

ATF

125

Q: Is there anything from this strategic document that, again, indicated to you that ATF agents would be authorized to stop making—to stop surveillance of stash houses?

A: No.

Q: Or to let guns walk?

A: No.

Q: So these strategic papers—were there—

A: Basically, you know, what was happening a lot is a lot of our agents were, you know, okay, we got a straw, let's move on to the next case. You know, they weren't spending time. Okay, let's flip this guy, you know; let's do our due diligence, guys, you know; let's wear off some shoe leather, you know. So this is reemphasizing, hey, guys, do you know what? We expect you now, if you identify a straw, to work it. Let's find out, you know, what cell he's at, who is the financier, you know. Let's do a little legwork on this.

Q: But your interpretation would be let's bust the straw and flip it up the chain?

A: You have to.

Q: And interdict the weapons? That's what you thought this document meant?

A: You have to, you have to.

Mark Chait

55-56

Q: Did anyone else at ATF underneath you, did Mr. McMahon or Mr. Newell or anybody else discuss tactics, including noninterdiction, ceasing of surveillance or gun walking as a potential tactic to be employed as a part of Fast and Furious to your knowledge or as a part of—excuse me, as a part of the cartel focused strategy to your knowledge?

A: Not to my knowledge, no.

Q: What about above you? What about Deputy Director Hoover, what about Director Melson? Did they ever come down to you and say this might require us to employ new tactics, noninterdiction, ceasing surveillance, gun walking; was that ever discussed to your knowledge within ATF headquarters?

A: Not to my knowledge.

Q: Did anyone from DOJ ever come to you, ever propose, ever discuss this, ever discuss these tactics that I'm describing here as potential tactics to be employed as part of the cartel-focused strategy?

A: Not to my knowledge.

59

he was “surprised” by the line agents’ allegations about gun walking earlier this year.

William Hoover

7

Q: Mr. Hoover, when did you first learn about the allegations of gun walking in the Fast and Furious case?

A: It would have been sometime in January of 2011.

Q: And how were they brought to your attention?

A: It was brought to our attention that one of our agents spoke to Senator Grassley's office and made those allegations.

10-11

I was concerned about the number of firearms that were being purchased in this investigation, and I decided that it was time for us to have an exit strategy and I asked for an exit strategy. It was a conversation that was occurring between Mark Chait, Bill McMahon and myself. And I asked for the exit strategy [with intermediate targets for] 30, 60, 90 days, and I wanted to be able to shut this investigation down.

11

he wanted to shut down the investigation and “cut[] off the sales of weapons to the suspects.”

55-56

Q: Did they give you—I mean, you were concerned about the number of guns going across. So did they give you any confidence that they were starting to get a handle on the number of guns here or that they would institute some of— implement some of those before—

A: I think they intended to wall off what they could from the information from the **ATF** also know that there had been discussions, I believe even earlier than March, with the FFLs to limit their inventory of these types of firearms so they could, you know, just tell the straw purchasers that, you know, it's going to take

us, you know, a week or 2 to get those in. They were employing some of those techniques to slow down, if you will, the sale of these firearms.

Q: But [one suspect] would still get firearms in the meantime?

A: Yes.

Q: And there wouldn't be any interdiction?

A: They did not—they chose, at that time, based on the information they had, as I have spoken before, that they did not go to him.

Q: Yeah, but what did you think would happen at the time? You were worried about the number of guns.

A: Yes.

Q: You were worried about [one suspect], because he was on that chart—

A: He was.

Q: —showing how many guns he had purchased. And during this lengthy wiretap process—

A: Yes.

Q: —you wanted a way out. But the question is, were there any other operational controls put in place that gave you personal comfort that fewer guns—or that ATF was going to get control of this?

A: I did not get any specific instruction. I remember having conversations with—actually, the day of that briefing when I asked for the strategy, I had discussions with Mark Chait and also Bill McMahon around that strategy and how we needed to ensure that we were taking steps to interdict as many firearms as possible and to move to close that investigation down.

223

[T]here's been reports that the Deputy Attorney General's office was aware of the techniques being employed in Fast and Furious, and that's not the case, because I certainly didn't brief them on the techniques being employed in Fast and Furious.

224-225

Q: But you don't believe that this is some sort of top-down—it wasn't a policy or some tactical strategy from either ATF management or main Justice to engage in what happened here in Phoenix in Fast and Furious.

A: No, sir. It's my firm belief that the strategic and tactical decisions made in this investigation were born and raised with the U.S. Attorney's Office and with ATF and the OCDETF strike force in Phoenix.

