
From: Burton, Faith (SMO)
To: Weich, Ron (SMO)
Sent: 7/5/2011 10:48:33 AM
Subject: FW: excerpts

-----Original Message-----

From: Axelrod, Matthew (ODAG)
Sent: Tuesday, July 05, 2011 10:47 AM
To: 'Castor, Stephen'
Cc: Burton, Faith (SMO)
Subject: RE: excerpts

Steve,

We'd like to vet this with ATF and the USAO, but because it involves a transcript excerpt we wanted to check with you first. Are you okay with us sending the excerpt to ATF and USAO to review for potential redactions? Thanks.

Matt

-----Original Message-----

From: Castor, Stephen [mailto:Stephen.Castor@mail.house.gov]
Sent: Friday, July 01, 2011 8:07 PM
To: Axelrod, Matthew (ODAG)
Subject: Re: excerpts

We have received some inquiries from news organizations about Mr. Newell's testimony. If we respond, we may need to provide some additional context.

----- Original Message -----

From: Axelrod, Matthew (ODAG) [mailto:Matthew.Axelrod@usdoj.gov]
Sent: Friday, July 01, 2011 07:43 PM
To: Castor, Stephen
Cc: Burton, Faith (SMO) <Faith.Burton@usdoj.gov>
Subject: Re: excerpts

Thanks, Steve. Will do. Can you let me know the context in which they'll be used? I likely won't be able to get back to you on this until next week. Do you have a deadline?

Also, it turns out that Chait is on leave next week. Maybe we can schedule him for the following week? If it works for you, we'll see if we can set up one of the briefings for July 7 instead.

----- Original Message -----

From: Castor, Stephen [mailto:Stephen.Castor@mail.house.gov]
Sent: Friday, July 01, 2011 06:54 PM
To: Axelrod, Matthew (ODAG)
Subject: excerpts

Hi Matt

Below are some excerpts from the Newell transcript. Please let me know if there is anything in these excerpts that you would recommend redacting.

Thanks

Steve

Q Right, I understand, but you identified them as lawful purchases. If the ATF was aware, and

certainly the ATF was aware, as this bullet paragraph number 2 on the first page points out, that purchases by these purchasers were being recovered in Mexico, and you were aware that they were purchasing with cash, some of the indicia of suspicion that [staff counsel name redacted] was walking through with you earlier, you're aware that previous purchases were no longer in their possession because they were recovered in Mexico. So how is that a lawful purchase if you know that these people are engaging in that sort of activity and you, rather than choosing to interdict in some way, allow that to continue to happen?

A Because, as I said earlier, it's the purchase versus the people who are transporting and trafficking and illegally tracking firearms to Mexico. I'm talking about two sets of events. I'm talking about the purchase at the gun store is one instance. We have to prove in each separate purchase, each separate transaction that a violation has occurred, and then in this case, in general, in many cases, those people take them to someone else who then transports them. The goal of this case was to identify the straw purchasers, the middle men, if you will, and then the financiers, follow the money, like probably every agency should do, I think that's a key indicator of who is financing it, obviously to determine who's leading as to who's financing, so it is a multi tiered approach. So that's why I think in this instance they're talking about the transfer is separate from the illegally trafficking because in this, in many cases, generally, and in many cases that we work, in the Phoenix area and across the border it is the straw purchasers, they themselves for the most part don't actually traffic the guns, or transport the guns I should say, across the border. It's usually someone else who is doing it because the straw purchaser's job is, job if you will, is to purchase the firearms for the network, give them to someone else and then

Q But that purchase is not a legal purchase. If the person because they are buying the firearm and swearing on a Federal form that they're using it for their own purposes, for their own personal use, right?

A We have to prove that though. We have to prove the intent.

Q I understand that, but we're talking about whether or not these are lawful purchases or not lawful purchases.

A But the burden --

Q If the person let me finish my question please. If the person purchasing the firearm at the time they're purchasing the firearm has the intent to transfer it to someone else, that is not a lawful purchase, correct?

A True. But we have to prove that.

Q I understand you have to prove that. But that is not a lawful purchase?

A In that scenario you gave me that's true.

Q Okay. And some of the ways that you might go about proving or some indicia of some evidence that the person didn't have the intent to use the firearm for their personal use at the time they purchased it would be what?

