

PANEL I OF A HEARING OF HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBJECT: "OPERATION FAST AND FURIOUS: RECKLESS DECISIONS, TRAGIC
OUTCOMES" CHAIRED BY: REPRESENTATIVE DARRELL ISSA (R-CA) WITNESS: SENATOR
CHARLES GRASSLEY (R-IA) LOCATION: 2154 RAYBURN HOUSE OFFICE BUILDING,
WASHINGTON, D.C. TIME: 10:00 A.M. EDT DATE: WEDNESDAY, JUNE 15, 2011

Copyright (c) 2011 by Federal News Service, Inc., Ste. 500 1000 Vermont
Avenue, NW, Washington, DC 20005, USA. Federal News Service is a private
firm not affiliated with the federal government. No portion of this
transcript may be copied, sold or retransmitted without the written
authority of Federal News Service, Inc. Copyright is not claimed as to
any part of the original work prepared by a United States government
officer or employee as a part of that person's official duties. For
information on subscribing to the FNS Internet Service, please visit
<http://www.fednews.com> or call (202) 347-1400

REPRESENTATIVE DARRELL ISSA (R-CA): (Sounds gavel.) The
committee will come to order. We exist 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 work tirelessly in partnership with
citizen watchdogs to deliver the facts to the American people and bring
genuine reform to the federal bureaucracy.

The mission of the Bureau of Alcohol Tobacco and Firearms is to
protect our communities from violent criminals, criminal organizations
and the illegal use and trafficking of firearms. Since the Gun Control
Act of 1968, the ATF has been organized as a unique law enforcement
agency that Americans could trust to reduce the illegal transfer of guns
into the hands of criminals.

Today's hearing concerns a breach of that trust that has left
countless innocent Mexican citizens and at least one federal border
patrol agent dead. In 2009, the ATF began allowing straw purchasers to
walk guns into Mexico believing that this initiative would help them
track the use of firearms by higher-ups within the Mexican drug cartels.

Guns, instead, were being seized and allowed to cross the
Mexican border without the knowledge of the Mexican government. This
effort failed. But with strong objections of the ATF field agents, the
program continued, and approximately 2,000 AK-47s and derivatives and
some 50-caliber sniper rifles and others and 10,000 or more rounds of
live ammunitions went into the arsenals of the Mexican drug lords.

Despite these strong objections by field agents, Operation Fast
and Furious continued. And not only did it continue, but those at the

000001

AZ0267831

DOJ-FF-43663

highest level of ATF show great interest in the program. A document displayed on the screen now shows that two of the most senior leaders in ATF, Acting Director Kenneth Melson and Acting Deputy Director Billy Hoover, were being briefed weekly on Fast and Furious. The documents show that both Melson and Hoover were keenly interested in the case and updates.

A second document shows Deputy Assistant Director for Field Operations William McMahon was so excited about Fast and Furious that he received a special briefing on the program in Phoenix scheduled a mere 45 minutes after his plane landed.

A third, and perhaps the most disturbing document, indicates that Acting Director Melson was very much in the weeds with Operation Fast and Furious. After a detailed briefing on the program at the ATF field division, Acting Director Melson had a plethora of follow-up questions that required additional research to answer.

And as documents indicate, Mr. Melson was interested even in receiving the IP address for hidden cameras located inside cooperating gun shops. With this information, Acting Director Melson was able to sit at his desk in Washington and himself watch a live feed of straw buyers entering the gun stores and purchasing dozens of AK-47 variants. Earlier this month, the Mexican government reported that more than 34,000 lives have been lost in the four and a half years, and scores of others remain missing. Last year, 111 U.S. citizens were killed in Mexico, which has been the most violent year in the drug war's history, according to the U.S. State Department.

When Senator Chuck Grassley, who we welcome here today, and I first learned about Operation Fast and Furious earlier this year, we were both shocked that such a brutal and reckless and blatantly reckless -- (audio break) -- candidly, at first, I believed that it had to be, as it was being alleged, an operation that was a few loose cannons and could not have possibly been properly briefed.

Last night, Senator Grassley and I released a joint report from the investigation entitled "Operation Fast and Furious: Accounts of the ATF agents." After these accounts, after the many depositions that have been taken, the witnesses that have come forward, the whistleblowers, if you will, it is now clear this was not rogues at a local level. Just the opposite. What we find is that people at the local level overwhelmingly objected to this program but were assured that it was approved at the highest levels.

Today, we will hear from the family of Agent Terry about how Fast and Furious devastated their lives, and we will hear from ATF agents who saw the risk, opposed the program and have come forward to tell the American people what happened.

The American people have a right to know the facts about Operation Fast and Furious, and Congress has a responsibility to find and reveal those facts. Thus far, more than 30 Democratic House members have joined Senator Grassley and myself in calls for the truth. I hope this

will continue to be a bipartisan effort. I believe that, in spite of slowness to react by the administration, there has now become a focus on getting the truth out in a more timely fashion, allowing the families to understand how it happened and, hopefully, working together with Senator Grassley and this committee to ensure it never happens again. That includes holding those whose judgment was so poor accountable.

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

REPRESENTATIVE ELIJAH CUMMINGS (D-MD): Thank you very much, Mr. Chairman. And I thank you, Mr. Chairman, for holding this hearing.

I'd like to start by saying a few words directly to the members of the Terry family who are here today. Over the past week, my family suffered a horrific tragedy that, in some ways, is similar to your own. Nobody can really know how that feels until they go through it themselves.

On the one hand, you want the criminals who did this to be brought to justice as fast as possible. You want them punished for what they did, for who they took from you. On the other hand, that's after the fact. It simply will not bring them back.

So you also want answers. You want to know whether something could have been done to prevent their death. And you want to prevent it from happening to anyone else in the future.

I want to tell you that I know how you feel, and I want to help as much as I can. Of course, we want the prosecutors to succeed in bringing the perpetrators to justice.

You also deserve direct and straightforward answers from your government. Working together, we can and must achieve both of these goals. And so I thank you for being here today.

Now, let me welcome Senator Grassley. Your reputation as a defender of good government transcends party lines. I've always been impressed by your determination, and I welcome you here today.

And you said something in your statement that -- in your written statement -- that I totally agree with and I want to reiterate. You said any attempt to retaliate against them -- speaking of the ATF officers -- for their testimony today would be unfair, unwise and unlawful. And I am here to say that I have always taken that position, and I share that view with you, and I will work with you to make sure that does not happen. And I'm sure it won't.

Let me also welcome the ATF agents who are here to provide their testimony. It is not easy to testify before Congress under normal circumstances, but it is even more difficult when you are testifying about allegations involving your own agency. That's tough. Nevertheless, I know you are here today because you want to improve this process.

000003

AZ0267833

DOJ-FF-43665

Finally, let me welcome Mr. Wiech from the Justice Department. This will not be an easy hearing for you either, but I know that you too are here because you want to improve this process. We look forward to talking with you about ways we can meet both the department's obligations for the prosecution and the committee's obligations for oversight. We thank each and every one of you for your service to the country. We will have tough questions today, but you all deserve our courtesy and respect.

On the substance of today's hearing, the allegations that have been made are very troubling, and new information we have obtained raises additional concerns about the role of various actors involved in these incidents.

Based on the interviews conducted by the committee so far and the documents we have reviewed to date, I have two concerns that I would like to explore.

First, we will hear testimony that surveillance of suspected straw purchasers was discontinued repeatedly seemingly for no reason so agents could return to gun stores to start over with new suspects. The Phoenix group handling this investigation was tiny, with only three to seven ATF agents. Although other offices and agencies were involved, the allegation is that these scarce resources were not used appropriately.

Second, we will hear testimony that specific individuals in the U.S. attorney's office in Phoenix refused to prosecute legitimate and promising gun cases involving straw purchasers. This gives me great concern.

It is not clear whether this reluctance was based on negative court decisions, inadequate resources or other issues, but one thing is clear. The allegations relating to this particular office span several years and several administrations.

I want to make two additional points about today's hearing. This weekend, Chairman Issa stated on national television that this committee's investigation and these hearings are not about finding the facts. He said -- and I quote -- "This is not a discovery process of what happened. We know what happened," end of quote.

With all due respect, I strongly disagree. We do not know all the facts. We still have much to learn in this ongoing investigation, and we should not rush to judgment.

Finally, no legitimate examination of this issue will be complete without analyzing our nation's gun laws which allow tens of thousands of assault weapons to flood into Mexico from the United States every year, including 50-caliber sniper rifles, multiple AKA variants and scores of others, some of them landing in neighborhoods like mine, the one I represent in Baltimore.

When Mexican President Calderon addressed Congress in May, he pleaded for us to stop fueling a full-scale drug war with military-grade assault weapons. In order to explore these issues further today, I am

exercising my right under the rules, Mr. Chairman, of the House for a minority day of hearings with several witnesses who will testify about these issues in great detail. I did not think it was necessary to call these witnesses for today's hearing, but I will work with the chairman on scheduling these hearings in the near future.

Finally, let me say this. ATF Special Agent Forcelli said something in his written statement that we all need to take note of, Mr. Chairman. He says these words: As a career law enforcement officer who has had to investigate the deaths of police officers, children and others at the hands of armed criminals, I was and continue to be horrified.

And this is the piece that I want us to concentrate on: I believe that these firearms will continue to turn up at crime scenes on both sides of the border for years to come.

With that, Mr. Chairman, I yield back.

REP. ISSA: I thank the gentleman. We now recognize -- oh. Members may have seven days to submit opening statements and extraneous materials for the record.

We now recognize our first panel. The distinguished Senator Charles Grassley is the ranking member of the Senate Committee on Judiciary. In that role, I have an opportunity to work with the senator on patent issues and many other issues of law enforcement.

But today, the senator is here to speak about a joint investigation that has spanned many months and, ultimately, has consumed a great deal of the senator's personal time and attention. And I thank you for being here. Your entire written statement will be placed in the record, and you're recognized.

SENATOR CHARLES GRASSLEY (R-IA): (Off mic) -- these important hearings and for the great work that you and your staff have done in your constitutional responsibility of oversight.

I am grateful to Agent Brian Terry's family for being here today and wish to express my sympathy for their loss. I hope that we can get the Terry family the answers that they deserve.

I also want to thank the brave people who are testifying from the Bureau of Alcohol, Tobacco and Firearms, these federal agents. I know that they're here to tell the unvarnished truth. I also know that that can be very tough since they still work for the ATF.

These agents already risk their lives to keep us safe. They shouldn't have to risk their jobs as well. And continuing to highlight what Congressman Cummings highlighted from my statement, any attempt to retaliate against them for their testimony today would be unfair, unwise and unlawful. And let me add to what Congressman Cummings said, and it would be a personal affront to this senator. When I became ranking member of the Judiciary Committee in January, this was the first oversight issue to land on my desk. Several other senators' offices

contacted my office to pass along these allegations about an ATF case called Operation Fast and Furious.

At first, the allegations sounded too shocking to believe, but sadly, they turned out to be true. ATF is supposed to stop criminals from trafficking guns to Mexican drug cartels, or I guess anyplace else. Instead, the ATF made it easier for alleged cartel middlemen to get weapons from U.S. gun dealers. Agents were actually ordered to stand by and watch these middlemen, these straw purchasers, buy hundreds upon hundreds of weapons. Agents warned that inaction could lead to tragedy, but management didn't want to listen. We will hear from some of those agents today and hear it from their point of view.

Inaction would be bad enough, but the ATF went even further. ATF encouraged gun dealers to sell to straw buyers. Emails prove that at least one dealer worried prophetically about that risk. He wrote to ATF about his concerns that a border patrol agent might end up facing the wrong end of one of those weapons. ATF supervisors told the dealer don't worry.

So the agents said it was a bad idea, and the gun dealers said it was a bad idea. Who thought it was a good idea? Why did this happen? Congress deserves answers to these questions.

The president said it didn't authorize it -- that he didn't authorize it -- and that the attorney general didn't authorize it. They have both admitted that, quote-unquote, "a serious mistake may have been made." There are a lot of questions and a lot of investigating to do, but one thing has become clear already; this was no mistake. It was a conscious decision by senior officials. It was written down. It was briefed all the way up to Washington, D.C.

According to an internal briefing paper, Operation Fast and Furious was intentionally designed to, quote, "allow the transfer of firearms to continue to take place," end of quote. Why would the ATF do such a thing? Well, the next line in the brief paper tells us. It was, quote, "to further the investigation and allow for the identification of additional co-conspirators," end of quote.

So very clearly, that was the goal. The purpose of allowing straw buyers to keep buying was to find out who else might be working with them, who else might be in their network of gun traffickers. Of course, that assumes that they are part of a big, sophisticated network. That kind of assumption can cause one to start with a conclusion and then work backward looking for the facts that fit the case. Until you figure out that you've got the cart before the horse, you're probably not going to get anywhere. Professor of criminology, Gary Kleck, recently published an article in The Wall Street Journal called, quote, "The Myth of Big Time Gun Trafficking," end of quote. Professor Kleck said that, according to his study of national crime data, ATF handles only about 15 operations each year that involve more than 250 guns. According to his study, a typical trafficking operation involves fewer than 12 guns.

000006

AZ0267836

DOJ-FF-43668

So why would the ATF make it a priority to identify large networks of traffickers? And, again, why would senior leadership decide to explicitly elevate that goal above ATF's traditional work of seizing weapons that were illegally purchased?

On October 26, 2009, emails indicate that there was a meeting of senior law enforcement officials at our Justice Department. It appears to have included the heads of every law enforcement component of the department, including directors of the FBI, the DEA and the ATF. It also included the U.S. attorneys for all of the southwest border states, the director of the organized crime drug enforcement task force and the chairman of the attorney general's advisory committee.

Sounds like a pretty big, important meeting, doesn't it? On the agenda at the meeting was a document describing the department's strategy for combating Mexican cartels. In a section called, quote, "attacking the southbound flow of firearms," end of quote, it says -- and I quote from the document -- "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," end of quote.

Well, the message in that document is pretty clear, isn't it? Trying to identify networks of traffickers is more important than seizing weapons. This document was transmitted to the head of the Phoenix field division on October the 27th, 2009.

Four days later, the Phoenix field division began investigating Uriel Patino on suspicion of being involved in a gun trafficking ring. Ten days after that, Patino was assigned his own case number. In the first 24 days that the ATF was onto him, Patino bought 34 guns from dealers cooperating with the ATF. That's nearly three times more than the typical gun trafficking operation according to the study in The Wall Street Journal that I just mentioned.

But that was just the beginning. Since the dealers were cooperating, ATF received notices of each purchase right away. Analysts entered the serial numbers into ATF's suspect gun database usually within days of the purchase.

On November the 20th, one of the 34 guns Patino bought turned up in Mexico just 14 days after he bought it in Phoenix. ATF learned of the recovery through a hit in a suspect gun database on November the 24th. That same day, Patino brought Jaime Avila into a cooperating gun dealer, and they bought five more guns. ATF had real-time notice from the dealer, and agents raced to the store to follow them. But they arrived too late.

Over the next six weeks, Avila bought 13 guns at dealers cooperating with the ATF. The dealers notified the ATF of each purchase right away. Analysts entered the serial numbers in the ATF database usually within about two days of purchase. Yet ATF did nothing to deter or interrupt the straw purchasers.

Avila went back to a cooperating dealer and purchased three more AK-47-type weapons on January the 16th, 2010. ATF simply put the serial numbers in its database. Still, ATF did nothing to stop Avila and Patino.

Eleven months later, two of those three rifles were recovered at the scene of Agent Terry's murder. During those 11 months, Avila purchased another 34 arms, but Patino purchased 539. Again, cooperating gun dealers notified ATF of each and every purchase.

It usually took about five days to enter the serial numbers into the ATF database, but ATF often had real-time or even advance notice of the purchases from the dealers. ATF even specifically approved of particular transactions. I'll give you an example.

In August 2010, a gun dealer cooperating with the ATF asked for guidance. Patino wanted 20 more weapons, but the dealer only had four in stock. The dealer told ATF that if he were to sell the guns, he would have to, quote, "obtain the additional 16 specifically for this purpose," end of quote. An ATF supervisor wrote back, quote, "Our guidance is that we would like you to go through with Mr. Patino's request and order additional firearms." At this point, ATF already knew that he had bought 673 guns from cooperating dealers and that many had already been recovered at crime scenes.

I want to be clear that we don't know for sure whether this particular order was actually filled for these additional 16 guns. However, these new emails support what agents and dealers have been telling us for many months. According to them, dealers identified (sic) ATF when any of the straw purchasers bought guns, either before, during or at least shortly after the sale.

We don't know what the exact totals are, but we know the suspect gun database had at least 1,880 guns related to this case. At least 30 of them were high-powered, .50 caliber rifles. The straw purchasers bought 212 guns in just six days, December 2009. Seventy percent of all guns in the database were bought by just five straw purchasers. If ATF agents had been allowed to stop just those five buyers, most of the guns in this case would not have fallen into the wrong hands. Finally, I want to say something about the politics of gun control. This investigation is not about politics; it's about getting the facts. That's what constitutional responsibility of oversight's all about. That's our checks and balances of government.

No matter what side of that issue you're on, the facts here should be disturbing. There'll be plenty of time for both sides to argue about policy implications of all this at some point, but I hope that we can do that at another day. Today is all about these agents not being allowed to do their job. Today is about the Terry family and their search for the truth.

Too often, we want to make everything about politics. We pick sides and only listen to what we want to hear. At least for today, let's just listen to these agents and let's just listen to this family and hear

000008

AZ0267838

DOJ-FF-43670

what they have to say. Let's hear their stories, and hear it loud and clearly. Let's then work together to get answers for this family and the other families who may have suffered. It's time to get to the truth and hold our government accountable.

The public's business ought to be public. The public's right to know -- and with the public's right to know comes that accountability. That's the checks and balances of our government, and that's what congressional oversight is all about.

Thank you, Mr. Chairman.

REP. ISSA: Thank you, Senator. Thank you for taking so much time out of your busy schedule to testify here today. While we set up for the next panel, we'll take a short recess. (Sounds gavel.)

END.

PANEL II OF A HEARING OF HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBJECT: "OPERATION FAST AND FURIOUS: RECKLESS DECISIONS, TRAGIC
OUTCOMES" CHAIRED BY: REPRESENTATIVE DARRELL ISSA (R-CA) WITNESSES:
JOSEPHINE TERRY, MICHELLE TERRY BALOGH AND ROBERT HEYER, RELATIVES OF THE
LATE BORDER AGENT BRIAN TERRY; SPECIAL AGENTS OLINDO "LEE" CASA, PETER
FORCELLI AND JOHN DODSON OF THE ATF'S PHOENIX FIELD DIVISION LOCATION:
2154 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. TIME: 10:00 A.M. EDT
DATE: WEDNESDAY, JUNE 15, 2011

Copyright (c) 2011 by Federal News Service, Inc., Ste. 500 1000 Vermont
Avenue, NW, Washington, DC 20005, USA. Federal News Service is a private
firm not affiliated with the federal government. No portion of this
transcript may be copied, sold or retransmitted without the written
authority of Federal News Service, Inc. Copyright is not claimed as to
any part of the original work prepared by a United States government
officer or employee as a part of that person's official duties. For
information on subscribing to the FNS Internet Service, please visit
<http://www.fednews.com> or call (202) 347-1400

REPRESENTATIVE DARRELL ISSA (R-CA): We'll now recognize our
next panels -- panel of witnesses. Mrs. Josephine Terry is the mother of
the late Border Patrol agent, Brian Terry. Ms. Michelle Terry is the
sister of the late Border Patrol agent, Brian Terry. Mr. Robert Heyer is
the cousin of the late Border Patrol agent, Brian Terry.

The committee would also like to recognize other members of
Agent Terry's family, including his father, Kent Terry, who is unable to
be here today; his stepmother, Carolyn Terry; his older brother, Kent
Terry Jr.; and his younger sister, Kelly Terry Willis. Our thoughts
today are with Agent Terry and his entire family as they continue to
mourn the untimely passing of their loved one.

Our remaining witnesses on the second panel are Mr. John --
excuse me -- Mr. John Dodson. He is a special agent in the Phoenix Field
Division of the Bureau of Alcohol, Tobacco and Firearms and Explosives.
Mr. Olindo -- Lee, as he's known -- Casa is a special agent in the
Phoenix Field Division of the Bureau of Alcohol, Tobacco and Firearms and
Explosives, and Mr. Peter Forcelli is the group supervisor of the Phoenix
Field Division of the Bureau of Alcohol, Tobacco, Firearms and
Explosives.

Ladies and gentlemen, pursuant to the rules of our committee,
all witnesses are to be sworn in order to testify. Would you please rise
to take the oath, and raise your right hands?

(The witnesses are sworn in.)

REP. ISSA: Let the record reflect that all witnesses answered
in the affirmative. Please be seated.

In order to allow time, particularly with such a large panel, your entire written statements and any inclusive material you want to have put in the record will be placed in the record, so feel free to summarize. Try to stay within five minutes. For the field agents, we will hold you closer to it; for the mother and sister, not so much.

We'll start with -- let's start with Mr. Heyer. You're recognized for five minutes.

ROBERT HEYER: Good morning, Chairman Issa, Ranking Member Cummings and other members of the committee. My name is Robert Heyer. I am a cousin of slain Border Patrol Agent Brian A. Terry.

As you know, I'm joined on the panel this morning with Brian's mother, Josephine, and his older sister, Michelle. They have asked me to give this opening statement on behalf of the entire Terry family.

It was just 10 days before Christmas last year when our family received the devastating news -- Brian had been shot and killed while engaged in a firefight with a group of individuals seeking to do harm to American citizens and others.

We knew that Brian faced imminent danger on a daily basis as a part of his chosen career, but we also knew that he and his unit were highly trained and equipped with the best weapons this country could provide to their fighting men and women. They were competent in overcoming any threat that they may face in the desolate section of desert that they patrolled. He and his team prided themselves as being the tip of the spear that defended this country and its borders. The telephone call came in the middle of the night. I know this type of horrible notification has been received many times during the past 10 years by families of our military's sons and daughters as the United States has fought wars in both Iraq and Afghanistan. After all, Brian had taken an oath to defend this country from all terrorist threats.