ATF

84-85

Q: You were in briefings with other people at ATF at headquarters. You were located at ATF headquarters. Based on your experience, was anybody talking about this, was there any evidence that this was a ...

A: Oh, no.

Q: ... deliberate strategy?

A: Contemporaneous?

Q: Contemporaneous.

A: While the investigation was going on that this was occurring? No, there was no discussion about any of this in terms of guns being surveilled and loads being discontinued, et cetera, no, there was no discussion about that.

Q: No evidence that you saw that this was a policy of the Department of Justice and ATF headquarters, not just a operational issue in Phoenix?

A: No, I had no no, I did not have any knowledge of that.

William McMahon

13-14

Q: 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: How did that come to your attention?

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

41-42

That it is our concern as well. We are working this investigation the best we can to take down this group of individuals and stop them from putting the guns in Mexico.

57

What I'm being briefed on is a large group of people buying a large number of guns. I didn't get briefed on specifics or this person just walked into the store and bought guns.

82-84

Q: So following the time period in July when you heard the phone calls and you had enough information to have an understanding that there would be enough proof to charge a conspiracy—or to, you know, move forward against these individuals, there was still a time gap between that and the actual indictment?

A: Right. I never actually heard the phone calls. It was mainly the discussion I would have with [Special Agent-in-Charge] Bill Newell, is that, okay, we are done with the wiretap, we are preparing indictments, and that was some time in June, I believe. And then, yeah, it took until January to get the indictments. It was maybe a weekly conversation with Bill, where are we, what is the story, what is the plan and they are working on it, they are working on it, they are promising this month, they are promising next month, and it just kept getting delayed until January.

Q: And at that point, what was your understanding of what was happening when those suspect individuals continued to go into an FFL and try and purchase a firearm?

A: Right. We are doing that technique that I spoke about earlier where we are actually getting the seizure warrants for those items [redacted].

Q: So did you do that for all of them?

A: I think everyone that we knew about—that is what I was being communicated from Phoenix. When we are done with the wires and we are preparing for indictments, we are interdicting at every moment we could with this very unique technique, the seizure warrants.

Q: So as far as you know, as soon as they were ready to prepare the indictments, they had sufficient evidence, they seized every weapon that they knew of that was being purchased after that fact?

A: That was my understanding, yes.

149

expressed support for a reporting requirement for multiple long gun sales, describing it as “a useful tool” for law enforcement agents.

151-152

Q: I think you discussed the 2009 counterpart focus strategy?

A: I think there has been some discussion about that, yes.

Q: And you're familiar with the document?

A: I am.

Q: Did anything in that document, in your understanding, authorize or direct cutting short surveillance?

A: No, it did not. It is an overarching strategy. It helped us realign our resources. It helped us focus on the biggest cartels. It just made it a priority for our divisions to focus on the counterpart strategy. That was the purpose of that document.

Q: Did anything in the document in your view say that you should not arrest a straw purchaser if you had enough evidence in order to build a larger case?

A: No, it did not.

Kenneth Melson

33

when he became fully aware of the number of purchases and the total number of weapons purchased, he remembers his “stomach being in knots.”

34

“we give a lot of discretion to our SACs,” and he wished that the line agents had contacted him directly with their complaints.

55

I think early on, if there had been an awareness of not just the number of guns, but the number of guns that a single person purchased, and that we were watching the guns being purchased by them, I think we would have taken a different approach on it, and would have approached [one suspect] and at the risk of putting the investigation in danger at least stopped his multiple purchases that continued on and on and on for a significant period of time.

It—you know, that would have to have been a judgment made at the time, if we were alerted to it, but nevertheless that was a judgment made by the Phoenix supervisors and the U.S. Attorney's Office, that this should continue in that vein because we didn't have sufficient evidence to prosecute those individuals at the time. And that's a legal decision. That's a lawyer's decision, a prosecutor's decision. It's not a street agent's decision to tell the U.S. Attorney when we've got enough for a case

68-69

I assigned a task force of agents to read through all the ROIs to determine whether or not the allegations that were being made by individuals in CBS and Senator Grassley were true or not, because frankly we didn't think they were true.

They did a review of those and found nothing that would indicate that that was true. I then asked them to bring to me all the ROIs that pertained to [one suspect] in particular and I read through those and found ROIs that indeed suggested that interdiction could have occurred, and probably should have occurred, but did not occur.

