

ATF Under Siege

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ATF UNDER SIEGE

By ERIK LARSON Monday, Jul. 24, 1995

A DETROIT COMPUTER BULLETIN board lists the names of local agents of the Bureau of Alcohol, Tobacco and Firearms and offers helpful advice on how to harass them. A licensed gun dealer, required to surrender his business records to ATF's national tracing center, coated them first with rat excrement. A flyer found posted in Pennsylvania reads WANTED: ATF AGENT. DEAD.

The ATF may be the most hated federal agency in America today, surpassing even the IRS in its notoriety. Gun-rights advocates have demonized the agency as a dark legion of storm troopers who trample the rights of ordinary citizens. Critics have gone so far as to compare its treatment of gun owners to Nazi persecution of Jews during World War II. In a best-selling book published last year, Wayne LaPierre of the National Rifle Association described ATF's disastrous raid at Waco, which began the 51-day siege that ended in conflagration, as "reminiscent of the standoff at the Warsaw ghetto." Opposition to ATF has become so intense in gun-toting quarters as to resemble a religion, says Gerald Nunziato, who heads the ATF tracing center. He distills its creed: "The gun is God; the N.R.A. is the congregation; and ATF is the devil."

The bureau is not the jackbooted monolith of N.R.A. lore, however. Far from it: court documents and internal reports uncovered in a two-month TIME investigation reveal ATF as a divided and troubled agency far more likely to abuse the rights of its own employees than those of law-abiding citizens. If anything, its internal troubles have impaired its law-enforcement abilities by embroiling agents and managers in a web of in-house scandals and divisive controversies. The agency faces a class action by black agents who claim widespread discrimination and intimidation, including the posting at one office of a "State of Oklahoma Nigger Hunting License." Last week charges resurfaced that ATF agents attended a racist gathering in Tennessee, the annual "Good O' Boys Roundup." Agents complain too of a management

culture that doles harsh discipline to agents but goes to great lengths to protect its managers. In one case, a former head of its Dallas office who sexually harassed an employee received a demotion and transfer -- to the Virgin Islands. "Any agent who's honest with you will tell you this agency has to be gutted," says Diane Klipfel, a supervisory agent in ATF's Chicago division who is mired in a battle with the bureau that began when she accused her commanders of corruption.

Two decades of outside scrutiny and persistent threats to its survival have so cowed the bureau that it now shies from certain categories of investigations, including probes of licensed gun dealers. Instead the ATF focuses more on such politically safe targets as crack gangs, outlaw bikers and ordinary killers. One indicator: the number of firearms ATF has taken into custody dropped 27%, to 12,965, from 1992 to 1994. Of those guns, 6,261 were handguns, or about three for each of the bureau's 2,000 agents. An ATF spokesman says such fluctuations are meaningless, but Kay Kubicki, a former ATF agent who is now counsel for the National Association of Treasury Agents, disagrees. "The only reason the total of guns [seized] would go down is morale," she says. "There's a direct correlation between the turmoil in the agency and the decline."

A theory voiced by ATF agents holds that the agency's skittishness may have contributed to its spectacular failure in the initial 1993 raid at Waco, in which four agents and six Branch Davidians were killed. David Koresh, so the theory went, made an ideal safe target -- an apparent madman leading a cult that had armed itself with vast quantities of weapons. While it was the FBI that directed the final assault in which 81 people died, it was the ATF that targeted the compound in the first place. Says Kubicki, without a trace of irony: "Waco was a need to look pretty."

John Magaw, installed as ATF's director in 1993 in a post-Waco shuffle, has vowed to reform the agency and resolve its interior conflicts. But some agents question his commitment, especially in light of his decision to rehire two leaders of the Waco raid fired last October after the Treasury Department's scathing "Blue Book" report blamed them for botching the action and later lying about why it had failed. The rehiring caused ATF self-esteem to droop yet again. "I've never been more ashamed of being an ATF agent than I am right now," an agent wrote in a recent letter to a magazine published by the agents' association. "This is an agency out of control!"

