

William McMahon Excerpts

- Q Okay. Let's talk about gun walking for a minute. I know it is a controversial topic. Do you recall that gun walking occurred in the Fast and Furious investigation?
- A No, I don't.
- Q You have had the chance to watch the agents testimony I presume on June 15th?
- A Parts.
- Q Parts of it. And allegations there were fairly strong that gun walking had occurred. How do you square up your comment with the comments from the agents?
- A I don't think at any point did we allow guns to just go into somebody's hands and walk across the border. I think decisions were made to allow people to continue buying weapons that we suspected were going to Mexico to put our case together. But I don't believe that at any point we watched guns going into Mexico. I think we did everything
- Q And so there it seems like there is a difference in semantics between what you are saying and what the street agents are saying in this particular case where the weapons are provided to the straw purchasers and then the straw purchasers transfer them to a third party and surveillance is broken off. That seems to be their definition.
- A Yes and I also, the word "straw purchasers" has been thrown around an awful lot. Proving that someone is a straw purchaser is a very technical issue. You are actually proving that they, the day they went in to buy those guns, they filled out that form and they said that when asked a question is this gun for you and they said yes, that lie is that is what makes them a straw purchaser. Now proving that lie is the difficulty that we have.
- Q Now if someone has done that on dozens of occasions before and it turns out they were lying on those occasions and they come in to buy another weapon
- A Sure.
- Q -- don't you have suspicion to go up and talk to them?
- A Absolutely, if we can prove that they lied on previous occasions. And that is the difficulty in this.
- Q The difficulty is proving that they lied on previous occasions?
- A Or any occasion.
- Q But once they come in to purchase a weapon again, you feel that
- A Once we have proven that they have lied? Absolutely.
- Q All right. When did you first become aware of allegations that gun walking might have occurred in the Fast and Furious case?

A Shortly after a takedown in January of 2011.

Q So shortly after the takedown in January 2011?

A [Nods.]

Q How did that come to your attention?

A I think there was some media reports or blog reports that that sort of thing were on our news clippings that we get every day.

Q So you weren't aware of that before January 25 or the press conference or --

A Correct.

Q Around that time. Okay. Did you do anything in your capacities as Deputy Assistant Director to investigate those allegations?

A Investigate, I mean I have talked to the individuals involved and tried to figure out where this was all coming from.

Q Who were those individuals that were involved at that point?

A Usually it was just Bill Newell.

Q Bill Newell?

A Right.

Q So Bill Newell had an allegation that gun walking occurred? Is that what I'm understanding?

A No. When I read these reports I would talk to Bill and say what are they talking about here? And we just had a discussion about that, that you know, it was not true and that sort of thing.

Q But you didn't go and reach out to the actual agents who were making these reports?

A There were no agents identified until a month or two later.

Q And what did Mr. Newell relate to you about these allegations that gun walking had occurred?

A That they were untrue.

Q And what was his basis for the claim that they were untrue?

A That his knowledge of the case, the way that this case was investigated, all of that.¹

Q Did you talk once a day, twice a day, three times a day [to Bill McMahon]?

¹ McMahon Transcript at 13-14.

A It varied. There were some days we spoke three, four times a day and I know that because Bill would call, sorry for going over my limit of one call a day type of thing. He would say things like that. But there were times that I wouldn't speak to him for a couple of days.

Q Why was he calling so frequently?

A Just to keep me updated what was going on. I have seven SACs. Some I don't hear from quite as often. I have to usually reach out to them. And then I have others that will call me quite a bit more. I have a SAC that probably calls me five times a day. Bill was kind of in the middle.

Q We have heard some testimony that he had a tendency to over report to you, always wanting to keep you in the loop about what was going on in Phoenix?

A Bill was pretty good at that, yeah.

Q That was not necessarily just phone calls but written product, whether it is briefing points or memorandum or things like that?

A That's correct.

Q So as a result, you probably had a pretty good idea of what was going on in Phoenix?

A I did.

A I'm very chain of command, absolutely.²

Q What is your current understanding of ATF's policy regarding gun interdiction?

A Our policy on gun interdiction?

Q Yes. Well, I'm sure you are familiar with section 140(a)(2)?

A Sure.

Q That allows the firearm to be transferred in furtherance to an investigation?

A Yes.

Q What is your understanding of how that policy works?

A My understanding of the policy is that if a transfer is occurring and in furtherance of the investigation we believe it is proper to allow that to continue then to allow it to continue.

Q And did that occur in the Fast and Furious case?

A Yes.

Q It occurred. And is that policy still set in stone or have things changed recently?

² McMahon Transcript at 17-20.

A No, nothing has changed.

Q Nothing has changed. So the order issued by the Deputy Attorney General in early March I assume you are familiar with that?

A Yes, I am.

Q What is the purpose of that order?

A I don't know.

Q Or that directive?

A I don't know.

Q You don't know what the purpose of that is?

A I knew what the order is. I don't know what his purpose for putting it out was.

Q Okay. Could it be the purpose of getting out of putting it out was to reiterate existing policy?

A Yes.

Q Could it have been to change what the policy is and implement a new policy?

A No.

Q No?

A Not that I understood.

Q Not that you understand. Okay. Have there been -- how frequently does the DAG issue a directive or an order like he did like the one that he did in early March?

A I know that he didn't order the Director; he ordered all DOJ components. I think the actual order went out to the U.S. attorneys, if I remember right, and to discuss with their SACs about not allowing guns to cross into Mexico or across the border.

Q Let me rephrase. How often does the DAG issue a directive or an order to all U.S. attorneys or, you know, the subagencies within DOJ?

A I probably have seen three or four times a year, maybe more.

Q Three or four times a year. So it is a fairly infrequent occurrence, is that right?

A There is always direction coming from the DAG's office.

Q Did this direction strike you as coincidental given the timing?

A No, not at all. It wasn't odd. Obviously everything that was in the media the DAG was being recorded as happening.³

Q I believe the way that I understood one of your answers from 40, 45 minutes ago was that if a straw purchaser, if an individual comes in, all right, to purchase, 10, 15, 25, AK 47 variants, you need to nail him on that particular transaction?

A Correct.

Q But I believe you said earlier that if you already know that he had come in previously and bought 10, 15, 25, AK 47 variants, you had surveilled him, you had watched him transfer the weapons to an individual who was not legally prohibited to buy the weapons, the weapon ended up in Mexico, then you said there would be a problem.

A There would be a problem?

Q Yes, there would be a problem, you would have reason to come and approach that person the next time he came into the FFL to buy a gun?

A Sure. That would be the suspicious. Absolutely.

Q So if an individual was identified to having bought 60 guns, for example, knowing some of these guns were illegally transferred, knowing that he had already lied on the form, knowing that some of these guns had already ended up in Mexico, why isn't he going to be approached while he continues to buy hundreds and hundreds and hundreds of other guns?

