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From: Schmalzer, Tracy (SMO)
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Subject: center for public integrity piece on ATF

ATF Let Hundreds of U.S. Weapons Fall into Hands of Suspected Mexican Gunrunners

Whistleblower Says Agents Strongly Objected to Risky Strategy

March 03, 2011

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Hoping to score a major prosecution of Mexican drug lords, federal prosecutors and the Bureau of Alcohol, Tobacco, Firearms and Explosives permitted hundreds of guns to be purchased and retained by suspected straw buyers with the expectation they might cross the border and even be used in crimes while the case was being built, according to documents and interviews.

The decision — part of a Phoenix-based operation code named Fast and Furious — was met by strong objections from some front-line agents who feared they were allowing weapons like AK-47s to walk into the hands of drug

lords and gun runners, internal agency memos show. Indeed, scores of the weapons came back quickly traced to criminal activity.

One of those front-line agents who objected, John Dodson, 39, told the Center for Public Integrity that these guns are going to be turning up in crimes on both sides of the border for decades. Dodson said in an interview that with the number of guns we let walk, we'll never know how many people were killed, raped, robbed ... there is nothing we can do to round up those guns. They are gone.

Dodson has taken his misgivings to the Senate Judiciary Committee as a whistleblower after his concerns were dismissed by his supervisors and initially ignored by the Justice Department's inspector general.

Sen. Charles Grassley, the panel's top Republican who is spearheading a probe of ATF's actions - said it's time to step back and examine the policy. Two of the guns involved in the sting operation turned up at the scene of a fatal shooting of a U.S. agent.

The Justice Department said today that Attorney General Eric Holder has asked the department's acting inspector general to evaluate the concerns about ATF's investigative tactics.

A Change in Strategy

Dodson told the Center he and several of his colleagues wanted to intercept some of the weapons but their objections were repeatedly overruled by ATF supervisors. The supervisors instructed them to simply record the straw purchases in a database, flag them as suspect, and monitor the suspected gun runners until evidence piled up about their connections to Mexican drug lords.

The tactics employed in the Fast and Furious case were part of an evolving change in the strategic direction of firearms investigations, ATF officials told the Center.

Mark Chait, ATF's assistant director in charge of field operations, told the Center he personally decided to change the strategy in September 2010 after years of futile efforts to interdict guns from small-time straw buyers with little hope of dismantling major drug trafficking organizations in Mexico. The agency's earlier focus on straw buyers was criticized last fall in a review by the Justice Department's inspector general of ATF's border effort, known as Project Gunrunner.

In addition, ATF officials have so far been frustrated in efforts to persuade the White House to implement even a simple change in firearm sales reporting requirements to help detect possible gun-running at the border.

When we look at the complexities of the organizations working around the border of Mexico, just dealing with the lowest level purchaser, the straw purchaser, doesn't get you to the organizer, the money people and the key people in that organization to shut that down. We found that if we don't attack the organization and shut the organization down, they will continue to move guns across the border, Chait told the Center. It's kind of a somewhat common sense approach that if you don't get to the higher-level folks that are making the calls, then guns will continue to cross the border.

But Chait went on to say that the policy was not set in stone. I think we have a good strategy, he said. I think it needs to be reviewed. We're taking a look at it right now to see if it needs to be tweaked in any way.

The Fast and Furious investigation was initiated in October 2009, eleven months before Chait's formal policy change. With direct blessing of ATF headquarters in Washington and supervision by the U.S. attorney's office in Phoenix, a special ATF strike force known as Group VII was given permission to let federally licensed gun shops continue selling weapons to straw buyers already linked to a suspected Mexican gun running operation.

Officials told the Center that ATF allowed about 1,765 firearms over the 15 months of the operation to pass from gun dealers to the suspected straw buyers that were the accomplices of the gun running ring. Another 233 weapons had been bought by the suspects prior to the ATF operation starting, bringing the total number of guns in the case to 1,998.

Of those, 797 of the guns were eventually recovered as a result of criminal activity on both sides of the border including 195 from inside Mexico after they were used in crimes, collected during arrests, or interdicted through other law enforcement operations, the officials told the Center.

Understanding the Risks

The risks that some of the guns might end up in crimes was fully understood, memos show.

A case summary sent to ATF headquarters took note of firearms being recovered in the Republic of Mexico or on/near the US/Mexico border.

