they are not helping the situation.

I am also aware, you know, this is the talk amongst the agents, I am aware in November, I think, of this past year, 2010, there was an OIG or IG with regard to Project Gunrunner. And I think that's a lot where that stuff was coming from. I think there had been some initial reports from the IG or OIG about a criticism of Project Gunrunner, and I think that information had been disseminated to the agents either directly or indirectly, and I was getting it second or thirdhand.

But that's the understanding I had about this situation here and what might have led to deployment of a different strategy, that and personal aspirations.

Alt at 95

Q. So in your 26 years of law enforcement experience, is there any justification or have you ever seen a U.S. Attorney's Office that would otherwise not prosecute the types of cases that you were presenting?

A. I have never had a straw purchase case that wasn't prosecuted that I presented. I understand this is a different animal. This is the southwest border. This is a very unique situation. You know, I understand that. But no, I have not seen the reluctance to prosecute these cases. I know that my agency is not in agreement with the interpretation of the corpus delicti issue of the U.S. Attorney's Office. I know that that has been addressed by our counsel with the U.S. Attorney's Office and that there has been communication with the U.S. Attorney's Office about that between our agency and the U.S. Attorney's Office here.

Q. So the U.S. Attorney's Office wouldn't – was reluctant to prosecute cases when you didn't have the guns?

A. They wouldn't.

Special Agent Olindo J. "Lee" Casa

Casa at 43

And of course -- and maybe this -- I don't know if you have talked to others and they have drawn this out. There is only so much surveillance you can do on these individuals. They are very savvy. They know the neighborhoods. They know most likely they are being watched. So when you surveil them, they go through the neighborhood and do what we call crazy Ivans. And that's a slang for they whip around U-turns, go into gas stations, cut through lights, go through lights, do evasive maneuvers, see if anybody is following them. And when we were -- it would only take them minutes to figure out we were following them. So at that point, the decision has to be made do we stop them or do we pull off surveillance because they know we are following them. And all my experience is we eventually terminated the surveillance. We did not stop them. Now, again, I just want to be clear. I want to, for what we are referring to, this was between, I would say my involvement was between March -- well, it was, let's say, January 1st, 2010 to about May. After May, when I got my chance, I got as far away from that type of investigation as I could.

Casa at 63

Q. So what had you heard about the historic practices of the U.S. Attorney's Office with prosecuting gun cases?

A. Just generally here in the Phoenix area they weren't big on, just generally from some of the couple guys that I knew that had been here for awhile said they generally didn't prosecute a lot of the straw purchasing cases. They just said generally -- there was not specific details or long conversations -- they just said generally they really weren't big on prosecuting straw purchasers.

Casa at 63-4

Q. Did anyone at the U.S. Attorney's Office ever tell you that they were unwilling to prosecute a case unless they had possession of the weapon, sometimes called the corpus delicti approach?

A. Yes. I do recall having or being -- I can't remember if it was specific training or informal training, but I actually do recall having a conversation, or not conversation, being told that, something to that degree by Emory Hurley. And I also had conversations with my own ATF legal counsel just in general asking what was the background for why we needed to view a gun that was recovered in Mexico.

Q. And explain that, why you needed to view a gun that you recovered in Mexico. You had to -- are you -- you personally or --

A. No, I am sorry.

Q. ATF had to?

A. When I say you, I mean ATF, somebody, some U.S. -- let me take it even broader. The way it was explained to me, some U.S. law enforcement official had to actually view a firearm recovery of Mexico in order to charge a straw purchasing case. And when I asked my -- I had a discussion with our ATF legal counsel here in Phoenix to ask what was the rationale behind the decision. And it was just roughly explained to me, and I don't know the ins and outs of it, it was based on an old INS case that involved an illegal felony, I am sorry, illegal alien case, and that's where the case law was derived from.

Q. Prior to your arrival in Phoenix and hearing from the U.S. Attorney's Office about this approach that you had to either have physical possession of the weapon or a U.S. law enforcement officer had to personally view the weapon, had you ever heard of that apparent or perceived legal restriction?