AND MAGAW MAY BE RUNNING OUT of time. The bureau faces a long hot summer of scrutiny, starting this week when the House subcommittees on crime and national security begin a joint eight-day hearing on ATF and FBI actions at Waco. The crime subcommittee plans two more hearings after the August congressional recess to examine other alleged ATF abuses and the enforcement of firearms laws in general. In short, congressional Republicans aim to ask whether the bureau should be allowed to survive. One of this week's inquisitors will be Representative Bob Barr of Georgia, an N.R.A. member who heads Newt Gingrich's Firearms Legislation Task Force. Barr asks, "At this point, do we really need ATF?"

THE N.R.A. IS BEYOND DOUBT THE ATF'S most committed opponent. Over the years the 3.5 million-member organization has built an infrastructure to ensure that far-flung cases of alleged ATF abuse get direct scrutiny from Congress. The organization is relentless. "The natural enemy of a gopher is a rattlesnake," says Gerry Spence, the flamboyant Wyoming defense attorney who defended Randy Weaver after the federal siege at Ruby Ridge, Idaho. "The natural enemy of the N.R.A. is the ATF."

The N.R.A.'s favorite strategy in harrying the agency is to publicize individual cases of alleged ATF abuses, in the process ignoring the thousands of investigations that conform even to the N.R.A.'s own anticrime platform. In 1994 ATF recommended 10,000 defendants for prosecution, of whom 47% were previously convicted felons. The bureau's critics also sidestep the fact that on the same day as the Waco raid, an ATF investigator, working with a New York City bomb-squad detective, found the vital shard of evidence that broke the World Trade Center bombing case. Agents from the bureau's office in Charlotte, North Carolina, recently took down a murderous street gang and sent a dozen members to prison, many for life terms. And last month Charlotte agents played a central role in capturing carjackers believed to have killed an Oregon businesswoman, the kind of case special agent in charge Paul Lyon sees as the bureau's "salvation." He feels Congress and the public have turned their back on ATF, even though the bureau is only trying to fulfill a mandate that Congress itself designated. "Now and for years, I have felt what people who came out of Vietnam felt," he says.

The N.R.A.'s atrocity stories typically omit details that might muddy its anti-ATF message. High on its list, for example, is the Randy Weaver case. In January 1991, ATF agents arrested Weaver for having sold two sawed-off shotguns to an ATF informant. Weaver was released on his own recognizance. When he failed to appear in court, a fugitive warrant was issued, and the case was passed to the U.S. Marshals Service, which caught up with Weaver in August 1992. A gunfight followed in which a deputy U.S. marshal and Weaver's 14-

year-old son were killed. The FBI took over, and one of its snipers killed Weaver's wife. Contrary to public perception, however, ATF played no direct role in the shootings. In July 1993 a federal jury found Weaver guilty of failing to appear in court but acquitted him of the original weapons charge after his attorney, Gerry Spence, argued that ATF had entrapped him.

THE BUREAU HAS ALWAYS WALKED A DIFFICULT beat, one that lies at the heart of American ambivalence. Largely through historic accident, the agency acquired responsibility for regulating three of the nation's most popular yet dangerous products: booze, cigarettes and guns. Its forebears include the "revenuers" who hunted moonshiners and enforced Prohibition. Eliot Ness remains the bureau's chief institutional hero. Today large framed posters from the 1987 movie *The Untouchables* hang in many ATF offices.

The IRS agents became gun cops after a period of escalating violence prompted Congress in 1934 to regulate machine guns and certain other weapons. Their jurisdiction widened with the Gun Control Act of 1968, which barred felons, minors and others from buying guns and required licensed dealers to keep records of who bought their firearms. This new authority delighted the agents, who felt they had been promoted to real crime fighters, but top IRS officials viewed the combined role of tax collection and gun control as a public relations nightmare. So in 1972 the Treasury spun off ATF into a free-standing bureau.

