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Prosecutors' Guide to the ATF

The Bureau
of Alcohol,
Tobacco,
Firearms,
and Explosives

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PROSECUTORS' GUIDE TO THE ATF

PROSECUTORS' GUIDE TO THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (ATF)

Introduction

An armed gunman commits a crime in one jurisdiction and flees to another county or state, where he commits a second crime with a firearm. Frequently, the only evidence initially linking these two geographically distant crimes may arise from the findings of an ATF ballistic report. This report will strengthen both cases in state court and may provide the ability, alternatively, to proceed in federal court. In both instances the ATF report provides an essential element to convict the gunman.

Successful prosecution of gun crime typically requires going beyond the arresting officer's report and initial incident investigation. Prosecutors are learning to use the services and information available to them from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to build a solid, airtight case against an individual accused of violating either state or federal firearms statutes. Through Project Safe Neighborhoods, America's network against gun violence, state and local prosecutors are increasingly relying upon the skills and resources of ATF to investigate and prosecute gun crime cases.

The U.S. Department of the Treasury established the Bureau of Alcohol, Tobacco, and Firearms (as it was originally known) as a separate bureau in 1972 to protect the public, reduce violent crime and collect revenue. In January 2003, the divisions of ATF that oversee firearms, explosives and arson programs were integrated into the Department of Justice as the Bureau of Alcohol, Tobacco, Firearms, and Explosives. (The new bureau will keep its ATF identification.) ATF's original regulatory and taxation divisions remain with the Department of Treasury under the Tax and Trade Bureau.

Through its new national organization and regional divisions, ATF will continue to expand its many services enabling prosecutors to successfully bring gun crime arrests to conviction. This monograph will serve as a reference guide to prosecutors regarding the services, programs and resources available to state and federal gun crime prosecutors from ATF in its efforts to target and investigate illegal firearms.

Legal Authorities

The Department of the Treasury delegated responsibility to ATF to enforce selected provisions of several federal laws, specifically the Gun Control Act of 1968, *18 U.S.C. Chapter 44*, the National Firearms Act, *26 U.S.C. Chapter 53*, and the Arms Export Control Act, *22 U.S.C. § 2778*. These Acts entitle ATF to regulate firearms traffic into, from and within the United States. Through these regulatory capabilities, ATF is able to provide many elements of an illegal firearms investigation that would not otherwise be available to prosecutors.

One of the primary purposes of the Gun Control Act of 1968 is to assist state, local and foreign law enforcement agencies in tracing firearms used in criminal activity. The Act makes it illegal to engage in the business of dealing in firearms without a federal license, *18 U.S.C. §§ 922(a)(1) and 923(a)*. The Act restricts business sales and interstate commerce in firearms to approximately 104,000 current Federal Firearm Licensees (FFL) nationally. Sales of firearms by an FFL are generally restricted to persons living within the state in which the FFL's business is located, *18 U.S.C. § 922(b)(3)*. Additionally, the FFL must keep detailed records regarding each firearm sale, including the buyer's name, age, place of residence and other identifying information, *18 U.S.C. §§ 922(b)(5) and 923(g)(1)(A)*. This information can be useful to a prosecutor when a legally purchased firearm is recovered from a crime scene.

ATF is authorized to inspect the records of an FFL to ensure compliance with the record keeping provisions of the Act not more than once during any 12-month period. Further, the FFL must notify ATF within 48 hours of any gun theft the FFL experiences. An FFL must also respond promptly to any written request ATF makes during the course of tracing

a specific firearm linked to that FFL, *18 U.S.C. § 923(g)(6)*. FFLs are required to inform ATF regarding any sales of two or more handguns sold in one transaction or during any five consecutive business days to the same individual, *18 U.S.C. § 923(g)(3)*.