A We have to have evidence that we pick up on electronic surveillance or other means to determine that the intent of that person when they went into the gun store was, in fact, to falsify the form for the specific purpose of giving it to someone else who they were, in fact, not the actual purchaser.

Q If that person had previously purchased multiple firearms on multiple previous occasions, each time with cash, each time with amounts of money that were not commensurate with their visible means of support, they filed a tax return, for example, and they earned \$15,000 last year and they walk in with \$40,000 within a 2 or 3 week period and buy 40 or 50 or 60 or 70 guns, wouldn't those types of things be evidence that they were not purchasing when they come in for the fifth or sixth or seventh time to buy 20 or 40 or 60 guns that they were not, that they're lying when they say it's for their personal use?

A We have to prove in each and every transaction that that, in fact, there's a set of facts that support probable cause to believe that, in fact, that transaction was illegal. We take all the information that we get, everything you mentioned and in addition with all the other things that we can put together to build a case that that is, in fact, an illegal transaction or series of transactions.

Q So you have to get to probable cause in order to do what?

A In order to get a complaint or seek an indictment.

Q To prosecute?

A To prosecute, right.

Q To start the process of prosecuting?

A Right, right.

Q But you don't have to have probable cause to take other investigative steps that could have the effect of interdicting or preventing those people from transferring the firearms to other people, as you strongly suspect, according to these talking points, that they are doing, right?

A Those are tactical decisions that are made on the street, yes. You're right, yes.

Q So you don't need probable cause to do those kind of things, there are ways you can interdict weapons, you can get the weapons out of the possession of the people who are about to transfer them to the traffickers?

A You need --

Q Short of probable cause?

A You need clear and convincing evidence if you're going to interdict and seize firearms that that firearm is going to be used in some illegal act. You have to have clear and convincing evidence supported by a series of facts to be able to go in and interdict those firearms.

Q You said several times early in the interview you suggested that probable cause was necessary in order to, for example, work with the local police department to do a traffic stop.

A I don't remember. If I said that, okay.

Q That's not accurate, though, is it?

A No. I mean you don't need probable cause, here's the thing. You need it to seek an indictment or a prosecution, you need to have probable cause that some illegal act has occurred.

Q Right, I'm asking you about steps short of indictment and prosecution.

A You can take other enforcement action, sure.

Q So if you see someone, for example, who has several indicia of suspicious purchase, they buy 20 firearms, they don't ask any, for any ammunition, they don't appear to know anything about the firearms, they pay with cash, they don't appear to be able to support a lifestyle of being able to afford to pay with cash, all these sets of factors that we've talked about, if they leave the store under that circumstance and the ATF is aware realtime, if the ATF agent is notified by the FFL and is aware realtime that that is happening, you could work with the local police and you could effect and you could follow them, wait for a traffic violation, you could pull them over, and you could question them about the use of those firearms, right?

A Sure.

Q And you could try to develop, you could allow your agents to try to develop that into probable cause?

A Sure.

Q Through the interview?

A Sure.

Q If you're an agent conducting surveillance in an FFL, or if you just happen to be in an FFL's store, and you notice one individual, professionally dressed, come up to the counter and ask questions about possibly buying an AK47, that doesn't raise any suspicions, what I just described to you, does it?

A Give me the scenario again.

Q You're in an FFL, and you see a reasonably dressed person, professionally dressed, come up to the counter, start asking some questions about AK47s in Phoenix, where it is legal, and they buy one. That doesn't raise any flags, correct?

A Under that scenario, I would say no.

Q If that same person, professionally dressed, attempts to buy 20 AK47s, would that raise any suspicions for you as a 24year law enforcement professional?

A Sure, it would be suspicious. Sure.

Q And could you help us understand the types of questions you would want to ask if you got a chance to ask that person?

A That person?

Q Professionally dressed

A Well, first I would have to have a reason that because I suspect that the transaction was suspicious, it doesn't mean I can go to stop that person on the street in their car and say, you know

Q But you're in the FFL. Let's say the person sees your ATF badge, turns to you and say, hey, how are you doing? Do you have any questions? What types of questions would you want to I'm throwing out a hypothetical. But what types of questions would you want to ask?

A You must like AK47s. Again, there is nothing illegal about that. I want to make that clear.

Q I'm not suggesting there is.

A There is nothing illegal about that I mean, as far as I know, that scenario that was presented to me, unless he lied on

Q But if he was buying 20, you would want to ask some questions, you said a minute ago, right?