A You had three knowings there, and I'm not sure if we knew each of those three things. And that is the problem here.

Q But if it turns out that those three things were known, then there would be a serious problem?

A If those three things were known?

Q If he knowingly transferred it illegally to a third party

A To a third party prohibited.

Q That is correct, a prohibited third party, if it ended up in Mexico, if he came back to buy more of these exact same weapons paid for in cash?

A Sure. These are all suspicious activities, and there are a lot of different investigative techniques you can use to confront that.⁴

Q So you referred earlier to this October memo that came down from the deputy attorney general's office that Senator Grassley referred to in his testimony?

³ McMahon Transcript, at 14-17.

⁴ McMahon Transcript, at 44-46.

- A Okay.
- Q This is the one with the paragraph that says merely interdicting guns from straw purchasers isn't enough, I'm paraphrasing, isn't enough, we have to focus on identifying networks.
- A Absolutely.
- Q So that was the direction from the Justice Department, that was the direction from the DAG's office as early as October 2009?
- A Absolutely, yes.
- Q And that was different from the previous way that ATF worked these cases right? Previously you focused on, traditionally you focused on straw purchasers and there was a decision made that that didn't work right?
- A No. I disagree. I think we were still, to this day, doing straw purchasing cases, there is no doubt. But if there is a chance that the straw purchasing case is going to get us to a network, we should be investigating that. We shouldn't be just be picking off one or two people at a time because that doesn't work. We have been doing that for years. And what works is identifying the network and taking the complete network down because then it makes them weaker in Mexico so that we can make the other cases that I referred to.
- Q Right even at the expense of allowing some small, you know, some straw purchasers to continue to operate, and it is more important, there was a decision made by Justice that it is more important to go after identifying the networks. And that is what you were trying to do, that is what Mr. Newell was trying to do, you were trying to serve that policy direction from the Justice Department, right?
- A Well
- Q To identify the networks?
- A I think the policy direction came from us explaining to Justice how firearms trafficking works and what can make an impact. We had constant meetings over at the Department about what gun runner is and what we think is going to make an impact. And we saw that, just knocking off those one or two straws is not going to work because, as I said, that plaza boss is sending that money into the U.S. and saying I want \$70,000 worth of guns. And he is going to get his \$70,000 worth of guns.
- Q So in October, when the DAG's memo is distributed to all law enforcement, all Federal law enforcement components of the Justice Department and it is forwarded to Mr. Newell in Phoenix, at that point, were you, or to your knowledge, was anybody in ATF aware that the DEA was already had information from a wire about [Mr. Defendant]?
- A I don't know when we got the information off that wire.

* * *

Q But that is completely different from the situation of [Mr. Defendant.] [Mr. Defendant] bought 673 firearms. Every single one of them gave contemporaneous notice to the ATF that he was purchasing them.

A I don't disagree.

Q Isn't that a completely different situation?

A I don't disagree. I don't disagree. What I have been briefed on is a large group of people buying a large number of weapons. And [Mr. Defendant] is troubling, absolutely.⁵

Q And your agents in the field, they're just interested, hopefully, in just getting guns off the street that are in the hands of bad people?

A Right. "In the hands of the bad people" is key.

Q And there's a big difference between those two standards, right?

A There's -- I don't know if there's a big difference, but some of the best ways to get criminals with guns off the streets is through a successful prosecution.

Q You would agree that some of these straw purchasers appeared to be suspicious persons when they walked in the doors of the FFL?

A Sure.

Q Driving up in a beat up old car, wads of money

A Sure.

Q -- wanting 20 AK 47s, that is a suspicion circumstance, right?

A Absolutely.

Q And would you agree that an ATF agent has a reasonable suspicion to ask some questions to that type of a purchaser if they observe it, if they're conducting surveillance?

A To a point. I mean, it depends on the suspicion, too, because, again, that is that fine line that we're always talking about. And there's a big difference between what I suspect, what I know, and I can prove. And I think that's what we're talking about here.

But there is that fine line. And, you know, what I suspect and what you suspect could be a lot different, but, you know, we should all be on the same page of what is going on here. And that is why we are conducting our investigation.

Q But having that reasonable suspicion can open the door for obtaining probable cause.

A It can. It can close the door, too. I mean, it is a judgment call that has to be made at the street level.

⁵ McMahon Transcript, at 125-132.

Q These folks that were going in to buy these weapons, do you see anything now that, had you known then, would have caused you to let these guys walk away with the guns?

A No, I agree, I think when we start talking about the totality of the numbers for individuals, that is concerning. But, again, you can't think of this as happening here in Washington, D.C. This is happening in Phoenix, Arizona. I don't know how much time you've spent there, but it's a different world. It's a different world. And I have a brother who lives there, and, wow, he has changed since he has been there.⁶

Q Okay, when did you first find out about the Fast and Furious investigation?

A It was probably the end of '08, either November or December of '08.

Q All right, and what was the context that you found out about the investigation? How did that occur?

A It was just I believe a conversation between Bill and I about this very good firearms trafficking case that they had ongoing out of our brand new strike force group.

Q That was '09, correct?

A I'm sorry, '09. I'm in '11. Two years ago. I apologize. I got my position in '08.

Q At what point did it start to stand out in your mind?

A As we progressed in the case when we were going to be getting wiretaps, that is not common practice for us in these cases. It is kind of a unique technique that we would use, so that started to stand out a little bit more.

Q Do you know when that was approximately?

A It was, we started, there was discussions about the wiretaps at the beginning of '10, January, February, maybe even to March.

Q It is my understanding that there is actually wiretap up when the case began in '09.

A That was part of the conversation we had back then was because we were in the strike force group, another wire was going on in the strike force but not part of our group that was providing some information about some of our identified members. So that actually, that wiretap which wasn't ours helped us get the probable cause to obtain our wiretaps.

Q Now how much information I guess was sort of gleaned from this other wiretap that was active in late '09?

A I have no idea.

Q Did the sharing of information between you, ATF

A Right.

⁶McMahon Transcript at 193-196

Q -- and DEA, for example, or ICE -- this was an OCDETF case, right?

A At some point it became an OCDETF case, that is correct.

Q So do you have any idea what information was shared between the folks at DEA, the folks at ICE and your organization at ATF?

A No, I don't. I just know that the concept of the strike force is that we would be sharing information to build on each others' cases. That is why we wanted to put our gun runner groups in these strike forces. That is what happened in this case.⁷

Q So I guess my question is still, at what point, and it sounds like your answer is early 2010, did you realize this was a big case? The answer you gave was when you started talking about the wiretaps

A Sure, wiretaps--

Q Wasn't the volume of guns at the end of 2009, just a massive number of guns?