Federal statutes also enable ATF to conduct warrantless searches of an FFL during an annual compliance inspection, in the course of a criminal investigation of someone other than an FFL or for the purpose of firearms tracing, *18 U.S.C. § 923(g)(1)(A)*. ATF is also authorized to inspect the records and inventory of FFLs via a reasonable cause warrant, *18 U.S.C. § 923(g)(1)(B)*, where there is reason to believe that a violation of the Act has occurred and that evidence thereof may be found on the FFL's premises. An ATF special agent can obtain a list of crime gun traces purchased from a specific FFL and multiple sale transactions from the FFL, as well as FFL and interstate theft reports. Thus, the length of ATF's legal reach can provide evidence or information that might not otherwise be available to a prosecutor and can greatly strengthen prosecuting a case.

An individual who makes a materially false statement or furnishes false identification to an FFL during the purchase of either ammunition or a firearm is also subject to criminal prosecution, *18 U.S.C. § 922(a)(6)*. In its capacity as a regulatory agency, ATF can provide this valuable evidence to both state and federal prosecutors for consideration as a separate charge in federal court or to encourage resolution of an underlying firearms offense in state court.

The sale of handguns by private individuals is confined to direct sales to purchasers living within the same state as the seller. Additionally, non-licensed individuals are precluded from buying handguns outside their own state of residence or transferring firearms to other non-licensees living out of state, *18 U.S.C. §§ 922(a)(3) and (5)*. The result of these regulations is that non-licensed or private sales generally fall under the auspices of state law, and violations of these laws are generally handled by state or local prosecutors.

The scope of the Gun Control Act of 1968 also prohibits under-age individuals, individuals with a criminal history or those determined to

be incompetent from legally possessing handguns. As a result, ATF has developed a Youth Crime Gun Interdiction Initiative (YCGII; see page 12), which enables ATF to trace handguns recovered from youths/juveniles. In 1999, juveniles (under the age of 17) and youths (under the age of 24) were involved in 42 percent of ATF's handgun trafficking investigations. In FY 2003, 66 metropolitan areas are scheduled to participate in this program, thus extending ATF's ability to interrupt the illegal supply of handguns to juveniles.

Under the language of the National Firearms Act, the manufacturer of certain classes of firearms, including machine guns, short-barrel rifles, short-barrel shotguns, silencers, and destructive devices, are required to register these firearms. Additionally taxes are imposed on transactions involving these weapons. ATF is authorized to regulate these provisions.

Under the Arms Export Control Act, the President is authorized to control imports and exports of certain firearms as "defense articles in furtherance of world peace and the security and foreign policy of the United States." ATF has been given the authority to regulate the import controls of these firearms from those proscribed countries.

ATF's website, currently located at www.atf.treas.gov, offers a compendium of state and federal laws dealing with firearms issues to assist prosecutors in determining the most appropriate forum in which to prosecute an illegal handgun case.

Programs and Services

Of special interest to prosecutors are the National Integrated Ballistic Information Network (NIBIN) program and ATF's National Tracing Center with its Online LEAD, Stolen Firearms, Obliterated Serial Numbers and Suspect Gun programs. ATF also assists prosecutors through its Youth Crime Gun Interdiction Initiative (YCGII), which includes preparing and initiating successful prosecution against criminal gunmen in both state and federal venues.

SUCCESS STORIES

Lake County (IN) Sheriff's deputies recovered cartridge casings at a drive-by shooting and submitted them for NIBIN entry. Two weeks later, a child was killed in a drive-by shooting. The Gary (IN) Police Department recovered the bullets and casings and entered them into NIBIN. NIBIN revealed a link between the two incidents, and an investigation was opened into gang activity. As a result, several high-ranking members of a local gang were prosecuted and found guilty of various federal offenses.

NIBIN Program: Matching Fragment “Fingerprints”

Perpetrators of armed violent crime have access to or obtain illegal firearms to conduct their illegal activity. Increasingly, they move from one jurisdiction to another in conducting their criminal behavior, thus making illegal guns extremely mobile. For example, an armed drug dealer may use a handgun in Louisiana and give this firearm to an associate, who later uses the same firearm in New York to commit a second violent crime. Prosecutors working these two cases in distant, unrelated jurisdictions might be unaware that the handgun connected these two crimes and the parties involved. One or both crimes might be dismissed for failure to build a conclusive case, or be settled on a misdemeanor charge.

