

William Newell Excerpts

Q. The current case that you say is in the third quarter, this is a big case for ATF, is that correct?

A. Sure, yes, that's a fair characterization.

Q. It's a case the director is well aware of?

A. Yeah. I believe, yeah, I'm sure he's well aware.

Q. And the deputy director?

A. Yes.¹

Q. We understand the Department had an initiative at the Justice Department level - -

A. Right.

Q. - - communicated down through ATF to begin thinking about ways of going after firearms trafficking problems.

A. There was a strategy, the strategy to combat Southwest border crime from the Department that was late 2009 and then I think early 2010 officially in a memo.

Q. And could you tell us about how that was rolled out and some of the reasons for it?

A. As I recall and I want to say I think it was October or November - - it was October of 2009, I received an e mail from our Southwest border coordinator which had a draft document related to the Department's strategy to combat Southwest border crime, the major crimes occurring along the Southwest border; and it was a departmental kind of focused strategy, if you will, on the different, you know, issues - - narcotics trafficking, bulk cash, human trafficking - - and firearms trafficking was one of those as well.

Q. Is Arizona one of those States that has a particular strong firearms trafficking problem?

A. Arizona is considered by - - well, by ATF and other agencies as kind of the eye of the hurricane, if you will, on the Southwest border because of the amount of drugs and humans and other related border crimes that occur along the Southwest border...

Q. So the ATF Phoenix field division office was a key player in this?

¹ Newell Tr. at 155.

- A. Yes. All the Southwest border divisions were. All national divisions, really.
- Q. Was that [ATF] that communicated that to you?
- A. As I remember, I think it was [ATF] was the Southwest border coordinator at that time, yes.
- Q. What other folks in ATF management were directing this initiative, from your perspective?
- A. Well, I know from my supervisor, Bill McMahon, we had several meetings with the SACs, Southwest border SACs, and he is over the western division, the western SACs. We discussed that strategy. And I know that we had conference calls on the strategy.
- Q. What was the plan to push that strategy out into the field?
- A. In what sense? In what form?
- Q. The Department level strategy was communicated to you and you had to implement it.
- A. Right.
- Q. And was there any guidance as to specifically how down at the agent level?
- A. It was - - we received instruction, but we wanted to focus on firearms trafficking networks, organizations as per the strategy that the Department had pushed out, yes.
- Q. And was there a goal to not merely focus on straw buyers?
- A. The goal was to go after the infrastructure, the organizations themselves; and straw buyers are considered the low rung and one part of a larger organization, yes.²

Q. You said earlier in your questioning with Donald that there was -- that you were aware of no evidence to date of any Fast and Furious purchasers who transferred weapons across the border that was witnessed by ATF.

A. Yeah, yeah.

Q. Does that comport with your recollection of what you said?

A. Yes.

² Newell Tr. at 9-11.

Q So that was a very specific statement that you made. I just want to ask a couple of follow ups. Are you aware of evidence of any of the Fast and Furious purchasers transferring weapons across the border that you were not -- did not witness, that ATF did not witness?

A. Not that -- we wouldn't know that. I mean, you're talking about something that we have no knowledge of. The best of our --

Q. Well, there is ways you can have evidence that something occurred without having witnessed it. I'm asking if you're aware of any evidence that that occurred?

A. Not that I'm aware of, no.

Q. Are you aware of any evidence that ATF witnessed that occur in other cases?

A. Witnessed what occur?

Q. A straw purchaser transferring a fireman across the border.

A. Yes.

Q. Can you describe generally the circumstances where that occurred?

A. Well, we have had cases

Mr. Serres. Excuse me just a minute.

(Discussion off the record.)

Mr. Serres. Thanks.

Mr. Newell. Can you repeat the question, please?

Q. The question was, are you aware of evidence of ATF actually witnessing straw purchasers transferring weapons across the border in other cases?

