

From: Cole, James (ODAG)
To: Miller, Matthew A (SMO)
CC: Schmalers, Tracy (SMO); **Attorney General**; Grindler, Gary (OAG); Perrelli, Thomas J. (OAAG); Goldberg, Stuart (ODAG)
Sent: 7/26/2011 9:03:39 AM
Subject: Re: WaPo - U.S. anti-gunrunning effort turns fatally wrong

Who in DOJ agreed to not give it to OPA?

DP

Jim

On Jul 26, 2011, at 8:33 AM, "Miller, Matthew A (SMO)" <Matthew.A.Miller@usdoj.gov> wrote:

DP

From: Schmalers, Tracy (SMO)
Sent: Tuesday, July 26, 2011 8:29 AM
To: **Attorney General**; Grindler, Gary (OAG); Perrelli, Thomas J. (OAAG); Cole, James (ODAG); Goldberg, Stuart (ODAG); Miller, Matthew A (SMO)
Subject: Re: WaPo - U.S. anti-gunrunning effort turns fatally wrong

DP

From: **Attorney General**
Sent: Tuesday, July 26, 2011 07:56 AM
To: Grindler, Gary (OAG); Perrelli, Thomas J. (OAAG); Cole, James (ODAG); Goldberg, Stuart (ODAG); Schmalers, Tracy (SMO); Miller, Matthew A (SMO)
Subject: Re: WaPo - U.S. anti-gunrunning effort turns fatally wrong

From: **Attorney General**
Sent: Tuesday, July 26, 2011 07:55 AM
To: Grindler, Gary (OAG); Perrelli, Thomas J. (OAAG); Cole, James (ODAG); Goldberg, Stuart (ODAG)
Subject: Re: WaPo - U.S. anti-gunrunning effort turns fatally wrong

I understand this was given to us with instructions we could not share with our press office. We did not.

DP

From: Grindler, Gary (OAG)
Sent: Tuesday, July 26, 2011 07:33 AM
To: Attorney General
Subject: FW: WaPo - U.S. anti-gunrunning effort turns fatally wrong

From: Richardson, Margaret (OAG)
Sent: Monday, July 25, 2011 8:31 PM
To: Grindler, Gary (OAG)
Subject: Fw: WaPo - U.S. anti-gunrunning effort turns fatally wrong

From: Schmalzer, Tracy (SMO)
Sent: Monday, July 25, 2011 08:26 PM
To: Reich, Steven (ODAG); Weich, Ron (SMO); Colborn, Paul P (SMO); Richardson, Margaret (OAG); Ramirez, Monica (ODAG); Burton, Faith (SMO)
Subject: WaPo - U.S. anti-gunrunning effort turns fatally wrong

http://www.washingtonpost.com/investigations/us-anti-gunrunning-effort-turns-fatally-wrong/2011/07/14/gIQA5d6YI_print.html <http://www.washingtonpost.com/investigations/us-anti-gunrunning-effort-turns-fatally-wrong/2011/07/14/gIQA5d6YI_print.html>

U.S. anti-gunrunning effort turns fatally wrong

By Sari Horwitz <http://www.washingtonpost.com/sari-horwitz/2011/03/02/ABR0vmP_page.html> ,
Monday, July 25, 3:25 PM

PHOENIX — They came from all over the country, agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives, brought here in a bold new effort to shut down the flow of U.S. guns to Mexican drug cartels. It was called Operation Fast and Furious, after a popular movie about street car racing.

But from the beginning, much of the fury was inside the agency itself.

On his first day undercover, John Dodson, who had been an ATF agent for seven years in Virginia, sat in a Chevy Impala with Olindo Casa, an 18-year veteran from Chicago. They watched a suspected gun trafficker buy 10 semi-automatic rifles from a Phoenix gun store and followed him to the house of another suspected trafficker. All of their training told them to seize the guns.

The agents called their superior and asked for the order to "take him." The answer came back swiftly, instructing them to stay in the car. The message was clear: Let the guns go.

This was all part of an ambitious new strategy allowing Fast and Furious agents to follow the paths of guns from illegal buyers known as "straw purchasers" through middlemen and into the hierarchy of the powerful Sinaloa drug cartel.

But Dodson and Casa were confused and upset. ATF agents hate to let the guns "walk." Yet it happened again, day after day, month after month, for more than a year.

They feared the worst, and a year later it happened: A Border Patrol agent was killed <<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/01/AR2011020106366.html>> in an incident involving Fast and Furious guns. And it was later revealed that the operation had allowed more than 2,000 weapons to hit the streets.