To assist law enforcement and prosecutors in this kind of scenario, ATF created the National Integrated Ballistic Identification Network (NIBIN), to flag links between discharged firearms on a national basis. ATF purchases Integrated Ballistic Identification System (IBIS) equipment, which it in turn gives to its NIBIN partners to use locally. In state and local forensic laboratories nationwide, ATF routinely upgrades and services this tracing equipment and provides training in its use. ATF also oversees the NIBIN network communication between NIBIN partners.

Once a bullet or casing fragment is recovered from a crime scene, a digital image of the fragment markings is entered into IBIS equipment. This image is then electronically compared and cross-referenced to other bullet or casing entries from the same jurisdiction, neighboring jurisdictions and eventually from jurisdictions across the country. When a possible match is located, firearms examiners are notified for further examination of the two images to confirm or disprove the “hit.” Because initial comparison is done with the ATF-provided system, firearms examiners in state and local laboratories can provide prosecutors, within minutes, information that previously would have taken thousands of man-hours to accomplish manually, if at all. Additionally, ATF can track the route of a crime gun geographically by comparing the unique signatures left on each fragment. A recent example of the success of this system was ATF’s ability to link bullet fragments from several unsolved crimes in Washington State, Louisiana and Alabama to the accused Washington, D.C. sniper(s), and to link a number of other shootings within the metropolitan D.C. area to the same weapon.

ATF supports approximately 233 NIBIN sites nationally. This valuable investigative tool is available in every state and most metropolitan areas. To date, ATF and its NIBIN partners have reported over 5300 “hits” linking crime scenes through a comparison of digitized imagery of bullet fragments. In December 2002, NIBIN findings helped one state prosecutor’s office indict a defendant for six previously unresolved murders. This program has a strong track record of enabling prosecutors to convict defendants who might otherwise have gone undetected.

A number of law enforcement offices employ their own NIBIN equipment, and ATF provides them with assistance in tracing, crime gun analysis and industry support. If there is no NIBIN site in your jurisdiction, contact the NIBIN coordinator of your regional ATF field division or the Washington, D.C. ATF NIBIN Branch (tel: 202 927-5660 or www.nibin.gov).

Crime Gun Tracing

ATF assists state and local agencies in the initial investigation of crimes committed with firearms by identifying those individuals who supply

crime guns to individuals. ATF's National Tracing Center (NTC) maintains records of all guns traced by ATF, all FFL theft or loss reports, and records of multiple sales of handguns made through FFLs. NTC has proven instrumental in identifying the first retail purchaser of traced firearms. In FY 2001 alone, the NTC conducted over 240,000 crime gun traces. There is limited capacity to trace "second hand" firearms through ATF's use of Demand Letters to high trace rate FFLs who are required to submit the serial numbers of used guns they acquire.

SUCCESS STORIES

The Los Angeles (CA) District Attorney's Office, Azusa Police Department, Pasadena Police Department and the Los Angeles County Sheriff's Department crime lab used NIBIN technology to link the same firearms evidence to separate robberies in Azusa and Pasadena. This information was instrumental in securing the successful prosecution of the robbery defendant and a significant prison sentence.

ATF's National Tracing Center Programs

In addition to the NIBIN capability to link crime gun usage through casing fragment matches, ATF has created several innovative programs to assist prosecutors and investigators by identifying individuals who are responsible for supplying guns to criminals. These programs are headquartered in West Virginia at ATF's National Tracing Center (tel: 304-260-3640, fax: 304-260-3645).

Online LEAD

Created in February 1999, Online LEAD provides street-level ATF agents and inspectors and state and local law enforcement with investigative leads concerning illegal firearms trafficking. Online LEAD provides real-time access to the firearm trace and multiple sale transaction records maintained in the Firearms Tracing System (FTS) database used by the

ATF National Tracing Center, which currently contains over one million gun traces and 460,000 multiple sales records. Data in the Online LEAD system are updated daily. By accessing and analyzing the records in FTS, investigators can quickly identify trends and patterns that may indicate the illegal trafficking of guns, and use this information to interdict the supply of guns to the illegal market.

