



Written by [Bob Adelman](#) on July 24, 2014

ATF: Guns Are the Problem

Initial hopes were that somehow the bad press that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (still known as ATF) has been receiving had caused the agency to pull back in its prosecution of criminal cases involving guns. But those hopes have faded.

[Reports from Syracuse University](#) showed that there were 6,791 such prosecutions recommended by the ATF in President George W. Bush's last year (2008), while there were just 5,082 gun violation cases under Obama in 2013 — a decline of 25 percent. The all-time high occurred during the Bush administration in 2004, when 8,752 cases were brought by the Justice Department. And so far this year, prosecutions have declined even further, likely to end the year at fewer than 4,400, if the present trend continues.



On the surface this appears to contradict the president, who stated, following the Newtown massacre, “We should get tougher on people who buy guns with the express purpose of turning around and selling them to criminals. And we should severely punish anybody who helps them do this.”

The obvious incongruity between these numbers and public pronouncements by the anti-gun president was reflected by Robert Cottrol, professor at George Washington University: “We have this irony. The Obama administration, which is asking for more in the way of gun regulations ... is actually prosecuting less of the gun laws already on the books.”

Many excuses were offered to explain the dichotomy — among them, budget cuts and bad press. This appeared to be reinforced by some ATF agents interviewed anonymously by the *Washington Times*, who said the agency had been burned by scandals such as *Fast and Furious* and an extensive report by *USA Today* on setting up fake stings to entrap potential criminals:

The current climate within ATF is: Let's take a step back and not go after too many hard-hitting violent crime cases that use informants or undercover agents. We can't just go it alone anymore....

We need buy-in from everybody: local law enforcement [and] other agencies. Then, and only then, [will we be] able to sell it [and have] the U.S. attorney come on board.

There was sequestration, which a spokesman for the ATF used to explain the apparent decline: “ATF faces key resources challenges in staff attrition ... resources are limited and difficult choices must be made with regard to priorities.”

The press has certainly been bad for the ATF. The “Fast and Furious” gun-running scandal has become common knowledge in the United States, while the *USA Today* study is causing people to link “false



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stings” with the ATF as well. Back in June 2013, journalists at the paper invested hundreds of man-hours poring over thousands of pages of court records and agency files, not including hours of undercover recordings of sting operations that transcended the law. According to the paper, here’s how the ATF conjured stings to create arrests and convictions:

The stings work like this: When agents identify someone they suspect is ripping off drug dealers, they send in an undercover operative posing as a disgruntled courier or security guard to pitch the idea of stealing a shipment from his bosses. The potential score is almost always more than 5 kilograms of cocaine — enough drugs to fetch hundreds of thousands of dollars on the street, or to trigger sentences of 10 years or more in prison.

When the target shows up ready to commit the robbery, he and anyone else he brings with him are arrested and charged with a raft of federal crimes, the most serious of which is conspiring to sell the non-existent cocaine.

Upon conviction, the unsuspecting target could spend the next 25 years of his life in jail.

USA Today quoted a former ATF supervisor who asked rhetorically, “Do you want police to solve crimes, or do you want them to go out and prevent crimes that haven’t occurred yet?” Another ATF source defended the practice:

Are we supposed to wait for him to commit a murder before we target him as a bad guy? Are we going to sit back and say, well, this guy doesn’t have a bad record. OK, so you know, throw him back out there, let him kill somebody, then when he gets a bad record, then we’re going to put him in jail?

Judges have increasingly answered that question by calling such stings “disreputable,” “tawdry,” and bordering on entrapment.

A closer look at what the ATF is doing, however, shows a change in direction with undiminished enthusiasm. The focus now is not on the criminal and his crime, either present or future, but instead on the gun — who’s making it, shipping it, or buying it. For that, the ATF is using an obscure section of the 1934 National Firearms Act (NFA) that allows the agency to go after violations perceived in the making, shipping, buying, and selling of firearms. The rules are tricky and often difficult to follow. Here’s a brief snippet:

No person shall make a firearm unless he has (a) filed with the Secretary a written application, in duplicate, to make and register the firearm on the form prescribed by the Secretary; (b) paid any tax payable on the making and such payment is evidenced by the proper stamp affixed to the original application form; (c) identified the firearm to be made in the application form in such manner as the Secretary may by regulations prescribe; (d) identified himself in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; and (e) obtained the approval of the Secretary to make and register the firearm and the application form shows such approval. Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law.

According to the Justice Department, just when prosecutions of criminals using guns has appeared to taper off, prosecutions under this obscure part of the NFA has increased an astounding 243 percent just in the last five years, and is up another 129 percent so far this year.



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And then there's the Hobbs Act, enacted in 1946, prohibiting the interstate shipment of property, including firearms, where there is any perception of illegality in the process. It is on track this year to become the third-most-prosecuted gun statute, compared to just a few years ago, according to the *Times*.

Robert Sanders, a former ATF assistant director, says the shift from criminals to guns is deliberate. "The agency's philosophy has shifted to 'guns are the problem and access to guns is the problem' rather than the criminal being the direct instigator of crime."

The ATF is not going away any time soon. It's just morphing into a more efficient, effective, and frightening version of itself.

Photo of ATF agent: AP Images

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