What makes Brian's death so shocking to his family is that he did not die on a foreign battlefield; he was killed in the line of duty as a U.S. Border Patrol agent. He died not in Iraq or Afghanistan, but in the desert outside of Rio Rico, Arizona, some 18 miles inside of the U.S.-Mexican border. His killers were not Taliban insurgents or al-Qaida fighters, but a small group of Mexican drug cartel bandits, heavily armed with AK-47 assault rifles. The rifles and the ammunition that they carried in those weapons were designed to do one thing, and that was to kill.

Brian was an amazing man, and I say that not just because he was family. Many people thought he was almost superhuman. After his death, we visited his former duty stations in Arizona. Each time we met one of his fellow agents, they spoke of how impressed they were with him. He was what we expect in our brothers and sons -- strong, competitive, handsome, courageous, funny and incredibly patriotic American. Some of his co-workers even had bestowed him with the nickname of "Superman."

000011

AZ0267841

DOJ-FF-43673

Brian was very proud to serve as a federal agent. He had joined the United States Marine Corps right after high school. He went on to college and earned a Bachelor of Science degree in criminal justice. He then became a local police officer in the communities of Ecorse and Lincoln Park, Michigan. When he sought to have more of an impact on keeping this country safe, he joined the Border Patrol. Brian, it seemed, had found his niche.

Before long, he tried out and became a member of the Border Patrol's elite tactical unit known as BORTAC. At age 40, he had much to look forward to, which included getting married and starting a family -- but for now, he was living his dream. He wore his BORTAC winged insignia with great pride and excelled as a BORTAC team member.

During BORTAC training, Brian was given a classroom writing assignment. The assignment was to write something about himself that would give the instructor some insight as to who he was. He composed a poem that he entitled "If Today Is to Be the Day, So Be It." I'd like to read you that poem so that you can have a better understanding of the man he was.

"If you seek to do battle with me this day, you will receive the best that I am capable of giving.

"It may not be enough, but it will be everything that I have to give.

"And it will be impressive, for I have constantly prepared myself for this day.

"I have trained, drilled and rehearsed my actions so that I might have the best chance of defeating you.

"I have kept myself in peak physical condition, schooled myself in the martial skills and have become proficient in the applications of combat tactics.

"You may defeat me, but I am willing to die, if necessary. I do not fear death, for I have been close enough to it on enough occasions that it no longer concerns me. But I do fear the loss of my honor, and would rather die fighting (than) to have it said that I was without courage.

"So I will fight you -- no matter how insurmountable it may seem -- to the death, if need be, in order that it may never be said of me that I was not a warrior."

Brian was due to complete his shift of duty that night in the desert outside of Rio Rico at midnight on December 15th and then take some much-deserved time off. He had already made his travel plans to fly back to Michigan and spend the Christmas holiday with his family. Brian's attention to detail had ensured that all the Christmas gifts he had meticulously selected for his family had already been bought and sent in the mail prior to his arrival.

Brian did ultimately come home that Christmas. We buried him not far from the house that he was raised in, just prior to Christmas Day.

(Pause.)

The gifts that Brian had picked out with such thought and care began to arrive in the mail the same week. With each delivery, we felt the indescribable pain of Brian's death, but at the same time also remembered his amazing love and spirit. (Pause.) We hope that you now know a little bit more about our Brian. We ask that you honor his memory by continuing to ensure what he worked so hard to do and ultimately gave his life doing -- that is, to keep this country safe and its borders secure.

We hope that the Bureau of Alcohol, Tobacco and Firearms is forthcoming with all information that the panel is seeking. We ask that if a government official made a wrong decision, that they admit their error and take responsibility for his or her actions. We hope that all individuals involved in Brian's murder and those that played a role in putting the assault weapons in their hands are found and prosecuted to the full extent of the law. Finally, it's our hope that no more law enforcement officers die at the hands of these heavily armed Mexican drug cartel members operating on and inside the borders of the United States.

The Terry family would like to acknowledge and thank the special agents in the FBI's Tucson Field Office and the prosecutors in the U.S. Attorney's Tucson Office that have worked so hard and continue to work in bringing Brian's killers to justice.

We would also like to acknowledge the courage and integrity of the three special agents of ATF's Phoenix Field Division sitting with us on this panel -- Lee Casa, Pete Forcelli and John Dodson. We recognize the professional risk you face by coming forward and speaking to the public about an investigation that you believe was ill-conceived and reckless.

The Marine Corps has the motto of "Semper Fidelis," which most of you know is Latin for "Always Faithful." The Border Patrol has the motto of "Honor First." Brian lived a life of honor, duty and sacrifice which reflected both of these mottos and the two organizations that he was so proud to serve in. It is now up to all of us to put honor first and to remain always faithful in the quest for justice.

On behalf of the entire Terry family, thank you.

REP. ISSA: Thank you.

Special Agent Dodson, you're recognized for five minutes.

SPECIAL AGENT JOHN DODSON: Mr. Chairman, Ranking Member Cummings --

REP. ISSA: Please pull the mic a little closer, if you would, please, and make sure it's on.

AGENT DODSON: Yes, sir. Is that better?

Mr. Chairman, Ranking Member Cummings, other honorable members of this committee, I thank you. Beginning with my military service and continuing through to this day, I am proud to have spent nearly my entire adult life in service to this country, under sworn oath to defend its Constitution, with my allegiance always pledged to this Republic.

I've spent the vast majority of my law enforcement career conducting criminal investigations with a particular focus on those involving the trafficking of narcotics and firearms. I have been involved in countless investigations and arrests, from basic misdemeanors to complex conspiracies of international drug trafficking organizations, many times as an undercover. I have made thousands of investigative stops and scores of arrests and have testified many times in federal and state courts across this country, often as a qualified expert.

I do not appear before you as some remote observer of these events, casting a judgmental finger over the actions of others. I come, as I have been asked to do, bearing only my firsthand account. I have not the burdens of rendering judgment, determining responsibility or holding others accountable. I yield those to this committee. The only message I hope to convey is that through this process some resolve may finally be brought to the families of Brian Terry and Jaime Zapata, that we may truly honor their service and mourn their sacrifice.

I hope that your inquiry and those of Senator Grassley's office and the inspector general will yet yield a true account for them and others on both sides of our border who have already been or will be affected by this operation. Furthermore, I'm grateful to have the opportunity to appear here today alongside the Terry family so that I may personally express to them my sorrow and my regret.

Simply put, during this operation referred to as Fast and Furious, we, the ATF, failed to fulfill one of our most fundamental obligations -- to caretake the public trust -- in part, to keep guns out of the hands of criminals.

When I became involved in this operation in late 2009, the ATF agents running it briefed me that the local Phoenix firearms dealers had provided them with a list of more than 40 individuals whom they believed to be purchasing guns for others -- straw purchasers. Of these individuals, several were members or believed to have connections with Mexican drug cartels.

Those identified straw purchasers were the initial suspects in this investigation. From the earliest days of that operation, after the briefing, I had no question that the individuals we were watching were acting as straw purchasers and that the weapons they purchased would soon be trafficked to Mexico and/or other locales along the Southwest border or other places in the United States, and ultimately that these firearms

000014

AZ0267844

DOJ-FF-43676

would be used in a violent crime. However, we did nothing to intervene. Over the course of the next 10 months that I was involved, we monitored as they purchased handguns, AK-47 variants and .50-caliber rifles, almost daily at times. Rather than conduct any enforcement actions, we took notes. We recorded our observations. We tracked movements of these individuals. We wrote reports, but nothing more, knowing all the while - - just days, sometimes, after these purchases -- the guns that we saw these individuals buy would begin turning up at crime scenes in the United States and in Mexico. And yet we still did nothing.

I recall, for example, one suspect as he met with another, receive a bagful of cash. With that cash he then proceeded to a local FFL, who conducted a transaction of firearms that we had authorized him to do. This straw purchaser then left the federal firearms dealer and met again with that third party and delivered the firearms to him. And still we did nothing.

Although my instincts made me want to intervene and interdict those weapons, my supervisors directed me and my colleagues not to make any stop or arrest, but rather to keep him under surveillance while allowing the guns to walk.

Surveillance operations like these were the rules. They were not the exceptions. This is not a matter of some weapons that had gotten away from us or allowing a few to walk so that we could follow them to a much larger, more significant target. Allowing those weapons that we knew to be destined for criminals was the plan. This was the mandate.

I remember a lecture by Army Lieutenant Colonel Dave Grossman, and I borrow from it now: ATF is supposed to be the guardians, the sheepdogs that protect against the wolves that prey upon us, especially along our Southern border. But rather than meet the wolf head-on, we sharpened his teeth, added number to his claw. All the while we sat idly by, watching, tracking and noting as he became a more efficient and effective predator.

Prior to my coming to Phoenix, I'd never been involved in or even heard of an operation in which law enforcement officers would let guns walk. The very idea of doing so is unthinkable to most law enforcement.

I and other field agents involved in this operation repeatedly raised these concerns with our supervisors. In response, we were told that we simply did not understand the plan. I cannot begin to think of how the risk of letting guns fall into the hands of known criminals could possibly advance any legitimate law enforcement interest. I hope the committee will receive a better explanation than I. Thank you again for the opportunity to appear here today before you, and I look forward to answering any questions that any of you may have.

REP. ISSA: Thank you, sir.

Mr. -- or Special Agent Casa?

SPECIAL AGENT OLINDO "LEE" CASA: Good morning, Mr. Chairman. Good morning, Mr. Cummings. Good morning, honorable members of Congress. My name is Olindo James Casa, and I'm a senior special agent with the Bureau of ATF.

I've been employed with ATF since March of 1993 as both an inspector and later as a special agent. I'm currently assigned to the Phoenix Field Division, Phoenix Group 7, an OCADETF strike force group, and have been assigned to that group since December 2009 to the present.

As a special agent with ATF, I've been a case agent, I've been a co-case agent, and I've participated in many firearms trafficking investigations, both domestic and international in scope. Needless to say, I feel I have extensive experience in regards to firearms trafficking investigations, and my work has resulted in the successful prosecution of many individuals who have violated the law.

After reporting to Phoenix Group VII office in December 2009, I was briefed by group members on the investigation "Fast and Furious." Shortly after, I became aware of what I believed to be unusual and questionable investigative techniques. For instance, I became aware that certain straw purchasers were purchasing numerous firearms from firearm dealers. What I found concerning and alarming was more times than not, no law enforcement activity was planned to stop these suspected straw purchasers from purchasing firearms. The only law enforcement activity that was occasionally taken was to conduct a surveillance of the transaction, and then nothing more.

As the investigation progressed over the next couple of months and additional suspected straw purchasers were identified, again with no obvious attempts to interdict the weapons or interview suspects. Around the same time, the Phoenix Group VII Office started to receive numerous firearm traces detailing recoveries of firearms in the country of Mexico. Many of those traces disclosed that the aforementioned straw purchasers were responsible for purchasing those recovered firearms.

At this time, several Special Agents in the group, including myself, became increasingly concerned and alarmed at Case Agent Hope McAllister and group supervisor Dave Voth's refusal to stop or address the suspected straw purchasers from purchasing additional firearms. Special Agent John Dodson and I continually raised our concerns directly with the case agent, Co-Case Agent Tonya English, and Group Supervisor Voth, to no avail. In response to our increasingly voiced concerns, the group supervisor issued the infamous "Schism" e-mail to the group. In essence, the email was a direct threat to the special agents who were not in agreement on how the case -- on how Case Agent MacAllister, Co-Case Agent English, or how Group Supervisor Voth managed the investigation. Based on my 18 years of experience with ATF, I did not think the email was an empty threat and took it very serious. It has been common practice for ATF Supervisors to retaliate against employees that do not blindly tow the company line.

Sometime in March 2010, at the direction of Group Supervisor Voth and Case Agent MacAllister, daily surveillances of straw purchasers

started to be conducted by members of ATF Group VII as well as ATF special agents from other offices who were detailed to assist with the Operation Fast and Furious. ATF Special Agent Lawrence Alt reported to the Phoenix Group VII Office around this period of time and, like Special Agent Dodson and I, became alarmed of the direction of the investigation and spoke out against the practices that were being utilized.

My role during the daily surveillances was that of shift supervisor. As the shift supervisor my responsibility was to oversee the surveillance agents at the direction of Case Agent MacAllister, Co-Case Agent English, and/or Group Supervisor David Voth. In general, my fears were realized while out on these aforementioned surveillances.

On numerous occasions the surveillance team followed straw purchasers to Phoenix area firearms dealers and would observe the straw purchasers buy and then depart with numerous firearms in hand. Those firearms included but were not limited to AK-47 variant rifles, .50 caliber rifles, and 5.7mm FN pistols, all of which are devastating weapons. On many of those occasions, the surveillance team would follow the straw purchasers either to residences, a public location or until the surveillance team was spotted by the straw purchasers. But the end result was always the same -- the surveillance was terminated by the case agent, co-case agent or supervisor without interdicting or seizing the firearms.

On several occasions I personally requested to interdict or seize the firearms in such a manner that would only further their investigation, but I was always order to stand down and not to seize the firearms. I made these requests over the air and have many law enforcement witnesses that can verify my assertions.

Reflecting back to that period of time during the investigation, I thought the poor decisions were made due to incompetency or lack of experience, which would have made this situation bad enough. Unfortunately, in recent light of documents that have been released, especially the briefing paper dated January 8, 2010, it appears the investigation was conducted in a recklessly planned manner with a specific strategy in mind. Per the briefing paper, the strategy was to allow the transfer of firearms to take place in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican drug trafficking organizations.

Special Agent Dodson, Special Agent Alt and I, at times on a daily basis, had warned the case agent, co-case agent, and group supervisor of the reckless course they were taking in regards to the investigation. We sternly warned them of the consequences of their actions but we were repeatedly ignored. In fact, on at least a couple of occasions I witnessed, Special Agent Dodson asked both Special Agent MacAllister and Group Supervisor Voth if they were prepared to attend the funeral of slain agent or officer after he or she was killed with one of those straw-purchased firearms.

Neither one answered or even seemed concerned by the question posed to them.

To close, I would like to extend my heartfelt condolences to Border Patrol Agent Brian Terry's family. I am truly sorry for your loss. I hope you find peace.

REP. ISSA: Thank you.

Special Agent Forcelli?

SPECIAL AGENT PETER FORCELLI: Good morning, Chairman Issa, Ranking Member Cummings and members of the committee. I thank you for the opportunity to appear before the committee today.

I am here to provide testimony that I hope will assist your inquiry into the investigation that has come to be known as "Operation Fast and Furious." I believe that your inquiry is essential. There have been grave mistakes made in this case, and the committee, the American people, and the family of slain U.S. Border Patrol Agent Brian Terry deserve answers.

Please allow me to give you a little background information about myself. In 1987, I began my career with the New York City Police Department. I worked in Bronx County, often referred to as the Bronx, as a uniformed police officer, and then ultimately as a detective in the Bronx Homicide Task Force. In my career I estimate that I have responded to approximately 600 homicide scenes. The vast majority were drug related, committed by armed criminals, and these violent criminals were armed with illegal firearms, and they had little regard for human life.

I retired early from the NYPD in June of 2001 to take a position with the Bureau of Alcohol, Tobacco and Firearms, as we were then known, and I did this because I had the honor of working with ATF agents who were working and making great cases, working hand in hand with incredible prosecutors from the Southern and Eastern Districts of New York. In working with these offices, one thing was very clear: dedicated prosecutors worked hand in hand with dedicated ATF agents to make cases that truly impacted the safety of the public. There was an absolute sense of teamwork and respect. Again, I'm going to emphasize the words teamwork and respect. Together with the prosecutors from the U.S. attorney's office with whom I'd worked, we had used confidential informants, proffers, cooperation agreements, waivers of speedy presentment, investigative grand juries and grand jury subpoenas and an abundance of other investigative tools to make successful cases as a part of a team.

I left the New York Field Division in March of 2007 to begin working in my current post of duty as the supervisor of the Phoenix I Field Office. Within weeks, I was surprised at what I had observed. In my opinion -- in my professional opinion, dozens of firearms traffickers were given a pass by the United States attorney's office for the District of Arizona. Despite the existence of probable cause in many cases, there were no indictments, no prosecutions, and criminals were allowed to walk

000018

AZ0267848

DOJ-FF-43680

free. In short, their office policies, in my opinion, helped pave a dangerous path.

Fortunately, the same could not be said of the Arizona attorney general's office, state prosecutors, to which we agents were forced to turn for prosecution of firearms cases. Victor Varela and his associates, who trafficked .50 caliber rifles directly to Mexican drug cartels, one of which was used -- (inaudible) -- to kill a Mexican military commander, were successfully prosecuted by the Arizona attorney general's office, and this was after the case had been declined for federal prosecution by Assistant U.S. Attorney Emory Hurley due to what he'd referred to as corpus delecti issues. Mr. Varela sadly was released from prison last July because of the lesser sentencing guidelines that apply in state court, but the alternative, no prosecution, in my eyes was unacceptable.

Another case, which involved a corrupt federal firearms licensee who was supplying guns to several firearms trafficking organizations, was declined by Mr. Hurley. This particular dealer in his post-arrest statement admitted that approximately 1,000 of his firearms were trafficked to Mexico. Over one-half dozen of that dealer's firearms were located around the body of Arturo Beltran-Leyva, the head of the Beltran-Leyva Cartel, when -- after his body -- after he was killed in a gun battle with the Mexican Naval Infantry in Cuernavaca, Mexico.

Due the recalcitrance of the United States attorney's office, cases such as these were presented for prosecution to the Arizona attorney general's office where the state laws carried significantly lesser penalties than they did under the federal statutes. And I believe that this situation, wherein the United States attorney's office for the District of Arizona in Phoenix particularly declined most of our firearm cases, was at least one factor which led to the debacle that's now known as Operation Fast and Furious.

And now I'll fast-forward to Operation Fast and Furious itself. ATF agents assigned to the Phoenix Field Division, with the concurrence of their local chain of command, walked guns. ATF agents allowed weapons to be provided to individuals that they knew would traffic them to members of Mexican drug trafficking organizations. They did so by failing to lawfully interdict the weapons, and they did so by encouraging federal firearms licensees to continue selling weapons in instances where they knew that no interdiction efforts would be planned.

When I -- when I voiced surprise and concern with this tactic to ASAC George Gillett and SAC William Newell, my concerns were dismissed. SAC Newell referred to the case as groundbreaking and bragged that we were the only people in the country doing this. My other ASAC, Jim Needles, merely said, Pete, you know that if you or I were running the case, it wouldn't be getting run this way.

This operation, which in my opinion endangered the American public, was orchestrated in conjunction with Assistant U.S. Attorney Emory Hurley, the same assistant U.S. attorney who prevented us from using some of the common and accepted law enforcement techniques utilized

000019

AZ0267849

DOJ-FF-43681

elsewhere in the United States. I have read documents that indicate that his boss, U.S. Attorney Dennis Burke, also agreed with the direction of this case.

Allowing firearms to be trafficked to criminals is a dangerous and deadly strategy. The thought that the techniques used in the Fast and Furious investigation would result in taking down a cartel, given the toothless nature of the straw purchasing law and the lack of a strong firearms trafficking statute is, in my opinion, delusional.

Based upon my conversations with agents who'd assisted in this case, surveillance was often terminated on individuals far from the border, which means that while the case agent believed that these weapons were destined for Mexico, the possibility exists that they were trafficked with cartel drugs to other points within the United States of America. As a career law enforcement officer who has had the -- to investigate the deaths of police officers, children and others at the hands of armed criminals, I was and continue to be horrified, truly horrified. I believe that these firearms will continue to turn up at crime scenes on both sides of the border for years to come.

In closing, I want the members of the committee and all Americans to know this is not how ATF agents conduct business. I'm very proud of some of the incredible work done by ATF agents around the country every day. ATF agents have given their lives in the performance of duty.

On my last trip to New York, sir, I had the privilege of being present for a homicide trial. In that same courthouse in the Southern District of New York, there were three other separate homicide trials going on, all from three separate ATF-initiated investigations. That's the type of work ATF agents do every day, and that's what I'd like the committee to keep in mind as well.

I thank you for your time. And again, my condolences to the Terry family. REP. ISSA: I thank you and thank all of our witnesses.

I now will recognize myself for the first round of questioning.

Mrs. Terry, I understand the U.S. attorney in Arizona visited you in December. Could you tell us in your own words what he had to say?

MS. TERRY: Which attorney are you talking about?

REP. ISSA: This is the U.S. attorney from Arizona that came to visit you in December.

MS. TERRY: Was that -- (off mike consultation) -- yes. That was Mr. Burke.

REP. ISSA: And what did he have to say to you?

MS. TERRY: He was just trying to explain to us exactly what happened in a roundabout way. We really never got anything out of the visit that he did have.

REP. ISSA: Now, if he didn't tell you at that time that the firearms that killed your son came from this operation, when did you learn about "Fast and Furious" and its connection to your son's death?

MS. TERRY: Most of it I heard from the media. We haven't really got anything direct -- phone calls or nothing from anybody.

REP. ISSA: Well, hopefully today we'll bring you some better answers on that.

Mr. Heyer, I understand recently you received a call from the U.S. attorney's office in Arizona. Could you please tell us the content of that call?

MR. HEYER: The U.S. attorney, Dennis Burke, has tried to keep us advised on the prosecution of the individuals believed to have a hand in Brian's death. So I received a telephone call whenever an indictment was going to be made, and also some information about where the investigation was going with respect to Brian's killers.

REP. ISSA: Did he ever comment about your testimony here today?

MR. HEYER: He did not.

REP. ISSA: OK.

Mr. Dodson, just yesterday the Justice Department said the following -- and I'll make a supposition for the record that it's untimely and unseemly for this kind of thing to come out, but I'm going to ask you to answer in regards to something Justice put out in The New York Times. An unnamed law enforcement source said to The New York Times -- they said, "Gun ownership was such an ingrained part of the culture in Arizona that it was difficult to tell straw purchasers from legal ones without" blank, blank, blank. Did you have trouble discerning that? Was it so difficult because of the culture that in fact any of you didn't know who the straw purchasers were?

AGENT DODSON: No, sir, not at all. I mean, first of all, I would question that unknown law enforcement source as to his background on these matters.

REP. ISSA: Here we call it Washington spin. (Laughter.)

AGENT DODSON: Yes, sir.

Sir, I can tell you this: In my knowledge and experience, when I set ground in Phoenix or when I got to Phoenix, the briefing that I got initially and the 40-some suspects that were identified right off the bat or they had already had identified -- those cases were made against those individuals -- most of them, almost that day, if not all of them.