In its early days, according to some current and retired agents, ATF often overstepped its bounds. The gun laws were full of opportunities for making felony cases against otherwise solid citizens accustomed to America's wide-open gun trade. At the same time, the arrival of serious gun control in the 1968 Gun Control Act radicalized the N.R.A., prompting the association to shift its emphasis from promoting marksmanship to gutting the act and harrying the enforcers. In 1980 the N.R.A. produced a film, *It Can't Happen Here*, in which Representative John Dingell of Michigan, then a member of the N.R.A.'s board of directors, states, "If I were to select a jackbooted group of fascists who are perhaps as large a danger to American society as I could pick today, I would pick BATF." (The bureau later shortened its logo to ATF.) The N.R.A.'s campaign was so effective that in 1981 President Reagan announced he would make good on a campaign promise to dismantle ATF. But he underestimated the depth of respect accorded the bureau among other law-enforcement agencies and was forced to backpedal. He announced later that he would still demolish ATF but assign its agents to the U.S. Secret Service. ATF agents, who saw the shift as conferring instant prestige, loved the idea; the N.R.A., however, realized it was about to lose one of its best fund-raising assets. Suddenly the N.R.A. rode to ATF's rescue, blocking its demise. The reversal

drew an acid appraisal from New Jersey Representative William Hughes, who accused the association of retreating because the Secret Service "might actually take the functions seriously and not be so easy to intimidate."

The bureau survived, but as a shattered agency. An internal Treasury review, completed in October 1981 but little known outside the bureau, produced a portrait of an agency in agony, "grinding to a standstill." Unsure of its mission, it was readily buffeted by shifting political winds. Said the report: "There is widespread distrust of top management. There is little unity within the organization. Morale is very poor. This situation goes far beyond the normal criticisms and complaints which are leveled against management in any organization."

THE RISING TORRENT of anti-ATF rhetoric has nurtured the perception that ATF agents are justifiable targets for heckling, if not outright assassination, an attitude that Ron Noble, Under Secretary of the Treasury for enforcement, likens to the 1960s protest ethos that branded all police officers "pigs." ATF's opponents, he says, don't loathe the bureau itself, just the laws it must enforce. "So what do you do?" he asks. "You attack an agency that not very many people know a lot about." Says a supervisory agent: "If you can't get the laws overturned, you pound on the agents. Because if you pound on them long enough, they'll turn around and say, 'Why bother?'"

The strategy is working. ATF agents often quote a maxim: "Big cases, big problems; no cases, no problems." The intense and well-orchestrated opposition has succeeded in discouraging ATF from aggressively pursuing investigations of gun shows, flea markets and licensed gun dealers, even though these often prove to be major conduits for the diversion of guns to criminals. The bureau's reluctance to investigate dealers has long driven agents to jokingly describe a dealer's license as "the \$10 immunity." (Until two years ago, the annual licensing fee was \$10.) A series of standing ATF orders closely choreographs all such investigations and requires that they be monitored from ATF headquarters in Washington. "You have to jump through six hoops of fire," says Kubicki, the agents' association counsel. Says Phil McGuire, a former ATF deputy director: "There's no question the N.R.A. has dictated exactly [the rules for] such things as dealer investigations and investigations of gun shows."

FAR FROM CRACKING DOWN, ATF allowed the number of licensed gun dealers to swell to nearly 300,000 by 1993. Often it failed to conduct thorough background checks for prior criminal offenses. In a survey it found that 72% of its licensed dealers never even bothered to open a bona fide store, but operated instead from their homes. Under Magaw, however, the bureau has lately got much tougher on applicants, requiring for the first time that they

submit fingerprints and a photograph. Now the number of dealers is falling at a rate of 150 dealers a day, an ATF spokesman says, and the bureau expects the total to level off at somewhere between 70,000 and 90,000.