A. No. But I probably wouldn't based on the geographical location and the type of trafficking I was generally doing, which was domestic. So, no, I mean I have never heard of that before. And I would like to add one more thing then real quickly, is they also, I think, and this came, I believe it came from AUSA Emory Hurley, said they were trying to develop a way to charge these cases if we did a negative search, if we got consent to do a negative search or obtain a search warrant to search someone's legal residence shortly after this purchase to prove that the gun is not there. So we were working on trying other strategies; to what extent, I don't know now but that was what was discussed some months ago.

Casa at 66-8

Q. In the straw purchase cases that the U.S. Attorney's Office did successfully prosecute that you were involved with, I am not speaking about any particular case, but how effective were those as a deterrent? Did those -- were people sentenced to jail time or probation? Did they get fined? What was the consequences?

ATTORNEY. Just again you can speak to generally based on your historical.

A. Thanks, Larry. I will just speak very generally.

Since I have been here a year and a half, sometimes these things take awhile to work through the system, I could tell you generally, and so I can't really answer what the normal, what I see the sentencing range being.

But I am working a certain investigation that's starting to head to the adjudication process. And, you know, based on different variables, but cooperation level and lack of cooperation, you know, they are talking about ranges between anywhere from felony probation to three to four years incarceration.

Does that answer you good enough? Because I really don't know enough to say I saw this, this, this, this, and this happen because I just haven't been here long enough to see some type of trend. But going back to my experiences, yes, I know that there, there is not, with the straw purchasing case and the lowest rung, there is not a heavy penalty associated with that. Because the people, the people that are most likely to be straw purchasers, generally they are able to buy a gun, so you don't have a criminal history level. And the history level just for that type offense of lying and buying, I will just use a generic term, just doesn't elevate them high up the chart.

Q. Of the sentencing guidelines?

A. Yes, the sentencing guideline chart.

Q. So if you don't have a criminal history and you haven't been busted for straw purchases before, then you are not going to get the three or four years --

A. Yes.

Q. -- in your experience?

A. Probably not. And if they agree to cooperate, you got the acceptance and maybe you got a 5K or you have a recommendation that deviated to a lower, that's where you get the felony probation, so yes. I would say generally speaking there is not a lot of bite in the 924 (a)(1)(A) statute as far as penalties and time, time that would be served.

Casa at 81-83

Q. Besides actually interdicting the weapons, instead of the apparent strategy used in the case we have been discussing, what else can law enforcement and even Congress do to improve the situation down here? What other tools are available?

A. I would say -- and again, I am -- I want to tread very lightly on this subject because I don't want to seem to introduce politics into this. This is not a political statement. There is really no trafficking, firearms trafficking statute per se. It would be nice to have a trafficking statute per se or to enhance some of the penalties on even, on the straw purchasers, just to be a deterrent effect. At the same time it would be nice to have a statute, a statute that's applicable to what is going on down here, or having some enhancements so we can really hammer these people and just put them in jail and make the deterrent effect so other people don't do it.

Special Agent John Dodson

Dodson at 39-40

Q. And tell us what you witnessed.

A. We witnessed one of the individuals, you know, the known straw purchasers arrive, go in. Sometimes one of us would actually be inside the FFL behind the counter. Sometimes if we had enough lead way we would go to the suspect's house and follow him from there to the FFL, or to a meeting, you know, just prior to and see an exchange. We would watch them purchase, you know, however many firearms they were purchasing that day, load them up in their vehicle, often assisted by employees in the stores, and then we would follow them away. Sometimes we would follow them back to their house, sometimes to, you know, a different house or a business or to meet with another vehicle in a parking lot. And then we would have to come back or head to another FFL because one of the other suspects, they are buying 15 or 20 of his own.