To identify a straw purchaser from a normal American citizen who just happens to reside in a state where gun culture is so prominent -- you're -- perhaps if a one-on-one scenario existed or a one-time. But to have an individual purchase hundreds of firearms over the course of an investigation where we're watching him, there is -- make no mistake, he was a straw purchaser.

REP. ISSA: So I guess -- Agent Casa, I think you'd probably agree that when you see someone buy hundreds -- dozens or hundreds and take them to a drop point, and even often more information, it's pretty obvious they're a straw purchaser, you've made your case under any kind of normal prosecution, wouldn't you?

AGENT CASA: Yes, sir. That's correct.

REP. ISSA: Mr. Heyer, you're a Secret Service agent. That probably qualifies you as much as anyone that could be in this room to understand a question I'm going to ask you. But you're also a family member. To date, these straw purchasers that were part of the chain of weapons that led to the murder of your cousin -- they haven't been charged with that crime. They've been charged with -- whatever it's called -- buy-and-lie, basically signing a false affidavit that they were the actual buyer of a gun. Do you believe that it is reasonable to be including them in their connection to the murder of Brian Terry?

MR. HEYER: Congressman, again, I'm here as strictly family today and not as a Secret Service agent.

REP. ISSA: Then for Peter Forcellini -- you've all mentioned about the prosecutions that you see, including in New York. You buy a gun, you knowingly sell it to a third party, you've lied about it, it leads to the murder. Isn't that how you get connected to that trial in addition to the trigger-puller? AGENT FORCELLI: Yes, sir. It would be a sequence of events that you would normally put together through interviews and other techniques.

REP. ISSA: So it's pretty unusual to have the murder -- a high-profile murder of a Border Patrol agent and you're not -- you don't roll up everybody involved into the prosecution which is taking place practically today.

AGENT FORCELLI: In all fairness, sir, I don't know what steps the FBI has taken in their investigation because that information has not been relayed to me at any point.

REP. ISSA: Well, Mrs. Terry, we're going to do everything we can to get full answers and full prosecution. We want whatever would be the greatest relief that we can give you to let you know that this won't happen again.

MS. TERRY: Thank you.

REP. ISSA: Thank you.

We now recognize the ranking member for his questions.

REP. CUMMINGS: I want to thank all of you for being here today. And to the Terry family, we thank you for your sacrifice. To Mrs. Terry, you raised an angel.

When the description was made by -- when I listened to that poem, that poem said it all. And I want to say to the family, I understand your pain and I promise you, we will not rest -- and to the agents, we will not rest. We will not rest until every single person responsible for all of this, no matter where they are, are brought to justice. And you said it best, Mr. Heyer, in your statement -- the last thing you said. You said it is now up to all of us to put honor first and to remain always faithful in the quest for justice. And you're absolutely right, and I promise you we will not fail you.

To the ATF officers, I thank you. As I said earlier, this has got to be very, very difficult. And I make another -- I make a commitment to you, and it's what Senator Grassley said, and I want the word to go out. Let it go forth that we want absolutely no retaliation against you. You are simply standing up for what you believe in. You are simply carrying out your oath of office. You've simply been great Americans, and continue to be, and we thank you. We thank you so very, very much. We thank you for your bravery. We thank you for what you're doing.

One of the most troubling allegations we have heard during this investigation is that the ATF agents Group VII were ordered to terminate surveillance and monitoring of suspected straw purchasers without seizing the firearms. Special Agent Casa, in your written testimony you made this statement: "On numerous occasions the surveillance team followed straw purchasers to Phoenix area firearms dealers and would observe the purchasers buy and then depart with numerous firearms in hand. On many of these occasions the surveillance team would then follow the straw purchasers either to a residence, a public location or until the surveillance team was spotted by the straw purchasers. But the end result was always the same. The surveillance was terminated."

So my question is pretty basic. Do you know why the surveillance was terminated? Was it a -- do you think it was a resource problem or was it a strategy type of thing?

AGENT CASA: No, sir, we had plenty of resources. I believe it was a strategy. As I indicated later in my statement, I found out about the briefing papers. At the time this was going on we had no idea why things were occurring. We were just told to fall in line and do what we were told.

REP. CUMMINGS: And you -- and you stated that you raised those concerns with your group supervisor, Mr. -- was it Mr. Voth?

AGENT CASA: Yes, sir. Mr. Dave Voth.

REP. CUMMINGS: And Special Agent Dodson, you participated in a transcribed interview with the committee, and your account is quite similar. Let me read what you said from the transcript.

You said, "Sometimes we would follow them back to their house; sometimes to, you know, a different house or a business or to meet another vehicle in a parking lot. And then we would have to come back to head to another FFL because one of the other suspects -- they were buying 15 or 20 of his own."

Special Agent Dodson, again, I'm trying to understand this. If you're following a suspected straw purchase and you start at the gun store and you follow to a house, why wouldn't you keep following that gun?

AGENT DODSON: Sir, that's the one question that I can't answer for you is the why. It made no sense to us either. It's just what we were ordered to do, and every time we questioned that order, you know, there was punitive action against those of us that did so.

As to why we would let them go or just follow them and tuck them in bed at home and us leave for the night, I can't tell you the why, sir. I can't. That's what I'm -- hopefully that this committee can find out.

REP. CUMMINGS: Well, we're going to -- we're going to find out.

I understand that there might be a new suspected -- I understand there might be new suspected straw purchasers happening back at the gun store, but if you keep leaving the guns you're following to start tracking new ones, you know, that doesn't seem to work. And I guess that's what all of you all are saying.

Did you also raise your concerns -- those concerns with Mr. Voth, your supervisor, I guess he was?

AGENT DODSON: Oh, yes, sir, many times.

REP. CUMMINGS: Have either of you ever received a substantive explanation as to why this operation would voluntarily terminate surveillance of suspected weapon traffickers? Anybody?

AGENT DODSON: Sir, no. Most of the time when asked or pressed for an answer to that question, it was relayed to me that they didn't have to explain anything to me. I was to do as I was told. On times where I questioned that even further, our boss would have an ASAC come down and we'd have a meeting and he would explain to us in his way of how he was not obligated to explain it any further to us and we needed to follow orders.

REP. CUMMINGS: Well, I think we are missing a piece of the puzzle here, and I think we must do more. It sounds like both of you raised concerns with your supervisor. I don't want to reach any conclusions yet on this because I think we need to gather more

information. I think it makes sense to talk to the supervisor and figure out what his answer to these allegations might be.

Thank you, Mr. Chairman. I yield back.

REP. ISSA: Thank you.

I'm assuming that you now join me in ensuring that all of the other people above these gentlemen will be interviewed in a prompt fashion, including those here in Washington?

REP. CUMMINGS: Mr. Chairman, I -- absolutely no doubt about it. And at the same time -- I'm glad you asked that question because we're going to make sure -- as I said, we want to make every -- sure, in the words of Mr. Heyer, that everyone is brought to justice. Now, let me be abundantly clear, since you asked the question. I want to make sure that there's no person, I don't care who they are, whose trial is jeopardized, that is able to get away, to get off of charges. I don't care how it's connected with this, I don't want their trials jeopardized. As an officer of the court and one who has practiced criminal law for many years, I'm very concerned about that. And so I think that we can reach a balance. I want -- and I've urged the Justice Department to cooperate. They have expressed their concerns.

But again, as I said before -- and I promise this family, I promise you I will do everything in my power. I will not rest until we bring everybody to justice.

REP. ISSA: I thank the gentleman.

We now recognize the gentleman from Oklahoma, Mr. Lankford, for five minutes.

REPRESENTATIVE JAMES LANKFORD (R-OK): Thank you.

And thank all of you for being here. This has got to be a very difficult day and not a day that you had ever hoped to be testifying in front of a congressional hearing, especially related to something like this. So we very much appreciate your time and for being here as well.

Special Agent Dodson, let me ask a series of questions -- and these will be for several agents. Give me your best guess -- and it's going to be just a guess on this -- how many weapons do we have in the United States or in Mexico that are out there that are a result of "Fast and Furious" that we do not know where they are?

AGENT DODSON: Well, sir, my best guess estimate at that is -- and remembering that "Fast and Furious" was one case from one group in one field division -- is about 2,500 totally or in total that we facilitated the sale of to these known straw purchasers. And I've heard numbers as many as 300 to 800 or so that we know to have been recovered. So outstanding, you're looking in the ballpark of anywhere from 1,000 to 1,500, 1,800 guns still.

REP. LANKFORD: What's your best guess on how many of those are in Mexico and how many of those are in the United States?

AGENT DODSON: I'd say 2:1, Mexico versus U.S.

REP. LANKFORD: OK. Were there any other mechanisms discussed to trace these weapons that you knew were being sold to straw purchasers other than just serial numbers? Any other way to be able to track them, trace them at all?

AGENT DODSON: Yes, sir. REP. LANKFORD: How successful do you think that was?

AGENT DODSON: I can tell you that after a trip to Radio Shack with ATF's funds, I myself manufactured a GPS tracking device that would fit inside the handle of an AK variant rifle. The problem with it was the limited battery life.

There was also attempts made through our tech department and other tech departments to have GPS systems -- a GPS system wired into one AK variant rifle.

REP. LANKFORD: And how was that received by the supervisors?

AGENT DODSON: Well, actually the one that went through our tech section was initiated by them --

REP. LANKFORD: Great.

AGENT DODSON: -- after my attempt to manufacture one didn't work out so well.

The one that we got from our tech side did actually work, and although it achieved its purpose in -- the last time I believe anyone knew its whereabouts was about 50 miles south of the U.S.-Mexican border.

REP. LANKFORD: Special Agent Casa, do you know of any other offices of ATF that are using this type of strategy?

AGENT CASA: Not that I'm aware of, no, sir.

REP. LANKFORD: Would you consider this a common practice that's being contemplated in any other -- any other area?

AGENT CASA: No, sir. I definitely hope not, but no, sir.

REP. LANKFORD: OK. Let me follow up on a statement that you made that is a very, very serious statement. You made this statement in your opening -- in your opening statement. "It's a common practice for supervisors to retaliate on special agents who do not toe the company line."

AGENT CASA: Yes, sir.

REP. LANKFORD: That's a pretty serious statement.

AGENT CASA: Commonplace within ATF, sir.

REP. LANKFORD: Is that unique to your area or is that unique to multiple areas, do you think, of ATF? AGENT CASA: In my experience, sir, it's unique to multiple areas within ATF. I've known -- I've known multiple -- dozens of agents that have been -- that have been -- received punitive punishments, whether they were justified or not.

REP. LANKFORD: OK.

Mr. Forcelli --

AGENT FORCELLI: Yes, sir?

REP. LANKFORD: Do we have a perfect storm here of a U.S. attorney who is unwilling to prosecute federal gun laws and a group of supervisors in ATF that are promoting a program to release weapons here? Is that just two errors here, or is it your sense there is something that's coordinated that's going on? And I understand that's a guess at this point.

AGENT FORCELLI: Sir, it's my belief that what we have here is actually a colossal failure in leadership from within ATF, within the chain of command involved in this case, within the United States attorney's office, and within DOJ, as to the individuals who were aware of this strategy.

To walk a single gun is, in my opinion, an idiotic move. More families will suffer like the Terry's and like Mr. Cummings at the hands of armed criminals. We weren't giving guns to people who were hunting bear. We were giving guns to people who were killing other humans. The assumption that all of these guns went to Mexico is apparently something that they believed in that group.

REP. LANKFORD: But your assumption is that this was coordinated among all those individuals, that this plan would happen and it was going to be allowed to happen.

AGENT FORCELLI: It would be allowed to happen and we would trace guns into Mexico, be able to identify a cartel and take them down. The problem that we have is that I know based on what I've heard from agents and what I heard over the radio is that surveillances were terminated often far from the border. Some of these guns could have been diverted with cartel drugs to New York, to Baltimore, to Oklahoma, to anywhere in the United States. This was a catastrophic disaster.

REP. LANKFORD: Thank you.

With that I yield back my time.

REP. ISSA: I thank the gentleman.

We now recognize the gentlelady from New York, Ms. McCarthy -- Maloney, I'm sorry. REPRESENTATIVE CAROLYN MALONEY (D-NY): (Laughs.) Thank you, Mr. Chairman --

REP. ISSA: You're both New York, but I know the difference.

REP. MALONEY: -- right, right -- and Ranking Member, for calling this important hearing. And I join my colleagues in expressing our condolences and support to the Terry family.

And I thank all of the professionals in law enforcement for your work and your bravery. And I especially want to welcome Special Agent Forcelli, since I used to have the honor of representing the beautiful Bronx, where you served, and I appreciate your statements in support of the AFT in New York and their fine work.

I would like to ask you, Special Agent Forcelli, some of the specific statements in your testimony, to try to get a better understanding of what evidence is necessary in order to get a conviction in these cases. And if I understand this correctly, there is no federal statute that specifically prohibits straw purchases. Is that correct?

AGENT FORCELLI: No, ma'am. There is a statute, but the statute doesn't carry significant jail time. And, candidly, I mean, I had great success working with Preet Bharara and several administrations before his with the U.S. Attorney's Office in New York.

And we used basic techniques: You arrest the people who -- the bottom feeders, the lower people in an organization, and then you proffer them. You gather information, utilize waivers of speedy presentment where you have somebody go do a delivery in the street to catch the next guy in the chain, have the straw buyer perhaps deliver the firearms to the trafficker and then arrest the trafficker.

We didn't have those tools available to us in Arizona because the United States Attorney's Office wouldn't allow us to utilize waivers of speedy presentment before a magistrate. Proffers almost never happen. The basic investigative techniques that I used with great success in the Southern District of New York, Eastern District of New York and elsewhere weren't being deployed in the District of Arizona.

REP. MALONEY: Working with my staff, when we looked into it, straw purchases are typically charged under Section 922 and 924 of the criminal code, and these sections make it a crime to knowingly make a false statement.

And in this case, the false statement would be when the straw purchaser lies on a Form 4473 when he or she makes the straw purchase. This was the way that they went after straw purchases in other states.

Are you aware of these two sections, and knowingly making a false statement? Are you aware of that particular -- AGENT FORCELLI:

I am, ma'am. And, again, I'll just state that in many instances these cases weren't prosecuted by the U.S. Attorney's Office.

REP. MALONEY: But I want to get back to the false statement.

And what is the false statement they would make on such a form that they could use in prosecutions? Are you aware?

AGENT FORCELLI: Well, the most blatant one is that there's a box that you check whether or not you're purchasing the firearm for yourself. A straw purchaser clearly is not. They're buying that gun merely to deliver it to another person. The other lies would be sometimes people put false addresses.

REP. MALONEY: And getting back to your statement on the prosecutions of border states, U.S. attorneys have complained that district court judges viewed these prosecutions as mere paper violations. And have you heard this criticism before?

AGENT FORCELLI: I have, and I agree with it. I think perhaps a mandatory minimum one-year sentence might deter an individual from buying a gun. Some people view this is no more consequential than doing 65 in a 55 --

AGENT FORCELLI: And the Justice Department --

REP. ISSA: If the gentlelady will suspend, I want to caution the witnesses that the scope of this -- your testimony here is limited, and it is not about proposed legislation and the like, and under House rules would not fall within the scope of this.

So, anecdotally you can have opinions, but ultimately it would not be considered valid testimony.

REP. CUMMINGS: A point of order, Mr. Chairman.

REP. ISSA: The gentleman may state his point of order.

REP. CUMMINGS: Yes, let me just be -- Officer Forcelli, in his testimony, has a statement, Mr. Chairman, that I read, where he says that these firearms are ending up on both sides of the border. And I think it's only fair that since it's his statement that she -- and that's basically what she's pretty much going to, but --

REP. ISSA: The gentlelady can ask any question she wants within the scope of the hearing. Under Rule 11, Clause 2K8, it's the discretion of the committee as to the breadth of the testimony. Any question related to the operation or the failures of Fast and Furious, or factual indications of what occurred in Arizona or throughout the system are within the scope of the hearing. Proposed legislation at a federal level, and whether or not they should be changed are outside the scope of not only this hearing but would not ordinarily fall under the jurisdiction of this committee.

The gentlelady may continue.

REP. CUMMINGS: A further point of order, Mr. Chairman. It's my understanding of the rules is that you can object to the question but you can't tell the witness what to testify to.

REP. MALONEY: Well, -- (inaudible) -- my time, I appreciate the chairman's statement, and I appreciate your statement earlier when you said you wanted full answers and full prosecution. And I think it's certainly within the scope of this hearing to understand why we're not getting a full prosecution. And the allegation that they call them paper excuses as opposed to a valid, concrete way to react I think is a valid way to go forward.

REP. ISSA: Would the gentlelady --

REP. MALONEY: I'm supporting your statement.

REP. ISSA: The gentlelady, if she would suspend for just a moment.

The gentlelady's questions and whether or not the gentleman believes that law enforcement was doing its job, or that the courts were properly enforcing, and whether that may have led to actions is fully within the scope. Anything that these individuals witnessed in or around Fast and Furious is certainly within the scope.

I only caution, we're not here to talk about proposed gun legislation. It would be outside the scope of this hearing.

REP. MALONEY: Well, I wasn't discussing that. I was trying to figure out why the Justice Department and the IG found that prosecutors often decline these gun cases. I want to know why they're declining them.

And to quote from the testimony, one of you said, because they believe it is difficult to obtain convictions on these violations, and because they believe it is difficult to obtain paperwork from Mexico.

And my question is, are these valid excuses not to bring these cases? I think that's a valid question to get to why we're not getting prosecutions in these cases. Are these valid excuses to say they're paper excuses, not to bring it? AGENT FORCELLI: I believe not, ma'am. And, again, to go after the midlevel and upper level members of a cartel, you need to start -- unless you have evidence on them immediately -- with the people at the bottom of the food chain.

REP. MALONEY: OK.

AGENT FORCELLI: When straw buyer cases are dismissed because of excuses made up by the United States Attorney's Office as opposed to when you have factual evidence that shows that person's committed a crime, then you can't prosecute that bottom feeder to move up to the next level.

000030

AZ0267860

DOJ-FF-43692

REP. MALONEY: One of you, in your testimony, called these laws to prosecute "toothless." And could you explain to me why are existing straw purchase laws toothless?

AGENT FORCELLI: My opinion, ma'am, is that with these types of cases, for somebody to testify against members of a cartel where the alternative is seeing a probation officer once a month, they're going to opt towards, you know, not cooperating with the law enforcement authorities.

REP. MALONEY: And what would help your interactions with the U.S. Attorney's Office, Mr. Casa, Mr. Forcelli or others? What would help you be able to be part of getting convictions and bringing those to justice that are part of these straw purchases that led to the death of Mrs. Terry's son?

REP. ISSA: The gentlelady's time has expired but you certainly can answer that.

AGENT FORCELLI: Well, I believe, first and foremost, they probably need more resources at the U.S. Attorney's Office in Arizona. There are an overwhelming numbers of gun crimes occurring there. And if they don't have the resources to prosecute them, then I would imagine that they would need some assistance in those regards.

REP. ISSA: We now recognize the gentleman from Idaho, Mr. Labrador, for five minutes.

REPRESENTATIVE RAUL LABRADOR (R-ID): Thank you, Mr. Chairman. Terry family, thank you for being here.

I will always remember the poem -- and I think I'm going to put this on my wall -- "I do not fear death but I do fear the loss of my honor." I think that's something that hopefully every member of Congress can somehow remember.

I think sometimes we worry too much about death, and in our case, death is, you know, the next election. And too many of us forget that what we should be worried about is our honor and the honor of this nation. So, thank you, Ms. Terry, for raising such a great son. I have five children and I cannot even imagine what you're going through.

When did you -- Ms. Terry, when did you first hear that -- I think you said you first heard about the weapons being purchased through the Operation Fast and Furious. You've heard that through the media, or did you hear that from any of the agencies?

MS. TERRY: No. (Clears throat.) Excuse me. Mostly on TV, the media, newspapers. I never really got a call about anything like that until it was brought out in the newspaper. REP. LABRADOR: And how did you feel when you heard about that?

MS. TERRY: I just was flabbergasted. I just -- I didn't believe it at first.

REP. LABRADOR: Did you have any questions -- did any questions come to your mind when you started learning that maybe there was something? Because I think -- I heard about this when I was first elected. I'm a freshman here, and I was just first elected.

And right after my election I started hearing from people in my district about this. And we, in fact, were some of the first to call for a hearing here in Congress about this, in the House. And what went through your mind? What were some of the thoughts that you had?

MS. TERRY: Well, I did ask a lot about how it happened, when it happened, why it happened, but never got no answers because nobody wanted to say anything.

REP. LABRADOR: But did you address these questions with the Department of Justice or any members of the attorney general's --

MS. TERRY: Oh, yes. Yes.

REP. LABRADOR: And no one has answered those questions?

MS. TERRY: We got a lot of different answers.

REP. LABRADOR: OK. To whom did you speak, specifically? Do you remember?

MS. TERRY: Well, we've been to so many memorials and I've talked to so many people, but I talked to a lot of his BORTAC friends that were on the unit that was with him, and they were, like, on a gag order so they couldn't tell us nothing. They was like they didn't even want to talk to us.

REP. LABRADOR: Are you satisfied with the answers you're getting? MS. TERRY: No.

REP. LABRADOR: No. Any of the members of the family, are you satisfied with the answers you're getting? Mr. Heyer?

MR. HEYER: I think I can speak for the family, Congressman, that there is a level of frustration for the family. I want to make it clear that our number-one goal is to pursue the prosecution of all the killers of Brian. That's our number one goal.

And, you know, the U.S. Attorney's Office in Tucson and the FBI is working very hard to do that. But I also think that I can speak for the family -- we've talked about this this morning -- that there seems to be a separation, a distinct separation between Brian's murder investigation and the ATF Operation Gunrunner, Fast and Furious operation. There seems to be a hesitancy to connect the two. So that part is very frustrating.

REP. LABRADOR: Can you tell me, Special Agent Casa, or any of the special agents -- that's point -- why do you think there's this

separation? Why are they making this separation between the murder of the agent and the Operation Gunrunner?

AGENT CASA: Simply put, it's to reduce their liability and our ATF's role in this murder. It started with a straw purchase that was interdicted. It ends up in the murder of a law enforcement officer, by what sounds like a very honorable law enforcement officer.

REP. LABRADOR: Thank you. I have no further questions.

REP. ISSA: Will the gentleman yield?

