

Hearing of the House Oversight and Government Reform Committee Subject: "Operation Fast and Furious: The Other Side of the Border," Focusing on Accounts From U.S. Law Enforcement Agents Based in Mexico" Chaired by: Representative Darrell Issa (R-CA)
Witnesses: Carlos Canino, Acting Attache to Mexico for the Justice Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Darren Gil, Former ATF attache in Mexico; Jose Wall, ATF Senior Special Agent, Tijuana, Mexico; Lorren Leadmon, Intelligence Operations Specialist for the ATF; William Newell, Former ATF Special Agent in Charge of the Phoenix Field Division; William McMahon, Deputy Assistant Director for Field Operations West, Including Phoenix and Mexico, ATF Location: 2154 Rayburn House Office Building, Washington, D.C. Time: 10:00 a.m. EDT Date: Tuesday, July 27, 2011

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REPRESENTATIVE DARRELL ISSA (R-CA): (Sounds gavel.) The hearing will come to order. Today's hearing continues the committee's ongoing investigation into the reckless program known as Operation Fast and Furious. The Oversight Committee exists to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent. And second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and to reform the government's bureaucracy.

Thus far the committee has heard testimony from ATF agents who reported that they were ordered to let guns destined for Mexican drug cartels to walk away from the hands of known criminals.

Today this committee will have the opportunity to question supervisors of these agents who knew about and believed these tactics were appropriate. The committee will also hear from ATF agents who worked in Mexico and who were horrified to learn ultimately about this program.

The task before the committee is very serious. The acting director of ATF, in a transcribed interview with investigators, had said that, "The Justice Department is trying to push all of us away from its political appointees." Indeed, the Justice Department continues to withhold key information and has inappropriately interfered with this investigation.

Let me be clear: The Justice Department is not our partner in this effort. They are the subject of this investigation and their continued interference will not be allowed to derail the committee's work.

Last month, members of this committee traveled to Mexico on a fact-finding mission where we were briefed on how the U.S. and Mexican law enforcement agents are working together to fight the drug lords who were responsible for more than 34,000 deaths in the last four-and-a-half years.

That effort cannot be derailed by the fallout of Fast and Furious. One of our goals is to ensure that the Mexican government can have confidence in its partner here in the U.S. from this day forward that we in fact will not let guns walk, that we will be as open and transparent as possible.

In the time ATF officials in Mexico have been increasingly alarmed by both volume and location of weapons that have been recovered, after reporting these concerns to ATF and Justice Department officials in Washington these agents were told nothing about Fast and Furious. Again, our trip to Mexico City taught us that ATF agents and, more importantly, likely DEA agents and likely two U.S. ambassadors were not informed about a program that was causing an increase in violence and an increase in guns arriving throughout Mexico, from Tijuana to Mexico City to Sonora and beyond.

We have before us today witnesses who worked in Mexico for years and they will tell the committee their frustration about being kept in the dark by officials in Washington and in Phoenix, and about what really happened as a result of Operation Fast and Furious.

They are going to have the opportunity to tell this committee about what happens when the Justice Department intentionally lets weapons flow across the border and how Mexican officials reacted when they began to learn the truth.

The committee will also offer ATF supervisors the opportunity to publicly explain why they thought it was OK to let weapons flow from Phoenix to Mexican drug cartels without making an effort to interdict them.

The committee is eager to know why one particular suspect was permitted to purchase 685 weapons before he was arrested. We are also eager to hear justifications for decisions that have created deep divisions within the ATF and outrage in both the United States and Mexico.

We have yet to -- we have not yet seen the end of the violence from Operation Fast and Furious. The deadly consequences of this irresponsible program could last for years to come. Today the committee estimates at least 1,600 weapons, including 50-caliber sniper

rifles, are still out there waiting to kill.

The possibility that administration officials, perhaps at the highest level of the Justice Department, approve this strategy and are now trying to cover up their own involvement by stonewalling the committee is alarming.

Today we are focusing primarily on the effects of Fast and Furious in Mexico. President Obama is keen to talk about who didn't know about the program and who didn't authorize it, but the American people have a right to know once and for all who did authorize it and who knew about it.

The ranking member and I both pledged the Terry family that we would focus our efforts on finding out who was responsible for Fast and Furious. Until we have those answers, the committee will remain focused on these basic questions.

And with that I yield to the ranking member for his opening statement. REPRESENTATIVE ELIJAH CUMMINGS (D-MD): I want to thank the chairman for this hearing, and I want to thank all of our witnesses for your service to our country and for what you do every day to protect so many lives.

We have an important responsibility in this committee to thoroughly investigate allegations of waste, fraud and abuse, and to follow evidence wherever it may lead, and to base our conclusions on the evidence before us.

The committee has now been investigating allegations relating to Operation Fast and Furious for five months. Committee staff has conducted 16 transcribed interviews of ATF managers and field agents in Phoenix, Washington and Mexico.

During these interviews, officials at various levels have acknowledged mistakes in the planning, executions and oversight of this operation. That is most unfortunate. Although key questions remain, I would like to make four points.

First, the head of ATF, acting Director Ken Melson, stated during his transcribed interview on July 4th that he did not become aware of any allegations about so-called "gun walking" until they were reported publicly. And this is what he said: "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."

Second, the officials interviewed by the committee did not support the allegations that the controversial tactics allegedly employed in this operation, such as suspending surveillance or failing to interdict weapons were part of a top-down strategy devised by senior ATF management or the Justice Department.

Again, acting Director Melson said that no Justice Department officials ever told him or anyone at AFT that these tactics were part of a new strategy to let guns go. He stated, and I quote, "We never discussed those types of tactical strategies," end of quote.

William Hoover, the acting director (sic) of the ATF, is the principal liaison between AFT and the Deputy Attorney General's Office. He also rejected this allegation. When asked whether these tactics were part of a top-down policy, he responded, and I quote, "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 the ATF and the OCEDTF strike force in Phoenix," end of quote.

He added, and I quote, "There has been reports that the Deputy Attorney General's Office was aware of the techniques being employed in Fast and Furious. That's not the case because I certainly didn't brief them on the techniques being employed," end of quote. Third, although these tactics may not have originated in the headquarters of ATF or the Justice Department, the evidence before the committee indicates that after receiving briefings in March 2010, Deputy Director Hoover and other senior AFT officials became seriously concerned about the number of weapons being trafficked by the suspects.

As a result, Deputy Director Hoover ordered an exit strategy that was used -- those were his words -- to close a case and seek indictments within 90 days. Although this exit strategy was developed, there were no indictments until this past January. One question I hope to explore today is why it took nearly 10 months, from March 2010 to January 2011 to close this operation and bring indictments.

Finally, nearly all of the officials interviewed by the committee strongly supported additional law enforcement tools to combat the flood of high-powered military-grade assault weapons from the United States in to Mexico.

Mexico is our neighbor, our ally and our friend, yet U.S. weapons are arming the world's most violent and powerful international drug cartels, costing the lives of 40,000 Mexicans in the last four -- five years.

While I will continue to work with the chairman -- with Chairman Issa to investigate the facts of Operation Fast and Furious, we must also examine opportunities for reform, and I look forward to again following the evidence where it may lead.

And with that, Mr. Chairman, I yield back.

REP. ISSA: I thank you, Ranking Member. All members will have seven days to submit opening statements and extraneous material for the record.

We now recognize our first panel of witnesses.

Darren Gil is a former ATF attache in Mexico. Jose Wall is ATF senior special agent in Tijuana, Mexico. Carlos Canino -- I'll get it better in time -- is the ATF acting attache in Mexico. Lorren Leadmon is the ATF team leader, Field Intelligence Support Team,

Southwest Border. William Newell is the former ATF special agent in charge of the Phoenix Field Division. And William -- god, I'm having a good day -- McMahon is the ATF deputy assistant director for Field Operations West. And I apologize, as usual, for never getting names quite right.

Pursuant to the rules of this committee, all witnesses must be sworn. Would you please rise, raise your right hand to take the oath?

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

Let the record reflect that all witnesses answered in the affirmative.

Thank you. Please be seated.

Now, even for this committee this is a large panel, so if each of you take five minutes we have 30 minutes. If you take more than five minutes, the guy next to you will also take more than five minutes. So please observe the green, yellow and red light.

Realize that all -- any official material or even additional material you choose to submit will be put into the record. So you can provide us with exactly your opening statement, which often happens, read in a verbatim way, or you can summarize and get it all done in five minutes or less. It's your choice. And I appreciate your staying within the time so that we can have maximum time for questions.

Mr. Gil?

DARREN GIL: Thank you, Chairman Issa, Ranking Member Cummings, and --

REP. ISSA: You're going to have to pull the mic close. They're deliberately designed to be somewhat insensitive so it's almost -- you almost have to kiss them to make them work.

MR. GIL: Very well.

Well, thank you again for inviting me to the conference -- hearing this morning.

First, I offer my sincere condolences to the families of agents Brian Terry and Jaime Zapata. I am deeply sorry for their loss and for the grief that this ill-conceived operation may have caused.

Also I thank ICE Special Agent Victor Avila for his services and sacrifices in fighting the narcoviolence in Mexico and along the border. I can only imagine the horror of helplessly watching a brother law enforcement officer die in the line of duty.

As the former head of ATF in Mexico, I also would like to apologize to my former Mexican law enforcement counterparts and to the people of Mexico for Fast and Furious. I hope they understand it was kept secret from me and my colleagues.

Unfortunately, as a result of this operation, it is the Mexican people who will continue to suffer the consequences of narcorelated firearms violence. I have no doubt, as recent media reports have indicated, that American citizens will also face more firearms-related violence as a result of this operation.

I would like to provide the committee of a brief description of my background.

I received a bachelor's degree in criminology from the University of Maryland, a master's degree in criminal justice from the University of Alabama, and am currently completing my dissertation at the University of Southern Mississippi, focusing on international affairs and security studies. I have been in service to our nation since my enlistment in the United States Army in 1980. After service in the Army, I joined the Las Vegas Metropolitan Police Department and later received my commission as an ATF special agent in 1987. I then served for 23 years in various positions at ATF, including intelligence and assignments and as the attache to Mexico until I recently retired.

I chose ATF because it was a small organization with a focused mission: combating the most violent offenders in America. During my first 12 years as a field agent, I participated in or directed investigations that targeted the worst of the worst. For the remainder of my career, I supervised, managed and led agency-conducted similar investigations.

Throughout my career, not once, never did firearms walk from any investigations I directed or fell under my command. This includes my service as ATF attache in Mexico. To put it bluntly, it's inconceivable in my mind or the mind of any competent ATF agent to allow firearms to disappear at all.

Furthermore, it is even more inconceivable that a competent agent would allow firearms to cross an international border, knowing that they are destined for the worst of the worst criminals in the Western Hemisphere.

I recall my first days at the ATF Academy, where it was drilled into us that under no circumstances would any firearms in any investigation leave the control of ATF. Instructors stressed that even if a weapon was lost by accident, the agent was still subject to termination.

My point is that ATF agents don't allow, and ATF as an organization has not tolerated, firearms to disappear. Yet apparently that

happened here.

After retiring from ATF, I started receiving inquiries from former colleagues, including Special Agents Vince Cefalu and Jay Dobyns, as well as from the press. They all wanted to know whether I was aware that ATF had allowed firearms to walk into Mexico. I advised my former colleagues that I was not aware, but I refused to speak to the media without a complete understanding of the issue.

After talking with several agents, I became convinced that firearms might have been walked into Mexico by ATF. Thankfully Congress and the media continued to investigate and Fast and Furious began to receive greater notoriety.

Nonetheless, I remained reluctant to speak out about what I had come to suspect since retiring from ATF but was never told about this operation. When I later learned that ATF executive staff would not make statements exonerating my former staff in Mexico of any knowledge of the gun-walking aspect of this operation, only then did I decide to speak to the press. My understanding is that my initial interview with Sharyl Attkisson of "CBS News" did have some calming effect on relations between the Mexican government and ATF personnel in Mexico. To this day I do not understand the failure of ATF executive staff to provide their own support in this matter to their personnel in Mexico.

During dissertation research I came across a study titled "The Waco Texas ATF Raid and Challenger Launch Decision: The Management, Decision and Knowledge Analytic." The paper's title could have been substituted "Operation Fast and Furious for Waco Texas ATF Raid" and the conclusions would have been the same.

Namely, poor management, poor judgment and poor leadership resulted in disaster. Operation Fast and Furious is indeed a disaster. I'm here today to answer the committee's questions but I also have a few questions of my own. For example: Who actually presented this operation for implementation? What was the objective?

My staff was already working with Mexico in tracing thousands of firearms recovered from crime scenes. Why the need to introduce even more firearms into a country that's seized by narcoviolence?

Why did ATF leadership fail to exercise oversight of this disaster? And why were ATF personnel in Mexico kept in the dark from this operation, which has now imperiled trust and cooperation between U.S. and Mexican law enforcement at a time when trust and cooperation is more essential than ever.

During my tenure in Mexico I observed firsthand the extraordinary changes occurring there. The heads of the agencies leading these changes are some of the bravest people I ever met. As a result of their leadership they have become targets of Mexican drug organizations.

I find it grotesquely ironic that as a representative of U.S. law enforcement in Mexico, my staff and I were asked to expose ourselves and our families to the same sort of risks while speaking to our American counterparts of integrity, rule of law, honor and duty in policing. Meanwhile, members of our own ATF and Department of Justice, for whatever reason, appeared to have refused to follow the same principles.

As a career special agent, I believe in the mission and people of ATF. The men and women of ATF go to work every day with a strong sense of duty. I hope that once all the facts are known about this operation, that ATF will emerge a stronger, more effective organization focused on its core mission: taking the worst of the worst armed violent offenders off the streets.

Thank you, Mr. Chairman and members of the committee. I'll be happy to answer your questions. REP. ISSA: Thank you.

Mr. Wall?

JOSE WALL: Thank you Chairman Issa, Ranking Member Cummings and members of the committee, for inviting me to speak today.

I am saddened by the circumstances that bring me here today. As an employee of ATF, I note that this situation is an anomaly and not reflective of the good work that ATF does in the service of this country. And I am hopeful that this process will shed light on what has occurred so that we in ATF do not have to travel down this path again.

This year marks my 26th year of federal service and my 19th as an ATF special agent. During my years as an ATF special agent I have been involved in hundreds of firearms trafficking investigations. These investigations date back to the early 1990s.

I've seen firearms traffic internationally from the United States to countries as diverse as the Netherlands, Canada and Macau. These international investigations were as unique as the places to where the guns were going.

However, one aspect shared by most of these investigations was the fact that most international gun trafficking is being done in the interest of organized crime. In late 2007, I became the border liaison officer for the Phoenix Field Division.

My duties allowed me to develop a working relationship with Mexican authorities and to travel into Mexico to examine guns or meet with officials. It was at this time that the struggle against the drug trafficking cartels was started by the government of Mexico.

Large-scale gun battles and murder became a daily occurrence in Mexico. To me and other agents, it became apparent that the level of firepower being used was more than we had ever seen. As the level of firearms trafficking increased, we in the Phoenix Field

Division realized that this was an arms race between the various cartels, an arms race that could very well determine the future of Mexico and tremendously impact our own country's future.

Phoenix agents initiated many good investigations during this time. These investigations served to disrupt the trafficking of guns and prevented them from reaching Mexico. But the urgency displayed by the agents in stopping these gun traffickers was not apparent in the prosecution of these cases as we saw some of our best trafficking cases languish at the U.S. Attorney's Office.

In an effort to do more against this tide of weapons, in the fall of 2009 I transferred to the newly opened ATF field office in Tijuana, Mexico. There I worked closely with ATF and other agents. I also traveled to some of the most heavily fought-for areas of Mexico.

In these contested areas I examined hundreds of firearms. Among these I examined some that can now be traced to the Fast and Furious investigation. The majority of these firearms had been seized from criminals engaged in drug trafficking, kidnapping, extortion and other crimes.

Having firsthand knowledge of the reality in Mexico, I was skeptical when the first whistleblower came to this committee with allegations of hundreds, maybe thousands, of guns being allowed to walk into the country of Mexico.

I could not believe that someone in ATF would so callously let firearms wind up in the hands of criminals. But it appears that I was wrong, that hundreds and quite possibly thousands of guns have been allowed to reach the hands of organized crime in Mexico, and that this activity has seemingly been approved by our own Justice Department and ATF management in the misguided hope of catching the big fish.

Having had enough experience with gun-trafficking investigations, I can only imagine that once the DOJ/IOG report was released -- a report that was critical of ATF efforts in stopping gun trafficking -- the emphasis changed to following the food chain up to the leaders.

What the persons approving this debacle failed to realize is that the end does not justify the means. These firearms are now in the hands of people who have no regard for human life, pose a threat to all of us, a threat to which none of us is immune.

I am especially concerned for the brave law enforcement officers and military in Mexico and here in the United States. I fear these firearms will continue to exact a terrible toll long after these hearings are over.

Finally, I have a request for this committee that the serious problem of gun trafficking not be forgotten. I don't believe we need another toothless law. What we need is vigorous enforcement and prosecution of those that would traffic in firearms, a policy of no tolerance for straw purchasers. And a change in the sentencing guidelines that would dictate mandatory sentences for these crimes would go a long way in curbing this criminal activity. I thank you.

REP. ISSA: Thank you.

Special Agent Canino?

CARLOS CANINO: Thank you, Chairman Issa, Ranking Member Cummings and members of the committee, for inviting me to speak today.

I want thank you for taking the time and effort to visit Mexico last month to get a boots-on-the-ground perspective. On behalf of Charge John Feeley, I want to convey his deep appreciation for the interest in Mexico and U.S.-Mexico relations.

I'm not here today to lay blame, point the finger or assign punishment. That will be for others to determine. I am simply here to discuss these events as I know them, and let the committee and the American people know what the ATF Mexico Country Office referred to as the MCO knew and when we knew it.

There in my 22-year career with ATF I probably spent 15 years as a street agent, investigating violent crime and gun trafficking, and the last seven supervising others doing the same. I'm a recipient of the U.S. Attorney General's Award for Excellence in Law Enforcement, two ATF Distinguished Service Medals, and two Medals of Valor.

I mention this not to boast, but to illustrate my recognized dedication to ATF and public service. I paid my dues. I can say with authority that walking guns is not a recognized ATF investigative technique.

These guns went to ruthless criminals. U.S. law enforcement and our Mexican partners will be recovering these guns for a long time to come as they continue to turn up at crime scenes in Mexico and the United States. It infuriates me that people, including my law enforcement, diplomatic and military colleagues, may be killed or injured with these weapons.

In my professional opinion, this investigative strategy was flawed. It was allowed to continue due to ineffective oversight in the Phoenix Field Division and possibly beyond. It's alleged that over 2,000 guns were trafficked in this investigation.

To put that in context, upon information and belief, the U.S. Army 75th Ranger regiment has approximately 2,500 Rangers. That means that as a result of this investigation the Sinaloa Cartel might have received almost as many guns that are needed to arm the entire regiment.

Of at least 2,000 weapons, 34 were .50 caliber sniper rifles. That is approximately the number of sniper rifles a Marine infantry

regiment takes into battle. That's 3,000 men.

For the MCO, this case is one of the many ATF traffic investigations for the U.S.-Mexico nexus. I would like to inform this committee and the American public that I believe what happened here was inexcusable, and we in Mexico had no part in it. We were aware of this investigation, but we were never aware of the policy to walk guns in this investigation.

As these questions have surfaced, I have become aware that critical details were deliberately kept from the MCO as well as ATF Office of Strategic Intelligence. I have reason to believe that we were kept in the dark because the ATF leadership in Phoenix feared that we would tell our Mexican partners. Reasonable people can disagree on investigative techniques, but there is no room for walking guns. This goes against everything we're taught at ATF, and I hope the committee gets to the bottom of these allegations.

