



LEGISLATIVE ANALYST REPORT

To: Members of the Board of Supervisors
From: Gabe Cabrera, Office of the Legislative Analyst (OLA)
Date: December 19, 2007
Re: **Crime Gun Tracing** (BOS File No. 070537) (OLA No. 024-07)

SUMMARY OF REQUESTED ACTION

The San Francisco Board of Supervisors approved a motion introduced by Supervisor Dufty requesting the OLA to identify the characteristics of successful firearm tracing programs that link suspects with crime guns and detect patterns in illegal gun trafficking.

EXECUTIVE SUMMARY

Like effective firearm tracing programs in Los Angeles, New York City, Oakland and Washington, DC, which are surveyed in this report, the Crime Scene Investigations (CSI) Unit within the San Francisco Police Department (SFPD) engages in the practice of comprehensive tracing by submitting all recovered firearms in San Francisco to the National Tracing Center (NTC), which is a component of the U.S. Treasury Department's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and retrieving completed traces to assist criminal investigations and prosecutions.

It is important to note that of the six Federal Firearms Licensees (FFLs)¹ currently doing business in San Francisco, only one is a retail gun dealer. The other five are auction service houses, a curio dealership, a gun repair shop and the San Francisco Opera that is licensed in connection to its "props". Therefore, it is unlikely that many crime guns originate from San Francisco. However, the Board of Supervisors may wish to ask the SFPD to tabulate the source of crime guns in the City and report its findings to the Board.

The SFPD's approach to comprehensive tracing currently relies on one Police Inspector titled "Firearms Analyst" in the CSI Unit to submit single and sometime multiple trace requests to NTC and to review each completed trace with an eye for identifying signs of illegal gun trafficking, such as of partially or completely obliterated serial numbers of firearms, of multiple sales of firearms to a single purchaser and of multiple traces to the same FFL. The Firearms Analyst then forwards all trace-related information to the appropriate Police Inspector conducting the investigation involving the recovered firearm. If the gun has a short "time-to-crime" (i.e., the length of time from point of retail sale to crime), was purchased out-of-state and/or as part of multiple sales transaction, the Firearms Analyst also forwards the case to ATF's Field Division in

¹ A FFL is any person, partnership or business entity that holds a valid license issued by ATF that allows the licensee to engage in the business of dealing in firearms (i.e., manufacturing, importing, repairing or pawnbrokering).

San Francisco, which has the authority and enforcement resources to conduct lengthy as well as inter-state investigations.

The Legislative Analyst recognizes that this approach has successfully served the City to date. It has linked suspects to their weapons as well as detected signs of illegal gun trafficking. However, it may not do so in the future, especially if the Firearms Analyst fails to recognize a particular crime gun pattern from disparate traces or if local circumstances change (i.e., if the numbers of FFLs, unlicensed sellers, straw purchasers and/or stolen firearms increase). The research literature on comprehensive tracing advises law enforcement agencies to not only submit all recovered firearms to NTC but also to analyze aggregate trace results to identify crime gun patterns, which may not be apparent in a single trace or traces. By identifying these patterns, law enforcement officials can target their enforcement resources and develop strategic responses to gun crime.

To be double assured that illegal gun trafficking is identified in San Francisco whenever it occurs, the Board of Supervisors may wish to ask the SFPD to begin to analyze aggregate trace results for crime gun patterns while continuing to review single traces for signs of such trafficking. The SFPD may thereafter choose to adjust its enforcement strategies if necessary. This is a policy matter for the Board.

BACKGROUND

Crime Gun Tracing

A “crime gun” is any firearm that is illegally possessed, used in a crime or suspected to have been used in a crime. A crime gun trace is a law enforcement tool developed by ATF that identifies the original seller of the firearm and the firearm’s original purchaser by tracking the manufacturer, caliber and serial number on transfer documentation from the manufacturer/importer through the wholesale/retail FFL to the original purchaser. The purpose of crime gun tracing is twofold, as follows.