REP. LABRADOR: Absolutely.

REP. ISSA: Following up on that, the two serial numbers that were used and found at the scene, to your knowledge, aren't those serial numbers not the first, the second or the third purchases, meaning there already was a case made against a potential defendant, and that could have been arrested and even turned as an informant, potentially, prior to the sale of those two weapons?

AGENT CASA: My understanding is yes.

REP. ISSA: Thank you.

We now recognize the gentleman from Massachusetts, Mr. Lynch.

REPRESENTATIVE STEPHEN LYNCH (D-MA): Thank you, Mr. Chairman.

First of all, Mrs. Terry and Mr. Heyer, my prayers and condolences go to your son, your cousin and your family. Special Agent Forcelli, in your statement you expressed extreme frustration with the U.S. Attorney's Office in Phoenix. You said they gave dozens of firearms traffickers a pass. You also testified that they allowed criminals to walk free. And you indicated that they declined most of the cases -- most of your cases, and this was at least one factor which led to the debacle, and perhaps the necessity of Operation Fast and Furious. Is that correct?

AGENT FORCELLI: Yes, sir. I strongly believe that.

REP. LYNCH: Those are very strong allegations, so I want to ask you about the specific cases that you cite. First you talk about the 2007 case of Victor Varela, who trafficked, I think, 50-caliber rifles to the Mexican drug cartels, one of which was used to kill a Mexican military commander.

The U.S. Marshall David Gonzales said at the time, "This case was made one of our highest priorities because of the nature of the crime." But you say that the assistant U.S. attorney in Phoenix wouldn't prosecute. Do you believe in that case that we had sufficient evidence to move forward with the prosecution?

AGENT FORCELLI: Absolutely. In fact, sir, that case was prosecuted by the Arizona Attorney General's Office, where they had to utilize statutes that aren't normally utilized in gun cases. They had to charge them with fraud schemes for falsifying the Form 4473s. Mr. Hurley, the assistant U.S. attorney who declined the case, stated that because the gun was in Mexico, the body of the crime was in Mexico, we have no case, and just outright declined prosecution for that reason.

We had identified additional straw buyers in Mr. Varela's network. We had gotten cooperating statements from them. They also went to jail. This could have been a very good federal case, but, again, the U.S. Attorney's Office declined it because, in their opinion, the gun being in Mexico meant that the evidence of the crime was in Mexico.

REP. LYNCH: Do you know any other office or region that applies that type of standard to go forward with prosecutions?

AGENT FORCELLI: Sir, I was told this was a 9th Circuit issue, but I've had discussions with prosecutors in Los Angeles, which is also in the 9th Circuit, that say that they didn't carry it to that extreme.

And what I will say for the record, sir, is since then -- since Mr. Hurley is no longer running the Firearms Unit -- he's been replaced, or it now answers to another supervisor -- they've now amended that to say that if we can go down and physically examine the weapon or have one of our assets in Mexico examine a weapon, that they will now charge those crimes.

But for two years, where I was in charge of the Firearms Trafficking Unit, if the gun went to Mexico, that case was dead. REP. LYNCH: OK. You also testified regarding the Excalibur gun store case in 2008. You said the dealer in that case admitted that about a thousand firearms were trafficked to Mexico, and a half a dozen or more found around the dead body of Beltran Leyva, who was killed by the Mexican naval infantry. Is that correct?

AGENT FORCELLI: Yes, sir. For the record I'd like to point out that that case was brought to trial by the Arizona Attorney General's Office. However, the gun dealer -- the case was dismissed by the judge. REP. LYNCH: Right.

AGENT FORCELLI: So that case was dismissed.

However, what I will say in regards to that case is I did, after that case was declined by the United States Attorney's Office, present that case to the Southern District of New York for prosecution, because they were doing a lot of international narcotics trafficking cases. And that office had told me if we could have shown one wire transfer, one banking transaction through their district, they would have been interested in taking that case.

Meanwhile, in the state where all these crimes took place, they were readily willing to just dismiss prosecution efforts.

REP. LYNCH: But both the Washington Post and PBS "FRONTLINE" support your version, I guess, and concluded that if there were ever a good case against a set of rogue gun traffickers, the case against the owner of Excalibur gun store was it.

And I'll read an excerpt from the Washington Post here. It says, "This was a case that seemingly had everything in its favor. In this case the agents had tons of evidence -- surveillance, recorded phone calls, confidential informants and undercover agents posing as straw buyers."

But this case was also denied, as you say, by the assistant U.S. attorney in Phoenix. Is that correct?

AGENT FORCELLI: Yes, sir, the same assistant U.S. attorney who was the prosecutor in the Fast and Furious investigation, as a matter of fact.

REP. LYNCH: OK. And then in 2009, 2010, you -- I'm running out of time -- you also say the same assistant U.S. attorney declined dozens of other cases. Is that correct?

AGENT FORCELLI: After 2009, sir, my duties were changed to home invasion investigations, so I'm not certain what happened with the firearms trafficking investigation. REP. LYNCH: OK. What's your assessment of why this specific U.S. attorney repeatedly refused to take a gun case? Do you have any --

AGENT FORCELLI: Sir, I don't know. I couldn't give you a reason as to why.

REP. LYNCH: OK, maybe we should have him in for questioning.

AGENT FORCELLI: That would be great.

REP. LYNCH: All right.

Mr. Chairman, I have run out of time.

REP. ISSA: Would the gentleman like an additional 30 seconds?

REP. LYNCH: Please. Yeah, that would -- thank you.

REP. ISSA: Without objection.

REP. LYNCH: I just want to note that your testimony, which is very good and -- look, it takes a lot of courage to do what you gentlemen are doing. It goes back to 2007.

AGENT FORCELLI: It does.

REP. LYNCH: So, you know, this isn't a political issue because obviously, you know, we're talking about career prosecutors who have been there since the Bush administration, as you cite, going back to 2007.

You're not alone in your assessment. We've heard other complaints from other witnesses. So I just want to thank you for your willingness to come forward and help the committee with its work.

I want to thank the chairman for the extra 30 seconds. Thank you.

AGENT FORCELLI: Thank you, sir.

REP. ISSA: I thank the gentleman.

We now recognize the gentleman from Utah, Mr. Chaffetz, for five minutes.

REPRESENTATIVE JASON CHAFFETZ (R-UT): Thank you.

First to the Terry family, thank you for your son's service, your relative's service. He's a hero. You know, you've got a lot of people on the front line doing tough things, and it will be -- I just want you to know and express, given an opportunity, you know, how much we appreciate his service, and we'll remember him. And to the agents who are brave enough to step forward and tell it like it is, we thank you. It takes a lot of bravery to step forward and do the right thing. And I know you probably had sleepless nights, and we'll have some others moving forward, but you're doing the right thing, and we want to thank you for your service and for your bravery in sharing your personal perspective in this situation.

Mr. Dodson, let's start with you for a second. At what point did you come to the -- where you just -- you had to come forward, you had to actually say something? Because usually these things kind of build up or something big happens. Explain to me what happened where you thought, enough is enough?

AGENT DODSON: Do you mean outside of ATF, sir, or --

REP. CHAFFETZ: In this particular case. I mean, why did you get to this point where you're sharing this information?

AGENT DODSON: Well, I questioned my supervisors almost immediately once we realized -- you know, once we had relocated to Phoenix and got briefed in, and it actually started operationally that we were allowing all these guns to go.

Then as the case agent and my supervisor, and ultimately my chain of command had all informed me that I was wrong and they were right and this was, you know, a righteous operation, it wasn't until December 15th, 2010 when I read -- well, we have SIR report, the Significant Incident Report, detailing ATF's preliminary investigation into the trace and weapons purchased by Jaime Avila.

And after reading that and then speaking with my FBI counterparts and learning that they were unaware of all of the events

surrounding the purchase and trace of those firearms is when I had to go outside of ATF, and I attempted to contact, originally, our two counsels' office, our ethics section. I made several attempts to contact the OIG's office. And ultimately I was able to speak to someone at Senator Grassley's office.

REP. CHAFFETZ: Do you think that there is a conflict between the OIG, given that maybe this started as a result of a recommendation, or do you see any sort of conflict that the investigator general has in this case?

AGENT DODSON: Well, I can see a conflict between the office of the OIG -- yes, sir, the actual individuals that are working the case, my interaction with them since I've been interviewed by them is that I think they get it.

However, those two offices being what they are and how they are aligned, there's inherently a conflict of interest there. If, in fact, someone at DOJ authorized this, knows about it, is as well versed in it as everyone at ATF, that thereby creates the conflict with OIG. REP. CHAFFETZ: Give me an idea of the size and scope -- and we're talking about thousands of guns knowingly going south, so to speak. In your normal course of business, if you thought that there was a straw purchase happening, how many guns would kind of push you over the threshold to say, we better stop that?

AGENT DODSON: Well, sir, I can tell you this: Prior to my arriving in Phoenix in December 2009, my entire career we have never lost a firearm.

And as a matter of fact, even if one had gotten away from us, if it was only a prop which had been mechanically engineered so that it could not effectively fire a round, even if that got away from us, no one went home until we got it back.

REP. CHAFFETZ: Even just one gun.

AGENT DODSON: Yes, sir.

REP. CHAFFETZ: And in this case we have thousands of guns.

Now, what was the over -- what was the goal here? I mean --

AGENT DODSON: Sir, I can tell you what I was told. I was told that the goal is to ultimately target and bring an entire cartel to prosecution.

REP. CHAFFETZ: But how were they going to do that? I mean, the suspected cartels were in Mexico, were they not?

AGENT DODSON: Yes, sir, they were, and I have no idea how they planned to do that by this operation, or how it was designed to function.

REP. CHAFFETZ: So, was it the goal to knowingly and intentionally allow these guns to go into Mexico?

AGENT DODSON: Was that the ultimate goal? Not as explained to me. Was that part of -- was that the rules in play to achieve the goal that they had explained? Yes. We were mandated, let these guns go.

Make no mistake, there was not a time we were out there on surveillance where we didn't have the forethought that these were going to be recovered in crimes. The next time we became aware of these guns would be when they were recovered at their final crime, not whatever crime they might have done.

It was the last crime that they commit that they're -- not "they" commit, but the person who has them commits, that they're recovered in. There may be nine or 10 that the cartels have perpetrated with those firearms prior to that date, but that recovery date is when we'll learn about it. So, ultimately what was the main goal, as explained to me, was to get a cartel. The mission, what we were doing, what we were ordered to do every day, was watch the same guys buy the same guns from the same dealers who we told to make the sales, and then we'd sit back and wait for the traces.

And when they came through from places in Mexico where it was definitively related to cartels, they were giddy. They thought that that justified -- that created their nexus from this straw purchaser to the cartel. However, there's not a rookie police officer in this country that can explain to you how we're going to make a case on them with that information.

REP. CHAFFETZ: My time has expired. I yield back.

REP. ISSA: I thank the gentleman.

We now yield -- or, five minutes to the gentleman from Virginia, Mr. Connolly.

REPRESENTATIVE GERRY CONNOLLY (D-VA): Thank you, Mr. Chairman.

And let me first join my colleagues in expressing my profound sympathies to the Terry family for your loss and the country's loss. And it maybe sounds hollow to say thank you for his service. We're in a terrible battle in the Southwest of our country and on the border with Mexico and in Northern Mexico.

Sadly, he is another victim of that terrible battle, but his memory and his contribution are something that will long be remembered and appreciated. And our thoughts and prayers go out to you and the family.

I want to thank our three agents for being here, and for your courage and for your testimony. I want to respectfully suggest, however, that I think that -- you know, we urged you to speak freely, at some

risk, and that means answering questions freely, without interference from any other member of this committee.

And we don't censor content here. The hearing has a scope, but if you feel an answer to a question requires amplification, you don't need to be mindful of the scope. And an individual member of this committee has an individual right to ask questions and to solicit answers without censorship.

So I want you to have that confidence just as we begin this hearing, urging you to speak freely. So you can speak freely in answering questions, including questions put by this member.

Let me ask you, Special Agent Forcelli -- I read your testimony about the U.S. attorney in Phoenix, and I want to explore with you just for a little bit, to what do you attribute the seeming reluctance to prosecute aggressively obvious illegal behavior that has a direct impact on your mission and that of the U.S. Attorney's Office?

AGENT FORCELLI: Sir, I can't say for sure. And, again, I don't want to paint the entire United States Attorney's Office with a broad brush. We had a very successful program that took place two summers ago where we arrested 70 home invaders, violent criminals who were doing drug robberies, and prosecuted them and went to trial.

For some reason, the Firearms Unit, which was at first, when I arrived in Phoenix, was run by Rachel Hernandez, and then subsequently run by Emory Hurley, consistently had issues with prosecuting our cases.

One example, we had an informant that they dismissed outright. This informant had provided truthful testimony, had provided accurate information, everything that met all the standards that we look for in law enforcement. They dismissed every case that this informant had anything to do with.

When I questioned him as to, why are we no longer using this informant, they said that his information was inaccurate and he lied. Well, I was upset, because I had such a good relationship with the prosecutors in New York, that my agents would bring a substandard product to the U.S. Attorney's Office.

So I went back and questioned them and looked at the documents, and that informant's information was dead-on. I then reengaged Ms. Hernandez and asked, why are we not using this informant, and she stated, well, he was moved with EWAP funds, Emergency Witness Assistant Program funds, and DOJ policy says we can't do that.

Well, having worked with the Southern District of New York, and having contacted main (ph) justice, I found out that that wasn't true. The only disclosure would be at trial you may have to articulate that that informant was paid those funds.

When I approached her again about this particular situation -- because dozens of cases hung in the balance -- she finally conceded,

000039

AZ0267869

DOJ-FF-43701

well, he wore a lot of jewelry, he doesn't have jury appeal; my final answer is no, we won't use him.

I know -- I've used murderers, I've used robbers, I've used all sorts of people to put on the witness stand to make cases. It's part of cooperation agreements. Part of a lawyer's job is to prep a witness. If this guy wore too much gold chain or didn't have jury appeal, it's incumbent on the prosecutor to help get him ready for testimony.

So, I found that it was either laziness or arrogance that really terminated many of our cases.

REP. CONNOLLY: And when you compare that experience to your experience in New York, this was unusual? AGENT FORCELLI: Sir, I can say that I worked at the United States Attorney's Office mostly for the Southern District through Mary Jo White's tenure there, through Dave Kelley, James Comey, even currently with Preet Bharara -- consistently outstanding.

I can tell you that in the United States Attorney's Office from Arizona, when I got there, Daniel Knauss was acting because the U.S. attorney had been fired. It was bad doing gun cases.

And it continued to be -- it has improved slightly since this flare-up, but it's been consistently bad.

REP. CONNOLLY: Thank you.

One final question -- I wish I had more time -- but we talked about resources. There are 8500 licensed gun dealers in the four southwestern states.

AGENT FORCELLI: Yes, sir.

REP. CONNOLLY: You've got 224 ATF agents assigned to Project Gunrunner. Do you really have the resources you need to do your job?

AGENT FORCELLI: It's amazing, sir, that you ask me that because I just had contact last week with a friend of mine who works in the 46th Precinct where I worked as a New York City police officer. It's one square mile. There are 355 police officers assigned to the 46th Precinct, one square mile. I have less than 100 agents assigned to the entire state of Arizona. That's 114,006 square miles.

So do we have the resources? No, we don't. We desperately need them. Does that justify us not stopping --

REP. CONNOLLY: No, no.

AGENT FORCELLI: No.

REP. CONNOLLY: Different issue. Thank you, Special Agent.

000040

AZ0267870

DOJ-FF-43702

REP. ISSA: Thank you. We now go to the gentleman from South Carolina, Mr. Gowdy, for five minutes.

REPRESENTATIVE TREY GOWDY (R-SC): Thank you, Mr. Chairman. Thank you for your leadership on this issue.

And to the family of Agent Terry, let me say on behalf of the people from the state of South Carolina we offer our condolences, and we thank you for the service and ultimately the sacrifice of your son, your brother, your friend.

To ATF, I worked with ATF for 16 years, and I find this hearing to be bitterly disappointing. This is not reflective of the ATF agents that I worked with for 16 years. And this panel is perhaps not the best panel for me to express my displeasure, but nonetheless, let me ask you this.

When did ATF have either constructive or actual knowledge that guns were going Mexico?

MR. : Sir, it's my understanding, in 2009, when Operation Fast and Furious was initiated, they were not interdicting firearms, and they had knowledge that those guns were being trafficked to Mexico.

REP. GOWDY: Now, when you say interdicting firearms, you mean something as simple as a traffic stop several miles away from where the purchase was made, protect -- (inaudible) -- if it need be -- but a traffic stop so you don't blow your informant. That easily could have been done, right?

MR. : Absolutely. In fact, let me point out something, sir. A lot -- we say an informant. A lot of the information that came into ATF came in from gun dealers who didn't like the fact that they're portrayed as this nefarious stray market.

The gun dealers were our friends. They have helped us make a lot of these cases, and we had some successful cases, and this is an anomaly this Fast and Furious investigation. But the problem is, then by getting them mixed up in this thing and encouraging to them to sell guns when they decided to stop did not help our reputation with the gun industry.

The other thing is, if our job is to stem the flow of firearms into Mexico and certain gun dealers realize there's a straw purchasing problem and they're willing to -- forgive me for using an analogy -- turn off the faucets, well, we could have diverted our assets elsewhere and looked at other gun dealers where we thought that the straw purchasers were going to.

Instead, we just encouraged them to continue selling guns. It made no sense.

REP. GOWDY: But even for this investigation, as half-baked as it was, to ever have worked, you would have had to have extradited folks

from Mexico back for prosecution in a lying-and-buying case with a statutory maximum of what? Ten years? And the guidelines of -- what are the guidelines in a typical lying-and-buying case?

MR. : Generally speaking, people with -- well, because they don't have criminal history, which is why they can fill out the form, they get probation. But again, that's if they're prosecuted at all.

REP. GOWDY: They could have done car stops. They could have done search warrants. They already had a Title III up from what I understand. Correct? MR. : Yes.

REP. GOWDY: All right. So even if it had worked, I don't understand how it ever would have worked.

MR. : Well, sir, let's say, for example, that we wouldn't get as far as to be able to extradite the heads of the cartel. Perhaps by going out there and doing interdictions, we could have deterred some of these guns from being purchased.

Secondly, had we been able to go out there and stop a straw buyer and then perhaps go do a controlled delivery, we would have made it up to the next level in the --

REP. GOWDY: You could have flipped them though. You don't have to let the guns walk. Flip them.

MR. : Absolutely.

REP. GOWDY: How did your U.S. attorney not do proffers?

MR. : That shocks me, sir. They do them very sparingly. Seventy home invasion defendants we arrested, as I pointed out earlier, we proffered one. We could have solved unsolved robberies. We could have solved unsolved homicides. We could have solved an untold number of crimes had we had access to those defendants.

REP. GOWDY: Now, this was an -- (inaudible) -- case, right?

MR. : Yes, sir.

MR. : Yes, sir.

REP. GOWDY: Fast and Furious was an -- (inaudible) -- case?

MR. : Yes, sir.

REP. GOWDY: What other federal agencies were involved? And what complaints did they lodge?

MR. : Well, sir, I can tell you, from almost the genesis of the case, we had an agent with Immigration and Customs Enforcement embedded in Group 7 acting on a -- (inaudible) -- agent status. So ICE was well aware of it.

REP. GOWDY: Was the bureau involved?

MR. : I'm sorry?

REP. GOWDY: The bureau? The FBI? MR. : Well, you've got to understand, ATF Group 7 is the Phoenix strike force group. The DOJ strike force consists of entities from DEA, FBI, ATF and ICE.

REP. GOWDY: What I'm trying to get a sense of -- and I've got less than a minute.

I want to know how many different law enforcement officers and agencies told the United States attorney's office this is a dreadful idea. How many different people and agencies said this is unprecedented; it is a dreadful law enforcement idea, and it needs to stop? How many people told Ms. McAllister and Ms. English this is a horrible idea?

MR. : As for agencies that expressed that to the U.S. attorney's office, sir, none that I am aware of. As for individuals that expressed it to Ms. McAllister and myself, Special Agent Casa, Special Agent Alt, Special Agent Medina voiced his concern.

MR. : So countless detail -- when you said came through --

REP. GOWDY: Yes?

MR. : Almost every person that came through that group that saw what was going on --

MR. : Every agent from outside of the Phoenix Field Division, sir, as well as many in it, but specifically those that came in from the outside were appalled as soon as they learned.

MR. : Shocked and appalled.

REP. GOWDY: I'm out of time, but I would like to ask one more question.

When the supervisors realized that guns were making it into Mexico, acknowledging the fact that we do not have much success extraditing people from Mexico for lying-and-buying cases, where the Mexican authorities warned, hey, something bad has happened and firearms are in your country because we turned an eye to it.

MR. : So I can say, having had conversations with our staff in Mexico City -- this is ATF personnel assigned to Mexico City -- that they were not fully briefed on this. They were very upset about it. This is something that was contained within the ATF Group 7.

REP. GOWDY: So we're going to ask for extradition cooperation from a country that doesn't even know what we're doing; that doesn't even know that we're letting guns go into their country that murders their citizens as well as our agents? MR. : No, sir. Because actually,

the way this case is designed, we don't even have a lying-and-buying charge on the individual that committed the crime in Mexico with these firearms. They're not the ones that lied on the form.

REP. GOWDY: So you'd have to have a conspiracy case which -- I'm sorry. I'm out of time.

MR. : Well never took the steps to develop that conspiracy, sir.

REP. GOWDY: Thank you, Mr. Chairman.

REP. ISSA: And I thank the gentleman.

We now recognize the gentleman from Massachusetts, Mr. Tierney?

REPRESENTATIVE JOHN TIERNEY (D-MA): Thank you very much.

And my condolences to the family as well and friends on that. And I'm not going to be asking you any questions, but I don't want you to interpret that as being unmindful of your pain and your sacrifice on that. I hope you accept it as such.

But I would like to talk to the three special agents on this a little bit and go back.

First of all, I do suspect that the Mexican government understands that there are guns coming from the United States into Mexico. Mexico's Ambassador Arturo Sarukhan has stated pretty clearly that he thinks guns from the United States have been feeding violence and overwhelming fire power is being unleashed by drug traffickers. So I think they're quite aware of that.

But before this Fast and Furious became the policy that we're all seriously questioning now, was it the Project Gunrunner -- was that the policy of the government from 2006 to 2009?