In Mexico, ATF has been doing great work, and I'm proud of our efforts in combating violent criminal with our Mexican counterparts. The whole point of the law enforcement mission in Mexico is to liaise with Mexican government officials and support their efforts to combat the transnational organized crime that plagues both our countries and threatens the security of our people.

These allegations, stemming from this case, that a few ATF agents and supervisors deliberately allowed guns to walk have destroyed ATF's credibility with our Mexican law enforcement partners and the Mexican public.

As this committee knows, Mexico is plagued by terrible violence. Time and again, my Mexican counterparts blame the United States for contributing to that violence. But, paramount to ATF, they blame us for an uncontrolled flow of weapons that end up in the hands of Mexican criminals.

I do not endorse the view of the Mexican government that American indifference is responsible for the violence and death. I make mention of it because it's what I hear on a daily basis in my dealings with my Mexican colleagues. However, in this particular case, with these specific guns, I'm unable to defend this position.

This case has made my life more difficult for me personally. Imagine my shame when my mother called me on the telephone and said, please tell me you weren't involved in this. My mother is a very wise person. She may not know how much -- she may not know much about law enforcement but she knows right from wrong. Even at great risk -- even at great distance she could see that walking guns was a terrible risk, that public safety must always come first.

Please remember, regardless of good intentions, walking guns will never be right.

The ATF rank-and-file know this, and we have not been given a satisfactory explanation for what happened. So what I would like to say to my ATF colleagues is simply this. Stand tall. Hold your heads high. We work for a great agency. Look around because there are heroes at ATF. We do not quit. We will not lie down. We will continue to honor our commitments to each other and to the public. I thank you for your time and I welcome any questions the committee may have of me.

REP. ISSA: Thank you. Mr. Leadmon?

LORREN LEADMON: Good morning, Chairman Issa, Ranking Member Cummings and distinguished members of the committee. My name is Lorren Leadmon and I'm honored that you've summonsed me here today to serve as a witness for the citizens of the United States. I'm an intelligence operations specialist with the Bureau of Alcohol, Tobacco, Firearms and Explosives, and a law enforcement veteran with 40 years of dedicated service.

I'm appearing before you today with a heavy heart laden with sorrow to provide this committee with testimony that I hope will prove to be useful. First, I would like to express my grief by extending a sincere apology on behalf of myself and like-minded ATF colleagues to the family of Border Patrol Agent Brian Terry.

Likewise, I offer an apology to all Mexican law enforcement officers and military personnel placed in harm's way while confronting the violent criminals armed by the targets and their associates in the Fast and Furious investigation. I started my employment with ATF in December, 2004, in the office of strategic intelligence and information. I was designated to support ATF's Project Gunrunner from the inception of the initiative in April of 2005.

In July of 2008, I became the team leader of the newly established field intelligence support team for the southwest border. The team works in partnership daily with OSII personnel assigned to the El Paso Intelligence Center and ATF personnel working in Mexico. Each of the partners work towards a common goal to determine the location and circumstances surrounding firearms recovered throughout Mexico, identifying the criminal element associated with the firearms, collecting intelligent pertaining to the criminal elements and ensuring that firearms are traced.

The team coordinates the information with case agents and field intelligence groups. A major function of the team is to identify the firearms trafficking (trends ?) and patterns and to establish links between firearms trafficking cases and seizure events in Mexico. The team is dedicated to ATF's strategic mission as set forth in the 2007 Project Gunrunner southwest border report that is summarized as follows:

"Working with its domestic and international law enforcement partners, ATF will deny the tools of the trade to the firearms trafficking infrastructure of the criminal organizations operating in Mexico through proactive enforcements of its jurisdictional areas in the affected border states in the domestic front, as well as through assistance and cooperative interaction with the Mexican authorities in their fight to effectively deal with the increased violent crime."

The report had the following strategic outcome: "Suppression of the firearms-and explosives-related violence occurring on both sides of the border through effective law enforcement collaboration involving the focused training, investigation and interdiction of the illicit trafficking and illegal use of firearms, explosives and ammunition."

The southwest border team first learned of the Fast and Furious investigation on November 20th, 2009. I had located a seizure event in Sonora. The Mexican authorities had recovered 42 guns from two transporters in a vehicle that had just crossed the border from Arizona. With the assistance of U.S. Immigration and Customs Enforcement, I was able to obtain the information on the firearms, submit traces and ascertain the results of the investigation.

From these firearms, there was 37 that related back to that Fast and Furious investigation, and this information became the foundation for the fact that all the firearms obtained in the Operation Fast and Furious investigation were potential crime guns and murder weapons predestined to be utilized by outlaws and assassins affiliated with a violent criminal organization in Mexico.

In the months leading up to February, 2010, the Fast and Furious purchasers were buying the types of firearms preferred by drug trafficking organizations in record numbers. By this time, they had purchased over 1,000 firearms and some of the purchasers were procuring them in lots of 10 to 20 at a time. At the same time, approximately 200 firearms in this investigation were recovered in the United States and Mexico.

The types of firearms and the volumes of the purchases, the seizures and circumstances surrounding the seizures along with the information provided by our law enforcement partners fully corroborated the fact that these firearms were being acquired by a violent criminal organization in Mexico. In December 2009, until the beginning of March 2010, I conducted numerous briefings on the investigation with the ATF senior management staff and headquarters. During each briefing, I provided detailed information depicting the progression of the acquisition of firearms and described the location, number, type and identity of the purchaser for each of the firearms recovered. I provided the briefing to the acting director in the first part of 2009 concerning firearms trafficking to Mexico, in which he was briefed on the upstart of the Fast and Furious investigation. He later attended one of the field operations briefings in the first part of January.

In March, 2010 I conducted a videoconference briefing with the managing officials from the four ATF border divisions, an attorney from the Department of Justice and every one of the ATF senior management staff except for the acting director. With the assistance of the group supervisor in charge of the Fast and Furious investigation, I provided a briefing outlining the amount of firearms purchased and the expenditures up until the end of February, along with the number of firearms seized at seizure locations. The totals briefed were the same as previously stated here.

The issue of the firearms not being seized by the case agents was brought up briefly and discussed. From this point on --

REP. ISSA: If you could summarize, the rest of it will be placed in the record.

MR. LEADMON: All right, so basically, what we're talking about is, by the end of it, we had the 2,000 guns. To date, there's about 590 that's been recovered, 363 in the United States and 227 in Mexico, and they're still coming.

I would just like to say at the end here the strategy of the Fast and Furious investigation did not take into account the public safety of the citizens of the United States and Mexico and blindly concentrated only on the goal of the investigation. The blatant disregard for public safety has had tragic consequences that will continue in the unforeseen future. And the rest of my testimony, you can see.

REP. ISSA: I thank you very much. Special Agent Newell?

WILLIAM NEWELL: Thank you, Mr. Chairman. Chairman Issa, Representative Cummings and distinguished members of the committee, I am William Newell of the Bureau of Alcohol, Tobacco, Firearms and Explosives. As a former special agent in charge of the bureau's Phoenix field division from June, 2006, to May of this year, I oversaw ATF operations in the states of Arizona and New Mexico, which includes 552 miles of the U.S.-Mexico border.

I appear before you today to discuss ATF's Operation Fast and Furious, an ongoing and active ODETF strike force investigation of a large-scale firearms trafficking organization. For the past 23 years, I have fully dedicated myself to confronting violent crime, especially firearms-related violent crime, along the southwest border. Having served 15 of these years along the southwest border combating firearms trafficking, I am keenly aware that this violence, fueled largely by Mexico's drug cartels, poses a serious challenge for U.S. law enforcement -- U.S. and Mexican law enforcement and threatens the safety of innocent civilians and law enforcement personnel on both sides of the border. At the conclusion of every investigation of this magnitude, thorough review is appropriate to determine whether tactics -- whether changes in tactics and strategy are in order.

With that in mind, I recognize that in this case and future large-scale investigations, it is imperative that there exists an effective flow of information between the field and headquarters elements to ensure that critical investigative information is being shared timely. Second, in retrospect, in a case of this magnitude, it is incumbent upon me to communicate a greater sense of urgency to my staff and the U.S. attorney's office as to the need for the return of expeditious charges.

Finally, I now recognize that in these types of investigations, more frequent risk assessments would be prudent. Firearms trafficking investigations are not always easy to conduct for a variety of reasons, including the lack of a federal statute that specifically prohibits firearms trafficking-related activity, the fact that firearms, unless altered in some way, are not in and of themselves contraband, the lack of adequate punishment for straw purchasers, thus impacting our ability to identify the leadership of the criminal organization

and the limited resources at our disposal.

These types of investigations are made even more challenging when none of the individuals in the firearms trafficking chain are presumptively prohibited by law of possessing firearms. Consequently, in order to identify and investigate the responsible higher-level individuals, agents must use a wide variety of investigative techniques. This can take time and considerable effort.

Throughout this case, conscientious and dedicated agents pursued numerous leads in order to determine who the decision-makers of this organization were in an effort to get beyond the straw purchasers and thus potentially disrupt and dismantle the entire organization. Through our experience, we have learned that the arrest and prosecution of straw purchasers alone does little to frustrate the capacity of the Mexican cartels to continuously obtain firearms as new straw purchasers are easily recruited to replace those arrested and continue the cycle of purchasing firearms.

Finally, our conduct of this investigation, as with any large- scale OCDEF investigation was coordinated with ATF's supervisor at headquarters in Washington, D.C., and with federal firearms prosecutors at the Phoenix United States attorney's office.

In October of 2009, the Department of Justice proposed a southwest border strategy to combat Mexican cartels, which was finalized in January of 2010, and which outlined successful strategies related to the identification, disruption and dismantlement of Mexican cartels through comprehensive, multiagency criminal enforcement operations with an emphasis on impacting the leadership and command structure of such organizations in order to have a substantial and sustained impact.

The DOJ strategy recognized the ineffectiveness of merely interdicting weapons, absent identifying and eliminating the sources and networks responsible for transporting them. It was with this guidance in mind that Operation Fast and Furious originated.

To be clear, Fast and Furious was an OSTF operation designed to, one, identify the purchasers, financiers, transporters, and decision- makers in a Mexican cartel-based firearms trafficking organization; two, to interdict, when lawfully possible, firearms presumptively destined for Mexico; three, to share, when appropriate, relevant information with U.S. and Mexican law enforcement authorities; four, to develop intelligence on other firearms trafficking organizations; and five, to charge, arrest and dismantle the entire organization.

In this regard, there are some key points I would like to make. One, it was not the purpose of the investigation to permit the transportation of firearms into Mexico, and to the best of my knowledge, none of the suspects in this case was ever witnessed by agents crossing the border with firearms. Two, our agents, in compliance with ATF policy, were engaged in the strategic effort to determine who the decision-makers and actual purchasers of the firearms were in order to disrupt the entire criminal organization. The effectiveness of this strategy has been recognized by the Department of Justice Office of the Inspector General in a review -- in their review of Operation Gunrunner.

Three, we attempted to be innovative in tracking and seizing firearms by the suspected straw buyers. Four, when appropriate during the investigation, we made reasonable efforts to share and coordinate the relevant investigative details with our Mexican law enforcement counterparts. Finally, throughout my past 23 years in law enforcement, I have lost some very good friends to firearms-related violent crime. I have witnessed firsthand the grief and despair suffered by families who have lost loved ones in the law enforcement profession. That is why I take very seriously my responsibility in dedicating myself to doing everything within my authority to confront and curtail these criminal organizations that would seek to do harm to my peers and innocent civilians. I did not discard that responsibility in the conduct of this investigation.

The death of Border Patrol Agent Brian Terry is one I will mourn for the rest of my life, as I do for all those brave heroes who have taken up the badge to serve and protect and then made the ultimate sacrifice. I express my deepest condolences to the Terry family, and may our heavenly father bless them, the Terry family, through these very difficult times. Distinguished members, I now stand ready to answer your questions and thank you for the opportunity to make this opening statement.

REP. ISSA: Thank you. Special Agent McMahon?

WILLIAM MCMAHON: Good morning, Mr. Chairman, Ranking Member Cummings and distinguished members of the committee. I am Bill McMahon, deputy assistant director, Office of Field Operations for the Bureau of Alcohol, Tobacco, Firearms and Explosives. Thank you for inviting me to this important hearing.

Let me be clear from the outset, as the ATF senior executive in charge of the west region, I share responsibility for mistakes that were made in the Fast and Furious investigation. The advantage of hindsight, the benefit of a thorough review of the case clearly points me to things that I would have done differently. However good our intentions, regardless of our resource challenges and notwithstanding the legal hurdles we face in fighting firearms traffickers, we made mistakes.

But know that I am very proud of the men and women who risked their lives investigating this case. Under tremendous pressure, they continue to work this case and many others we have in the American Southwest. Please do not let our failings impact their noble deeds.

Mr. Chairman, I was the assistant special agent in charge in New York City on September 11th, 2001. Our offices were in the World Trade Center. I have witnessed great human suffering brought to bear by those to whom violence is a stock in trade. This is one of the reasons I was so committed to bringing down the complex network of criminals operating in our homeland and bringing violence on both sides of the southern border. But in our zeal to do so and in the heat of battle, mistakes were made, and for that, I apologize.

Mr. Chairman, I'm no stranger to the great and ultimate sacrifices made by my fellow law enforcement officers. I have lost friends in the line of duty, whether it was in the rubble of the World Trade Center, on the streets of our communities or in the desert Southwest. Nothing hurts more than losing a fellow law enforcement officer in the line of duty.

With that in mind, I want to express my sincere condolences to the Terry family. And while the investigation into his tragic murder remains ongoing and because of this, I may not be able to comment on that investigation, please know that I honor his great sacrifice and I am truly sorry for his family's loss. With that in mind, I appear before you today of my own free will to answer, to the best of my ability, questions you have regarding this operation and my role in it. Thank you.

REP. ISSA: Thank you all. Before we begin, I've been made aware that all of you -- or presumably all of you -- received from the Department of Justice counsel a letter that speaks specifically to your testimony here today. And it's from Barry S. Orlo (sp). Did all of you receive that letter? You didn't?

MR. : I did not.

MR. : No, sir. Those letters were only issued to people that were actually under subpoena. And that's normal for any case that we have agents that are under subpoena by defense or others.

REP. ISSA: Okay, I want to make some clarifications. The letter infers that you may not be able to answer certain questions here today. And I want to make sure it's clear that where it says, for example, you may not reveal any information covered by rule 6-E of the Federal Rules of Criminal Procedure related to a matter that is currently before a Grand Jury. And there is -- it goes on up and above.

Now, we've got a former 20-year defense attorney to my right. We've got a former prosecutor in Mr. Gowdy down below -- Mr. Meehan, a former U.S. attorney -- and a number of other people who have worked, before they came here, in law enforcement. I'm asking all of them if a question occurs from any of us that clearly would lead to something believed to involve compromising the ongoing investigation or the actual chances of convicting somebody, that we take a pause.

I'm not beyond that. If you believe, any of you, that you're asked a question that in this format would, by it being open to the public, would compromise the ability to convict any of the 20 people now charged or others who you reasonably believe will be charged, I want you to take a pause.

On the other hand, I want you to understand every question we ask, you are compelled to answer, unless you assert your Fifth Amendment rights. There is no executive order or executive branch decision that can stop us from compelling that answer. If you believe that you are protecting the ability to reach convictions or to save somebody who is undercover in any other way would be harmed by your giving an answer in open hearing, I want you to assert that we need to be in executive session.

The committee can go to executive session at any time by a simple vote of the committee or concurrence of the chairman and ranking member. We probably will not go to executive session at that moment but would pen that question until the end. So understand our intention is to be very clear. We know that in fact the cartels continue to operate. We do not want to have materials here unreasonably disclosed.

I want to make one other thing clear before we start, and then I'll recognize the ranking member. This committee has been made aware that there were wiretaps in this Fast and Furious investigation. That was not by the Justice Department turning over material required by subpoena.

We will not be going into the details of any subpoena in our questioning, and we do look forward to justice providing the subpoenaed material in a timely fashion they have not yet done. But again, those are under seal. So their existence, which was obtained and has been fairly widely understood, is no longer under seal.

But the details of those at this point, including Kenneth Melson's statement that when he read the details he was sick to his stomach, is as far as we're going to go on the details of the wiretap at this time. This hearing is about our relations with Mexico, what they knew in Mexico, what they didn't know, how the agency did or didn't communicate. That doesn't mean that we may not want information from you in due time, but I think we want to be very careful that today, we have no reason to go into some of these areas. And so we're going to avoid them.

With that, if the ranking member has any comments.

REPRESENTATIVE ELIJAH CUMMINGS (D-MD): Thank you very much, Mr. Chairman. Just some clarifying items. First of all, Mr. Chairman, I want to thank you for what you just said. I think that's a very balanced approach to take. We're all concerned about the ongoing investigations and putting people in jeopardy; that should not be as a result of our efforts here.

But I just want to -- there may be some things, Mr. Chairman, where, say, for example, these gentlemen may not even know that they are crossing the line. And I know that we're looking into the Justice Department. I have no problem with that. But if we have a situation where Justice -- and I understand we have some Justice attorneys here -- where they think that there may be a crossing of the line, is there a way that we can at least pause and just, you know, make sure that we're not crossing over into some territory, the very type of territory you're talking about? That's all. I think that's --

REP. ISSA: And I appreciate the gentleman's question, although I want that very carefully and sparingly used, since Justice is not an invited guest here today. If you believe that a line of questioning is going down that way, we will entertain a request from

representatives of Justice.

Again, this investigation is about Justice. It is about your bosses. We believe that, in fact, there are people culpable for what happened -- for the mistakes, as Special Agent McMahon said, the mistakes that were made, besides Special Agent McMahon. So we do intend to get to those errors and mistakes.

But for the ranking member, absolutely. We want to make sure that if somebody inadvertently starts down a line of questioning, whether you see it, somebody from Justice brings it to our attention, Mr. Gowdy, who is -- certainly understands what it takes to preserve a prosecution, Mr. Meehan or anyone else -- that I want this to be a little bit like the quality control line on a Toyota production. Anybody can pull the stop if you see a mistake about to happen.

Now that doesn't change the fact that this letter is a little out of line. And it may be boilerplate, but it implies that you don't have to answer. Yes, you do have to answer but we will use executive session or another setting to get additional information so as to ensure that what we must do does not get in the way of what you all must do. REP. CUMMINGS: Mr. Chairman, just one other thing. I'm just looking at the expression, particularly of Special Agent McMahon. I want to make sure that they understand what you just said. I mean, can you inquire as -- do you all understand what he just said? (No audible response.) All right. Very well. I just wanted to make sure.

REP. ISSA: Okay, yeah. And I use the English language so poorly that sometimes my wife does mention that perhaps just because I say what I mean doesn't mean that they can figure out what it means, too. But again, set it off at the tone because this is important that we get to we have to get to, but do it in the respectful way for the fact that there are lives at stake on both sides of the border, many of your brethren.

I'll now recognize myself for a line of questioning. Mr. McMahon, you said that you made mistakes, that people made mistakes. Would you like to give us just one of those mistakes?

MR. MCMAHON: Sure. Again, as I said, after a thorough review of everything after the fact, I did -- I do see that one of the mistakes that I made personally was maybe more thoroughly reviewing some of the documents that were coming across my desk on this case. And I think that's been brought out in my review. And it's something that I know will not happen again.

REP. ISSA: OK. Special Agent Newell, as recently as yesterday you called this -- you said Fast and Furious is a phenomenal program. I know it was, I hope not is. Do you stand by that?

MR. NEWELL: Did I -- I'm sorry, Chairman.

