

**ASSESSMENT AND POLICY RECOMMENDATIONS FOR DOMESTIC
ILLEGAL FIREARMS TRAFFICKING**

**A Paper
Submitted to The Graduate Faculty
of the
North Dakota State University
of Arts, Humanities and Social Sciences**

By

Frank Anton Heley

**In Partial Fulfillment of the Requirements
For the Degree of
MASTER OF SCIENCE**

**Major Department: Criminal Justice
Department Name: Criminal Justice and Political Science**

January, 2012

Fargo, North Dakota

ABSTRACT

This report examined the nature of domestic illegal firearms trafficking, including key features and predictors of firearms trafficking, and rationalizes the defining of domestic illegal firearms trafficking into three levels that are indicative of the seriousness and features inherent to the particular level of trafficking. This report also examined the scope of the trafficking situations at their respective levels, the means already being utilized to address firearms trafficking problems, and their effectiveness. Finally, this report recognizes that the differing levels of trafficking may require varied and differing efforts be used in combating firearms trafficking and policy recommendations involving both legislative and enforcement efforts are detailed at the respective levels of trafficking.

TABLE OF CONTENTS

ABSTRACT.....	iii
INTRODUCTION.....	1
Purpose.....	1
Scope of Trafficking.....	4
BACKGROUND.....	6
Notable Legislation.....	6
Literature Review.....	12
INDICATORS OF TRAFFICKING.....	29
Trace Data.....	29
TRAFFICKING ASSESSMENTS AND RECOMMENDATIONS.....	32
Low Level Firearms Trafficking Assessment.....	34
Low Level Firearms Trafficking Recommendations.....	48
Mid-Level Firearms Trafficking Assessment.....	53
Mid-Level Firearms Trafficking Recommendations.....	60
High Level Firearms Trafficking Assessment.....	63
High Level Firearms Trafficking Recommendations.....	68
SUMMARY AND CONCLUSIONS.....	71
REFERENCES.....	77

INTRODUCTION

Purpose

The purpose of this report is to examine the policies that address domestic illegal firearms trafficking in the United States. While crime in general has been on the decline, there are persistent factors that contribute to the maintenance of criminal activity. One is drugs and the other is firearms. In trafficking investigations and assessments, we see the two linked together. Firearms support drug trafficking operations and each trafficking operation can support the other operation financially. Because of the nature of drug trafficking, violence is often associated with it and firearms help perpetuate a cycle of violence. Firearms trafficking, while enabling guns to be put in the hands of street criminals, also has a broader scope as it arms drug trafficking organizations and other criminal and extremist groups. While firearms trafficking may seem ancillary to a problem like drug trafficking, it in fact supports criminal enterprises and without some way to restrict it, it allows a greater level of violence to be thrust upon law enforcement agents and citizens alike.

For this purpose, domestic illegal firearms trafficking will be defined as the illegal firearms trade that occurs both within the borders of the United States and illegal cross-border firearms trafficking to Mexico and Canada where the firearms originated in the United States. This is the definition that will be used throughout the report in reference to domestic illegal firearms trafficking. In the sections that follow, the report will detail the importance of studying U.S. trafficking policy. This report considers that in determining what effective policy is, that effectiveness be judged on whether the efforts made might be beneficial to limiting firearms trafficking. In examining the data and information available

on a number of efforts in limiting trafficking, there is little empirical evidence of how effective any particular program is in reducing firearms trafficking. It is with this consideration that, while this report will indicate what programs and efforts may be effective, it relies on the individual agencies to make the determination of how effective their efforts are.

It will be demonstrated that the scope of domestic illegal firearms trafficking is wide and varied and that there is a framework of U.S. law designed to address domestic illegal firearms trafficking that should be examined to determine if existing legislation is sufficient and effective enough to have an impact on trafficking. It will also be demonstrated that domestic illegal firearms trafficking contributes to violent crime, provides a means of engaging in illegal activity for individuals and criminal organizations, and fosters corruption. Further, this proposal will demonstrate that the lead agency in combating domestic illegal firearms trafficking, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), has engaged in practices and programs that could benefit from analysis of their effectiveness.

The U.S. government's policy to address this trafficking is two-fold. The first focus relies upon legislative remedies. The National Firearms Act (NFA) and the Gun Control Act of 1968 are two examples of laws that were enacted to limit the access of certain firearms to certain individuals. The report will examine whether these and other laws have been effective in limiting illegal trafficking and whether proposed legislative efforts will likely be effective. Recommendations will be made that should guide the crafting of effective legislation while roadblocks to effective passage and enforcement of legislation will be determined.

The second focus of U.S. policy is on utilizing law enforcement investigations and industry compliance to limit trafficking both within the borders of the United States and across the nation's borders to Canada and Mexico. Because the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) is positioned to be the lead agency in addressing firearms trafficking the report will examine the BATFE to see how effective the agency is in limiting illegal firearms trafficking. It will assess the effectiveness of their methods and programs that have and are being used to combat illegal firearms trafficking, and their ability to coordinate with other agencies at not just a federal level but also at a state and local level as well. Additionally, the report will examine the effectiveness of the BATFE's industry compliance and enforcement efforts and the roadblocks the Bureau faces in enforcement and intelligence gathering that are inherent in trafficking issues.

As will be demonstrated in the following section, the scope of the trafficking problem is wide and varied and the position of the author is that the examination of effective policy can best be accomplished by considering illegal trafficking as being composed of three levels. The author considers that, similar to drug trafficking, different levels of the trafficking involve different actors, with different motivations, and different means of accomplishing their specific goals. For example, procuring a firearm for an associate who is a felon may not be done for a primarily profit driven motive but rather as a favor. The motivations, means, and effort for this actor is certainly different than traffickers who seek to move larger quantities of firearms across state lines to generate illegal income. Because of these inherent differences, to address firearms trafficking it will be more efficient and effective to define the broader trafficking picture into levels dependent upon activity.

Low level trafficking could involve as little as a single illegal transaction, is most likely to be situated in cities, and is unlikely to extend beyond a particular state's border to any great degree. Mid-level trafficking involves a larger number of illegal transactions and likely involves interstate transport, more involvement from organized criminal groups, and possibly assistance and support from firearms dealers. High level trafficking is generated by shipping firearms in violation of U.S. export law across the borders of both Mexico and Canada. These shipment may also involve the transfer of firearms that are illegal to be exported or possessed, will likely involve large criminal organizations and their associates on one or both ends of the transaction, will require some degree of sophisticated, organized smuggling operation, and will likely involve a significant number of, or high market value, firearms.

By examining in more detail the features and conditions that are both unique and similar to these three levels of trafficking, more effective policies recommendations can be presented. Each of these levels will pose a unique challenge to law enforcement and will require different enforcement efforts and tools. These levels will be examined individually and this paper will seek to develop and refine more effective policy recommendations in both the legislation and enforcement focuses to address the different challenges the levels pose.

The author has had a life-long interest in crime and criminal activities and is well versed in criminal techniques, has been a firearms owner and enthusiast for over 35 years, and is currently a licensed private investigator with over 16 years of experience. From this background, the author has developed a wide and varied experience and knowledge base

concerning investigations, intelligence gathering, firearms law, illegal firearms, the nature of trafficking, and firearms in general, and will draw on this base throughout the paper.

Scope of Trafficking

The United States has the largest gun ownership per capita of developed nations, approximately 89 guns for every 100 U.S. citizens (Small Arms Survey, 2007). There are hundreds of manufacturers based in the United States. In 2008 they produced almost 1.4 million pistols and slightly more than 1.6 million rifles. The United States legally exported only about 54,000 pistols and 104,000 rifles from those totals in 2008 (BATFE 2010). Gun manufacturers in the United States range from large established domestic manufacturers like Strum Ruger and Remington to foreign manufacturers with domestic facilities like Heckler Koch and Beretta. In addition, a number of smaller firms with government contracts, specialty weapons manufacturers, small gun shops, and individuals who manufacture on a hobby basis all add to the sources of firearms in this country. There are over 55,000 federally licensed firearm dealers in the United States. Legal importation of firearms from other countries, most notably from former communist bloc countries, also provides a source for the firearm supply that currently exists.

The significant number of weapons and sources contribute to the illegal firearms trade in this country. This trade helps support and contributes to violent drug trafficking (Government Accounting Office, 2009) and violent street crime (National Institute of Justice, 1997) and it is this link that provides a justification for this avenue of research. Having a better understanding of trafficking and the means used to combat it is necessary to make informed policy recommendations which will enhance the efforts currently being made and have an effect on both trafficking and violent crime. The paper will focus on

trafficked weapons called small arms, which include semi-automatic pistols, shotguns, semi-automatic and fully automatic high capacity rifles, machine pistols, and sniper rifles (GAO, 2009, Violence Policy Center, 2009., National Institute of Justice, 1997, Royal Canadian Mounted Police, 2007). The sources of these weapons range from new and used weapons (from theft or purchase) to military stock and surplus (National Gang Intelligence Center, 2007). The destination of these weapons range from individuals restricted from firearm ownership (U.S. House of Representatives, 2006), domestic criminal gangs (Heinzmann, 2004), and cross border traffic to criminal gangs and drug cartels (Associated Press, 2011). The wide scope of illegal firearms trafficking suggests that efforts necessary to combat trafficking run the gamut of legislation, firearms industry compliance, and varied law enforcement operations and that these policy aspects are deserving of examination in order to insure they are being utilized in the most effective way.

BACKGROUND

To better inform the audience, this paper will examine the existing legislation that is intended to control the illegal domestic trafficking of firearms. The most pertinent laws will be explained and discussed to better assess their impact on trafficking. Additionally, a review will be conducted of assessments of the state of illegal trafficking as it applies to the United States. This review should provide justification for the need to examine the trafficking issue and possible avenues to address the problem.

Notable Legislation

Foremost in the discussion of illegal trafficking is defining the illegal activity and the illegality of the firearms themselves. The illegality may occur in transferring firearms to an individual restricted from firearm possession by any of the actors involved in the transfer itself, it may also occur through a transfer involving someone not appropriately licensed as a Federal Firearm Licensee (FFL). Additionally it may involve transfers that violate other conditions such as residency or a type of regulated firearm. Following is a brief examination of the laws currently in place, former laws and proposed legislation that define conditions of illegality, regulation, and possession relative to their effect on illegal domestic firearms trafficking.

The National Firearms Act (NFA) was the first significant legislative action to control access to firearms by individuals. It was enacted in 1934 with the intent to “curtail if not prohibit, transactions in NFA firearms”. (BATFE, 2009) These firearms are defined as destructive devices, silencers, machine guns, or short-barreled shotguns and short-barreled rifles (i.e. those firearms with barrels less than 18 inches long) and certain firearms described “as any other weapon” (typically meant to include firearms other than handguns

that could be concealed). In addition the law designated certain firearm or device parts as equivalent in terms of regulation to the device or firearm itself, for example a fire control device to switch action between semi and full auto is considered a machine gun. The NFA did not outlaw the possession of these weapons. NFA weapons may be purchased from a Class 3 firearms dealer following a thorough background check, fingerprinting, endorsement from the Chief Law Enforcement Officer in purchaser's area, and payment of a \$200 tax on each transfer and requires registration of the weapon with the BATFE. (BATFE, 2005). The NFA also provided regulations for manufacturers, importers, and dealers of these items. In passage of the law, because of Congress' concern about the use of these weapons in gangland violence, a \$200 tax was imposed on the transfer of these weapons in the hopes of dissuading individuals from purchasing them. The law spelled out a duty for those who transfer or who were possessors of NFA firearms to register these weapons and pay the tax. Because the intent of the law was to curtail ownership, the BATFE, after NFA weapons owners made good faith attempts to register these weapons, forwarded registration information on the owners to the state authorities who then prosecuted the owners for state law weapons violations (BATFE, 2005).

In 1968, the U.S. Supreme Court ruled that the act of registration violated the 5th amendment against self-incrimination, so an amendment to the NFA was crafted to address this issue and other ambiguities, the Gun Control Act (GCA) of 1968 (BATFE, 2009). This extensive law also defined who may import, export, and transfer (herein defined as including delivery, trade, barter, sale, give, and transport) weapons, the licensing process and regulations for Federal Firearms Licensees, and who may legally receive weapons. This includes definitions of age and in-state residency requirements as it generally prohibits

interstate transfers, even amongst private individuals unless through a FFL, and prohibited the possession of handguns by those under 21 years of age.