MR. : Sir, if I may, Project Gunrunner was a funding source that led to staffing many groups along southwest border offices with agents.

Project Gunrunner was preceded by something that they referred to as Operation Southbound. And what that did was we identified straw buyers through the cooperation of gun dealers or through reviewing documents of past firearms purchases. And then we would go out and do car stops and do interdictions.

In many of those interdictions, there were no prosecutions for the reasons I stated earlier. But the point was that we lawfully seized the weapons based on probable cause, and those weapons wouldn't hurt anybody. Now, there were plenty of times where, if a gun dealer was suspicious of a person and we would stop them and that person was a law-abiding citizen, they went on their way with their lawfully purchased firearm and our apology.

But if they were criminals, those guns were in our custody whether they went to jail or not, and they never hurt a soul.

REP. TIERNEY: Were there any appreciable amount of weapons, do you think, getting through that system still making it to Mexico?

MR. : Oh, absolutely. And it's the nature of the straw purchasing. I mean, a straw purchaser is somebody who is legitimate. If the gun dealer isn't suspicious and he makes that sale, and then that person then hands it off to somebody who's going to bring it down to Mexico, we're going to have no way of knowing that until the gun is recovered in Mexico.

REP. TIERNEY: All right. So, in fact, you're familiar with the Iknadosian case?

MR. : I was a supervisor on that investigation, sir.

REP. TIERNEY: Well, I assume you were unhappy with that result?

MR. : Extremely.

REP. TIERNEY: All right. And in that case, didn't the judge make a determination that essentially he threw the case out after about eight days of trial on the premise that there was no proof that the ultimate person that got that gun was a person not allowed or not lawfully in possession?

MR. : Correct. What he was stating was that we couldn't prove that he was supplying prohibited persons. That wasn't the allegation or the nature of the case. Again, that's why, after that happened, I tried to present this case to the United States attorney's office in New York which is just incredible going into national narcotics cases.

And had we had one wire transfer or one banking transaction occur in that district, I'm convinced we would have had a successful prosecution there.

REP. TIERNEY: Do you think there's any hesitation on federal prosecutors? I ask this of all of you agents because you've been so candid.

Any hesitation on the part of federal prosecutors because they think somehow pursuing these cases is going to be interpreted as violating or looking to violate somebody's Second Amendment rights?

MR. : No, sir. I honestly don't think so from my perspective having --

REP. TIERNEY: That's not what's causing the inertia on the part of the prosecutors?

MR. : I can't say for sure, sir.

MR. : I would have to agree with Peter Forcellini, no.

REP. TIERNEY: So if a person goes into a store -- a gun store -- and buys two or three or four handguns, does federal law require them to report that?

MR. : Yes, sir.

REP. TIERNEY: OK. And if I were a person who went into a store and I bought four or five long guns --

MR. : No such requirement, sir.

REP. TIERNEY: What if I went in -- and you're familiar with the Romanian AKs?

MR. : Yes.

REP. TIERNEY: All right. And it's fair to say that there's a high amount or a large proportion of the guns that are going to Mexico constitute AKs? The Romanian AKs?

MR. : Absolutely.

REP. TIERNEY: All right. So they're coming from Romania into this country. They get doctored up and changed, and then they move on down to Mexico?

MR. : Yes, sir. REP. TIERNEY: All right. So if I went into a store and bought any number of those, the store owner doesn't have to report that?

MR. : No.

REP. TIERNEY: All right. If it was reported to you, would that give you some indication of here's something you ought to investigate?

MR. : Sir, it's my opinion, just like we monitor monies wired to the Middle East, and we monitor how much Sudafed somebody buys in the pharmacy nowadays because that's what's utilized to make methamphetamine, it would be similar to that. Not everybody who buys more than one gun is a criminal, but it would give you an indicator that, hey, why is this person buying seven AKs? Maybe that's somebody we want to speak to.

Now, we're not aware of those multiple sales unless one of two things happens. A, is we have a cooperative gun dealer who calls us and says, hey, something's not right here; or, B, that weapon is -- one of those weapons is found at a crime scene and traced back to that individual. And then we go pull the paperwork manually from the gun dealer.

REP. TIERNEY: Is there any law enforcement reason or rationale that you can think of why we would not want to have that information reported? Multiple sales of long arms like Romanian AKs or something?

MR. : I can only give you my personal opinion, sir. It would be a good indicator for us, a good starting point, much like it is with handguns.

REP. TIERNEY: But no reasons you can think of why you wouldn't want to have it reported? It wouldn't interfere with law enforcement efforts if it was reported?

MR. : In my opinion, it would help our efforts, sir.

REP. TIERNEY: Thank you.

REP. ISSA: The gentleman's time has expired.

The gentleman from Texas, Mr. Farenthold, is recognized for five minutes.

REPRESENTATIVE BLAKE FARENTHOLD (R-TX): Thank you very much, Mr. Chairman.

I, too, would like to express my condolences to the Terry family. The district I represent includes Brownsville where the family of Special Agent Jaime Zapata resides as well, and they're going through some pain similar to what you guys are going through, very possibly, as a result of ill-conceived policies by the ATF. I did have a couple of questions for the gentlemen here from the agency, and we appreciate your courage in testifying and want to assure you that -- I think I speak for the bulk of this committee -- that we really appreciate your courage in coming out, and it would certainly be a bad thing if there were to be any repercussions.

My question is this. In your testimony, you were talking about you had followed the straw buyer from the gun store, and it would stop. Did y'all ever go beyond the first handoff of that weapon to trace them to where they were going?

MR. : Sir, not really, no. Many a times, what we would do is we would have the information beforehand where they would call the FFL and say, hey, we're coming by to pick up 10 or 15 of these AK-variant rifles. At which time, the FFL would notify the case agent, and we would begin the surveillance.

We would often go to the straw purchaser's house and catch him before he leaves there, catch him as he meets an individual, you know, at a car wash or a gas station --

REP. FARENTHOLD: And so -- but you didn't follow that individual to move it up the chain.

MR. : No.

REP. FARENTHOLD: So if you were out to make a case against people higher up in the chain, wouldn't the next logical step have been following the gun?

MR. : That would be very logical, sir. After he purchased the firearms and delivered them to another parking lot and Special Agent Casa and I took pictures of them taking them out of one vehicle and putting them in another, yet we had to follow the straw purchaser back to his house while we knew the guns were headed the other way on the highway.

I cannot tell you the logic behind that either.

REP. FARENTHOLD: And you mentioned -- go ahead. Did you have something to add?

MR. : Yes, sir. We were given direction by either of the case agent or the group supervisor. We were literally pulled off of surveillances. When we would make requests after a straw purchase change has taken place, we requested, hey, this is a good opportunity to seize the firearms from an unknown person, plus we get to identify that unknown person, plus we might be able to move up the chain.

And we were told point blank time and time again absolutely not, no.

REP. FARENTHOLD: All right. All right. So I apologize for going so fast. I have limited time. You say you built -- at one time, you built a tracking device from stuff you bought at Radio Shack, and then you had one -- one of the thousands of weapons, you had one that the agency provided for you that ran out of battery.

Is that correct?

MR. : To my knowledge, there was just the one, yes, sir.

REP. FARENTHOLD: So if you were trying to track guns, wouldn't the logical way to do that be embed some sort of tracking device either in the gun or its packaging?

MR. : Sir, when the statement is made that we were trying to track these firearms, what that means is we were tracing them, once they were recovered in the last crime they were utilized in.

REP. FARENTHOLD: Right. But if you were trying to make a case that this is going up to the Mexican drug cartels and is involved in multiple murders and, you know, potentially bringing, you know, bigger charges against these straw-men for being part of a conspiracy, you'd want to see, you know, everybody involved in that conspiracy, wouldn't you?

MR. : Oh, most definitely, sir. And what I would have done, I would have landed on these straw purchasers. And before long, I would have had that information for you.

REP. FARENTHOLD: All right. So let me ask you this. The policy that we have just following them and then quitting, do you see any rationale behind that? Could you come up with any reason we were stopping when we were stopping? Any theory at all?

MR. : Sir, I'll say this. For years when I first got to Phoenix, I was supervising firearms trafficking investigations, and we utilized trackers, and we did what you just pointed out. We'd make a car stop at the hand-to-hand exchange, or we would seize the weapon if it got to a reasonable point where we thought it might go to Mexico.

To answer your question, I've sat down many times to try to figure out what the logic would be to let these firearms going to Mexico, and I can't think of a single logical reason why this strategy would work.

REP. FARENTHOLD: And you're not aware of any cooperation with the Mexican authorities or any of our intelligence agencies that might be tracking these beyond Mexico or anything? MR. : I think if we were tracking them, we wouldn't see the tragic results we see when these guns get traced back from murder scenes.

REP. FARENTHOLD: And were you doing anything to identify these weapons other than recording the serial numbers? For instance, test firing them and gathering ballistic information or anything else?

MR. : Sir, no. The firearms were being sold and, like I said, in most instances, taken out of the country. I noted once the Mexican government takes possession of them, our assets in Mexico go examine them. And I'm not exactly sure --

REP. FARENTHOLD: And I mean, you work on the border. You realize Mexico takes bringing guns into their country pretty seriously. I mean, just taking a shotgun to Mexico to go bird hunting is an experience.

MR. : Yes, sir.

REP. FARENTHOLD: So this is something our friends, our allies and our neighbors would be very concerned about, and we didn't bother to deal -- to inform them?

MR. : We did not.

REP. FARENTHOLD: Thank you very much.

REP. ISSA: I thank the gentleman.

We now go to the gentleman from Pennsylvania, Mr. Kelly, for five minutes.

REPRESENTATIVE MIKE KELLY (R-PA): Thank you, Mr. Chairman.

And I want to thank you, Special Agents, for appearing. I thank everybody on this panel. We admire your courage and your patriotism for doing that.

But my questions really are to the Terry family. And, Ms. Terry, I know how difficult it was for your opening statement, and I will tell you now that, as I'm in the autumn of my life, being the father of four and the grandfather of five, I think the unintended consequences of poor policies, procedures and failed strategies, at some point, somebody has to be held accountable for these things.

And as difficult as it may be for yourself and the Terry family, if the person responsible were in the room right now for Operation Fast and Furious, what might you want to say to them. And, please, I think it's so important for the public to understand the purpose of these hearings. While we're very upset with the policies, it's important that people understand that there is a loss of human life here. So it's more than just a strategy that's failed. It's more than a failed policy and procedure. It is the loss of someone which is so near and dear to you.

So it's your opportunity to do that. I would appreciate it.

MR. HEYER (?): Well, it is tough. Brian was an amazing kid, an amazingly brave kid that was willing to put his life on the line. If that person were in the room, obviously, we'd want him or her to accept responsibility.

Right now, looking back at this operation, it appears that it has cost the life of our Brian. We hope and pray that it's not going to result in any additional lives of U.S. law enforcement. But I don't know if we can truly -- if that's truly going to happen. Those guns are out there.

So beyond accepting responsibility for these decisions and why - - we'd be curious to hear why did you feel that this was within that risk. You know, I've heard from the ATF agents here that even a mockup weapon normally would not have been allowed to walk during these operations. And, you know, an awful lot of weapons walked, and we'd be curious to find out why.

REP. KELLY: Ms. Terry, anything that you have to add?

MS. TERRY: I don't know what I would say to them, but I would like to know what they would say to me. That's all I would say.

REP. KELLY: Well, I know it's difficult, and I don't want to put you through any of this, but I think it is incredibly important because the fabric of your family has been irreparably torn. It can never be put back together again.

000050

AZ0267880

DOJ-FF-43712

And so the purpose of these hearings, really, is to make sure that nobody else has to go through the same things that you have gone through.

So I appreciate you being here. And with that, Mr. Chairman --

REP. ISSA: Would the gentleman yield?

REP. KELLY: I will yield back.

REP. ISSA: The gentleman yields to the chair.

REP. KELLY: Yes, sir.

REP. ISSA: Thank you. I'm going to follow a line of questioning that I think I've been seeing developed throughout here with law enforcement experts. You have two points -- you know, the old expression, you know, you connect the dots. The first point is the straw buyer. The last point is the scene of the crime.

You've said -- each of you special abilities -- that in this case, as soon as you got to the next point of connect the dots, you were generally sent the other direction. You were not allowed to go beyond that next point. You weren't even allowed to follow that next point even when they headed north with the weapons. Now, if an operation like Fast and Furious seems to have a pattern, a consistent pattern, that you're only looking for two points -- the beginning and the end -- it's not a criminal prosecution. It's not an effective one. Plus, of course, if you take the logic that you can't prosecute a straw purchaser if the gun is in Mexico, if you take that point, then that part of it was frivolous from the start even though, today, every one of those straw purchasers has been charged, oddly enough, with the evidence that was available before that gun ever walked beyond the first step.

So let me just ask a question for your supposition, but I think it's a very well educated one. If you only look at the beginning and the end of the dot, isn't the only thing you've proven that guns in America go to Mexico? Now, could that be a political decision? Could that be a decision that, basically, we just want to substantiate that guns in America go to Mexico? Something we all knew but would have considerable political impact as Mexico began complaining about these and they could say, well, yeah, we were even rolling up the straw purchasers.

It wouldn't change the fact that Mexicans were dying at the bequest of the United States, but wouldn't it ultimately meet a political goal?

MR. : I imagine, sir, that it's possible. In this instance, I think it's more just, as I said earlier, a case agent that had a bad idea, a group supervisor who failed to rein her in, an ASAC who failed to rein -- the chain the command all the way up failed.

REP. ISSA: But you'd agree that it doesn't meet any criminal goal, a goal of prosecuting the way it was handled?

MR. : No because you can't show the chain of how those pieces of evidence went from Point A to Point B which you'd need to prove at a trial.

REP. ISSA: I hope it was just a terrible mistake.

Mr. Clay, you're recognized for five minutes. REPRESENTATIVE WILLIAM LACY CLAY (D-MO): Mr. Chairman, at this point, I have no questions for this panel. In the interest of -- I yield to Mr. Cummings.

REPRESENTATIVE ELIJAH CUMMINGS (D-MD): It seems to me that we do have a -- there's some serious disconnects. And why that is, you know, I cannot imagine.

And I want to say to you all that your testimony has been abundantly clear, but I want to, for a moment, go back to Ms. Terry.

Ms. Terry, I often say -- right now, I'm preparing to do a eulogy on Saturday. And one of the things that I thought about as I'm sitting here I do believe that part of life is death but also a part of death is life. And what I mean by that is that, you know, we can't fully understand why somebody would leave us so young, particularly somebody like your son and your relative who was so full of courage and the fact that he was willing to basically die for his country.

And we cannot always understand it, and I think we all struggle -- we struggle with it particularly when it's a young person. But I can say this that I believe deep in my heart that some kind of way out of his death will come life.

In other words, the mere fact that we're here right now, Mr. Heyer, talking about this, the mere fact that this was not something that was just shoved under the rug and just moving on, the mere fact that there are probably already changes being made to this program -- and I think it was you that said it that you wish you could -- you wish you could say that this was the end of it, but there are guns still out there.

But at least -- and to the agents I say this, too -- at least we are now moving in a direction where, hopefully, we reverse this and save some lives. That's why I said, Ms. Terry, sometimes out of death comes life. And it's not -- nothing, nothing, nothing -- I'm not trying to -- nobody can bring a person back. But, you know -- because I've wrestled with the question. I wrestle with it all the time of why do so many of our best die young.

And so that's why I said to you before -- Mr. Issa -- Chairman Issa asked me a question a moment ago about cooperation in the Justice Department. And I wanted to make it clear that I've fought all my adult life trying to take guns -- illegal guns -- out of hands of folks, period.

It was you, Mr. Forcellini -- and all of your testimony was absolutely brilliant. It was straightforward. No bull. Just straight testimony. And that's what I appreciated so much about it. But that -- what you said I don't want us to lose sight of it.

And even the chairman just talked about it to a degree. These guns don't just end up in Mexico. They end up in the United States, too. You know, and they are not just killing people -- used to kill people in Mexico. It's happening everywhere in our streets.

And some kind of way -- some kind of way -- as I listened to Senator Grassley, he's right. We do need to leave the political piece at the door and try to figure out how do we address this problem. We've got to keep in mind, too, Mexico is right next door. So basically, in a sense -- in a sense, if these guns are flowing to Mexico, basically, what we're doing is turning a gun on ourselves or guns on ourselves. And this case is a prime example of that.

And so, you know, I just -- I just -- I just believe that we have to take this moment and make it bring life -- bring life out of this very horrific and terrible death.

And with that, I yield back.

REP. ISSA: I thank the gentleman for his comments.

We now go to the gentleman from Florida, Mr. Ross, for five minutes.

REPRESENTATIVE DENNIS ROSS (R-FL): Thank you, Mr. Chairman.

And to the Terry family, I cannot imagine the emotional roller coaster that you have gone through and what today's testimony does for you, but I can appreciate that you are here. And I am grateful for that.

To our agents that are here, you know, this investigation, as you well know, relies intensely on your testimony not only in whole but -- quite frankly, in hopes that we find an answer as a result of this investigation to see that this never happens again.

And to that end, I want to ask a couple of questions and specifically to you, Mr. Casa, because I was here for your opening testimony and had to leave for some votes.

But you mentioned that it was the rule rather than the exception, I think, to have the surveillance without the interdiction or the arrests. Was that the gist of it?

AGENT CASA: For this investigation, yes, it was.

REP. ROSS: And you state in your testimony that it has become common practice for ATF supervisors to retaliate against employees that do not blindly tow the company line no matter what the consequences. Can you describe what any of that retaliation may have been?

AGENT CASA: I would just say refer back to OIG investigations over the countless years. I believe all the attorneys that have represented ATF employees for all types of retaliation or whistleblowing, punitive actions, for -- whether that agent or inspector deserved the punitive actions for --

REP. ROSS: Because you mentioned in the e-mail that you received, you thought that it was threatening.

AGENT CASA: Oh, yeah.

REP. ROSS: And were you personally threatened by McAllister (sp) or English (sp) or anybody else?

AGENT CASA: No, they're my equal -- or, you know, they're the -

REP. ROSS: Right.

AGENT CASA: But my supervisor put in there, hey, if you don't like what we're telling you to do, go work for Maricopa County sheriff's department. First of all, it was in horrible taste.

REP. ROSS: Yeah, I agree.

AGENT CASA: Second of all, because there are brave men and women law enforcement side by side with us, fighting violent crime in the Phoenix area.

REP. ROSS: I think it's -- what has happened to your supervisor since then?

AGENT CASA: I have no idea.

REP. ROSS: Is he -- was any -- were there -- were there any repercussions as a result of his actions?

AGENT CASA: Not as of yet. My understanding --

REP. ROSS: So is he -- he's still in the same position, his supervisory capacity?

AGENT CASA: Yes. I still understand he's a group supervisor. I believe he is in Minneapolis-St. Paul, currently still a GS-14 group supervisor.

REP. ROSS: Now, you mentioned that they would -- that they would stop you from arresting straw purchasers and interdicting their weapons. Were there other occasions when you were -- your case agent told you to stand down and not make such arrests? AGENT CASA: I mean, in this investigation?

REP. ROSS: Yes, in this investigation.

AGENT CASA: Again, it was -- it was common. It was more than on one occasion. It was a few occasions.

REP. ROSS: Was there one where you watched him come out with a bag of guns, I guess, and --

AGENT CASA: Yes. On one specific occasion -- I wish I had more time; I'll try and be as brief as possible -- we observed -- in fact, I was with Special Agent Dodson -- and we observed an individual straw purchase. I believe on that day it was 10 FN pistols, which -- by the way, they penetrate law enforcement vests. They're called cop killers. So --

REP. ROSS: And that had to be particularly painful.

AGENT CASA: Yes.

REP. ROSS: And you saw this happen and you were ordered to stand down?

AGENT CASA: We followed it. We followed the straw purchaser. We saw him transfer the guns to an unknown individual -- unknown. And I said, OK, I called this -- since I was the shift supervisor, I called the case agent and said, we need to interdict these firearms.

REP. ROSS: And who was the case agent? Was that --

AGENT CASA: McAllister (sp).

REP. ROSS: McAllister (sp), OK.

AGENT CASA: And I was told, no, stand down, do not interdict. I was given no explanation why, other than to keep on following the unknown individual with firearms. Well, he's street -- he's street-savvy. He makes our -- a 10-person surveillance, each car over and over again, and to the point where he stops in the middle of a small subdivision in front of Special Agent Dodson and I, and he's a lot higher up in a jacked-up pickup truck, we're down here, and we know he has at least 10 FN 5.7-millimeter pistols.

And then I say, we need to engage. I call back in. Unfortunately, the group supervisor, who should have been there during the operation, or the case agent, who should have been there during that operation, they were gone for the day. They left --

REP. ROSS: And there was no way to get in touch with them?

AGENT CASA: Well, I was -- I was told the point of contact at that point was a probationary employee named Tanya English (ph), who wasn't even a 10-year ATF special agent. And I had to take my instruction from her -- who told me, no, fall back, just re-surveil.

REP. ROSS: But isn't that falling -- that fallback, that re-surveillance, isn't that contrary to what ATF policy should be?

000055

AZ0267885

DOJ-FF-43717

AGENT CASA: Yes.

REP. ROSS: I mean, shouldn't the policy have been, go in and make the arrest -- or interdiction?

AGENT CASA: Yeah. I'm sorry to cut you off. Yes, sir, most definitely. Furthermore, it created a very serious officer safety issue.

REP. ROSS: Yes.

AGENT CASA: 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.

REP. ROSS: So but for the grace of God, there could have been more than Brian Terry lost as a result of this.

AGENT CASA: Yes, sir.

REP. ROSS: Ms. Balogh, just briefly, I've got just a couple of seconds. Is there anything that you think that your brother would want this committee to know about his life and about his service?

MS. BALOGH: Brian was about making a difference in justice. And I just feel that this country owes it to him because he spent his whole life fighting for this country in some way or another.

REP. ROSS: I agree. And he is a hero.

I yield back.

REP. ISSA: I thank the gentleman. We now go to the gentleman from Arizona, Mr. Gosar, for five minutes.

REPRESENTATIVE PAUL GOSAR (R-AZ): Mrs. Terry and the family, I am deeply sorry.

And as a father, I don't know -- I just can -- can just feel that pain. And I hope that what I say next does not aggravate that in advance, OK?

