

**Senate Judiciary Committee Hearing
Executive Nomination
Michael J. Sullivan to be Director, Bureau of Alcohol, Tobacco, Firearms and
Explosives**

Responses to Questions from Senator Richard J. Durbin for Michael J. Sullivan

1. Crime gun trace information is vitally important for identifying leads in criminal investigations and for uncovering illegal gun trafficking networks. In a September 6 press release, ATF described firearms tracing as “a key component of ATF's enforcement mission.”

However, that same press release noted that “only about 30 percent of the crime guns recovered nationwide are submitted to ATF to be traced.”

On September 20, you were quoted in USA Today saying “there may be law enforcement agencies out there not asking for [trace data] because they don’t think they have access to it.” According to the article, you said that “conflicting interpretations of federal law may be contributing to false perceptions that police are no longer able to receive the information.”

It seems to me that given ATF’s enforcement mission, and given its position as a federal agency and as the repository of gun trace information, the burden should be on ATF to coordinate with state and local law enforcement agencies to ensure that all crime guns get traced. It also seems the burden should be on ATF to clear up false perceptions among the law enforcement community.

a) i. What guidance is ATF currently providing to law enforcement agencies about access to crime gun trace data?

RESPONSE: ATF has taken an aggressive approach to educate the law enforcement community, and the public at large, about access to crime gun trace data. Earlier this year, the Boston Herald published my letter to the editor that dispelled commonly held myths concerning the release of trace data. In my letter, I said: “Let me be clear: neither the congressional language nor ATF rules prohibit the sharing of trace data with law enforcement conducting criminal investigations, or place any restrictions on the sharing of trace data with other jurisdictions once it is in the hands of state or local law enforcement. In fact, multi-jurisdictional trace data is also utilized by ATF and shared with fellow law-enforcement agencies to identify firearm-trafficking trends and leads. Additionally, nothing prohibits ATF from releasing our own reports that analyze trace-data trends that could be used by law enforcement.”

To educate law enforcement on accessibility of trace data, ATF officials and I met with the International Association of Chiefs of Police Executive Committee and the Fraternal Order of Police to discuss this topic. Concurrently, ATF placed the aggregate trace data for all 50 states on the ATF website, prepared specific trace data for ATF Special Agents in Charge to release to the 56 Major City Chiefs, and I held a media roundtable to provide accurate information to the press. Additionally, the broad release of accurate information about data available to law enforcement partners resulted in the first State agreement with ATF to trace all recovered guns (New Jersey State Police). I believe these efforts to provide accurate information helped to clear up the false perception about access to trace data.

ATF also has published four brochures readily available to law enforcement agencies on ATF's website: www.ATF.gov.

Information for Law Enforcement Agencies (ATF Publication 3312.7) - ATF offers various documents through its National Tracing Center for law enforcement agencies (ie. *What is Firearms Tracing and Why Trace Firearms?*; *Stolen Firearms Program*; *Obliterated Serial Number Program*; *Record Search Request(RSR)*; *International Tracing Program*; *ACCESS 2000* etc).

Information for Industry Members (ATF Publication 3312.10) - *ATF is congressionally mandated to centralize the out of business records of Federal firearms licensees (FFLs). Federal statute requires FFLs to forward their records to ATF within 30-days of discontinuance and for the Out-of-Business Records Center to maintain records of FFLs, which are used in the firearms trace process.*

eTrace Internet-based Firearms Tracing and Analysis (ATF Publication 3312.9) - *ATF has provided law enforcement agencies with a paperless firearms trace submission system readily accessible through the internet. eTrace allows participating agencies to submit their trace requests electronically. More importantly, law enforcement agencies can monitor the progress of their traces and retrieve the trace results in real-time. Extra features of eTrace are the built-in utilities to query all firearms trace data submitted by an agency. Any agency can comprehensively trace their firearms and analyze on-line data.*

ATF Disclosure of Firearms Trace Data (ATF Publication 3312.11) - *In keeping with tradition to provide support to our law enforcement partners, ATF published a brochure in May 2007 to address frequently asked questions relative to trace data on crime guns.*

We will continue to reach out to our partners through meetings, articles, bulletins, and training.

ii. Will ATF publish any standards or procedures to make clear to law

enforcement what types of data they can ask for and what they can do with it?

RESPONSE: See above responses.

iii. If so, when will any such standards or procedures be issued?

RESPONSE: See above responses.

b) Please describe the specific steps that ATF is taking to ensure that all the crime guns recovered in this country will be submitted to ATF for tracing.

