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LETTING GUNS WALK

Pressed to make a really big case, ATF managers went for broke

By Julius (Jay) Wachtel. “If you’re going to make an omelette, you’ve got to break some eggs.” That, said ATF special agent John Dodson, was his agency’s excuse for allowing more than 1,700 firearms, including scores of AK-47 clones and .50 caliber, armor-piercing rifles, to land in the lap of Mexican cartels. “The day I started, there were 240 guns they had [let out]...Guns they were purchasing were showing up on both sides of the border already. I mean...a guy comes in and purchases 10 AK-47s, and four of them he purchased last time have already shown up on the other side of the border? And you keep going?”

The flow of guns from the U.S. to Mexico is a long-standing problem. With laws that forbid private citizens from possessing handguns beyond .38 caliber and rifles beyond .22’s, our Southern neighbor has long been a favorite destination for American hardware. (For an English-language summary of Mexican gun laws click [here](#).)

Your blogger, a retired agent, worked on many such cases in Arizona during the 1970’s. (For an example, click [here](#).) Then, as now, traffickers got local residents to act as “straw buyers” and buy large-caliber handguns and rifles at gun stores on their behalf. In the nineties, when Mexico moved in earnest against the cartels, wars for supremacy broke out and arms smuggling reached a fever pitch. Much of the flow turned to military-style rifles such as the WASR-10, a Romanian AK-47 clone that is apparently imported into the U.S. for the main reason that it’s such a desirable commodity in Mexico.

Most states, including the primary sources of guns smuggled to Mexico, Arizona and Texas, impose neither quantity limits nor waiting periods on gun purchases. Ordinary persons can walk into a gun store and leave with an armful of rifles in minutes. All they must do is show a local ID, pass an automated criminal record check and certify on a Federal Form 4473 that they are “the actual buyer/transferee of the firearm(s) listed on this form.” That’s right: no matter how many guns they buy, it’s all on the honor system. (For more about the ease of purchasing guns click [here](#).)

Dealers don’t report long-gun sales to ATF, so it usually only learns of a bulk transaction when police or a foreign government trace a recovered gun. However, Federal regulations require that dealers who sell more than one handgun to the same buyer in a five-day period promptly report the transfer to ATF. Multiple sales are common, and by the time that agents learn of them it’s too late to intercede.

It’s not simple to prove that someone acted as a straw buyer. Purchasers are under no obligation to answer ATF questions. Neither are gun possessors, nor those to whom recovered guns are traced. Even when someone admits to falsifying an ATF form the penalties (a maximum 5-year prison term) are weak. “Lying and buying” is taken lightly by Federal attorneys, who often decline to prosecute, and by judges, who invariably impose lenient sentences. That’s not just the blogger’s opinion: it comes from no less an authority than the Department of Justice, whose November 2010 review of Project Gunrunner, ATF’s guns-to-Mexico interdiction program, declared the pursuit of straw buyers a dead cause:

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. As a result, we found that [Federal prosecutors] 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.

Since drug trafficking crimes are much more popular with prosecutors and carry far harsher penalties, auditors urged that ATF stop spinning its wheels on minor cases and partner with DEA to pursue the cartels. Forewarned that criticism was coming, ATF had already published a new set of guidelines, “[Project Gunrunner – A Cartel Focused Strategy](#),” laying out the new approach:

While our strategy will remain multi-faceted and continue to include the inspection of licensed gun dealers and the targeting and arresting of straw purchasers, our revised approach will place greater emphasis on investigations that target specific cartels and the persons responsible for organizing and directing firearms trafficking operations in the United States. We have come to understand that we can best impact firearms trafficking to Mexico and Southwest border violence by linking our investigations to drug trafficking organizations and where possible to specific Mexican cartels. Our efforts will also be enhanced through increased coordination with our Federal counterparts.

Prophetically, the writers threw in a few words of wisdom along the way:

There are also practical considerations that may require bringing investigations to a conclusion or dictate a change in investigative tactics prior to the identification of persons directly affiliated with the [drug trafficking organizations.] Examples include high volume trafficking investigations in which numerous diverted firearms identifiable with one or more purchasers are being used in violent crimes and recovered by law enforcement, and high volume trafficking investigations in which over an extended period ATF cannot reasonably determine where or to whom such firearms are being trafficked. SACs must closely monitor and approve such investigations, assessing the risks associated with prolonged investigation with limited or delayed interdiction....

In the real, messy world of investigating gun traffickers the “egg-breaking” that agent Dodson spoke of is hard to avoid. When your blogger established a gun trafficking group in 1993 (yeah, that’s a ways back) the very first case demonstrated the difficulties of keeping track of small, lethal objects. Police caught a parolee with a gun. It was traced to a small, home-based dealer who had been buying dozens of handguns at a time from a distributor. We got the seller to let us know when the buyer returned. Alas, the first notice came late and the load was lost. But the next time we were positioned well in advance. We followed him from the premises and watched as he met with others, then trailed one of these third parties to a small restaurant. Later that evening, agents intercepted its manager – the fourth person in the chain – as he delivered five pistols (all that was left from an original load of thirty) to residents of a gang-infested neighborhood.

It wouldn't be the only time that guns would slip through our fingers (for a published account of the years-long project, click [here](#).) But the losses were usually small, and considering the fact that local cops were recovering north of 10,000 guns a year there was little choice but to plod on.

Well, back to the future. In October 2009, nearly a year before it formally adopted a cartel-centric strategy, ATF had implemented a pilot program in Arizona. In an operation dubbed “Fast and Furious” agents tracked the activities of a group of gunrunners who had already bought 200-plus guns from Phoenix retailers. Hoping to bring down a cartel, agents clued in the dealers, and with their assistance monitored and videotaped gun purchases for the next *fifteen months*, letting a stunning 1,765 guns pass under their noses.

Not everyone on the F&F team was a happy camper. Its most outspoken former member, [special agent John Dodson](#), insists that four of the seven agents assigned to the project opposed letting guns “walk.” Objections were voiced by other ATF insiders, including the attaché in Mexico City. He was right to worry. [ATF estimates](#) that to date at least 195 F&F guns have turned up in Mexico. A furious Mexican legislator has claimed that these weapons have been involved in “150 cases of injuries and homicides.”

Mexico took the brunt of it. But F&F guns inevitably started turning up in the States. In May 2010 a Border Patrol agent recovered several during a tense confrontation with bandits. Then in December two F&F guns were found at the scene of the murder of [Border Patrol agent Brian A. Terry](#). While it's not thought that they were used in his killing, the recovery brought the ill-starred project to an end. In January 2011 Federal prosecutors [indicted thirty-four suspects](#), mostly straw buyers and money men, on gun charges. Surprisingly, a few were also accused in a drug and money-laundering conspiracy.

You see, “Fast and Furious” was never meant to be just a gun case. True to its ambitions, ATF had partnered with DEA to go after the Sinaloa cartel. It may be that the unseemly delay in shutting down the iron pipeline was influenced by hopes that, given enough time, agents could hook the big fish. Well, they got away, but there was apparently enough evidence, perhaps in the form of wiretapped conversations, to snare a few lesser players on drug charges.

So was waiting worth it? According to [Attorney General Eric Holder](#) the answer is a resounding “no.” As he recently pointed out, guns *are* different. “I've...made clear to people in the department that letting guns walk ... is not something that is acceptable. Guns are different than drug cases, or cases where we're trying to follow where money goes.” Well said. Now if the A.G. would only get Federal prosecutors to take ordinary gun cases more seriously, we'd be all set.