Through Online LEAD, the improved data flow has helped firearms trafficking task forces and other law enforcement partners in New York, Memphis, Atlanta, Baltimore and Washington, D.C. to connect the purchaser of a crime gun to crime guns recovered in other locations, thus identifying possible illegal gun traffickers. Online LEAD is available to all state and local law enforcement agencies at ATF field offices throughout the country.

In jurisdictions with several municipal law enforcement agencies, this “heads-up” regarding a potential influx of a particular type of firearm or specific suspect weapon helps prosecutors decide whether to proceed with investigating independent arrests as individual indictments or potentially as part of one common scheme or plan. For questions or assistance regarding the Online LEAD program, contact the Program Manager (tel: 304-260-3664).

Stolen Firearms Program

Through the Stolen Firearms Program, each federal firearms licensee (FFL) is required to report the theft or loss of a firearm(s) from its inventory within 48 hours after the theft or loss is discovered. This information can assist prosecutors in mapping gun thefts to identify area “hot spots.” Additionally, if reported stolen guns are recovered within their jurisdictions, this information may be instrumental in linking individuals back to the original FFL theft. Questions regarding guns identified through this program should be directed to the Stolen Firearms Program Manager (tel: 304-260-3685 or 1-888-930-927).

Obliterated Serial Numbers Program

Obliteration of a firearm serial number is a trafficking indicator. The Obliterated Serial Numbers Program (OSNP) provides in-depth analysis,

research and direction for investigations involving firearms with obliterated, altered or removed serial numbers.

The goal of the OSNP is to assist law enforcement's efforts to trace such firearms and to identify patterns that may indicate illegal gun trafficking. OSNP data are of particular interest to prosecutors because an obliterated serial number is in violation of federal law and may be considered as evidence of criminal intent. (Keep in mind that certain firearms manufactured before the Gun Control Act of 1968 were not required to have serial numbers; therefore, the absence of a serial number on these firearms is not a violation of federal law.) For questions or assistance regarding the Obliterated Serial Numbers Program, contact the Program Manager (tel: 304-260-3673).

An obliterated serial number is prima facie evidence of criminal intent on the part of the defendant. If ATF is able to "raise" a firearm serial number, a prosecutor should request a certified copy of ATF's findings to present in court if necessary.

SUCCESS STORIES

By comparing ballistics "fingerprints," technicians at NIBIN helped police in Houston (TX) to positively link three murders and a robbery that occurred over a four-month span. The NIBIN information and other evidence led to the apprehension of two suspects, both of whom were convicted of murder.

Suspect Gun and Person Programs

The goal of the Suspect Gun Program is to maintain a database listing confiscated firearms and firearms believed to be involved in illegal firearms trafficking. This information interfaces with data on individuals purchasing multiple quantities of handguns, firearms dealers with improper record keeping, and firearms purchased by persons suspected to be straw purchasers included in various Firearms Tracing System databases updated by ATF special agents. For instance, whenever a crime gun is

traced by the National Tracing Center, the firearm's make, model and serial number is first run through the Suspect Gun Database. In the case of a positive match, the crime gun's trace information is then given to the agent who entered the firearm or purchaser in the Suspect Gun Database for further investigation.

While this information is not readily accessible to prosecutors, it is important to work closely with your region's ATF special agents regarding any firearms trafficking schemes within your jurisdiction. ATF special agents are privy to the names and addresses of any individuals involved in multiple sales transactions or crime gun traces where the individual is the purchaser, possessor and/or associate in the transaction. For questions or assistance regarding the Suspect Gun and Person Programs, contact the Program Manager (tel: 304-260-3673).

Graphic Information System (GIS) Software

Mapping the locations of recovered illegal handguns used in criminal activities, sites of multiple sales, and theft points can provide law enforcement with many benefits. From a prosecutor's perspective, this information can provide a valuable understanding of the community and the types of handguns favored by different regional defendants or gangs. Crime gun mapping enables prosecutors and law enforcement to detect patterns in crime gun sales and develop strategies for reducing this illegal market. It can be particularly useful to use gun data with other information, such as calls for service, with mapping software. ATF can assist in mapping through its Crime Gun Analysis Branch, or in field divisions where this technology may also be currently in use.