Q. Based on your training and experience, what did you think about this?

A. It was something I had never done before, sir. And quite frankly, I took great issue with it and concern. I felt like I understand the importance of going after the bigger target, but there is a way to do that. We did it successfully in the dope world all the time. And those skills and practices that we used there, a lot of them transfer over, and more than applicable in gun trafficking investigations, but we weren't allowed to use any of them.

Dodson at 76-77

A. Yes, sir. First of all, again, I'll remind you that cartel focus strategy came out in September,

October of 2010. And in general what it says is ATF -- after the GAO report which wasn't very favorable to ATF -- needed to focus less on the straw purchaser and more on the organizations, to get the bigger fish, to go after the cartels, hence the cartel focus strategy. Nowhere in that strategy that I have read does it authorize or does it say that, yes, you agents can walk guns. I haven't found it in there. However, the paragraph or two that I am referring to states that in an instance or in a situation where straw purchases are allowed or are being allowed to occur, that this has to be monitored very closely, and the special agent in charge is specifically responsible to always take into account the weight to public safety, to the crime, the destination, the places that those firearms are going, and he has to be willing and ready to put an end to it if he evaluates it that it has gotten too bad.

Supervisory Special Agent Peter J. Forcelli

Forcelli at 17

Q. So tell us a little bit what kind of, you know, what kinds of observations you made regarding this firearms trafficking. Were these all border cases?

A. Primarily guns going to the border. It was a bit of an eye opener. I had seen in my first weekend in Phoenix more of the AK-47s, Barrett rifles than I had seen in 23 years working in New York City. It was an eye opener.

Forcelli at 30-1

Q. Now, when you say they were walking free, was it an issue of cases being presented and not filed? Were there acquittals in trials?

A. No.

Q. What was the problem?

A. I can deal with an acquittal in trial. They [the U.S. Attorney's Office] were just, they were refusing to take the cases ... They found any reason to get away from doing cases. It got so bad I contacted the Attorney General's Office from the State of Arizona and just said what can you do for us, you guys have jurisdiction over the entire border.

Forcelli at 40-1

When the U.S. Attorney's Office wouldn't take it because they said the guns were in Mexico and, you know, the habeus delicti issue, we went to the AG's office and they took it.

Q. You mean corpus delicti?

A. I am sorry, yes. Habeus corpus, I am sorry. It is all Latin to me.

Forcelli at 63-4

Q. Are you aware that this operation we are talking about that Group 7 was planning, the idea was to get people higher up in the so-called food chain, correct?

A. Yes.

Q. Are you aware whether any of these higher ups were caught or indicted or anything like that?

A. I don't think in this district we would have any luck doing that because we don't have the ability to work up the chain because there is no leverage put on the people at the bottom, if you know what I mean, to flip them and work our way up. I don't think any higher level people were arrested but I don't know.

Forcelli at 97-9

Q. In your experience with the ATF in Phoenix, for a typical straw purchaser where there is a prosecution and there is a conviction, you said there is very low, the punishment is pretty weak. What is the typical punishment?

A. Probation.

Q. What is the sentence?

A. Probation, generally. And again, to get somebody to cooperate against the cartel member when the option is be free and see you guys once a month, generally speaking they are going to take the see a guy once a month. I think if the option were to doing some jail time, you might get some cooperation, so the guy would come in and proffer and be able to develop intelligence to build a case. I think historically working gang cases in New York, which was where all my experience was, that's how we made them. You arrested the lower level guys. When they were going to do five, six, seven years for whatever, they come in because they didn't want to do that time, and you move up. And I have made six, seven RICO, not RICO, but continuing criminal enterprise or large gang cases with murders involved just that way.

Here I don't think our agents would ever have that kind of success. And it is not because the agents aren't working hard. It is because there is no buy in from the United States Attorney's Office. And that's my professional opinion.

Q. So in your professional opinion as a law enforcement officer of two plus decades, if we strengthened the straw purchaser statutes, that would aid in your ability to effectively deter some of these straw purchasers?