ATF is attempting to not only secure a straw purchase/dealing in firearms without a license case against various

individuals but more specifically to make the bigger connection to the Mexican Cartel Drug Trafficking Organization (DTO) obtaining these firearms for the best possible case and the most severe charges when it is time to indict this case, the memo read.

Dodson said his supervisors seemed pleased when one of the guns the agency had let walk showed up in a crime in Mexico. They were elated every time a gun was recovered in Mexico because they saw it as proving the nexus that we were dealing with a real drug trafficking group.

But the investigation dragged on for 15 months, in part, documents show, because the Justice Department was slow to approve a wiretap and bring prosecutions. Memos reveal that ATF supervisors were frustrated by the delays, but let straw buyers and suspected gun runners continue to move scores, even hundreds of guns a month, internal agency memos show.

An April 2, 2010 memo from the strike force leader to the Justice Department disclosed that ATF watched as targeted suspects purchased 359 guns in the United States in March 2010 alone.

The case summary sent to ATF headquarters in summer 2010 gave a much higher number.

To date over 1,500 firearms have been purchased since October 2009 for over one million (\$1,000,000.00) cash in over-the-counter transactions at various Phoenix area gun dealers, the memo said.

Some of the field agents became increasingly incensed.

Nothing happened. We're monitoring the same buyers buying the same guns from the same dealers at the same rate and we're not stopping any of it, Dodson recalled.

Notations in the case files reviewed by the Center show ATF received several trace reports of guns they had let pass to straw buyers showing up in criminal cases in Mexico or on the U.S. side of the border.

In November 2009, for example, four 7.62 caliber weapons were recovered in Naco, Mexico only two weeks after one of the suspects had purchased them. Also, in July 2010 a Romanian AK-47 variant was recovered in Navojoa, Mexico, the records say.

Dodson, who told the Center he expects to be fired for speaking out, said four of the seven agents on the strike force had strong reservations about what they were being instructed to do. The three others, he said, backed the approach. Dodson's biggest fear was that some of the guns would eventually be used against law enforcement.

That fear was soon realized.

A Death Raises Questions

In May 2010, a Customs and Border Protection agent confronted an armed band of gangsters along the U.S. side of the border. The suspects fled but some of the guns they left behind were traced back to weapons purchased by one of the suspects targeted by Fast and Furious, Dodson said.

U.S. Border Patrol agent Brian A. Terry was fatally shot north of the Arizona-Mexico border in December while trying to arrest bandits who target illegal immigrants. Two weapons recovered at the scene were traced to the ATF's Fast and Furious operation, according to Sen. Charles Grassley. Then in December, two weapons recovered at the scene of a murdered Customs and Border Protection agent, Brian Terry, were traced to the ATF operation, according to Sen. Grassley.

This may be a well-intended policy, but when you have agents on the ground for months questioning what's going on, and a Border Patrol agent is killed, it's time to take a step back and check to see if the policy has gone awry, Grassley told the Center.

The ATF said in a statement today that neither gun recovered at the scene appears to be the weapon that killed Terry, and may simply have been left behind by the criminals. At this time, we're not aware of any forensic evidence that would link these guns to the homicide, the agency said.

Grassley said his committee has interviewed numerous ATF agents, including Dodson, who have come forward to raise concerns about the Fast and Furious operation and the potential danger of ATF's approach.

The ATF clearly had plenty of information on the bad guys. The problem wasn't the fact that the guns weren't being reported, it was that the ATF didn't act on the information they had, the senator said.

We heard from more than a dozen people who brought forward allegations of wrongdoing at the ATF. What Agent Dobson has done by risking his career in an effort to expose the truth is patriotic. He is guilty of only one thing: committing truth, Grassley added.

Dodson said he feels responsible for Terry's death by being part of the ATF operation. He said he saw no other option but to go public even if meant being fired because he and his fellow agents' concerns were ignored by

supervisors.

Dodson said after his supervisors rejected the agents' concerns, he filed a whistleblower complaint both by Web and phone to the Justice inspector general but was never contacted. He then approached Grassley, keeping his current supervisor on a joint terrorism task force apprised of his whistleblowing activities. Eventually, the inspector general contacted Dodson after Grassley intervened.

ATF supervisors told agents who disagreed with the strategy that "if you are going to make an omelet you've got to scramble some eggs," Dodson said. "That was the attitude. I took it to mean that whatever crimes these guns were going to be involved in, those were the eggs, those were acceptable."

