

Senator Grassley?

SENATOR CHARLES GRASSLEY (R-IA): Yeah. Thank you, Madame Secretary.

Over the past month I've been investigating serious allegations regarding Bureau of Alcohol, Tobacco, Firearms. The allegations that thousands of guns were intentionally allowed to flow through known straw purchasers near the southwestern border into Mexico, and those allegations are stunning. As of now I have received nothing but denials from Acting Director Melson or Attorney General Holder. Now, I'm not sure I expect you to know what happens at the grass roots in everything in your department, and this isn't "gotcha" -- (inaudible) -- it's kind of what do you know and what you didn't know. So these are my questions: Are you aware that one of your Immigration and Custom agents was working on this case out of Phoenix called Operation Fast and Furious, and if so, when and how did you learn about it?

SEC. NAPOLITANO: I'm not aware of that -- a particular agent. I am aware of the ATF operation generally and have become aware in the wake of the murders of Agent Terry and Agent Zapata.

SEN. GRASSLEY: Did you sign off on this operation, and if so, when?

SEC. NAPOLITANO: No. It's an -- this is within the Justice Department, sir.

SEN. GRASSLEY: OK. Did anyone ever express concern to you about the Bureau of Alcohol, Tobacco and Firearms purposely allowing gun traffickers to purchase through straw buyers, and if so, what did you know about it?

SEC. NAPOLITANO: No, no concerns were expressed to the secretary.

SEN. GRASSLEY: OK. Did you ever discuss with anyone anything similar to the strategy described by whistleblowers in this case, that of allowing guns to walk to make a bigger case against the cartels? And if so, I'd like an explanation.

SEC. NAPOLITANO: No, I was not so informed, and I know that, however, the attorney general has asked his inspector general to look at the operation.

SEN. GRASSLEY: OK. I'd like to ask you how you feel about the fact that another agency's decision to put hundreds of guns into the hands of criminals on both sides of the border may have contributed to the death of Border Patrol Agent Brian Terry.

SEC. NAPOLITANO: Well, Senator Grassley, to date -- and I have asked that question -- my understanding is that the whole Terry matter is under investigation, including the source of the guns that were held. So I think it would be immature -- premature, not immature -- premature and inappropriate for me to comment on that right now.

SEN. GRASSLEY: Part of the reason I ask that question is because the family is not very satisfied with the information that they're getting. And I don't blame you for that, but I want you to know that there is that dissatisfaction.

Let me go on. When Border Patrol Agent Brian Terry was killed, his tactical unit used thermal binoculars to spot at least three bandits sneaking across the border carrying AK-47s. Yet according to a story -- a sworn affidavit from an FBI agent, when the bandits refused to drop their weapons, our agents fired nonlethal beanbags, like this. The bandits responded with gunfire of this type -- the bullets that I'm showing the picture of. These are .762-caliber cartridges. I'd like to ask you, according to Agent Terry's family, federal officials told them in family briefing that two of the agents in his group carried only these beanbag guns while two others had regular weapons. Do you know if that's true or not?

SEC. NAPOLITANO: I don't know if that's true, but I would like the opportunity to talk about our lethal force policy because I think there's a lot of misinformation in the blogosphere and other places.

The head of the Border Patrol, Chief Fisher, actually comes out of special operations. So he comes out of the same group that Agent Terry was in when he was murdered. Our lethal force policy is the same as virtually every law enforcement department I know of in the country. That is, if you are under threat of serious injury or death, you may use lethal force. And like any other law enforcement agency, there is usually a mix of lethal and nonlethal devices that are carried, particularly when you have a multi-agent event. So while I know holding up the pictures is very dramatic, the plain fact of the matter is that the lethal force policy of our Border Patrol is that they are entitled to use lethal force if they are under such a threat.

Now, the particulars of the Agent Terry operation are still under investigation, and I think the facts will come out over time.

SEN. GRASSLEY: I sent a letter on Friday asking for a copy of the use of force policy. Would you be able to provide that to us very soon?

SEC. NAPOLITANO: Sure.

SEN. GRASSLEY: OK. You may have answered this question, but let me ask it anyway. Is it true that Agent Terry's team was under standing order to use nonlethal force even against armed bandits refusing to drop their weapons? And if not, how would you explain reports that he was under that kind of order?

SEC. NAPOLITANO: They were -- I have asked that question, and my information is absolutely not. Our lethal force policy is what I have described to you.