REP. ISSA: This was quoted in the Washington Post that came out yesterday that, and they quoted you by name as having called this a phenomenal program. Do you think -- did you at one time think and do you think today that Fast and Furious was a phenomenal program?

MR. NEWELL: Chairman, I -- that quote -- I don't know the date of that quote. It wasn't yesterday. It was --

REP. ISSA: It came out -- OK, let me rephrase the question. This is back to my inability to work with the English language. Did you ever think that Fast and Furious was a phenomenal program?

MR. NEWELL: Well, Mr. Chairman, to answer your question, I believe that Fast and Furious was conceived with the idea of disrupting and dismantling an entire organization --

REP. ISSA: Yeah, but let's get into the details. Fast and Furious was at its heart about letting guns walk. Your agency knew that if you let guns leave -- be bought by straw purchasers who you knew, in fact, were straw purchasers, including two felons -- and in the opening statement, when people talk about people that had every right to buy them, felons at that moment that they bought them were criminals.

They could have been stopped. They could have been arrested. There was an inherent crime. So at least in the case of two of the buyers, they were felons. They bought guns. They committed a crime by buying them. They were allowed to move on and eventually turned those weapons over to intermediaries who got them to the drug cartels. That was always part of the program. Do you think that that was in fact, whether you say phenomenal, do you think that that was a good idea?

MR. NEWELL: Well, Mr. Chairman, with all due respect, I'm not aware of two felons involved in this case.

REP. ISSA: I'm informed they became felons during the pendency of the case, so I may not know the exact date. But let's go on beyond that. Even if they weren't felons, the documents that we have seen provided by whistleblowers show that, in fact, all along in this program you knew that the weapons purchased were destined for drug cartels.

You knew all along that the weapons -- that someone buying over 600 weapons was not buying them for sport hunting, especially .50 calibers. So do you -- and my time is running lean on trying to get an answer -- did you think it was a good program? It appears as though you thought it was a good program at some time.

MR. NEWELL: Well, sir, as I said in my statement, I acknowledge now that we did make some mistakes in this -- in this initiative, in this program.

REP. ISSA: OK. All right. I think we'll all acknowledge that you're right on that. When I was in Mexico, I observed a lot of things, Special Agent Canino. My understanding -- I was told in Mexico by a number of your colleagues -- you were not there at the time -- that when they entered into the database, into the trace database, Fast and Furious weapons, they got a system error. In other words, they didn't get a hit or a miss. They got a network error. Are you aware of that?

MR. CANINO: Yes, sir.

REP. ISSA: So when your agents -- your federal agents with 20 more years -- entered in the information that would have allowed them to contact a special agent in Phoenix, they did not get the information that would have allowed them to contact the special agent in Phoenix. Isn't that correct?

MR. CANINO: That's correct, sir. REP. ISSA: So you were blocked. Mr. Gil -- and I've run a lot of my time with the other questions, but for both you and Mr. Canino -- if you had known about this program, were you or were you not obligated to tell the ambassador?

MR. GIL: Sir, upon my arrival, I had discussions with the ambassador about arms tracking being the number-one issue. The second call I would have made would have been on the ambassador. The first call I would have made would have been directly to the acting director of ATF to find out exactly what this case is all about.

REP. ISSA: So in my remaining time, and Special Agent Wall, this would of course apply to Tijuana too, if you're operating in a foreign nation as an American law enforcement individual, as a liaison invited on behalf of a government, not having law enforcement power in that country, don't you owe it to the ambassador to keep him or her fully informed of anything you learn? Because you're not there to do law enforcement. You're there to help them do law enforcement through the embassy.

So for all three of you first three witnesses, isn't it reasonable to believe that one of the reasons that you were not told about Fast and Furious is had you been told, in addition to the acting director, the ambassador and the rest of the State Department would have had to have been read into this program, considering its magnitude?

MR. WALL: To follow what Darren said, if -- we weren't aware of that technique that ATF agents were actually following known gun traffickers away and letting them go. That is insane. It was inconceivable. You would not ever think that because ATF does not do that. If I had known that that was in fact occurring, I would have called ATF headquarters. And if we did not get relief from them, we would have gone upstairs and told the ambassador and hopefully he would have been able to stop it.

REP. ISSA: Thank you. Mr. Cummings?

REP. CUMMINGS: Thank you very much, Mr. Chairman. Gentlemen, from early on in this case, various ATF agents and officials raised concerns about the number of guns purchased by Fast and Furious suspects that were flowing from Arizona to Mexico. Mr. Leadmon, you testified in March, 2010, that you provided a detailed briefing about Fast and Furious to Acting Deputy Director Hoover, Assistant Director Chadin (ph) and several others. Is that correct?

MR. LEADMON: (Off mic.)

REP. CUMMINGS: Now, Mr. McMahon, after this March 2010 briefing, Mr. Hoover directed the Phoenix field office to prepare an exit strategy to shut down the operation within 90 days. Is that correct?

MR. MCMAHON: That's correct, sir. We did ask for an exit strategy --

REP. CUMMINGS: OK.

MR. MCMAHON: -- a 30-, 60-, 90-day exit strategy.

REP. CUMMINGS: And in his interview, Mr. Hoover told the committee that this was the first time in his career he had ever asked for an exit strategy, but that he felt that he needed one because he was very concerned about the large number of guns being purchased by these suspects.

Mr. McMahon, did you share Mr. Hoover's concern about the large number of weapons in this case with others?

MR. MCMAHON: Absolutely, sir. I think we were all concerned about the large number of cases. But this magnitude of a case was something we had never encountered before in my career.

REP. CUMMINGS: And did you ask Mr. Newell to -- Special Agent Newell to provide you with an exit strategy?

MR. MCMAHON: I did, sir.

REP. CUMMINGS: And when did the exit strategy envision indictments arriving?

MR. MCMAHON: We received the exit strategy, I believe, at the end of March, and again --

REP. CUMMINGS: What year?

MR. MCMAHON: Of --

REP. CUMMINGS: 2010?

MR. MCMAHON: Of '10; I'm sorry. REP. CUMMINGS: OK.

MR. MCMAHON: And we had a 30-, 60-, 90-day plan. If certain things were accomplished by 30 days, we'd be able to seek indictment. If certain things were accomplished by 60 days, we could obtain indictments; that sort of thing.

REP. CUMMINGS: So you had, more or less, some kind of a time schedule. Is that correct?

MR. MCMAHON: That's correct.

REP. CUMMINGS: Were you following that schedule? In other words, were you checking back every 30 days, 60 days, whatever?

MR. MCMAHON: We were actually -- I was checking back more than that. Bill and I were probably talking weekly about the activity of what was going on in the case and how much closer we were to completing our investigation.

REP. CUMMINGS: Well, according to that strategy, from the very beginning, what was the day that you expected, envisioned indictments arriving? When you first -- you did it in March, what, 2010?

MR. MCMAHON: Correct. We were expecting indictments sometime in the summer of 2010.

REP. CUMMINGS: And I want to understand why it took from March 2010, when Mr. Hoover ordered the operation to be shut down, to January 2011, when indictments were finally issued. Can you help us with that?

MR. MCMAHON: Well, again, we were working day to day with the U.S. attorney's office. And it is a partnership when you put a case like this together. And we thought we had enough. And obviously we have to prove that to the prosecutors that we have enough, and that does take a little bit extra time.

REP. CUMMINGS: Well, that was more than a little bit extra time, was it not? I mean, you had just -- you were talking initially, I guess, about the summer 2010, and you end up January 2011. You're approaching a year, as opposed to a few months. Is that right?

MR. MCMAHON: Well, it was about six months, sir, yes.

REP. CUMMINGS: Now, Mr. Newell, when did you eventually shut down ATF's investigative portion of this operation?

MR. NEWELL: Well, sir, the investigation is ongoing as we speak.

REP. CUMMINGS: But at some point -- I'm talking about what we were just talking about, Special Agent Newell. MR. NEWELL: Yes, sir.

REP. CUMMINGS: There was a plan to shut this piece down, an exit strategy.

MR. NEWELL: Right.

REP. CUMMINGS: And I'm asking you to refer to what I just asked Special Agent McMahan, Mr. McMahon, about.

MR. NEWELL: Yes, sir.

REP. CUMMINGS: What was the plan? I mean --

MR. NEWELL: The plan was end of July present to the U.S. attorney's office what we believed to be the evidence that we needed to secure the first round of indictments. And as the exit strategy said, the 90 days -- 30, 60, 90 days was not a firm, depending on, you know, what type of investigative material or information we get, and depending on each 30-, you know, 60-, 90-day time frame.

So it was roughly about -- I believe about mid-August when we felt that we presented to the United States attorney's office all the evidence we needed to secure a first round of indictments. So, in essence, we probably went over a couple of weeks.

REP. CUMMINGS: So did you -- I assume, Mr. McMahon, did you approve this going beyond the time period that you initially stated for the exit strategy? Is that right?

MR. MCMAHON: There was nothing to approve, sir. I was getting updates from Bill about his work with the U.S. attorney's office.

REP. CUMMINGS: So basically if he said, "Look, we need more time," you just assumed you needed more time.

MR. MCMAHON: And he'd give me a reason why we needed more time; correct.

REP. CUMMINGS: And so Mr. Issa, Chairman Issa, asked -- said the purpose of the program was to let guns walk. And I just want Mr. Newell and Mr. McMahon to be clear. We're trying to get to the bottom of this. We've been going ring around the rosy forever. What was the purpose of this operation, to the best of your knowledge, Mr. -- Special Agent Newell, and then yours, Mr. McMahon?

MR. NEWELL: Well, Mr. Cummings, thank you for the question.

The purpose of this investigation was to identify and disrupt and dismantle an entire firearms trafficking organization that was linked to a Mexican drug cartel. That was the purpose. And to do so, we needed an extraordinary amount of work on the part of the agents to, in fact, achieve that goal. REP. CUMMINGS: But it was not to let guns walk. Is that correct?

MR. NEWELL: No --

REP. CUMMINGS: I don't know if you -- go ahead.

MR. NEWELL: No, sir. As I said in my statement, sir, one of the things that I -- it frustrates me to some extent -- is there's that belief. And at no time in our strategy was it to allow guns to be taken to Mexico, no, sir.

REP. CUMMINGS: I don't know if you heard Special Agent McNino (sic/means Canino), but he was almost in tears and very frustrated, because he felt that all of this went against the very things that he stands for and these other agents stand for.

And with that, Mr. Chairman, I'd just like for Mr. McMahon to just answer my question, and then I'll --

REP. ISSA: Without objection.

REP. CUMMINGS: Thank you very much, Mr. Chairman.

MR. MCMAHON: I totally agree with you, sir. That is not in the makeup of an ATF agent. We do not allow guns to walk. What we did in this investigation was investigate a large group of individuals that were breaking the law, and we were trying to put our case together so that we could actually make an impact.

If we pick off these one or two straw purchasers, they get replaced in a day, and we have even more guns going into Mexico. That was the plan.

REP. ISSA: I thank the gentleman.

We now recognize Mr. Burton for his five minutes.

REPRESENTATIVE DAN BURTON (R-IN): First of all, Agent Newell, what was the origin of this program? Who came up with this idea? Where did it come from?

MR. NEWELL: Well, sir, it was based on -- it was based on the fact that when we -- the OCDETF strike force was initiated. The idea of the OCDETF program is to disrupt and dismantle entire organizations. The --

REP. BURTON: Who came up with this idea? Was it you or Mr. McMahon or somebody higher up the food chain?

MR. NEWELL: Idea for what, sir? REP. BURTON: For the whole program.

MR. NEWELL: It's one investigation, sir. Fast and Furious is one investigation.

REP. BURTON: Well, who -- where -- where was -- I mean, the selling of the guns or the giving of the guns in Fast and Furious, where did that come from? Who made that decision?

MR. NEWELL: Well, sir, we have a policy that allows for those transfer of firearms in order to pursue targets in an investigation, identify others --

REP. BURTON: OK. Well, there were 2,000 -- as I understand it, there were as many as 2,000 firearms. Is that correct?

MR. NEWELL: That's approximately it, yes, sir.

REP. BURTON: And you were allowed to -- allowed 2,000 firearms to go in the system, this Fast and Furious program. How were you tracking those?

MR. NEWELL: Well, sir, Fast and Furious -- I apologize, but Fast and Furious was not a program. It was an investigation that was --

REP. BURTON: OK. How was -- how did you track the weapons, the 2,000 weapons?

MR. NEWELL: Well, depending on how the information got to us. Sometimes the information got to us after the sale. Sometimes it got to us through investigative means that firearms were --

REP. BURTON: Did you have a set of records that showed who got them and who reported to you where they went and all that?

MR. NEWELL: Through our tracing system, we have a way to determine when firearms are seized, and we also received information --

REP. BURTON: On all the firearms, did you get this information?

MR. NEWELL: No, I don't believe so, no, sir.

REP. BURTON: Why not?

MR. NEWELL: Why not we didn't get all the information? REP. BURTON: Yeah. Well, I mean, if you have 2,000 firearms that are out there that are going in the program or the investigation, and you're putting them out there, it seems to me you'd want to -- if you're trying to make a case, you'd want to track those and know where all of them went.

MR. NEWELL: Well, we did track the ones that we knew about, yes, sir.

REP. BURTON: Well, there were 2,000 firearms. Did you have control of those at any time?

MR. NEWELL: We seized, sir, over -- approximately 300 guns in this case in the United States through our efforts. And the other firearms we put into our suspect gun database.

REP. BURTON: Well, I must be missing something. You had 2,000 firearms.

MR. NEWELL: Yes, sir.

REP. BURTON: You put them into the system, into the investigation, correct?

MR. NEWELL: I did not, no, sir.

REP. BURTON: Who did?

MR. NEWELL: Agents in the group, agents in group seven.

REP. BURTON: OK. Well, who kept records of that? The agents that were doing it -- did anybody keep records who they were giving the guns to?

MR. NEWELL: Sir, I'm a little -- the weapons were being purchased by a criminal organization.

REP. BURTON: OK.

MR. NEWELL: So when we found out about that information, be it through weapon seizures or through cooperating dealers or through other means, we would keep track of that, yes, sir.

REP. BURTON: So you have a record of all the weapons that were put into the -- that were sold.

MR. NEWELL: To this day, we're still discovering more, because this was a very prolific firearms trafficking organization. When we first initiated this investigation in November of 2009, I believe the number was they had already purchased -- and we believe to this day the number changes -- something like 400 firearms. By the time we initiated our OCDETF strategy to focus on the entire organization, I think it was close to 1,000 firearms by the time we opened our OCDETF program.

REP. BURTON: I must have missed something, because it seems to me if there were 2,000 weapons that were sold and went into the -- and you were investigating this and you were trying to find the criminals that were buying them, that there would be a record of all of the weapons that were sold.

MR. NEWELL: We have a record of --

REP. BURTON: All the weapons that were sold.

MR. NEWELL: No, sir, because we're still to this day discovering firearms that were purchased by these individuals that (we weren't aware of ?).

REP. BURTON: OK. Well, did you have a record of the ones that purchased those individuals -- I mean, purchased those weapons, the individuals that purchased those weapons?

MR. NEWELL: The ones that we were aware of; yes, sir, we do have them.

REP. BURTON: You have the records of all those.

MR. NEWELL: I do believe so, yes, sir.

REP. BURTON: And you're still in the process of making the case on this.

MR. NEWELL: Because we're identifying additional suspects as we go, yes, sir.

REP. BURTON: I yield back.

REP. ISSA: Would the gentleman yield? Yes.

So let me understand from previous testimony. Agents were there at the scene. Videotape -- video observance, digital video observance, occurred as they bought them. The agents in many, many cases followed the suspect leaving with six, 10, 20 weapons for a period of time, and then they were ordered by this task force to break off and let those weapons continue going.

And you charged Mr. Acosta, one of the 20 defendants -- the only one that's not just a meth user who was straw buying -- you've charged him with being trafficking. When did you know that Acosta was trafficking weapons in -- his intent was to traffic weapons into Mexico? And when weapons occurred in Mexico that you knew Acosta had received from straw buyers and they turned up at crime scenes in Mexico, then what did you do? MR. NEWELL: Sir, as relates to Mr. Acosta, I believe we -- it was Mr. Acosta, sir, or --

REP. ISSA: Acosta.

MR. NEWELL: Mr. Acosta?

REP. ISSA: He's the money man.

MR. NEWELL: Well, actually, Mr. Acosta in this investigation right now is the head of the Phoenix cell of this trafficking organization.

REP. ISSA: Right.

MR. NEWELL: So --

REP. ISSA: And you knew he was trafficking and you knew he was receiving these weapons and you knew these weapons were showing up at crime scenes.

MR. NEWELL: Well, the --

REP. ISSA: I'm just -- I just want understanding -- and my time has expired -- but why you couldn't seem to answer the gentleman's question straightforward. You knew guns that you had watched be delivered -- or watched be purchased went to third parties and ended up in Mexico. And yet this program continued as though you somehow didn't know they were being -- that the purchasers -- the same purchaser who had purchased guns that were already in Mexico was purchasing more.

I yield back. I think -- who do we have next? Mr. -- give me the list.

Mr. Davis is next for five minutes.

REPRESENTATIVE DANNY DAVIS (D-IL): Thank you very much, Mr. Chairman.

Mr. Leadmon, you've been in ATF for seven years studying gun trafficking on the Southwest border. Before that you were a homicide detective here in Washington, D.C. for many years.

Can you describe to us briefly how the Mexican drug cartels get firearms from the United States?

MR. LEADMON: Yes, sir. I guess one way to kind of summarize this is it kind of came to light to me several years ago when an individual describing it to me put it as follows. He says the Mexican people have been trafficking drugs into the United States since 1880. They've also been buying Sam Colt's guns since 1880. So that kind of gives you the groundwork of the culture and the reason why we have this problem, because we have these firearms being sold and the Mexicans are coming up -- these cartels. And they are purchasing these weapons. That's a fact.

REP. DAVIS: In your experience, what type of weapons are in demand by the cartels?

MR. LEADMON: It's -- like I alluded to in my written testimony, which I didn't get to finish, but there is a -- we have actually gone in and identified a lot of what we call DTO preferred weapons. And these are usually your AKs, your ARs. They like the .38 Supers, the .45s. We've got a list of them. And in this particular case, the firearms being purchased -- all the firearms being purchased by these individuals were --

REP. DAVIS: Let me ask --

MR. LEADMON: -- (inaudible).

REP. DAVIS: -- why do you think they focus on these type weapons?

MR. LEADMON: Because they're weapons to use to -- one, they have to protect themselves (sic) against their rivals. Two, they are confronted by law enforcement in Mexico and the military, so they need this type of firepower and that heavier firepower to exist down there.

REP. DAVIS: Thank you.

Mr. Wall, you've spent the last 19 years as an ATF special agent and have most recently served as the ATF representative in Tijuana, Mexico. We've heard a lot today about the problem of gun trafficking in Mexico, and I'm hoping that you can help me better understand the problem.

Based on your experiences in Mexico, where are the cartel's guns coming from?

MR. WALL: From my experience, the majority come from the United States.

REP. DAVIS: Are you seeing a representative sample of all guns used in crimes in Mexico, or are the Mexican authorities just maybe showing you firearms that they believe come from the United States?

MR. WALL: They make them available to us. In the last four years, since 2007, I've probably looked at over -- slightly over 2,000 firearms in Mexico. These are firearms that I went out, and soon after they were seized at a crime scene or at a stash house, I went out and I examined the guns. And of those 2,000, less than 50 -- let's just say 50 of them I could tell were from foreign manufacturer, meaning outside the U.S., possibly from South America; guns that maybe were tied back to even the guerrilla wars in Central America.

REP. DAVIS: So you believe that these statistics are accurate, that they are real.