And it was at that point that I took that ROI and gave it to our people and the Department. In fact, we briefed and gave it to Matt Axelrod in particular, because to me that was a smoking gun that we really needed to look at the rest of this particular case. Not making a judgment as to whether they should have interdicted in light of information they knew on the streets that might have affected officer safety or civilian safety, because taking down a car in the middle of Phoenix that's loaded with weapons by unknown individuals is a dangerous—a dangerous situation.

So I don't know whether they should have or shouldn't have. All I know is I found an ROI. That's when we asked for all the stuff

72

“the general assumption among the people that were briefed on this case was that this was like any other case that ATF has done.”

75

I don't believe that I knew or that [Acting Deputy Director] Billy Hoover knew that they were—that the strategy in the case was to watch people buy the guns and not interdict them at some point. That issue had never been raised. It had never been raised to our level by the whistleblowers in Phoenix that stayed in-house down there. The issue was never raised to us by ASAC [Assistant Special Agent-in-Charge George] Gillett who was supervising the case. It unfortunately was never raised to my level by SAC [Special Agent-in-Charge William] Newell who should have known about the case, if he didn't, and recognize the issue that was percolating in his division about the disagreement as to how this was occurring. Nor was it raised to my level by DAD [Deputy Assistant Director William] McMahon who received the briefing papers from [Phoenix Group Supervisor] **ATF** and may have had other information on the case. Nor was it given to me by a Deputy Assistant Director in OSII, the intel function, when he briefed this case the one time I wasn't there and he raised an objection to it and saw nothing change.

76-77

Q: Did you ever authorize agents to use a tactic of stopping surveillance in order to see where the guns might go through E-trace later on?

A: Absolutely not.

Q: Did you ever use or authorize agents to use a tactic of non-intervention to see where the guns might go?

A: I don't believe I did.

Q: Did you ever tell agents not to use or authorize agents not to use other common investigative techniques like 'knock and talks' or police pullovers in order to see where the guns might go in this case?

A: No.

Q: Did anyone at the Department of Justice ever tell you or tell anyone else at headquarters and it got to you that those tactics were authorized as part of a new strategy in order to follow the guns, let the guns go, see where they might end up?

A: No.

77-79

the *Cartel Focused Strategy*, a Southwest border strategy developed by the Justice Department, was not intended "to allow the guns to go to suspected straw purchasers without any good faith belief that you could recover those weapons

78-79

[W]e never discussed those types of tactical strategies ... that's for the group supervisor and the agent and the ASAC [Assistant Special Agent in Charge] and the SAC [Special Agent in Charge]. They do the tactical stuff.

84

Q: Would multiple long gun sales reporting be a helpful law enforcement tool to understand and identify trafficking networks early on?

A: Absolutely.

Q: Why?

A: Because it gives us information about the people who are buying weapons of choice in Mexico. And if we were given on Monday the information that you had gone in and purchased four semi-automatic weapons, and then we are able to look at other multiple sales reports and find that two days earlier, you bought another five and that a week earlier you bought 20, then that would be able to allow us to focus on you as a suspected straw purchaser.

97

Q: And would the establishment of a specific and dedicated firearms trafficking statute that specifically prohibited firearms trafficking behavior that allowed you to use a pattern of behavior to prosecute cases rather than the mere paperwork

violations that you mentioned earlier, would that assist law enforcement in prosecuting these cases?

A: Absolutely.

122-123

Q: After reading the ROI, did you believe there was probable cause to arrest—arrest the driver or seize the guns based on what you read.

A: Based upon the instructions and the view of the law by the U.S. Attorney, there would not have been probable cause, because—for several reasons. One, the purchase by the suspected straw purchaser could have been a lawful purpose—I mean a lawful purchase. He may not have lied on anything. The transfer of guns to a non-prohibited person would have been lawful. So there would have been no unlawful transaction. They don't know whether the driver of the other car is a convicted felon or illegal immigrant or what his situation is. That doesn't mean you couldn't have stopped the car, and gotten his identification and asked him what he was doing with the weapons or found out more information to advance the investigation. But again, that so often is a judgment call that is made by the police officers on the street that, you know, it's hard to second-guess that. The reason I pulled it out is because this was at a time I think after the CBS news exposé where we were yelling, stop the guy, stop the guy, and this came the closest of that of anything I saw going through there. So I wanted to alert my staff as well as the DAG's office that there are instances in which guns were not stopped. Now, whether they could have been stopped or we had the lawful authority, that's where some of the disagreement comes as to whether or not there was probable cause to stop that car and arrest or search.