A I think it became a massive number probably in January or February when we were briefed on it. It was a large group of people which was even more unusual. Most of my experience is in the east. I spent most of my career in New York City. And if we had an individual buy 10, 15 guns, that was a lot. In Arizona, in Texas, that is really nothing. But what we had in this case -- and also the networks in New York were two or three people. This was a -- I think we identified somewhere 30, 40 people, probably 25, 30 people, in the beginning of '10. And that made it substantial that we had this large network buying a large number of guns.⁸

A No. The DEA wire was part of our investigation. That is what led us to the larger network and our own wiretaps absolutely. That is the whole idea of working in a strike force.

Q When were you aware of working with a DEA wire?

A I don't know if it was December or January. It was all part of Bill Newell explaining, hey, this is why we are doing strike force work, this is a great example of what works when we share information, when DEA's drug stuff is bumping against our gun stuff, so that was the conversation I had with Bill.⁹

Q So walk me through the tracing procedure and the tracing process. So if I'm in Mexico, and I call you up and say Mr. McMahon, we recovered this Barrett .50 caliber with serial number ABCD5, what do you do?

A Well, we would put it into our national tracing system. The national tracing system, the way it works is normally a work, someone at the tracing center will actually have to call the manufacturer and say I have serial number ABCD, who did you sell it to? And then

⁷ McMahon Transcript, at 20-23.

⁸ McMahon Transcript, at 28-29.

⁹ McMahon Transcript, at 123-125.

they will say, well, we sold it to this wholesaler. Then we call the wholesaler, the wholesaler will say, well, I sold it to this retailer. We call the retailer and then the retailer will tell us we sold it to this individual. So at this point we have the first over the counter purchaser of that weapon.

Now, depending on the time, sometimes we will get these traces back and this person maybe bought the gun 10, 15, 20 years ago. That doesn't give us as much a lead as if this person bought the gun 2, 3, months ago.

Q Or 2, 3 weeks ago?

A Or 2, 3 days ago.

Q Sounds like a fairly arduous process tracing the weapons?

A Tracing, absolutely.

Q So if the gun isn't recovered in Mexico or the gun isn't recovered in Arizona or Texas or somewhere else, how are you turned on to Mr. Chambers initially? How would that happen?

A Again I think through information others would provide. We could also do it through suspicious sales if someone is buying a large number of the same type of weapon over and over again.

Q How would you at ATF become aware of that?

A Usually if we send our regulatory function into the gun shop, they will be doing their inspections and then they will see something that looks a little suspicious.¹⁰

Q So when it says, the second sentence, "They found 40 AK 47s from our 'Fast and Furious' case," how did they -- and this was yesterday -- I mean, so they know yesterday.

A Yep.

Q Okay. You testified earlier about how arduous the process was

A Oh, sure.

Q -- for doing traces?

A Uh huh.

Q So isn't the reason that they were able to know so quickly that these were connected to Fast and Furious is because they were put into the Suspect Gun Database at the time they were purchased?

A Absolutely.

¹⁰ McMahon Transcript, at 26-27.

- Q And that is because you had cooperation from the FFLs and you had contemporaneous notice that these guns were being purchased by these purchasers?
- A I don't know what caused them to be put in the Suspect Gun Database. We used that database as an investigative tool. If we become aware of guns that were purchased yesterday, last week, 3 weeks ago, a year ago, that we believe are suspect, we will put them in the database. And that helps us trace the firearms.
- Q Would it surprise you if I told you the average time between the date of purchase and the date of entry into the Suspect Gun Database for the 1,880 guns that we're aware of connected to Fast and Furious is about 5 days?
- A That's good.
- Q So you had contemporaneous notice from the gun dealers that these guys were buying these guns. That is how you knew so quickly that they were connected to the case, right?
- A We knew they were connected to the case because they were in the Suspect Gun Database. I don't know when
- Q Right, which is a quicker way to trace than the normal trace process, right?
- A Well, it is not a trace. It is actually
- Q It's a substitute for the trace process.
- A Well, not really, because there are still other parts of the trace that are done for a trace. All these guns should still be traced. With the Suspect, it gets a lead out to our people much quicker. I mean, obviously an agent takes the time to put it in our database so that they can get that lead much quicker.
- Q But the Suspect Gun Database has the key information that you want from a trace. It has the date of purchase, the person who purchased it, where they purchased it, et cetera. Correct?
- A I don't know if it has all of that, but it has most of that, yeah, absolutely. I mean, that is why we have a Suspect Gun Database.
- And we knew right away that 40 of these guns were part of our case. I think it was actually a bigger seize than just the 40, so that would actually give us more leads, as well. So how did this group of guns get commingled with another group of guns? What's that organization? Is that still tied to our organization or
- Q Right. But you knew about them in the first place because the gun dealer had told you at the time they were purchased.
- A I mean, I don't know how we knew about these guns. I mean, it could be I don't know. I mean, I just know that they were put in Suspect Guns. You know, I didn't put it in Suspect Guns. I don't instruct people to put it in Suspect Guns. They put it in Suspect

Guns, and it gives us a good lead. I mean, this whole arrest gave us a very good lead, actually.¹¹

Q When you say "they," who?

A Acting Director Melson and Deputy Director Hoover. They would go over for, I don't know if it was monthly or bimonthly meetings with the DAG and that changed a couple times. We had a couple of different DAGs during this investigation.

Q So to the best of your knowledge, who were the DAGs during the investigation?

A Oh, wow, it was Cole, who is there now, he was acting for a while and now he is the AG's Chief of Staff.

Q Grinler?

A Grinler, Gary Grinler. And before him was Ogden, and I believe that was it.

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Q About their communications with Justice about this case.

A No. I don't recall any communications with anybody within my chain up or below that had conversations with main Justice on this case. I mean, obviously there was discussions on this case. There was discussions about what was going on in the southwest border all the time. I mean, I was probably going to weekly meetings at some point, either at Justice or at ATF about southwest border. It took up the majority of my time, even though I have seven field divisions and four of them are directly related to the border.¹²

Q Exhibit 2 is an email from Kevin O'Keefe, chief of Criminal Division, and the first line, "George, I know my folks made contact last week while I was away from the office. Mr. McMahon," I presume that is you, "has tasked us with doing a link analysis on Hope's case in order for him to brief AD Chait." I'm sorry about the second line. "Doing a link analysis on Hope's case in order for him to brief AD Chait, who will, in turn, brief a DOJ attorney on new southwest border operational plans." I'm sorry about the copy there.

A That is okay.

Q So this email, middle of December 2009, so again, it seems as though you are somewhat hands on at this point in the middle of December 2009, tasking them with doing a link analysis on Hope's case. I'm not familiar with what a link analysis is. Can you explain that to me?

A A link analysis is trying to link individuals together to either an event or a series of events.

¹¹ McMahon Transcript, at 176-178.

¹² McMahon Transcript, at 93-

Q Okay, and why would you have tasked them with doing a link analysis on this ordinary case

A Sure.

Q -- in the middle of December?

A I never said it was an ordinary case.

Q Well, a case at this point did not stand out in your mind?