Dodson said that another time a supervisor told him, "It's kind of a moot argument. They're going to get those guns somewhere." But my feeling is we shouldn't be making it easier for them.

Internal agency memos show ATF supervisors dismissed the objections of agents in the Group VII strike force, insisting the prize of getting permission to run a wiretap and eventually rolling up a major gun or drug gang in Mexico merited the risks. There were even comments interpreted by the agents as veiled threats that they could lose their jobs if they didn't fall in line.

"This is a time we all need to pull together, not drift apart," Group VII supervisor David J. Voth wrote to his strike force team in March 2010, acknowledging "there may be a schism developing amongst the group."

"If you don't think this is fun you're in the wrong line of work" period! This is the pinnacle of domestic U.S. law enforcement techniques. After this the tool box is empty," Voth wrote.

"Maybe the Maricopa County Jail is hiring detention officers and you can get paid \$30,000 (instead of \$100,000) to serve lunch to inmates all day."

Plagued By Delay

The operation, however, turned out to be anything but fast and furious.

By spring 2010, Voth appealed to the Justice Department for some "urgency" as the number of weapons ATF let through was growing.

In an April 2, 2010, email to one of his supervisors and an assistant U.S. attorney in Phoenix, Voth wrote there was "no pressure but perhaps an increased sense of urgency." The strike force supervisor noted that March 2010 was deadliest month in five years in Mexico and also yielded some of the largest movement of weapons from Fast and Furious.

"Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles," Voth wrote. "I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking into account the entire scope of the conspiracy would be ill advised to the overall good of the mission."

"I acknowledge that we are all in agreement that to do so properly requires patience and planning. In the event, however, that there is anything we can do to facilitate a timely response or turnaround by others, we should communicate our sense of urgency with regard to this matter."

Nine months later, Fast and Furious finally bore some fruit.

On Jan. 25, 2011 "15 months after the operation was launched and one month after the agent's death along the border" the primary suspect named in the strike force case file, Jaime Avila, was indicted along with 19 alleged cohorts in Arizona. The 53-count indictment included 35 counts of making a false statement in connection with the acquisition of firearms. Avila has pleaded not guilty.

"The massive size of this operation sadly exemplifies the magnitude of the problems," said U.S. Attorney Dennis Burke at the time. "Mexican Drug Lords go shopping for war weapons in Arizona."

When asked for comment on the office's role in the ATF operation, a spokesman for the U.S. attorney's office in Phoenix noted today that federal prosecutors along the Mexican border have been pressing for tougher penalties against straw buyers who traffic arms to Mexico.

William Newell, special agent in charge of the ATF's Phoenix office, announces the indictments that emerged from the Fast and Furious investigation on Jan. 25 in Phoenix. ATF officials say Newell is slated to become the agency's new attaché to the Mexican government. Credit: Matt York/Associated Press
Dodson said some of the cooperating gun dealers who sold weapons to the suspects at ATF's behest initially had concerns and wanted to end their sales. One even asked whether the dealers might have a legal liability, but was assured by federal prosecutors they would be protected, he said.

The case logs show ATF supervisors and U.S. attorney's office lawyers met with some of the gun dealers to discuss their role in the case, in one instance as far back as December 2009.

Concerns about ATF's approach even extended outside the ATF office in Phoenix.

Grassley's office said it has gathered evidence and testimony that Darren Gil, the ATF's then-attache to the Mexican government in Mexico City, also objected to the Fast and Furious strategy. He worried it might be viewed by the administration of Mexican president Felipe Calderon as a misguided approach that only armed drug lords for more violence.

The attache, Grassley said, raised his objections to ATF headquarters but was told supervisors there already knew about the operation. Gil was eventually removed from his job, and retired. His planned replacement is the special agent-in-charge in Phoenix during the operation, William Newell, ATF officials said.

Gil declined to be interviewed.

Behind the Debate

Law enforcement experts said the ATF's strategy clearly had risks.

Phil Jordan, a former Drug Enforcement Administration administrator who once ran the inter-agency El Paso Intelligence Center, said: "I can't comprehend how one of our agencies could allow weapons to flow if we knew that they could end up in the hands of the cartels, and then be utilized to kill people."