Youth Crime Gun Interdiction Initiative

ATF recognized a significant percentage of its crime gun tracing efforts involved juveniles (age 17 and under) and youths (age 18-24) associated with illegal gun trafficking or possession of firearms. ATF's *Crime Gun Trace Reports (2000)* indicates that 33 percent of crime guns recovered were from youths, with another 8 percent recovered from juveniles. Recognizing the close connection between juveniles/youths and involve-

ment in criminal activity in general, ATF, working closely with federal, state and local agencies, developed a youth-focused firearms enforcement program called Youth Crime Gun Interdiction Initiative (YCGII). This program helps locate illegal suppliers of firearms to youth/juveniles and works to disrupt and curtail this market through comprehensive gun tracing and interdiction. ATF has the statutory authority to identify and arrest illegal firearms suppliers or criminal users and provide this information to prosecutors for judicial processing. Additional information regarding the YCGII can be found at: <http://www.atf.gov/firearms/ycgii/>. For assistance in requesting a crime gun trace, contact your local ATF point of contact (see Appendix for a comprehensive list of ATF offices).

SUCCESS STORIES

With the help of Online LEAD, the Metropolitan Nashville (TN) Police Chief obtained information that identified the individuals responsible for illegally trafficking a firearm used in the May 1996 murder of a fellow police officer. The firearm in question was one of approximately 400 firearms illegally trafficked by two people who were subsequently convicted by prosecutors for violations of the federal firearms laws.

Project Safe Neighborhoods Enforcement Training

ATF, through its partnership with the National District Attorneys Association (NDAA), International Association of Chiefs of Police (IACP) and the National Crime Prevention Council (NCPC) has designed a three-day training program to improve the level of crime gun interdiction and subsequent prosecution. Using a multi-disciplinary approach to instruction, the training builds professional partnerships between prosecutors, law enforcement and ATF special agents in a concerted effort to collectively use their resources to investigate and prosecute cases involving firearms traffickers and armed violent offenders.

Core elements of instruction focus on firearms trafficking, enforcement strategies, characteristics of armed persons, firearms identification, firearms tracing and crime gun analysis. This training also provides participants with in-depth instruction in applicable federal firearms statutes and a review of the firearms statutes of their own state. Prosecutors and law enforcement officers have an opportunity to analyze how best to initiate a gun crime case and appropriate prosecution strategies. Participants develop a clear understanding of what is required to successfully prosecute a gun crime case in either state or federal court. The program also includes one-day instruction for uniformed patrol officers that focuses on the characteristics of armed persons as well as firearms identification and tracing techniques.

A separate two-day executive track of instruction is designed for elected or senior state prosecutors, U.S. Attorneys, ATF Special Agents in Charge and senior law enforcement officers. This program brings together jurisdictional policy makers and enables them to discuss candidly how best to create and implement programs to combat violent crime. Participants analyze and develop strategies using Project Safe Neighborhood initiatives within their respective agencies to reduce gun crime within their communities. At the conclusion of the instruction, participants of this executive session report their findings to the other participants.

This training is available by contacting ATF's Office of Training and Professional Development (tel: 202-927-3130).

The American Prosecutors Research Institute (APRI) offers a series of training programs for prosecutors which relies upon the participation of ATF personnel. For more information about these APRI sponsored courses, contact APRI's Gun Violence Prosecution Program (tel: 703-549-4253, fax: 703-836-3195 or <http://www.ndaa-apri.org>).

Characteristics of Armed Persons

ATF, in conjunction with its Youth Crime Gun Interdiction Initiative, has formulated an instructional unit for prosecutors and law enforcement officers to sensitize them regarding the characteristics of armed

persons. This training breaks down elements of the appearance and movements of typical individuals carrying concealed weapons. Individuals who carry weapons often change their movements and behavior patterns to accommodate carrying the firearm. Experienced law enforcement officers often instinctively spot an individual carrying a concealed weapon but are not always at ease explaining to a jury why a defendant was investigated for weapons. This training program provides prosecutors with insight into the patterns of concealment, physical movement, and hand-off actions frequently associated with armed persons so that they may encourage law enforcement officers to better articulate these instincts in court.