The law also defines which individuals are prohibited from possessing firearms. These are described as anyone under indictment or a convicted felon, a fugitive from justice, an unlawful user of or addicted to a controlled substance, those adjudicated as a mental defective or committed to any mental institution, anyone illegally in the United States, those dishonorably discharged from the armed forces, who renounced their citizenship, or are subject to a restraining order or convicted of a misdemeanor domestic violence offense (BATFE, 2005). That same year the Omnibus Crime Control and Safe Streets Act of 1968 prohibited interstate trade in handguns i.e. a resident from one state purchasing a handgun in another state and increased the minimum age for buying a handgun to 21 (BATFE, 2005).

Following the 1982 Senate Judiciary Subcommittee on the 2nd Amendment, the Firearm Owners Protection Act was enacted in 1986 to address some of the abuses of second amendment rights by improper prosecutions by the BATFE. While it loosened some restrictions on gun rights, like the interstate shipment of ammunition and long guns, one important revision was that it prohibited the possession or transfer of a machine gun by a non-licensee (with military and law enforcement exceptions) that was not registered (as an NFA weapon) prior to May 19, 1986. This law had a dramatic effect on the price of pre-ban machine guns, inflating their price to many times their true value, changing the market features related to transferring these weapons. In order to prevent harassment of FFLs the law also mandated that compliance inspections could only be conducted once a year. The

law also established that the U.S. government may not keep any registry linking non-NFA firearms to their owners or firearms transactions (BATFE, 2005).

However, it wasn't until the failed assassination attempt on President Ronald Reagan that a mechanism was put in place to prevent the purchase, or more inclusively the transfer, of firearms to the prohibited individuals defined in the Gun Control Act. This came about with the passage of the Brady Handgun Violence Prevention Act in 1993. It required all prospective firearms purchasers to submit to a background check, initiated by an FFL, and a five day waiting period. The National Rifle Association (NRA) opposed some conditions of the bill and in concession the waiting period was removed in 1998 and replaced by a computerized instant check system. As use of the National Instant Criminal Background Check System (NICS), managed by the FBI, became common, most checks are completed within minutes, although delays in confirming eligibility may result in no more than a three day waiting period. However the background check can be waived with certain exceptions like possession of state issued handgun permits, concealed weapon permits, or evidence of other local or state checks. The Brady Act prevents thousands of prohibited individuals from possessing firearms each year and over 100 million NICS checks have been performed over the past ten years resulting in the prevention of over 700,000 firearms transfers. (Federal Bureau of Investigation, 2011).

In 1994, The Violent Crime Control and Law Enforcement Act was passed, containing what is commonly called the Assault Weapons Ban. The law was in place for ten years and expired in 2004. The law banned the possession and transfer of semi-automatic rifles and machine pistols after the date of the enactment. The weapons were defined by manufacturer and model and other rifles were included if they were capable of

accepting detachable magazines and possessed two or more of a number of cosmetic features including a bayonet lug, telescoping stock, flash hiders, pistol grips, and grenade launchers. Pistols with detachable magazine were included if the magazine attached outside of the pistol grip, had a threaded barrel for attachments, a barrel shroud, or were a semi-auto version of a full auto weapon. Shotguns were included if they held more than five rounds, had a detachable clip, a pistol grip, or folding stock. The act also specifically banned high capacity magazines, defined as 10 rounds or more. During the ban, manufacture, except for military or law enforcement purposes, was also prohibited but remaining stocks of weapons and magazines manufactured before the ban were allowed to be sold.

Proposed Legislative Attempts

Through the mid 90's to the present, a number of federal legislative actions were submitted in an attempt to limit trafficking, increase sanctions on firearms violators, and redefine the illegality of certain items (Library Of Congress, 2011). From 2008 to the present, examples of bills include:

- Southwest Border Violence Reduction Act that sought to increase funding for BATFE's Project Gunrunner
- Border Reinforcement and Violence Reduction Act that sought to increase funding to investigate firearms trafficking and other unlawful activities on the Southwest border
- Gun Parts Trafficking Act that sought to make it illegal for anyone other than a manufacturer to assemble a firearm, prohibit shipping of gun parts that might be used to make a firearm, and increase the cost of manufacturers' licenses

- Gun Trafficking Penalties Enhancement Act that sought to increase the penalties of anyone who should have known a transfer was to a prohibited person, attempting to transfer a firearm knowing it will be used in a crime, traveling to another state to procure a firearm to use it in a crime, and being illegally engaged in the importation, manufacture or dealing in firearms, and to include firearms trafficking as a RICO offense
- Internet Gun Trafficking Act that sought to make offering a firearm for sale on the internet or operating a website that was primarily offering firearms for sale illegal
- End Gun Trafficking Act that sought to prohibit selling more than one firearm or attempting to buy more than one firearm in a 30 day period and increase the retention of background check records for three months
- Anti-Gun Trafficking Act that sought to prevent an individual from purchasing more than two firearms in a 30 day period and require dealers to submit a copy of the sellers identification and statement he is not a felon to the Chief Law Enforcement Officer in the purchaser's area
- Stop Gun Trafficking Act that sought to prohibit more than two hand gun sales in a 30 day period and modify the meaning of "engaged in business" to include any individual who transfers more than one handgun to a non-licensee in a 30 day period

There are a number of other bills similar in content and intent. They also share the fact that none have moved past committee (Library of Congress, 2011), precisely because of the political nature of enacting gun laws. A Republican controlled Congress dare not pass any laws restricting firearms so as to avoid the lobbying wrath of the NRA.

Literature Review

Low Level Trafficking and Street Crime

The extent of trafficking needs to be assessed at different levels to facilitate a deeper understanding of the efforts already being made and the level of effectiveness evidenced from them. Each of the different levels of trafficking will have features unique to their level. They may vary as to the means employed to obtain firearms and differences in the procurers and end users.

Low levels of trafficking may be the most common form of trafficking but the hardest to detect and stop. This level of trafficking will simply entail providing a few firearms or even a single firearm that is illegal to possess. Two conditions define this illegality and are an underlying component of all levels of trafficking. The status of the receiver makes it illegal for them to possess the firearm, as in the case of felons, the mentally ill, or those convicted of domestic violence offenses or the type of weapon transferred to them is such that without proper documentation, it is illegal to possess (BATFE, 2005). At this low level, the receiver of the firearms may simply be looking to obtain a firearm so as to facilitate the commission of additional crimes, for protection, or simply because they desire to own a firearm but are restricted from doing so. Theft through robberies or burglaries can be a means of obtaining firearms and conventional law enforcement techniques can be utilized in order to address this procurement means both proactively and retroactively (NIJ, 1997).

However the use of straw buyers provides an additional challenge to enforcement and detection because the nature of the straw buy, or purchase, is innocuous. Straw purchases occur on the premises of gun shops, sporting goods stores, pawn shops, and gun

shows. As The BATFE defines it “A “straw purchase” occurs when the actual buyer of a firearm uses another person, the “straw purchaser,” to execute the paperwork necessary to purchase a firearm from an FFL. Specifically, the actual buyer uses the straw purchaser to execute the firearms transaction record, purporting to show that the straw purchaser is the actual purchaser of the firearm. Often, a straw purchaser is used because the actual purchaser is prohibited from acquiring the firearm because of a felony conviction or another disability” (BATFE, 1999, p. 7).

As noted above, the Brady Act requires passing a background check on purchasers before a firearm is transferred to them. This is a requirement only when purchasing from an FFL, not between non-licensees. After a five year study of gun shows, in 1999 the BATFE determined that while FFLs make up 50% to 75% of vendors at gun shows, many collectors and gun enthusiasts, who are usually non-licensees, use these venues to trade, buy and sell firearms (BATFE, 1999). The Clinton administration was concerned that a gun show loophole exists in that there were no mechanisms to insure that non licensees were not transferring firearms to prohibited persons. Other concerns include straw buys through FFLs, FFLs selling to out of state residents, FFL transactions without background checks, and the sale of semi-auto to full-auto conversion kits. (BATFE, 1999).

For their 1999 study, the BATFE conducted 314 investigations at, and involving, gun shows. They found that more than half of the investigations involved being engaged in the business without a license, 46% of the investigations involved felons buying or selling firearms, 20% involved FFLs selling “off the books”, 15% involved selling to prohibited individuals, and 20% involved violations of the National Firearms Act (i.e. Class 3 weapons). Their report also suggests some remedies for some of these scenarios, including

regulation and registration of gun shows, refined definitions of “engaging in business”, requiring that all transfers require an FFL conducted background check, and educating gun owners and collectors on the law. Federal law would not affect any jurisdictions with more restrictive existing state law. While the BATFE considers gun shows “as a venue for criminal activity and a source of firearms used in crime” (BATFE, 1999 p. 7) there are other means of obtaining firearms. Illegally trafficked guns frequently end up being used in crime (BATFE, 1999) and an exploration of the use of these “crime guns” and who possesses them is warranted.

In 1997 the National Institute of Justice through the Drug Use Forecasting program developed a study of the characteristics of illegal firearm use and the offenders involved. The program interviewed more than 7,000 arrestees from 11 major urban areas concerning the access, availability, and reasons for possessing the firearms. In terms of their sample, 55% were black and one-third tested positive for cocaine. 37% of the arrestees reported owning a firearm. Some sites included juveniles in the sample and of those, gang membership varied widely by site from 2% to 41%. The study found that among the survey respondents, 14% carried a gun all or most of the time. For juvenile males and gang members, the proportion was higher (20% and 31% respectively). They found no correlation between carrying a gun and drug use and no discernible differences in age or gender and firearm ownership. The study also demonstrated that 13% of the arrestees admitted to stealing a firearm, confirming their previous research suggesting theft was a significant means of obtaining firearms (NIJ, 1997). Overall, 23% of arrestees admitted to owning a gun in order to commit crimes. The proportion was higher among gang members with 50% admitting to owning for that purpose.

These arrestees were also victims of gun violence with between 59% and 75% stating that they had been threatened, shot at, or injured with a gun and high percentages reported carrying a gun for protection. Violent attitudes were also prevalent; notable percentages feel they get respect from peers by carrying a gun. Both drug sellers and gang members stated that it is ok to shoot someone who disrespects you (21% and 34% respectively). They reported much higher percentages regarding whether it was ok to shoot someone who hurt you. The study suggests that police programs similar to the one used in the Kansas City Gun Experiment and other firearm suppression programs designed to limit access of firearms to youths may be beneficial. They also suggest firearms traces and destruction as a way to limit access and transfers. Co-operation amongst law enforcement and post release correctional services in premises search programs and hot spot policing were also recommended. The general consensus of the 1997 NIJ report was that the arrestees in their sample found firearms relatively easy to obtain.

A 2008 investigative report by WCVB in Boston supports this consensus. While Massachusetts has some of the nation most restrictive gun laws, the laws have done little to restrict illegal access to firearms. Following months of interviews with police, prosecutors and criminals, the investigative news team for WCVB determined that many criminals could get access to a gun in just a few minutes, and that they see evidence of “community guns”, guns stashed around the neighborhood available for anyone to use (Kelly, 2008). Boston police officials state that it’s not a problem of a few large dealers but many small street level dealers that help account for the 4000 gun crimes a year in Massachusetts. The investigative report also noted that guns were coming from places as far away as Alabama to be sold on the streets and that dealers at gun shows were willing to look the other way on

questionable transactions. Federal convictions against traffickers and dealers were down 50% from the previous year but the BATFE Acting Director states that it is not because his agency has been less aggressive but that they are pushing more cases to the state level (Kelly, 2008).

Trafficking patterns similar to what were observed in Boston were also found nationwide. A Brown University study from 2010 examined BATFE gun tracing data and gun laws in the different states. They found that the flow of guns later traced to crimes demonstrated that the guns were trafficked from states with weak gun laws to those states in a relatively close proximity with strong gun laws.