RESPONSE: In addition to the activities highlighted above, ATF continues to promote Project Safe Neighborhoods (PSN) and Violent Crime Impact Teams (VCIT). Both programs explain the value and encourage the tracing of all recovered crime guns. In addition, ATF continues to encourage the use of eTrace, which was officially made available to the law enforcement community in January 2005 and is being promoted as a fundamental tool of PSN and VCIT. ATF also offers training to law enforcement agencies on properly identifying firearms for accurate traces, and through this training and others (such as the PSN Enforcement Training) consistently and thoroughly encourages all law enforcement agencies to trace all recovered firearms.

2. Last August, I met with the head of ATF's Chicago Field Division, Special Agent Andrew Traver. Special Agent Traver told me that ATF's eTrace program not only makes the crime gun tracing process faster and more accurate, but ATF also offers eTrace for free to any law enforcement agency that signs up for it.

Special Agent Traver told me last August that most of the 1000-plus law enforcement agencies in Illinois had not started using eTrace. I began sending letters to Illinois police chiefs and sheriffs to tell them about eTrace and to encourage them to use it.

Prior to my letters, many of the chiefs and sheriffs in my state had never heard of eTrace., but as soon as they heard about it, they signed up. Within a few weeks after I sent out my letters, the number of Illinois law enforcement agencies using eTrace jumped by nearly 30 percent. By December 2006, I was informed by ATF that Illinois had become the state with the most widespread eTrace usage.

- a) eTrace is a powerful law enforcement tool, and police chiefs and sheriffs need to hear about it. Will you commit to contacting every law enforcement agency in the country to inform them about eTrace?**

RESPONSE: ATF will continue to highlight eTrace at every available opportunity and will endeavor to ensure that all law enforcement agencies are aware of its availability and capabilities.

As you may know, eTrace was officially made available to the law enforcement community in January 2005 and was promoted by ATF at the 2005 International Association of Chiefs of Police (IACP) conference in Miami, FL. The eTrace program was also recently promoted at the 2007 National Organization of Black Law Enforcement Executives (NOBLE) Annual Conference and was featured at the 2007 IACP Conference in New Orleans, LA. To date, there are more than 1,500 law enforcement agencies throughout the United States (and in a dozen foreign countries) who are actively utilizing eTrace in support of their investigative work. The ongoing effort of distributing eTrace is currently being coordinated through the responsible ATF field divisions and does require the completion of a standard Memorandum of Understanding (MOU). The eTrace MOU establishes an interagency agreement governing the access and use of eTrace.

Online firearms tracing via eTrace is currently being promoted as a fundamental tool through the Project Safe Neighborhoods (PSN) initiative. ATF, in joint partnership with the National District Attorneys Association (NDAA); the National Crime Prevention Council (NCPC); and the International Association of Chiefs of Police (IACP), has unveiled the "*Every Gun Tells A Story*" advertising campaign to promote online firearm tracing as a key component to the PSN initiative. PSN serves as "America's Network Against Gun Violence" and the "*Every Gun Tells A Story*" campaign encourages law enforcement agencies to do three things relative to crime guns; Recover It // Trace It // Solve It. Through this campaign, agencies are encouraged to contact their local ATF office if they are not currently tracing recovered crime guns online via eTrace. The eTrace program has also been featured in the IACP's Firearms Interdiction technical assistance newsletter.

- b) Will you commit to contacting regularly any agencies that have not yet signed up for eTrace?**

RESPONSE: ATF will continue to highlight eTrace at every available opportunity and will endeavor to ensure that all law enforcement agencies are aware of its availability and capabilities.

3. Like police chiefs and mayors throughout my state of Illinois, and like the Illinois State Chapter of the Fraternal Order of Police, I oppose the provision known as the “Tiaht Amendment” that has been included in recent CJS appropriations acts. I believe the restraints this provision puts on the use of crime gun trace data are unnecessary, and are a hindrance to good law enforcement practices.

I am particularly troubled by the version of this amendment that has been included in this year’s Senate CJS appropriations bill. This version would require law enforcement officers to certify that the trace data they receive will not be used or disclosed by anyone for any purpose other than a bona fide criminal investigation or prosecution. A violation of this certification requirement could carry felony criminal penalties for the officer.

a) Do you support legislative language that would threaten police officers with a felony if they use ATF’s gun trace data for legitimate law enforcement purposes that do not quite fall within the term “investigation”?

RESPONSE: The Department of Justice does not believe that the “certification” language included in the Shelby Amendment imposes any new or additional requirement on law enforcement, because the current trace process already requires such a certification.

The Gun Control Act (GCA), 18 U.S.C. 923(g)(7) allows ATF to seek trace data only in connection with a bona fide criminal investigation. As a result, there has always been a requirement that law enforcement trace requests to ATF also be connected to a legitimate law enforcement investigation. In recognition of the GCA requirement, ATF’s trace request form requires the requesting agency to enter an NCIC crime code in connection with its trace request. That requirement is a form of certification that is already part of the trace process. If a law enforcement officer presently falsifies information on the trace data request form, he or she could be subject to prosecution under 18 U.S.C. 1001 in the same manner as anyone who lies on a federal form in any context. That is true under the current trace process, and is completely independent of any appropriations language.

b) i. In your view, what law enforcement activities would qualify as a “bona fide criminal investigation”?