In conjunction with its PSN Enforcement Training program, ATF offers detailed instruction in identifying the characteristics of persons who carry concealed firearms and many of the legal issues concerning stop and frisk actions. Emphasis in this training is placed on articulating probable cause as well as documenting observations.

Facts Worth Noting

- Only about 12% of traced crime guns were recovered from individuals who had purchased them legally from FFLs.
- Median “time to crime” (time from retail purchase to crime recovery) for handguns legally purchased from an FFL was 6.6 years; 15% of crime guns were recovered within one year of their original purchase; and 31% were recovered within three years of their first retail purchase.
- The median “time to crime” for handguns recovered from youths was 4.5 years after the original retail purchase. 9mm semiautomatic pistols accounted for 28% of the illegal handguns recovered from youths.

- Handguns comprised 77% of all traced crime guns. Four handgun types make up 60% of the handguns traced: 9mm semiautomatic pistols, .380 caliber semiautomatic pistols, .25 caliber semiautomatic pistols and .38 caliber revolvers.
- 62% of crime guns were recovered in the state of their original purchase; 35% were recovered within the same city as their initial purchase; and 12% were recovered in adjacent counties within the same state or in adjacent states.

Crime Trace Reports (2000), July 2002

Future Directions

Bradley A. Buckles, Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, has stated: “Gun crime is not primarily a federal problem. It is first, and foremost, a local problem faced everyday by police officers on the street.” Traditionally, the majority of gun criminals arrested by local law enforcement have been prosecuted by state or local prosecutors in state court. With the successful growth of Project Safe Neighborhoods and corresponding development of strong partnerships with their federal counterparts, it is increasingly important for state and local prosecutors to be aware of the services and programs of ATF.

APPENDIX

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) field divisions are located throughout the United States. Some of the field offices have jurisdiction in surrounding states. All field offices may be contacted 24 hours a day, seven days a week.

Below is an alphabetical listing of ATF field divisions and their main contact numbers as of 12.26.02.

Atlanta Field Division

(404) 417-2600

Baltimore Field Division

(410) 962-0897

Boston Field Division

(617) 557-1200

Charlotte Field Division

(704) 716-1800

Chicago Field Division

(312) 353-6935

Columbus Field Division

(614) 827-8400

Dallas Field Division

(469) 227-4300

Detroit Field Division

(313) 259-8050

Houston Field Division

(281) 372-2900

Kansas City Field Division

(816) 559-0700

Los Angeles Field Division

(213) 534-2450

Louisville Field Division

(502) 753-3400

Miami Field Division

(305) 597-4800

Nashville Field Division

(615) 781-5364

New Orleans Field Division

(504) 841-7000

New York Field Division

(718) 650-4000

Philadelphia Field Division

(215) 597-7266

Phoenix Field Division

(602) 776-5400

San Francisco Field Division

(415) 947-5100

Seattle Field Division

(206) 389-5800

St. Paul Field Division

(651) 726-0200

Tampa Field Division

(813) 202-7300

Washington Field Division

(202) 927-8810

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ATF forms and publications are available from: ATF Distribution Center, P.O. Box 5950, Springfield, VA 22150-5950 (tel: 703-455-7801) or website: www.atf.gov

To locate the closest ATF field office, check the website:
www.atf.gov/field/index/htm

RESOURCES

ATF Websites/Contact Information

Project Safe Neighborhoods	www.psn.gov
Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)	www.atf.gov
National Tracing Center (NTC)	
Firearms Tracing	(800) 788-7133
Crime Gun Analysis Branch	(304) 260-3640
Online LEAD	(304) 260-3664
Stolen Firearms Program	(304) 260-3685 or (888) 930-9275
Obliterated Serial Numbers	(304) 260-3673
Suspect Gun Program	(304) 260-3673
National Integrated Ballistic Information Network (NIBIN)	www.nibin.gov
Youth Crime Gun Interdiction Initiative (YCGII)	www.atf.gov/firearms/ycgii

Technical Assistance for Prosecutors

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