MR. WALL: I know guns and I know what I see. And I'm the person on the ground, yes, sir.

REP. DAVIS: Are you finding many of the weapons coming from Central America? Some people seem to think that some actually are coming from Central America. Do you think that many of them are?

MR. WALL: Some do, yes, especially with some groups. Certain cartels have more of a tendency to acquire their firearms in Central America or South America, possibly even from guerrilla groups.

However, the other cartels, the ones that I'm familiar with, most of their firearms are U.S.-sourced firearms.

REP. DAVIS: So you think the United States is the main source of these weapons.

MR. WALL: Yes, sir, I do.

REP. DAVIS: Thank you very much, Mr. Chairman. I yield back.

REP. ISSA: I thank the gentleman.

We now go to the gentleman from Utah, Mr. Chaffetz, for five minutes.

REPRESENTATIVE JASON CHAFFETZ (R-UT): Thank you, Chairman.

Agent Newell, when did you first become aware, know, anticipate, or maybe even suspect that these firearms and this program were being transported or transferred into Mexico?

MR. NEWELL: Sir, when we -- I think we started getting the first traces -- I want to say I believe sometime in November of '09, yes, sir.

REP. CHAFFETZ: So in November of '09, you believed that they were being transferred or transported into Mexico. Did that cause you any concern?

MR. NEWELL: Yes, sir. It always does. REP. CHAFFETZ: But you say here -- but the program continued on, knowing full well that these guns were going to Mexico. You said in your opening statement here, "It is not the purpose of the investigation to permit the transportation of firearms into Mexico."

MR. NEWELL: When we were lawfully able to seize firearms in this case and the many, many firearms trafficking cases we conduct in Phoenix and Arizona and across the Southwest border, we take every effort to stop that, yes, sir.

REP. CHAFFETZ: But in January, coming out of your office -- in a January 2010 -- I mean, you testified today in your opening statement, "It is not the purpose of the investigation to permit the transportation of firearms into Mexico." That's today.

MR. NEWELL: Yes, sir.

REP. CHAFFETZ: Yet, in February or March -- I'm sorry -- January 8th, 2010, it -- in this memo, point number 13, you write -- or it is written, "Currently our strategy is to allow the transfer of firearms to continue to take place," albeit at a much slower pace in order to further the investigation, allow for the identification of additional co-conspirators.

It would continue to operate and illegally traffic firearms to Mexico drug trafficking organizations. So it was the goal. It was the intention of the program to allow guns to be trafficked to Mexico, based on this memo. Is that correct?

MR. NEWELL: No, sir.

REP. CHAFFETZ: What's wrong -- that's from your statement. It also says in here a number of different seizures in Mexico. It seems very inconsistent at best to suggest that it was not the purpose to allow them to go to Mexico. Yet you know in 2009 that they're going to Mexico, and you put it in a memo in 2010, January of 2010. How are those statements compatible?

MR. NEWELL: Well, sir, if I may -- and I'm glad I'm given the opportunity to clarify that paragraph that has been obviously well publicized. The wording in that -- the way my understanding was, when that briefing paper was drafted, was that our efforts to allow the transfer to identify additional co-conspirators was so that we could further the investigation, take out the whole organization. Otherwise these individuals would in fact continue in probably a larger --

REP. CHAFFETZ: So you allowed -- is it hundreds or thousands of weapons to continue to flow through this program and go into Mexico?

MR. NEWELL: I'm sorry. Can you repeat the question, sir? REP. CHAFFETZ: How many additional -- how many hundreds or thousands of weapons did you allow to be purchased, knowing that they were going to Mexico?

MR. NEWELL: Sir, the purchase was being done by a criminal organization, a large-scale --

REP. CHAFFETZ: But you facilitated it. You allowed it, did you not? I mean, that was part of the program; allow these straw purchases to happen so that the guns could end up in Mexico. And you know in 2009 that that's happening.

MR. NEWELL: Sir, again, the goal of the organization -- the goal of the investigation was to disrupt and dismantle the entire --

REP. CHAFFETZ: I know. I understand the goal. But you were purposely -- the problem is you were purposely, knowingly allowing the guns to go to Mexico. And you have information in 2009 that it's being successful. Yet you never put a stop to it. It's meeting the goals and intentions you laid out in this memo in January of 2010, and it continued on and on. And consequently, there were thousands of weapons that ended up in Mexico, killing people -- killing people. That's the reason that we're here today.

When did you first know or think that guns were walking?

MR. NEWELL: Sir, in this investigation -- to the best of my knowledge, we didn't let guns walk from that perspective.

REP. CHAFFETZ: When did you first think that they were?

MR. NEWELL: Were what, walking?

REP. CHAFFETZ: Walking, yeah.

MR. NEWELL: Sir, again, the policy --

REP. CHAFFETZ: Did you ever -- have you ever thought that they were walking?

MR. NEWELL: Sir, the policy regarding transfer of firearms regards the fact that we're trying to develop an investigation.

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REP. CHAFFETZ: I know what you're trying -- when did you first think that guns were walking?

MR. NEWELL: Sir, I -- again, the goal of the investigation --

REP. CHAFFETZ: I -- when did you first think that guns were walking? Did you ever think that? Do you think that here today? MR. NEWELL: I truly believe, as I have said before, that I didn't -- we didn't let -- intentionally let guns walk.

REP. CHAFFETZ: Let's go to slide two, if we could, please.

This is an email from Mr. Newell to Mr. McMahon on December 21st, 2010, six days after Brian Terry was killed. Quote: "Since I don't like the perception that we allowed guns to walk, I had David Voss pull the numbers of the guns recovered in Mexico, as well as

those we had a direct role in taking off here in the U.S."

So you're telling me you didn't suspect that the guns were walking?

MR. NEWELL: As my email says, it's about the perception. There is -- there was -- I didn't want people to think there was the perception, because in my mind that was not the case.

REP. CHAFFETZ: How were guns not walking?

MR. NEWELL: Knowing and proving that the transfer or purchase of firearms is illegal are two different things.

REP. CHAFFETZ: I'm asking -- this is one month before the indictments and two months before John Dodson went on CBS News with the accusations that the case is still an active investigation.

Why did you have Mr. Voss pull the numbers one day after the Terry murder for the number of guns recovered in Mexico and the United States? And did you know that Fast and Furious was about to come under massive scrutiny?

MR. NEWELL: I did not know at that time it was going to come under this level of scrutiny, no, sir.

REP. CHAFFETZ: What is the difference between -- explain to me why you don't think the guns were walking. You obviously thought that others had that perception.

REP. ISSA: Mr. Chaffetz, could you summarize?

REP. CHAFFETZ: Oh, my apologies. I'm way over. I yield back.

REP. ISSA: I thank the gentleman.

We now go to the gentleman from Vermont, Mr. Welch, for five minutes.

REPRESENTATIVE PETER WELCH (D-VT): Thank you very much.

Mr. Newell, I'm also trying to just understand the sequence here that some of my colleagues were asking about. As I understand it, agents would watch a straw purchaser purchase guns, correct? They would follow the straw purchaser and come some places to another location, where they would observe that the guns were left, correct?

MR. NEWELL: Left -- yes, sir, I believe --

REP. WELCH: Well, they were dropped off by the straw purchaser and delivered to whoever the middleman was, right?

MR. NEWELL: Yes, sir.

REP. WELCH: All right. And then, on a couple of occasions, the agents called in for permission to make an arrest, and they were denied that permission because of the overall objective of the plan, correct?

MR. NEWELL: I'm aware of that in one instance, yes, sir.

REP. WELCH: All right. So the question I have -- and I think Mr. Burton and Mr. Issa were asking this -- what procedures did you have in place to follow where the guns went, from that point where they were dropped off to wherever they ended up?

MR. NEWELL: Well, I know we had surveillance teams out there that were -- their job was to do that, yes, sir.

REP. WELCH: But what -- I mean, you got a report. I'm an agent. I observe a straw purchaser. I watch the purchaser go to a delivery point. So the next step is following the guns from that delivery point to wherever they may end up. Now, I understand how this plan worked --

MR. NEWELL: Yes, sir.

REP. WELCH: -- from the point of watching the straw purchaser make the purchase, watching the straw purchaser make the drop. But I don't understand what happened after that or what your system was in order to follow where those guns went.

MR. NEWELL: Well, sir, it wasn't my system. It was decisions that were made in the field by dedicated agents to --

REP. WELCH: No, no, I don't want -- there's got to be a system.

MR. NEWELL: Right.

REP. WELCH: What's the system, whatever system it is?

MR. NEWELL: Well, agents in the field do the best they can to follow firearms, follow leads and see where they're going and --
REP. WELCH: No, I mean, you're -- I don't get that. You -- trained law -- you guys have plans, right, about how you're going to execute a complicated and very dangerous situation? So I'm just wondering what it is. A load of assault rifles has been delivered to a middleman. Was there an explicit plan by which you would follow where those guns went after the drop to the middleman?

MR. NEWELL: Best of my knowledge, we did everything possible to, in fact, do that with the resources we had out in the field.

REP. WELCH: Right. But I'm asking how you did it.

MR. NEWELL: With surveillance, with the agents on the ground, boots on the ground.

REP. WELCH: Well, if you had boots on the ground, how is it that you wouldn't know where those guns went, from the drop to the next step?

MR. NEWELL: Because in some instances guns would go to a home, and unless we had any -- unless we had any lawful basis to approach those individuals, we sat on surveillance as much as resources would allow. And then other priorities would -- other cases -- other -- would take them away from that house.

REP. WELCH: All right. So, then, basically there was not either the resources to follow those guns from the drop to wherever they ended up.

MR. NEWELL: Not in every instance; but in some instances, yes, sir.

REP. WELCH: All right.

Mr. Leadmon, in your testimony, you discussed the 2007 Project Gunrunner. You highlighted the strategic mission of the ATF and the need to cooperate with domestic and international law enforcement partners to deny the tools of the trade to the firearms trafficking infrastructure.

Can you clarify one important issue about what happened? Do you have an opinion that it was a mistake in this operation to focus on the Mexican cartels, the criminal organizations that are trafficking firearms? Or was it a mistake or a failure to prioritize public safety as ATF targeted the cartels?

MR. LEADMON: It's not an opinion; it's my observation.

REP. WELCH: Mm-hmm. (Acknowledging.)

MR. LEADMON: What I will say is that the -- I think there's a term here; everybody said let these guns walk. I personally believe our agents walked away from the guns as they were traveling down the road, similar to seeing something off at a train station. To skirt around this, to me, is ludicrous. These firearms, right, like I testified earlier, were crime guns, murder weapons. We knew it in 2009. We knew that, based on our information out of Mexico. We knew where these guns were ending up by our partners in Mexico, down there recovering them and researching them. There is no doubt that this was going to a criminal organization as early as 2009. As every day went on thereafter, it became more and more substantiated.

My thing here is we're talking about lawful ways of arresting or going in. We have an obligation to the Mexican people and the U.S. government and the citizens of the United States. There's other ways to stop the flow of guns, other than arresting people. You can go and seize the guns. You don't have to arrest them.

REP. WELCH: Thank you. My time has expired. I yield back.

REP. ISSA: I thank the gentleman.

We now go to the gentleman from South Carolina, Mr. Gowdy, for five minutes.

REPRESENTATIVE TREY GOWDY (R-SC): Thank you, Mr. Chairman.

Special Agent Newell, you said firearms are not, in and of themselves, contraband. That's true, unless they are sold to, possessed by, or acquired by a prohibited person, which would include a straw purchaser.

So my question to you is this. Did ATF have contemporaneous or pre-knowledge of any straw purchasers purchasing weapons in Arizona?

MR. NEWELL: Well, sir, straw purchasers are not prohibited individuals unless they've been convicted of some crime.

REP. GOWDY: No, it is against the law to purchase a gun knowing you're going to transfer to someone else to therefore get around the fact that the person you're going to give it to is a prohibited person. Agreed?

MR. NEWELL: Yes, sir.

REP. GOWDY: OK. Well, that's a straw purchaser. Someone who's going to give the gun to a prohibited person is a straw purchaser.

MR. NEWELL: Yes --

REP. GOWDY: So now that we've got that cleared up, did you know that anyone who was -- who was acquiring firearms from firearms dealers in Arizona were straw purchasers? Contemporaneous with the acquisition, did ATF know it?

MR. NEWELL: We have to prove that, in fact, that is a violation. Yes, sir, we presented to the U.S. attorney's office evidence that we believe that these individuals were, in fact, straw purchasers.

REP. GOWDY: All right, let's do it another way. The very first weapon recovered in Mexico through a trace, did you go back to the purchaser of that weapon and interrogate them? MR. NEWELL: I did not, no, sir.

REP. GOWDY: Did anyone with ATF?

MR. NEWELL: I'm not aware of that, no, sir.

REP. GOWDY: Why not?

MR. NEWELL: I don't know, sir.

REP. GOWDY: You've got a gun that was purchased in Mexico -- purchased in the United States that makes it into Mexico. You know through your trace that that's the gun. Did you go back to the person who purchased it? That's a -- that's an old-fashioned investigative technique. It's not as complicated as letting guns walk. It is more effective, though, to actually go interrogate the person who made the acquisition. Did you do that?

MR. NEWELL: Well, sir, as I stated earlier, in this investigation, realizing that if you take off one straw purchaser you're not making an impact on the greater -- in the greater organization --

REP. GOWDY: I want to ask you about the greater investigation. Because I've read now four different times you've said disrupt, dismantle, destroy.

MR. NEWELL: Yes, sir.

REP. GOWDY: How are you going to extradite drug kingpins from Mexico?

MR. NEWELL: We don't have plans to do that, no, sir.

REP. GOWDY: So once the guns make it to Mexico, there's nothing you were going to do about those drug kingpins.

MR. NEWELL: Yes, sir, there was.

REP. GOWDY: What?

MR. NEWELL: One of the things we wanted to do was, as soon as we had solid information on who the drug kingpin, if you will, was, to share that information with Mexico.

REP. GOWDY: But you didn't share the information with Mexico ahead of time.

MR. NEWELL: Well, sir, we did --

REP. GOWDY: So they're supposed to trust American law enforcement, who's been conducting an investigation and knows firearms are going into Mexico, and you tell them after the fact, and they're supposed to thank you and be partners in this endeavor?

MR. NEWELL: Well, sir, it wasn't only until we had information on who the specific recipient or the drug kingpin was that we felt it was prudent to share that information. Because we weren't sure --

REP. GOWDY: How are you going to dismantle Mexican drug cartels if you're not going to extradite the kingpins back to the United States?

MR. NEWELL: Because we hope that the Mexican officials will, in fact, prosecute them for that.

REP. GOWDY: So you're doing this to help the Mexican criminal justice system; you're just not going to tell the Mexican criminal justice system about it.

MR. NEWELL: No, sir, I disagree with that premise.

REP. GOWDY: Well, that's exactly what you just said, Special Agent: that you were going to tell them about it after the fact.

MR. NEWELL: Well, we didn't -- we had to know it first. We had to know who the drug -- we had to -- through this investigation and as it continued --

REP. GOWDY: OK, you got the first trace that tells you a U.S. gun is found in Mexico. Why did you not go interview the person who acquired the gun? Why not do the investigation the old-fashioned way, with car stops, with search warrants, with active surveillance? Why do it this way? It was never going to work.

MR. NEWELL: Well, again, years of experience have shown us, sir, that removing one straw purchaser will not have an effect on a larger investigation.

REP. GOWDY: Well, Special Agent, the only way it possibly could have worked would have been if Mexico had extradited these kingpins. If you want to disrupt, dismantle, destroy, the only way it could work is if you told Mexico -- or I would have settled for you just telling your own fellow agents about it ahead of time. Because ATF in Mexico didn't know about it, did they?

MR. NEWELL: Well, sir --

REP. GOWDY: Yes or no? Did Mexico ATF office know about this?

MR. NEWELL: They were aware of the investigation, yes, sir.

REP. GOWDY: They were aware that weapons were going into Mexico and you knew about it? MR. NEWELL: That we knew about it? Sir, weapons go into Mexico all the time.

REP. GOWDY: From straw purchasers that you knew about.

Let me ask you this. If Mexico were to ask us to extradite the law enforcement officers who knowingly aided and abetted weapons going into Mexico, what would your reaction to that be?

MR. NEWELL: I would explain to them that our concern in investigation(s) of this type is to take out the whole organization so we have the greatest impact possible, and not -- if you just take off (sic) one straw purchaser, you're not having an impact on the greater effort, which is to --

REP. GOWDY: Special Agent Newell, my time is up. I'll just say this in conclusion: I worked with ATF for six years directly. I worked with ATF indirectly for 10 years as just a state DA. This is one of the saddest days in my six months in Congress. It may be the saddest day. ATF has a wonderful reputation in South Carolina. We never once contemplated letting firearms walk, ever. A first-year Quantico or Glynco person knows that.

I'll yield back.

REP. ISSA: I thank the gentleman.

We now recognize the gentle lady from California, Ms. Speier.

REPRESENTATIVE JACKIE SPEIER (D-CA): Thank you, Mr. Chairman.

Special Agent Newell, what were you thinking? I think that's what we're all scratching our heads about here today. And the embarrassment that you have put on ATF generally, an outstanding organization of line agents, is deeply troubling to all of us.

But what I'm really concerned about is, but for the fact that there were whistleblowers, but for the fact those whistleblowers went to Senator Grassley, but for the fact CBS did an investigation, this travesty would still be going on today. That's my big objection. Who did you tell? Did Mr. Melson (sp) know about this?

MR. NEWELL: About the investigation?

REP. SPEIER: Yes.

MR. NEWELL: My belief is, yes, he -- I briefed him, and --

REP. SPEIER: When did he know about it? When you started it? When you were conceiving it?

MR. NEWELL: I'm not exactly sure when -- the first time he was made aware of the investigation, ma'am. REP. SPEIER: Well, who did you make aware of this idea of this investigation?

MR. NEWELL: Well, when the -- when the investigation first initiated in -- I believe in November, we sent a -- I sent a briefing paper -- we sent up a briefing paper, I believe, the first part of December. And then --

REP. SPEIER: To whom?

MR. NEWELL: To my supervisor.

REP. SPEIER: Who is?

MR. NEWELL: Mr. McMahon.

REP. SPEIER: And Mr. McMahon, what did you then do?

MR. MCMAHON: When I was briefed on the initiation of this investigation, I passed it up the chain. But this was an initiation of an investigation. We had a -- pretty early on -- that's why the title "Fast and Furious" came on it -- we had a large group of people who were buying a lot of guns in a short period of time. And then we were having recoveries in Mexico.

What we had was purchases in the U.S., recoveries in Mexico. We didn't have what was in between. And that's what the agents in Phoenix were trying to prove.

REP. SPEIER: So you all thought this was a great idea?

MR. MCMAHON: To stop guns from going to Mexico? Yes, ma'am.

REP. SPEIER: No, this particular investigation -- of letting guns walk into Mexico.

MR. MCMAHON: We didn't have an investigation to let guns walk. We had an investigation into a group of individuals who were breaking the law and trafficking guns into Mexico.

REP. SPEIER: All right. So 2,000 guns walked into Mexico. You've retrieved maybe 300. Is that correct?

MR. NEWELL: I believe the current number is roughly 600 firearms have been recovered.

REP. SPEIER: And my understanding is that the way you were, quote, "surveilling" them is that you were putting GPS systems on them. Is that correct?

MR. NEWELL: On the firearms, or on vehicles? Depends on -- we used all kinds of investigative techniques to further the investigation to try to determine if, in fact, the firearms were going into Mexico.

REP. : Would the gentlelady yield? We have previous testimony that three times and only three times were any electronic tracking devices placed on the products.

REP. SPEIER: Only three times?

REP. : Yes, correct.