A Yeah, I guess, yeah. But it is one of these issues of unless I suspect that there is some illegal activity

Q Would you want to ask that person, hey, what are you going to do with those 20 AK47s? Is that a fair question?

A It depends. Yeah, I guess it would be, but it depends on the circumstances. It is not unusual for people in places like Arizona and Texas and those places to go in and buy multiple firearms, multiple handguns, multiple long guns. It is not unusual, and it is not illegal in many instances. And so we have to put the evidence together to prove that, in fact, that transaction is illegal by many different ways. And that's what we struggle with to do all the time on these cases, because we have to look at each individual transaction and try to put those pieces of the puzzle together and try to determine how does this fit into that puzzle.

Q Going back to my hypothetical, you're at the FFL, your badge is displayed, and the buyer looks over to you, acknowledges that you're with the ATF, and initiates conversation with you and says, do you have any questions? What other types of questions would you ask that potential buyer who initiated the conversation with you and wants to be completely open and honest with you?

A Again, that is a scenario that has never happened to me in 20plus years of law enforcement. I don't think it has ever happened to anybody in ATF in my career. So it is a scenario that is almost in the realm of fantasy.

But I would guess I would ask, how come you like AK47s so much? You seem to like AK47s. You must have a niche for AK47s. Because, again, it is legal, as far as based on the scenario.

Q In your experience in the Phoenix field office, do buyers frequently come in and buy 20 AK 47s at a time? Is that a common occurrence? Does that raise any suspicions?

A It is not a common occurrence. It is not common. And that is why a case like this was

Q Like, if one of your case agents bumped into you at the water cooler and said, I just found out some FFL called me and said they had a person buy 20 AK47s. Would that be the type of information that you would want your agents to follow up on?

A Yes. Yeah, absolutely.

Q And get the 4473s?

A Sure.

Q And talk to the FFL and find out if that suspicious

A And put that purchase look at that purchase before you go approach someone. Again, when you're conducting an investigation like this, apart from just in general, a firearms trafficking investigation and I did it many, many years on the southwest border in south Texas and south Florida and other places in the country you don't want to show your hand. I mean, if you suspect something is occurring, but you're well short of probable cause to be able to prove something beyond a reasonable doubt, especially in a jury in a place like Arizona, a State that has a lot of guns, and that is okay, you want to be able to say, okay, this purchase just occurred, okay? Let's find out if there are any other purchases that this gentleman made.

And, again, because we have to go out and look you know, there's no database, if you will. So we have to go to FFLs around the area. Maybe he bought it at some gun show, maybe he bought it on the Internet. You know, we try to do some research on him and determine whether and, also, traces. We'll run traces to see if any traces came up for that person.

Q Getting back to my hypothetical, you see a professionally dressed person attempt to buy 20 AK47s, pull out a wad of cash. You're in the store. You're an ATF official. Did that raise suspicions?

A It might. But, again, that's a

Q At what point would you, as an ATF official and you're the special agent in charge in Phoenix for a good chunk of time, but going back to your days as an agent, if you happened to be visiting an FFL and you're doing your ordinary visits with an FFL, you happen to be in the store and you witness a transaction like this occurring, would you decide to ask any questions or would you let that transaction occur?

A What I would do and using this scenario and my experience, if I were I would follow the person to see where they went.

Q You would. So that would be suspicious for you?

A Well, I mean, it depends. It depends on the circumstances. You're giving me a scenario like I said, you are giving me a scenario that has never occurred, as far as anybody I've ever been around with ATF, that it's an inyourface type of, "I just bought these guns, here's this money, I want to talk to you." I mean, that never happens, as far as I know.

Q Okay. Just to be clear about my hypothetical, you're in a store, you see a professionally dressed person come in and attempt to buy 20 AK47s, pulls out a wad of cash.

A Right.

Q That's completely is that fantasy, or is that the type of thing that does happen?

A It's never happened to me. And it's never happened, as far as I know, that that scenario where they're sitting right there and a guy pulls out a wad of cash and buys 20 AK47s as far as I know. I mean, maybe it has, but I'm not aware of it.

Q So if you did witness it, you would probably get on your phone and call back to your office and say, "We have to tail this guy," is that right?