The persistent barrage of outside attack also helped create a culture in which senior managers and agents face each other across a vast reservoir of distrust and hostility, according to hundreds of pages of internal reports and court documents reviewed by Time. Rank-and-file agents have long protested how managers use ATF's internal-affairs unit, which routinely conducts three to five times as many internal probes as the Secret Service's apparatus, even though each agency has roughly 4,000 employees. Magaw explains the differential as partly because of the fact that ATF agents conduct far more gritty street investigations and thus are likely to draw more flak inside and outside the agency. But Magaw also sees the difference as the result of ATF's failure to train its agents adequately and of the unsettling effect of so much outside criticism.

The tempest that has wracked ATF's Chicago field division gives a flavor for the forces long at play within the bureau. The division, one of ATF's largest, has been riven with charges of corruption, sexual harassment, racial discrimination and management retaliation. Two veteran agents, Diane Klipfel and her husband Mike Casali, now face imminent discharge; they claim in a federal lawsuit that the bureau took the action in reprisal for their having reported corruption and sexual harassment, including allegations that police officers assigned to ATF had stolen money from a drug dealer. Prompted by their disclosures, investigators from Treasury's Office of the Inspector General in November 1992 conducted an unprecedented raid on the Chicago office to seize financial documents. The interlocking scandals caused the transfer of the division's top three officials and the firing of a first-line supervisor (who was reinstated this year by a federal appeals court in Chicago). The experience, however, took a grave toll on the pair's careers and personal lives. For two months, Klipfel says, the couple had their children sleep in a second-floor closet as a precaution against retaliatory shootings.

But ATF officials say Klipfel and Casali will be fired because the bureau believes they too had engaged in past misconduct. For example, it charges that Casali conducted evidence searches without federal warrants and that Klipfel maintained an inappropriate relationship with the target of an investigation. Raymond Risley, assistant deputy superintendent of internal affairs for the Chicago police, says his unit conducted a thorough investigation and found no evidence of theft. He says, however, that ATF would not let his investigators interview Casali or Klipfel and that the drug dealer's lawyer would not allow the dealer to be questioned.

The ATF rumor mill went into overdrive, accusing Klipfel in particular of everything from dealing cocaine to sleeping with a drug dealer. Yes, declares Klipfel with weary sarcasm, "I try to fit it all in. I'm a supermom."

Until the events of February 1992, she and her husband were well-regarded agents. Klipfel had been nominated four times for a top women's law-enforcement award. Casali had been decorated for heroism. "They were not only good agents; they were exceptional agents," says Robert Sanders, a former assistant director of ATF and now an attorney who specializes in defending gun owners against the agency.

But on Feb. 20, Klipfel led a series of raids with the help of two Chicago police officers. In the course of the day, Klipfel began to suspect the officers had stolen money from the raiding party's first target, a 30-year-old drug dealer named Darrin Pippin. The evening of the raid, Klipfel challenged the officers, triggering a violent argument in which one of the officers kicked the door of her car and threatened her and her family, according to a formal statement she filed with ATF. "The cops were so mad," Klipfel says. "I just couldn't be sure. I felt that my children just were not safe." She got home at 1 a.m. and immediately moved her children into the closet.

She reported her allegations to her superiors in the division, but charges that they failed to pass her report to ATF headquarters. "Now that was unconscionable for a law-enforcement organization," says Sanders, who earlier had supervised Klipfel and Casali. "That's corruption. You cannot sit on an allegation of corruption. You report it and let the chips fall where they may."

Eventually Klipfel alerted Treasury's Inspector General, this time adding charges of misconduct by her commanders, Joseph Vince, at that time the Chicago office's agent in charge, and Jimmie Adamcik, his assistant. Among the charges: that Adamcik had sent ATF cars to a friend's repair business and had associated openly with John Boyle, head of an armored-car company who was under indictment for stealing more than \$4 million, much of it in coins entrusted to his company. (Boyle later pleaded no contest to all charges and was sentenced to 38 months in prison.)

