

**Opening statement of Peter J. Forcelli, Supervisory Special Agent, ATF, June 15, 2011.**

Good morning, Chairman Issa, Ranking Member Cummings and members of the committee. Thank you for the opportunity to appear before the committee today.

I am present here today, to provide truthful testimony before the committee, which I hope will assist your inquiry into the ATF investigation that has come to be known as “Operation Fast and Furious.” I believe that your inquiry is essential. There have been grave mistakes made in this case. The committee, the American People, and the family of slain U.S. Border Patrol Agent Brian Terry deserve answers.

Please allow me to give you a little background information about myself. I have always found it best to start from the beginning when laying out facts. In 1987, I began my career in law enforcement with the New York City Police Department. I worked in Bronx County, often referred to as “The Bronx” as a uniformed police officer, and then ultimately as a detective in the Bronx Homicide Task Force. In my career, I estimate that I have responded to approximately 600 homicide scenes. The vast majority were drug related, and were committed by armed criminals. These violent criminals, armed with illegal firearms, had little regard for human life.

I retired early from the New York City Police Department in June of 2001 to take a position with the Bureau of Alcohol, Tobacco and Firearms (ATF), as it was then known. I did this because I had the honor of working hand in hand with ATF agents who were doing incredible work in investigating violations of the law with the assistance of the U.S. Attorney’s Offices for the Southern District (SDNY) and Eastern District of New York (EDNY). In working with these offices, one thing was very clear. Dedicated prosecutors worked hand in hand with dedicated ATF agents to make cases that truly impacted the safety of the public. There was an absolute sense of teamwork and respect.

Some of the cases I had the honor of working on were the “Sex, Money, Murder Bloods” investigation, which involved multiple homicides, drug trafficking and racketeering. The “Neese Bello Organization” investigation, which involved over 100 Hobbs Act violations. “Operation Stadium Shadow”, which solved six homicides, and resulted in the release of two men who were

wrongfully accused, and, in fact, one convicted of murder. These are just a few of my cases.

Again, I'll use the words *teamwork* and *respect*. Together with the prosecutors from the United States Attorney's Office with whom I had worked, we had used, confidential informants, proffers, cooperation agreements, "Writs of Habeas Corpus", "Waivers of Speedy Presentment", investigative grand juries, grand jury subpoenas and an abundance of other investigative tools to make successful cases as a part of a team.

I left the New York Field Division in March of 2007, to begin working in my current post of duty as the Group Supervisor of the Phoenix I Field Office. Within a matter of weeks, I was surprised at what I had observed. In my opinion, dozens of firearms traffickers were given a pass by the U.S. Attorney's Office for the District of Arizona. Despite the existence of "probable cause" in many cases, there were no indictments, no prosecutions, and criminals were allowed to walk free. In short, their office policies, in my opinion, helped pave a dangerous path.

Fortunately, the same could not be said of the Arizona Attorney General's Office to which we agents were forced to turn for prosecution of firearm cases. Victor Varela and his associates, who trafficked .50 caliber rifles to Mexican Drug Cartels, one of which was used to kill a Mexican military commander were successfully prosecuted by the Arizona Attorney General's Office, after the case was declined by Assistant U.S. Attorney Emory Hurley due to "*corpus delecti*" issues. Sadly, Mr. Varela was released from prison last July, due to the lesser sentencing guidelines for such offenses in state court, but the alternative- no prosecution- was unacceptable. Another case, which involved a corrupt federal firearms licensee, who was supplying guns to several firearms trafficking organizations, was declined by Mr. Hurley. This dealer, in his post-arrest statement, admitted that "approximately 1000 of his firearms" were trafficked to Mexico. Over one half -dozen of that dealer's firearms were found in the immediate area around the body of Arturo Beltran-Leyva. Mr. Beltran-Leyva, who was the head of Beltran-Leyva Cartel, was killed in a fierce gun battle with the Mexican Naval Infantry in Cuernavaca, Mexico.