A respected former ATF executive, Jim Cavanaugh, conceded that allowing guns to reach the streets may have been a mistake. "But the alternative argument could be, 'Well I could have got one or two guys. But that would have allowed a ring of 30 to 40 to 50 gun traffickers to operate for two or three more years, and they could have pumped thousands of guns into Mexico,'" he said.

What other factors might have influenced ATF to let guns "walk" rather than confiscating them immediately and arresting the straw buyers?

Part of the answer may lie in the sort of frustration experienced by ATF in an earlier Phoenix case against firearms dealer George Iknadosian, who owned a store called X Caliber Guns.

Dozens of Romanian WASR 10 weapons bought by suspected straw buyers at X Caliber were eventually recovered at Mexican crime scenes, but authorities could not make a successful case against Iknadosian in 2009, alleging that he was part of a conspiracy trafficking firearms to Mexico. Federal prosecutors declined to take the case because federal courts were increasingly ruling that purchasers had to be barred from buying weapons in order for a dealer to be prosecuted. State prosecutors stepped in and charged Iknadosian with fraud, conspiracy and money laundering, but a state judge dismissed the case, using similar logic as the federal courts.

After a deadly shootout with suspected members of the Beltran-Leyva cartel on May 26th, 2008, that left eight policemen dead, authorities seized a variety of guns, including seven AK-47s, as well as 36 magazines, and 500 rounds of ammunition, according to ATF investigative reports. Credit: ATF ATF officials were also facing a Justice Department inspector general's review of Operation Gun Runner "a review which ultimately criticized the agency in November 2010 for not aiming higher in its border gun probes.

"ATF's focus remains largely on inspections of gun dealers and investigations of straw purchasers, rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns," the report said.

"Because there is no federal firearms trafficking statute, ATF must use a wide variety of other statutes to combat firearms trafficking. However, cases brought under these statutes are difficult to prove and do not carry stringent penalties " particularly for straw purchasers of guns," the report noted.

"As a result, we found that [U.S. Attorney's offices] are less likely to accept and prosecute Project Gunrunner cases. And when these cases are prosecuted and convictions obtained, Federal Sentencing Guidelines categorize straw-purchasing-related offenses as lesser crimes."

The contretemps occurs just as Mexican President Felipe Calderon met today at the White House with President Barack Obama.

The presidential get-together was already expected to be tense, as friction has arisen over leaked American diplomatic exchanges that criticized the Mexican government. The cables, some of them classified secret, were disclosed by the Wikileaks website.

In an interview last week with El Universal, one of Mexico's leading newspapers, Calderon said that U.S. Ambassador Carlos Pascual's "ignorance has translated into a distortion of what is happening in Mexico" that has caused "an impact and an irritation in our own team."

As he has several times, Calderon complained to El Universal that the American government has done little to curb the nation's demand for drugs or stop the flow of weapons across the border.

◆ The institutional cooperation ends up being notoriously insufficient, ◆ Calderon said.

Jordan, the former senior DEA official, said the ATF's policy in Fast and Furious ◆ supports President Calderon's complaint that the U.S. is not doing nearly all it can to stop the flow of weapons into Mexico. ◆

Publicly, ATF and Justice have tried to downplay any notion it would let guns knowingly flow to straw buyers to Mexican drug lords.

Newell, the special agent in charge in Phoenix, was asked at a news conference after the Avila indictment whether his agency would ever let guns knowingly cross the border. Newell answered, ◆ Hell, no. ◆ But, he said, suspects under surveillance sometimes elude agents, which could result in guns winding up in Mexico.

Grassley got a similar answer.

In a Feb. 4 letter to the senator, the Justice Department said ATF never ◆ knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico. ◆ ATF, the letter added, makes ◆ every effort to interdict weapons that have been purchased illegally and prevent their transportation into Mexico. ◆

Grassley told the Center he now believes those representations are contradicted by the documents his staff has gathered and the testimony of agents like Dodson. ◆ The Justice Department and the ATF put up a wall to mislead the American people and were less than forthcoming, ◆ he said.

Dodson also believes his agency has been less than forthright, and said that was part of the reason he went public.

◆ I'm boots on the ground and I've seen it done (let guns go through) and I had done it and I was instructed to do it almost every day I was down there. It happened, ◆ he said.

◆ What we were doing in my opinion was wrong. It's not what we do and for my agency to openly and publicly come in and deny we are doing it, I can't even fathom it. ◆

The International Consortium of Investigative Journalists' Ricardo Sandoval Palos also contributed to this story.

cpikftag