RESPONSE: ATF will trace all firearms submitted by law enforcement agencies that contain the requisite information, including an NCIC Crime Code.

ii. Would crafting proactive anti-gang policing strategies qualify as a “bona fide criminal investigation”?

RESPONSE: To assist local law enforcement in crafting proactive anti-gang policing strategies, ATF would provide aggregate trace data that includes information such as recovery locations, time-to-crime, top source states, firearm types, and crimes associated with traces.

iii. Would compiling statistics on model and make of guns used in crime qualify as a “bona fide criminal investigation”?

RESPONSE: Such information could be included in aggregate trace data as described above.

In a September 6 press release, ATF says: “ATF is committed to providing critically important trace data to law enforcement agencies who seek our assistance....we must make certain that our efforts remain focused on criminal investigations, including the analysis of comprehensive crime gun trends and patterns.”

c) Does this statement mean that ATF has concluded that analysis of crime gun trends and patterns falls within the meaning of the term “criminal investigation”?

RESPONSE: ATF believes that the Tiahrt Amendment does not prevent ATF from providing trace data to cities to identify trafficking patterns and trends. For example, ATF’s Violent Crime Analysis Branch (VCAB) analyzes aggregate firearm trace data to determine any trends and patterns relative to firearms trafficking schemes. VCAB will supply these studies or reports to ATF Field Divisions and Federal, State and local law enforcement agencies for studies relative to their respective jurisdiction. These reports typically contain, among other things, information about recovery locations and source states.

4. This August, ATF began publicly releasing aggregate crime gun trace reports for each state. These are the first public reports of this type since 2002, and they are helpful in showing gun trafficking trends. The release of these reports is a welcome development, and I hope these reports will be released on a regular basis.

Recently, ATF also issued a public report analyzing crime gun traces in one city - New York City. However, according to ATF's Illinois report, the City of Chicago recovered more crime guns in 2006 than New York did- 8,367 guns in Chicago, compared to 7,059 in New York.

a) Will you arrange for the public release of a trace report on crime guns recovered in the City of Chicago?

RESPONSE: Yes. ATF will release to the public an aggregate report on crime gun traces in the City of Chicago.

b) Will you arrange for the public release of trace reports on crime guns recovered in other major metropolitan areas?

RESPONSE: Yes. ATF intends in the future to release to the public aggregate trace data reports on crime guns recovered in other major metropolitan areas.

5. The state-by-state trace reports that ATF issued in August 2007 provide a general breakdown of the types of crime guns recovered in each state. For example, each report lists the numbers of pistols, revolvers, rifles, etc., that were recovered in 2006.

Legislators find this information about crime gun types useful, because it informs our policymaking. If these state trace reports broke down the crime gun types by make and model of gun, that would be even more useful.

For example, a September 15 Associated Press article quoted Miami police officers as saying the number of assault weapon crimes "seems to be increasing every year." Trace reports that break down crime gun data by make and model would help legislators determine whether this perception is borne out by the data. If police officers are being outgunned by criminals, we in Congress want to know about it, and we want to be able to make informed decisions in response.

a) Will ATF provide legislators, upon request, with reports on recovered crime guns, broken down by make and model?

RESPONSE: In response to requests from individual Members of Congress, ATF will provide existing aggregate trace data studies and reports that do not contain law enforcement sensitive information. With respect to requests for customized reports, it is the policy of ATF to accommodate Congress by providing information through the Chair and Ranking Member of committees of jurisdiction. ATF recognizes that Congress

conducts its oversight of the executive branch through its committees, which act through their chairmen, and we seek to accommodate their needs. In doing so, we provide documents to both the Chair and the Ranking Member of the committee.

b) Will ATF publish standards or guidance on the types of aggregate trace information that can be disclosed to legislators?

RESPONSE: As a general rule, ATF defines aggregate trace data as information that does not reveal the specific underlying trace results that identify, among other things, the retail FFL and first retail purchaser, which is law enforcement sensitive and may be part of an ongoing investigation. The information provided would include information such as recovery locations, top source states, and crimes associated with traces.

c) Will ATF publish standards or guidance on the types of aggregate trace information that can be disclosed to law enforcement?

RESPONSE: In May of 2007, ATF published a pamphlet explaining our policy on the disclosure of firearms trace data (ATF form 3312.11). This document provides guidance as to what types of trace information can be shared with law enforcement. It states that a law enforcement agency with jurisdiction can obtain a comprehensive analysis of its firearms trace data to determine any trends or patterns relative to firearms trafficking schemes, including geospatial analysis of crimes and recovery locations, source states, FFL, and first purchaser. We have distributed this document to our partners in State and local law enforcement and at meetings of the International Associations of Chiefs of Police, the Fraternal Order of Police, and the Major Cities Chiefs. In addition, it is available on our web site.

d) Will ATF publish standards or guidance on the types of aggregate trace information that can be disclosed to the public?