- First, it can assist law enforcement agencies to trace most recovered firearms to their original purchasers.² However, staff within the SFPD’s Bureau of Investigations advised the OLA that the original purchaser of a firearm is rarely also its criminal possessor. Thus, SFPD Inspectors must interview the original purchaser to find out what he or she did with the gun. The inspectors then interview the next owner, as reported by the first one, and so on. They continue to do this until they have traced the gun to its recovery, if possible.

² Of the 88,570 requests for firearm traces from select U.S. cities in 2000, 77,250 (87%) resulted in traces initiated by NTC. The other requests were not initiated largely because they identified firearms manufactured prior to the federal Gun Control Act of 1968. This law requires all newly manufactured firearms to bear a serial number. As a result of the 77,250 requests for which a trace was initiated, 47,478 purchasers (54% of all requests and 61% of all initiated traces) were identified. Most of the other requests terminated at either a) the manufacturer/importer stage due to incomplete or inaccurate information about the serial number or b) the wholesale/retail dealer stage because the dealers reported that they had no records on the firearms.

- The second function of firearm tracing is the identification of patterns of illegal gun trafficking. When NTC traces all recovered firearms for law enforcement agencies, it can furnish information about crime gun patterns and trends in their areas.³ With this information, law enforcement agencies can target their enforcement resources and develop strategic responses to gun crime.

Law enforcement agencies can submit firearm trace requests to NTC via mail or facsimile using ATF's Firearm Trace Request Form, or through the eTrace system. This system allows participating law enforcement agencies to submit, via the Internet, firearm trace requests to NTC. It also provides the utilities for querying all firearm trace related information relative to a participating law enforcement agency. Regardless of how they are submitted, all firearm trace requests are completed by NTC at no charge to participating law enforcement agencies.

Illegal Sources of Crime Guns

The term "illegal gun trafficking" refers to the diversion of firearms out of lawful commerce and into the hands of prohibited persons (i.e., convicted felons and juveniles). To stop the illegal gun trafficking, law enforcement agencies have developed strategies to address the following problems:

- Unscrupulous FFLs – Any FFL that knowingly sells firearms to prohibited persons. As previously mentioned, there is only one retail gun dealer in San Francisco. Therefore, it is unlikely that many crime guns originate from the City.
- Straw purchases – The acquisition of firearms from a FFL by an individual (the "straw") for the purpose of concealing the true identity of the intended receiver of the firearms.
- Stolen firearms – The theft or loss of firearms from individual residences or FFLs. By law, all FFLs must report the theft or loss of any firearms from their inventories to both ATF and local law enforcement within 48 hours. However, many private citizens do not maintain a record of the serial numbers of their firearms. When these firearms are stolen from individual residences, their owners cannot properly identify them to law enforcement. As a result, many stolen firearms enter illicit markets as undocumented and undetectable.
- Unlicensed sellers – The federal Gun Control Act of 1968 provides that any person who makes "occasional sales, exchanges or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his/her personal collection of firearms" is **not** required to obtain a firearms license. Still, California law requires all gun transfers between private parties to occur through a licensed FFL.⁴

CURRENT LAW & PRACTICE

The Crime Scene Investigations (CSI) Unit within the SFPD's Forensic Services Division is responsible for crime gun tracing, as well as crime scene processing, latent finger/palm print

³ Because the Tiahrt Amendment restricts cities' access to crime gun data from *neighboring jurisdictions*, ATF can report findings to us only for the City and County of San Francisco. This amendment has been attached to the annual U.S. Justice Department appropriations bill since 2003.

⁴ California Penal Code, Section 12070-12086.

analysis and forensic computer/video analysis. Since 2003, the unit has engaged in comprehensive tracing by submitting all recovered firearms in San Francisco to NTC. The unit submits approximately 1,100 gun trace requests per year. Of these, approximately 900 are for recovered crime guns and the remaining are for firearms that are simply “turned in” by private citizens.

Crime Gun Tracing

To initiate a trace of a gun, one Police Inspector titled “Firearms Analyst” within the CSI Unit submits a trace request to NTC through eTrace. NTC then communicates the request to the gun manufacturer and documents to the extent possible the chain of wholesale/retail transactions from point of sale to the original purchaser. The Firearms Analyst accesses the completed trace online.