A. Generally what happens in a situation like that is we have a control delivery situation where you have a scenario where you are working closely with the Mexican, with concurrence of the embassy, our people in Mexico, that being ATF, ICE, other people and law enforcement on the U.S. side as they do in drug controlled deliveries all the time where you are meeting your law enforcement partners at the border with the expectation that -- and the goal is that they will then take that evidence into delivery wherever it would go. They would assume control of the investigate -- control of that scenario at that point and then take it into Mexico?

Q. And you're saying you are aware that that did occur with those controls?

A. Yes.

Q. Did that occur a lot?

A. No.³

Q. Paragraph 1 [of exhibit 1] states, the investigation has identified more than 20 connected straw purchasers.

A. Uh huh.

Q. The last sentence states that, to date this group has purchased in excess of 650 firearms - - of which they have paid cash totaling more than \$350,000?

A. Uh huh.

Q. Is that type of information enough information - - if you know that there is 20 connected straw purchasers, is that enough information to go out and start talking to these potential straw buyers and finding out if they are, in fact, straw buyers and who they are buying for?

A. It depends on what the goal of the investigation is. In this case, the goal was twofold. It was to identify the firearms trafficking network, the decision makers, and not just focus on the straw purchasers. We would go after the decision makers, the people who were financing. That is why we got IRS on board, I think, early on in the case. Who the finance - - well, financiers are, who the decision makers are, who the transporters are, who in my experience, apart from this case, but in my experience, over the many, many years I have supervised and been directly involved in straw purchasing cases as a case agent or as a supervisor or as second line, straw purchasers usually are very - - lack knowledge of the actual decision makers of an organization... They are the street corner - - the lowest rung of a distribution, or in this case the opposite.

Q. But they are different in some respects, such as they don't have a long rap sheet, correct?

A. Well, they can't if they are going to be used to go in and buy guns, because they have to be able to pass the background check, which again goes to the legality. I mean, you have to prove that each individual transaction is, in fact, a violation of Federal law.

You know, one of the issues is in cases like this is the fact that with the lack of a statute that specifically addresses a pattern of activity that could be construed as - - with evidence of a conspiratorial type nature of a firearms trafficking there is no firearms

³ Newell Tr. at 102-103.

trafficking statute, in other words. There is no statute that says this type of activity in and of itself is illegal. So what we have to do is we have to go out and find each individual transaction and find out if each individual transaction was, in fact, illegal and put all those pieces of the puzzle together.

Q. Paragraph 2 identifies a couple of seizure events, or five to be specific. Approximately 53 firearms originally purchased by the group have been recovered.

A. Uh huh.

Q. It references that they have been recovered in Mexico.

A. Uh huh.

Q. Is that type of information serious enough that you, as the leader of the Phoenix field office, would want to start knocking on doors, talking with the straw buyers? Apparently their guns were ending up in Mexico at that point. And this is January of 2010.

A. That type of information is very important to us to put together a more solid picture of, in fact, who is - - what is the group - - who - - what the group is comprised of; the firearms trafficking network, who it is, what it is, who is in charge of it. So, yeah, that is key information for us to help us add another piece of the puzzle, if you will. This is all - - this is all - - when we look at a firearms trafficking group or a network or any type of investigation like this, it is pieces of the puzzle, and we are trying to put the pieces of the puzzle together to determine what, in fact, we are looking at.⁴

Q. And so I think the following question is, in the process of gathering enough evidence to go after - - take down the entire organization, there was a point at which you had enough evidence to take down an individual straw purchaser and chose not to?

A. It really depends on what evidence we had and when we had it in conjunction with the U.S. Attorney's Office. I mean, we felt, you know, that when we - - I say we - - us and the U.S. Attorney's Office and we reached a point where we had enough to indict. I think there was a mutual agreement that we, you know - - that at a certain point we would get enough evidence and we would seek indictment. I made that clear earlier that that was roughly, you know - - we thought - - of course as a law enforcement agency, we always think our cases are ready for indictment before the U.S. Attorney's Office think it. That is common practice. I think it was probably early to mid August of 2010. But of course, you know, in defense of the U.S. Attorney's Office they obviously have input into that. We might think our case is ready, but of course the U.S. Attorney's Office has input into, well, you need to shore up this, you need to do this, you need to do this. And I respect

⁴ Newell Tr. at 28-30.

that process because that is how it has always been as I've been doing this for 20 something years.