Gang involvement and mid-level trafficking

That gang members were evidenced to be highly likely to carry and use a gun necessitates the examination to what degree gangs are involved in trafficking. Street and motorcycle gangs have traditionally been involved in illegal activities which necessitates the use of violence to manage, maintain, protect, and expand these activities. While it has been shown that American and Latin American gangs use guns far more than gangs in other countries, there is still limited information on how they purchase, acquire and transport weapons (Small Arms Survey, 2010). In May 2011, a 2 ½ year investigation involving the FBI, state, and local officials culminated in dozens of arrests of gang members with ties to the Mexican Mafia, a well-established prison gang that is deeply involved in drugs and weapons trafficking (AP, 2011). Operation Black Flag sought to take down the leader of the Mexican Mafia, which had enormous influence over Hispanic gangs in Orange County, California. Law enforcement officials stated the gang was “calling the

shots” when it came to narcotics, extortion and other crimes, with local gangs connected to or paying tribute to the Mexican Mafia (Frere, 2011).

Trafficking by gangs has a nationwide scope and trafficking enforcement and interdiction typically involves multiple agencies. The DEA and Connecticut State Police, with the assistance of the BATFE, in an 18 month investigation were able to secure indictments against members and associates of the Diablos motorcycle gang for narcotics and weapons trafficking (DEA, 2005), though no significant amount of firearms were recovered. Trafficking investigations typically involve undercover work and confidential informants. An undercover agent with the BATFE infiltrated the Hells Angels in 2003 which resulted in dozens of members being arrested for narcotics, weapons charges, and murder for hire (Arizona Republic, 2005).

A report from the National Gang Intelligence Center indicates that there are members of almost every major street and motorcycle gang currently serving in the U.S. military and that they may account for much of the widespread theft of military weapons and equipment from installations. Weapons ranging from grenades, machine guns, assault rifles, handguns, and explosives are sold on the black market to gun dealers, criminals, and gang members (NGIC, 2007).

Street gang members and their associates will provide firearms locally and out-of-state to other gangs. A 2004 piece for the Chicago Tribune recounts how a Gangster Disciple in Mississippi arranged for straw purchases in the Mississippi Delta region, where firearms were relatively easy to purchase. The guns were then run up to Chicago to supply the Mickey Cobra gang in their turf war. Handguns are not as easy to obtain in Illinois. The law requires a firearm owner’s permit and a 3 day waiting period besides the requirement

of federal law. In this case, as in others, 9 mm semi-auto pistols seem to be the most popular commodity (Heinzmann, 2004). This is likely because of the wide variety of models that have been produced in this caliber, the low cost even for high quality models, higher capacity magazines, and reasonably priced ammunition (Heley, personal knowledge).

However, it is not only street criminals and gang members who are cashing in on a lucrative black market. The trade can contribute to corruption of law enforcement as well. As part of a larger investigation, eight former and current NYPD officers were charged with weapons trafficking violations after they purchased weapons, including an M4 assault rifle, from an undercover FBI agent, filed off the serial numbers and transported them across state lines for sale (Signore, 2011). The report stated that the officers were “paid handsomely” for their part in the conspiracy (Signore, 2011).

High Level Trafficking

Corruption stemming from trafficking also extends into high level trafficking. The mayor, police chief, and a city councilman in Columbus, New Mexico, a small village near an area of the Mexican border marred by cross border drug trafficking violence, were recently charged with narcotics and weapons trafficking violations (AP, 2011).

Higher levels of trafficking were examined by the Violence Policy Center. In 2009 they examined the trafficking of firearms to Mexican drug trafficking organizations (DTOs). Their study of 21 federal firearms prosecutions involving over 1,700 firearms in Texas, Arizona, California, and Nevada over a three year period showed that Texas, Arizona, and California, respectively, are the primary source of firearms trafficked to DTOs. They found that preferred weapons of the DTOs, according to BATFE

Congressional testimony, are the Barrett .50-caliber rifle, AR-15 and AK-47 variants and the FN 5.57-caliber pistols. They suggest that a three pronged approach be undertaken. They called for increased restrictions on military style weapon manufacture and distribution, increased regulation of FFLs since they appear to be a major source of the weapons crossing the border, and improved buyer qualification procedures (Violence Policy Center, 2009). The southern border of the United States continues to be a significant location of trafficking. In 2011, U.S. authorities arrested 17 U.S. citizens and legal residents in the Phoenix, Arizona area in a scheme that saw them making straw buys in Arizona with the intent of selling the weapons, which include AK-47 assault rifles to the Sinaloa cartel in Mexico (AP, 2011).

Mexico isn't the only destination south of the border that is served by trafficking operations in the U.S. Six people were arrested following a discovery of a weapons cache in Miami. The traffickers sought to ship weapons and ammunition disguised in appliance crates and transported in shipping containers to Venezuela for the purpose of arming both sides of the conflict in Columbia. It was reported that one ringleader bragged that he had moved over 4 million dollars in munitions and could make others rich too. The operation was believed to have moved over 30 shipping containers to South American over the past 2 years. The discovery of the cache netted handguns, automatic weapons, and over 200,000 rounds of ammunition (South Florida Sun-Sentinel, 2004).

However, there may be other sources of weapons that are supplying conflicts in South and Central America. The North American Congress on Latin America study in 2008 found that besides weapons caches left over from the days when Russia and the U.S. were arming the various factions in Latin America, legal U.S. weapons shipments to South

American countries have been diverted toward insurgent groups. However, the study also reports that the Mexican government estimates that 2,000 firearms a day are crossing the border from the U.S., where weapons reportedly sell for three times their U.S. market value (Stahl and Tuttle, 2008). The Government Accounting Office's 2009 report found that most of the firearms entering Mexico illegally are transported by personal or commercial vehicles through border crossings because of the high degree of success they have in it, and are facilitated and managed by Mexican DTO's or their associates. Once in Mexico they are distributed in border towns for later pickup or trafficked to other locations. The main routes from Texas are through McAllen, El Paso, and Laredo, while Nogales, Arizona, and San Diego, California are also trafficking routes (GAO, 2009).

Cross-border trafficking isn't limited to south of the border. Gillis' 2005 report indicates that in the past five years, Canadian officials have seized more than 5,400 firearms coming into the country from the U.S., providing a major supply of weapons for Canadian criminal gangs. Canadian officials are utilizing a multi-million dollar piece of contraband detection equipment, the Vehicle and Cargo Inspection System (VACIS) in an attempt to stem the flow of weapons into the country, which the Royal Canadian Mounted Police's (RCMP) National Weapons Support Team states accounts for 94% of the crime guns recovered in Vancouver in 2003 (Gillis, 2005). Canadian officials have traced some guns as originating in places as far away as Georgia and have also seized firearms that are being carried overland by individuals. In 2004, Canadian police requested 1,135 traces from the BATFE on guns seized during criminal investigations. They note an increase in military type weapons seizures as well. Canadian officials also noted that efforts to stem trafficking north of the border are hampered by an apparent lack of interest in Canadian

concerns about the smuggling and a lack of funding for the BATFE anti-smuggling operations (Gillis, 2005).

The Royal Canadian Mounted Police conducted a study in 2007 and determined that the primary sources of smuggled firearms and firearm parts were the U.S. They also noted larger numbers of firearms are being seized per investigation, and that firearm preferences varied by location. In 2006, over 90% of firearms seized originated or were transported from the U.S. They report that most of the firearms are transported across land routes at points of entry. Seizures in British Columbia usually originated in Washington, in Alberta; origins included Washington, Idaho, and California, while in Ontario, weapons originated in Florida, Georgia, and Ohio. Vermont, New Hampshire, and Maryland were key sources for guns in Quebec, while an increasing number of firearms are being transported across the New Brunswick/Maine border. During the first three quarters of 2007, of the more than 3,800 guns seized, 52% were crime guns. Rural areas tended to exhibit long gun usage in crimes but in urban areas, the preferred weapons were handguns, often semi-auto pistols. Most firearms smuggled were higher-end semi-auto pistols which are commonly traded for narcotics and sell for three times their retail price. The RMCP notes that they have seen a recent increase in the seizure of assault rifles and fully automatic submachine guns (2007).

However in 2008, smuggling was noted to be down along the Northern border but the number of violent incidents between border agents and smugglers have increased, according to the Border Patrol, because of the success they are having against smugglers. Border security measures had increased threefold following the 9/11 attacks but officials

noted that while smugglers can no longer operate with impunity, the smuggling routes are always changing. (LA Times, 2008).

Besides supplying weapons to street criminals, gangs, and cartels, there is also a market for supplying weapons to terrorist organizations. In a sting operation, a former NYC high school teacher was arrested for his part in supplying small arms to undercover agents he believed were connected to Hamas and Hezbollah. While the suspect did exhibit support for the terrorist organization goals, profit was again a driving factor (Auer, Gonen, & Crudele, 2010).

Role of the BATFE

The Bureau of Alcohol, Tobacco, Firearms and Explosives (formerly the ATF and formerly with the Treasury Dept.) has positioned itself at the forefront of combating illegal firearms trafficking. Its first incarnation was a unit in the Bureau of Internal Revenue but following the passage of the 1968 Gun Control Act, the ATF was established in 1972 as a separate bureau in the Treasury Department. Currently under the Department of Justice, they utilize FFL compliance and active investigation to limit trafficking (BATFE, 2011). In 2010 The Bureau employed 2508 Special Agents and 624 industry investigators, with a direct budget authority of slightly over one billion dollars. (BATFE, 2011).

Historically, the Bureau has suffered from image problems in part because of the methods and tactics they use. The book, *The BATF's War On Civil Liberties: The Assault On Gun Owners* (Hardy, 1979), describes how the Bureau routinely used coercive tactics and entrapment to obtain arrests and convictions. Some examples: Agents would approach non-licensees at gun shows and offer to pay an inflated price for a firearm in a personal collection or agents would ask a non-licensee to check with other collectors in order to

obtain a desired firearm, paying them for the trouble. If the non-licensee accepted, they were charged with “engaging in the business” of being a firearm dealer as the income provided for the firearms was proof of profit. Likewise, having a collector obtain a firearm not in their own collection is deemed “engaging in the business”. People charged with minor firearm offenses were coerced through threats to induce others to commit firearms violations to increase firearms cases.

Indeed, the 1982 Senate Judiciary Committee on the Second Amendment concluded that following the passage of the 1968 Gun Control Act, which was intended to prevent access to illegal weapons and access to felons, the “over breadth of the law has led to neglect of precisely this area of enforcement” (1982). The Bureau’s records showed over recent years that “55% of its gun law prosecutions overall involve persons with no prior felony convictions and one third involve citizens with no prior police contacts at all” (1982).

The Committee’s report also noted that there was evidence that the Bureau was mainly devoting enforcement efforts toward technical violations where the individual had no prior criminal intent or knowledge, and that collections confiscated by the Bureau were not being returned to the owners upon acquittal. The weapons more commonly confiscated seemed not to be crime guns but were more highly valued collector pieces. The Bureau changed regulations regarding the legality of straw purchases, did not publish them in the Federal Register, then conducted massive sweeps, arresting dealers who had previously understood that these sales were legal. A similar scheme involved the law concerning recording keeping pertaining to sales from private collections of dealers. While the Bureau claimed to be making appropriate cases, they did concede that only 9.8% of their arrests

were brought on felons in illegal possession cases, and the value of guns confiscated were typically double that of a typical crime gun. In all, “75% of the Bureau’s prosecutions were on ordinary citizens who lacked both criminal intent and knowledge and were induced by agents into technical violations” (United States Senate, 1982, p. 22). Following the subcommittee findings, the Firearms Owner Protection Act of 1986 was passed. It sought to correct and repeal portions of the Gun Control Act. One of the most important features of the act as it relates to trafficking was that it prevented the establishment of any system of registration of firearms, their owners, or firearms transactions.

More recent documentation also focused on the role of the BATFE. A House Judiciary Committee investigated what appeared to be the heavy handed tactics of the Bureau at Richmond, Virginia gun shows in 2005. Numerous witnesses complained about intimidation from agents when trying to purchase firearms, detentions and interrogations of patrons of the show, unjustified firearm confiscations, and intense and intrusive residency checks associated with any patron who purchased a firearm at the show. Patrons who purchased firearms legally were also mailed letters from the BATFE stating an investigation showed they may have violated federal law and are required to appear at the BATFE office to answer questions about their purchase or be subject to arrest. While BATFE insisted they were only trying to stop straw purchases and keep guns out of the hands of felons, most accounts indicate that the BATFE zealously overstepped their bounds (U.S. House of Representatives, 2006).

