

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

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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 Forcellini 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."

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 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 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 delicti 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 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 Forcelli -- 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.

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. I 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 they 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 may sound 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, 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.

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 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 Forcelli, 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 I 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.

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. Forcelli -- 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 whistle-blowing, 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?

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 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. Forcelli, 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.

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 OCDEF 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.