REP. SPEIER: And that those batteries ran out, is what I was told as well. Is that correct?

REP. : Exactly.

REP. SPEIER: All right.

What Peter Forcelli (sp), the special agent, testified earlier -- said that in his opinion, you know, if we monitor money being wired to the Middle East and we take down actual information about people who buy Sudafed because we're concerned about meth labs -- we know that gun running is coming from the United States into Mexico. That's the source of it. Why aren't we required -- why aren't we requiring people who purchase multiple longarms from reporting that? And my question to each of you is, should we be doing that? We do it for things like Sudafed, but we don't do it for longarms.

MR. MCMAHON: I believe that -- well, we put forward a demand letter requiring gun dealers along the Southwest border to report the sale of two or more firearms that fire from the shoulder greater than .22 caliber that accept a detachable magazine.

REP. SPEIER: And what's the penalty if they don't?

MR. MCMAHON: If the FFL doesn't? It will be part of the revocation process if they don't follow the rules.

REP. SPEIER: They -- oh, so they would lose their license.

MR. MCMAHON: Correct.

REP. SPEIER: That's like a slap on the hand, isn't it?

MR. MCMAHON: Well, that's all we have at our disposal that we can do.

REP. SPEIER: I'm asking you -- I'm asking you if there should be a law passed requiring the reporting of longarms that exceed a

certain number.

MR. MCMAHON: I think that's the job of this body.

REP. SPEIER: No, we're asking you. You're out in -- you are out in the field. You're telling us that the gun-running into Mexico, the drug cartels are getting those guns from the United States. They're originating here. So I want everyone on the panel to just answer that question. We -- yes or no.

MR. MCMAHON: The -- demand letter three (ph) that's going forward is going to be a great tool for us to combat this.

REP. SPEIER: All right. Mr. Newell?

MR. NEWELL: Thank you, Congresswoman. Yes, any tool that we have to assist us in detecting early on, to detect -- help us assist to detect early on a firearms trafficking organization that is trafficking in large quantities of multiple -- of assault-type weapons would help.

REP. SPEIER: Thank you. Next?

MR. LEADMON: Yes, ma'am, I think that if we're going to do this it should be in a balanced approach, maybe through legislation. But we also got to take in mind that this -- we do have 2nd Amendment rights, and this needs to be balanced. And I think that we should be -- approach this with caution.

REP. SPEIER: Well, what does that mean? Either you think we should have one, or we shouldn't.

MR. LEADMON: That means that to me there is a common good in this idea and this legislation, but there is a responsibility for us to balance it also.

REP. SPEIER: Next?

MR. CANINO: Yes, ma'am, that would help.

MR. WALL (?): Yes, ma'am. I agree with Mr. Leadmon, though: We need to balance it with 2nd Amendment rights. We require purchases of handguns -- within -- two or more handguns within a five-day period to be reported to us. However, the situation in Mexico right now and along the Southwest border, I think it's an exigency, that we have some type of -- well, some help along that line with the assault weapons or the long guns.

MR. GIL (?): I would disagree to some extent that that would be beneficial. I would rather have a relationship with the federal firearms licensee for when an individual does come in and wants to purchase multiple weapons of any sorts, handguns or long guns, that they would work with us on that. And that would provide us the -- some information targeting those individuals. So I would somewhat disagree with that.

REP. SPEIER: My time has expired.

REP. ISSA: I thank the gentle lady.

We now go to the gentleman -- Mr. Walberg for five minutes.

REPRESENTATIVE TIM WALBERG (R-MI): Thank you, Mr. Chairman. And I thank you for also giving us the opportunity to go to Mexico City and meet with the officials down there, both our hardworking agents and agencies as well as the federal police in Mexico. I just -- hearing some of the responses this morning, I -- I'm kind of surprised that the Mexico federal police met us with such openness in providing information to us of what they're attempting to do, when it's apparent we let them down.

I guess to try to get at -- come at it from the other side to get some answers, let me ask Mr. Canino -- and thank you for your service.

MR. CANINO: Thank you.

REP. WALBERG: When did you first learn that a large number of guns were being seized in Mexico and traced back to Phoenix?
MR. CANINO: Well, sir, it was around November or so. My intel officer in Mexico reported to me that there was a large amount of weapons in a suspect gun database.

REP. WALBERG: What was your reaction -- what was your reaction to that?

MR. CANINO: Well, sir, I looked at it. I thought three things about this case. Number one, I thought that -- the cases were out of Phoenix. Anybody who has ever talked to any agents in Phoenix or worked in Phoenix knows that the U.S. attorney's office there has been reluctant to prosecute firearms cases. That's number one.

Number two, I thought that our agents in Phoenix had stumbled upon a gun trafficking group and, in their due diligence, were finally realizing, "OK, these guys have beat us for these many guns."

And number three, I thought somehow our agents are losing these loads -- or a combination of all three.

Never, never in my wildest dreams would I think that ATF agents were ordered or participated in actually following known gun traffickers and just walking away. That is, to me, inconceivable. And to this day I still -- I'm trying to get my head around this.

What happened in this case is -- this is the ATF gun trafficking book, something we've done since 1972. And we do it well. And they went in Phoenix to the shredder and shredded the best practices, all the techniques that you use to investigate a gun trafficking case. It's not rocket science. If it was, I wouldn't be here.

REP. WALBERG: Had you -- had you received any warning from ATF in Phoenix or Washington about the possibility of a spike in guns showing up in Mexico?

MR. CANINO: No -- well, I was, you know, talking with Lahren (sp) and the folks at the Office of Strategic Intelligence. You know, we became aware, OK, there's a gun trafficking case in Phoenix. The first guns that I became aware of that were related to that case were in November of '09, where nine guns turned up in a seizure of 42 guns in Sonora, Mexico.

REP. WALBERG: So no warning?

MR. CANINO: Once those guns came up and we traced them, hey, OK, now we found out there was a case out of Phoenix. But out of that case, out of those nine guns, that person who purchased those nine guns purchased close to 700 guns.

So in '09 we knew -- "we" meaning ATF, ATF Phoenix, ATF Mexico -- we knew that at least one person involved in that case had guns recovered in Mexico. And like I said, that person was allowed to buy 700 guns. REP. WALBERG: Seven hundred guns.

Mr. Gil, let me -- let me ask you the same questions. When did you first learn that a large number of guns were being seized in Mexico and traced back to Phoenix?

MR. GIL: Sir, I learned actually during the same event that Mr. Canino just referred to. He and my chief analyst, Dennis Vashiani (ph), came into my office. And I had just arrived in early October. And this event came across. And so they briefed me at that time.

REP. WALBERG: And your reaction to that?

MR. GIL: I picked up the phone. We discussed it. I picked up the phone, I called the Phoenix field division to find out what was going on with this investigation. And we were recovering an abnormal number of weapons, and if they were aware of it, and if so, what was going on?

REP. WALBERG: And you -- and you received no warning prior to that?

MR. GIL: No, sir.

REP. WALBERG: In the few remaining seconds, let me move over to Mr. Leadmon. What's eTrace?

MR. LEADMON: It's the ATF's electronic tracing system. It's -- was the system we used to submit traces and to get the results.

REP. WALBERG: Was the database useful for tracing guns, or did you face obstacles with the tracing system?

MR. LEADMON: Well, within the tracing system we have a flagging system called Suspect Guns. And in that Suspect Guns database, right, it's utilized to notify case agents when a weapon that they suspect is being used in criminal -- a crime gun -- that it's flagged and then the agent's notified.

REP. WALBERG: Were there any delays in the usage of eTrace on this particular issue?

MR. LEADMON: No, the tracing comes out of -- especially the Mexico guns or the U.S. guns -- that comes from the recovering officers or their agency. But the flagging system has a mechanism in it -- or it did, in the inception of Gunrunner -- I mean, excuse me, Project -- this project, Fast and Furious, it had a system that wasn't -- you know, we couldn't have it through our electronic system. Halfway through --

REP. WALBERG: Why was that? MR. LEADMON: It was just a matter of just merging the systems together. It is now part of our eTrace system, and it's all fully available.

REP. ISSA: The gentleman's time has expired.

We now go to the gentleman from Illinois, Mr. Quigley, for five minutes.

REPRESENTATIVE MIKE QUIGLEY (D-IL): Thank you, Mr. Chairman.

I apologize; there's several committee meetings going on. So if I ask a question that's been answered, I apologize. But perhaps just the most obvious. Special Agent McMahon, was it your intention to go back and get these weapons after this all took place? People

left these stores with guns. Your intention was to go back and get those -- all these weapons, correct?

MR. MCMAHON: Well, our intention was to prove that they were doing something illegally when they bought those weapons. And that's easier said than done. Proving that someone's a straw purchaser actually means that you have to prove the day that they came in to fill out that form, that they lied when they answered one of the questions.

And proving that -- we have to prove that they knowingly lied when they filled out that form. So once we've determined that someone is a straw purchaser, yes, we want to be able to get the weapons that they've -- are responsible for as quick as possible.

REP. QUIGLEY: Did you believe that you could get these weapons back if that was the case, regardless of where they went?

MR. MCMAHON: Well, again, I think our problem with this case is proving that a violation occurred in the U.S. and then determining how those weapons were being transported into Mexico. We know that, of all the people we identified in this case -- our purchasers -- none of them were actually physically taking the weapons into Mexico.

We didn't -- we were checking border crossings, all of those sort of things, and that was not happening. So there was a great unknown at the beginning of this case trying to figure out what the -- what the size of this network was and how it was operating.

REP. QUIGLEY: Well, if -- you and Special Agent Newell have used the line, if we took off one or two straw purchasers today, they simply get replaced. In your words, in your mind, why is that the case?

MR. MCMAHON: Because I think the way I understand firearms trafficking in Mexico, which is totally different than any type of firearms trafficking we've ever done before -- I'm from New York, I work firearms trafficking cases all the time, but it's totally different in Mexico. What you'll have is a plaza (ph) boss that orders guns from the U.S. He'll give someone in the U.S., say, \$70,000, and says, I want \$70,000 of guns. And he expects to get \$70,000 worth of guns.

REP. QUIGLEY: And how do they find each other typically?

MR. MCMAHON: Well, then that person will have their -- that's an established network from the drug trade of drugs going north. So that individual --

REP. QUIGLEY: I'm sorry. So that relationship's already there because of the drug trade?

MR. MCMAHON: Absolutely. And then that person will recruit individuals that have clean records that are U.S. citizens to buy weapons.

Now, if we start picking off one or two people, that hurts the money person in the U.S., but the person in Mexico is still going to get his \$70,000 worth of guns. And that's what happens.

So knocking off straw purchasers one by one -- yeah, it makes life hard on the money person in the U.S., but it doesn't make an impact in Mexico. And that's the key to what we're trying to do at ATF. And there has to be that balance, obviously.

You know, as I said, the mistakes -- in no way should we have ever allowed anyone to get upwards of 600, you know, purchases without talking to that person, trying to find out what they were doing, seeing if they would cooperate. But again, I think we learn things in every case we ever do, and we are learning an awful lot from this one.

REP. QUIGLEY: Well, this is a network where people talk, so they would talk about what it's like to be a straw purchaser from an economic point of view. They encourage someone else, as you say, to do this. What would discourage someone from being a straw purchaser that we could do?

MR. MCMAHON: I think, obviously, you know, stiffer sentences for some of these individuals. We're tied to -- when we make a case against these individuals -- obviously they have all clean records -- the federal system is tied -- tied into punishing individuals that have a criminal history. Obviously, straw purchasers will not have a criminal history. That's what makes them viable to purchase weapons. That would help us an awful lot, to have a hammer over their head to either cooperate or ultimately never do this. That's --

REP. QUIGLEY: We've heard the expression that many feel like this is doing 60 in a 55 or some reference to that: that it's not particularly strongly punished, and typically not with a jail term. Is that your understanding?

MR. MCMAHON: It is. It shouldn't be. I -- every time I talk about this, whether it's to media or other people or members of Congress, I'm always trying to stress that these individuals that think they're just doing maybe a paper violation are actually causing havoc in another country, or elsewhere here in the U.S. Because the people that need them to buy guns aren't using them to protect their store or protect their residence. They're using them to create mayhem.

REP. QUIGLEY: And the last question. Editorials about 2nd Amendment aside, if you go into a store in -- a gun store in Arizona, how many AK-47-type weapons can you buy?

MR. MCMAHON: As many as he has.

REP. QUIGLEY: Thank you. And I yield back.

REP. CUMMINGS: Would the gentleman yield?

REP. QUIGLEY: Yes.

REP. CUMMINGS: Just one question.

REP. ISSA: I ask unanimous consent that the gentleman have 30 seconds.

REP. CUMMINGS: Thank you very much.

Mr. -- Special Agent Newell, I must tell you that your testimony has been quite frustrating, I think for both sides. I just want you to answer one question. Mr. Leadmon said the way that this should have been conducted. Do you remember hearing what he said? He said the way this should have been done.

MR. NEWELL: Yes.

REP. CUMMINGS: I just wanted to know your reaction to that.

MR. NEWELL: Well, sir, as I said in my opening statement, I recognize that in retrospect there were mistakes made in how we handled this investigation. We should have -- and one of the things I said in my opening statement was it was incumbent upon me to have more risk assessments throughout the investigation. I acknowledge that. I acknowledge the fact that one of the things I should have done was more frequently throughout the investigation conduct risk assessments to ensure whether this was still a prudent strategy to occur.

To -- but I will tell you, sir, that from years and years of experience, as Mr. McMahon just said, we -- these Mexican drug cartels are going to get their firearms. They're going to get them. So we have to do everything we can in terms of taking out the infrastructure that -- straw --that manipulates the straw purchasers.

Straw purchasers are the lowest rung in the ladder. They're like a street corner drug dealer. If you just focus your investigations on straw purchasers, you're not having a lasting impact. But I -- to answer your question, sir, I acknowledge that yes, in fact, that there should have been more frequent risk assessments. I acknowledge that fact.

REP. ISSA: Thank you. We now go to the gentleman from Tennessee, Dr. DesJarlais.

REPRESENTATIVE SCOTT DESJARLAIS (R-TN): Thank you, Mr. Chairman. And I thank the panel for appearing here today. Regrettably, I have to attend a teleconference, but I would like to yield my time back to the chair, as it's very important we continue this discussion.

REP. ISSA: I thank the gentleman for yielding. I'd like to follow up somewhat along the line that the ranking member was on. Mr. Patino (sp) bought 730 weapons, is our best count right now. He worked through Mr. Acosta (sp). For both of my -- Special Agent Newell and McMahon -- was there a time in which either one of you were aware that Mr. Acosta (sp) -- buying weapons -- a total of 730 -- from this particular straw buyer, who was on food stamps, who had no income -- was there a time that you became aware Mr. Acosta (sp) intended on transporting those weapons to the drug cartels to sell them?

You've charged 19 straw purchasers, who are all out on their own recognizance right now, just waiting for trial sometime next year. You've charged one person with trafficking. Was there a time you became aware that, in fact, you had a known - known group of buyers, including Mr. Patino (sp) at 730 weapons, and you knew that the purchaser, the money man, intended on transporting those to Mexico? Was there ever a time that you knew that? Mr. McMahon first.

MR. MCMAHON: There was never a time that I knew that, no.

REP. ISSA: Mr. Newell.

MR. NEWELL: There was never a specific time that we knew that, no, sir.

REP. ISSA: Please stay away from words like "specific"; they worry me. Was there ever a time -- did you get to an understanding that you had a known buyer buying from these people with an intent to traffic them to the cartels? Was there a time?

MR. NEWELL: Throughout the investigation, we had information that --

REP. ISSA: What was the first time that you had that information?

MR. NEWELL: That this group was trafficking firearms to Mexico?

REP. ISSA: That you had a known buyer, Mr. Acosta (sp) or that group, and that the purchaser -- some of the straw purchasers they were buying from were, in fact, providing to these people for the -- for their purpose of transporting?

I ask you this question very simply.

MR. NEWELL: And I --

REP. ISSA: You've been -- now, wait a second. You've been here as a paid not-answerer so far. And I appreciate that you've been here as a paid not-answerer. But there comes a point where I go, wait a second, 730 weapons bought by a man who had no money. Every penny he bought with, he had to get from somebody.

You knew that at some point. You knew who was buying them. And you allowed it to continue. Now, there comes a point where, as we go through the rest of the investigation -- and this was about Mexico, and I want to get back to that very quickly -- but there comes a point where we have to have more than just "mistakes were made."

My understanding is you knew from credible information -- your organization knew that, in fact, you had a buyer providing the money to Patino (sp) and others; that he was taking possession of those weapons. And you knew with specificity that those weapons -- some of them had already ended up in Mexico.

Is that correct?

MR. NEWELL: Yes, sir.

REP. ISSA: And what was the first date? Oh-nine -- what was the first date?

MR. NEWELL: Sir, to answer your question, throughout the investigation we had information that Patino (sp) was -- Mr. Patino (sp) was working with Mr. Acosta (sp), throughout the -- I don't -- I don't recall a first date.

REP. ISSA: OK. So from day one you had a straw purchaser with no means of support buying hundreds of weapons, providing them to his intermediary, which meant that both of them were very much part -- you didn't have a buy-and-lie situation at this point. You had an individual who could be charged with his participation in the actual trafficking of weapons. You had somebody who was trafficking for the -- specifically for the intent of getting it to the drug cartels, providing huge amounts of information -- I mean, sorry, huge amounts of money. You had that early on.

We're now two years later, and you've only charged 18 other people with buy-and-lie. And the one person you knew early on was doing this.

Where, quite frankly, is any semblance of roll-up or any semblance of going further? It looks like you knowingly allowed these to be sold, waiting to see if the other end in Mexico would give you information.

It seems like you knowingly allowed these weapons to get out of your control, knowingly, to someone you knew was trafficking into Mexico. You saw the results, you allowed it to continue, and now you're telling us we don't let guns walk.

Well, I've got to tell you before this investigation ends I've got to have somebody in your position or at Justice admit you knowingly let guns walk. Because right now your agents, both the agents where today from Mexico and the agents that were part of Phoenix and part of this program who became whistleblowers have told us you were letting guns walk.

It's only you and Mr. McMahon and other people at Justice who continue to come before this committee and say we don't let guns walk. Are they lying or are you lying?

MR. NEWELL: Sir, in this investigation it is my opinion that we have not let guns walk.

REP. ISSA: You're entitled to your opinion, not to your facts. With that we go to the gentleman, Mr. Tierney.

REPRESENTATIVE JOHN TIERNEY (D-MA): Thank you, Mr. Chairman. Mr. Wall, before you were transferred to the ATF field office in Tijuana, Mexico you were in the Phoenix office. Is that correct?

MR. WALL: Yes, sir. I was.

REP. TIERNEY: And you said in your written testimony that you personally saw some of the ATF's best tracking cases languish in the U.S. Attorney's office. Is that an accurate statement?

MR. WALL: Yes, that's accurate, sir.

REP. TIERNEY: Now, we've also had other ATF agents tell us the same thing, that there was a lagging of proceeding on these cases in the U.S. Attorney's office. When was that period of time that you were assigned to the Phoenix office?

MR. WALL: Well, I was working primarily gun trafficking to Mexico from 2007 to until I left for Tijuana in 2009, fall of 2009.

REP. TIERNEY: Thank you. Mr. Newell, a number of ATF witnesses that the committee interviewed have said that this case was ready for indictment probably in August of 2010, but the U.S. Attorney's Office didn't really seek the indictments until January of 2011. Is that an accurate reflection of your memory?

MR. NEWELL: Yes, sir.

REP. TIERNEY: Do you know why you experienced these delays?

MR. NEWELL: I think that's a question better asked for the U.S. attorney's office, sir.