A. Perhaps, yeah. And then the other thing would be to get the prosecutors here who would be willing to charge the crimes. Because, again, I mean we deal with violations of other federal laws here.

Forcelli at 103-05

Q. So they, it sounds like they are the weak link in the law enforcement world of Arizona.

A. There is weak links. I mean not every agent is created equally, I believe. And frankly there is a lot of overstepping amongst federal law enforcement I think across the country. But here in Phoenix, like I know ICE is working border cases, the FBI has a small hand in border cases because a lot of overlap, which doesn't help. But yes, the U.S. Attorney's Office is kind of viewed as an obstacle more than a help in criminal prosecution here in Arizona, here in the Phoenix area.

Q. We mentioned earlier the corpus delicti issue --

A. Yes.

Q. -- that the U.S. Attorney's Office used as an excuse to not prosecute straw purchases. Can you explain that a little further?

A. Yes. The way it was explained to me by Mr. Hurley --

Q. And slowly --

A. Sorry.

Q. -- for the benefit of our court reporter.

A. The way it was explained to me by Mr. Hurley is the corpus delicti of the crime is the gun on a straw purchasing case. So if the gun is in Mexico, regardless of the fact that you have the form 4473 and confessions, the thing that has the jury appeal, the body of the crime, is in Mexico. I disagree. U.S. Attorney's Offices from other districts disagree. It is not a Ninth Circuit thing because in L.A. they disagree. I don't get it.

Now, the form what they are relying on, my opinion, if they are relying on the form, that should be the corpus delicti, and not the gun in Mexico. It is an easy way to get rid of the case, saying the gun is in Mexico. But you have the guy saying I lied on the form and you have the form. What more do you need? My opinion.

This was also taken up. There was a training that was conducted. They call it the NAC. I don't know what it stands for. If any of you guys were federal prosecutors you would. It is where they have the training center for U.S. Attorneys it's in Carolina.

Theresa Rassas, who is an AUSA, she is a former county attorney that now works for the U.S. Attorney's Office. And she is one of the ones trying to be good, but the leash is on her. She was sent there to give a presentation on this very issue and was pretty much laughed off the stage, which is appalling, because she is a very nice girl and somebody who wants to prosecute cases. But she was pretty much laughed off the stage according to all the people I know who were present at that presentation, because she was utilizing their standard here about if the gun is in Mexico you can't prosecute it. If something is broken, I mean I would think they should find a way to fix it, not find a way just to dismiss it since we are about fixing things, I would think.

Forcelli at 110-12

Q. And then you traced it to the murder of a commander in Juarez?

A. Yes.

Q. Or it was traced and you heard about it?

A. Yes. And we successfully identified him and his associates and arrested them all with the Arizona Attorney General's Office.

Q. Roughly when was that?

A. 2008 to 2009. The case was prosecuted and he is -- I would say probably more likely 2008.

Q. Did the U.S. Attorney's Office refuse to take that case?

A. Yes.

Q. They refused to take a case where there was a murder in Mexico and multiple, multiple .50 caliber rifles that had been trafficked across the border and then traced back to that, and you had the purchaser of the weapons, you had the straw purchaser?

A. Emory Hurley stated the corpus delicti issue was a problem, the guns were in Mexico, and he could not take the case.

Q. Those people are now serving in jail?

A. Well, because --

Q. Or is it still ongoing?

A. I looked at my watch because that's how little time he is doing, because a state charge only carried about two years, where for a federal he would have looked at more time. He is probably out by now, not that my watch would have told me that. But, yeah, I believe he is either released or due for release very shortly. A young man, I believe he was less than 20 years old, he had a network of about five or six straw purchasers. I believe we arrested most of them, I think almost eight. We may have one we couldn't quite make a case on. Yeah.