The GAO Report on Firearms Trafficking

In 2009, the Government Accounting Office produced an assessment of the challenges the U.S. faces on controlling firearms trafficking into Mexico. In producing the

report they called upon the expertise of numerous federal agencies including the BATFE. While the report states that the number of firearms entering Mexico is unknown, they did determine that 87% of the firearms seized by Mexican authorities between 2004 and 2008 (over 20,000 firearms) originated in the U.S. 68% were manufactured in the U.S., and 19% were manufactured in other countries, imported to the U.S. and then trafficked into Mexico. The BATFE stated that the three major challenges to stemming illegal traffic are restrictions on collecting information on firearms purchases, lack of required background checks on private sales, and limitations on reporting multiple sales. The report also found that BATFE and Immigration and Customs Enforcement (ICE) “do not consistently and effectively coordinate their efforts in part because the agencies lack clear roles and responsibilities and have been operating under an outdated interagency agreement” (GAO, 2009, p. 3). This included not informing ICE of “controlled delivery operations” (covert operations to identify organizations in Mexico receiving illegal weapons) and a lack of cooperation between ICE and BATFE at the gun desk of the El Paso Intelligence Center.

An additional hindrance was the fact that agencies lack any kind of systematic analysis and data reporting that could be used to assess the effectiveness of their efforts. The agencies did not have any complete data on the amount and sources of guns trafficked, cases initiated, or prosecutions resulting from investigations. Still more challenges to effective enforcement were a lack of funds dedicated to arms trafficking, the establishment of multiagency task forces was lacking, and the Mexican government’s use of the BATFE tool E-Trace is hampered by a Spanish language version that had yet to be developed and deployed. The report recommends that there be increased data analysis to determine trends and trafficking data, Department of Homeland Security oversight of the efforts of BATFE

& ICE to insure they share data and utilize each other as resources, and the efforts of the agencies be analyzed and data collected on their efforts (GAO, 2009).

The report also detailed the most common weapons seized in Mexico and stated that U.S. military weapons only accounted for .7% of weapons seized in Mexico. The BATFE concluded for the report that, besides the straw purchases taking place, that a small number of corrupt FFLs or their employees facilitate illegal transfers (GAO, 2009). However the BATFE has no data to demonstrate what percentage of firearms were trafficked to Mexico because of straw purchases or corrupt dealers, let alone purchases from gun shows.

The GAO report also brings to light the interagency coordination that BATFE will have to establish and maintain both with ICE and with DEA and Customs and Border Protection (CBP), who are responsible for the ports of entry in the U.S. CBP's role was shown to be underutilized as officials report that "southbound inspections of vehicle and persons has not been a high priority for the U.S. Government and have resulted in relatively few weapons seizures" (GAO, 2009, p. 24). In 2008, CBP reported only 35 total southbound weapons seizures at 10 of the 25 southern points of entry, netting only 70 weapons. These southbound ports of entry are also shown to lack resources and infrastructure to adequately inspect vehicles. Overall the GAO report indicates that there simply is not a strategic plan with a focus on arms trafficking to Mexico. The BATFE's plan for 2004-2009 "does not mention arms trafficking to Mexico" (GAO, 2009, p. 52), though the BATFE did state their new Strategic Plan would focus on this issue. Both BATFE and ICE developed plans to deal with arms trafficking, Project Gun Runner and Project Armas Cruzadas, respectively. Missing from both plans are means to ensure progress is being made toward the strategic goals. CBP doesn't address any particular goals

at limiting arms trafficking and though the Office of National Drug Control Policy in its National Southwest Border Counternarcotics Strategy did mention arms trafficking “it did not contain key elements of an effective strategy” (GAO 2009, p. 54).

BATFE Strategic Plan 2010-2016

In 2009, the BATFE released its Strategic Plan 2010-2016. It contained four core mission focuses-illegal arms trafficking, criminal groups and gangs, explosives/bombs/bombings, and fire and arson. In regards to trafficking, the Bureau recognizes the threat that trafficking into Mexico poses and they also mention that illegal trafficking via the internet is a problem that deserves their focus. The main effort to address southern border trafficking is Project Gunrunner. The Project is a DOJ interagency effort to reduce violence and trafficking. Described as a “forceful strategy”, the BATFE’s primary role “is to stem the trafficking of illegal weapons across the border and to reduce the firearms driven violence occurring on both sides of the border” (BATFE, 2009, p.6). In order to maintain safety in our communities and national security the Bureau is utilizing the Integrated Violence Reduction Strategy. The strategy as stated is “to remove violent offenders from our communities, keep firearms from prohibited possessors, eliminate illegal weapons transfers, and prevent firearms violence through community outreach. IVRS builds upon traditional law enforcement efforts with the use of state-of-the-art technology, intelligence and information sharing, industry regulation, and community outreach” (BATFE, 2009, p.6). The strategic goal of the BATFE, specifically stated, is as follows:

Strategic Goal-Reduce violent firearms crimes by strengthening firearms trafficking intelligence gathering, analysis, inspection and investigative activity.

Strategic Objective 1: Interdict and prevent illegal firearm trafficking

Strategies:

- Develop Integrated Firearms Enforcement Teams-utilized in source and trafficking areas
- Expand Risk Based Approach To Inspections-achieving a three periodic inspection cycle
- Enhance Use of Internet Trafficking Units
- Increase Targeted Import Inspections
- Increase ATF's Illegal Firearms Trafficking And Technical Training
- Advance Uniformity In Crime Gun Recovery Protocols
- Expand Awareness And Outreach-at the internet and guns shows
- Improve Inventory Control Of Firearms Licensees

Strategic Objective 2: Lead the advancement of illegal firearms trafficking intelligence capability through comprehensive information management and research in emerging technology.

Strategies:

- Establish A Comprehensive Firearms Tracing Program
- Modernize And Integrate Firearms Database
- Increase Participation In State Fusion Centers
- Enhance Partnerships With Academia
- Increase Research And Development In Firearms Technology

Performance Goal-Reduce the risk to public safety caused by illegal firearms trafficking (BATFE, 2009, p.11-12).

INDICATORS OF TRAFFICKING

Trace Data

To afford a better understanding of the nature of trafficking and what weapons are likely to be a focus of trafficking, this report examines some of the characteristics of crime guns. The BATFE provides some indication through its firearms trace data of the nature of crime guns; the types, the states the original purchases of the firearms were from, and their time to crime, i.e. the elapsed time from their original purchase from a dealer to the time they were recovered and traced. This report examined the BATFE trace data reports of a number of specific states; Illinois, New York, & Washington D.C. as they have relatively restrictive gun laws, Arizona, Texas, New Mexico, and California because of their proximity to the Mexican border, and Washington, Montana, North Dakota, and Minnesota because of their proximity to the Canadian border and also Massachusetts for a northeastern state, Nevada for its proximity to border states and Florida as a southern state.

While there is some missing data in the BATFE reports and they only include crime guns that were actually recovered and traced, these reports can provide a proxy for firearm use in crime. Some generalities are evident, by far the most prevalent firearm documented in the reports were pistols, making up 40% to 50% of traced firearms. Roughly one quarter of the traced firearms were revolvers in the more urban states like New York and Massachusetts. However the second most commonly traced firearms vary by state with more rural states like North Dakota, Minnesota, Montana & New Mexico showing higher percentages of tracing on rifles and shotguns.

Machine guns (which would include fully automatic assault rifles) are very rarely recovered and traced. For example, in the southern borders states of Texas, California, New

Mexico, and Arizona, out of 54,805 traces conducted in 2010, machine guns were involved in only 113 traces. This offers further support to the contention that these weapons may not require a strong focus from BATFE in regards to their low level trafficking.

Also showing a clear trend is the time to crime. The average time to crime varies between 8 and 13 years with half of the firearms having a time to crime of three years or more. Across all the states examined for this report, the average number of firearms with a time to crime of three years or less ranged 40% to 50%, for most states. However in the states of IL, MA, NY, and Washington D.C. the proportion of firearms with a time to crime of three years or less drops to a range of 19% to 26%. This may be an indication that these states' more restrictive laws slow early transfer of guns to crime use (BATFE, 2011).

BATFE data also indicated what the nature of the situation that prompted the trace. While the vast majority of initiatives were related to "possession of a weapon" or "firearm under investigation", there were indications that weapons trafficking prompted some traces. In the 14 states examined for this report, of the reported top 10 charges related to prompting the trace, "selling weapons" occurred in AZ and WA and "trafficking weapons" occurred in MN and MA. However these 1,355 traces only account for 2.5% of all the traces from these 14 states (BATFE, 2011). As many of these traces are initiated by local law enforcement during the course of a criminal investigation, it would appear that either local law enforcement agencies are not encountering trafficking situations frequently, or they do not recognize them for what they are.

Other trends relate to the source of the traced weapons. The BATFE examined each state and documented those states' top 15 firearm origination states that resulted from their firearms traces. For the individual states examined in this report, the examined state is the

major source for the traced firearm and no one origin state provided more firearms than the state examined. However, in a few states, like New York, the total number of firearms originating from other states exceeds the number of traced firearms originating from the examined state itself. It should also be noted that in all of the states examined, firearms traces generated hits in almost every state in the country. Related to trafficking, the trends show that typically the firearms traced show a pattern of origination in a cluster around the examined state. This would indicate that the majority of interstate trafficking is regional in nature. There are some noted exceptions. Some far flung states do contribute relatively small amounts to the total being traced. For example, in New York, the top 15 origin states cluster around New York and the east coast, with the exception of California. There are also patterns that extend beyond close proximity clustering. For Illinois, there appears to be a stretch of states leading from Illinois down to Florida that account for the majority of firearms origination. For Massachusetts, the origination states run the length of the eastern seaboard down to Florida while for Texas, contributing states run the length of the southern border. Almost all the southern states and up the eastern seaboard into New England are origination states for Florida. The data also indicates that of the states examined here, at least 25% of the firearms recovered could not be traced to an origin state (BATFE, 2011).

In light of these trends, we can consider the characteristics of crime guns and the circumstances around their tracing as being indicative of the characteristics that may surround trafficking. For instance, trafficking may be a regional endeavor that seeks to meet a demand for a desired firearm commodity. By examining trends and continuing to gather more detailed data, better assessments can be made on the most productive areas of focus for law enforcement and can assist in establishing interstate partnerships to address

their common regional trafficking issues. It is only with quality assessments of the true nature and features of any level of trafficking that the most productive recommendations can be forwarded.

TRAFFICKING ASSESSMENTS AND RECOMMENDATIONS

In assessing the different levels of firearms trafficking, a number of enforcement efforts and legislative remedies have been applied at all levels. For example, on June, 2011, Senators Feinstein, Schumer, and Whitehouse delivered a report to the Senate Caucus on International Narcotics Control regarding halting illegal firearms trafficking to Mexico. Their recommendations called for Congress to 1) require background checks on all firearm purchases, including those at gun shows, 2) ban the import of assault weapons under the GCA provision that they are unsuitable for sporting purposes, 3) renew the assault weapons ban, 4) require all multiple sales of firearms be reported to the BATFE, and 5) ratify the Inter-American Convention Against the Illicit Manufacturing of and Trafficking of Firearms, Ammunition, Explosives and Other Related Materials (CIFTA). While they presented their proposal as a means to address high level trafficking, some of the recommendations can be directed at other levels of trafficking. However while some of the efforts and remedies may be appropriate at one level they may be ineffective at another as will be demonstrated. After examining some of the goals set out by the Bureau in their FY2010-2016 Strategic Plan and other performance indicators it should be noted that while the Bureau has specific strategies and performance indicators listed, there is little detail provided as to how they will accomplish the strategies or what bench marks should be established for their performance indicators. The performance of the BATFE, both in its strengths and weaknesses, can affect multiple levels of trafficking and while some of its programs and efforts are applicable to all levels of trafficking some are more level specific.

In the following assessments and recommendations section, efforts and legislation that crosses over and is applicable to multiple levels of trafficking will be noted. It also

must be noted that germane to the issue of legislative efforts is the recognition of both the “gun community” and “gun lobby”. The author defines the gun community as a collection of hunters, target shooters, gun enthusiasts and collectors, NRA and other gun rights group members, and firearms dealers who strongly support the second amendment and are very sensitive to perceived attacks on it. They are aware of firearms law issues, are active at the polls, and can be moved to political action in a variety of ways. The gun lobby will be defined as those organizations, specifically the NRA and firearms manufacturers, that attempt to influence policy and laws regarding the control and manufacture of firearms.