A completed trace may also include “time-to-crime” (i.e., the length of time from point of retail sale to crime), the source of the firearm (i.e., same county, adjoining county, other county or other state) and whether the firearm was purchased as part of a multiple sales transaction (a trafficking indicator).

The Firearms Analyst reviews each completed trace. The analyst then forwards all trace-related information to the appropriate Police Inspector conducting the investigation involving the recovered firearm. If the gun is not recovered from its original purchaser, it has been transferred at least once. In which case, the Police Inspector must interview the original purchaser to track the firearm through the entire chain of transfers to the criminal possessor.

If the gun has a short time-to-crime, was purchased out-of-state and/or as part of multiple sales transaction, the Firearms Analyst also forwards the case to the ATF’s Field Division in San Francisco, which has the statutory authority and enforcement resources to conduct lengthy as well as inter-state criminal investigations.

Triggerlock II

In 1999, the U.S. Attorney’s Office for the Northern District of California launched “Triggerlock II”, a district-wide program whose goal is to prosecute firearm offenders in federal court when such prosecution is warranted. This exposes them to harsher penalties than those provided in the California Penal Code.

In San Francisco, the U.S. Attorney’s Office runs the program in collaboration with ATF and the SFPD. Currently, two FTE Inspectors from the SFPD’s Bureau of Investigations serve as liaisons to ATF’s office in San Francisco. Their primary role is to review all arrest cases involving felons in possession of firearms to determine if they meet the criteria for prosecution under Triggerlock II.

Triggerlock II and its predecessor “Operation Triggerlock” have been very successful, according to staff in the Bureau of Investigations. For example, in a case first uncovered by the SFPD, a federal grand jury recently indicted two individuals on charges related to the straw purchase of 58

firearms in the State of Arizona.⁵ The indictment was the result of an 11-month investigation by two separate U.S. Attorney Offices, ATF and the SFPD.

Other Activities

The Firearms Analyst also provides a weekly report to the SFPD's command staff that summarizes the number of firearms recovered by police district (A through J) and type of weapon (i.e., pistol, rifle and shotgun). While this helps command staff to key-in on areas of the City with high proportions of gun activity, it may not necessarily alert them to patterns of illegal gun trafficking.

The SFPD's Criminalistics Laboratory test-fires all recovered firearms in San Francisco and enters fired cartridge casing and bullet images into the National Integrated Ballistics Information Network (NIBIN). Fired cartridge casings and bullets recovered at crime scenes (in the absence of a firearm) can provide the basis for a crime gun trace but only if the gun with which they are associated has been previously traced and a cartridge casing or bullet from that firearm is entered into NIBIN.

OTHER JURISDICTIONS

In conjunction with the Supervisor's staff, the OLA identified effective firearm tracing programs in Los Angeles, New York City, Oakland and Washington, DC. Although their local circumstances are different from each other's and San Francisco's, they share a common characteristic that they analyze aggregate trace results to identify crime gun patterns. Based upon these patterns, each develops strategic responses to gun crime. Incidentally, all of these cities participated in ATF's now defunct "Youth Crime Gun Interdiction Initiative" (YCGII) program.⁶

Los Angeles

In 2004, the U.S. Justice Department and ATF selected 15 cities, including Los Angeles, to implement the Violent Crime Impact Team (VCIT) initiative.⁷ The goal of this initiative was to reduce the number of homicides and other firearms-related violent crime in targeted areas or "hot spots" in those cities.

To form the Los Angeles VCIT, ATF assigned 10 ATF Special Agents plus personnel from other federal agencies to work with personnel from the Los Angeles Police Department (LAPD), the Los Angeles County Sheriff's Department (LASD) and other local agencies. The VCIT target areas are two local police divisions, covering approximately 20 square miles, mainly in south Los Angeles.

⁵ Press Release, U.S. Attorney's Office for the Northern District of California, October 2, 2006.

⁶ In July 1996, President Clinton launched YCGII in 17 cities to help trace crime guns to their source, as well as to identify and arrest armed criminals and those that illegally supply firearms to youth. By 2000, the number of cities participating in YCGII increased to 55 cities.