Q. Do you think that the indictment of the 20 straw purchasers did that?

A. Did what exactly?

Q. Took down the organization?

A. It is an ongoing investigation. Like I answered the question earlier, at that time, the first round of indictments, we knew that was not going to be - - that was going to be part of a continuing case. We felt very strongly, as my statement in the press conference was, that at that time that the individuals that we had indicted, as I said publicly, were the head - - or the heads of the organization as we knew it then in the Phoenix area. The case is ongoing and we are developing additional information that gives us more suspects.⁵

Q. So, according to this document, on December 17, 2009, ASAC George Gillett e-mailed you and Group VII supervisor both?

A. Right.

Q. Indicating that ATF supervisory special agent [ATF] received a briefing on the investigation this week and mentioned the possibility of meeting to shut the investigation down due to the large number of guns that have already been trafficked.

Mr. Gillett continued that, quote, we have slowed down the FFL - - we have slowed down FFL on future purchases and obtaining intelligence directly related to this investigation from the current DEA wiretap.

Can you, first of all, just explain who [ATF] is and where he fits in in the chain of command?

A. [ATF] at the time that this was written I believe was the Southwest border coordinator. And I believe earlier I mentioned that I had gotten a draft of the DOJ's - - a draft of the DOJ's Southwest border cartel strategy, and he at the time was the - - in headquarters the Southwest border coordinator.

Q. So you recall this e-mail?

A. Yes.

⁵ Newell Tr. at 210-212.

Q. Do you know approximately how many firearms your agents in Phoenix have witnessed being purchased?

A. Oh, had witnessed. I'm not - - personally witnessed purchased? By this date, I don't know. This is a month I guess technically into the investigation. I mean, I don't have those numbers. They're not witnessing any firearms - - your question is - -

Q. Sure.

A. Right. They're not witnessing any firearms - - these are firearms that have already been purchased.

Q. Now, how did your agents become aware of those purchases?

A. How did they become aware of the purchases?

Q. Yes.

A. After the sale, most of the times one of the FFLs in Arizona, [FFL], for years had done - - had a practice with faxing over 4473s voluntarily, as well as going around to other FFLs, I believe, and just looking

This again is about a month into the investigation, I believe. I think the case was this was not technically Fast and Furious at this point. It was still - - the investigation was called Jacob Chambers. The investigation that was initiated on November 16th of 2009 was Jacob Chambers, et al. That's what Hope opened it up as.

Because that was, at that point, the individual we thought was - - you know, again, the pieces of the puzzle, at that point the piece of the puzzle that - - and I'm guessing - - that Hope thought the key piece was Jacob Chambers. That's why she opened up the investigation as Jacob Chambers. When you open up an investigation, you normally open it up in the title of the person you suspect to be the most prominent people - - person in the investigation.

Mr. Foster. I'm sorry, what was the date you said? November?

Mr. Newell. I believe it was November 16th. I believe that's the case. I believe it's November 16th. I'm not 100 percent certain about that, but I think it's November 16.

Mr. Foster. 2009?