Q. Is there anything ongoing about that case?

A. No, sir.

Q. Are you comfortable providing us the name of the --

A. It was --

Q. -- person?

A. -- national news. And it is, the defendant's name was Victor Varela, and the case is completely adjudicated.

Q. Can you spell the last name?

A. V-a-r-e-l-a.

Q. And Emory Hurley, the Assistant U.S. Attorney, refused to prosecute that case?

A. Yes.

Q. And you had traced it to a murder in Mexico of a Mexican, you said, commander. You mean a police official?

A. Yes, sir. Yes, sir. Mr. Hurley at the time had replaced Rachel Hernandez as the chief of the gun unit. And another thing I am going to bring up, Mr. Hurley, who was the chief of the gun prosecution unit, also has been seen at gun shows hanging out behind counters with FFLs, which, again, we work with FFLs here frequently. They are decent people, the lion's share of them. But my opinion is it looks improper for the chief of a gun unit to be associating with FFLs at a gun show behind a counter. It looks like a conflict of interest. An agent at one gun show, Sean Sander from Phoenix, attempted to take a picture of Mr. Hurley. And he covered his face and scurried off. If you are not doing anything wrong, why would you hide your face and scurry away? And I brought this to the attention of our chain of command and the people at the U.S. Attorney's Office.

Forcelli at 152-55

Q. In your view, given his approach to gun prosecutions and the significant criticisms of the U.S. Attorney's Office that have come from the very highest levels of ATF for their unwillingness to prosecute gun cases, is Mr. Hurley qualified to serve as a special advisor on gun prosecutions for the U.S. Attorney?

A. I will say I think two things. I don't -- Mr. Hurley is a nice guy. I don't think Mr. Hurley's service enforcing violent crime in the U.S. Attorney's Office at all is in the best interest of anybody. And, again, his relationship with gun dealers, his very well-known relationship with gun dealers should have negated his ability to prosecute gun crimes. It looked on the face like a conflict of interest. I don't know if it was. If he had -- you know, if there were any bad effects, I am not alleging that. But in my opinion, for an Assistant United States Attorney, the look of impropriety is impropriety.

You know, and again, if this was fine, why wouldn't you want to be -- why would he cover his face and run at a gun show when an agent tries to snap a photo of him hanging out with legendary guns behind a counter at a gun show.

Q. Were there any other agents at ATF or any other people in the law enforcement community in Phoenix who expressed concerns about this potential conflict of interest --

A. Yes.

Q. -- with Emory Hurley?

A. Yes, pretty much 50 percent of the agents on the floor. And it was relayed to our chain of command that we had a problem with this.

Q. Relayed through your chain of command that there was a perception of a conflict of interest with Emory Hurley and the FFLs that ATF regulates?

A. Yes. Yes, sir.

Q. And did you ever see any response or reaction or action taken in response to those concerns?

A. None whatsoever.

Q. And in your professional opinion I think you said that the perception of a conflict of interest between Mr. Hurley and these FFLs should negate his ability to serve in a capacity advising the U.S. Attorney to prosecuting gun cases in Phoenix?

A. Yes, yes, sir, and perhaps in a white collar capacity or prosecuting something else. I know this isn't a joking setting, but the running joke in the office was if Cheech and Chong could get law degrees, I guess the U.S. Attorney would put them in charge of the narcotics unit. Because Emory Hurley likes guns. He knows things. I like guns, but he is like very into guns. He knows proof marks from different places in the world, like where this gun was manufactured. He could tell you specifications that I am not familiar with. So I think his passion for guns has led some in that office to believe he would be effective at prosecuting gun crimes. But gun crime and guns really don't go hand in hand, as weird as that might sound. You know, the laws are possessing gun near a school, felony in possession, you know, using a gun in furtherance of a federal crime. The manufacturer, stuff like that really doesn't relate in many instances into the crime. So I mean I guess his passion for guns, they thought it was a good fit. But it is not.

Phoenix Special Agent in Charge, William Newell

Newell at 32

Q. Who gets to make those decisions that there aren't there isn't the necessary evidence to make arrests, or there isn't probable cause to stop suspects? Is that are those decisions that are happening at the ATF level, or are those decisions that are being communicated to the ATF agents by the U.S. Attorney's Office?