A Well, using that scenario, that might be one of the possibilities, yeah. And then we could follow the guy. He might go home. And if he goes into his home, and we'll sit there for a day or 2 or 3 and nothing happens, we might go knock on the door. And the guy could give us a list of answers, all of which are perfectly legitimate. You know, "Mr. Smith

Q Okay. I'll represent to you that I've gone and talked to some of these FFLs, and I say, "Hey, what's an ordinary, nonsuspicious AK47 transaction like?" And they'll say, "Usually buy one at a time, put it on a credit card," because it costs north of 400 or 500 bucks.

A Okay.

Q Maybe they would buy one for their brother, buy two.

A Right. Okay.

Q But the FFLs I've spoken to say, "If somebody tries to buy 20 AK47s from me, I'm very suspicious. I don't want to lose my license. And so I'm going to be very careful monitoring that transaction. I'm going to look at the 4473. I might even dial back to my ATF contact."

A Uhhuh.

Q So would you be willing to acknowledge that an individual purchaser who wants to buy 20 AK 47s at a time, or even 5, 6, 7 AK47s, that raises suspicions, correct?

A Sure, it does.

Q Now, changing that hypothetical around just a little bit, but let's say the person isn't professionally dressed. Let's say the person is wearing beatup clothes, holes in the jeans, drives up to the FFL in a beatup, old car. Does that change the scenario at all and attempts to buy 20 AK47s. It changes it a little, doesn't it?

A Well, using that scenario, I guess it would change it a little bit, sure.

Q Because somebody who is professionally dressed and comes in, is very businesslike and asks questions about AK47s

A But, again, there could be

Q that's a little bit different than somebody in a beatup, old car, shabbily dressed, correct?

A But it could be a perfectly legal sale.

Q No, I'm not saying that. Oh, no

A It could be suspicious

Q I'm not getting into that.

A Right.

Q I'm just asking you a question, does it look suspicious?

A Well, you're talking about you're talking about law enforcement decisions that are made on the street by

Q No, I'm talking about this one hypothetical.

A Oh, I know, but I'm saying, in the context of or you're talking about, you know, law enforcement, State, local, Federal, they take all this information, and they piece all this together, and they form an opinion, based on experience, of what perhaps might be occurring.

Q Now, would you have a problem if one of your agents was in the store, saw that happen, and decided to go out and pull the guy over, or the lady over if it was a

A Would I have a problem with it?

Q Yes. Just based on the information I've given you, just the 20 AK47s, whether they're shabbily dressed or whether they're in professional attire. Do you have any issue with one of your ATF agents initiating a traffic stop?

A It depends on the circumstances of why they're initiating the traffic stop. Do they have reasonable cause to believe

Q No, just based on the information I've given you, that they were in the FFL, they observed a transaction, 20 AK47s, in cash. Is that enough information for one of your special agents to initiate a traffic stop or to coordinate with Glendale PD or Phoenix PD to pull someone over?

A Again, it depends yeah, I would say "yes." But it depends on, is it part of another case? Is it part of a coordinated effort? Sure. But there has to be a reason to do that. You just can't go pulling over people left and right because you suspect that they're

Q I understand. But is that enough of a reason, that you saw somebody buying 20 AK47s in cash?

A Independent of any other information

Q Uhhuh.

A that would lead you to believe that they're part of some other you know, that there's some illegal activity that's supported by probable cause, I would say that that agent needs to be very careful about when they pull someone over, unless they have a very good legal reason to do that.

Q So that's not enough of a legal reason?

A Suspicion is not a legal reason.

Q When does it jump from reasonable suspicion to probable cause? If they were trying to buy 500 AK47s

A Well, when you have information that specifically connects a group of individuals that are orchestrating and ordering an individual to

Q Is there a volume of weapons in a particular transaction that would automatically ramp it up from reasonable suspicion to probable cause, or from something short of reasonable suspicion to reasonable suspicion? Is there any amount of weapons that would trigger that?

A No, not

Q No?

A I mean, no, not in my experience.

Q Okay. So a professionally dressed person comes into an FFL, says to the FFL, "I would like to buy 5,000

A Well

Q AK47s, and here is a wad of cash"

A You're giving me a scenario

Q Okay.

A just like the scenarios you gave before

Q Okay.

A that have never occurred to me.

Q Okay. But you would agree, there is a

A Well, sure.

Q Is 500 enough?

A There is no set number. I mean, it depends on when you have enough evidence

Q Okay.