Due the recalcitrance of the United States Attorneys Office in Arizona cases such as these were

presented to the Arizona Attorney General for prosecution under state statutes subject to lesser criminal penalty than Federal Statutes. I believe that this situation, wherein the United States Attorneys Office for Arizona in Phoenix declined most of our firearm cases, was at least one factor which led to the debacle of “Operation Fast and Furious.”

Fast forward to “Operation Fast and Furious” itself. ATF agents assigned to the Phoenix Field Division, with the concurrence of their local chain of command, “walked” guns. ATF agents allowed weapons to be provided to individuals whom they knew would traffic them to members of Mexican drug trafficking organizations (DTOs). They did so by failing to lawfully interdict weapons that they knew were going to be delivered to members of DTOs, and they did so by encouraging federal firearms licensees to continue selling weapons that were destined for delivery to members of the DTOs where no interdiction efforts were planned.

When I voiced surprise and concern with this tactic to SAC William Newell and ASAC George Gillett, my concerns were dismissed. SAC Newell referred to the case as “groundbreaking” and bragged that “we’re the only people in the country doing this”. My other ASAC, Jim Needles, merely said “Pete, You know that if you or I were running the case, it wouldn’t be run this way”

This operation, which in my opinion endangered the American public, was orchestrated in conjunction with Assistant U.S. Attorney Emory Hurley. [Emory Hurley is the same Assistant U.S. Attorney who previously prevented agents from using some of the common and accepted law enforcement techniques that are employed elsewhere in the United States to investigate and prosecute gun crimes.] I have read documents that indicate that his boss, U.S. Attorney Dennis Burke, also agreed with the direction of the case.

Allowing firearms to be trafficked to criminals is a dangerous and deadly strategy. The thought that the techniques used in the “Fast and Furious” investigation would result in “taking down a cartel” given the toothless nature of the “straw purchasing law” and the lack of a “firearms trafficking statute” is, in my opinion, delusional.

Based upon my conversations with agents who assisted in this case, surveillance on individuals who had acquired weapons was often terminated far from the Mexican border. Therefore, while the case agents and others believed that the weapons were destined for Mexico, the potential exists that many were sent with cartel drugs to other points within the United States. As a career law enforcement officer, who has had to investigate the deaths of police officers, children and others at the hands of armed criminals, I was and continue to be horrified. I believe that these firearms will continue to turn up at crime scenes, on both sides of the border, for years to come.

In closing, I want the members of the committee and all Americans to know: This is not how ATF agents conduct business. I am very proud of some of the incredible work done by ATF agents around the country every day. Many ATF agents have given their lives in the performance of their duties. On my last trip to New York City, I participated in a homicide trial on a case that I initiated in the U.S District Court for the Southern District of New York. Three other separate homicide trials were also being conducted in that courthouse. Each was the result of work done by outstanding ATF case agents, who solved those murders through conducting complex criminal investigations, while working hand in hand with dedicated prosecutors. Like myself and the members of the Committee, they too want the truth to come out, and those who acted irresponsibly held accountable. They deserve it, the family of Border Patrol Agent Brian Terry deserves it, and the American people demand it.

I thank you for your time today, and wish you Godspeed in this endeavor. God Bless America.

- Biography for Witness Peter Forcelli

**Peter J. Forcelli, Supervisory Special Agent, Bureau of Alcohol, Tobacco, Firearms & Explosives.**

Supervisory Special Agent (SSA) Forcelli has 25 years of law enforcement experience. He has been employed by the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) since June, 2001. He served his first six years as a special agent assigned to the New York Field Division, where he worked extensively on the investigation of armed criminal gangs, homicides, home invasion organizations, and continuing criminal enterprises with the U.S. Attorney's Offices for the Southern and Eastern Districts of New York. In March, 2007 SSA Forcelli was assigned to ATF's Phoenix I Field Office where he continues to supervise special agents who conduct investigations into violent criminal activity and illegal firearms trafficking, to include firearms trafficking to Mexico. Prior to his employment with ATF, SSA Forcelli was a decorated homicide detective with the New York City Police Department (NYPD). SSA Forcelli retired from the NYPD after approximately 15 years of service. He is a survivor of the 9/11 Terrorist Attacks on the World Trade Center, and has made over 1000 arrests in his career.