A. It is a two way communication. The agents will call normally in a firearms trafficking case, the agents will consult with an assistant United States attorney on an investigation and go through the elements that they have regarding a specific violation, and a determination is made at that point whether there is enough to complain someone, indict someone, and then arrest or seize evidence and what have you. And that was in this case as well.

Newell at 51-53

Q. Can you explain how the lack of a firearms-trafficking statute impacts your work?

A. Well, sure, I can explain it. And I'll tell you that it's actually explained very well in -- in July of 2009, the Congressional Research Service did a report called, "Gun Trafficking and the Southwest Border." I just remember it was July of 2009.

And in there, it talks about the fact that one of the challenges for law enforcement -- and it didn't specifically say ATF; it said challenges for law enforcement -- is the fact that, when you have multiple straw purchases -- multiple straw purchasers -- "multiple straw purchases" I believe is the exact -- I'm quoting not verbatim here. But it says that one of the challenges is the fact that not having a statute that specifically addresses a pattern of activity or hinders -- a pattern of activity involving a firearms-trafficking scheme, if you will, hinders law enforcement's ability to intervene early on in a firearms-trafficking conspiracy. Now, that's not verbatim, but that's kind of what it talks about.

And what that means is and my interpretation of that is that there's no statute that specifically addresses a pattern of activity of basically taking firearms from legal commerce into illegal commerce, which is technically the definition of firearms trafficking. Because firearms, again, are not, in and of themselves, contraband unless they've been altered in some way, an obliterated serial number or been modified to fire fully automatic and that kind of thing, you know, some sort of modification to the gun that's illegal, a sawed-off shotgun type of thing, shortened barrel, that type of thing. So guns, in and of themselves, are a commodity, a legal commodity, unless they've been altered or unless -- well, unless they've been altered.

So when you have a firearm that's taken from lawful commerce into unlawful commerce, that technically is the definition of firearms trafficking, by my understanding or under our

definition. So, not having a statute that would address a pattern of activity by a group of individuals that are engaged in some form of diversion of firearms from legal to illegal creates a situation for us where we have to go and look at each individual transaction by a particular purchaser in order to -- especially when the purchasers are not prohibited.

When you have non-prohibited people purchasing firearms and then transferring them or providing them to other non-prohibited people, we have to show that somehow that's illegal. And when you have that type of scenario, it makes it difficult at times. It can make it difficult.

Newell at 156-57

Q. But legislation that would allow where evidence of a pattern of transactions was sufficient to show to have probable cause to bring an indictment, that would be helpful to ATF's mission in Arizona?

A. Yes.

Newell at 157-58

Q. You were the, again, the lead law enforcement officer in the Department of Justice for gun crimes in Arizona for 5 years. You know, I live up here in Washington, D.C. I hadn't spent any time in Arizona until visiting recently. What's the scope and scale of the gun trafficking problem?

A. That's a great question. I haven't got an opportunity to ask that -- or answer that question. You have to understand that when you're talking about firearms trafficking in Arizona, when you talk about Arizona and places like Phoenix especially -- and I mentioned earlier about Phoenix or Arizona is a gateway. You talk about places like the Tohono O'odham Reservation, 75 miles of the border, which about two-thirds of the reservation are inside of Arizona; one-third are outside. You're talking about a major hub like the south center of Arizona, where you have major highways. Traffickers of whatever contraband if it's northbound are looking to go to Phoenix to hide, to mix into the population, if you will, so that they can then transport, be it drugs, humans, what have you. And southbound the same thing.

You've got a large population in Phoenix that -- for instance, the home invasion, we did a big home invasion initiative a couple of years ago. And I use that as an example, home invasions. You know, 3 years ago or so, 4 years ago maybe, there was a lot of attention on Phoenix about being the kidnapping capital of the world and home invasion and what have you. That rises from the fact that you've got all these competing interests in the underworld, if you will, in Phoenix. You've got the human traffickers, the drug traffickers, the firearms traffickers and the money launderers.