A supported by rocksolid documentation and evidence, in conjunction with the U.S. Attorney's Office, to be able to say

Q No, you're getting into prosecutions, arrest, and all that stuff. I'm getting into

Counsel. Could we perhaps not interrupt the witness while he's answering a question? Because I would actually like to hear the answer to the questions.

Mr. Newell. My issue is again, this goes back to the issue of, firearms, in and of themselves, are not contraband. You know, someone can have 100 AK47s in their car, driving around on a Sunday afternoon in Phoenix, and get stopped by the police for speeding, you know, and there could be nothing wrong with that, absolutely nothing wrong with that.

Now, if that was 100 kilos of cocaine, that would be a totally different story. But firearms, in and of themselves, are not contraband. So it's a legal commodity until it's taken from legal commerce to illegal commerce, or unless it's been modified in some way, you know, serial number obliteration or whatever.

So I can't give you a set number because it's really a set of facts supported by evidence, probable cause, to say that that person is, in fact, violating the law. And when we get to that point and we believe we have enough to effect an arrest, then we'll get with the U.S. Attorney's Office and get in a complaint or get an indictment.

Q My time is just about up, so I'll just ask one more question.

Could you give us examples of what would be facts that count as reasonable suspicion to effect a traffic stop?

A Well, sure. If we have evidence that the form that the individual actually falsified the form in some way as to a false address or a false, you know the identification was false.

If we thought that the person was in some way prohibited, you know, a convicted felon, illegal alien, had lied on the form for that.

Or maybe that the person that was receiving the firearms was, in fact, prohibited; you know, the person went in, strawpurchased the firearms for his brother, who is a convicted felon, let's say, in this scenario, and we knew that to be the case, then, yes, we would do that. But that's because we had evidence to be able to support that.

Q So is it fair to say that you need evidence that is external to what you're watching what one of your agents is watching?

A Well, supporting, yeah, evidence that supports the charge that, in fact, that activity is, in fact, illegal, supported by probable cause.

Q So it's very difficult or unusual for an agent to conduct surveillance and effectuate traffic stops based on observing what

A Well, absent any other information, sure. I mean, because, again, firearms, in and of themselves, are not contraband. I mean, I think that's difficult for some people to understand. And it's just that, it goes to the whole thing about the statute of the firearms trafficking statute, the lack thereof, of being able to say, hey, we have a statute that, looking at this pattern of activity, we can say, "This, by statute, is illegal," instead of looking at each individual transaction and trying to piece all that together, which is what we have to do in these cases.

A Well, again, going into general issues and hypotheticals -- because it's very common in our cases. You know, again, going back to like this, you know, this group, we had three agents at the beginning, and it grew to a whopping four in December and then a whopping maybe six in February or January February.

With the amount of activity that we have in an area like Phoenix or Dallas or Houston or the areas I've worked, El Paso, Brownsville, we will follow people to a house when we have the

information that they're en route to a house or we believe they're suspects and they're en route to a house. And we'll sit there as long as we can to determine if we can glean or obtain any additional information, maybe cars coming and going, get the license plates to try to identify people if we can.

But with the amount of resources we have, sitting on a house for 4 or 5 days is just not it's just virtually impossible. Especially when, in many instances, in cases like this, someone might buy -- and this is very common in Southwest border cases. I've worked firearms trafficking cases I have worked or had oversight of cases in Arizona, New Mexico, and Texas of the Southwest border of course, other places as well where a trafficking network, many times, is a group of individuals, straw purchasers, who are working for a specific person as a friend, as a favor, to make a few extra bucks.

And, again, most of the straw purchasers in Arizona these days are, on average, anywhere from 18 to 19, 19 to 20 years of age on some form of -- I think the last time I checked it was something like 75 percent of them are on some form of state assistance. So, in other words, they are, again, the low rung of the ladder, if you will. And they are people who for many times or in many instances they're doing it to make a couple hundred bucks here and there.

So they'll do that to deliver guns to someone who might live at a specific address. They'll deliver those guns to a specific address, and those guns may stay there 2 or 3 days, 2 or 3 weeks, 2 or 3 months. So when we determine all these different addresses that are involved, we do the best we can with the resources we have to conduct surveillance. But there's some places we just don't have the resources to sit there for multiple days when all this other activity is occurring around us. And it's a lot.