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**From:** Morrissey, Mike (USAAZ)  
**To:** Hurley, Emory (USAAZ); Cunningham, Patrick (USAAZ); Kelly, Kristen (USAAZ) 6  
**CC:** Burke, Dennis (USAAZ)  
**Sent:** 3/4/2011 7:22:43 PM  
**Subject:** RE:

The assertion that ATF encouraged gun dealers to sell multiple assault weapons to individuals suspected of illegally purchasing those assault weapons for resale to Mexican cartels, is false. ATF and an Assistant U.S. Attorney met twice with FFLs and advised the FFLs, quite clearly, that the law enforcement could not give an advisory opinion to an FFL regarding whether a future sale was lawful. The FFLs were reminded, with clarity, that it was up to an FFL, at the time of sale, to determine whether a sale was lawful. In short, the FFLs were advised that law enforcement could not advise FFLs not to make a sale that appeared lawful to them; at the same time if a sale appeared unlawful to the FFL, that sale could not proceed, as law enforcement could not confer upon the FFL authorization for a sale that was not lawful. Of course, FFLs did not need encouragement to sell guns in a lawful manner. That is their livelihood. In pursuit of that livelihood, the FFLs had, by the time they met with law enforcement, made numerous multiple sales of assault weapons. Those assault weapons that had been sold, and as with all sales where ATF was not present but the sales were deemed lawful by the FFL, the assault weapons were gone.

Under these circumstances, where the FFLs had provided information to ATF regarding sales that the FFLs had deemed lawful, the FFLs inquired whether their information had proved useful; they were assured that their information was useful. Further, as the FFLs had determined at the time of sale that the sales were lawful, they were assured that they were not exposed to criminal liability for making lawful sales.

In instances where ATF was able to observe a sale by a FFL to an individual, ATF agents understood that unless the agents observed illegal conduct, agents could not have intervened. It bears repeating that, at the time of sale by the FFLs, the determination by the FFLs was that a sale was lawful. Seizure of a firearm from a citizen at that point, before investigation has determined criminal behavior by the citizen, would violate the United States Constitution. As you know, the purchase of multiple assault weapons in lawful, as is transfer of those assault weapons, and even sale of barter of the assault weapons to another, unless law enforcement can prove, by clear and convincing evidence, that at the time of acquisition, the acquirer's intent is to use the assault weapon to commit a crime.

**ATF**

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**From:** Hurley, Emory (USAAZ)  
**Sent:** Friday, March 04, 2011 4:28 PM  
**To:** Cunningham, Patrick (USAAZ); Morrissey, Mike (USAAZ)  
**Subject:**

ATF did not encourage any FFL to engage in multiple sales to individuals who were suspects in the ATF investigation. In two meetings with FFLs, attorneys and agents advised the FFLs that the Government cannot advise

them to sell multiple guns or advise not to sell multiple guns. The FFLs were advised that those decisions were up to FFLs as are all decisions to sell left up to the FFL to evaluate the sale and determine whether it is lawful. In short, the FFLs were advised that the Government cannot advise FFLs to halt a sale that appears lawful and we cannot authorize a sale that appears unlawful. There was no mistake as to the clarity of the Agents' and Attorneys' message.

FFLs need no encouragement to sell guns as that is their actual business, selling guns. By the time that the government met with the owners, they had made many multiple sales and the guns were gone.

The FFLs wanted to know that the information that they provided was actually useful, and that they were not unwittingly implicating themselves in some criminal activity of which they weren't aware. As we have said so many times before, they were told that ATF could not authorize illegal sales to be made any more than they could prohibit lawful sales, however, ATF appreciated their cooperation and willingness to voluntarily provide information to ATF including notice of multiple long gun purchases and notice of single gun sales of certain types of firearm or sales to particular individuals. No one discussed civil liability. The FFLs were providing information to ATF regarding transactions that the FFL must have viewed as lawful, having no knowledge or reason to know that the transfers were unlawful.

Throughout the investigation, ATF received historical information about purchases by suspects. This includes purchases by suspects that are not observed by ATF agents at the time of sale, but are discovered by reviewing documents after the sale.

For those purchases that ATF is able to observe, unless and until agents observe illegal conduct they cannot treat them as anything other than ordinary purchases. At the time of transfer of the firearms from the FFL to the straw purchaser based upon the facts available to the FFL at the time of the sale, the sales to the ♦straw purchasers♦ are lawful; and seizure of the weapons in the hands of those purchasers without evidence of criminality would violate the United States Constitution and would be an unlawful seizure and deprivation of property rights without cause. (Fourth and Fifth Amendments).

In these investigations, there may come a point over the course of an investigation where ATF believes, though it is well short of proof beyond a reasonable doubt required in criminal cases, that they can prove that a particular person only buys guns for the purposes of illegal trafficking. However, seizure of the guns at that point is a bold step to take and may not be legal because purchasing multiple long guns in Arizona is lawful, transferring them to another is lawful and even sale or barter of the guns to another is lawful unless the United States can prove by clear and convincing evidence that the firearm is intended to be used to commit a crime. (18 USC 924 (d))

**ATF**