Mr. Newell. 2009, yes.⁶

- Q. So you don't recall if he agreed or disagreed with Mr. Rowley's concerns?
- A. No. He agreed with our goal in this case. He agreed with where we were heading in the case absolutely.
- Q. So it's your understanding that Mr. McMahon agreed with your assessment of Mr. Rowley's concern that the investigation should move forward?
- A. Mr. McMahon, as I recall, agreed with our assessment that we're going to continue to put the pieces together, continue to identify as many of the individuals involved. The goal of the investigation at the outset was to identify the organization. That was what Mr. McMahon agreed to, as I recall.⁷
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- Q. Well, do you recall Mr. McMahon contacting you about anyone's concerns about Operation Fast and Furious current to December 2009?
- A. Yes. Yes. We had, I believe there was a briefing took place in March up here and then at the end of that probably I want to say - - no, I'm sorry. In late April, I believe, McMahon and, again, I talked to Bill, he's my boss. I talk to him all the time about numerous investigations. Phoenix at this time and continues to be a very, very busy place when it comes to firearms trafficking. So I believe it was in, I would say, mid to late April when he and I started discussing a strategy as to how we were going to wind this case down with what we had at the time. I believe we called it an exit strategy. And we prepared, I think I got with, at that time, I think Mr. Needles was the ASAC at that time, I believe if I recall, and got with [ATF] and I had Jim Needles get with [ATF] and case agents and kind of draft where we are in the U.S. Attorney's Office, where we're at, what do we need, what additional evidence do we need to make our case. And I think I put a 30, 60, 90 day window on it.

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- Q. Was there any specific event or series of events that precipitated that conversation with DAD McMahon?
- A. No, not any specific event. I think it was just we realize that well, there was, I guess to answer your question, throughout this case we - - this goes case specific though. There's issues that are involved that are in this ongoing investigation, some of the issues, I am really reluctant to talk about it, that might affect the prosecution. But to give you, to answer your question it was just, we were at the point probably in maybe April, maybe

⁶ Newell Tr. at 61-62.

⁷ Newell Tr. at 74-75.

mid April, maybe late May, maybe mid April when we realized that, listen, we've got to, we've got to get to a point where we've got, we've got to really get to a point where we get all the evidence we need to take this network off. I think that was, I don't know. I think that was late April, I think was when it was drafted, the strategy was drafted, the exit strategy I believe.

Q. So there was a 30 day plan, a 60 day plan, and a 90?

A. It was all in one document. It was, you know, this is where we hope, if it all goes well, depending on circumstances, any investigation, sometimes good luck is a great thing and then 30 days, 60 days, 90 days and we opened at the end of each period we're at that place where we need to be to, you know, get the case to an indictment phase.

Q. And that was in collaboration - - again my word not yours - - with the U.S. Attorney's Office?

A. Yes. Mmh hmm. Coordination with the U.S. Attorney's Office.

Q. Was the case brought to a conclusion after 90 days?

A. Ninety days would have put that I believe at about end of the July, early August, something like that and that was right about when we felt that we had the evidence that we needed to end the operational phase of the investigation, if you will. I want to say early August.

Q. So in early August, this is 2010?

A. Yes.

Q. You believe that the Operation Fast and Furious was at the end of its operational phase?

A. That's fair to say, yes.

Q. Had your agents effectuated arrests of any of the suspected individuals in Operation Fast and Furious at that point?

A. Not at that point, no.

Q. Well, can you explain what the next phase of the investigation was after August?

A. Well, the next phase in the investigation, it really moves from an investigation phase to prosecution phase at that point in the sense of getting the case ready for indictment. So I know that the case agent and case agents, really [ATF] and [ATF], as well as the others were meeting regularly with the AUSA Emory Hurley, compiling all the different pieces of evidence specific to each individual prospective defendant, to get to a point where we

met what we felt in conjunction with the U.S. Attorney's Office, in coordination with them, that met the burden of proof to be able to seek an indictment.

Q. Sir, can you explain for us what exactly the end of the operational phase means? Does that mean the end of surveillance? Does that mean - - I'm not really clear on what that means.

A. Well, that just means we think we've reached a point in the investigation where we have the evidence we need to begin seeking indictment.

Q. And that was - - was that your decision or was that - - whose decision was that?

A. Well, if you look at the 30, 60, 90 day time frame that we established, I established, it was partially my decision, yeah, it was my decision as SAC to say, okay, at this point in the investigation, in briefings with my folks that we think we have enough evidence at this point to get with the U.S. Attorney's Office and move to trying to seek an indictment.