⁷ By 2005, the number of cities participating in VCIT increased to 20 cities.

Incidentally, firearms recovered in Los Angeles often originate from the neighboring U.S. States of Nevada and Arizona. Both have liberal gun laws. Because San Francisco is geographically further from these states, it is somewhat shielded from this particular type of illegal gun trafficking, according to staff with the SFPD's Bureau of Investigations.

According to LAPD personnel, through the analysis of crime gun trace results obtained from ATF's NTC, NIBIN and the Violent Crime Analysis Branch as well as traditional leads and investigations, Los Angeles VCIT identified, arrested and prosecuted a number of gang members, parolees and others who were responsible for firearms-related crimes in the target areas.⁸ This had a positive impact on crime in Los Angeles. For instance, a U.S. Justice Department 2006 report entitled "*Violent Crime Impact Teams (VCIT) Initiative: Focus on Partnerships*" indicates that there was a decrease in the number of homicides and firearms related violent crimes in the target areas during the first five months of 2005 (during VCIT) as compared to the first five months of 2004 (pre-VCIT). The report does not quantify the size of this decrease.

Los Angeles VCIT recently announced the arrests of 22 members of the "*Neighborhood Crips*" gang in south Los Angeles on firearms charges as well as narcotics and counterfeit currency charges.⁹

New York City

During the early 1990's, the collection and analysis of crime gun trace results enabled the New York City Police Department (NYPD) to learn that firearms supplied by FFLs which were not in compliance with local requirements often contributed to violent crime in New York and elsewhere.

In 1994, NYPD's License Division teamed with ATF to create the Firearms Licensee Application Inspection and Review (FLAIR) program, which provides new and/or renewal FFL applicants with information about local licensing requirements (some of the most stringent in the country) and thus discourages them from pursuing FFLs.¹⁰

Prior to FLAIR, only 29 of the 950 FFLs in the city were in compliance with local requirements. Since it was implemented, FLAIR has discouraged literally hundreds of individuals from pursuing FFLs. For instance, of the 248 new applications received by ATF from 1994 to 1997, 236 were withdrawn or abandoned, six were disapproved, four were approved and two were still pending investigation at the time. FLAIR also reduced the total number of FFLs operating in the city. In 1992, there were 987 FFLs in the city, and by 1996, there were only 205, which represents a drop of 79%.

Of course, San Francisco's local circumstances are different from New York's. Whereas New York's FFLs number in the hundreds, San Francisco has a total of six FFLs, of which, only one is a retail gun dealer. Based upon this dearth of existing FFLs in the City alone, it is unlikely that

⁸ Telephone interview with LAPD Detective Samuel McCauley, September 19, 2007.

⁹ Richard Winton, "*Feds raid L.A. in Crips' gang sting*", Los Angeles Times, April 12, 2007.

¹⁰ In 1994, the U.S. Congress changed the federal firearms licensing law to require ATF to ensure that licensees are in compliance with state and local laws as a condition of receiving a FFL.

many individuals are currently pursuing gun dealer licenses in San Francisco. Therefore, NYPD's strategy of discouraging individuals from pursuing FFLs would be wholly unnecessary in the City.

The ATF's 2000 "*Crime Gun Trace Analysis Report*" for New York shows that FFLs located in the five boroughs of the city were the source of only 32% of crime guns purchased and recovered in the city, whereas an additional 49% of traceable guns recovered in the city were first purchased at FFLs in the southern U.S. States of Virginia, North Carolina, Florida, Georgia and South Carolina.¹¹ As of the writing of this report, NYPD had not yet responded to our request for whether it has used this information to target the specific illegal sources of crime guns from those areas.

Oakland

During the late 1980's and early 1990's, the Oakland Police Department (OPD) traced a large percentage of firearms used in violent crimes in the city to unlicensed sellers.¹² The city was also home to a large number of FFLs, many of whom were illegally selling out of their cars and homes.