REP. TIERNEY: Did they ever give you an understanding of why it was that they were seeking the delay?

MR. NEWELL: That they were continuing to put together the information they needed to seek indictment.

REP. TIERNEY: And was it that broad an explanation, no specifics?

MR. NEWELL: Certain specifics regarding financial for the money laundering statutes that are in the -- money laundering violations that are in the indictment.

REP. TIERNEY: Do you consider those reasons to be legitimate or did you think that they were somewhat suspect?

MR. NEWELL: I believe that they were legitimate in the sense of the return on some subpoenas, yes sir.

REP. TIERNEY: Now, Mr. McMahon, you said that a number of your agents were certainly frustrated from time to time with the U.S. Attorney's Office in Phoenix, correct?

MR. MCMAHON: That's what was being relayed to me from Bill, yes.

REP. TIERNEY: All right. But you didn't have a direct knowledge of that. Your agents didn't express it to you?

MR. MCMAHON: I shouldn't say that. Yes, there is a personal friend that I had that works in Phoenix that I hired in New York. He did express his frustration with the U.S. Attorney's Office, yes.

REP. TIERNEY: Now, at some point in time when Mr. Newell and Mr. McMahon, you thought that the case was ready for indictment -- that is the August 2010 and after that -- did you start using seizure warrants to interdict some of the weapons?

MR. MCMAHON: Yes, sir. We started doing that, I believe, in September of '10 in an effort to seize firearms as we were waiting for the indictment.

REP. TIERNEY: All right. So -- MR. MCMAHON: Civilly, seize firearms civilly.

REP. TIERNEY: So once you thought that the case had been made --

MR. MCMAHON: Yes, sir.

REP. TIERNEY: -- then you started to try and take extra actions to make sure that the weapons didn't get beyond a certain point. All right. And when would you exercise the seizure warrants in relation to this whole trafficking activity that was going on?

MR. MCMAHON: Well, sir, I thank you for the question. During the summer of '10, we finally convinced certain individuals in the Judiciary that we had a very strong -- we believed we had a very strong ability -- or theory on being able to seize firearms civilly in order to stem the flow. And that really got -- we got that approved I would say September of '10.

REP. TIERNEY: Now, this problem with the U.S. Attorney's Office in Phoenix, the lag of time between when people in the field thought that they had their case made and waiting for the indictments to go down, is that a problem that exists with the current U.S. Attorney?

MR. MCMAHON: I will say, sir, that having been there five years when I was there from 2006 to 2011, the current U.S. Attorney has been much more aggressive and much more proactive than previous administrations, yes, sir.

REP. TIERNEY: OK. The previous administrations, however, were --

MR. MCMAHON: Of U.S. attorneys.

REP. TIERNEY: -- insisted in having that issue?

MR. MCMAHON: Yes, sir.

REP. TIERNEY: A flag on that? Mr. McMahon, you told the committee that ATF agents had secured confessions from star purchasers to develop certain cases, but that your agents presented those cases to the U.S. Attorney's Office in Phoenix and the assistant U.S. attorney declined to prosecute and said there was no violation. Do you remember telling the interviewers that?

MR. MCMAHON: I do remember speaking about a single case that was relayed to me by Bill Knoll (sp?), yes.

REP. TIERNEY: Can you give us the specifics of what it was you related?

MR. MCMAHON: What was told to me was we were working an operation at a gun show. Our agents observed someone that looked suspicious pushing a baby carriage with a couple of long guns in it. They followed her out to the parking lot where she actually transferred that to an individual, and our agent saw a transfer of money.

We had other agents follow the car that had the guns now out of the parking lot, pulled him over, did a traffic stop, identified him as a multiple convicted felon with not only the two guns that this woman gave her (sic) but also a third gun. We also confronted the woman and she confessed that she was paid to purchase these weapons.

I believe it was a Saturday or Sunday when this happened. Bill relayed to me that that was presented to the duty agent in Phoenix and they suggested that we take the case to state court.

REP. TIERNEY: Thank you. I'm going to yield back the ranking member at this point in time.

REP. CUMMINGS: Thank you very much.

REP. ISSA: We'll ask that you also have another 30 seconds.

REP. CUMMINGS: Thank you, Mr. Chairman. Special Agent Newell, I want to go back to something that the chairman asked you because I want to make -- I want this to be real clear, and this is for the benefit of the entire committee. I've got to -- I'm trying to figure out what your definition of walking guns is. Maybe that's part of the problem. I think we -- because -- I think almost everybody up here has our opinion about this, and I'm just wondering if there's a difference between your definition of walking, allowing guns to walk, and ours.

MR. NEWELL: Well, thank you. I appreciate the opportunity to answer that. My definition of walking, and I believe it's a common law enforcement term, is when a law enforcement agency, be it ATF, FFLs be it a state or a local agency actually puts some sort of evidence into the hands of a suspect in furtherance of an undercover operation in furtherance of an investigation, and then does nothing to -- with that property, that property that -- for instance, with ATF it could be a prop gun, one of our evidence guns.

They put it in the hands of that suspect and then don't do the follow up, don't attempt to determine where that gun is going.

REP. CUMMINGS: So you don't think there was any walking allowed in this based on that definition in this case?

MR. NEWELL: Based on that definition, yes, sir.

REP. CUMMINGS: Thank you, Mr. Chairman.

REP. ISSA: I thank gentleman. We now go to the gentleman from Arizona, Mr. Gosar, for five minutes. REPRESENTATIVE PAUL GOSAR (R-AZ): Thank you, Chairman. This renewal -- you know, once of my colleagues on the other side brought it up about new laws. Now I want to emphasize it wasn't the gun sales operator, and let me emphasize that again. It wasn't, was it, because they were alarmingly bringing forth these sales, were they not?

MR. MCMAHON: I'm sorry, Congressman.

REP. GOSAR: Here we go again.

MR. MCMAHON: Well, I didn't --

REP. GOSAR: It seems like this is the Moe, Curly and Larry show and we're looking for Larry. I mean, it's disruptive to actually see what I'm seeing here. As a business person coming from Main Street America to actually see what I'm seeing here, you've got to be disgusted about this. And to go around and round and turn the corner, it's ridiculous.

Agent Canino. I watch your body language; I'm a healthcare physician --

MR. CANINO: Yes sir.

REP. GOSAR: OK? I watch body language like crazy. Tell me what you disagree with, that man right there.

MR. CANINO: On this specific case?

REP. GOSAR: Yes, talking about records. How about records? Let's talk about records. Are there adequate records being kept?

MR. CANINO: At the FFLs?

REP. GOSAR: Yep.

MR. CANINO: Yes, sir.

REP. GOSAR: And how about how they relate between the sale of these guns in Mexico? Can you choreograph that?

MR. CANINO: Yes, sir. I think ATF does a great job in regulating the firearms industry.

REP. GOSAR: But in this case in tracking, did they actually, were they able to track them? They had no idea where they were going?

MR. CANINO: No, sir. The only -- the reason -- you've got to put this in context. Everybody's saying, oh, this case was so big. It was complicated. Firearms trafficking cases are not complicated, sir, OK? They're not complicated. The reason this case was so big was because we didn't do anything, plain and simple. Everybody wants to make this bigger than it is. Like I said earlier, you don't have to -- I spent 19 years, 15 as a street agent, four leading a street group, OK?

You don't have the luxury or the right, in my opinion, as an ATF agent, to say I like this law, I like that law. OK? That's where -- you guys set the law, we follow it. Now it's up to me as an ATF agent how best to make up an investigative technique and best practices so I can make a case and present it to the U.S. attorney.

I've done my job. Now it's up the U.S. attorney if he wants to prosecute it or not. I'm going to bring him the best case I can. In this case, like I said earlier, we have the ATF trafficking guidelines and best practices and we just threw it out the window. Nobody got stopped. Like I said earlier, how can you let somebody buy 730 guns and at what point are you going to stop them? I mean --

REP. GOSAR: What you were doing is just totally prohibited.

MR. CANINO: I am -- I am embarrassed, sir. I have agents, guys who I consider American heroes, my friends, who -- and I never thought I would hear this -- who they've told me since this broke, Carlos, I'm ashamed to carry an ATF badge. To me, I have cried over that literally, and I'm not ashamed to say that.

This is not a job to me, it's a profession. I don't have a hobby. My hobby is being an ATF agent. I love this job. I hit the lottery when I came on and I'm proud of what I do and I'm proud of the ATF agents in this country. We have heroes, we really do. But -- and I've been watching your body language too and Mr. Burton's. I'm sorry, sir, but that's all I can say. I have no other way to describe this.

REP. GOSAR: Well, I mean, I look at this and I look at -- you know, when we're doing medical procedures we look at what's our end game and what's all the processes in between, and there's collateral damage. And the problem is the collateral damage is our crimes, and there are going to be deaths, like we just saw, and there are going to be many more.

And they're on this side and they're on that side. And you know what that tells me? That tells me when we were in the planning stage we got a problem. It's not on the field, it's right there in the office, in the head office and coming up with this. This was absurd to even have this idea. I hear this merry go round bantering back and around where we can't get an answer from Mr. Newell.

I mean, the buck stops to somebody. Who is it? It's obvious to me it's not these two gentlemen right here. I want to find out who Larry is. That's where we're going to have to go with this, because this is absurd. And the fact that we use people's lives and their -- and our friends from Mexico as pawns in this without even discussing it, how absurd.

It's irreprehensible (sic) to even conceive of what's transpired here, and I hope the buck stops and I hope we take accountability all the way through because this can't go on again. This is -- I mean, both sides of the aisle are furious, and the American people ought to be furious that this is what we get for higher-ups in ATF or in the Department of Justice. Shame on you. I yield back the rest.

REP. ISSA: I thank the gentleman. We now go to the gentleman from Virginia for his five minutes, Mr. Connolly.

REPRESENTATIVE GERALD CONNOLLY (D-VA): Thank you, Mr. Chairman, and I'm sure all of our panelists are so pleased to be here today. I guess I have a slightly different take on the subject. I don't defend Fast and Furious, and I don't defend the actions of the U.S. Attorney's Office at the time in Phoenix and I certainly believe that it was a botched attempt that led to a tragedy, perhaps many tragedies.

And I think this committee and its chairman are right to raise those issues and to try to assign blame. But there's another part of the story I doubt very much the press will print in tomorrow's headlines, because it's so much easier to print who screamed the loudest at ATF and that you got beat up.

But what the press won't print tomorrow, sadly, is the fact that Congress' hands are hardly clean on the subject. We have done everything to make sure that the F in ATF is nullified. We have made sure that you haven't got a permanent director for six years.

We laud the private sector. What private company would think it's OK to lack a permanent CEO for six years. We have done everything in our power in Congress to try to defang the ATF to make sure that it's toothless. We've done everything we can to fight your budget and reduce it so that you don't have the resources to do the job.

We're not criticizing you for not doing well. We had testimony before this committee by one of your colleagues called by the committee majority who said there are more New York police officers per square mile in New York than there are ATF agents in all of the state of Arizona. And yet somehow we're going to stop the hemorrhaging of arms trafficking going into Mexico with that kind of paltry set of resources.

But that won't be in the headline tomorrow. Some of the loudest critics of ATF today are also on a bill misnamed the Bureau of Alcohol, Tobacco, Firearms and Enforcement Act. What does that bill do? It allows firearms dealers to liquidate their inventories after having their arms' dealer license revoked, and would decriminalize gun sale recordkeeping violations even if they contributed to cross border gun traffic.

How does that help ATF and its mission? Where is the accountability here in Congress on this subject? It's easy to beat up on you. It's easy to look for a scapegoat when the agenda really is to make sure that we make it harder, not easier, to enforce gun trafficking. We had testimony from one of your colleagues before this committee who said there's more regulation on over-the-counter Sudafed than there is in arms trafficking going into Mexico.

And he testified and was interrupted in his testimony because it wasn't welcome, that he believed we needed to toughen enforcement laws as a tool for ATF to be able to fulfill its mission along the border. So I have no doubt that we can all pile on and correctly criticizing ATF for a botched mission. But what isn't said and sadly what the press isn't going to bother to write about but they should, is the fact that Congress for six long years and maybe longer has done everything in its power to make sure in fact you can't do your job. And this set of hearings needs to explore that too. With that I yield back the balance of my time to the ranking member.

REP. CUMMINGS: There is no -- currently no federal statute that criminalizes firearm trafficking. Instead, traffickers are often prosecuted under 18 USC Section 922 which prohibits engaging in firearms business without a license. The need for a federal firearms trafficking statute was also a common refrain of law enforcement agents interviewed by the committee, as Mr. Connolly said.

They told us that a dedicated firearms trafficking statute would give them the ability to address patterns of activity by traffickers who would divert firearms from legal to illegal commerce. Mr. Leadmon, based on your decades in law enforcement, do you believe a federal firearms trafficking statute would be helpful in disrupting the flow of guns to Mexican drug cartels?

MR. LEADMON: Yes, sir. I've viewed your proposed legislation. I agree with it wholeheartedly. One of the things that I think might be added to that is a little more emphasis on international trafficking, maybe if we can tighten it up a little bit as far as going to drug cartels. I too think that if you reach a certain amount of weapons that could even be a life offense.

REP. CUMMINGS: Thank you very much.

REP. ISSA: I thank the gentleman. We now go to the gentleman from Texas, Mr. Farenthold, also a member who went to Mexico City.

REPRESENTATIVE BLAKE FARENTHOLD (R-TX): Thank you very much, Mr. Chairman. I would like to take a moment to address something I heard before I ask a question. From the other side they were talking about how much more difficult it is and how much more regulated the purchase of Sudafed is. I don't see anywhere in the Constitution where we're guaranteed the right to bear Sudafed, but we are guaranteed the right to bear arms. So I think that's an appropriate -- or an inappropriate distinction.

Mr. McMahon, when my friend, the former prosecutor, the gentleman from South Carolina, asked you what the goal of this was you said that it was to bring down a drug kingpin in Mexico. Is that a fair assessment?

MR. MCMAHON: Did I say that, sir?

REP. FARENTHOLD: I'm sorry. I guess that was Mr. Newell. Did you say that, Mr. Newell?

MR. NEWELL: I believe what I said was the goal of the investigation was to disrupt and dismantle an entire firearms trafficking network. Yes. REP. FARENTHOLD: And so I believe you said a drug kingpin. Let me ask Mr. Gil and to identify some drug kings. Let me as Mr. Gil, does the Mexican government know who the drug kingpins are in Mexico?

MR. GILL: Sir, they are aware of the heads of the organizations. To answer your question shortly, yes.

REP. FARENTHOLD: And so let me go ahead and ask you another question there, Mr. Gil. In your time working with the Mexican government as a former ATF attache in Mexico, did they ever ask us to do anything like that? You know, let guns come across the border so they could track them or find or bring down drug kingpins?

MR. GILL: No, sir.

REP. FARENTHOLD: All right. Let me go on to Mr. Canino. I want to applaud your service and your candor with this committee. We've heard that, you know, we're trying to bring down the drug kingpins or whatever the words were as far as stop the trafficking. If you were put in charge of developing an investigation to do that, how would you do that? Would your plan involve letting firearms move across the border? How would you do it?

MR. CANINO: To stop a drug kingpin?

REP. FARENTHOLD: Or to stop the -- or if you want to go even more simply with the firearms, stop the firearms trafficking.

MR. CANINO: Well, to stop the drug kingpin I'd call DEA, because that's what they do, number one. Number two, you work the trafficking investigations paint by the numbers. It's frustrating being an ATF agent, that comes with the badge, OK? The trafficking investigations, the laws, like I said, you have to be open minded; I guess is the word I'm looking for.

I don't know if it's the best description, but like I said, it's paint by the numbers. You have to work; it's like building a house. When you stop building the foundation you work from the bottom up. And this case nobody got stopped. They didn't grab somebody and say, OK, hey, we're going to roll you. And I don't go into sources or methods but there's a whole -- you know, we have schools on this.

REP. FARENTHOLD: Yeah, I mean, if you watch a cop show you know how it's done.

MR. CANINO: Right.

REP. FARENTHOLD: You follow the guns or you arrest them, it's the first stop, and try to flip them both. Or if you really want to work in partner with the Mexican government you follow the guns until he crosses the border and radio across to your colleagues in Mexico and they move it up the line there. It seems like common sense to me.

Let me ask -- I want to ask this question to everybody on the panel, because I think this is really important. We've seen Operation Fast and Furious, we've recently heard about Operation Castaway, a similar program in Florida. Are there -- are any of you all aware at this time of any similar operations going on that allow guns to flow across the border to friendly countries now?

Are you all aware of those and if you are, are we doing anything to stop them? And if you could just come on down the line, we'll start with Mr. McMahon.

MR. MCMAHON: I am not aware of any case like that, friendly or unfriendly coverage, no.

MR. NEWELL: Neither am I sir.

REP. FARENTHOLD: Is anybody?

MR. : No. MR. CANINO: No, sir, I'm unaware of any.

MR. GIL (?): No, sir.

REP. FARENTHOLD: And we only found out about this one through whistleblowers and my prayer is that if there's anybody watching this committee hearing that's ATF or another agent that knows of something going on like this, if they would let this committee go to -- this is one of the most shameful moments, I think, in our government's history when we are letting guns go across the border to our friends in Mexico.

Let me just ask another -- I only have 32 seconds left. I'm going to stick around for a second round of questioning so I'll yield back my remaining 30 seconds.

REP. ISSA: And I'll pick it up. Special Agent Newell, what did this program expend in money? Millions of dollars, right?

MR. NEWELL: The program or the network?

REP. ISSA: Well, Fast and Furious. Up on this side we think of it as a program, you think of it as a simple investigation. The investigation, you spent millions of dollars over the course of two years, correct?

MR. NEWELL: I don't believe it was millions of dollars, sir.

REP. ISSA: Hundreds of thousands?

MR. NEWELL: Probably a couple hundred thousand dollars, yes.

REP. ISSA: Agents were camped out in some cases for a period of time at a drop location?

MR. NEWELL: Yes, sir.

REP. ISSA: So when you were trying to do the big hit, the big fix, the big -- get the -- roll big guys, why is it that testimony shows us that only three times were there any kind of detection plants -- and I don't want to get into sources and methods either -- but only three times we've been told did they try to do any detection and one of these GPS tracking was a Radio Shack make it yourself.

Why in the world, with the quality and the quantity of agents and time, video cameras planted, with Internet connections, et cetera, why is it there wasn't some tracking to track the weapons?

MR. NEWELL: We had trackers on vehicles, sir, and the trackers you mentioned on weapons. But again this goes to resources. I mean, it's our resources. We have agents that are out there working 16, 18, 20 hour days and we -- REP. ISSA: Unfortunately you just made my case and time is expired. Eighteen hours of an agent's time is so much more money than one of these tracking devices that you were pennywise and pound foolish by not having sophisticated devices. With that we go to the gentlelady from the District of Columbia for her five minutes. Ms. Norton.

DELEGATE ELEANOR HOLMES NORTON (D-DC): Well suppose you have had a trafficking device, then what would have been

the next step?

MR. NEWELL: Well, Ma'am, it depends on how long the firearms stay in the area. For instance, in many of the transactions here the firearms never left the Phoenix area. And trackers -- the battery life of a tracker is only good, you know, depending on --

DEL. NORTON: Well, give me the Phoenix area, what could you charge this so-called trafficker? This law abiding citizen, now, who doesn't have a record but he's buying many, many guns. What could you charge him with?

MR. NEWELL: There's nothing to charge him with at that point. We have to prove a violation has existed, had occurred.

DEL. NORTON: You know, I just want to say to sit in a hearing and hear people beat up on the ATF is very, very interesting to me. You sit in a Congress where the gun lobby controls the Congress of the United States? On the Republican side of the aisle they totally control it. On my side of the aisle they virtually control it.