For law enforcement folks, when you first heard about the shootings of Congressman Gabby Giffords, was there a level of anxiety from the ATF during -- that one of the weapons might trace back to the operations of Fast and Furious?

MR. : Yes, sir.

MR. : Yes, sir.

MR. : Yes, sir.

REP. GOSAR: Where did this anxiety come from? And from whom specifically?

MR. : Sir, she's -- vocal, from my public information officer, who's a friend of mine, who said that there was concern from the chain of command that the gun was hopefully not a Fast and Furious gun.

MR. : Sir, I'd like to also add, every time there's a shooting, whether it was Mrs. Gifford(s) or anybody -- any time there's a shooting in the general Phoenix area or even in -- you know, in Arizona, we're fearful that it might be one of these firearms.

MR. : Yes, sir.

MR. : And this happened time and time again. When there was U.S. embassy personnel killed in Juarez, Mexico, the fear spread through the division.

REP. GOSAR: Part of the reason I'm asking: because I'm feeling like, I mean, I'm a dentist, I didn't participate in the military. But I understand that there is a chain of command, and I feel like I'm watching the movie "A Few Good Men." And, you know, this wasn't done, you know -- from what I'm gathering, you know, we've talked about -- Special Agent Forcelli, you were talking about trying to get a jurisdiction in the New York courts. We're talking about the drug cartels. So we're not talking about something really simple here. So I guess my point is that if a -- if an issue is this great, typically before this one, if you've been involved in one, how far did it go up that people knew about something like that?

MR. : Sir, I know I've had discussions with SAC William Newell, who's the special agent in charge -- well, former special agent in charge of the Phoenix Field Division. The supervisor -- the -- excuse me, the assistant special agent in charge who was involved in this case when it first started was George Gillette. He and I had discussions where he pretty much just rolled his eyes when you voiced opposition to this.

David Balth (ph) and I hadn't conversed much. He's in a different building. But I know from the review of a briefing paper that went up that was prepared by either SAC Newell or vetted through SAC Newell by Mr. Gillette that this was briefed at the highest levels of ATF. I've heard that Mr. Melson, our director, was aware of it.

And what I find most appalling, sir, is that nobody has stepped up and had a statement beyond the Phoenix field division. I mean, there were tragic errors made here, and nobody has shown the decency and leadership to step up and say, hey, we made a mistake and we should have done something wrong. That's what I find as appalling as anything else in this case, short of, of course, the tragedy that happened to the Terry family.

MR. : That's absolutely right, sir. No one in ATF involved in this, up to our -- Acting Director Melson, has shown any significant leadership in this matter. And I can tell you I know that our former group supervisor, Dave Broathe (ph), had to come to D.C. to brief our headquarters, DEA, special operations division in Chantilly, Virginia, that he briefed EPIC (ph) on it, and obviously OCDETF was briefed, because we secured the funding from OCDETF.

I recall in March of 2010 when Acting Director Melson came to the Phoenix Field Division and spoke about the case, he knew the case agent by name, the group supervisor by name, and I believe even some of the defendants or would-be defendants in the case.

REP. : (Inaudible) -- where this is going in the -- in the right way here.

You know I'm from Arizona.

MR. : Yes, sir.

REP. : You are currently aware, and have -- for some time, that Department of Justice has had lawsuits against Arizona. Were you aware of any biases within your scope at ATF or comments in -- versus Arizona by the ATF or by the DOJ in regards to those?

MR. : No, sir. MR. : No, sir.

REP. : You're sure.

MR. : I don't recall any.

REP. : It just seems like just this whole lax attitude -- I mean, from the jurisdiction, from timely and aggressive law enforcement that would create this. I'm getting this opinion because you said that you couldn't get a jurisdictional aspect of oversight in Arizona, and you took it to New York, did you not, sir?

MR. : Yes, I did.

REP. : OK. So it seems like a continued dismissal of actually (trumping ?) charges. And you've got a problem in Arizona. And, you know, we've seen a concerted effort that we've called out law enforcement on the border -- I think it's specifically Sheriff Devers -- as lying. I just see a lack of cooperation all the way across, and so does Arizona. And we see a very defunct cooperative type of format that's becoming -- or trying to be uniform in adjudicating these laws. And we see it -- I can tell you from Arizona, we see a very organized, orchestrated plan -- lack of a plan from the DOJ, particularly with Arizona.

MR. : Well, it's interesting, sir. And what I'll add is that the one thing I'll say emphatically is that I have had limited dealings with the Tucson office of the U.S. attorney's office. I've had extensive dealings with the Phoenix office. And again, in the Phoenix

000058

AZ0267888

DOJ-FF-43720

office there are some good people, and I apologize that I've had to speak ill of that office, you know. But there is a distinct difference in attitude between the Tucson and Phoenix offices. The U.S. attorney's office in Tucson seems to be more amenable to working on cases with ATF, amenable to finding justice than the U.S. attorney's office in Phoenix. And it's ironic because the U.S. attorney himself and his immediate chain of command are based on Phoenix. That's all I can really add.

REP. : Thank you.

REP. ISSA: I thank the gentleman.

We now recognize the gentle lady from New York, Ms. Buerkle, for five minutes.

REPRESENTATIVE ANN MARIE BUERKLE (R-NY): Thank you, Mr. Chairman.

I want to begin by saying to the mother of Brian Terry, Ms. Terry, I have six children, and my heart is broken for you, because your life is irreparably changed. And I want you to know that what Mr. Hire said about having someone step up and accept responsibility, that will be the charge of this committee. And that's what we will do for you because of the loss that you all have sustained. You have my deepest sympathy.

To the agents, thank you. Thanks for your courage for being here today and for your forthrightness in standing up and doing the right thing. We appreciate that very much.

I want to begin with Ms. Terry.

Can you, if there's a question that you would like us to ask or find out, can you share that with us? Is there something that's nagging you and you'd like the answer to?

MS. TERRY: Well, most of my questions and answers are done by my nephew, Bob. But if I have anything to ask, I just ask him, and he gets me my right answers.

REP. BUERKLE: Well, then I would ask Mr. Heyer, is there a question that you would like us to ask?

MR. HEYER: I think we'd want to know if the dragnet that is set to find everyone involved in Brian's murder will be set deep enough and wide enough to encompass anyone involved in Operation Fast and Furious. If the guns used in Brian's murder were part of this operation, then we'd want to know, will everyone in that operation that had to deal with those specific weapons be brought up on charges of facilitating the murder of Brian Terry?

REP. BUERKLE: Thank you. We will ask that question on your behalf.

There was a press conference held shortly after Agent Terry's murder. And in that -- during that press conference, Special Agent William Newell -- he vehemently denied that guns were walked. This question is for Mr. Forcellini, if you could. Were you at that press conference?

AGENT FORCELLI: No, ma'am, I was not, but I watched it on TV.

REP. BUERKLE: OK. And did you hear him when he was asked regarding guns walking -- did you hear his response to that?

AGENT FORCELLI: The "hell, no" response?

REP. BUERKLE: Yes, sir.

AGENT FORCELLI: I did, ma'am.

REP. BUERKLE: OK. And what was your reaction to that?

AGENT FORCELLI: I was appalled, because it was a blatant lie.
REP. BUERKLE: Was he -- he was aware that guns were being walked?

AGENT FORCELLI: He was -- yes, ma'am. In fact, as I stated earlier, there was a briefing paper that was forwarded up to headquarters. Mr. Newell, if not the author, would have had his ASAC prepare it, and it would have been forwarded through Mr. Newell. And I can tell you that Mr. Newell as recently as two months ago was stating that the case agent in this case should be getting an award. He still thinks this is an outstanding investigation. And I find it personally appalling.

REP. BUERKLE: My colleague Dr. Gosar brought up -- he made an analogy between "A Few Good Men" and this situation and the reminder. But with a good -- "Few Good Men" there was an order in place. There was a -- this was what everyone followed; this was the policy. But my sense is -- and I'd like to ask the three agents today -- that what happened in this situation was not the ordinary course of business. And so if you could each comment on that.

AGENT FORCELLI: Ma'am, I can tell you as recently as three weeks ago, we conducted an interdiction of a .50-caliber belt-fed rifle through a cooperative gun dealer. That individual showed up to pick up the rifle with cash, probably drug money. He was not a resident of the United States, but he had false ID. We had three trackers on the -- well, two on the gun, one in the package. And we had air support, the whole nine yards.

And once we got to a point where we realized we could not safely monitor that weapon, that individual was immediately stopped and that weapon seized, and he was arrested. That's how we normally do business. And I can tell you as a supervisor, no agents under my watch would have ever let a gun walk. I wouldn't have allowed it.

000060

AZ0267890

DOJ-FF-43722

REP. BUERKLE: Special Agent Casa, did you want to comment on that?

AGENT CASA: Yes. Yes, ma'am. Thank you. I'd have to back exactly what Pete said. I'm working a number of investigations throughout what we're going through now. I'm still juggling them with everything else. And I would never let one firearm walk. I've worked with -- I'm working a number of OCDETF cases with other agencies, and I have to assure them -- and they know who I am -- that we will not let one firearm walk. We will stop that firearm at all costs. Because one firearm on the street is one too many. That firearm can kill any one of us at this table.

That's all I'd like to add, ma'am. Thank you.

REP. BUERKLE: Thank you.

Special Agent Dodson? AGENT DODSON: Thank you, yes, ma'am. Prior to my involvement in Phoenix with the Fast and Furious investigation, in all of my ATF experience and my experience in local law enforcement, ma'am, I can tell you this: that we've never let a gun walk. I've never seen it authorized or allowed to let a gun walk. And if one even got away from us, like I stated earlier, nobody went home until we found it.

REP. BUERKLE: Thank you all very much. Again, thank you for your service, for being here today. And to Brian's family, again, our deepest sympathy.

I yield back.

REP. ISSA: I thank the gentle lady. I thank our witnesses for their testimony. It's not a normal practice to have the government witnesses along with the family or what sometimes are called civilians. But in this case I thought it was appropriate that you all be there together.

I appreciate all that you have done for us today to have us better understand the situation.

And Mrs. Terry, although I can never guarantee the outcome, about two years ago we were able to name a Border Patrol station after three fallen Border Patrol agents, several decades after they were killed. I've instructed my staff to work with the Border Patrol to find a mutually acceptable to you and the family location to name after Brian. And I will author that bill as soon as a location is determined by the family. And you have my promise that we'll do the other things that you asked for here today, that we will keep this from being political until we get to the full truth of everything surrounding this tragic incident that we know clearly could have been avoided.

I thank you.

And we'll take a short recess before the next panel. (Sounds
gavel.)

END.

000062

AZ0267892

DOJ-FF-43724

PANEL III OF A HEARING OF THE HOUSE OVERSIGHT AND GOVERNMENT REFORM
COMMITTEE SUBJECT: "OPERATION FAST AND FURIOUS: RECKLESS DECISIONS,
TRAGIC OUTCOMES" CHAIRED BY: REPRESENTATIVE DARRELL ISSA (R-CA) WITNESS:
ASSISTANT ATTORNEY GENERAL RONALD WEICH LOCATION: 2154 RAYBURN HOUSE
OFFICE BUILDING, WASHINGTON, D.C. TIME: 12:55 P.M. EDT DATE: WEDNESDAY,
JUNE 15, 2011

Copyright (c) 2011 by Federal News Service, Inc., Ste. 500 1000 Vermont
Avenue, NW, Washington, DC 20005, USA. Federal News Service is a private
firm not affiliated with the federal government. No portion of this
transcript may be copied, sold or retransmitted without the written
authority of Federal News Service, Inc. Copyright is not claimed as to
any part of the original work prepared by a United States government
officer or employee as a part of that person's official duties. For
information on subscribing to the FNS Internet Service, please visit
<http://www.fednews.com> or call (202) 347-1400

REPRESENTATIVE DARRELL ISSA (R-CA): (Sounds gavel.) Hearing
will now come back to order. We will now recognize our third panel. Mr.
Ronald Welch (sic) is assistant attorney general, U.S. Department of
Justice. Pursuant to the rules, would you please rise to take the oath?

(Witness is sworn in.)

REP. ISSA: Let the record indicate that the witness answered in
the affirmative. I've noticed -- note that you sat patiently through all
of the previous testimony. So not only do you understand the red
light/green light, but you'll be the final witness, and I appreciate your
patience and your being here to hear everything that came before.

You're now recognized.

RONALD WEICH: Thank you very much, Mr. Chairman. And I would
ask that my full statement be included in the record.

REP. ISSA: Without objection, so ordered.

MR. WEICH: Mr. Chairman, Ranking Member Cummings, members of
the committee, I'm very pleased to be here today to discuss the Justice
Department's continuing efforts to respond to the committee's subpoena
concerning ongoing criminal investigations on the southwest border and
pending indictments in the U.S. District Court for the District of
Arizona.

I want to say at the outset that the department is fully
committed to working with you in good faith to accommodate the
committee's legitimate oversight interests. We hope the committee will
similarly engage in good faith with the department in a manner that
recognizes the important confidentiality interests presented when
congressional oversight involves open criminal investigations. It's
difficult when the interests of principle -- principled exercise of the

000063

AZ0267893

DOJ-FF-43725

prerogatives of the legislative and executive branches come into potential conflict. The Constitution envisions that the branches will engage in a process of cooperation and accommodation to avoid such conflicts. And we look forward to engaging in that process with you.

As the committee is aware, many of the subpoenaed documents concern an open criminal investigation conducted by the Bureau of Alcohol, Tobacco and Firearms, known as Operation Fast and Furious.

Other subpoenaed documents concern the open investigation and pending prosecution regarding the shooting death of Agent Brian Terry. Let me just say here that the death of Agent Terry was a tragic loss, and the Justice Department extends its deepest sympathies to his family, who testified courageously here a moment ago.

We were very pleased to hear on Monday of the committee's commitment not to compromise the investigation into Agent Terry's murder or the broader gun-trafficking investigation. And we are fully committed to bringing to justice those who are responsible for Agent Terry's death.

The department recognizes the important role of congressional oversight, including oversight of the department's activities. It's the policy of the executive branch, at the instruction of the president, to comply with congressional requests for information to the fullest extent, consistent with the constitutional and statutory obligations of the executive branch. At the same time, attempts to conduct congressional oversight of ongoing criminal investigations are highly unusual and present serious issues. As the department's Office of Legal Counsel under President Reagan explained in 1986, the policy of the executive branch throughout our nation's history has generally been to decline to provide committees of Congress with access to or copies of open law-enforcement files except in extraordinary circumstances.

The policy is designed to fulfill the department's obligations to preserve the independence, integrity and effectiveness of law-enforcement investigations in the criminal-justice process generally. And I want to say this policy is completely nonpartisan. It has been relied on by administrations of both parties for decades.

So in response to your subpoena, this department has been striving to reconcile the two principles by accommodating the committee's oversight interests while protecting our confidentiality interests. Striking this balance can take time and effort.

It is not the case that the department is refusing to comply with the department subpoena. In fact, we are working diligently to satisfy the committee's core oversight interest without compromising the important purposes underlying the department's policy that I have described.

The starting point for our approach is an agreement by the department that this committee has a legitimate oversight interest in information, shedding light on the genesis and strategy of the Fast and

Furious operation. We have focused on identifying documents and responses to those needs.

We have already made a good deal of information available. In total, the department has physically produced more than 675 pages of documents to the committee, made available more than 900 additional pages for review. In addition, we've made one ATF official available for an interview with the committee staff, and we hope we will be able to schedule more interviews in the upcoming weeks. The committee has requested briefings on specific topics, and we have agreed to provide those.

The department has taken the extraordinary step of retaining an outside consultant, a contractor, at substantial cost, to assist us in building a database of the emails of the 19 individuals at ATF whom the committee has indicated primary interest in. We have engaged in a search of great magnitude to ensure that we get the documents that you have asked for, to the best of our ability.

The individuals -- there are 19 selected user accounts that you have focused on. They contain over 724,000 emails and attachments. In addition, the department has collected thousands of documents flagged to us by ATF as potentially responsive. Over two dozen lawyers at ATF and the department are reviewing those documents, and we have been able to provide documents to the committee each of the last three working days -- yesterday, Monday, and the Friday before.

The department will not be able to make available all of the documents encompassed by the subpoena because of the law-enforcement confidentiality interest that I have already identified. We cannot provide certain core investigative and prosecutorial documents, but we will work with the committee to identify and make available documents responsive to your core requests.

Let me conclude by emphasizing that the department recognizes that congressional oversight is an important part of our system of government. At the same time, congressional oversight that implicates ongoing congressional investigations presents -- (inaudible) -- not raised in ordinary cases.

Despite the unique challenges posed by oversight of open criminal matters, we remain optimistic that the department will be able to satisfy the committee's core oversight interests while safeguarding the integrity, independence and effectiveness of the department's ongoing criminal investigations.

Thank you for inviting me to testify, and I'll be pleased to answer your questions.

REP. ISSA: I certainly hope so.

I recognize myself.

Sir, if you're going to count pages like this as discovery, you should be ashamed of yourself. The only thing that this says is "Internal Use Only: Not For Dissemination Outside the ATF." That's not discovery. That is saying that nothing within the document requested, under any circumstances, are we going to be shown. It doesn't take so long if you don't spend your life redacting.

The pages go on like this forever. You've given us black paper instead of white paper. You might as well have given us a ream still in its original binder. How dare you make an opening statement -- how dare you make an opening statement of cooperation. We've had to subpoena again and again. Your representatives of this -- of your organization, of the executive branch, have discouraged witnesses from coming forward. It has only been the courage of whistleblowers like the ones you saw here today that have caused us to have more documents on this case than you have ever suggested turning over. And how dare you talk about 900 pages, all of which were available on the Internet. Your first discovery that you ever turned over, you gave us already available on Google search documents only.

So, sir, what executive privilege are you claiming? Sensitivity is not envisioned. On Monday, we held a hearing here. And I hope you had plenty of people watching it. And if you didn't, get it on YouTube. Not one witness, not on direct or on cross, talked in terms of the kind of unique sensitivity. Instead they gave us case law and cases involving Justice that say just the opposite of what you're saying.

Sir, you heard from the family and you heard from the whistleblowers. They have concerns about whether you're charging everybody in Brian Terry's murder. And, yes, I'm deeply concerned. And we've promised to get to the bottom of it. And if somebody wants to call that political interference, so be it. You should be held to a standard of why everybody, including the people who lie, buy and lie those weapons, why they're not being charged if there's any chance they can be properly linked to his murder.

But let's move on. Understand, that's for the family. For this committee, we're investigating you, your organization. The executive branch above the Phoenix office is who we're investigating. We want to know what felony-stupid, bad judgment led to allowing this program at the highest levels.

When you've got the head of Alcohol, Tobacco and Fire on basically his computer screen watching these things, don't tell me you didn't know what it was doing. It appears to us on this side of the aisle, and I believe on the other side, that you thought this was a good idea.

Today are you prepared to tell us that this program was, in fact, necessary and a good idea? And are you prepared to tell us who authorized it? Who was the greatest, highest-ranking person who authorized any part of it?

MR. WEICH: Mr. Chairman, you've raised a number of issues. Let me try to --

REP. ISSA: Do the last ones first. Who authorized this program that was so felony-stupid that it got people killed?

MR. WEICH: The attorney general has said that he wants to get to the bottom of this. He has directed the Office of the Inspector General at the Justice Department to review this matter in order to answer questions like the ones you have. REP. ISSA: And if that's the case, then why are we any burden at all? Isn't every one of our requests consistent with what the inspector general and the attorney general should be looking at in this case?

MR. WEICH: I don't know for a fact that everything you've asked for is what they're looking at --

REP. ISSA: I hope you came here to answer questions like that. We're asking for things related to the above-the-field level almost exclusively. Our questions are about who authorized this. Why did it happen? Why did it continue? Our question to you today is the president said he didn't authorize it. He said the attorney general didn't authorize it. He didn't say he didn't know about it. He said he didn't authorize it. Who at Justice authorized this program?

MR. WEICH: As I said, Mr. Chairman, at the Office of the Inspector General --

REP. ISSA: Who at Justice -- if you know, I ask you to answer -- who do you know was involved in the authorization of this, today? Do you know? Do you know?

MR. WEICH: Well, Mr. Chairman, if you'll permit me to answer the question, we sent a letter to Chairman Smith, who asked a question like that. And we pointed out that this operation, as with other law-enforcement operations, originated in ATF's Phoenix office.

REP. ISSA: That's not authorization. Who authorized it at the highest level?

MR. WEICH: Again, Mr. Chairman, please, if you'll permit me --

REP. ISSA: Do you know who authorized it at the highest level? And don't answer Phoenix or Tucson or any part of Arizona, if you please.

MR. WEICH: Mr. Chairman, it's difficult to answer your questions if you won't permit me to answer them.

REP. ISSA: I want the answer to my question, which was who here in Washington authorized it. We know who looked at it on video. We know who authorized it effectively, at least by acquiescence. Who authorized this at Justice?

MR. WEICH: Mr. Chairman, I do not know the answer to that question, and the inspector general is reviewing the matter.

REP. ISSA: Then we will have somebody back who does.

The ranking member is recognized. REP. CUMMINGS: Mr. Weich, let me apologize for that. You don't deserve that. Perhaps somebody else in the department does. What is your role? What's your job?

MR. WEICH: I'm the assistant attorney general for the Office of Legislative Affairs, Congressman.

REP. CUMMINGS: And these are not the decisions that you make, are they, the questions that he was just asking you about, the chairman was asking you about?

MR. WEICH: That's correct.

REP. CUMMINGS: And as I've said many times, there's a certain level of integrity that we must maintain in this committee. I see this committee as just lower than a court. And I know, and I've said it to the chairman, and I'll say it over and over again, you've got to go home to your family. You've got colleagues who are watching this. And for you to be hollered at and treated that way, I just think it's unfair. And so, on behalf of the committee, I apologize.

REP. ISSA: Would the gentleman yield?

REP. CUMMINGS: No, I will not yield. I'm trying to talk to the witness. I didn't interrupt you.

REP. ISSA: No, and you didn't -- I didn't say things --

REP. CUMMINGS: I'll yield as long as I get the time.

REP. ISSA: Hold the time.

Will the gentleman please note, you may apologize on behalf of something you say. I am not apologetic --

REP. CUMMINGS: Fine.

REP. ISSA: -- and you may not apologize on behalf of the committee.

REP. CUMMINGS: Thank you.