A Okay. If I remember the context of this, we were going to be -- the Criminal Division of main Justice was looking to assist us in the few ongoing cases that we may have had that we may have had some problem getting prosecuted. One of the cases that obviously came up was this one. We wanted to make sure that it was prosecuted fully so if we had this opportunity for the Criminal Division to assign U.S. attorneys or assistant U.S. attorneys from main Justice to a case, we thought that this might be one that they might be interested in. So that is why we were provided it.

Q Who would those criminal attorneys be in this case?

A I believe it was, well, I believe we briefed Kevin Carlisle, and at the time, he was the chief of the gang unit. And there was another, someone under him, and I don't remember his name, who was actually going to be directly assigned to ATF to work on a case or two that we thought would merit the prosecution.

Q Would the name Joe Cooley ring a bell?

A That name sounds familiar but I can't be sure. I know it was Kevin Carlisle, and Joe Cooley could have been one of those associates.¹³

Q So from your point of view, the number of weapons being transferred in this case is ordinary?

A Oh, it is not ordinary, no, by no means is it ordinary. That is something that we were definitely taking a look at. This is a large group buying a large number of weapons, and that is a bit unusual. And so that did get our attention. And that is something that we wanted to make sure that gets prosecuted the right way, and that is why we want to brief Department of Justice Criminal Division.¹⁴

Q Were you aware that anybody -- I know it came to light obviously recently within the last 5 or 6 months, but before then, were you aware that anybody was expressing dissatisfaction with this case with the way it was being run?

A No.

Q -- or there was anything going on with the case that should have raised eyebrows?

¹³ McMahon Transcript, at 31-33.

¹⁴ McMahon Transcript, at 34.

A No.¹⁵

Q Read it if you want. I affectionately refer to this as the [ATF] memo.

So the [ATF] memo here, very clearly, Mr. [ATF] was expressing concern about the number of weapons going on in this investigation very early on, December 17, 2009, then you see up here an email at the top from Mr. Newell, I will address [ATF] concerns with McMahon. Did Mr. Newell ever address these concerns with you?

A I believe we did speak about [ATF] involvement in this case.

Q Okay. Can you describe some more about that conversation with Mr. Newell?

A Sure. It was some concerns that [ATF] was dictating things from headquarters to the field which was not his job. I agreed. I said I would speak to [ATF]. That is about what I remember from this.

Q Okay so Mr. Newell was not concerned about Mr. [ATF] actual concerns about the number of guns, but he was rather concerned that headquarters was interfering with his little operation down in Phoenix?

A Well, that position in headquarters. He will never have a concern with me interfering with a case, but that position in headquarters, absolutely.

Q So he never expressed to you Mr. [ATF] actual concern about the volume of guns that was being purchased in this case in December 2009?

A Did Bill Newell?

Q Yes.

A We talked about the volume of guns from very early on. As I said, this was a large group of people buying a large number of guns, and that is concerning.

Q And again, did he express Mr. [ATF] specific concerns about this to you?

A I believe he did.

Q You believe he did. And what did you do with that information knowing that Mr. [ATF] was concerned about this?

A I would explain to [ATF] what was going on in Phoenix at the time, about this is not Virginia where Ray spent most of his career, or New York, where I spent most of my career. This was Phoenix, Arizona.

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A Okay.

¹⁵ McMahon Transcript, at 34.

Q Mr. **ATF** Mr. Kumor, Mr. Newell participated by phone, Mr. Cooley, and Mr. Carlisle.

A Okay.

Q And in this meeting, are you familiar with the meeting I'm mentioning --

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Q So Mr. **ATF** didn't express concern about this case again?

A I don't remember if Ray brought up concerns during that meeting.

Q What about Mr. Kumor? Did he express any concerns about this case?

A Not that I remember.

Q Essentially you were having two direct reports

A Uh huh.

Q Expressing major concerns about this case to you.

A I did?

Q Yes, Mr. Kumor and Mr. **ATF**. That doesn't ring a bell?

A No, it doesn't. Them expressing concerns?

Q Would it surprise you if this meeting were tape recorded?

A If what meeting was tape recorded?

Q The meeting between Mr. **ATF** Mr. Kumor, Mr. Chait, Mr. Carlisle and Mr. Cooley.

A Would it surprise me? Nothing surprises me nowadays.¹⁶

Q Were there discussions in ATF management so you and Mr. Chait, Mr. Melson, folks in D.C. about sort of the risky strategy of Fast and Furious?

A I don't think there was ever a strategy with Fast and Furious. There was a concern because we had a large group people buying a large number of weapons. And that was a concern from early on. That is the problem with firearms trafficking.

Q Was this concern addressed to people above Mr. Chait, Mr. Hoover, and Mr. Nelson?

A I don't know.

Q Did you ever address these concerns about the large number of weapons?

A To people above -- outside the agency?

¹⁶ McMahon Transcript, at 35-38.

Q Sure. Certainly they were well aware of the large number of weapons that were being trafficked in this case?

A Who was?

Q I mean, Mr. Hoover, Mr. Nelson

A Oh, absolutely.

Q So the concerns that were going on, were those being discussed?

A Absolutely. Oh, absolutely.

Q And what -- what I guess operational safeguards were in place to ensure that the guns weren't going to go to Mexico, weren't going to end up at crime scenes in Mexico? What safeguards were in place?

A Well, I mean, every individual in this case was put into the tech system. So if they ever had a border crossing that would be checked, if ICE - - if CBP was doing the check southbound.

All the guns that we suspected being purchased by this group were put into our suspect gun database. We were obtaining a wiretap to help us identify when and if people are buying weapons and who is orchestrating that. So all of those safeguards and all of those wasn't the case in the other four judicial districts and so Pete and I had those kind of conversations from he has been out in Phoenix for 6 years now probably, so.

Q And you saw his testimony before the committee right?

A I saw parts of it yes.

Q So it was the same sorts concerns that he raised at the hearing

A Absolutely.

Q That you raised professionally? Those were not new to you?

A No. Absolutely not. Absolutely not.

Q What, if anything, did you do or did you suggest that Pete do to try to address those concerns?

A Well, you had to work within the system I used to tell him and then obviously bring it up your chain, and then I would have conversations with Bill Newell about what he is doing with the U.S. Attorney's Office. And in fairness when Dennis Burke took over and we did see considerable change, they were getting more and more aggressive, and those were some positives that we saw. And I would sometimes relay that to Pete that we are seeing some and he would Pete would admit things were getting better too.

Q In your interactions with the director, the deputy director, do you ever recall any conversations with them about, "Wow, that is a lot of guns. Are we doing the right thing?"

A Absolutely. I mean, that was constantly being talked about around the room. Absolutely.

Q So there were pros and cons of letting this case

A There was discussion. I don't know if it was ever pros and cons. It was, this is what is going on, this is how we are getting closer, this is a big network. It was those kind of conversations. I don't think at any point anyone said, do this, do that. It was just an overview of what is going on. And then we would say, wow, that is an awful lot of guns, that is an awful lot of money, it is an awful lot of people.