Q. So it wasn't the U.S. Attorney's call?

A. Well, I mean, it's a coordinated call because throughout this case - - one thing I need to explain is, in OCDETF cases and this is any OCDETF case, the OCDETF concept, especially the strike force concept, is by its nature of the description it is a prosecution led, prosecutor led concept, investigation, in other words. And so we just don't unilaterally go out and conduct a generally hypothetical, year long investigation, and at the end of the year come into the U.S. Attorney's Office and say, hey, here's all the evidence. We want an indictment tomorrow. It doesn't work that way. It shouldn't work that way. In any case, small, large or medium, I guess, I have always encouraged my agents to have a good working relationship with the U.S. Attorney's Office so that in the beginning of the investigation, throughout the investigation, establish a good working relationship with the U.S. Attorney's Office, and in this case I think we had that, and in the case that Emory Hurley was an AUSA early on in the case, and I had regular contact with Dennis Burke and Pat Cunningham, the Chief of Criminal, about as we went along with the investigation and then we got to the point I'd say, maybe early August where we felt we are at that point now where we think we're ready to seek indictment. And if I recall they agreed. But there's still work that needs to be done. It's one of those deals where you're looking at a room full of documents that have been compiled throughout an investigation, and there is a process where the agents and the AUSA need to sit down in that office sometimes we have a lot of attorneys in the room, and you sit there and defendant by defendant you put all those pieces together and say, okay, we're going to charge this person with this, we're going to charge this person with this, and here's the supporting evidence to do that, et cetera, et cetera. That's a process.

Q. Was there a timetable for the issuance of indictments?

A. As I recall, I think it was, we were hoping to get indictments in, as I recall, I think it was maybe October, November roughly.

Q. And it is my understanding that the indictment wasn't issued until January 2011?

A. That's correct. That's correct.

Q. Can you explain the reason for the delay?

A. A lot of it has to do with the workload. The workload involved putting a case together like that and the fact that the AUSA might have other cases they are working on, trials that might come up that they have no control over, things like that. It's a very, very busy office. The U.S. Attorney's Office in Arizona is an extremely busy office, probably one of the busiest in the country.

Q. So do you have any specific recollection of why the indictment wasn't issued?

A. I think it was a combination of workload and the fact that there was a lot of work that needed to be done as far as putting the charges together.

Q. And I think we are just about near the end of my hour but one or two more questions. Going back to April, the end of April, 2010, when you had this conversation with DAD McMahon, laying out the 30, 60, 90 plan?

A. Mmh hmm.

Q. What specifics did you give DAD McMahon about the tactics of the investigation at that point?

A. About the tactics?

Q. Yes.

A. He was well aware of the many, like in many firearms trafficking cases, we have we avail ourselves of all kinds of different things to try to, surveillance, electronic surveillance, things like that.

Q. Well, going back to - - well, at that time, was DAD McMahon aware that agents were not effectuating arrests of suspected straw purchasers?

A. I'm assuming he was, yeah.

Q. Why do you - - well, do you recall what specifically you told him about that?

A. In the briefings we had, I believe the briefing that took place here in March it was discussed that our strategy was, you know, that we were still putting the pieces together and, yeah, we had a lot of suspicious activity, but we still had, we were still trying to get to the point where we could prove it in order to effect arrest.⁸

Q. So earlier today you talked about, at one point, you had asked for a prosecution plan from the folks below you at ATF, an exit strategy.

A. Uh huh.

Q. You wanted a write up of what actual charges would be brought, et cetera, in the case?

A. Uh huh.

Q. Do you recall when that occurred that you're referring to?

A. When I asked for the exit strategy? I want to say it was probably mid April, something like that. Early to mid April.

Q. If documents indicate March or April, that would be consistent with your recollection?

A. Yeah, right.

Q. Okay. So - - and by March or April, [Defendant] was already an identified suspect in the case and had been for several months, right? I'm just getting him to confirm what I already know. That is the case, right?