Adamcik and Vince eventually were transferred to other posts. Vince's attorney, Dave Stetler, calls the allegations against his client "absolutely false" and says ATF disciplined Vince without formally charging him with anything. (Adamcik could not be reached for comment.) An internal investigation sustained some of Klipfel's allegations. It reported that Boyle had arranged free use of a nightclub for the division's 1992 Eliot Ness Birthday Party. Adamcik had also invited Boyle to play in the division's Eliot Ness Golf Tournament, held in Indiana on a workday. Boyle couldn't attend, however. Awaiting sentencing, he wasn't allowed to leave Illinois.

Klipfel's husband Mike Casali says he too passed along disturbing news about a Chicago cop, this from an informant who reported a rumor that a cop assigned to ATF was selling guns to gang members and had helped cover up a murder.

CASALI AND KLIPFEL, LABELED AS snitches, fast became outcasts. Klipfel found a black plastic rat in her office. Pictures of her children were knocked off her desk repeatedly. In a lawsuit they filed in Chicago federal court, Klipfel and Casali allege that ATF conducted a "deliberate and strenuous" campaign of retribution meant to suppress further disclosures of misconduct. Says Sanders: "Retaliation is so obvious."

ATF director Magaw denies the couple's charges but declines to discuss their case further. "Both people in Chicago are going to be fired," he states. "I'm going to continue that process. They deserve to be fired."

Retaliation is something of a pattern within the ATF, according to a recent internal investigation by the Treasury Inspector General's office. In a report sent to Magaw last year, the investigators said they found that of 370 Equal Employment Opportunity complaints filed by employees, 105 resulted in charges being filed with Internal Affairs against the complainers or their supporting witnesses. In 54 of these cases, Internal Affairs launched full investigations. The report cited an array of management practices that "created at least a perception among some ATF employees that managers abused their authority by retaliating, harassing or intimidating the work force."

ATF's black agents say they in particular have experienced such behavior. Although the "Good O' Boys Roundup" made news last week, ATF's leadership has long known of the annual affair and its racist trappings. The black agents' class action cited the event as just one of dozens of racist incidents. Dondi Albritton, who heads the bureau's Explosives Technology branch in Washington and is a plaintiff in the lawsuit, said he once saw an invitation to the roundup that was printed on ATF letterhead and mailed in an ATF envelope. At this year's outing, racist slogans and T shirts were reportedly on display, including one with Martin Luther King Jr.'s face behind a target. Last week Magaw called for a Treasury probe of the event, and Senate Judiciary Committee chairman Orrin Hatch scheduled a hearing for July 21. Said he: "I'm very upset about it. We're not going to sit around and let this type of stuff happen."

ATF's black agents describe a lonely, isolated life in a culture still dominated by attitudes carried forward from ATF's moonshine-hunting days. "With ATF it's always been the good ole boy system, white males from the Southeast," Albritton says. The generation of ATF officials who hired today's senior managers were typically men hired for their knowledge of Southern mores and

their skill at outwitting deep-country bootleggers. Once these woodcraft experts reached positions of authority, says Larry Stewart, assistant special agent in charge of ATF's Atlanta office, "they hired people who looked like them, who talked like them, who had the same habits." As soon as Stewart began reporting acts of discrimination, he charges, he was repeatedly passed over for promotions and subjected to petty acts of reprisal.

One episode, which he describes as retaliation for his participation in the lawsuit, aggrieved him deeply. Stewart had led a group of ATF agents who took part in a complex 1990 investigation of mail bombings that killed an attorney and a federal judge. The arrest of the bomber prompted President Bush to invite all the participants to the Rose Garden for presidential commendations. Stewart wasn't invited. ATF also gave out awards to Stewart's agents, to his boss Thomas Stokes, even to the boss's secretary. But again, not to Stewart.

"When I found out ..."

He stops, turns away. "I'm sorry."

He tries again. "When I found out that Tom Stokes' secretary had been given an award ... when I found out that all my agents, that ATF internally was going to give them awards, when I heard that managers above me were given awards and I was not even mentioned -- I don't think I have the words to describe how I felt, how hurt, how devastated I felt."