RESPONSE: The information we provide the public would include information about recovery locations, time-to-crime, top source states, and crimes associated with traces. Examples of publicly available information are available on the ATF website.

6. In your testimony before a Senate Appropriations subcommittee earlier this year, you said that “to successfully fight violent crime, it is essential to prevent the illegal flow of firearms to criminals.”

I agree. It is an unfortunate fact that there are federal firearms licensees (FFLs) who knowingly sell or supply guns to gang members and other criminals. It is imperative that we break these supply chains and keep guns out of the hands of those who are prohibited from using them.

a) How many inspections of FFLs did ATF conduct in FY 06?

RESPONSE: In FY 06, ATF conducted 7,295 compliance-type inspections. Of these, 4,497 were compliance inspections and 2,798 were special assignments such as theft investigations and industry seminars. ATF also conducted 4,969 application inspections.

b) How many FFLs overall were there in FY 06?

RESPONSE: As of October 10, 2006, there were 107,316 Federal firearms licensees.

c) What criteria does ATF use to determine which FFLs it will inspect over the course of a year?

RESPONSE: ATF uses many different criteria in determining which FFLs to inspect including but not limited to: compliance history, the number of crime gun traces involving an FFL, the time since its last inspection, and the type of license, e.g. ATF is currently engaging in a 3-year initiative to inspect all pawnbrokers.

d) Does ATF look at crime gun trace data to see where investigative resources might best be focused?

RESPONSE: Yes, crime gun data is a key component of ATF’s FFL inspection program.

e) In FY 06, how many FFLs were found during inspections to have committed one or more violations of law?

RESPONSE: ATF conducted 4,497 compliance inspections in FY 2006. Of these, 2,218 inspections (49.3 percent) had no violations. The remaining 2,279 (50.7 percent) had violations disclosed during the inspections.

f) How many FFLs had their licenses revoked in FY 06?

RESPONSE: ATF revoked a total of 115 FFLs in FY 06, out of an FFL population of approximately 107,000.

g) ATF reports that 1,526 ATF-referred defendants were convicted in firearms trafficking cases in FY06. How many of these individuals were federal firearms licensees?

RESPONSE: Ten of the 1,526 defendants were FFLs.

h) Does ATF believe it is adequately identifying and prosecuting those FFLs who are knowingly supplying guns to gangs and criminals?

RESPONSE: ATF makes efficient use of its resources through targeted strategies and the integration of its industry operations, criminal enforcement, intelligence, forensic and technological capabilities. ATF's top priorities and responsibilities include identifying FFLs who are suspected of illegally supplying guns to violent criminals, gangs, and to prevent the flow of firearms to organized crime groups. This approach is highlighted in such strategies as Operation Gunrunner along the Southwest Border and the Violent Crime Impact Teams.

i) If the answer to question "h" above is no, what more can Congress do to help?

RESPONSE: ATF believes it is making effective use of its resources.

7. Last year, I was informed by ATF that many gun owners do not keep a written copy of their gun's serial number in a location separate from the gun itself. This becomes a

problem when a gun is stolen, because the owner cannot report the serial number of the stolen gun to the police. If that gun is later used in a crime, the ATF trace on that crime gun will often link back to the innocent owner who had a gun stolen. This is a headache that innocent gun owners would like to avoid.

In February, I wrote you to ask if ATF would be willing to provide each gun purchaser with a document that recorded the serial number of the gun.

In your response, you said that ATF publishes a "Personal Firearms Record" form which it encourages gun owners to use. This form provides a place for the owner to list the gun's serial number and other information that would be valuable to give to the police if the gun is stolen.

It seems that widespread use of this form would be helpful to law enforcement and to gun owners who might have their guns stolen. While gun owners need not be forced to keep this form, it seems that we should at least make sure that each gun buyer is given a form and is encouraged to retain it.

What steps has ATF taken to make sure that every gun owner is given one of these Personal Firearms record forms and is advised about its usefulness? Please describe each step in detail.

RESPONSE: ATF encourages FFLs to distribute the Personal Firearms Record (ATF form 3312.8) to their customers by suggesting that the FFL put their business stamp on the form so customers have a record and the place of purchase. New FFLs are provided all the forms and publications during their first inspection and advised on regulations and how to obtain additional forms. ATF is in the process of posting an open letter to all FFLs on the ATF website, as well as publishing an article in the next FFL Newsletter as a reminder to them to provide this handout to customers who purchase firearms. In addition, the form is available to everyone on ATF's Web site.