Q. What I'd like to figure out is I would like some more - - I would be able to shed some light more on this dialogue we were having earlier about when is enough information to take action and when is enough to take what action, right? So what I'm trying to get at - - I will just represent that it is my belief that he was identified that early in the investigation, far earlier than that. So by the time you're asking for the exit strategy memo in March or April of 2010 - - yeah, it was actually identified according to documents that we have on November 25, 2009. So long before the exit strategy memo request that you made.

A. Sure.

⁸ Newell Tr. at 75-81.

Q. Actually, why don't we start with the foundation this way: Did you actually get one? Did you get an exit strategy memo?

A. Yes. Not a memo, but was an exit strategy in a document.

Q. And have you reviewed it recently in the course of all this controversy?

A. I believe so, yes.

Q. So you could readily identify it and - -

A. I could readily identify it, but

Q. You could get to it pretty quickly? You don't have to go look for it?

A. I guess so, yea.

Q. So if we were to ask the Justice Department to make that a priority in our document production, that is not - - there is no logistical hurdles to doing that? That is what I'm getting at.

A. Sure.

Q. And do you recall, since you have reviewed it recently, basically what it says? Can you describe it for us generally?

A. Sure. I don't remember how many pages it is. It is probably two or three pages and it talks about, you know, in the next 30 days if all goes well - - and again, this is if all goes well. That stage of the case in, say late March, early April - - I think it was early April when I asked for the document. I'm not sure. One of the issues we have in these cases is - - especially when we are trying to identify the head of the snake if you will, the head of the organization, be it drug cases, gun cases any kind of cases - - and this is a very common practice and you can talk to anybody in law enforcement. The heads of the organization, even the intermediary, they toss phones left and right. They will use a phone for a week, maybe 2 weeks and they will toss phones. So as we are trying to get all of the evidence possible through electronic means to determine their role and the leadership role of the organization, we were having a difficult time keeping up, you know, with that tossing of phones issue.

So we were working extremely hard, [ATF] and [ATF] and everybody was just working extremely hard to keep on top of what, you know - - where are we at now in the sense of phones and what have you. And so that document in regards to, you know, 30, 60, 90 days deals with - if it all goes well, we hope to be here in 30 days. If all goes, you know, we hope to be here in 60 days or here in 90 days.

- Q. And here would include a description of who you're going to charge and what you are going to charge them with?
- A. Yeah, that came after - - when it got to the 90 days - - I think it was probably the beginning of August, at that point in conjunction with the U.S. attorney's office started coming up with a list of possible defendants.
- Q. So getting back to my original reason for this line of questioning. So can you explain to us - - we know that after Agent Terry was killed, that [Defendant] was arrested in very short order and he was charged in very short order. So - - and yet you have maintained that people weren't arrested earlier than they were because you didn't have the evidence necessary to be able to do that, working in conjunction with the prosecutors and so forth and it was their judgment and - - so what changed between March/April when you're asking for a strategy to pull the trigger and, you know, take this down and indict these people between then and December 14th, 15th of 2010.
- A. What changed is we had - - we had the evidence we felt to put a case together to focus on the organization. We felt that at that point, we had the key pieces of evidence we need to be able to charge people for their role in this organization.
- Q. Was there significant new evidence related to [Defendant]?

Mr. Serres. I don't see how that is not talking about case specifics and the evidence of the case that we are trying there is a protective order in the district on discovery. There is local rules about talking about the evidence in the case. I don't see how that is not getting into that. I mean, I don't want to - - like I said at the beginning, I don't want to interrupt and keep having you detour, but that is the area that I think we are goes against what we are trying to do here which is to make him able to talk about what your inquiry is.

Mr. Castor. This is pretty key to our inquiry because it has been maintained that you couldn't arrest these defendants. Agent Terry was killed, there is an immediate arrest which is different from everything else in the case. So I guess we are trying to get to was it just because of the tragedy that happened that in this particular instance?

- Q. If these defendants hadn't been identified yet shortly after the Brian Terry incident, where a border patrol agent was killed, immediately [Defendant] was arrested and that is different than the rest of the defendants, what was unique about that? Was it the specific tragedy that changed things?