In considering any legislation, the influence the NRA carries when it comes to passing, amending, or preventing the passage, of gun laws has to be recognized. Even mildly restrictive amendments to existing law will be met with strong protest from both the gun community and gun lobby as evidenced by the years of delay in implementing the Brady Bill that requires background checks for firearms purchases from FFL dealers and the continued resistance to pass multiple long gun sales reporting requirements (Serrano, 2011). Efforts made in this area must take this into account in crafting and promoting these laws, regardless of the level of trafficking it is meant to address.

Low Level Firearms Trafficking Assessment

Federal Legislation

As a legislative consideration to address low level trafficking, re-instating the Assault Weapons Ban is not an effective remedy to limit trafficking at this level. Originally the law intended that violent crime could be reduced by preventing access to these weapons. However, after all the effort put into crafting and passing the law, it had little effect on violent crime, primarily because their use in street crime was minimal, as

confirmed by Koper and Roth (2001). Their study showed that assault weapon use constitutes only 2% of all gun crimes and the ban had no significant effect on the number of gun homicides, the number of victims per incident, or the number of wounds per victim (Koper and Roth, 2001). Thus reinstating the Assault Weapons Ban is not supported in terms of limiting injury in street crime and it will likely have little effect on the low level trafficking of these weapons, as low level trafficking will primarily provide firearms for street crime use, where handguns are preferred.

The Feinstein et al proposal suggested background checks on all individuals who purchase firearms, including those purchases at gun shows, as a way to stop trafficking to DTO's. Attempts have been made in the past to close what it often referred to as the "gun show loophole" in that a non-licensee can go to a gun show and purchase a firearm from another non-licensee and not have to submit to a background check. The gun show loophole has been an issue since the Clinton Administration; however at that time the concern wasn't DTOs but rather that felons could illegally obtain firearms. However, the idea of a "loophole" should be examined more closely. Currently there is nothing to prohibit non-licensees from selling firearms to one another, regardless of whether it takes place at a flea market, a gun show, or in a garage and there never has been. Simply selling a firearm doesn't put the seller in a category of "doing business" as a dealer and does not subject them to BATFE regulation. While it's true that gun shows are in essence a market place for guns, the nature of the vendors at the shows has to be considered when determining the availability of firearms to prohibited persons at gun shows. In the author's experience at numerous gun shows in California, Texas, North Dakota, and Minnesota, the large majority of the firearms vendors are FFL dealers who are required by law to conduct

a background check, regardless of where they sell the firearm, and they must attend to state residency requirements regarding firearms sales. A significant portion of vendors are collectors who display their collections, which often include higher end and antique firearms, and are not in the habit of selling off parts of their collection frivolously. This leaves a relatively small percentage of vendors who have a few firearms to sell and vendors who likely operate under the table as dealers. However, in terms of determining the illegality of transfers to prohibited individuals, the non-licensee seller must be aware the buyer is prohibited from possessing a firearm. This is something that may not be offered up by the individual attempting to purchase the firearm and it will be necessary to demonstrate the seller had this knowledge to determine if a crime occurred on the part of the seller. Feinstein, Schumer, and Whitehouse's recommendations would make background checks required for all firearms purchases but the feasibility of such a measure has to be considered in terms of how well it can be enforced between two private individuals, the record keeping requirements of the individuals involved, whether as individuals they will be subjected to possibly warrantless checks of documentation, and how it will apply in a variety of contexts, including gifting a firearm in lieu of a sale.

For a law requiring background checks of all firearms sales between non licensees to be useful in trafficking it will have to include some record keeping and enforcement details. In an FFL sale, the serial number trace can only show what dealer possessed the gun prior to its original sale and who the dealer made the original sale to. This occurs only because of the record keeping requirements made on the dealer. Following that, standard investigative techniques (e.g. interviews and interrogations) are the only way to further trace the gun's history. Without the necessary mechanisms to manage and enforce the law,

a universal background check mandate it will do nothing to limit or stop trafficking on any level. To be effective as a tool against trafficking, the law would need all firearms to be registered and that all firearms owners comply with reporting requirements. However, the GCA prevents the establishment of any kind of database involving or requiring the registration of non-NFA firearms. The gun community is very wary of any attempt to establish registration of firearms as it is seen as a mechanism to facilitate firearms confiscation. In the author's assessment, the likelihood of the gun community complying with such a federal law (considering how the gun community in general feels about federal regulation of firearms) is slight and without an actual database of firearms on which violations of the law can be determined, the sheer number of firearms in the U.S. would render such a law useless in limiting trafficking at any level.

State Legislation

Because of the strength of the gun lobby in Washington D.C. and the strong political overtones regarding firearms issues, federal legislation regulating firearms and their transfer may be difficult to pass or modify. However a number of states have been able to pass firearms laws and laws regulating firearms dealers that are stricter than federal law. Illinois and particularly Chicago have some of the most restrictive gun laws in the nation. Illinois residents are required to have a firearms owner ID and bans residents from selling firearms to anyone who does not possess one and since 1982 Chicago has banned handguns except for those already in circulation which were then registered with the city (Cook et al 2007). Maryland bans the sale, transport, or possession of assault pistols and New Jersey requires the specific state licensing for possession of any assault weapon (BATFE, 2011).

One caveat that must be considered in the implementation of state laws limiting firearm transfers and possession is that it may foster mid-level trafficking. If the available, initially legal supply of firearms becomes difficult to access, it should be expected that market forces will seek to reconcile this by the development of illegal firearms sources. Thus, while local and state laws may limit low level trafficking, it may provide an opportunity for criminal activity to fill the gap of firearms through intra or interstate trafficking. This trafficking will require more organization and by virtue of this may involve organized criminal elements.

The Underground Gun Market

Wright, Wintemute and Webster (2010) examined low level handgun trafficking in California. Their analysis included the types of guns and the characteristics of the sellers, (defined for the study as dealers, importer/manufacturer or pawnshop) purchases, and the purchasers themselves, with their outcome variable as the percent of handguns recovered as a crime gun within the three years of its original purchase that was in the possession of someone other than the original purchaser. If we accept the authors' contention that these weapons were purchased with gun trafficking in mind, then their data showed that what might be considered as straw purchases made up only 0.4 % of handgun purchases in 1996. Results showed that of the traced guns recovered in the study, the large majority were originally singly purchased, semi auto pistols that cost more than \$150 and were purchased from a dealer by males. However multiple regression analysis on the 772 firearms that were traced exhibited patterns that contribute to their risk of use as a trafficked crime gun. Multiple handgun purchases that occurred on the same day were more likely to be traced as a crime gun than single purchases or multiple purchases that occurred over 30 days, as

were medium caliber (9mm) semi-auto pistols, costing less than \$150. These crime guns were also more likely to have come from retailers who do high volume gun sales, and have relatively high percentages of rejected transfer applications. Females were also twice as likely as males to have a gun traced to them as the original owner and the younger the original purchaser, the more likely the gun was to be recovered as a crime gun (Wright et al, 2010).

Cook, Ludwig, Venkatesh, and Braga (2007) took an in-depth look at low level trafficking in a high crime community on the south side of Chicago through interviews and statistical analysis. They found the virtual lack of any licensed firearms dealers in the city requires residents to travel outside of city limits to purchase a firearm (Cook et al, 2007). A system of local gun brokers had developed which act as middle men between the actual gun purchasing client and the gun supplier. Their study was able to determine characteristics of the gun brokers and of the nature of obtaining firearms (e.g. traces on crime guns in Chicago indicated that only about 10% were purchased in Cook County, with about one-fifth of those guns being purchased by a female, which may be an indication of a straw purchase). Other interviewees confirmed they rarely travelled outside of the neighborhood to purchase a firearm. Cook et al also report that guns are shared or loaned within the community and that legal ownership of a firearm may see that firearm converted to a crime gun through this process or through theft (2007).

Their study showed that while the guns are relatively cheap (the median price for the sample was \$150), they are not that easily obtained, with almost 62% of those individuals in the sample who wanted a gun claiming it would take more than a week to obtain one. Because of the limits on firearms dealers and handguns in Chicago, ammunition

is also at premium with one interviewee reporting spending \$50 for 10 rounds of 9mm ammunition where on the legal market he could have purchased 500 rounds for the same price (Cook et al, 2007).

Cook et al postulate this thin gun market may stem from several factors. First there was a reluctance of gangs to deal in gun trafficking and the gangs exercised control over their members' firearm possession. There was a fear among gang leaders that increased focus from the police pertaining to illegal gun sales and use would disrupt the more lucrative drug trafficking enterprises. Police officers admitted that they have received calls from gang leaders on confiscation tipoffs involving their own gang members. Officers also realized that "there will always be drugs" (Cook et al, 2007, p. 571), but by getting the guns off the streets it makes their job easier and reduces homicides. However many youths maintain gang membership to retain access to guns, even if regulated by the gang. For non-gang affiliated interviewees who owned a gun, 40% reported obtaining it from a relative, 35% reported obtaining one from a gang member, 17% from a licensed security guard and 6% from a broker.

Special Operations and Task Forces

Risk factors for trafficking should be determined individually by local law enforcement as, at least in Chicago, gangs may not have much organized involvement in low level trafficking as opposed to independent gun brokers. If there is evidence that gangs are trafficking firearms, there are local operations that can be effective against them. There are indications from interviews in Cook et al's 2007 piece that programs like Boston's Operation Cease Fire may provide some leverage to be used on street gangs to help stem trafficking and crime gun use. According to the NIJ, Boston's Operation Ceasefire utilized

a focused law enforcement effort on gangs, which combined crackdowns on gun crime with keeping an open dialogue with gang leaders so that they knew what was expected of them. The operation assessed where the guns were coming from and who was obtaining them and the working group focused on who was trafficking the guns to Boston street gangs. Working closely with the BATFE and taking an intrastate and interstate approach, they found that most of the illegal guns trafficked to Boston came from within the state (National Institute of Justice, 2011).

To address a localized trafficking problem, some localities have developed task forces. In 1993, the Bureau of Justice Assistance at the U.S. Department of Justice created the Firearms Trafficking Program which funded eight demonstration projects around the country. Gary, Indiana developed a program that targeted multiple firearm purchasers who are linked to criminal elements, and developed intelligence and investigative leads. The task force maintained a database of individuals involved in multiple firearm sales and recoveries, and review dealer records of multiple sales (BJA, 2000). Virginia, with BJA funding, developed three task forces in their state, each based out of a BATFE field office. Targets for investigation were developed from the Firearms Transaction Center, the agency managing Virginia's Firearms Transaction Program which provides for background checks on buyers and also licenses gun dealers (Virginia State Police, 2011). The task forces were generally able to involve dealers as cooperative informants, and suspicious attempts at purchase, incomplete purchases, and multiple sales provided investigative leads. The task forces attempted traces on all guns recovered during investigations and initiated its own investigations into FFLs who did not possess state licenses (BJA, 2000). It should be noted that Virginia had state laws in place which assisted in the productivity of the task force.

As an example of structure and budget for a task force, in a 2006 report on Connecticut's task force, the report indicated that their Statewide Firearms Trafficking Task Force investigates illegal firearms transfers, possessions, and transportation and trace all guns seized by law enforcement. In its operation from 2000-2006 the size of the force varied between 4 and 9 officers, and only had an ATF liaison its first two years. The task force had five officers in 2006 and an operating budget from state funds of \$500,000 with slightly more than 80% of this funding going to pay for the officers on the task force. The task force also received federal grant money. From 2000 to 2005, the task force conducted 319 investigations, made 189 arrests, seized 495 guns, and inspected 204 firearms dealers (Rose, 2006).

BATFE Activities

There are a few Bureau efforts that are applicable to all levels of trafficking. Started in 2008, the BATFE campaign, "Don't Lie For The Other Guy" was formed in conjunction with the National Shooting Sports Foundation to reduce straw purchases at the retail level, educate dealers on recognizing the signs of a potential straw purchase, and educate potential straw buyers on the penalties for the offense. It accomplishes this thru a variety of media forms, (radio, TV, billboards) and by providing info packs and conducting seminars for dealers. The BATFE fact sheet claims that over 34,000 info packs have been sent to firearm retailers and they have launched the program in 25 cities, however there is no indication if any evaluation of the program has been conducted, whether it has reduced straw purchases, or whether it has influenced dealers or patrons to reconsider participating in straw purchases.