Q How about with the folks from Justice that you mentioned? Kevin Carlisle or Joe Cooley? That's somebody we mentioned. Is Joe Cooley the other guy who worked with Carlisle?

A I believe he was. I just keep forgetting his name. But I know Kevin very well. I have been with Kevin at lots of different meetings. Joe, I think, was only in this meeting with me maybe once or twice at the most.

But, yeah, the discussions we had with them were about what was going on in this case and what maybe they could do to help us, you know, focus some of the prosecution resources on this case.

Q As I understand it, there was some frustration that the T3s weren't moving fast enough?

A Absolutely.

Q That, you know, Emory Hurley, the AUSA, wasn't processing them?

A Well, no. What came to me was the fact that OEO was -- there was a big delay with OEO.

Q Okay.

A And so, then that is when myself -- we were at a meeting with Jason Weinstein, and we brought it up to him after the meeting. And then he fixed it like that. He assigned it someone to just this case, and, sure enough, things started turning around much quicker.

Q And you had similar frustrations with getting the indictments out the door?

A Absolutely. Yeah.

Q And you had wanted them in July, right?

A We wanted them as soon as they could get them, is what it came down to.

Q And why did you want them as soon as possible?

A Well, it was time to take this case down. It was time to, you know, round everybody up and

Q Because you didn't want them buying any more guns.

A Well, it was also, we wanted to show everybody what great work we have done. And that was key. There was a lot of discussion about that. You know, can we take it down right around the end of GRIT, because then we could have a bigger press conference.

Q But, really, at the end of the day, you didn't want any more guns to be on the street.

A Oh, absolutely. That's why we were arresting all these people. I mean, that is what our job is.

* * *

Q Because you didn't want any more firearms to go out the door.

A Absolutely. I mean, that's our ultimate goal. We want to stop guns from going into Mexico from the U.S. And that's why we conduct this investigation.¹⁷

Q You talked earlier about how you thought ATF needs to be an organization where, yes, there is a chain of command and people need to follow the chain of command, but people also need to be able to -- if they don't get satisfaction with their immediate supervisor, they need to be able to go to the next level up in the chain of command

A Absolutely.

Q -- and have some alternative means of raising concerns, right?

A Absolutely.

Q And you expressed some concern earlier that, you know, you didn't hear about a lot of these complaints, you know, until they became public.

A More disappointment than concern. But disappointment.

Q Disappointment. Okay. Are you familiar with the "schism" email that has been in the press?

A I am.

Q Mr. [ATF] told people basically, if you don't like the way we are doing things, you can go work for \$30,000 a year at the Maricopa County Sheriff's Office?

A I have read the email, yes.

Q Yeah. So you can understand why somebody, maybe, who received that email might be chilled from trying to go above Mr. [ATF] to his supervisor?

¹⁷ McMahon Transcript at 198-200

A I actually think the complete opposite.

Q Oh, really?

A I think that's when I would go above Mr. **ATF** I mean, if he is saying things like that, then I would have brought that to his supervisor.

Q So you don't understand how a line level agent might be intimidated by a group supervisor who is, you know, a level above him, a level above his supervisor, threatening that they would be terminated and they can go look for a job somewhere else if they don't like it?

A I mean, maybe if that's a brand new person. But anybody that has been around long enough knows that nobody gets terminated in this agency -- well, for the most part.¹⁸

Q And what kind of mistakes do you feel were made?

A Well, specifically I think that mistakes I have seen in hindsight now are that we took a little bit too much direction from the U.S. attorney and also I think a mistake was that the communication within the group wasn't as good as it should have been. The decisions that were being made by the case agent and the group supervisor I don't think were communicated in the right way to the rest of the members the team from what I have seen.

Q And do you feel that that is because the group supervisor and case agent sort of coalesced power around the two of them and refused to share information with the other agents? Or why do you think that is?

A No, I just don't think that they communicated their decision making and the reasons behind their decision making very well. At least in hindsight now.¹⁹

Q And that is through your review of document?

A It is the conversation about what was going on. It is review of documents. It is testimony I have heard. It is, you know, it is just a conversation about what was going on in the atmosphere in this group. You know, you had

Q And these agents have been, have testified before the committee that they weren't allowed to use those techniques that are described and that are authorized in ATF orders, ways to interact with the straw purchaser to attempt to elicit through the interview process probable cause, they were prevented from, they were ordered not to do those things, right?

A That is my understanding, yes.

Q And that was a conscious decision at what level?

¹⁸ McMahan at 219-220

¹⁹ McMahan Transcript at 9

A At the street level.

Q So you are saying at the case agent level and the group supervisor level, but not above?

A With consultation of the U.S. Attorney's Office, absolutely.

Q The U.S. attorney was aware of that situation?

A The U.S. Attorney's Office. The prosecutor assigned to this case. That is the reality here, and that is where I think the breakdown is, is that those agents that are out there assisting on surveillances and assisting on wires aren't privy to the conversations they are having with the U.S. attorneys, and again, I think that is the mistake that was made here, that the whole team should have been aware of what the dynamic of Phoenix is and was.

Q Well, I don't think that the agents, if they, the fact whether the U.S. attorney, no matter who was saying it, they objected to the tactic?

A Okay.

A Correct. Again, I spoke earlier about two mistakes. One mistake was allowing the U.S. Attorney's Office to dictate what we did. The second was the communication. So those are the mistakes that I see in this case.

Q So you would disagree with that decision by the U.S. Attorney's Office?

A I would. I would. And in hindsight, yes, I would. And those are some of the discussions Bill Newell and I had early on about is there a weak link here? Is there somebody that we can go talk to? And that is what was going on.

Q So you suggested interviewing the witnesses, interviewing the straw purchasers?

A If we can identify the right person to do and they weren't getting any support from what I understand from the U.S. attorneys to do that.

Q And Mr. Newell resisted that or he blamed it on the U.S. attorney?

A He blamed it on the process is where it came down to. It was this is the way things are here in Arizona and the way things are. And we were trying to make the best case possible against these individuals and stop a network of traffickers.²⁰

Q Okay. Did you read the wiretap applications?

A No, I did not.

Q Okay. But you were on the distribution for those, weren't you?

A That's correct. Have you seen--

Q I have.

²⁰ McMahon Transcript at 118-120

A Okay. I have seven divisions that push a lot--

Q But only one -- it was infrequently that wiretaps were used, right?

A No. Wire

Q For firearms

A Trafficking cases, yes, that, is infrequent. But we have wiretaps going all across the country.

Q How many wiretaps were there in this case?

A I believe we applied for -- I think we ...-- I think we applied for nine.

Q So there were ... wiretaps and you never bothered to read any of them?

A Absolutely not. And there was no way I could. Some of these wiretaps would be up for, like, 2 days; and then we would be applying for another one.