REP. ISSA: The gentleman may resume.

REP. CUMMINGS: Let me say this. I apologize, because we're better than that. We're better than that. And I do hope that we bring the appropriate people who can answer those questions. And even when they come, they should not be treated that way. On April 13th, you wrote to the committee to explain the extreme sensitivity of some of the

documents covered by your committee's subpoena of open law-enforcement files. You explained that the subpoena, quote, "encompasses records that would identify individuals who are assisting in the investigation and sources and investigative techniques that have not yet been disclosed."

But this is not all of the records, right? And I assume that it is just a small subset of subpoenaed documents and that you can redact such sensitive information. Isn't that correct?

MR. WEICH: That's correct, Congressman. And that's what we're trying to do.

REP. CUMMINGS: Now, I can understand the chairman being upset, because I'd be upset, but I wouldn't treat you like that, about somebody submitting to me some black pages. Can you explain that to me?

MR. WEICH: Well, one thing I want to make clear, Congressman, is that the number of pages that I cited in my testimony as having been produced or made available does not include such pages. Where those pages are redacted, it's part of a document showing where there was law-enforcement-sensitive information that we were unable to provide, but that is not included in the total.

REP. CUMMINGS: And what were the total pages that you submitted?

MR. WEICH: We'll get the exact numbers.

REP. CUMMINGS: Well, while your staff is assisting you on that, let me get going.

MR. WEICH: I have it.

REP. CUMMINGS: OK.

MR. WEICH: It was -- we have physically produced more than 675 pages of documents and made available more than 900 additional pages for review. And I should say, this production is ongoing. We have made documents available and physically produced documents in each of the last three business days. And I expect the document production to continue.

REP. CUMMINGS: The purpose of our investigation is to understand what occurred and who was responsible. Do you think that you'll be able to provide sufficient documents to answer those core questions without disclosing highly sensitive records?

MR. WEICH: I'm sorry, Congressman. Could you -- REP. CUMMINGS: In other words, you said that there are some confidentiality issues. And I'm trying to get to -- you said that this spans -- certain policy spans over various administrations. It wasn't just Democratic administrations, Republican administrations.

I'm just asking you, is there a way that we can get -- what I've often said, and I said it before the hearing that the chairman referred

to the other day, I said there's -- we need to do two things. We've got two things going on here. We're trying to look to see how far this thing went up, but at the same time, we've got these criminal prosecutions. And I'm saying is there a way that we can resolve those issues? Is that within your purview?

MR. WEICH: Yes, it is. And I believe that we can do so. We are doing that by providing documents, by briefing the committee, by making documents available, and by facilitating witness interviews. We share the committee's goal in getting to the bottom of these questions, and we are assisting the committee at the same time that the department itself has a review by the Office of the Inspector General.

REP. CUMMINGS: Now, you further explained that it is the public release of this information that presents the most risk to ongoing criminal investigations and prosecutions. You stated, and I quote, "Disclosure of these types of information may present risks to individual safety in the violent environment of firearms trafficking activities. Disclosure may also prematurely inform subjects and targets about our investigation in a manner that permits them to evade and obstruct our prosecutorial efforts."

Even if we're not so upset about -- and I am always concerned about prosecutions -- the fact that somebody's life might be in danger gives me great concern, because I see it, living where I live, almost every day. So what is the -- tell me something. What is the -- can you give me a response to that?

MR. WEICH: Yes, Congressman. Some of these documents identify cooperating witnesses. They identify confidential informants. They describe a strategy as to specific cases, ongoing cases. And revealing that strategy could inform potential targets of the investigation of law-enforcement activities. And it seems unwise -- you yourself, Ranking Member Cummings, highlighted a number of ways in which the committee investigation has already inadvertently overstepped the line and, for example, made public a sealed document.

We're concerned about this. We really think that if we work cooperatively, we can help the committee avoid such missteps, help satisfy the committee's oversight interests, and get to the bottom of these questions.

REP. CUMMINGS: Thank you very much.

REP. ISSA: The gentleman's time has expired. The gentleman from Oklahoma is recognized. Would you yield to me for 30 seconds?

REPRESENTATIVE JAMES LANKFORD (R-OK): Absolutely.

REP. ISSA: Did you provide those documents you say were released that were sealed? The documents you're saying were prematurely released, were they provided by you under any kind of request?

MR. WEICH: You know, I'm not certain. If you'll permit me to consult with my staff, I'll be able to --

REP. ISSA: OK, off the clock. Go ahead.

MR. WEICH: I got the answer, Mr. Chairman, and the answer is no. Those were not documents we provided. Those were documents that your investigators obtained and then made public, in spite of the court order that they not be made public.

REP. ISSA: So you're saying that if we get documents that we have no idea, because you're not providing documents, that we're responsible?

MR. WEICH: Yes, Mr. Chairman. It seems to me that you should ask the Justice Department whether sensitive documents should be made public. That particular document related to a wiretap, which is always a sensitive law-enforcement step. And if the committee would consult with us, we would help the committee avoid --

REP. ISSA: If you had given us those documents with appropriate guidance, that obviously wouldn't have happened. You didn't do it, and you had plenty of time to do it.

I yield back to the gentleman.

REP. LANKFORD: Thank you.

As I try to follow up this whole day and try to process what's been going on, February the 4th there was a letter that Senator Grassley went back and forth with you, saying, "The allegation that ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to straw purchasers who transported them to Mexico is false."

May the 2nd, you wrote again to Senator Grassley reiterating, "It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico." Yet I just asked some agents about that, and their statement was they think about 1,500 weapons are still out there, and probably two to one of those are in Mexico. Would you like to change your statement at all on that or have anything that you would want to shift on your previous statements from February or May?

MR. WEICH: Thank you, Congressman. The statements that you refer to are -- let me say this. Every time the Justice Department sends a letter to Congress, it is true to the best of our knowledge at the time that we send it.

Those particular statements remain true for the technical reason that the committee's report issued last night described. The straw purchasers don't take guns to Mexico. And in any event, ATF doesn't sanction or approve of the transfer of weapons to Mexico. That's obviously --

REP. LANKFORD: But ATF did permit those knowingly understanding they're headed towards the border. And that was well known, apparently, among the Phoenix office, and as we can tell going up the food chain, that these purchases were not being purchased by someone out, as was stated, bear hunting. These were straw purchasers buying in large quantities and headed towards Mexico. So how can we make a statement, "We're not sanctioning that, but we're also not interdicting; we're not trying to stop it either"?

MR. WEICH: Right. No, obviously allegations from the ATF agents you've heard from today and from others have given rise to serious questions about how ATF conducted this operation. And that's why the attorney general instituted an investigation and it's why we're cooperating in this committee's investigation.

REP. LANKFORD: Was there any communication with leadership in Mexico so that if these weapons showed up in Mexico, we were actually doing a law-enforcement process here to make sure they were both aware that these guns might be headed that way or that we had a working relationship, when arrests were made, we would cooperate with them dealing with these arrests?

MR. WEICH: Congressman, I can't -- from my position in the Office of Legislative Affairs, I don't have personal knowledge of the kind of communication. My understanding is that, in general, there are close ties between U.S. law enforcement and Mexican law enforcement, including on gun investigations. As a general matter, the answer to your question is yes. As to specific cases, I'm not in a position to say.

REP. LANKFORD: So we're not -- are you saying they were aware that this Fast and Furious was going on and that guns were headed their direction and they were involved in that process, or there's just "We know their phone numbers and we occasionally call each other"? This specific program is what I'm talking about. MR. WEICH: Congressman, I'm not in a position to answer that question with specificity.

REP. LANKFORD: Do you know who might be a good person that we could contact to get that kind of specific information?

MR. WEICH: The committee has already interviewed one ATF agent. And as I said, we're prepared to make other agents available. And these include high-ranking ATF officials. I would think that those individuals can speak with specificity to the question that you're asking.

REP. LANKFORD: Terrific. What other office besides the Phoenix office was doing this type of program?

MR. WEICH: Congressman, I'm not in a position to answer. I don't know the answer to that question.

REP. LANKFORD: OK. Do you know how many offices that DOJ has a relationship with that were informed about this operation as it was ongoing that might be engaged, at least have a -- not necessarily approval, but at least acknowledgement? "This is going on. Just be

aware. The Phoenix office is tracking straw poll -- tracking straw buyers, and they are out there. There may be as many as 1,500 guns. Just be aware of that."

Do we know how many other offices or agencies were aware of that?

MR. WEICH: Are you saying offices or agencies of the Justice Department?

REP. LANKFORD: Agencies within Justice, yeah, that it has a relationship with.

MR. WEICH: I don't know. There is close communication among the various U.S. attorney's offices and the law-enforcement components. There are, you know, cross-cutting meetings and task forces and so forth, including OCDETF. But I can't speak with specificity as to this operation.

REP. LANKFORD: OK, thank you.

I yield back.

REP. ISSA: I thank the gentleman.

The gentleman from Missouri, Mr. Clay.

REPRESENTATIVE WILLIAM LACY CLAY (D-MO): Thank you, Mr. Chairman. Mr. Weich, from what I can see, the Department of Justice has worked hard to comply with the committee's very large document request. Not only have you gone to considerable lengths and cost; you have worked with the majority committee staff to prioritize documents of great interest. You have briefed the committee, not only on your ongoing processing of documents, but on the case itself. On top of delivering many documents, you have made the most sensitive documents available for review by committee staff in ways that protect the documents' integrity.

It seems to me that the department is cooperating with the committee's extraordinary requests. And I say extraordinary because not only is the scope of the request very large, but because of its timing, during ongoing criminal investigations, as well as an ongoing IG investigation.

Flashing back to when the committee was investigating Blackwater during the previous administration, a member of this committee, now in the majority, said that, quote, "We are supposed to allow the administration to do its investigation, and then we do oversight," end of quote.

Now, I believe we have a legitimate interest in conducting oversight of the administration, but we should not jeopardize ongoing criminal cases or IG investigations just because a different party now holds the White House.

Mr. Weich, in your statement you explained that the department has made certain documents available to committee staff for their review, but without providing copies. This is because the documents contain sensitive law-enforcement material and the department needs to prevent their public disclosure.

MR. WEICH: That's absolutely right, Congressman.

REP. CLAY: Is this a common practice?

MR. WEICH: Yes, it's a very common practice, as I detail in my written statement. For many years the department has used this process of making documents available in order to maximize the number of documents that a committee can have access to. Chairmen for many years have accepted this practice. And we do it because the rules of the House do not easily permit a committee to keep documents confidential. And indeed, this committee has declined to provide any such assurances.

So this is what we do. We make documents publicly -- make documents available physically that we are prepared to see be made public. And those that are not, we make available to the committee investigators.

REP. LACY: And it's obvious that it's very disturbing to you and the department that the -- to the fact that, despite your procedures and clear warnings, the majority and Senator Grassley has inappropriately released sensitive documents. MR. WEICH: Let me say this, Congressman. What I -- as the chairman noted, I've been here all morning, and I listened to Senator Grassley, as well as to the Terry family and to the ATF agents who testified.

The common view of all the witnesses and the members of the committee is that it is vital that these prosecutions, most notably the prosecution of Agent Terry's alleged killers, be successful, that we not do anything to harm those prosecutions. Our effort to preserve confidentiality of certain law-enforcement-sensitive documents is in furtherance of that goal.

REP. LACY: And you wrote on Monday that you heard, during the hearing on Monday, that the committee is committed to not compromising the murder investigation or the broader gun-trafficking investigation through its oversight activities, given what we found out about improper disclosure and improper contact with witnesses. And the way that these hearings have been structured and conducted, I'm not sure I agree with your assessment.

I think that the majority's actions have come very close to compromising the investigations and prosecution, if they already have not done so. Do you still believe in the majority's commitment to not compromise these investigations?

MR. WEICH: Congressman Clay, we want to work with the committee. We have an ongoing relationship with the committee staff. I think it's important for us to flag these warnings and maintain

appropriate boundaries. But we share the committee's interest in getting to the bottom of these allegations, and so we will work with the committee.

REP. LACY: I thank the witness.

REP. ISSA: I thank the gentleman.

We now recognize the gentleman from Utah, Mr. Chaffetz.

REPRESENTATIVE JASON CHAFFETZ (R-UT): When did you first talk to Attorney General Holder about this issue?

MR. WEICH: As best as I can recall, it came up in preparation for his oversight hearings in May. He was asked about it, I think, by Chairman Issa on --

REP. CHAFFETZ: Do you still hold tight to the -- so you're suggesting that the letters that you sent on February 4th, 2011 to Senator Grassley, and again another letter on May 2nd, 2011 to Senator Grassley, that the content of those two letters is complete and accurate, as best you know?

MR. WEICH: Congressman, I've said --

REP. CHAFFETZ: That's a yes-or-no question. Is it complete and accurate? MR. WEICH: Congressman --

REP. CHAFFETZ: Yes or no?

MR. WEICH: Well, respectfully, that's not susceptible to a yes-no answer.

REP. CHAFFETZ: Go ahead.

MR. WEICH: Thank you. As the committee's report pointed out, there is a technical explanation for why the allegation that ATF sanctioned the sale of guns to straw purchasers, who then transported them to Mexico, is not an accurate statement. And so we said that that was false.

However, serious allegations have come to light, including the testimony of the agents today, that cause Attorney General Holder to want there to be an independent review of this matter, and he's initiated that review. So we're not clinging to the statements in those letters. We're saying --

REP. CHAFFETZ: So if I said that I think somebody knowingly and willfully actually misled and lied to Congress, would I be off base?

MR. WEICH: Respectfully, Congressman, you would be in that we make every effort to provide truthful information to Congress. I know that's something that I --

REP. CHAFFETZ: I would like to highlight --

MR. WEICH: -- take very seriously in my role.

REP. CHAFFETZ: -- January 8th. Remember, these letters came on February 4th and May 2nd. But on January 8th -- and I will quote from this internal document here from the Phoenix field division that indicated on page four, quote, "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 co-conspirators who would continue to operate and illegally traffic firearms to Mexican drug trafficking organizations." And it goes on there.

The administration knew in January, before these letters came out, that it was on purpose. It "would continue to operate and illegally traffic firearms to Mexico." How can that stand? And how can you and the Department of Justice and people who take responsibility for this allow the lies to continue to come to Congress? Why did this Obama administration purposely allow the illegal transfer of more than 2,000 weapons that they knew, according to this memo, were going to go to Mexico? MR. WEICH: Congressman, you've asked questions that the office of the inspector general is looking at, that this committee is looking at, and we --

REP. CHAFFETZ: I want answers from you. That's why you're here. You have this document. You know that this is true. This memo goes on to continue to say, and again in January, to date there have been five notable seizure events connected with the group, approximately 53 firearms originally purchased by this group, have been recovered. Three of these seizures have been in the country of Mexico. We knew that these were going south.

And yet, in your letter, that you state, quote, "It remains the understanding, our understanding that ATF Operation Fast and Furious did not knowingly permit straw purchase buyers to take guns into Mexico.

" That is patently and totally false. How do you do that? How do you do, when this comes out in January and again in May, you write, and you tell this Congress that they did not knowingly permit straw purchasers to take guns into Mexico, in total contradiction of the memo of January 8. How does that happen?

MR. WEICH: Congressman, I've explained to you that we do our best to provide the information to Congress as we know it. As allegations have come to light, we've initiated an investigation, and cooperating with this committee's investigation.

REP. CHAFFETZ: Is Fast and Furious still ongoing?

MR. WEICH: I don't believe so, Congressman. I'm --

REP. CHAFFETZ: At what point did the attorney general, did he order it that it be taken down, did we stop doing it? At what point did they actually, all right, enough is enough?

MR. WEICH: The attorney general made very clear, as this matter came to light, that guns should never be walked to Mexico --

REP. CHAFFETZ: I want to know when the attorney general actually got engaged in this. Why didn't he know about it? When did he know about it? Or was he just oblivious to it?

MR. WEICH: No, Congressman, he answered Chairman Issa's question on the House Judiciary Committee, the question was --

REP. CHAFFETZ: But I questioned him also on the House Judiciary Committee. If you remember, you were sitting in the row right behind him --

MR. WEICH: Very close.

REP. CHAFFETZ: And he said he didn't know when he first knew about it. So I'm trying to figure out when did he know about it, and then, what did he do about it?

MR. WEICH: He told Congressman Issa that he first learned about it several weeks before the hearing in connection with the press release. REP. CHAFFETZ: And what I don't understand is, when you go back and look at the record, President Obama knew about it back in March. If the president knew about it, why didn't the attorney general know about it, and why are you issuing a memo in May when the President of the United States, in an interview with, I believe, Univision, is saying, we know there were some mistakes made. How did that happen? The president makes this comment, and then still, months later, you have the gall to issue a memo to this Congress saying, that's just false. It's not true. That does not add up, and that's what this investigation is going to continue to pursue.

Yield back.

REP. ISSA: I thank the gentleman.

If I may grant myself a time for a colloquy, because the gentleman does seem to be rather upset, I've read the statement and if you were to parse words and determine the meaning of "is," then you probably could say that, because the straw purchasers, the original buyers, did not take them to Mexico, but rather transferred them to intermediaries, that in fact, they did not knowingly take them into Mexico. I would not call it the whole truth, but I certainly understand why, if someone's trying to deceive and mislead, that they could, in fact, write a letter like that and think that they technically didn't lie, and they would be correct.

With that, we recognize next the gentleman -- oh, you haven't done yours?

We recognize the gentleman from South Carolina, Mr. Gowdy.

REPRESENTATIVE TREY GOWDY (R-SC): Thank you, Mr. Chairman.

Sir, I know that you were here this morning while the members of the committee were -- and I will say this with all the civility that I can muster -- I think it is bitterly ironic that you would refer to committee missteps before you referred to ATF or DOJ missteps. In response to questioning from Mr. Issa, you used the phrase "committee missteps." I think the purpose of this hearing is not so much our missteps -- real or perceived -- but the missteps of ATF and DOJ. So let me start by asking, when did anyone at DOJ know that firearms, in connection with this investigation, were going to Mexico?

MR. WEICH: Congressman, that's not a question that I'm equipped to answer. As I said, the inspector general is looking at it, and we're cooperating in this committee's investigation.

REP. GOWDY: Well --

MR. WEICH: And let me reiterate, Congressman, I didn't start out my testimony by talking about committee missteps. I didn't talk about it in my opening statement -- REP. GOWDY: No, sir, you did not. But it is bitterly ironic that the first criticism you would have, and the first use of the word overstep would be of this committee, and not of ATF, and not of the United States attorney's office in Arizona. And I frankly am shocked at the relationship between ATF and that particular United States attorney's office.

It is untenable and unworkable, and I would hope that someone at DOJ would ask some questions of the U.S. attorney's office in Arizona. I cannot imagine that kind of working relationship where proffers are not allowed, and subpoenas take six weeks to be approved. And I would be hopeful that you would ask that. So you do not know when DOJ knew that firearms were in New Mexico?

MR. WEICH: No, sir. I personally do not.

REP. GOWDY: All right. What is DOJ's policy on guns walking?

MR. WEICH: The attorney general has made very clear that guns cannot walk to Mexico. That is to say, guns, it is, per se, a violation of law for guns to be transported across the border to Mexico.

REP. GOWDY: What is your definition of walking?

MR. WEICH: That, as the committee's report made clear, is the subject of much discussion within ATF and --

REP. GOWDY: I'm asking about DOJ.

MR. WEICH: I'm afraid I'm not in a position to answer that question. I will say that it is --

REP. GOWDY: But you would agree that saying, that me physically handing someone who's a prohibitive person, a gun, that cannot be the only definition of walking. Having knowledge that a gun is leaving your area of surveillance or jurisdiction, is walking. Correct?

MR. WEICH: I can't define walking. What I can say, Congressman, is that it is -- this is a challenging enforcement environment, as I think you know, as a former federal prosecutor.

REP. GOWDY: I do, but I've also got to tell you, as a former federal prosecutor. This is unprecedented. I've never heard -- would you ever allow or sanction controlled substances -- if it were controlled substances and not firearms, would you have ever allowed or sanctioned or permitted them to walk?

MR. WEICH: First of all, there's a big difference. Drugs are, per se, illegal, and guns are not. The sale of a firearm or multiple firearms to an individual who is not a prohibitive person is not illegal, of course. REP. GOWDY: I'm aware of that. Would you have allowed controlled substances to skip surveillance and go to Mexico?

MR. WEICH: That's a question that's well beyond my area of responsibility or expertise. I will note that, of course, there are controlled buys in narcotics cases, in order to pursue a drug conspiracy and pursue the highest levels of a drug conspiracy. I know that from my personal experience as a prosecutor. REP. GOWDY: Well, who can we ask, who can we invite before this committee, that can tell us definitively when the Department of Justice knew that guns were going into Mexico? Who would you invite us to invite?

MR. WEICH: I think you're pursuing the right track, if I can be so presumptuous. You're obtaining documents, you're interviewing witnesses. You interviewed Agent Newell, who was one of the individuals mentioned in the testimony today as having been very involved in this. There are other agents and ATF officials who we are ready to provide for interviews. We --

REP. GOWDY: What about the United States attorney in Arizona? When did the U.S. attorney know that guns were a part of -- this was an OSADEF investigation, so it's impossible to argue the United States Attorney's office wasn't part and parcel to it. When did the United States attorney in Arizona know that firearms were leaving the United States and going to Mexico?

MR. WEICH: I don't know the answer to that question, Congressman Gowdy. But could I just say, I know Dennis Burke, the U.S. attorney there. He is a very hard-working, dedicated public servant, and what obviously happened here is there was a serious, profound disagreement about strategy. But the common goal of the United States attorney's office and all of the ATF agents is to interdict guns, to stop the gun trafficking to Mexico. So Mr. Burke, I'm sure, was dedicated to that purpose.

REP. GOWDY: Sir, with respect, given the fact that you know, Mr. Burke and I do not, would you share with him what was said this morning about the dissatisfaction with federal law enforcement in Arizona and the relationship that they have with the United States attorney's office?

MR. WEICH: Yes.

REP. GOWDY: Because that has not been my experience, certainly not in South Carolina, and not in other jurisdictions. The level of animosity and the fighting between law enforcement and federal prosecutors over something as simple as a proffer -- are you aware of any United States attorney's office that doesn't engage or allow the use of proffers?

MR. WEICH: It's obviously a common technique.