It is a mark of ATF's curious culture, however, that even the most critical agents often proclaim a deep respect for the agency and its mission. "I love this agency," Stewart says. "I love this agency so much I would work for it 24 hours a day if they'd let me." Vanessa McLemore, another class-action plaintiff, says she wanted to become an ATF agent since high school. "Deep down I'm happy. I would not go to another agency. I love what I'm supposed to do. What I don't like is not being given an equal opportunity to do it."

Director Magaw says ATF has begun to change. His first priority, he says, was to address what he saw as the central lesson of the Waco disaster: lack of training, even among field commanders. The initial raid, which took place Feb. 28, 1993, was by all accounts an inexcusable disaster. The Treasury's Blue Book outlined in cold detail a cascade of errors and placed primary blame on the fact that the raid leaders allowed it to proceed even after learning that they had lost the element of surprise.

Here Magaw disagrees. The worst error, he says, was the decision by the raid's top two commanders to take part in the assault, thus eliminating the perspective that might have allowed them to call it off and avert disaster. One leader rode in a helicopter, the other joined the raiding party that entered the compound. "It's the same effect as if the Redskins would send their coaches onto the field," Magaw says. "Your coaches were where they couldn't see what

was taking place." The ATF, he says, had never trained the leaders to recognize the flaws in their thinking. "Had I only had the training they had, would I have made some of these same mistakes?" Magaw asks. "The answer is clear in my mind: Yes."

He insists now that every new agent read the Blue Book report. He expects soon to require that all agents undergo bouts of refresher training every three or four years, just as the Secret Service's do. He has established a new position of assistant director for training to allow the bureau's training staff to compete more effectively for internal funds. "If you have good people and you train them," he says, "you will survive in spite of yourself."

HE HAS BOLSTERED TOP-LEVEL decision making as well. A new Treasury review board, consisting of ATF officials and one person each from the Customs Service, Secret Service and Justice Department, must approve ATF's most sensitive undercover cases. An internal directive obtained by Time, dated May 5, defines such cases to include investigations "of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media." Says Magaw: "Anybody who questions why we're doing it differently now than we did before need only look at Waco."

Now he is turning his attention to ATF's internal troubles. Within the past year, he says, he put the bureau's 24 special agents in charge on notice that he would be watching closely to ensure they dispense disciplinary action consistently and fairly, but he was not satisfied with the results. Now he is about to launch a five-member professional review committee that will examine every internal investigation and vote on the discipline required. He also established eight peer groups to give black agents, female agents and six other subgroups -- including white males -- a clear channel for venting grievances.

Despite all those changes, some agents wonder if life within ATF has really changed. Immediately after the Waco raid, many agents were outraged when the raid leaders, Phillip Chojnacki and Chuck Sarabyn, tried to blame the fiasco on a young undercover agent. The Treasury report, which condemned both leaders for serious errors and for lying to postraid investigators, stated, "Their consistent attempts to place blame on a junior agent were one of the most disturbing aspects of the conduct of senior ATF officials."

But last December Magaw rehired the men. ATF had discharged them two months earlier, after both had spent nearly a year on administrative leave at full pay. The settlements granted the men full back pay for the brief period of their formal terminations, expunged their records of all disciplinary action, and restored their past salaries and their eligibility for law-enforcement pensions. It did, however, strip them of their official status as federal investigators empowered to carry guns and enforce federal law. Magaw says he took into

account the men's long years of service and his opinion that their performance was partly ATF's fault for training them poorly in the first place. Despite ATF's concessions, the settlement is punishment enough, he says.

Jim Jorgensen, an ATF agent and deputy executive director of the National Association of Treasury Agents, disagrees. "It just really sends the wrong message to the public," he says. And with the start of the latest congressional investigation of Waco, public perception has again become a matter of intense concern. If history is any guide, this new round of scrutiny will once again blow the agency into a period of angst and self-doubt. "We've always been defensive," says Charlotte ATF agent in charge Paul Lyon. "We have always been susceptible to light breezes -- it doesn't even take a full storm." But this week the agency is bracing itself once again for gale-force winds that may well threaten its survival.