Q But you never bothered to read any of the applications

A I knew that

Q -- rich in detail?

A I knew that we were applying for wires and that was what was important for me.

Q Whose job is it to read the applications, if it is not yours?

A Counsel, main Justice. I mean, there is quite a few levels.

Q Why are you even in the chain of command if you're just going to pass on your work to the level above you?

A That level is not above me. The Counsel and main Justice, the people that review wiretaps, that is what they do for a living.

Q Put out a memo for a wiretap application, isn't that your job to sign off on that?

A No, I never signed off on a memo for a wiretap application.

All right. I am going to introduce Exhibit 4 here. Hopefully, we can come to an agreement on what exactly occurred.

Here is Exhibit 4. I will give you the original. That is for you.

[McMahon Exhibit No. 4
was marked for identification.]

Q So this is dated February 5, 2010, a memorandum to Deputy Assistant Director, Westfield Operations. I assume that is you?

A That is. That is my title.

Q Through the Special Agent in Charge, Phoenix Field Division, from Group Supervisor, Phoenix Group 7.

Subject: Request for Authorization to Seek Title 3 Intercept of Telephonic Communications.

So this is a memo to you requesting authorization to seek Title 3 intercept. There is some good detail in here. Not as strong detail as the actual wiretap applications themselves. Are you saying that you never read this, that you just approved it and sent it up to the next level?

A If I -- if I -- if I had read this, I would have signed it and dated it. I don't believe I have ever read this.

Q You don't believe you have ever read this. So what is the point of even sending it to you then?

A I'm not sure if it was sent to me.

Q Memorandum to Deputy Assistant Director. This isn't you sending it on to somebody else. It is somebody sending it to you.

A Correct.

Q That's right. So do you sign everything that comes in your in box?

A I do.

Q Do you sign it immediately?

A Do I sign it immediately? I sign it when I review it.

Q You sign it when you review it.

A Then I would put "approved".

Q Okay. So, just to be clear, you never -- you've never seen this document before?

A Not that I recall, no.

Q Okay.²¹

Q How does the Title 3 process work? Walk me through. If I'm Bill Newell, how do I get a Title 3 approved?

A Well, he doesn't.

Q If I am **ATF** how do I get a Title 3 approved?

²¹ McMahon Transcript at 51-54

A The case agent usually would be the one that prepares an affidavit with an assistant U.S. attorney. Then it gets reviewed by ATF counsel, and then it goes over to main Justice. For the life of me, I can't remember the unit in main Justice.

OEO. Thank you.

They are the approvers in this. Then it goes back to the U.S. Attorney's Office, and then they present it to a judge.

Q Okay. Just a last question before I hand over the questioning.

The first sentence here, "this memorandum serves to request authorization" -- the memorandum is to you -- "to initiate a Title 3 cellular telephone intercept." So if you never approved this, if you never saw it in the memorandum request authorization, how was this authorized?

A By a judge signing the order. I mean, that's how wiretaps work.

Q Mr. **ATF** can't simply sign it in -- sign it by himself and submit a wiretap application to a Federal judge.

A No. It has to go through the process I just described.

Q It seems as though you're a part of the process here.

A Not the process I described, no.

Q So does that mean that you're saying that Mr. **ATF** is able to go directly to OEO without your approval? He doesn't need your approval?

A I am, yes. I mean, my approval -- yeah. No, it is -- I would be informed of things that are going on, but there is not a lot of approval on something like that. I approve things like spending over \$50,000 on a case, overtime, things like that.

Q So a group supervisor or case agent doesn't need your approval to submit an application to OEO?

A Electronic surveillance, using informants, all of these different techniques aren't approved at my level, no.

Q I just have one thing. Would it be common that people might write memos to you that you don't look at or you don't get a chance to see?

A Not that I know of, no.

Q Especially something this rich in detail?

A I mean, I don't know that the detail has anything to do with what kind of memos I get and don't get.

Q So if it was sent to you, most likely you would have looked at it?

A I would, yeah. I mean, there is -- I don't know where I was February of '10.²²

Q And so if a group supervisor wants to seek a Title 3 and he is working with the U.S. Attorney's Office, who would you expect him to get approval from? Or no one?

A His chain of command. Because, obviously, wiretaps are going to be very labor intensive. They cost a lot of money. So there are some budgetary reasons that the SAC will have to make those decisions.

Q So those budget decisions would go up to the SAC?

A Sure.

Q Would the SAC bring those up to you?

A We might discuss those, yeah. Because a lot of times it might require extra people to work the wire or overtime to -- depending on the hours they were going to work the wire. And I don't believe that ever came in this case because of the whole strike force concept. We were going to be using a DEA wire room, their contractors, that sort of thing.

Q So you don't recall them having a budgetary conversation with you about the wiretap?

A No.

Q But you were aware that the wiretap

A Absolutely. We were discussing wires pretty early on, and it did take us a while to get our first wire. And there was actually -- there were some delays in the process of getting new wires, and I actually had to have a meeting with someone from the Criminal Division as well to see what we can do to help speed this along, to speed the process along. Because these wires are rolling over pretty quickly. They were up -- we were up on a phone for a day or two and then they would go down. So we needed to roll into our next phone.

Q And just on that, when you were having problems with the speed from the wires, was that a problem from -- where was the problem generating from?

A OEO and main Justice.²³

Q Do you -- I guess do you know why they were stopping short the surveillance?

A I don't.

Q So you didn't approve them stopping short the surveillance?

A No, no.

²² McMahan Transcript 54-56

²³ McMahan Transcript 58-60

- Q Do you have any idea why someone would stop short of the surveillance?
- A I think some -- I mean, there are reasons you would stop a surveillance. If you don't there is no way you can see any more, if you lose someone, if nothing illegal has happened there is lots of reasons to stop a surveillance.
- Q And who would make the decision to end the surveillance?
- A Whoever is supervising the operation out there on the street.
- Q So is that the group supervisor?
- A It could be the group supervisor was there, the case agent, or usually whenever you go out on these things someone is put in charge. It could be a grade 13 street agent that has more knowledge on the case or the case agent himself or the group supervisor.
- Q And would they need to go to anybody else to get approval to sort of stop a surveillance?
- A No.
- Q Is that done as a general rule or on a case by case basis?
- A I think in a general rule. I think we allow our investigators and our group supervisors to conduct our investigations.
- Q And who else would have known, I guess, that they were stopping short of surveillance?
- A I guess if it is in a report somewhere, then whoever is reviewing the report using ASAC, maybe the SAC might review the report and anyone else that I guess that it was brought to their attention. I just don't know who else that would be.²⁴
-
- Q If your agents in the field had access to information that a particular suspect had an intention to go to an FFL to make some of these purchases, and the agents in the field with that information telephoned the FFLs and said, "Hey, one of these guys is coming in to buy some of these weapons, we would like you to go through with the transaction," would that concern you?
- A It would. Yeah, I don't think we should be telling FFLs to make transactions or not make transactions. I think that's a concern. I think it is the FFLs' responsibility to make those decisions.
- Q So, for the most part, the FFL shouldn't be tipped off by ATF that a suspect is coming in to buy weapons, right?
- A I mean, for the most part, it depends on what it really depends on what is going on with the case. But, overall, no, that should not be the practice. I mean, I am sure there are other times that things like this would and should happen. But, for the most part, no, it should not.