Newell 160-62

Q. So you're describing how that's interconnected to a number of other problems?

A. Sure. I mean, I think you can look at the U.S. Attorney's -- just to go back to the question of the cooperation of the U.S. Attorney's Office. I think you can go back to the U.S. Attorney's Office Web site, which is public, and look at the amount of indictments from, I would say probably last summer to today, and you will see a tremendous amount of indictments on firearms related issues, you know, firearms trafficking related issues. Just phenomenal.

We just had one, it's on a public Web site, where we worked a case regarding Mexican drug cartels trying to acquire a stinger missile. It's on the Web site, so it's public knowledge. There are a lot of indictments, which I think show the commitment from the U.S. Attorney's Office and the scope and the scale of the issue that we confront daily out there.

Q. Does ATF and Phoenix have the resources, in your opinion, to effectively confront this challenge?

A. No.

Q. Explain that.

A. Well, I mean, look at this case, for instance. When we started this case, I think there were three people in the group, and we had to scramble. As we worked the Fast and Furious case, we had to first bring in people from the other groups in the division, in the Phoenix area. Then we had to bring in, when I got some funding, when OCDETF funding was approved, I believe it was late February, early March, we were able to bring in some agents from other divisions to help out, surveillance and other things. So, you know, I mean, when you look at, you know, where we stand staffing wise, I think it's -- and not just Arizona, but across the country, but really especially south of the border.

We've got offices who have got you know 3 or 4 agents in them, when a fully staffed office theoretically for us is 10, 1 and 1; 10 agents, 1 supervisor, 1 support. But on average, it's about 6 to 7 agents on average.

Q. And has Project Gunrunner, which was conceptualized but then fully implemented during the time that you were a SAC in Phoenix, has that assisted and provided you additional resources?

A. Yes, sure. I mean, we were able to open up several new offices, Group VII in Phoenix. We were able to open up Tucson IV, which is also a Gunrunner strike force office, we were able to open up. The Las Cruces II office, this is in my area, the Las Cruces II office, the Roswell satellite office, the Sierra Vista office we just opened up this year were all because of the support we got on the Gunrunner.

Newell at 179-80

Q. The ATF agents have responsibility for taking firearms off the street, correct, that shouldn't be on the street that are in the hands of bad guys?

A. Sure. When they have a legal basis to do so, sure.

Q. And they make their decisions on criteria such as reasonable suspicion or probable cause?

A. Sure.

Q. And the prosecutors, they have to think about things in a different way. They have to think about reasonable doubt or clear and convincing evidence, correct?

A. Sure.

Q. Looking back on things, did you ever see a situation where those two standards or groups of standards were conflated, meaning the law enforcement folks in the field were making decisions about what the prosecutors will have to prove in court ultimately?

A. Well, again, the OCDETF strategy is, in the mission statement the OCDETF strategy for the strike force is a prosecution led initiative. So be it a DEA case, ATF case, ICE case, if you're part of the OCDETF mission, in this case, this case, was, as well as the task force or the strike force, an AUSA is assigned to the case to assist with the agents and the officers, task force officers, in helping guide the investigation in the sense from a prosecutorial standpoint as per the OCDETF mission statement.

Q. But there was a decision that came from somebody, whether it was Dave Voth or whether it was the case agent or whether it was you or whether it was someone back in Washington in ATF or whether it was someone in the Justice Department that decided not to pull over suspects who had left an FFL with large numbers of AK 47s?

A. I concur we did that.

Q. They were under surveillance, videotaped?

A. We did that though in this case. On numerous occasions we did that.

Q. But not as a matter of course?

A. When we had evidence to be able to prove to be able to pull people over, we did that. On numerous occasions we did that. We had Glendale PD do it for us, Phoenix PD do it for us. I can't remember who else. Maybe I think Avondale or some other ones. Mainly Phoenix PD and Glendale.