It is the agency's biggest debacle since the 1993 deadly shootout in Waco, Tex. What began as a mutiny inside ATF's Phoenix office has blown up into a Capitol Hill donnybrook that is rocking the Justice Department.

"This is a mistake that could have and should have been prevented," said Rep. Darrell Issa, (R-Calif.), chairman of the House Committee on Oversight and Government Reform, which is investigating the operation.

The battle has hobbled Fast and Furious, a case that individuals inside ATF say held the promise of becoming one of the agency's best investigations ever.

"We have never been up so high in the Sinaloa Cartel, the largest and most powerful drug cartel in the world," said a federal official involved in the case who spoke on the condition of anonymity. "This is an open, ongoing investigation. It is so unfair."

A risky plan

Fast and Furious began with a noble goal.

On Oct. 26, 2009, the directors of the FBI, Drug Enforcement Administration and ATF and the top federal prosecutors in the southwestern border states met with the deputy attorney general at the Justice Department to plot strategy for combating Mexican cartels. A key problem <<http://www.washingtonpost.com/wp-dyn/content/article/2010/12/12/AR2010121202663.html>> : the tens of thousands of guns coming from the United States to arm the drug traffickers.

Agents along the border had long been frustrated by what one ATF supervisor later called "toothless" laws that made it difficult to attack gun-trafficking networks. Straw buyers – people with no criminal record who purchase guns for criminals or illegal immigrants who can't legally buy them – are subject to little more than paperwork violations. Even people convicted of buying AK-47s meant for the cartels typically just get probation for lying on a federal form attesting that they were buying the guns for themselves. With such a light penalty, it is hard to persuade those caught to turn informant against their bosses. And federal prosecutors rarely want to bring such charges because they do not consider the effort worth their time, according to ATF supervisors.

At the meeting in Washington, a new strategy was proposed. Instead of emphasizing the seizure of weapons in individual cases, the strategy focused on identifying and eliminating the pipelines that moved the weapons. The goal was to bring down the trafficking network, not just the people on the lowest rung.

The new strategy arrived in Phoenix the next day. The task of figuring out how to implement it went to Bill Newell, the head of ATF's Phoenix office, and his senior managers. Newell was a 20-year veteran who had worked the border for a decade and speaks fluent Spanish.

To identify the networks, the agents would watch and document as the straw buyers transferred guns to middlemen. The agents would be instructed not to move in and question the men but to let the guns go and see where they eventually ended up.

The reasoning was that an arrest of a straw purchaser would not get ATF the bigger fish; the buyer would get a light punishment, if any, and the cartel could just find another buyer. By not immediately arresting the straw buyers, the agents could follow them and their associates, wiretapping conversations, and possibly charge them with serious crimes such as conspiracy, drug trafficking and money laundering.

The plan they developed was permitted under ATF rules, had the legal backing of the Phoenix U.S. Attorney Dennis K. Burke and had been approved and funded by a task force at the Justice Department, ATF's parent agency.

Nevertheless, it was risky. In drug-trafficking cases, investigating agents, by law, cannot let drugs "walk" onto the street. Since gun sales are legal, agents on surveillance are not required to step in and stop weapons from hitting the streets and must have probable cause to make an arrest. But the danger in letting guns go is obvious.

In November 2009, Newell's agents in "Group 7," one of the squads in the office, began following a particularly busy suspected gun trafficker. In 24 days, he bought 34 firearms. The next month, the man and his associates bought 212 more.

The case began to grow exponentially, with more than two dozen suspected straw purchasers. It was named Fast and Furious because the suspects operated out of a sprawling auto repair shop and raced cars on the streets, like Vin Diesel, the star of the movie.

But a mutiny was brewing in Group 7. Dodson, Casa and two other agents were furious about letting the guns walk. The chemistry in the office was bad. Many of the agents had been sent in from outside Phoenix and were working together for the first time under David Voth, a Marine Corps veteran and brand-new supervisor sent in from Minnesota. The agents' outrage overrode any sense of loyalty to their bosses.

Every day, Dodson and the other agents watched and stewed while the straw purchasers bought boxes of guns and sometimes took the weapons to stash houses and cars waiting in parking lots. Each time they called in to supervisors they were told to stand down.

The agents, operating out of office space in downtown Phoenix, clashed with Voth and the agent running the case, Hope MacAllister, who they felt ignored their concerns. Neither Voth nor MacAllister responded to requests for comment.

"We were all sick to death when we realized . . . what was going on," Casa later testified. Arguments ended in screaming and threats by supervisors.