The Bureau has exhibited an interest in teaming with academia to develop performance criteria and conduct performance evaluations of programs and to modernize its database. By being able to effectively evaluate its programs and improving its intelligence capabilities, effective trafficking efforts can be implemented in areas that warrant an increased focus. The Bureau also seeks to utilize a risk based approach to compliance inspection, expanded investigative capabilities as related to internet trafficking, improving FFL inventory control, and increasing trafficking awareness and training for dealers and law enforcement, all of which are applicable to the different levels of trafficking.

From an investigative standpoint, a good starting point in illegal firearms trafficking is at the source of firearms, thus the FFL dealers should be a focus. Dealers have a wide variety of regulatory and exporting mandates. They are currently required to report all firearms thefts and all multiple handgun sales. They are required by law to conduct an NICS check when transferring a firearm and have to maintain sales and inventory records. The BATFE implemented eZ Check in 2000 which requires licensees to verify the status of another licensee before making a transfer (BATFE, 2011).

However it is from corrupt dealers that firearms may be sold off the books, illegal or stolen firearms may enter the black-market, and they serve as a source for straw purchases and illegal sales. It is typical that a small number of dealers account for a large number of traced firearms (Webster, Vernick, and Bulzachelli, 2006). Current law, enacted as a reaction to abuses of authority from BATFE inspectors, now limits the ability to inspect an individual dealer to once in a 12 month period unless an active criminal investigation is ongoing, a warrant is issued, or to assist in tracing firearms. These

compliance checks would insure that transactions are being recorded and recorded accurately, inventory checks could be made, and premise checks could help verify the legitimacy of the dealer. With infrequent inspections it becomes easier to hide diverted or “off the books” transfers and suspicious sales by corrupt FFLs and it is harder to generate opportunities to foster good relationships with legitimate dealers who can be a source of investigative leads. To address questionable dealers, in 2000 the BATFE began requiring dealers with 10 or more crime gun related traces with a three year or less time to crime or information to the National Tracing Center (BATFE, 2010).

According to the Congressional Research Service, in 2010, the Bureau employed 834 Industry Operations Investigators (IOIs) (not including 14 IOIs provided to the southwest border by special appropriation) who completed 10,538 inspections that year. This amounts to inspections conducted on 8.9% of FFL dealers with investigators averaging 12.6 inspections a year, essentially one inspection a month. The Congressional Research Service report on the 2011 BATFE budget also states that at a March 2010 CJS Appropriations Subcommittee hearing, ATF Deputy Director Melson testified that many FFLs are not inspected for five years or more because of a lack of ATF personnel (Krouse, 2011). However BATFE documents report that for 2010, the Bureau had only 624 investigators initially accounted for in the salaries and expenses appropriations, (BATFE, 2011) suggesting that the Bureau is partly relying on additional budget allocations and appropriations in manning these positions.

When historical compliance inspection data is examined, the efficiency of the investigators varies widely. After 1978, there was no fiscal year where inspections of FFL dealers exceeded 10%. At the peak of FFL dealer numbers in 1992, the number of

investigators totaled 792 (compared to 791 investigators in 2009), the percentage of inspected dealers only totaled 5.7% but investigators were conducting on average 20 inspections a year. In 2009, the number of inspections totaled 11,375 and investigators only conducted on average 14 inspections a year.

From 1990 to 2010 the number of investigators varied from a low of 702 in 1998 to a high of 935 in 2002. The percentage of compliance investigations varied during this period from a low of 3 % in 1991 to a high of 9.9% in 2009. It should be noted that it appears the BATFE has had an increased focus on inspection with 2007 to 2010 exhibiting inspection percentages between 8.9% and 9.9%. However there is no shortage of FFL dealers to inspect and increasing the number of inspectors or alternately, increasing the number of inspections conducted per year may be beneficial to limiting trafficking.

Efficiency should be the focus of these efforts. Even when the number of investigators was at its peak in 2003 at 940, investigators only inspected 4.9% of FFL dealers with investigators averaging only 5.5 inspections a year, less than one every two months. This suggest there are no clear guidelines or mandates on how often inspections should be done by investigators to insure adequate coverage in compliance inspections or concerning the efficiency of the investigators themselves, or alternatively there is a lack of adherence to these guidelines and mandates.

The results of the inspections show that increasing efficiency may be beneficial. In 2009, of the 11,375 compliance investigation conducted, only 48% of the dealers had no violations. Also noted, even though there is a requirement to file with the BATFE if an FFL ceases operation, 12.5 % of inspections were conducted on dealers who subsequently were shown to be out of business. While these investigations may be necessary as a follow-up,

the fact that they constitute over 12% of the inspections may indicate that a more efficient means of determining their status is warranted. The BATFE wants to address compliance inspection by utilizing a risk based approach to inspections and to “achieve a three-year periodic inspection cycle in partnerships with FFLs” (BATFE, 2009 p. 10). It should go without saying that considering the vast number of FFL dealers, a risk based approach should be utilized, however given the current state of the efficiency of inspections, achieving a three-year periodic inspection cycle can only be accomplished by increasing the number of investigators and increasing the number of inspections per investigator.

Part of the BATFE’s 2010-2016 strategic plan called for developing a comprehensive firearms tracing system, perhaps signaling the need for improvement in the Bureau’s National Tracing Center Division (NTCD). The NTCD was established a number of years ago and allows firearms trace requests to be made by any law enforcement agency conducting a criminal investigation. They can be requested by phone, fax and also through the internet on e-Trace. Besides tracing, the NTCD also assists in analyzing obliterated serial numbers, manages reports of stolen firearms from dealers, shipments and the military. In addition the NTCD also assists in Out of Business record requests and international tracing. (BATFE, 2011). The efficient tracing of firearms is a very necessary component to trafficking investigations. While the information it provides is limited it does provide a starting point for investigations and intelligence gathering as the frequency in which firearms are traced to specific dealers or purchasers can be indicative of trafficking and thus provide for surveillance and undercover operations opportunities.

One of the BATFE’s program geared toward low level trafficking is the Youth Crime Gun Interdiction Initiative (YCGII). The initiative intended, through the use firearms

traces, to demonstrate that “there is a sizable illegal market in firearms involving felons, juveniles, and other illegal possessors and traffickers in of firearms... (which) includes corrupt federally licensed dealers who ignore the results of background checks, straw purchasers, unlicensed sellers, thieves and traffickers in stolen firearms, among others” (BATFE, 1999 webpage). Besides interdiction of youth access to firearms, the initiative sought to have participating jurisdiction voluntarily agree to submit information on all recovered crime guns to the Bureau’s tracing center in order to provide information on illegal firearms activity in the participating communities, allow collaboration with local and state law enforcement agencies, and allow them to focus their resources on area most likely to impact illegal trafficking to juveniles, gang member and adult criminals. The program was initiated in 1996 with 17 cities that expanded to 55 cities by 2000, with 44 of the jurisdictions having a population greater than 250,000. During the initial period in 1997, trace requests from the participating cities nearly doubled compared to the previous year. Their annual reports provided data on the types of crime guns recovered, thus providing indications of the type of firearms more likely to be trafficked. The reports also indicate time to crime (i.e. the elapsed time from original purchaser until it was recovered as a crime gun). The BATFE considers a three years or less time to crime as a short period of time and that a time to crime of 2 years or less may be indicative of trafficking (BATFE, 2000). In the 2000 report summary, 24% of crime guns had a time to crime of two years or less. One of the objectives of the initiative was to have jurisdictions submit all crime guns recovered for traces. Of the 88,570 traces requested in 2000, 87.2% of traces were initiated. This is a result of incomplete or inaccurate serial numbers or guns sold before 1969 for which there are no records. The traces were able to determine the purchasers in 2/3 of

traces, with the unsuccessful traces related to incomplete dealer, or wholesaler and manufacturer information, and nonexistent sales records. In their 2000 report, the Bureau indicated a desire to expand the program nationally but yearly results of the program past 2000 did not appear on their website.

The “gun show loophole” has been claimed to contribute to all levels of trafficking, but it is more likely to contribute mainly to low level trafficking and somewhat to mid-level trafficking based on the number of firearms that may possibly be trafficked from such transactions, which thus defines the levels of trafficking. The BATFE is in a position to, with the proper self-restraint and low profile, utilize gun shows for investigative leads. BATFE frequently has an overt presence at gun shows, providing information on career opportunities, regulations, and laws. These venues also provide an opportunity for covert investigators to monitor vendors who, while presenting themselves as only non-licensees, may in fact have an illegal firearms selling operation. They are also able to conduct covert investigations into the sources of weapons of questionable origin (e.g. possible stolen military weapons or weapons with altered identifying marks).

The BATFE has involved itself in low level trafficking, however from a historical view the level of controversy that the BATFE generates (Hardy, 1979, U.S. Senate, 1982, U.S. House of Representatives, 2006) in conducting these type of investigations may call into question the focus of the Bureau. Their resources may be more efficiently utilized at different levels of trafficking. As the Office of Inspector General reports in 2010, the BATFE should “focus it’s investigative efforts on more complex criminal conspiracies involving high level traffickers rather than low level straw purchasers” (Krouse, 2011 p. 21).

Low Level Firearms Trafficking Recommendations

Federal firearm legislation passage will always encounter difficulties. The political divide amongst Congress members on 2nd Amendment issues is very evident and the ability of the NRA to muster political support, both at the grass roots and federal levels make federal restrictions a difficult thing to implement. While there are political roadblocks to enacting federal legislation to limit potential trafficking, it is recommended that states develop and implement their own laws regarding firearms dealer licensing and regulation. State officials with the backing of the law can inspect firearms dealer records and require other conditions to operate as a firearms dealer in their particular states. This can fill the gap left by federal legislation regarding monitoring the business operations of dealers and in prohibiting firearms that the jurisdiction deems problematic be it “Saturday night specials” or assault weapons.

This allows for more localized control over firearms dealers in their states and laws can be implemented that address that state’s particular trafficking concerns. Illinois, for example, requires a valid gun owner’s license to allow transfer of a firearm, even for private citizens, and other states have enacted laws limiting the types of firearms that can be sold and implemented reporting requirements for multiple sales. State laws regarding firearms dealers may allow law enforcement agencies and task forces to sharpen their focus on dealers who are selling off the books or engaging in illegal or questionable purchases by allowing them more access to records. State mandate reporting requirements also allows agencies to better assess trafficking patterns involving not only the dealers but the individual purchasers as well. Implementing long gun multiple sales reporting may be a

better means to monitor and limit the possible trafficking of assault weapons rather than resurrecting a federal assault weapon ban.

While having restrictive municipal and state laws may limit the low level trafficking that occurs, because of supply and demand, an increase in mid-level trafficking could be the result as traffickers move to fill the void when local access to firearms is restricted. For example, while Webster, Vernick, and Bulzachelli (2006) noted that a marked reduction in Milwaukee's sales of low priced handguns may have resulted in a reduction in their later use as a crime gun over a two year period. However it is possible that a study with a longer follow-up would have found that any reductions in firearm crimes related to this prohibition were short lived as traffickers either developed other sources for low priced firearms, either from elsewhere in the state or from out of state sources, or firearms users adapted to having to purchase higher priced firearms. Other unintended consequences may also be a rise in firearm theft as the profitability from trafficking more expensive weapons increases. It is recommended that while state laws may limit some trafficking, there must be an awareness of and a plan designed for addressing the possibility of unintended consequences.

As mentioned above, a number of the BATFE's efforts apply across multiple levels of trafficking. This report recommends that the Bureau increase their focus on compliance inspections of dealers. The BATFE, as noted earlier, is well aware there are corrupt federally licensed dealers, and have stated they are undermanned in their investigator positions. Compliance investigation is an important first step in addressing trafficking and the Bureau made need to reconsider some budgetary priorities. The Bureau requested a FY 2011 budget of \$1.163 billion dollars, the bulk of which is salaries (\$1.115 billion) plus \$6

million for construction. Of that total amount, 72% (\$837.4 million) is dedicated to just firearms. FY 2010 budget shows that on average it takes \$113,400 to fund a “full time equivalent position” for a single year (Krouse, 2011). Based on the Bureau’s initial allocation of 624 investigators for FY 2010, a five percent increase in investigators would have probably cost the Bureau \$3.5 million in budget relocation or allocation for 31 investigators.