And the Second Amendment is cited as you try to do your job to keep guns from essentially bringing down the government of an ally. So when it comes to Mexico let me ask you, what kind of gun control laws does Mexico have? Does anybody know about their gun control laws? Yes, sir.

MR. CANINO: Yes, ma'am I do.

DEL. NORTON: Yes, sir, would you please speak up?

MR. CANINO: Civilians could buy nothing greater than a .38 caliber. Anything after that is for the exclusive use of the military and the police.

DEL. NORTON: Now here is Mexico who does its job on its side of the border. It says -- essentially it makes it very difficult for anyone except someone in law enforcement or the military to get a gun. So they come to the United States where trafficking is wide open.

And let me ask you this. We're concentrating on Mexico now. Let me ask you about trafficking to Chicago. Let me ask you about traveling to the District of Columbia, to Baltimore. Let me ask you about trafficking to LA. Do these same traffickers operate as effectively in our country as we have now seen them operate taking guns to Mexico?

MR. NEWELL: Well, I believe that the organizations are a little bit different. That's why I said earlier about -- we've never encountered an organization like this from Mexico. The trafficking in the U.S., my experience anyways, is a little bit different. It's a little bit more association related. But obviously trafficking domestically is a major issue for us and I spent the majority of my career working those kind of cases.

DEL. NORTON: If a person, let's say, buys 200 guns, and here you made mistakes. If I had a dollar for every mistake this Congress has made when it came to guns I'd be a very rich woman. You made a mistake, it was a fatal mistake, it was a mistake for which you are being held accountable. Let's say you hadn't made a mistake, but someone without a record bought guns, that's me. You found me with 200 guns. What could you do to me?

MR. NEWELL: Nothing at all, ma'am.

DEL. NORTON: Would -- did you feel disarmed in your fight against this wholesale movement of guns from our country to Mexico, or did you feel you were equipped to in fact by law enforcement to do what was necessary?

MR. NEWELL: I think my experience -- ATF agents are very resilient, you have to be to make the case. And that's what our people do and they do that every day and they're out there doing that today.

DEL. NORTON: And they made design packets to try to take them -- so to make themselves more effective on the ground.

MR. NEWELL: I think that's what we should always be doing. Yes.

DEL. NORTON: Could I ask each of you would you feel better able to stop this traffic if the Congress passed a law that made it -- and added to our criminal code a section that prohibited the transfer of a gun when an individual knows the gun will be transferred to a person who is prohibited from carrying a gun or intends to actually use the gun illegally?

MR. NEWELL: We currently do have a statute that does handle that.

That's the whole lying on the federal form violation.

DEL. NORTON: Sorry, but lying on the federal form gets you to where?

MR. NEWELL: Gets us to -- if we can -- prove that someone knowingly filled out that form incorrectly or lied --

DEL. NORTON: Can you seize guns -- we've been talking about seizures here. In order to seize guns, what does the ATF have to show?

MR. NEWELL: That a violation of law has been committed with that firearm.

DEL. NORTON: (Inaudible.)

REP. ISSA: The gentlelady's time has expired, but if anyone else wants to answer the question on what's -- (inaudible) --

DEL. NORTON: I'm back to what -- well, what -- well, what's the law that's been violated?

REP. ISSA: If anyone else wants to answer --

MR. NEWELL: Yes, sir. Thank you, Mr. Chairman.

We have to prove beyond a reasonable doubt that that firearm was in some way used in violation of a -- of -- in furtherance of a violation of a crime or in violation of a crime.

We can't just go out and randomly seize firearms from individuals. Firearms are in and of themselves not contraband. If we stop someone on the street with five AKs, 10 AKs, 20 AKs --

DEL. NORTON: Or a hundred AKs.

MR. NEWELL: -- or a hundred -- and they're not prohibited. As frustrating as that may be -- and, believe me, it's extremely frustrating. But as frustrating as that may be, we may not have any legal ability to take those -- to seize those firearms.

REP. ISSA: Anyone else want to answer on that? Mr. Gil?

MR. GIL: Yes, Mr. Chairman. In my experience and as I look around the room here, I've had the opportunity to work in pretty much every -- pretty much every state of the -- of the union. And I've always been able to use the current laws to success in investigations, whether you're pulling somebody over with a hundred AK-47s. I've found that ATF special agents are very qualified in interviewing techniques. Ninety-nine point nine percent of the time we'll get confessions from those individuals. We'll take those guns.

And if not that case, then we would at least end up getting an abandonment from them for those weapons, so they don't hit the streets. So there are other avenues to approach versus -- that we could use under the current laws.

REP. ISSA: Thank you.

We now go to the most-qualified person on the committee to ask questions, the gentleman from Pennsylvania, Mr. Meehan.

REPRESENTATIVE PATRICK MEEHAN (R-PA): Thank you, Mr. Chairman.

Special Agent -- (off mic) -- you're a trained special agent for ATF. Are you trained in the issue of walking guns?

MR. WALL: No, sir.

REP. MEEHAN: Is there any -- with regard to walking guns, when you are in training, what do you know about -- what does ATF tell you about walking guns?

MR. WALL: You don't -- you don't walk guns. Sir, I teach at the ATF National Academy. I teach our first -- our first-line supervisor school. I teach our command-and-control school for GS-15s and above.

REP. MEEHAN: Are you aware of anybody who has been disciplined for walking a gun at ATF?

MR. WALL: No, sir, but I can -- Darren was talking last night and he put it in perspective. If you're an ATF agent and you lose your gun, it's three days, no questions asked, up to termination on the --

MEEHAN: If you lose your gun -- (off mic) -- somebody else's gun.

MR. WALL: If you lose your gun, it's three days.

REP. MEEHAN: What do you define as walking a gun?

MR. WALL: What exactly happened in this case -- REP. MEEHAN: Tell me, in your words, what do you think walking a gun is.

MR. WALL: Walking a gun is when you have custody and control of that firearm, and you let it get in the hands of a suspect and you don't interdict that suspect.

In this case, we had cooperators at the gun stores, so they're acting as agents of the government. So it doesn't matter if those guns came out of an ATF prop vault or --

REP. MEEHAN: OK. Thank you.

Agent Newell, is that what you meant when you said that if ATF puts evidence into the hands of the gun -- or into the hands of a suspect there's a distinction somehow between a straw purchaser getting it or ATF putting it -- please explain to me what you talk -- what you meant by the distinction of ATF putting it in the hands of a suspect.

MR. NEWELL: The distinction for me, Congressman, is ATF actually putting evidence or some sort of prop firearm in the hands of a suspect.

REP. MEEHAN: So that's a distinction from a straw purchaser, who goes and under your observation?

MR. NEWELL: In that aspect, yes, sir, it is.

REP. MEEHAN: So you're suggesting here that the distinction is, because you did not put the hand -- the gun in the hands of the purchaser here, that somehow there's a distinction from allowing a gun to walk?

MR. NEWELL: Well, Congressman, I disagree with something Mr. Camino just said regarding the fact that the FFLs were acting as agents of the government.

As my recollection in this case, the -- two FFLs in particular were clearly instructed as to -- follow the letter of the law, to abide by the rules and regulations --

REP. MEEHAN: Let's move on, because that's a distinction.

The strategy -- you were asked a specific question. Who defined the strategy for Fast and Furious?

MR. NEWELL: Well, a case like Fast and Furious goes through several levels of approval, sir.

REP. MEEHAN: Who originated the strategy for Fast and Furious?

MR. NEWELL: I believe it was at this -- at the street level. REP. MEEHAN: Tell me who the person is who created the strategy for Fast and Furious. You are the special agent in charge of your area. It emanated from your district.

MR. NEWELL: Right.

REP. MEEHAN: Who originated the concept for Fast and Furious?

MR. NEWELL: Sir, it's not one person who did that. It was a group of individuals who looked at the set of facts in this case and determined that this was the best strategy to follow to take --

REP. MEEHAN: Well, where did it start? Where does the stream start?

MR. NEWELL: It starts --

REP. MEEHAN: Tell me who participated in that conclusion.

MR. NEWELL: Well, there's -- it's several individuals. It was the group supervisor, the assistant special agent in charge, myself and individuals in headquarters.

REP. MEEHAN: OK. So there was a number of people who were very learned in this process. Now you testified here today earlier no part in the strategy to allow guns to be taken to Mexico. It was no part in the strategy to allow guns to be taken to Mexico. Is that right?

MR. NEWELL: To knowingly allow guns to go to Mexico, yes --

REP. MEEHAN: To knowingly allow guns to Mexico.

MR. NEWELL: Sir, in this case, we did everything. We had seizures in this case. When we had evidence --

REP. MEEHAN: I asked you a specific question. I said that there was no part in the strategy to allow guns to go to Mexico. Is that accurate?

MR. NEWELL: Yes, sir.

REP. MEEHAN: Would Mr. McMahon have participated in any way in the development of this policy or this -- the Fast and Furious strategy?

MR. NEWELL: I know he was aware of it. Yes, sir.

REP. MEEHAN: He was aware of it.

Mr. McMahon, you testified a plaza boss -- he has \$70,000. He wants \$70,000 worth of guns. What's a plaza boss? MR. MCMAHON: Sir, that's someone who controls an area for a cartel.

REP. MEEHAN: And where is that plaza boss?

MR. MCMAHON: In Mexico.

REP. MEEHAN: So you testified that part of the theory here, you're words, is the plaza boss expects \$70,000 worth of weapons.

MR. MCMAHON: Correct.

REP. MEEHAN: Mr. Newell, the strategy Mr. McMahon identifies that you expect, you understand that he expects \$70,000 worth of weapons. Where does that get in that there was no part in the strategy to allow guns to be taken to Mexico?

MR. NEWELL: Yes, sir. We had -- we still -- during the beginning parts of this case, we did not know who the plaza boss was. We didn't know who was --

REP. MEEHAN: That's not my question about who the plaza boss was. The question is, is there a plaza boss. Agent McMahon just said he's in Mexico.

MR. NEWELL: Right.

REP. MEEHAN: And the plaza boss expects \$70,000 worth of guns. Now, you're saying no part of this strategy was to allow the guns to go into Mexico? Who's right here?

MR. NEWELL: Sir, the strategy wasn't to allow guns to go to Mexico.

REP. MEEHAN: Yes, but what did Agent McMahon just say? This was a OCDETF case. Who else participated in this, in the form of this, going up to -- (inaudible) --

REP. ISSA: I ask unanimous consent the gentleman be allowed to have another 30 seconds.

REP. MEEHAN: Thank you.

REP. ISSA: Sure.

REP. MEEHAN: Was this an OCDETF case?

MR. NEWELL: Yes, sir, it was.

REP. MEEHAN: OK. That implies that at a certain point in time it moves beyond your agency, does it not?

MR. NEWELL: Yes, sir. REP. MEEHAN: What does that mean with regard to OCDETF? What kind of other participants were there are part of OCDETF?

MR. NEWELL: Well, there was other agencies who were involved in this.

REP. MEEHAN: Other agencies -- what other agencies were involved in this?

MR. NEWELL: In this investigation that were full partners in this case was the Immigration and Customs Enforcement, now know as (sic) Homeland Security Investigations. We had Internal Revenue Service and we had assistance to some level from DEA.

REP. MEEHAN: So are you saying DEA, IRS, and ICE all knew about this program --

MR. NEWELL: (Inaudible.)

REP. MEEHAN: -- to participate in the OCDETF?

MR. NEWELL: They participated in the investigation. Yes, sir.

REP. MEEHAN: In the investigation -- were they aware that guns were being walked to Mexico?

MR. NEWELL: Sir, again, I'm assuming that they -- I mean, I know they would know of the strategy, but --

REP. MEEHAN: They were aware of the strategy --

MR. NEWELL: Yes, sir.

REP. MEEHAN: -- which included what Special Agent McMahon talked about, allowing \$70,000 worth of guns to go to the plaza boss?

MR. NEWELL: Sir, I've never said that we were allowing \$70,000 worth of guns to go in.

REP. MEEHAN: You said it was the expectation.

MR. NEWELL: I was giving a scenario of how it works. There's a plaza boss in Mexico that's requiring \$70,000 worth of guns. So if he's not getting it from the network we're investigating, he's getting from somewhere else. It wasn't -- the \$70,000 example I gave you wasn't specific to this investigation. It was an overall generalization of how trafficking to Mexico works.

REP. MEEHAN: But we're talking about plaza bosses. We're talking about plaza bosses in Mexico.

REP. ISSA: The gentleman's time has expired. We will have a second round in just a moment.

The gentlelady from New York, Miss Buerkle?

REPRESENTATIVE ANN MARIE BUERKLE (R-NY): Thank you, Mr. Chairman.

I'm uncertain as to where to start here because of what I've heard. I think I'll start with Mr. Canino.

Mr. Canino, your comments were that it's inconceivable to let guns go. That's not the way the ATF does things. So in your experience, is what happened in Operation Fast and Furious an aberration from the usual way that ATF does business?

MR. CANINO: This is the first time I've ever heard of anything like this in -- I'll be -- I start my 22nd year on Friday. This is the first time I've heard anything like this.

REP. BUERKLE: And during the course of this operation, were you advised that there was going to be -- well, at what point did you become aware that there was going to be a different method of operation in --

MR. CANINO: Ma'am, I have to put this in context. I didn't -- the first time I ever heard of someone accusing ATF agents of actually watching suspected gun traffickers just drive away was when Special Agent Dodson was on CBS. I had -- and I didn't believe him. And I was very vocal about that.

I didn't become aware until it started coming out little by little, talking to fellow agents. And then mid-April, I saw some documents, and that convinced me that what Special Agent Dodson was alleging was in fact correct.

REP. BUERKLE: Thank you.

And the other special agents that are here, Mr. Gil, Mr. Wall, Mr. Leadmon, in your experience, is this the first time you've ever seen ATF operate this way?

MR. GIL: Again, I recently retired, and after going on 23-plus years, it's inconceivable. And again, I didn't believe it even after seeing Mr. Dodson as well. And I still didn't believe it until after I talked with Mr. Dodson and others that I became convinced that perhaps ATF did walk these weapons.

REP. BUERKLE: And Mr. Wall?

MR. WALL: As I stated in my opening remarks, yes, it's the first time I've ever seen it. And I was very skeptical. I didn't believe Mr. Dodson at all.

REP. BUERKLE: And Mr. Leadmon?

MR. LEADMON: Ma'am, part of my duties and functions is to look at the Southwest border cases, all of them. And this is the first one I've seen, but I would like to add something that the panel was asking earlier. You asked when we first became aware that Mr. Acosta, right, was involved as the leader of the straw-purchasing ring, and some of the issues as to Mr. Patino. That was in 2009, and it was early on. I briefed it to my senior directors January of 2010, and we know this.

And one of the driving forces behind how we know that these were going to Mexico -- and there were Mexico people involved -- is because our other law enforcement partners provided us with information, specific information, that allowed us to know exactly what was going on and to what cartel it was going to.

This was not a mystery. We knew this in December of 2009. I briefed it in 2010, January.

REP. BUERKLE: Thank you, sir.

So Special Agent Newell -- and Special Agent McMahon, we'll get to you because you're his supervisor -- so at some point, based on the IG's report and DOJ, they said, we're going to try something different here.

I'm assuming -- because that's the way things work in government, and maybe I'm wrong -- that someone said, we need to have this operation and we're going to make the determination that for the first time ATF's going to conduct business this way. We're going to let these guns walk.

Now, they maybe didn't say it, but in essence that's really what happened, that this is a different way of conducting business for the ATF. Where would that plan have come from? Somebody -- I know you said you sat -- you sat down with this group, Mr. Newell.

But somebody higher up than you made a determination that for, the first time, ATF was going to run this. We've heard from this panel, we've heard from the panel prior to today that this is a complete aberration from the way the ATF has done business. Where would that have come from?

MR. NEWELL: Well, ma'am, in putting the strategy together for this case we -- the strategy came from several places. The Department of Justice issued in -- originally in a draft in 2009, October of 2009 and January of 2010 about how to combat Southwest border drug trafficking by Mexican drug cartels.

And one of them dealt with firearms trafficking, which said through use of the OCADETF Co-located Strike Forces, a mere interdiction is not the answer. You have to go after the structure of the organization of the -- of the -- whatever it be -- firearms; human-, drug-trafficking organizations -- to make the biggest impact.

REP. BUERKLE: OK. And who would that memo have come from? MR. NEWELL: I do believe that memo came down from the Deputy Attorney General's Office.

REP. BUERKLE: OK. And then -- so this is now we're going to change strategy. This is going to be a different way to conduct an operation. So you get your directive from them. And then these groups that you talked about -- you sat down and you came up with a plan, or did that plan come from up on high?

MR. NEWELL: The plan figured into -- or the memo fitted into how we were going to address this, what -- when we first looked at it in November of 2009 -- was already a very active, prolific, firearms- trafficking organization, as Mr. McMahon testified. In my 23 years, we have never seen an organization that was this prolific in buying firearms in such a short period of time.

So we felt that in conjunction with the OCADETF strike force, where this group, Group 7, was located, that the best way to attack this organization was through the use of, you know, a multiagency conspiratorial-type investigation, we'd dismantle the whole organization.

REP. ISSA: The gentlelady's time has expired.

We now go to the gentleman from Michigan, Mr. Amash.

REPRESENTATIVE JUSTIN AMASH (R-MI): Thank you, Mr. Chair. I'm going to yield my time to Mr. Gowdy.

REPRESENTATIVE TREY GOWDY (R-SC): I thank the gentleman from Michigan.

Mr. Leadmon, for those who are perhaps watching and not familiar with the full panoply of investigative techniques, surveillance is a tried and true investigative technique, correct?

MR. LEADMON: Yes, sir.

REP. GOWDY: What about consensual encounters where you just do a knock-and-talk, where you walk to someone and ask them? I mean, there's a reason Dostoevsky wrote "Crime and Punishment." There's a reason Edgar Allen Poe wrote "The Tell-Tale Heart." Sometimes people confess, don't they?

MR. LEADMON: Yes, sir. There's several tools in the toolbox, especially when you're faced with the fact that we know that these weapons were going to be used in such carnage down in Mexico and the United States. We should have pulled every tool out of that toolbox, not just to make our case. Our case should not have been the priority here. The stopping the flow of those firearms should have been the number-one priority, and we should have reached into that toolbox. We should have conducted interviews or we should have done interviews with surrounding people. We should have tracked these weapons better. We should have followed everything by the letter to stop them. I mean, just where do we stop with the number of guns? One, five, 10?

REP. GOWDY: Have you -- have you ever heard tell of a law enforcement officer stopping someone for speeding, when really they may have had another purpose in mind?

MR. LEADMON: I've heard that --

REP. GOWDY: It happens from time to time, doesn't it?

MR. LEADMON: -- (inaudible) --

REP. GOWDY: Crossing the yellow line?

MR. LEADMON: Sooner or later, you're going to make a mistake, and then --

REP. GOWDY: Exactly. And when you do a lawful, nonpretextual car stop, it also opens up the full panoply of other search options, right, like searching the vehicle or a pat-down? How about a proffer? Is that -- is that a -- is that in your -- in your toolbox, to go to a United States attorney and say, I'd like to proffer this person; I'd like to send them a grand jury subpoena?

MR. LEADMON: Correct.

REP. GOWDY: It's the same way you conduct every other investigation other than this one, right?

MR. LEADMON: Correct.

REP. GOWDY: From shoplifting to murder, we do them all the same way, except this one.

MR. LEADMON: Correct.

REP. GOWDY: Special Agent Newell, I happen to think this was ill-conceived from its inception. You have testified repeatedly that the purpose was to destroy, dismantle drug cartels. So I -- I'm going to ask you again, how would this ever have succeeded. What was your purpose?

