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ATF's tactics to end gun-trafficking faces a federal review

By James V. Grimaldi
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A controversy over tactics used to break up an extensive Mexican gunrunning ring has prompted federal officials to re-evaluate an aggressive law enforcement strategy to stop firearms trafficking.

The new scrutiny comes after two separate shootings in the past three months where federal agents were killed and guns recovered by investigators were later traced back to individuals already under investigation by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The top Republican on the Senate Judiciary Committee has charged that ATF agents allowed hundreds of firearms to flow from gun stores in the United States to criminals in Mexico and elsewhere in order to build cases against more prominent gun traffickers.

In one of those cases, ATF agents in Phoenix were deeply divided over when to conclude the investigation and arrest suspected traffickers. Some of those agents took their misgivings to Sen. Charles E. Grassley (R-Iowa) after two AK-47s traced back to a U.S. gun store were recovered near the scene where a Customs and Border Protection agent was killed.

The controversy highlights the difficulty ATF agents face in complex cases against increasingly sophisticated gunrunning rings, said former and current government officials. Because of weak gun laws and investigative limitations imposed at the urging of the gun lobby, many gunrunning cases end with little more than paperwork violations against buyers who procure guns for others. Such so-called straw purchaser cases rarely amount to more than charges of lying on federal documents.

"There is no gun-trafficking statute," said James Cavanaugh, a retired ATF supervisor. "We've been yelling for years that we need a gun-trafficking statute because these cases are so difficult to prove."

This means that agents who want to make bigger cases must sometimes watch guns travel to criminals who use them in more serious crimes, such as drug trafficking.

"Dismantling the Mexican drug cartels is a worthy goal," Grassley said. "However, asking cooperating gun dealers to arm cartels and bandits without control of the weapons or knowledge of their whereabouts is an extremely risky strategy."

The Justice Department has denied that the case unfolded the way Grassley asserts, but ATF agents have acknowledged using aggressive tactics in an attempt to break up high-level rings connected to Mexican drug cartels.

The undercover operation's goal, Assistant Attorney General Ronald Weich said in a letter to Grassley, was "to dismantle the entire trafficking organization, not merely to arrest straw purchasers."

Weich added: "The allegation - that ATF 'sanctioned' or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico - is false."

Attorney General Eric Holder has asked for a review by the Justice Department's inspector general, which last year

criticized the ATF for failing to pursue high-level trafficking cases.

Acting ATF Director Kenneth Melson has asked "a multi-disciplinary panel of law enforcement professionals to review the bureau's current firearms trafficking strategies," the ATF said.

Mexican legislators also have asked for a joint U.S-Mexican examination.

Known within the multi-agency federal task force as Operation Fast and Furious, the undercover investigation culminated in January with 34 people being charged in a 53-count indictment that included drug smuggling and money laundering allegations. When the Justice Department announced the arrests in January, they revealed that hundreds of firearms had been traced to crimes, including 195 weapons that were seized by authorities in Mexico.

Grassley's examination revealed sharp disagreement within the ATF field office over how the investigation was run.

"ATF leadership did not allow agents to interdict the weapons in this case," Grassley said. "Instead agents simply monitored the purchases of 'suspect guns' and entered them into a database of firearms 'suspected to eventually be used in criminal activity.'"

Stemming the flow of guns to Mexico, where most firearm ownership is outlawed, has been a priority of the Obama administration, which otherwise has been deeply conflicted over federal gun policy.

"We are trying to work our way through more effective mechanisms to prevent straw purchasers from buying caches of weapons [and] transporting them across the border," Obama said last week in a news conference with Mexican President Felipe Calderon.

But the administration was dealt setback last month when the House voted to block an ATF plan to track the bulk sales of assault weapons along the border. Under the proposal, gun dealers would have to report to the ATF when someone purchased two or more rifles that have a caliber higher than .22 and a detachable magazine.

The dispute over Fast and Furious within the ATF's Phoenix field division occurred after some veteran agents argued there was ample evidence to make arrests while supervisors pressed to watch suspects longer to in order to catch the ringleaders.

One ATF agent, John W. Dodson, told Senate investigators that he warned that someone could get killed with the weapons they were letting "walk." Dodson said he was told, "In order to make omelettes, you have to break a few eggs."

The controversy came to Grassley's attention after border agent Brian Terry, 40, was gunned down in December while patrolling the border. Two assault rifles on an ATF watch list as part of Fast and Furious were found near the killing, but both have been ruled out as the murder weapon, officials said.

Another federal agent, Immigration and Customs Enforcement agent Jamie Zapata, was shot in February while traveling on business from Mexico City to Monterrey. Guns seized after the killing were linked to three men arrested in Texas. The men had been under investigation by the ATF and U.S. Drug Enforcement Administration, court records show.

The frustrations of agents began appearing anonymously on Web sites. Anti-ATF bloggers sympathetic to the militia movement picked up the allegations late last year, dubbing the scandal "Project Gunwalker" and alleging ATF agents let guns "walk" to boost the numbers of U.S. weapons recovered in Mexico. The bloggers theorized that the ATF wanted high numbers to gain support for an assault-weapons ban.

The ATF strategy was defended by Andre Howard, owner of Lone Wolf Trading Co. in Arizona, which cooperated with the ATF and sold the weapons found near Terry.

"It appears that any state or federal agency charged with said tasks are damned if they do, and damned if they don't," Howard said.

Defense attorney Dick DeGuerin said the controversy has had an impact on the criminal investigation into one of his clients, Carter's Country, a prominent Houston area chain that had sold assault weapons to an extensive gun-trafficking ring.

In an echo of the Fast and Furious case, DeGuerin said that Carter's County had dozens guns traced to Mexico because in the past few years the retailer was told by ATF to go ahead with sales of assault weapons and then report the serial numbers later to the ATF.

Last week, a prosecutor called DeGuerin to say the investigation was being dropped.

"We stood to embarrass them, meaning the ATF, for being hypocritical, two-faced, and turning against the very people who were trying to help them," DeGuerin said.