Mr. Newell. I mean, what was different there was additional evidence later on in the case concerning [Defendant]. That gave us the ability to charge him with using a false address which is what we charged him in the complaint.

Q. As soon as the guns were traced to [Defendant], he was arrested immediately.

A. He wasn't arrested immediately. He was arrested - -

Q. Later that night, wasn't he?

A. Well, sure. To be honest with you, you're talking about a guy who changed his address and literally was a street - - as relayed to me, he was basically a transient and our agents went out with the subpoena and police department I think and found him in a matter of

Q. But you had 40 suspects at that point that you weren't going after their house. 20 of them were indicted subsequently?

A. 20, right.

Q. But you had 40 or so suspects. And the moment these firearms are found at the Terry scene traced back to [Defendant], boom, he is arrested, which is different than everything else that has been described to us with the other suspects in the case. So we are asking why.

A. One of the guns was traced back to him, he was a suspect.

Q. But there is guns being traced back that are found in Mexican crime scenes that are being traced back, there is guns that are found in El Paso, there are guns that are found in Naco and that arrest didn't happen.

A. Well, again, at that point in time, we were still proceeding toward doing one indictment against, you know, the whole series of people. And that incident happened and then there was evidence that it was gathered later in the case to be able to arrest him on a complaint.

Q. Surely you're not suggesting that you learned of the address change and the falsehood about the address on the form, you happened to learn about that on December 14th, the same night that Agent Terry was killed? That's not what you are suggesting, is it?

A. No. I'm not suggesting it at all.

Q. So you had the information that allowed you to make the complaint on him long before you actually did it, right?

A. I don't think it was long - - as I recall, the complaint lists purchases that were made in it was June or July.

Q. 6 months earlier, right?

A. Sure. Okay.⁹

Q. Were there ever any complaints that the process may be moving too slowly, given the significance of this case for ATF?

A. Complaints from whom?

Q. Complaints from ATF management, folks at headquarters above you. You know, hey, this is really a problem; we need to work this out.

A. I don't remember receiving any complaints regarding that. I know that McMahon, Bill and I would talk about it and I would give him an update on where we're out, you know, on the status of the indictments, but I don't remember a specific complaint lodged at me, I don't recall that.

Q. And I'm not talking about a formal complaint submitted to your personal file, of course. I'm just talking about a general anxiety.¹⁰

Q. How about the - - there was a recovery in Juarez, I believe it was near a couple of weeks ago I believe it was late April. It was a very large stash of weapons recovered. Do you remember the one I'm referring to?

A. I believe so, yeah.

Q. Did you - - have you made any effort to figure out if any of those guns are associated with Fast and Furious?

A. Yes.

Q. What is the result?

A. I believe - - I don't know the exact number. I think - - I don't know the exact number of I think it is four or five maybe. Four or five. I'm not sure of exact number.

Q. But that four or five, as your understanding, are associated with Fast and Furious purchasers?

A. Yes, uh huh.

⁹Newell Tr. at 105-111.

¹⁰Newell Tr. at 140-141.

Q. And both with regard to the Juarez recovery and with regard to the helicopter incident, do you know whether or not those guns were purchased by the suspects after they were identified as suspects in the investigation by ATF or before?

A. I'm not sure. I'm not sure.

Q. Have you tried to find out?

A. Yes, we tried to find out.

Q. You're still trying to find out?

A. I believe we have that information. I just don't have it with me.

Q. You just don't know?

A. Yeah, I don't know off the top of my head.

Q. But someone at ATF knows? [**ATF**] would know?

A. She might, yeah. And I might know, too. I just don't know off the top of my head right now. I don't have it in front of me.¹¹

Q. Now, in the course of this investigation, referring to Operation Fast and Furious, we've heard allegations that agents witnessed suspected straw purchasers purchase multiple firearms and that those individuals were followed to a residence and watched for some period of time and then surveillance was subsequently cut off. Is that consistent with your recollection of Operation Fast and Furious?

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.

¹¹ Newell Tr. at 218-219.

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.¹²

¹² Newell Tr. at 54-55.