

Responses from Michael Sullivan to Questions from Senator Feinstein –

Question #1

In your letter to me dated August 31, 2007, you attached some responses to questions raised about ATF trace data sharing. In your Response to Statement 8, discussing whether ATF can give local police trace data about trafficking patterns, you discussed a bill that had been considered in the 109th Congress, H.R.5005. That bill had tried to limit ATF's trace data sharing to situations in which local law enforcement was seeking it for a bona fide investigation. You noted how the Justice Department had written to Chairman Sensenbrenner, proposing to amend this language, to replace "investigation" with "investigative purpose." You said "this proposal was made specifically to address the issue of aggregate analysis."

- The Tiahrt provision contained in the latest Senate CJS Appropriations bill, as reported out of Committee, would similarly allow ATF to share gun trace data only if a local law enforcement agency certified that it was being sought "solely in connection with a bona fide criminal investigation or bona fide criminal prosecution." Wouldn't this language, just like H.R.5005, restrict ATF's ability to provide aggregate analysis to state and local law enforcement agencies?

RESPONSE: ATF has always believed that the Tiahrt Amendment does not prohibit the publishing of studies or reports of aggregated trace data. In every appropriation since 2003, Congress also has enacted language requiring that ATF Tracing Studies contain a disclaimer making it clear that trace data cannot be used to draw broad conclusions about firearms-related crime (Section 621 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, P.L.109-108). The inclusion of this provision indicates that ATF may publish tracing studies or reports. Moreover, 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.

- If so, why hasn't ATF yet spoken out against this provision, as it did with H.R.5005?

RESPONSE: See response to above question.

- Do you agree that this Committee-reported language should be changed, so that, at a minimum, the word “investigation” should be replaced with “investigative purpose”?

RESPONSE: The Department of Justice has indicated its support for replacing the word “investigation” with “investigative purpose.”

- Do you have any other concerns about the Tiarht provision contained in the CJS Appropriations bill as reported out of Committee?

RESPONSE: In every appropriation since its inception in 2003, Congress also has enacted language requiring that ATF Tracing Studies contain a disclaimer to make it clear that trace data cannot be used to draw broad conclusions about firearms-related crime (See, e.g., Section 621 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, P.L. 109-108). The inclusion of this provision indicates that ATF may publish tracing studies or reports. If this trace study exception was not included in the appropriations, then ATF could no longer provide these types of data releases to the general public, researchers, or public policy makers. The bill, as reported by the Senate Appropriations Committee, does not contain any comparable provision. As a result, the bill may prevent ATF from continuing to publish non-law enforcement sensitive aggregated trace data reports for the benefit of Congress, our research partners, and the public.

Senator Feinstein – Question #2

In your letter's Response to Statement 11, describing how ATF had denied Senator Lautenberg requested gun trace data, you noted that the Department has "amended its interpretation" of Tiahrt, to allow ATF to respond to requests for aggregate trace data "from chairs of congressional committees with oversight over ATF." You then noted that, since Chairman Mikulski had approved the request, Senator Lautenberg has now been provided with the data he requested.

- While I am pleased that Senator Lautenberg received his requested information, what is it in Tiahrt, or any other provision of law, that allows ATF to share gun trace data only with the chairman of the committees that oversee it, and not other members of those committees who are similarly charged with such oversight responsibilities?

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.

- Why do you believe that a Senator or Congressman seeking ATF trace data information for policymaking purposes should be required to obtain the committee chairman's approval before he can obtain that information – particularly since that chairman may one day be a member of a different political party?

RESPONSE: See response above.

Senator Feinstein – Question #3

- Please explain why you believe it has been appropriate, and in the best interest of the citizenry, for you to have simultaneously served as both United States Attorney for the District of Massachusetts and as Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives?

RESPONSE: First, I am honored that the President of the United States nominated me as U.S. Attorney, and as Acting Director of ATF, and it has been a privilege to serve in both capacities.

Certainly the dual responsibilities have been challenging, but not impossible, and I remain closely involved with all matters at the U.S. Attorney's Office. I am only a phone call, e-mail or flight away. I believe that my experience in Washington, D.C., has assisted me in being more effective as a United States Attorney because I better understand the Department, its priorities, and its available resources. In turn, I believe that my experience in the field, both as the U.S. Attorney and as a local prosecutor, has helped inform my management of ATF.

I am fortunate to have exceptionally talented and committed people in both offices. These dedicated career Assistant U.S. Attorneys and law enforcement officers understand our priorities and have a commitment to serving the people of the United States. The staff, both at the U.S. Attorney's Office and ATF, are doing an exceptional job of assisting me with leading and managing the respective offices.

- During this period of simultaneous service, please describe the portion of your work hours that you have devoted to each of these jobs, and an estimate of how many days each month you have been physically located in Washington, D.C. instead of Massachusetts.

RESPONSE: Typically, I spend 20 to 30 percent of my time on United States Attorney responsibilities and 70 to 80 percent of my time on ATF responsibilities. Of course, depending on the events of a particular day, these percentages can vary substantially. Furthermore, I spend approximately 14 to 17 days per month in Washington, DC, or traveling on ATF business.