However, besides accounting for more investigators, the Bureau should consider increasing the number of inspections conducted. Historical data shows that investigators are certainly capable of conducting at least 20 compliance inspections a year and data has also shown these are not wasted efforts in ensuring dealers are in full compliance. It is recommended that the Bureau undertake an examination of its investigator training programs and the way field inspections are being conducted in different offices. It is the expectation that efficiency and effectiveness could be improved upon and some established performance standards put in place. The Bureau should be striving for an increased number of compliance checks. For example in 2009 if the number of inspections was increased to 24 a year per investigator, and investigator ranks increased by 5%, it would have resulted in an additional 8,521 compliance inspections conducted, possibly discovering around 4,000 violations.

The Cook et al and Wright et al results suggest that the BATFE’s involvement in investigating possible straw purchases at local firearms dealers may need to be minimal considering the low percentages of firearms that are purchased from pawnshops, and dealers that later become crime guns. The Cook et al data also indicates that straw purchases may not be a large source of low level trafficked firearms. However, in light of

evidence that suggests straw purchases are used in illegal trafficking, there are features of handgun purchases that point to investigative leads. It is recommended that agencies use available data to focus investigative efforts on trafficking indicators like large volume retailers who reject a higher percentage of transfer applications, and multiple same day transactions made by young adults. These types of leads, derived from access to records, can lead to investigative and surveillance efforts that can reduce this level of trafficking. The BATFE already requires the reporting of multiple sales to an individual within five business days but by gathering and examining data, especially in markets, cities, or areas that are believed or shown to be prone to gun crimes and possibly trafficking, law enforcement may more effectively target their investigations.

This report has found evidence that a portion of the firearms illegally trafficked enter into the black market through thefts. Street criminals note the ease with which a firearm can be obtained in their neighborhoods and part of what fuels that supply is the availability of unsecured firearms. Gun manufacturers, the BATFE, and state and local law enforcement can play a part in preventing theft of individually owned weapons by promoting the use of gun safes, lock boxes and other home security measures to limit access by theft to firearms. In some areas, for example North Dakota, the widespread possession of firearms and the rural nature of the states may make changing the way firearms owners secure their weapons difficult. It is common for gun owners in a state like North Dakota to display firearms on the walls of residences or leave them in easily accessible areas (Heley, personal knowledge). It is recommended that an intensified joint effort between the BATFE and gun manufacturers be undertaken to promote the safe storage of firearms, to provide more effective locks or disabling devices with each firearm,

and to continue to use and expand upon difficult to access locations of serial numbers to prevent them from being obliterated. This will help reduce incidents of thefts and assist in the tracing of firearms that have been stolen or used in the commission of a crime.

Trafficking at this level is confined geographically. If a jurisdiction determines by assessment that a special focus on gun trafficking is warranted, it is recommended that they develop or utilize a suitable existing model program (e.g. Boston's Operation Cease Fire) to address their particular problem. Law enforcement intelligence gathering is crucial in understanding the local gun market as was evidenced in the nature of the market in Chicago. Law enforcement can then take appropriate steps toward addressing the trafficking of firearms. Whether it is straw buys, burglaries, gun brokers, or gangs, the approach can be tailored to produce the most effective results through means like stings, crackdowns, and surveillance.

If a law enforcement assessment of gun trafficking throughout a state warrants it, a recommendation is made that the state develop, through coordination and support with the BATFE, a state task force. The BATFE is able to provide training for task force members, drawn from state, county, and local departments. Task forces for municipalities or states provide for a concentrated local focus on trafficking problems that utilizes officers who will already be familiar with gun trafficking behavior in their area and have established street contacts. Mutual Operating Agreements through the Department of Justice can provide for overtime pay for task force officers (BJA, 2000). Utilizing task forces also frees up BATFE resources and manpower from low level trafficking so their attention can be focused on larger trafficking operations and a more thorough understanding of trafficking

through task force intelligence on a local level can assist the BATFE in higher level investigations.

Mid-Level Firearms Trafficking Assessment

As exemplified in BATFE trace data from the states, the surrounding states to an examined state provide more firearms to the examined state than do more distant states (BATFE, 2010), suggesting a regional nature to mid-level trafficking. Since trafficking in general involves the market components of supply and demand, trafficking to this degree involves transporting firearms to areas where availability of firearms may be restricted, or from areas where access to firearms is plentiful. This is determined both by the laws governing firearms possession and sale and the supply of firearms themselves. The trafficking of larger numbers of firearms across state lines, similar to any other trafficking operation of illicit goods, entails a coordinated effort between the parties. Criminal investigations across the United States have consistently shown that trafficking, whether it is firearms, drugs, or human beings, is often perpetrated by organized crime groups and their affiliates. These groups have the resources and personnel necessary to conduct efficient larger scale operations that could generate a profit. Consequently, a focus on these groups, specifically street and motorcycle gangs is important for this level of trafficking. The level of access these groups have to firearms also must be addressed. Of concern in mid-level trafficking is that the higher number of firearms being trafficked, could be indicative of supplying arms to other criminal organizations rather than individual street criminals, thus supporting other large scale criminal operations like drug trafficking or bolstering the arsenals of militias, extremist groups and other criminal organizations and gangs.

Federal and State Legislation

It is important to note that state laws that allow increased inspection and regulation of firearms dealers above what is called for by federal law can assist in investigating and limiting trafficking. As noted in the low level trafficking assessment, state laws that restrict possession and types of weapons may disrupt the local trade in illegal weapons. Interstate trafficking typically involves moving firearms from states with more relatively relaxed gun laws (such as Mississippi) to states with more restrictive laws like Illinois. While more restrictive state laws may make low level trafficking more difficult, it does foster interstate trafficking to meet the demand for firearms.

State laws that mandate inspection of gun sales records can also help generate investigative leads regarding possible trafficking. Accounting for these multiple sales is hampered by the limitations of dealer reporting requirement involving only handguns. Purchasing large quantity of long arms may be indicative of trafficking but reporting requirements on long guns is still dependent on state law, with the exception of the BATFE's mandate on California, Texas, and Arizona on reporting multiple rifle sales, on two or more rifles to a single individual over a period of five days. The rifles must be semi auto, accept detachable magazines and be larger than a .22 caliber (BATFE, 2012). Establishing state laws that focus on dealer regulation will allow for investigative leads to be developed and further the ends of limiting trafficking and apprehending the groups responsible for trafficking more so than the laws that simply restrict possession or sale. Restrictive laws, while providing for a punitive action, will not be as effective in breaking the groups that are responsible for firearms trafficking, as leads can only be generated based on whether those charged with the offense would be willing to disclose information.

Gangs

As mentioned previously in this report, a growing concern for the Department of Justice is the number of criminal gang members currently or formerly in the military. The NGIC 2007 report demonstrated that street and motorcycle gangs, while making up only a small proportion of military service personnel, do have access to military weapons and have engaged in theft and weapons smuggling from military bases and stationing assignments. The approach to combat this is two-fold. Reduce the number of military service personnel with gang membership or ties and reduce the access of these individuals to military weapons.

In regard to the groups engaging in the trafficking, in 2009, Eyler found that the U.S. military does not have policies that adequately prevent the inclusion of gang and extremist (white & black supremacists) group members from its ranks. Recruiters have overlooked or failed to recognize gang affiliations and there are deficiencies in obtaining or accessing civilian criminal records of potential recruits. (Eyler, 2009) The military has rarely used the RICO statues to prosecute gang members in the military that engaged in organized criminal efforts like the theft of weapons and Eyler (2009) notes that “cautious interpretation of the Posse Comitatus Act has led to situations in which military police will not coordinate with civilian police in anti-gang efforts that may affect the military but do not directly involve a military actor. This failure to coordinate reduces the effectiveness of both military and civilian police at combating gangs” (Eyler, 2009, p. 719).

The NGIC 2007 assessment noted that gang members have smuggled weapons back from combat zones to civilian associates and gang members. They have used their civilian associates and gang members to traffic military weapons to guns shows and dealers for

profit and to arm their individual members and other criminals. The NGIC report noted that a 1993 GAO report found that small arms theft was widespread but the NGIC report suggests that the true extent of military weapons theft is unknown. The NGIC also noted that lax base security allows civilian gang members access to bases and military personnel. This lax base security was also exemplified by the ease of access to unguarded or poorly guarded equipment storage facilities found on larger bases. Threatcon conditions at military bases determine the level of security taken and lower levels of threat, as determined by the base commander, call for relatively little security measures related to inspection of buildings and base traffic (Department of the Army, 1997). The NGIC report also noted that “gang members in the military are commonly assigned to military support units where they have access to weapons and explosives” and that “military personnel may steal items by improperly documenting supply orders or by falsifying paperwork” (NGIC, 2007, p. 10).

Task Forces

Similar to their utility in low level trafficking, state run task forces can address interstate trafficking, particular to their state or region, and coordinate with other task force and agencies. West Virginia’s task force, funded by the BJA, frequently conducted guns for drugs investigations. West Virginia relaxed firearms laws made it a source state for trafficking to market states like New Jersey and New York where they were sold for a large profit. The traffickers then invest the money in drugs and return to West Virginia to turn a large profit from the drug sales. The task force debriefs federal narcotics charge plea bargainers for trafficking information, conducts interdiction at transportation terminals,

solicits help from citizens, dealers and other agencies, and trains state troopers on intelligence gathering in the field (BJA, 2000).

BATFE Activities

Applicable to mid-level trafficking investigations is the Bureau's use of National Integrated Ballistics Information Network (NIBIN). One of the goals in the BATFE's strategic plan is to increase the number of items entered into the National Integrated Ballistics Information Network (NIBIN) and the number of NIBIN hits. NIBIN is intended to examine ballistic evidence from shootings and from their database link this evidence to perpetrated crime in other states. If ballistic evidence can connect a recovered firearm to crimes in other states, it can provide investigative leads into traffickers and trafficking trends. In 2009, out of the 187,283 bullets and casings imaged through NIBIN, only 2.8% resulted in matches (BATFE, 2010). However the Bureau does not give an indication of how much of an increase is needed to indicate effective performance and without a clear goal to strive toward, it will be difficult to determine the impact it has on trafficking. NIBIN items submitted are largely a function of other law enforcement agencies submitting evidence to NIBIN partners. The number of NIBIN hits will in part be a function of both how many items are submitted and how often a particular gun was used in a crime that left ballistic evidence, i.e. a spent casing or recovered bullet or the particular firearm itself. The author did not locate any information from the Bureau that addresses how this performance can be improved other than urging law enforcement agencies visiting the NIBIN website to utilize the network (Dept. Of Justice, 2011). Without a large and diverse database of ballistic information to draw from investigative leads and patterns of trafficking may be missed. While the NIBIN may have the potential to identify the possible movement of

crime guns by trafficking, with its effectiveness at generating hits at 2.8%, certainly some advances in participation will be necessary to make it a more effective law enforcement tool to address trafficking at this level.

This report demonstrated that gangs have been implicated with some frequency in trafficking operations. The BATFE has a comprehensive focus on gangs and violent crime. As part of Project Safe Neighborhood, the Bureau is using Violent Crime Impact Teams (VCIT) which trace all recovered guns, investigate all firearm related leads, infiltrate criminal groups through undercover operations and confidential informants, manage the NIBIN system, and investigate corrupt FFL dealers. (Krouse, 2011). The number of gang related investigations from 2000 to 2007 increased tenfold and in 2008 the BATFE referred over 4100 gang members and their associates for prosecution. Congress approved a \$10 million increase in 2010 for expansion of VCITs. The BATFE is also partnering with the FBI's National Gang Intelligence Center and the DOJ led National Gang Targeting Enforcement and Coordination Center (GangTECC). However wording in the 2010 Appropriation Consolidation Act indicates the Bureau needed prompting in its coordination efforts with the FBI, DOJ, and other entities (Krouse, 2011).