How would we have known, hey, this was a great investigation; it succeeded?

MR. NEWELL: Sir, you said that -- to disrupt a drug cartel. The purpose of this investigation was to disrupt and dismantle a firearms- trafficking organization that was feeding firearms -- REP. GOWDY: In Mexico.

MR. NEWELL: -- In the United States. The firearms-trafficking organization in the United States, not only the straw purchasers, the middlemen, the transporters, the financiers. That was --

REP. GOWDY: Well, then when the guns were going into Mexico, you should have known that this was an abject failure because that's not what you wanted, right?

MR. NEWELL: Absolutely. We didn't want any guns --

REP. GOWDY: So when you found out the first gun went to Mexico, why did you not abort the investigation?

MR. NEWELL: Because were still putting the facts together to be able to convict --

REP. GOWDY: When is the very first time you knew or should have known that firearms were going to Mexico?

MR. NEWELL: Well, I believe it was when I got the -- when we got the first traces. I was advised of the first traces, which I believe was November of 2009.

REP. GOWDY: 2009, and when did you abort the investigation?

MR. NEWELL: The investigation is ongoing, Sir.

REP. GOWDY: Right. That's my point. So you knew the weapons were going to Mexico.

MR. NEWELL: Right.

REP. GOWDY: Were you at some point going to let Special Agent Canino know about it?

MR. NEWELL: Mr. Canino knew about the investigation.

REP. GOWDY: He knew -- he knew that you -- that weapons were going into Mexico?

MR. NEWELL: Oh, absolutely. Yes.

REP. GOWDY: When were you going to let your Mexican counterparts know about it?

MR. NEWELL: I'm assuming that they knew that firearms -- because I have -- you know, sir, one of the issues about that is there's only one field division in this country, only one that has a PGR representative in it. That's the Mexican Department of Justice. In all my years of working with Mexico -- I spent four years in Bogota, Colombia representing ATF in South America. I am very, very, very key on the fact that we need to share information with our foreign law enforcement partners.

REP. GOWDY: Well, you testified earlier that you were going to turn the information over to Mexican prosecutors and let them prosecute, because I asked you were you also going to allow U.S. law- enforcement officers to be extradited to Mexico for breaking their law, and you said "no."

So my question to you is this: How in the world are you going to get our brothers and sisters in law enforcement to trust -- why would you trust the prosecution if you don't trust them during the investigation?

MR. NEWELL: Sir, to answer your question about the drug cartel -- the kingpin or -- in your words, a kingpin (to get the ?) -- that were going to get the guns to Mexico, we did not have information until late in this case, an ongoing part of this case, who that individual was.

And I invited -- with Mr. Canino, we invited in December of '10 as well as in January Mexican prosecutors to come in -- I don't think that's ever been done before and I am the one that requested it.

REP. GOWDY: Did you debrief them on Fast and Furious?

MR. NEWELL: Yes.

REP. GOWDY: Did you tell them that guns were going into Mexico?

MR. NEWELL: Well, yes.

REP. GOWDY: You told them when?

MR. NEWELL: In -- throughout -- well, my PGR representative that I have in my office who has been there for two years knew about this case, not in specific --

REP. GOWDY: When the first gun showed up in Mexico --

MR. NEWELL: He was aware --

REP. GOWDY: -- that you knew was from Phoenix; the first one that was connected to this showed up in Mexico, did you go interview the straw purchaser?

MR. NEWELL: No, sir, we did not. REP. GOWDY: Why not?

MR. NEWELL: Because again, our strategy was -- and we knowing -- from years of experience, you take off one straw purchaser, you're not having an effect on the greater organization, which is -- at that point in November of 2009, you have to realize it wasn't even -- (off mic) --

REP. GOWDY: Have you ever flipped a cooperating witness before?

MR. NEWELL: Yes, I have.

REP. GOWDY: How do you do it without asking them? How do you do it without interviewing them?

MR. NEWELL: It depends on what your goals in an investigation are.

REP. GOWDY: Your goal is to bring down an organization. It's very compelling testimony to have someone from within the organization testify against his comrades, right?

MR. NEWELL: Yes, sir.

REP. GOWDY: So why didn't you go -- why didn't you approach him?

MR. NEWELL: Approach who, sir? That one straw purchaser?

REP. GOWDY: Yes, the straw purchaser.

MR. NEWELL: Again, the goal, sir, in this case was to take out the whole organization. We felt that by just trying to flip one straw purchaser -- if he in fact did flip, it would not affect the overall goal --

REP. GOWDY: (Off mic.)

REP. ISSA: The gentleman's time has expired. We'll have a second round.

We now go the gentleman from Idaho, Mr. Labrador.

REPRESENTATIVE RAUL LABRADOR (R-ID): Thank you Mr. Chairman.

Special Agent Canino, I just think I just heard Special Agent Newell say that you knew about this gun walking. Can you please --

MR. CANINO: Yes, sir. I want to make it perfectly clear to you, the American people, the Mexican government, my family, my

friends, at no time ever did I know that ATF agents were following known, suspected gun traffickers -- one of which bought 700 guns, and we knew about his guns showing up in Mexico six weeks after we opened up that investigation -- never, ever did I -- would I imagine that we were letting that happen. We have 4,000 investigations, plus or minus with our Mexico/U.S. nexus. There are guns coming in -- that's trafficking -- the guns that are coming into Mexico.

I had no clue that we were allowing these guys to operate like this. Look, Mr. Gowdy said we'd even -- there was no interdiction. To start any case you have to -- you have a toolbox. We have classes. Jose Wall teaches those trafficking classes. I've been to them. It's like building a house. You start from the bottom and you try to work your way up. You know, at one point, you're only going to reach so far. And then you come in and you have a meeting and you say, OK, how can we advance this?

You meet with the U.S. attorney.

From what I see here, none of this was done. Or if it was, it wasn't very effective. So when -- when did you first realize that the gun walking allegations were true?

MR. CANINO: April.

REP. LABRADOR: Of this year?

MR. CANINO: when -- yes, April -- I mean I was starting to lean that way and then I was at ATF Bureau headquarters in April for a meeting and I sat down with Mr. Leadmon, and he convinced me.

REP. LABRADOR: OK. Did you come across any specific evidence to prove that ATF had taken part in these actions?

MR. CANINO: One more time -- I'm sorry.

REP. LABRADOR: Did you come across any specific evidence to prove that ATF had taken part in these actions?

MR. CANINO: Well from the -- from the totality of the circumstances and then, you know, speaking with different agents and speaking with Mr. Leadmon -- yeah, and you know, the guns showing up in Mexico.

REP. LABRADOR: Did you review any documents or anything?

MR. CANINO: You know, sir, I -- when I visited Mr. Leadmon, I saw -- I took a look at the management log, and if I read it correctly, there were three instances in the first two pages where we walk away from guns. At that point, I was so disgusted I didn't even want to look at the case file anymore.

REP. LABRADOR: And when was that?

MR. CANINO: That was in mid-April or so of this year. REP. LABRADOR: Why were you so upset with this information?

MR. CANINO: Because it goes against everything we're taught. I mean you -- like I was explaining earlier, you don't do that. We're not taught to do that from the first day we walk into the academy all the way till we leave this job, like Darren said.

It's not a recognized investigative technique. This is not a special case. This is just a trafficking case that we do. This is what we do. You know, amongst other things, trafficking is what we do, especially on the southwest border.

This was -- this wasn't a one of. This wasn't a who done it. This was -- you know, this was the ground ball.

REP. LABRADOR: Just a basic game, basic, basic case --

MR. CANINO: Yeah.

REP. LABRADOR: -- what you do every day?

MR. CANINO: Exactly.

REP. LABRADOR: Special Agent Newell, do you know who Kevin O'Reilly is?

MR. NEWELL: Yes, sir.

REP. LABRADOR: What's the nature of your relationship with him?

MR. NEWELL: I've known Kevin for, I'd say, probably 10, 12 years?

REP. LABRADOR: How often do you communicate with him?

MR. NEWELL: Oh, I haven't communicated with him in a while but probably three or four times a year or something like that or maybe, maybe more depending on him reaching out to me.

REP. LABRADOR: Isn't it a little bit unusual for a special agent in charge of an ATF field division to have direct email contact with the national security staff at the White House?

MR. NEWELL: He's a friend of mine.

REP. LABRADOR: How many times did you talk to him about this case?

MR. NEWELL: The specifics of this case? I don't think -- I mean, I don't think I had one specific conversation with him about the specifics of this case.

REP. LABRADOR: OK. Who -- REP. ISSA: Would the gentleman allow me to help him a little? You don't -- not that you need it, but could you take the word "specific" out and answer the general -- did you talk to him about this case?

MR. NEWELL: I might have talked to him about this case. Yes, sir.

REP. ISSA: Do you know when that was?

MR. NEWELL: It was probably -- I -- as I recall I think it was during the summer. It might have been the summer or early fall of 2010.

REP. LABRADOR: OK.

So Special Agent McMahon, you took responsibility this morning here for the actions of the agency and I appreciate that. Who at the highest levels -- I can't imagine that this is something that you decided to do on your own. Who did you communicate with at the highest levels about this case?

MR. MCMAHON: I communicated to my chain of command within ATF. We were all very much aware of this investigation and what was going on.

REP. LABRADOR: And who was aware at -- who was aware that this investigation was occurring and that guns were being walked to Mexico.

REP. ISSA: You can -- you can answer that question. Time has expired, but go ahead.

MR. MCMAHON: I mean, no one was aware that guns were walking at my level or above me. And again, I think we're getting caught up in this whole definition of "walking", but even given whatever the definitions are, no one from my level up knew of any gun walking.

REP. ISSA: I thank the gentleman.

We now go to the gentleman from Florida, Mr. Ross, for five minutes.

REPRESENTATIVE DENNIS ROSS (R-FL): Thank you, Mr. Chairman.

Mr. McMahon, I had an opportunity to read your opening statement. I apologize I've been in and out of here, and I, first of all, appreciate your service and I understand your remorse with what has gone on here.

But I've got to talk to you a little bit about your interview that you had -- your transcribed interview and I would like to review some of that with you. In fact, if I could get slide 6 brought up. This is a transcript of your interview that you had. And before the committee when you were asked whether you read the wiretap applications for -- for the Fast and Furious and you responded, no, I did not.

Do you recall that question and that answer?

MR. MCMAHON: I do.

REP. ROSS: OK. And then when you were asked if it was your job to sign off on the wiretap applications, you stated, no, I never signed off on a memo for a wiretap application.

Is that --

MR. MCMAHON: That's correct.

REP. ROSS: -- and that -- and that was your statement then and still today?

MR. MCMAHON: Yes, it is.

REP. ROSS: OK -- slide 7.

Could we see slide 7? OK.

This is a memorandum dated February 5th, 2005 that -- addressed to you from the group supervisor of Phoenix Group 7, and the first line states: This memorandum serves to request authorization to initiate a Title III cellular telephone intercept.

It's addressed to you. Do you recall that memorandum?

MR. MCMAHON: I recall seeing it just recently, yes.

REP. ROSS: Just recently?

MR. MCMAHON: That is correct.

REP. ROSS: You don't recall seeing it before --

MR. MCMAHON: I do not.

REP. ROSS: -- at all?

MR. MCMAHON: I do not.

REP. ROSS: OK -- slide 8, if we can get slide 8 up there.

And this is an e-mail from William Newell to you on February 5th, 2010. And attached to this e-mail was an e-mail -- it was a memo that was -- that we just saw on the past slide. And the e-mail states that, attached is a cover-up memo requesting authorization to conduct a T3 intercept on the main suspect OCDEF strike force firearms trafficking case out of Phoenix entitled Fast and Furious. I am FedExing that to you.

Do you recall receiving that e-mail?

MR. MCMAHON: I don't recall, but I mean, I obviously received that e-mail, yes.

REP. ROSS: OK.

MR. MCMAHON: I don't specifically recall receiving this e-mail, no.

REP. ROSS: Do you recall seeing the attachment that was attached to it?

MR. MCMAHON: No, I do not. And I think -- I think our e-mail records show that they weren't able to scan the attachment, too, because it was so large and they said they were going to FedEx it.

REP. ROSS: And who said that to you? MR. MCMAHON: I think it says it here in this e-mail.

REP. ROSS: That told you that it was too large?

MR. MCMAHON: That's what I read here. It says, I could not scan the actual affidavit, too, due to its size, so I am FedExing it.

So scanning it would mean to attach it to this e-mail.

REP. ROSS: Now, this is a -- this is a request for a wiretap.

MR. MCMAHON: This is --

REP. ROSS: Yes, this has a request for a wiretap that's attached to the e-mail.

MR. MCMAHON: A wiretap is actually an affidavit that's prepared at the U.S. Attorney's Office.

REP. ROSS: OK. So let's go to slide 9, then. OK. This is an affidavit prepared by Special Agent Hope MacAllister in support of an application for authorization to intercept wire communications. It's attached for your review.

Now, the signature block is from Mark R. Chait, but there's someone else's signature there. Do you recognize that signature?

MR. MCMAHON: I do.

REP. ROSS: And whose signature is that?

MR. MCMAHON: That's my signature.

REP. ROSS: OK. So you were aware of this request for the wiretap.

MR. MCMAHON: Absolutely.

REP. ROSS: OK. And is -- having seen these documents now, is there anything you -- would you like to clarify it in your testimony or your interview at all?

MR. MCMAHON: Not at all, no. I know that we forwarded the application for the wiretap through the legal-counsel process to get their approval before we went back to the Phoenix U.S. Attorney's Office and then to the OEO in main Justice.

REP. ROSS: But -- and -- OK. But you just testified just minutes ago that you weren't -- don't recall ever requesting authorization for the -- for the -- for the T3 intercept. MR. MCMAHON: No, I said that I never recalled receiving this request. I did get the actual application for the many wiretaps, and then they were forwarded --

REP. ROSS: And this was one of those requests for the wiretap that you -- that you authorized in your affidavit.

MR. MCMAHON: The last -- the last slide you put up that had my signature on it from Mark Chait --

REP. ROSS: Yes.

MR. MCMAHON: -- that would transmit the actual -- the actual application for a wiretap, yes.

REP. ROSS: OK. Now, in your interview, were you asked about this?

MR. MCMAHON: Not this specifically, no.

REP. ROSS: OK. Did you volunteer it?

MR. MCMAHON: Not that I recall, no.

REP. ROSS: OK. Any reason why not?

MR. MCMAHON: I'm trying to figure out what I needed to volunteer. I think I did tell the staff when I was interviewed that I don't recall -- I did recall receiving the applications -- (inaudible) --

REP. ROSS: But you downplayed to Mr. Kumar your knowledge about any of this.

MR. MCMAHON: I downplayed to Mr. Kumar my knowledge about this?

REP. ROSS: Yes. Didn't you?

MR. MCMAHON: No, that's not correct. I told Dan Kumar everything I knew about this case.

REP. ROSS: And when was that? In March of -- 25, 2010?

MR. MCMAHON: It was throughout this investigation. I think Dan sat in on some of the briefings. We discussed it.

REP. ROSS: I see my time has expired.

REP. ISSA: I ask the gentleman have an additional 30 seconds. Would the gentleman yield that 30 seconds?

REP. ROSS: Yes, sir. REP. ISSA: So if I'm to understand, just as a layperson -- I'm one of the nonlawyers up here, so that's why I introduced the qualified people early on. But as a layperson, it looks to me like you had an intimate part in the wiretap request. Your signature was part of a request process. And yet when we asked you about your being involved in them, you did not volunteer to tell us about this part. You simply relied on, you didn't actually sign the affidavit.

Is that -- what you're saying is the truth was you didn't sign the affidavit, even though you signed this document and saw other documents and were sent other documents that you may not remember?

MR. MCMAHON: I signed this document that transmitted the application for the wiretap to our counsel's office for them to review.

REP. ISSA: But you never looked at it.

MR. MCMAHON: No, I did not. Again, I think I said earlier on, mistakes were made, and one of the first questions you asked me, sir, was, what mistakes.

And that mistake is not doing a thorough-enough review of the documents that were coming across my desk. I accept full responsibility for that.

REP. ISSA: I thank the gentleman.

Would the gentlelady from New York like to have a round of questions?

REP. MALONEY: Well, first of all --

REP. ISSA: The gentlelady is recognized.

REP. MALONEY: Thank you. Thank you very much. And I thank you and the ranking member for holding this hearing and all of you for your service to our country. We appreciate it.

We've had a series of hearings. I regret I was also in a hearing that we're having in Financial Services that -- I am ranking member on it so I had to be there. So I wasn't here for most of it, but Mr. Cummings is going to brief me completely on everything that happened.

But in one of our prior hearings, we had special agents that basically testified that the enforcement was not strong enough, that that was one of the problems on the border, that there wasn't an express law against trafficking in guns and that a lot of times the penalties were, to use the terms of one of the agents, he called them toothless -- that you really couldn't do anything with it.

And they said that the penalties even in trafficking guns and very serious offenses and straw purchases and all kinds of things really ended up in nothing more than probation, so therefore they didn't even feel like pursuing convictions because the penalties were so, so lax.

And it was inadequate either to deter illegal purchases and it -- and it wasn't strong enough to encourage the cooperation of suspects when they were cooperating. They had to have stronger laws.

So I put in a bill with other members of this committee to make trafficking in guns a federal crime. And I'd like to ask Special Agent McMahon and Newell whether or not you think this would help in combating violent drug trafficking, illegal-gun trafficking at the border.

MR. MCMAHON: Currently, obviously, we have some laws that are in place that we're using and we're enforcing to the best of our ability. I think any extra tool is going to be helpful to us. I think when it gets more specific -- as I think some of the legislation that's been presented would be more specific -- it would make things obviously easier.

REP. MALONEY: Do you think it would disrupt the flow of guns on the border? Do you think it would help in that way?

MR. MCMAHON: I think a tool like that would help, yes.

REP. MALONEY: And Newell, would you like to also testify on it?

MR. NEWELL: Yes, ma'am. I believe -- and as matter of fact the Congressional Research Service in July of 2009 published a report, which said -- I believe the title of it was "Gun Trafficking and the Southwest Border." And in there they talk about the need for a specific statute to address the trafficking of firearms by a group of individuals that would aid law enforcement -- a statute that would law enforcement in being able to address a specific activity that is currently not illegal.

So any tool that we would have to assist us in that obviously would be welcome.

REP. MALONEY: Does everyone else on the panel agree? If you disagree, would you like to express why? Does everyone agree that this could be a tool that would be helpful or --

MR. NEWELL: I would somewhat disagree. As I stated earlier, I think the lying and buying, the straw purchase is -- by definition itself you're buying a weapon or purchasing a weapon or obtaining a weapon for transfer to some other third party. In and of itself, it's trafficking.

We have some personnel that gave outstanding trafficking courses throughout my career, certainly in the last few years. And we provided this training to state and locals, as well as to our federal partners. And lying and buying, straw purchasing is of itself -- is trafficking. And we -- well, that's what we promoted during these sessions.

Now, I would agree with you that by definition a straw purchaser has no criminal history; therefore, we would have to increase the penalty for those folks that are actually making the initial purchase.

REP. MALONEY: Well, that's what the bill does. And I think oftentimes I listen to the people that are in the combat, that are on the streets trying to get the job done, which is our special agents. And in several panels, including today, they have said that a strong anti-gun-trafficking bill would help them do their job. So I think we should listen to them.

One of the testimonies in our last hearing -- one of the agents said that they were military-type weapons, that it wasn't -- no one wants to inhibit a hunter from getting a gun to go hunting with or someone to protect themselves, but these were really the type of weapons, like AK-47s, that are used in military combat.

And they were training and trading in these very deadly, deadly guns. And I understand even the protective equipment has to be reinforced for military-type guns.