²⁴ McMahon Transcript at 62-63

I just marked Exhibit 14.

[McMahon Exhibit No. 14
was marked for identification.]

Q I'm not going to go through every page in this. If you would flip to the third page and you can certainly read as much as you want, but I'm going to start on the third page. And I'm not going to identify the FFL. I mean, you can see who it is here on the record, but just for purposes of the transcript.

Just starting on page 3, there is an email to [ATF] from an FFL.

A Okay.

Q It says

[Discussion off the record.]

Mr. Serres. I just wanted to know if he knew.

Mr. Castor. Okay.

Mr. Serres. So, do you know?

Mr. McMahon. No, I don't know if this is an FFL or not. I mean, it says "general manager," I don't know what that is.

Q Okay. This is an email from [FFL].

A Okay.

Q It's one of the FFLs listed in the indictment. Do you understand ... is an FFL in Arizona?

A I do.

Q Okay. So, [FFL's] general manager emails [ATF] and notified [ATF] that [Defendant] is looking to purchase 20 FN FNX 9 millimeter firearms.

"We currently have four of these firearms in stock. If we are to fulfill this order, we would need to obtain the additional 16 specifically for this purpose." You can finish.

Q Correct.

The second paragraph and take your time in reading it. I don't want to rush you through this.

And so the second paragraph, [ATF] says, in summary, our guidance is that we would like you to go through with this.

Is that concerning to you?

A It is.

- Q Okay. So if you were [ATF] supervisor in the field and he came to you and he said, "Hey, boss, this is what I'm going to do," you would say, "Don't do that"?
- A Yeah, absolutely. I mean, again, I said earlier I don't think we should be telling FFLs to sell or not sell firearms.
- Q Okay. The page after that
- A Page 5?
- Q Yeah is [ATF] telling [ATF] that they are going to go ahead and complete the transaction.

Then I want to turn your attention to the following page. And this is where it gets a little tricky, in my view. This is an email from Scottsdale notifying [ATF] that their annual check is occurring, and they were requesting extensive documentation. And so [ATF] tells [ATF] about this. And over the course of the next couple pages, [ATF] confirms that, you know, he essentially can help [ATF] out with this, you know, with their regulatory on the regulatory side of things.

So the concern here is, if [ATF] doesn't go through with the transaction it discussed with [ATF] they might be worried about getting jammed up on the regulatory side of things. You can see here with these emails that there was a discussion about the regulatory side of things, and it looks like [ATF] hooked him up.

Is that concerning to you?

- A Very much. Very much.
- Q Okay. And so you were unaware that that type of thing was going on?
- A I was. I was.
- Q Mr. Newell didn't tell you about that type of thing?
- A No.
- Q And do you know if Mr. Newell knew about it, now, after the fact?
- A No, I don't know.
- Q Okay. Is this the first you're learning of this type of thing?
- A First I'm learning of this, yes.
- Q Okay. So this is a problem.
- A Absolutely.
- Q Okay.

A We have to keep that balance. We license the industry. That is our job. And then we also conduct criminal investigations. They can't bleed into one another.

Q And it is our understanding, too, that [ATF] was doing the same thing with another FFL,...; that she was calling on the phone, notifying the proprietor of [FFL] "Such and such a guy is come in to buy such and such weapons," and they essentially worked out a way to make sure the weapons changed hands to the suspect. And that is a problem?

A It is.

Q Okay.

A The only time that I know that that was happening and I agreed with the technique was when we were actually when we put a tracker on one of the weapons. I mean, that, to me, is perfectly fine, when you garner the cooperation of the FFL to help facilitate this transfer so that we can actually track weapons.

But I don't see that happening with these emails here. I don't think that happened in these cases, and that is concerning. But, as I said, there are times when I think it is helpful to do these things.²⁵

Q Okay. So if you tipped these guys off by knocking on their door and said, "Hey, we are on to you; what can you tell us"

A Right.

Q -- granted, in July you might not have been able to have the actual indictment

A Right.

Q -- but you would have tipped them off that

A Right.

Q -- you know, "You are on our radar screen." Do you think there was enough evidence then to

A I mean, they were presenting the case for indictment. I mean, I don't know about what evidence we had specifically for each individual, but

Q Because they were what I am getting to is because they kept buying more guns in July and August and September

A My understanding is that things

Q -- and October

²⁵ McMahon Transcript at 187-191

A -- tailed off then.

Q They tailed off somewhat but not

A I thought substantially. I mean, our big months were December, January. I don't know, February or March, one of those things, was a lull. And then things really

Q I think it was the day of the Terry shooting

A Okay.²⁶

Q Are you aware of whether in the Fast and Furious case the agents were in fact using any of these methods to slow or stop the purchases so interdiction, traffic stop, arresting people

A They were. At the point in the case when the wiretaps were up, they were making interdictions. They had a very unique technique near the end where they would actually I don't know how they were able to get this across, but they were doing some seizure warrants on the weapons based on they would go into a gun store after a purchase was made, have a drug dog smell the firearms not the currency, and the dog would be a narcotics dog and hits on narcotics and that would base that would base the seizure warrant, which I thought was very unique because I'm not sure how that will hold up in court. But I guess we will fight that battle later on.

But there were doing interdictions, absolutely.²⁷

Q Was there a conscious decision not to go out and knock on their door and say, "Hey, what are you doing with all these purchases?"

A We discussed that early on about, you know, who is the right person to make a run at. And what I got back from Bill Newell was, no, there wasn't, and they wouldn't get the support of any kind of prosecution. We wouldn't have anything to hold over this person's head when we did do the knock and talk.

Q So a conscious decision was made not to do the knock and talk?

A Correct.

Q And following that, the guns really started to add up. I mean, there were 212 guns bought by the suspects in just 6 days in December of '09.

A Okay.

Q At any point, did yourself or Mr. Newell have a discussion about, "Wow, it's a lot of guns; maybe we do need to do the knock and talk"?

A Absolutely. We discussed that throughout. We had this large group of people buying a large number of guns, and that was always the concern. But the bigger concern was

²⁶ McMahan Transcript at 202-204

²⁷ McMahan Transcript at 68-69

putting the case together so we can get them locked up so we could do this and shut down this network.

Q There is sort of a tension between not having enough for an arrest or a successful prosecution, on one hand, versus allowing the case to develop, on the other hand. And allowing the case to develop, I think you would acknowledge, results in some of these suspects acquiring a lot of weapons, right?