REP. GOWDY: Of course, it is. There's no way to build a historical case without proffers. And since you know Mr. Burke and I do not, would you ask him to do what he can to repair his relationship with law enforcement? Because it appears to be fractured, from this vantage point.

MR. WEICH: I'd be happy to talk to him, but I'm sure he's monitoring this hearing closely.

REP. GOWDY: Thank you.

REP. ISSA: I thank the gentleman.

We recognize the gentleman from Massachusetts, Mr. Lynch, for five minutes.

REPRESENTATIVE STEPHEN LYNCH (D-MA): Thank you, Mr. Chairman.

Just briefly, following up on that point, it would seem that the approach of at least the deputy or assistance U.S. attorney down there was to acquire corpus delicti, the body of the crime, to actually have the guns in order to proceed with the prosecution. Then, that will, if that's the case, I believe it's an improper application of the law, and since this committee is involved in overseeing that our laws, once passed by Congress, are indeed enforced, it would serve us all, I think, if we review that, the application of the law, if that indeed is the approach of the office down there.

MR. WEICH: Congressman Lynch, if I may, one thing that's been brought to my attention is that the United States attorney's office has brought cases involving large numbers of guns for purchases, individuals alleged to have trafficked guns without a license, and that those prosecutions have sometimes resulted in hung juries or directed verdicts of acquittal because of the high stage of proof, especially in the Ninth Circuit. So there may be something for Congress to look at in its legislative arena as well.

000080

AZ0267910

DOJ-FF-43742

REP. LYNCH: OK. With that, I will yield the balance of my time to the gentleman from Maryland, Mr. Cummings.

REPRESENTATIVE ELIJAH CUMMINGS (D-MD): Thank you very much.

Mr. Chairman, I want to submit our letter for the record, requesting the minority day of the hearings. It's dated June 15, today.

REP. ISSA: Thank you. I'm in receipt of your request. REP. CUMMINGS: Well, I'm asking that it be admitted into the record, Mr. Chairman, signed by members of the --

REP. ISSA: Certainly. Without objection. So ordered.

REP. CUMMINGS: Thank you very much.

I want to say this to you, Mr. Weich. I'm sitting here and I'm listening to all of this, and I want you to take a message back. In some kind of way, we've got to establish, you know, the majority has some concerns, and I think many of them probably quite legitimate. And there has to be a balance here. I'm always concerned about people possibly dying as a result of something we might do in this committee. I'm concerned about murderers getting off. I spent a phenomenal amount of time trying to protect witnesses.

I've submitted legislation that has been held up in the Senate side, by the other side, trying to protect witnesses. I believe in ultimate cooperation between law enforcement and the public. I have a record of it for years. You know why? Because I go to the funerals, I see the deaths, I hear the cries and I experience the pain. In some kind of way, we've got to make sure that we strike the balance that I was just talking about. And I'm not sure, I'm just not sure, whether that balance has been struck the way it ought to be.

This committee has a job to do. The Justice Department has a job to do. In some kind of way, we've got to find a way, as the adults in all of this, to make that happen, and make it work. And I'm really serious about that. You've got to, you know, life is short, and I tell my staff that every day I look in the mirror and I face my own mortality. And the question is, is how can I be most effective and efficient. And while we go through this ring around the rosy stuff, what happens is that none of us are affected.

And you heard me make a commitment to that lady, Ms. Terry. I shall not rest until everybody involved in this process -- and I mean that, I shall not rest -- until all of that is addressed. Now, the chairman said something that was very interesting. He, a moment ago, spoke about all this transparency and we need to read the whole document, and I appreciate that. But the one thing he did not say about his memo on January 5, he didn't read this piece. You remember, Mr. Chaffetz mentioned this memo, he said read a piece of the memo, but he didn't read all of it.

And let me just read this line so that the record will be clear. It says investigative, talks about this, on January 5, 2010, investigation and prosecution, and I quote, "investigative and prosecution strategies were discussed, and a determination was made that there was minimal evidence at this time to support any type of prosecution." I just wanted to finish that because I think it's important, particularly in the light of the chairman saying that we need to have the whole statement. And with that, I yield back.

REP. ISSA: I thank the gentleman.

We now go to the gentlelady from New York, Ms. Buerkle.

REPRESENTATIVE ANN MARIE BUERKLE (R-NY): Thank you, Mr. Chairman.

And thank you, Mr. Weich, for being here today. I have a couple of questions. You keep alluding to the inquiry and the investigation that IG is going to conduct at the request of --

MR. WEICH: That office is currently conducting that investigation.

REP. BUERKLE: OK. All right.

So are you concerned that their investigation is going to conflict or interfere with DOJ's investigation?

MR. WEICH: That, oh you mean the criminal investigation?

REP. BUERKLE: Yes, that's the --

MR. WEICH: The inspector general has a good deal of experience in avoiding those kinds of conflicts, and of course, their work is strictly confidential. Any report that they would issue publicly would be carefully vetted to avoid those kinds of concerns.

REP. BUERKLE: And so, you're not concerned that they will interfere with the DOJ's investigation, just to be clear?

MR. WEICH: We are not concerned.

REP. BUERKLE: OK. Then why are you concerned that congressional, that this investigation, that's continually what we hear, while there's an ongoing investigation, and so we feel we're not getting the answers we need because you're concerned about compromising a federal investigation. I'd like you to differentiate for this committee.

MR. WEICH: Sure. Well, first of all, Congresswoman, we're not saying that this committee should not investigate. To the contrary. We recognize the legitimate oversight interests, and we are cooperating with the committee as it pursues this. So we're not, in any way, saying don't do this. We're --

REP. BUERKLE: But if I would interrupt for a minute, there's a de facto, if you don't provide what's being asked, or you provide what we see here, all those redactive sheets. Whether or not you agree we have legitimate oversight, the fact that you're not complying with our request is a de facto, well, you're not going to comply.

MR. WEICH: We have provided almost 2,000 documents in different forms. The redacted documents that the chairman showed is a little bit of a red herring, I say with respect, because those were multi subject documents, I'm informed, and where the subject wasn't, the subject, you know, that portion of the memo wasn't responsive to the subpoena, it was blacked out because we're obviously not producing non-responsive material. We're not redacting heavily the material that the committee is seeking, and that is within its core oversight arena.

REP. BUERKLE: All right. With all due respect, I think this committee would disagree with your assessment, that we have been, we feel like we've been stonewalled, and we've not gotten the information that we've requested for DOJ. But I don't want to take up all my time on that line of questioning. You sat here this morning during the hearing, the second panel with the three special agents. Did you hear them say that this was the first time and perhaps the only time they had seen such an operation as this one exist?

MR. WEICH: I did hear them say that.

REP. BUERKLE: And is that of any concern to you, that, out of nowhere, there's this Fast and Furious Program that results in the death of Brian Terry?

MR. WEICH: No. It is obviously the, some of the testimony that was provided today is of great concern to the Justice Department, and that is why we are investigating it, through the office of the inspector general, and cooperating with this committee's investigation.

REP. BUERKLE: Is this the first time you've heard any of that testimony?

MR. WEICH: I've been generally aware of it in my role as the head of the office of Legislative Affairs, have obviously been aware of this for a number of months.

REP. BUERKLE: And what, when you say you're generally aware, what does that mean?

MR. WEICH: I've been involved in producing responses to letters. I've been in discussions about how to comply with the committee's subpoena, so I've been aware. I must say, I was very pleased to be here today to hear personally all of the testimony that was provided.

REP. BUERKLE: And before I get onto my last question, did you hear the issue they raised regarding retaliation?

MR. WEICH: I did. And I thank you, Congresswoman. I want to assure the committee -- I think a number of members raised this -- that the Department of Justice will not, would never retaliate against whistleblowers.

REP. BUERKLE: Lastly, my question, and I asked the family of Brian Terry, what, if they had the ability to ask a question, what they would like to know, so I'm going to read the question that Mr. Heyer gave us to ask you. And I'd like, to the best of your ability, to answer this question. I think that we would want to know if the dragnet that is set to find everyone involved in Brian's murder will be set deep enough and wide enough to encompass anyone involved in Operation Fast and Furious.

MR. WEICH: The answer to that question is unequivocally yes. There is a firm commitment in the Department of Justice to bring everyone responsible for Agent Terry's death to justice.

REP. BUERKLE: And the second part of his question -- if the guns used in Brian's murder were a part of this operation, then we'd want to know, will everyone in the operation that had to deal with those specific weapons, be brought up on charges of facilitating the murder of Brian Terry?

MR. WEICH: Obviously, the whole purpose of the investigations that are ongoing, both in the office of the inspector general and here, is to ensure that there is accountability for the decisions that have been made, and most importantly, to improve and strengthen our law enforcement efforts. If there are flawed strategies, if there is insufficient surveillance of weapons, obviously, that's something that the Justice Department wants to rectify.

REP. BUERKLE: Thank you.

I yield back, Mr. Chairman.

REP. ISSA: I thank the gentlelady.

We now recognize the gentleman from Texas, Mr. Farenthold, for five minutes.

REPRESENTATIVE BLAKE FARENTHOLD (R-TX): Thank you, Mr. Chairman.

I assume you all are investigating various crimes that were associated with these guns. Aside from the tragic murder of Agent Terry, are there any other American law enforcement officers or citizens who've died as a result of this program?

MR. WEICH: Congressman, I can't accept the premise of the question. I don't know that any particular murder can be attributed to this program. I think that assumes a lot of fact, and I'm just not equipped to deal with that. So I can't answer the question, because I can't accept the premise.

REP. FARENTHOLD: All right. Let's, let's talk about, you heard in the testimony this morning of the agents saying that there was some sort of strategy that we would allow these guns to move up the chain of command with the rather nebulous goal of snaring a drug cartel. Are you aware, is this the strategy, and if so, can you tell me in any rational basis how the means that we used justify the ends, when we quit following the guns as soon as they changed hands the first time? There was no cooperation with the Mexican authorities, and it just seems like once they did the first top, we just went away. MR. WEICH: Congressman, one thing I heard loud and clear from the ATF testimony today, from those agents, was that the people with whom they disagreed on the strategic questions, told them and believed that they were engaged in a strategy to topple a significant transnational gun trafficking operation. If the strategy was flawed, then individuals should be held to account, and the strategies should be improved. But I did hear that everybody had the goal of stopping illegal gun trafficking to Mexico. REP. FARENTHOLD: To me, it just doesn't seem, it seems like the next step is you follow the guns all the way. The actions that appear to have been taken don't seem to make any relationship to the strategy at all. But I've got a couple of other questions, so we're going to leave that on. You've been reluctant to provide information and answer questions, continually citing ongoing criminal investigations, and not wanting criminals to go free or jeopardize these investigations. But my understanding -- I'm a lawyer -- my understanding of our justice system is that the defendant is entitled to all exculpatory evidence. So if we've got something that will help the defense, we're obliged to turn it over. So it seems like that, you ought to go ahead and turn it over to us so we can finish our investigation and meet your legal obligation to any defendants in this case for full disclosure.

MR. WEICH: Well, Congressman, we certainly need to meet our constitutional obligations to the defendants. I would note that when the committee interviews potential trial witnesses, you're creating material that wouldn't otherwise exist, that may be used to impeach witnesses at trial.

REP. FARENTHOLD: I mean, we're after the truth, and regardless of whether it comes out in front of this committee or comes out in front of a trial shouldn't matter. Let me go on. You also say that there's some concerns with releasing information to us that would jeopardize other investigations in other strategies and programs. Is that correct?

MR. WEICH: Yes.

REP. FARENTHOLD: Would you be willing to provide a briefing to all or some of this committee in a classified basis about those? I think you sensed a lot of anger, I'd go so far as to say anger from this committee that our government is engaged in what we perceive to be a reckless operation. Even if in a classified manner you could assure us you guys aren't so far off the reservation that there's a problem, I think it would go a long way to stemming some of the, for lack of a better word, adversarial conversations that are going on here. MR. WEICH: I hear you, Congressman. First of all, we'd be pleased to brief

000085

AZ0267915

DOJ-FF-43747

the committee. We have briefed the committee and will continue to do. It should not be adversarial. I want to emphasize this. We share the committee's concern about the matters that you heard about this morning. We are not adversarial to you in this. We are trying to get to the bottom of this ourselves.

REP. FARENTHOLD: And I'll yield my remaining 30 seconds to the chair.

REP. ISSA: I thank the gentleman.

You made a statement in that letter that you signed on the fourth that said ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. Who prepared that line in your letter?

MR. WEICH: Chairman Issa, the --

REP. ISSA: You signed it. Who prepared it? Was it you?

MR. WEICH: These letters are the product of the Justice Department --

REP. ISSA: So your signature on that letter doesn't mean that you know it to be true. Is that correct?

MR. WEICH: I take ultimate responsibility --

REP. ISSA: OK. Isn't that statement false now with what you know?

MR. WEICH: Obviously, there have been allegations that call into serious question that particular ---

REP. ISSA: Weren't there documents that now have been provided and made public that let you know that that statement was false?

MR. WEICH: And that's why you're investigating, and that's why we're investigating.

REP. ISSA: I'll just take your agreement that those documents indicate that that statement that you signed, that someone prepared for your signature, were false.

MR. WEICH: Congressman, I'm not prepared to say that at this time. Everything that we say is true to the best of our knowledge at the time we say it. As more facts come out, obviously, our understanding of the situation is enhanced.

REP. ISSA: Just for the record, we will be posting online the 20-some pages that were made available. Since, out of the 20-some pages, the only thing that's not redacted other than internal use only statements is, Kevin Simpson, Acting Division Operations Officer, U.S. Department of Justice, ATF, 201 East Washington Street, Suite 940,

Phoenix, Arizona, and the zip. The phone numbers are redacted. That's 100 percent of what you call discovery.

Would the ranking member like a second round?

REP. CUMMINGS: I just have one question.

REP. ISSA: The gentleman's recognized.

REP. CUMMINGS: This is following up on what you just were talking about.

Let me ask you this, Mr. Weich, again. I want to go back to trying to be effective and efficient. Again, we, I'm tired of, when we're put in a position where we're wasting time. You know, we may be dead next week, so I'm just being very frank with you. I'm tired. I don't want to waste time. Life is short.

This is the question. If you got assurances, the department got assurances that we would not be disclosing documents that are extremely sensitive, and agrees to, you know, to try to make sure that, well, we would commit to working out accommodations where we could go through -- I mean, you submit the documents, we got through them, making sure that, and we go through them together, come up with some type, would you want to come up with some kind of schedule whereby we can get what we want, you can be assured that we're not doing something that interferes with the kinds of things that you just talked about?

MR. WEICH: We will work with you, Congressman. We strongly favor that kind of cooperative accommodation process. It's traditional, and in this instance, where we recognize the committee's legitimate oversight needs, we want to reenter that process and do as much as we can to provide information to the committee.

REP. CUMMINGS: Well, would you all be willing to submit to a schedule, a document production schedule? See this is what I'm getting to. We can do this all day. And a new Congress will be in. And that's why I'm talking the way I'm talking. I'm, we've got to get stuff done. And I can't, we cannot keep our commitment to Ms. Terry by doing this back and forth thing. It's a waste of time. It's a waste of effort. And life is short.

MR. WEICH: I hear you, Congressman.

REP. CUMMINGS: So, I'm trying to get you to, I'm trying to help you help us --

MR. WEICH: I understand.

REP. CUMMINGS: And hopefully, help yourself at the same time. So, I mean, if we can work something out, can we move faster? MR. WEICH: Yeah. We --

REP. CUMMINGS: Because obviously, the majority feels like we're not moving fast enough, and I can understand that.

MR. WEICH: Yeah.

REP. CUMMINGS: That you're not moving fast enough.

I know you've got all kinds of -- I think you said it's something like 700,000 pages, or something like that. What would you suggest? Let me put it another way. How, what kind of arrangements would you suggest that, so that we don't keep running into this wall?

MR. WEICH: I don't think we've hit a wall. I don't think we're at an impasse. I think we are now on track. Obviously, it may have been a bumpy start. But we have produced documents in each of the last three working days, we made a witness available for an interview and we have a list of others we are ready to facilitate interviews of.

We are doing what I think you're asking, Congressman, which is trying to accommodate the committee's needs, consistent with our confidentiality interests.

REP. CUMMINGS: Well, would you after this try to sit down with us and try to see if we can't -- I mean, it's up to the chairman; he's the chairman of the committee -- but see if we can work out something where we can get documents and set up a schedule so we can get these documents passed? The last few days is wonderful, but I think we need to try to see if we can move the process along a little bit.

MR. WEICH: I'd be pleased to do that; I would welcome that. One thing I would say is we've devoted substantial resources -- attorneys full time -- to review these documents. We've hired a contractor to help us put these in a form that they can be efficiently reviewed. So we're rolling here.

REP. CUMMINGS: You know, one of the things -- one of the problems here is something that I talk about a lot and I recommend this book to you. It's called, "The Speed of Trust" by Covey. And he just talks about when people don't trust each other, it slows down everything. When they trust each other it speeds it up.

And I think maybe we need to -- I know you all are worried about documents being released. It seems like we're worried about not getting all the documents timely. Sometimes it's like -- well, we've got to break through that so that we can do the work of the American people.

And with that, I yield back. REP. ISSA: I thank the gentleman.

And I'll close more patiently than I opened.

Would you agree to voluntarily provide a list of DOJ and/or other personnel that prepared or participated in the preparing of the February 4th letter that we've had so much discussion about?

000088

AZ0267918

DOJ-FF-43750

MR. WEICH: Congressman, I'm not prepared to make that commitment at this time. These letters are the product of substantial deliberation with the executive branch.

As I said --

REP. ISSA: Would you agree to make available a list of personnel who worked on and may have in some way been responsible specifically for the misstatement in the letter that says ATF makes every effort to interdict weapons that have been purchased illegally and prevent the transportation to Mexico?

MR. WEICH: I'm not prepared to make that commitment at this time.

What I am committed to -- what I am prepared to commit to is an ongoing effort to help the committee get to the underlying questions here about ATF's law enforcement activities.

REP. ISSA: Now, just for the record: Your job, the reason you're paid and basically have the title you have, is to answer Congress's questions.

MR. WEICH: That's a big part of my job.

REP. ISSA: Roughly five months ago Senator Grassley was told by your office in writing that he wasn't going to get answers, because he wasn't a chairman. You're aware of that, right?

MR. WEICH: I am. That's not an accurate statement. If I may -

-

REP. ISSA: Or more specifically that --

MR. WEICH: It's not that he won't get an answer --

REP. ISSA: -- that Chairman Leahy would have to request them.

MR. WEICH: We have answered Senator Grassley's letters. We have great respect for Senator Grassley, with whom the department has worked on many projects over the years quite productively.

As to oversight, it is the long-time position of the executive branch through administrations of both parties that the Congress -- each house of Congress -- speaks through its committees as to oversight. And so you are exercising the power of the House. No Senate chairman has made a parallel request. REP. ISSA: And I'm well aware that for two years of this administration there were no Republicans able to make those requests and have them granted and the requests generally were not made at all. That is in fact the position of the majority here is that there wasn't valid oversight for those two years.

It's my personal position -- and I'll go on the record today, since people were kind of enough to read things from the past -- that we

000089

AZ0267919

DOJ-FF-43751

need to have legitimate minority rights. And that at some future time in Congress -- and each time the rules are produced -- I'm going to try to have a party of the opposite party of the president, even if they're a minority, have rights. Because I think it's wrong that in fact, the majority ultimately often finds itself asked and encouraged to protect the administration.

I was here for the Bush administration. I was more junior, but I certainly saw people in your position constantly cajoling us to protect the president. I don't approve it; I now appreciate just how wrong that was.

Having said that, I will on behalf of the committee suggest something that you may take back to DOJ: If you're willing to do in-camera review 100 percent unredacted -- I repeat, 100 percent unredacted, and please don't say it's unacceptable, because it's obviously above your pay grade -- you prepare, we come over -- we being the staff. They look at the unredacted material. To the extent that we can agree on mutual redactions and the materials are sent over, to the extent that we disagree, then we can talk in terms of documents that have been seen that are not available, are not releasable, do not fall within your concerns, because I share your concerns that our rules are such that once something comes over here -- with the exception of the select intelligence committee -- it becomes much more problematic as far as review or release.

I want to get around that. I want to work with Justice on it. I cannot from this side of the dais accept any responsibility for documents that are leaked by third parties who get them. And I cannot enter into a negotiation where you tell us you're going to redact what we got around you, while you don't even let us see unredacted versions in-camera.

There's never been a time in which I was more animated than when my staff came back from that breakthrough meeting to find out that they had mostly black pages as your response in-camera.

So please take back, on behalf of this member and I hope the minority, that we should be trusted to send over career-professional staff to look at unredacted documents, understanding we're not taking them with us until or unless there is an agreement to how they would be appropriately redacted. That is an extension I'm putting on the record. Until that occurs, we will continue to expect discovery and we will continue to object to getting virtually all-black pages. And with that, I think the ranking member has a question.

REP. CUMMINGS: Will the gentleman yield for just a second?

REP. ISSA: Of course.

REP. CUMMINGS: I'm assuming that the message that you're sending to higher ups that would include both sides -- they're from both sides --

REP. ISSA: That's exactly the intention --

REP. CUMMINGS: Simultaneously.

REP. ISSA: It's a simultaneous -- our policies -- for those who may want to be aware of it -- our policies are that in fact anything that is received as a document production is received to both sides.

As you know, Mr. Weich, normally we ask you to send copies to both sides simultaneously. In the case of an in-camera, we would expect that staff would be detailed from both sides to go over and review it.

But we will only come back for in-camera review if in fact -- and we'll send cleared personnel, you know, pre-agreed to you from both sides if that becomes an issue -- but we have to look at the source material if an in-camera review will be appropriate.

No judge is going to look at redacted material as in-camera. Certainly you wouldn't expect us to see a part of a document that does us very little good and then say, well, yes, we had production.

MR. WEICH: Well, Mr. Chairman, I appreciate your recognition that I can't sort of negotiate this kind of thing at the witness table. But I can assure you that we will work with you on these kind of process concerns. That's the mode that we're in trying to help the committee address its oversight needs.

REP. ISSA: We look forward to that. This has been difficult. I will go again, last on the record, that we believe that there has been some breakthrough in the last week or so. We're thankful for the breakthrough. It's been awhile in coming, but hopefully it's the last time that we'll have the logjam with that.

And with that, this hearing stands adjourned. (Sounds gavel.)

END.