To respond to these conditions, city officials began requiring all dealers to apply for a local police permit to sell firearms. Any applicant with a prior criminal record, ethical breaches and/or histories of mental illness is ineligible for a permit. At the same time, the OPD teamed with ATF to create the Firearms Licensee Compliance Program, which conducts comprehensive background investigations on new or renewal FFL applicants as well as ensures their compliance with local, state and federal gun laws.

OPD's Weapons Unit currently runs both the local permitting and compliance programs. Together these programs have reduced the total number of FFLs operating in the city. For instance, in 1994, there were 57 in the city and by 1996, there were only six (consisting of two retail gun stores and four pawnshops).¹³

Here, too, San Francisco's local circumstances are different from Oakland's. Whereas a large number of FFLs operating in Oakland (both legally and illegally) prompted the city to implement local permitting and compliance programs, San Francisco has only six FFLs and by the SFPD's estimation, all of them are in compliance with local, state and federal gun laws. Therefore, it would be entirely unnecessary for the SFPD to implement local permitting and compliance programs like those in Oakland.

Washington, DC

As a result of strict regulations on the sale and possession of firearms in Washington, DC, there were no firearms originating from that jurisdiction in 2000.¹⁴ Since September 1979, local law

¹¹ U.S. Treasury Department, ATF, YGCII, *Crime Gun Trace Report, New York, New York*, July 2002.

¹² Oakland Municipal Code, Title 5, Chapter 5.25 (Firearms Dealers).

¹³ U.S. Justice Department, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, "*Promising Strategies To Reduce Gun Violence*", February 1999.

¹⁴ U.S. Treasury Department, ATF, YCGII, *Crime Gun Trace Report, National Report*, July 2002.

has prohibited the ownership and possession of handguns, short-barreled rifles, sawed-off shotguns and machine guns. Long guns and pistols validly registered to the current owner prior to September 1979 remain legal in DC. It is therefore not surprising that FFLs in the neighboring States of Maryland and Virginia were the sources of 59% of the traceable crime guns recovered in DC.¹⁵ Nor is it surprising that the city has used this information to develop strategic responses to gun crime.

In July 2007, DC and Maryland law enforcement officials and prosecutors teamed up to create a regional partnership entitled the District of Columbia-Maryland Gun Trafficking Task Force to target the specific illegal sources of crime guns from their areas. This regional partnership specifically works to share crime gun data and resources (to the extent possible under the latest Tiahrt Amendment) and to develop a plan of action that is adaptable by region and participating law enforcement agencies.

The DC-Maryland Gun Trafficking Task Force joined an already established task force between the State of Maryland, the City of Baltimore and Baltimore County. This task force has had some successes. For instance, it recently conducted a search of a convicted sex offender's home and seized 38 weapons.¹⁶

Washington DC's local circumstances, where no firearms originate from that jurisdiction, parallels San Francisco's insofar as there is only one retail gun dealer in the City. Therefore, it is unlikely that many firearms originate from San Francisco. From this perspective, a regional law enforcement partnership among law enforcement agencies in the Bay Area, like the DC-Maryland Gun Trafficking Task Force, may help to identify opportunities for intervention on the supply side of illegal firearm trafficking. However, more analysis of San Francisco's crime gun trace data is required prior to determining that this strategy is appropriate for the City.

CONCLUSION

The Legislative Analyst recognizes that the SFPD's approach to crime gun tracing has successfully served the City to date. It has linked suspects to their weapons and detected signs of illegal gun trafficking. However, it may not do so in the future, especially if the Firearms Analyst within the Department's CSI Unit fails to recognize a particular crime gun pattern from disparate traces or if local circumstances change (i.e., if the numbers of FFLs, unlicensed sellers, straw purchasers and/or stolen firearms increase). Therefore, the Board of Supervisors may wish to ask the SFPD to begin to analyze aggregate trace results for crime gun patterns in San Francisco while continuing to review single traces for signs of illegal gun trafficking. The SFPD may thereafter choose to adjust its enforcement strategies if necessary. This is a policy matter for the Board.

¹⁵ Ibid.

¹⁶ Press Release, DC Mayor Fenty, July 27, 2007.