"I will be damned if this case is going to suffer due to petty arguing, rumors, or other adolescent behavior," Voth wrote in a March 2010 e-mail. "I don't know what all the issues are but we are all adults, we are all professionals, and we have an exciting opportunity to use the biggest tool in our law enforcement tool box. If you don't think this is fun you are in the wrong line of work - period!"

In May 2010, Dodson asked his supervisors whether they "were prepared to attend the funeral of a slain agent or officer after he or she was killed with one of those straw-purchased firearms."

Dodson later told a congressional committee that Voth responded to the complaints by saying, "If you are going to make an omelet, you need to scramble some eggs."

Voth denies making that comment or that Dodson raised the possibility of slain agents, said a law enforcement official involved in the case who has been instructed by his superiors not to talk to the media about the case. The official also described both Voth and MacAllister as hard-working and conscientious agents.

A death in the desert

Late on the evening of Dec. 14, 2010, U.S. Border Patrol officer Brian Terry and other officers were patrolling Peck Canyon in the Arizona desert about 11 miles inside the U.S.-Mexican border. The region was a hotbed for bandits who ambushed illegal immigrants.

Nicknamed "Superman" for his good looks and strength, the 40-year-old Terry was planning to fly to Michigan for Christmas with his family after his shift ended.

Suddenly, the group got into a firefight with five suspected illegal immigrants. At first, Terry and the officers fired "less than lethal" beanbag guns, an FBI report said. But the suspects fired assault weapons. Then the agents resorted to live ammunition.

Terry was fatally shot in the melee. Investigators made four arrests and found two AK-47 semi-automatic rifles nearby.

Within hours, the news spread inside ATF: The serial numbers on the two rifles matched guns bought by one of the Fast and Furious suspects a year before outside Phoenix. The bullet that killed Terry was so damaged that neither of the firearms could be definitively linked to his killing, according to a law enforcement official in the case.

Terry's death was the last straw for Dodson. He said he tried to contact ATF headquarters, ATF's chief counsel, the ATF ethics section and the Justice Department's Office of the Inspector General.

When he didn't get an immediate response, he and other agents reached out to Sen. Charles Grassley (R-Iowa), the ranking minority member of the Senate Judiciary Committee.

At the same time, word was leaking out to bloggers <<http://waronguns.blogspot.com/>> on gun

rights. They began posting that there was a dark side
<<http://sipseystreetirregulars.blogspot.com/>> to the still-unpublicized Fast and Furious.

On Dec. 22, an item appeared on cleanupatf.org, founded by dissident ATF agents. The post said that an ATF official in Phoenix "approved more than 500 AR-15 type rifles" to be "walked" to Mexico. Some bloggers speculated that ATF was encouraging the smuggling to boost the numbers of U.S. weapons recovered in Mexico to gain support for an assault-weapons ban.

'A blatant lie'

The public first learned about Fast and Furious in late January 2011 when U.S. Attorney Burke called a news conference in Phoenix to announce a 53-count indictment involving 20 suspects. The indictment alleged that from September 2009 to December 2010, the suspects bought hundreds of firearms to be illegally exported to Mexico.

To Newell, who was also at the news conference, Fast and Furious was a "phenomenal case," the largest-ever Mexican gun-trafficking investigation, a direct answer to the call to stem the flow of firearms south of the border.

A local reporter asked Newell about the rumors that ATF agents had purposely allowed firearms to enter Mexico.

"Hell, no!" he answered. Newell said that they could not follow everyone and that sometimes suspects would elude agents, which could result in guns getting into Mexico.

Peter Forcelli, an ATF group supervisor in the Phoenix office, watched the news conference on television. "I was appalled," he later testified to Congress. "Because it was a blatant lie."

Two days later, Grassley wrote <<http://grassley.senate.gov/about/Grassley-Correspondence-and-Information-on-Operation-Fast-and-Furious-and-Project-Gunrunner.cfm>> to acting ATF director Kenneth E. Melson, asking whether the gun-walking allegations were true. An answer came from Assistant Attorney General for Legislative Affairs Ronald Weich, who relied on ATF for his information: "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."

While technically correct - the straw purchasers transferred the weapons to middlemen and did not take them to Mexico themselves - those words would come back to haunt ATF and Justice at a congressional hearing.

Weich also wrote to Grassley that under long-standing practice, Justice would not release investigative documents to him because he was not the chairman of the Judiciary Committee.

Grassley was infuriated. "The Justice Department is an ache in my rear," he said during a Judiciary Committee markup session.