A Absolutely.

Q So there is a tension there.

A Oh, absolutely. I think, as I said a couple times, that is a fine line that we have to watch all the time. I mean, when does a gun that starts out legal cross that threshold and become a part of illegal commerce? And that is what we are trying to prove.

We can never put a number on you know, God forbid I say to somebody, "Once somebody buys a certain number of guns, you have to go talk to them," because, you know, people have the right to buy as many guns as they want. It is very suspicious, absolutely, when people buy a lot of guns. But we have to walk that fine line about, you know, what is illegal and what is not.²⁸

Q Do you know how many of [Defendant]'s firearms were recovered in Mexico?

A I don't.

Q Would it surprise you if it was as high as 60 by March 1?

A No. I mean, it doesn't. But, I mean, numbers there were recoveries, there's no doubt about it. We were getting briefed on recoveries. As I said earlier, we were having a lot of recoveries in the Tijuana area. Then we started having recoveries down in El Paso. And what is the connection there? What routes are they taking? And

Q Is it fair to say that there was a conscious decision made not to go knock and talk?

A I don't know if there was a conscious decision to do -- you know, again, Bill Newell and I talked a couple of times about, hey, is there somebody that we can go talk to to try to flip, you know? And they didn't feel they had it yet, and they were going with the scenario.²⁹

Q Darren Gil said on CBS that when he showed up in Mexico City, a short time after he arrived there he started seeing a lot of firearms being recovered in Mexico that were traced back to the Phoenix case. He told CBS that he notified headquarters, he notified Phoenix, and he didn't get very far with his -- the alarms that he raised.

²⁸ McMahan Transcript at 183-184

²⁹ McMahan Transcript at 186-187

It's our understanding that he was communicating with his supervisor, Mr. Kumor. What can you tell us about that? Did Kumor come to you?

A Again, I think there was discussions throughout this about the recoveries in Mexico. I don't remember any in specific that Darren Gil brought up or, you know, what he suggested for us to do or anything like that. I mean, he may have just made a statement that guns had been turning up down there. And, yeah, that is true, we see that; we are putting a case together to stop them from putting guns in Mexico.

Q I think Gil said that he was told by headquarters that it's under control, that we're putting together a big case. Is that consistent with what--

A You know, I don't believe I ever spoke to Darren about this being under control or this big case. I mean, we were making a big case. Those are all true -- that is true.

Q What do you recall from your conversations with Mr. Kumor?

A I know we had conversations about, you know, the sharing of information. And there was a lot of sharing of information to the Tijuana area about possible suspects going that way. I would hope that it would have been communicated to Darren, as the attache.

Danny -- Kumor was well aware of what was going on in this case. He sat in on a few briefings. I would have hoped he shared that with his people under him, about what was going on, how we were putting this case together.

Q After Gil complained a good bit, raised the alarm that there were 500, 700, 900 guns--

A He did that?

Q -- being traced back to Mexico

A Darren actually did that?

Q Yes. He says he got shut out of the case, and they slapped a 6(e) control on the case, and so he couldn't access--

A I doubt that. I think this case was -- our system is a little weird, our case management system. If there is anything that has grand jury material in a case, even if it is just one little mundane piece of information, and that is in the case, the case agent checks a box, and that creates the case becomes 6(e) and only certain people have access to the whole thing, which doesn't make sense. And we are trying to fix it, but it is a multimillion dollar fix to do something like that.

So this case, if I remember correctly, was designated 6(e) very early on. So for Darren to say that he was shut out of a case, that is not possible, because it was a 6(e) case very early on. And you can't just say I don't know if Darren thinks he had access when it was a 6(e), because I don't know if he got a 6(e) letter, but you don't just shut a person out. Once something is 6(e), only certain people can get in that case to begin with, and there is no shutting out of anything. So, after 900 guns were recovered, if Darren is saying that, for them to be shut out, that is inaccurate.

- Q He also could have been obtaining information through the Suspect Gun Database, though, right?
- A The Suspect Gun Database is not part of the case management system, so it won't be a 6(e)
- Q Right, but he could have been tracing the guns back via the Suspect Gun Database. Like, if they found serial numbers of guns in Mexico.
- A Well, yeah, I would hope that he would be doing that. Yeah, absolutely. I mean, that is part of the job of the people in Mexico, is one of the things that we're having a problem with is the proper identification of firearms down there. So anytime that we can get our agents out to the scene to get a good look at firearms, we get a better trace.
- Q Do you know if the Suspect Gun Database has a shutdown feature to it?
- A I don't believe it does, but I'm not really familiar with the Suspect Gun Database. But it is not in our ENFORCE systems; it is a totally different system. So the 6(e) part is only in our ENFORCE system.³⁰
-
- Q I just want to go back to the exit strategy.
- A Uh huh.
- Q Who was involved and aware of the exit strategy?
- A From me up?
- Q Yeah.
- A When I got it, I pushed it right up to actually I had it for a few days before I pushed it to Mark. I think he actually had to ask for it from me, oh, yeah, I got that and send it to you type of thing. And then I'm assuming he pushed that up to his boss, the Deputy Director Hoover.
- Q And were there further conversations about it after?
- A I think it was obviously we are into this 30, 60, 90 days and we still hadn't had this case come to finale. So there was constant conversations, and that is why we got some of the other briefing papers that said, okay, we are scheduled for indictment on December and now it has been pushed back 30 days because of this. We are getting that on paper, but then we were also getting phone calls like that quite often. It was almost like a weekly conversation I would have with Bill, where are we now, or every other week type of thing, where are we now with the progress. And then it even got into more details like, okay, I think you guys have identified 42 people, how many are well, they only want to do 20, then why. So we would have those discussions.
- Q What about the conversations with the people above you?

³⁰ McMahon Transcript at 216-219

A It was as far as the exit strategy? It was, a lot of times Mark would have the conversation with the people above him and then it would deal with the answer and then I would give the answer. Or if we are in a joint meeting, I said, yeah, I talked to Bill today, he has a meeting with the U.S. attorney tomorrow for an update. So we were doing a lot of that throughout the finale of the case, the last 5 or 6 months.

Q And what was the substance of the communication?

A It was mainly just what is the status, you know, what are they promising, what date are we indicting, how many people are we indicting and as I said I think the date just kept changing. And that built on some of the frustration.³¹

Q. So Mr. **ATF** didn't express concern about this case again?

A. I don't remember if **ATF** brought up concerns during that meeting.

Q. What about Mr. Kumor? Did he express any concerns about this case?

A. Not that I remember.

Q. Essentially you were having two direct reports --

A. Uh huh.

Q. Expressing major concerns about this case to you.

A. I did?

Q. Yes, Mr. Kumor and Mr. **ATF**. That doesn't ring a bell?

A. No, it doesn't. Them expressing concerns?³²

³¹ McMahon Transcript at 154-155

³² McMahon Transcript, at 38.