Q: So when you were saying earlier this morning that you believed this ROI showed an instance of where ATF had allowed guns to be transferred without interdiction, were you not making any judgment about whether or not there was lawful authority in that particular instance.

A: That's correct. But it just alerted us to the fact that there are instances that could have done that, and so as Senator Grassley said in his e-mail we saw just before, there may be something to this.

136-137

[T]his strategy was an attempt to focus, just like the OCDETF program has for years, at taking down the top level of the cartels, recognizing as this and many other documents do, that just arresting or taking the guns from suspected straw purchasers is not going to stop the flow of weapons or the flow of drugs, just like DEA now is not focusing on distributors of dime bags of cocaine on the street. That doesn't do anything. It doesn't stop the flow of drugs coming in. They have to go after the cartels to stop it. We have to go after the cartels to stop the flow of guns. The straw purchaser is like the dime bag of cocaine being sold on the street. It puts a lot of people in jail, but it doesn't stop the crime.

137

the strategy “was a higher level Department strategy on bringing the agencies together to work more closely and coherently to get the top rung. There would have been no reason to talk about individual tactical strategies at this level.”

183

Q: And based on your experience as Acting Director of ATF and a long time prosecutor, you just don't feel that ATF has the legal resources available to it to stop that flow of weapons.

A: That's correct.

William Newell

12

When asked whether there was “any guidance given to the agents about different techniques” or “not interdicting suspicious transactions,” Special Agent-in-Charge Newell replied, “Not that I recall, no.”

61

Q: I think that you're aware that at some point during the course of Operation Fast and Furious line agents made complaints about the tactical decisions made at the agent level to cease surveillance?

A: I became aware of that probably in February maybe of this year when the allegations were first made.

Q: So prior to February 2011 you were unaware of complaints from line agents in the Phoenix field division Group 7 regarding surveillance tactics being employed on the ground?

A: To the best of my recollection, I don't remember anytime ever being advised that there was some discourse amongst the agents. I became aware of that when some of the documents were released that I saw. And I want to say it was probably February, early February, something like that, of this year.

ATF

85-86 (6/30)

Q: Now, as part of this investigation, we've been told that, during the course of conducting surveillance on suspected straw purchasers, some of your agents felt that they had sufficient evidence to intervene in some way, but they were instructed to, quote, “stand down” by the primary case agent. You know, specifically, you know, they said that they could have intervened by conducting a

traffic stop or effectuating an arrest or doing a seizure. Are you aware of those allegations?

A: I've heard them as part of the hearing and stuff.

Q: So, during your supervision of Operation Fast and Furious, those allegations weren't brought to your attention?

A: No.

Q: You don't recall having any conversations with agents under your supervision that they had wanted to effectuate a traffic stop or effectuate an arrest and [Case Agent] ATF told them not to?

A: I don't recall participating in any of those discussions. I don't recall people coming to me with those concerns.

212-213 (6/30)

The purpose of this email and the reason this email was sent is ... a lot of people were concerned about their scheduling on the wire and if they were on surveillance or if they were in the wire room, if they were working Saturday, if they were working at night, if they were working Sunday, when was their day off, why were they on this assignment, so and so had that assignment. ... It was strictly about the wire and the working of the wire and the scheduling of the wire. It wasn't about the way the case was being worked.

Exhibit 7 (6/30)

It has been brought to my attention that there may be a schism developing amongst the group. This is the time we all need to pull together not drift apart. We are all entitled to our respective (albeit different) opinions however we all need to get along and realize that we have a mission to accomplish.

52 (7/1)

Q: Well, is there anything in this document [the Department's 2009 Cartel Focused Strategy] or any of the other documents that you reviewed related to the cartel focused strategy that directed you or your agents to forego conducting interdictions when you believed you had lawful authority to do so?

A: No, I don't think we forego or I don't think we didn't seize firearms when we had lawful authority.

Q: In fact, you did, as part of Operation Fast and Furious, you did in fact interdict weapons when you believed you had lawful authority to do so?

A: I think I stated previously, but we seized hundreds of firearms as part of this case.

Q: Was there anything in the 2009 cartel focused strategy document that you just reviewed or any of the other cartel focused strategy documents that you've reviewed that directed you or your agents to cut off surveillance early?

A: No, not that I'm aware of.

Q: Was there anything in this 2009 cartel focused strategy document or anything in any other cartel focused strategy document that you reviewed that directed you or your agents to forego arresting individuals when you believed you had legal authority to do so?

A: No. There's not—I am not aware of any specific language in here that said not to arrest people.