'Felony stupid'

Grassley soon teamed with Issa, the new chairman of the House Committee on Oversight and Government Reform, who had the subpoena power that Grassley lacked.

On March 31, 2011, Issa subpoenaed the Fast and Furious documents. Two-and-a-half months later, Issa and Grassley released a scathing report <http://oversight.house.gov/images/stories/Reports/ATF_Report.pdf> calling the operation "ill-conceived" and "abhorrent." On June 15, Issa held a hearing, bringing together Weich, whistleblowers and relatives of Terry, the slain border agent.

From the dais, Issa grilled Weich.

"Who authorized this program that was so felony stupid that it got people killed?" Issa said.

Weich answered that he didn't know but said that Justice's inspector general was now investigating.

After the hearing, the story received the dubious distinction of being lampooned by Jon Stewart on "The Daily Show": "The ATF plan to prevent American guns from being used in Mexican gun violence is to provide Mexican gangs with American guns. If this is the plan that they went with, what plan did we reject?"

The spotlight was now moving toward senior Justice officials, including Attorney General Eric Holder. The attorney general told Issa that he did not learn about Fast and Furious until this spring. President Obama had said that Holder told him he would not have allowed guns to go into Mexico.

At the hearing, Rep. Elijah Cummings (Maryland), the top Democrat on the committee, tried to turn the discussion toward gun control, noting that even the whistleblowers said they didn't have the tools to stop firearms trafficking to Mexico.

Issa cut Cummings off, saying that was not their focus.

Fourth of July meeting

Through it all, ATF Director Melson sat in his office on New York Avenue in mounting frustration. He watched Congress pummel his agency and Issa call for his resignation while he said he was instructed by Justice to say nothing.

Melson had known there was a massive case being run out of Phoenix, but he later said he wasn't aware of the operational details or the agents' discontent.

After the outcry, Melson plunged into the case file, reading it at his kitchen table in Northern Virginia and on an airplane flight. It tied his stomach in knots, he said, and in mid-flight he composed an e-mail telling Justice officials that their public stance was inconsistent with the documents.

Shortly after Issa's hearing, Melson, a career prosecutor for more than 30 years, read in the newspaper that he might be fired.

On Friday, July 1, 2011, Grassley's chief investigator sent Melson an e-mail, alerting him to concerns of retaliation against the Group 7 agents. He gave Melson his cellphone number and told him to call anytime.

By Sunday, Melson told the investigator he was ready to testify.

The next day, July 4, an extraordinary meeting took place: The embattled head of a federal agency went in secret to Capitol Hill to talk to the political enemies of his bosses in the Obama administration.

From 10 a.m. to 4 p.m., as crowds gathered downtown for the fireworks, Melson testified behind closed doors to about 10 congressional staffers sitting around a long witness table in the Rayburn Building. So intent were Melson and Richard Cullen, the private attorney he retained, that they did not eat or drink for six hours.

"I would have given \$5 for a pretzel," said Cullen, Melson's longtime friend and a former U.S. attorney.

Melson said mistakes had been made by the ATF. He said guns should have been interdicted in certain instances. He was frustrated that Justice had not let him speak to Congress months earlier. And he said Justice officials seemed to be more concerned about protecting the political appointees at the top of the department.

After Melson's testimony, Issa and Grassley wrote a five-page letter embracing the ATF director and warning Holder not to fire or retaliate against him. Grassley and Issa also demanded the e-mails, internal memos and handwritten notes of 12 Justice officials who they said were aware of Fast and Furious.

"I do have serious concerns that the attorney general should have known a lot more than he says he knew," said Issa, who is holding another Fast and Furious hearing Tuesday. "In some ways, I'm more disappointed that he's saying he didn't know than if he says he was getting briefings and he didn't understand."

Some ATF officials still insist that Fast and Furious is a success, saying the case will soon lead to the indictment of as many as two dozen high-level traffickers. They fear the controversy could rob the agency of the will to pursue the biggest gun-trafficking cases.

"I am concerned that the lasting effect of this premature and stilted inquiry will be that the citizens of this country ultimately will be less safe as ATF agents will be less inclined to

work the hard cases necessary to cut off the head of the snake," said Paul Pelletier, a former Justice official and the attorney for Newell. "The shame of it is that the careers of these terrific public servants have been unfairly tarnished at the expense of public theater."

Altogether, the straw purchasers bought 2,020 firearms during Fast and Furious, according to law enforcement officials. Of those guns, 227 were recovered in Mexico; 363 have been recovered in the United States.

An additional 1,430 remain on the streets.