The BATFE's coordination efforts with other agencies are an important component in gathering intelligence. Institutions like the NGIC and GangTECC can use their expertise to provide information about the structure and operations of criminal gangs to the BATFE. This will enhance the Bureau's ability in using VICTs to investigate and infiltrate gangs that are involved in firearms trafficking. One of the focuses of the BATFE Strategic Plan for 2010-2016 was on gangs, however the focus seems to be on the role of gangs in other types of trafficking (cigarettes) with an additional focus on gangs and firearms as it related

to their use of firearms in committing violent crime and maintaining criminal enterprises. In 2009, the Bureau seemed to put a focus on gang related activity, reporting this gang related data but no data was reported for the previous years in the time frame. In 2009, the BATFE reported that 4,076 defendants were gang related gang related cases totaled 1,577.

While a focus on gangs as traffickers is important at this level of trafficking, quality investigations need to be conducted in order to quash criminal enterprises. Examining historical data from fiscal years 2003-2009, the BATFE has recommended 88,748 cases for prosecution (it should be noted that the results include cases of all types but the vast majority of cases investigated by the BATFE involve firearms) resulting in 75.8% of cases moving forward to indictment. 77.7% of those cases (52,309) resulted in convictions. There was no case data available from the rest of the period to compare to 2009. However, for defendants, an average rate of “recommendation for prosecution” to “conviction” was 57.6 % in the fiscal years 2003 to 2008. (BATFE, 2010). Compared to 2009, this same recommendation to conviction rate is down to 48%. While the percentages of those who were “indicted” to “convicted” rose slightly from the historical data to 2009, the largest difference is in the cases brought for prosecution that resulted in indictments having dropped from 76.8% to 60%. There was no previous year specific data available to indicate if this was part of a downward trend. The rate of recommendation to prosecution is an indicator of the legal sufficiency of the case presented. The reduction in the rate for the BATFE noted above may be indicative of an increase in cases that lack sufficient legal evidence to prosecute or that have other legal sticking points. This may be reflective of the quality of investigation done by the Bureau’s Special Agents.

In comparison to other federal agencies the BATFE recommendation to conviction rate of defendants is similar to the 2008 FBI rate of 44%, as is the recommendation to prosecution rate of 58.2%. However compared to the DEA who also face some of the same challenges in investigating trafficking that the BATFE does, their recommendation to prosecution rate of defendants is at 80.3% (which may speak to that agency's adherence to the idea that it is not the number of cases presented but the quality of the cases (DEA, 2011)). For 2008, the DEA's recommendation to conviction rate was 70.1%.

Mid-Level Firearms Trafficking Recommendations

Similar to what was noted in the low level trafficking recommendation, state implemented laws regarding firearm possession, sales, dealer regulation, and records and reporting requirements will assist state agencies and task forces in combatting trafficking by allowing more access to records and control over sales than would be allowed by federal law.

For the same benefits noted in the low level trafficking recommendation, if a law enforcement assessment of gun trafficking throughout a state warrants it, a recommendation is made that states develop, through coordination and support with the BATFE, a state task force. The BATFE is able to provide for training and overtime pay for task force members, along with access to BATFE resources and intelligence. Because of the interstate nature of mid-level trafficking, a task force is an appropriate entity to coordinate intelligence, enforcement, and investigative efforts with other neighboring state agencies so that concentrated, coordinated, and effective efforts can be made.

Weapons theft from military installations is reportedly widespread (NGIC, 2007) and the thefts stem from two major security gaps: base security lapses and military

personnel who use their service as a means to access weapons. The obvious solution to address this problem is increased security on military bases. There is little to innovate in this regard, it is more a matter of willingness to engage in security practices that will hinder the theft of weapons and equipment. The U.S. Army's Force Protection plan calls for the implementation of electronic surveillance for intrusion detection and video surveillance to enhance intrusion protection (Department of the Army, 1997), however it is unknown to what degree bases have implemented these systems. As base commanders more fully analyze the threat of weapons theft, the installation of electronic security systems may prove itself beneficial to combatting these thefts. An increased focus on weapons theft may also prompt base commanders to more fully utilize the security structure within the Threatcon system. Threatcon levels are not solely implemented for direct terrorist threats upon military bases but can be utilized, at the base commander's discretion, to address a criminal threat involving theft of military equipment (Department of the Army, 1997). The increased inspection of base buildings, identifying personnel on base, and the inspection and searches of vehicular traffic going on and off the base that higher Threatcon levels bring could enhance the military's ability at detecting and preventing weapons theft from bases.

It is this report's recommendation that the BATFE play a more active role in this issue by forwarding its concerns to the Department of Defense (DOD), and prompting the DOD to examine security breaches and address the security weakness that allow these thefts to continue. It is recommended that the DOD explore utilizing enhanced electronic security measures and Threatcon level implementation to address established or developing concerns about weapons theft. The DOD already shares information on stolen weapons

with the BATFE through the NTCD, though the extent to which reporting to the NTCD is done and the timeliness of the reporting is unknown. The BATFE can assist the military in background investigations on suspected gang members while providing investigative leads concerning theft of military weapons and trafficking.

This report also recommends an increased focus on intelligence gathering concerning trafficking operation that may be conducted by gangs and understanding the extent to which these criminal organizations engage in firearms trafficking. This report demonstrated that gang members have frequently been implicated in firearms trafficking operations and the BATFE should consider more than the use of guns by gangs but also gangs as traffickers. Any indication that gangs were responsible for firearms trafficking was missing from their current strategic plan. This focus will require coordination with local gang units, and Federal agencies with gang resources like the FBI, DEA, and INS. It is necessary to maintain the VCITs as this is an appropriate mechanism for assessing the level of illegal trafficking conducted by criminal groups and as a means to investigate it. It will need to insure it maintains communication and a solid partnership with other federal agencies to enhance their intelligence gathering capabilities and assist one another in investigations and operations. However, the value of VCITs can only be determined by engaging in quantitative analysis of the program to gauge its effectiveness in areas like gathering intelligence, producing viable investigative leads, and assisting in shutting down corrupt FFLs. It is recommended that BATFE conduct an evaluation of the VCIT program to insure its resources are being used effectively and that the programs are being implemented correctly. It will be useful in assessing the impact on trafficking by VICTs by determining the level of actionable intelligence produced through undercover operations,

the effectiveness that comprehensive tracing has on generating investigative leads, if increased participation in the NIBIN is witnessed through VICT management, and if increased focus on corrupt FFL dealers generates an impact on their operations and decreases trafficking. Proper oversight will also need to be addressed. Any time undercover operations and the use of confidential informants are utilized, case management is critical to insure that the cases generated have a strong legal basis. By insuring solid cases are brought for prosecution, the Bureau can improve on its performance on convicting defendants.

The Bureau should also insure that its agents and investigators adhere to best investigative practices. Two of the Bureau's performance indicators are increasing the amount of defendants both recommended for prosecution and convicted. Historically, the Bureau has been viewed as an agency that has abused its authority (Hardy, 1979, U.S. Senate, 1983, U.S. House of Representatives, 2006) and in doing so is at risk for bringing legally weak cases for indictment. Having only 48% of cases recommended for prosecution result in conviction, as was evidenced in 2009, results in a recommendation to assess the tactics and tools used in Special Agent investigations. There should be adequate oversight of individual field offices and regional operations to insure that legally damaging practices like coercion, entrapment, and the use of unreliable confidential informants is minimized or eliminated.

The Bureau may need to adopt a more reserved approach to its investigations, working more diligently to develop solid leads, and conduct more intelligence operations, including surveillance. Investigation of individuals involved in illegal activities requires understanding the target and how they operate and conducting active, passive, and

proactive intelligence gathering (NJIC, 1988). Without effective intelligence gathering the likelihood of an effective investigation and successful prosecution are reduced (NJIC, 1988).

High Level Firearms Trafficking Assessment

Because the United States has a large stock of firearms, a potential criminal commodity, that is readily available, the ability of the United States to prevent high level trafficking makes the issue a domestic concern. Because of the ongoing concerns with narcotics trafficking from Mexico and its attendant violence, southern border firearms trafficking has become a focus of the BATFE. While there are numerous agencies who can play a role in preventing firearms trafficking (U.S. Coast Guard, ICE, CBP, DEA), this report examines the efforts and coordination by the BATFE with these other agencies.

Legislation

On the issue of export law, the very illegality of trafficking requires legislative measures to address violations. The GCA, NFA, and the Arms Export Control Act (AEC) expound on the regulations defining legal export by manufacturers and dealers and address more generally the export of firearms. The main legislative tool regarding cross national firearms trafficking is the Arms Export Control Act in that the legality of exportation is dependent on whether the item supports terrorism or increase the possibility of outbreak or escalation of conflict. (U.S. Dept. of State, 2011). Senators Feinstein, Schumer, and Whitehouse seek the ratification of CIFTA. While this is basically an agreement to engage in practices that would limit illegal trafficking, the measures and methods detailed do not differ significantly from what is already practiced in the U.S. One component of the Act is, if in accordance with domestic policy, that “State Parties shall take the necessary measures,

within their possibilities, to allow for the appropriate use of controlled delivery” (CIFTA Article XVIII) and to provide mutual aid, assistance, cooperation and intelligence sharing (U.S. Dept. of State, 2011).

Firearms Trafficking Across the Northern Border

Cook et al’s 2007 examination of trafficking in North America demonstrates that patterns for trafficking differ between the borders. While both Mexico and Canada have relatively restrictive gun laws, handguns are a more typical commodity in Canada trafficking as long guns (excluding assault weapons) are readily available legally while handgun acquisition and possession is more difficult. Contrary to the limited trafficking means (straw buys leading to small overland shipments) suggested by the U.S. for trafficking into Mexico, trafficking into Canada is shown to have taken a variety of approaches. 2008 data showed that 69% of traced crime guns in Canada were traced to the U.S. Traffickers have used concealment in vehicles, mail order, false documentation and declarations, and coordination with corrupt customs officials to accomplish their goals. However there appears to be relatively few cases that involve more than 10 firearms. Data from Toronto in 2008 revealed that while Washington State contributed to the source of a third of their smuggled crime gun, Florida was the next largest contributor (Cook et al, 2009).

Firearms Trafficking Across the Southwest Border

Sources. Cook et al (2009) states that Mexico’s prohibition on gun stores severely limits the sources of legal firearms to a division of the Mexican military. Possession is heavily regulated thus providing for a larger demand for all types of firearms. The BATFE states that a significant amount of weapons are being purchased through straw

buys at U.S. border state gun stores and are being smuggled across the Mexican border to drug cartels in small shipments called “ant runs” by the BATFE (Krouse, 2011). But Cook et al (2009) suggests that the contribution to illegal guns in Mexico from firearms smuggled overland into Mexico from the U.S. has not been determined and suggests other sources for criminals and DTOs. These would include freighters smuggling shipping containers with numerous weapons and ammunition, diverted Central and Southern American legitimate arms shipments, and pre-existing caches of weapons.

The Cook et al (2009) examination of trafficking in Mexico cites three other sources of firearms for criminal elements and organizations: smuggling from international organized crime groups, illegal firearms trafficking through Central and South America and the Mexican military, which may be a main source of illicitly held weapons. The BATFE reports that trafficking sources are concentrated, with a small number of cases (97) cases between 1996 and 2003 accounting for a large volume of firearms (more than 30,000). In most cases the average number of firearms per case was 124 (a handful of cases involved much larger numbers of firearms), but the actual trafficking took place in “ant runs” of small shipments each (Cook et al 2009). The concentration of sources, i.e. a relatively few traffickers trafficked a high number of firearms, suggests that high level firearms trafficking is done through an organized gang for the purpose of drug trafficking support, (Cook et al 2009) although this not synonymous with arming drug cartels.

In 2011, the GAO reports the number of firearms seized in Mexico between 2004 and 2010, and traced to an original owner in the United States, varied between almost 2,000 to over 14,000 per year (Feinstein et al). Feinstein et al also report that 70% of those guns came from California, Texas and Arizona (2011). But the 2009 Cook et al analysis

also demonstrates that the claims of high percentages of crime guns recovered that are traced to the U.S. must be understood in the context that recovered firearms are only a fraction of the guns used in crime in Mexico, that only a portion of those are traced, and that selectivity plays a part in submitting traces, so that there is no clear picture of how much of the illegal market the U.S. is supplying (Cook et al, 2009).

BATFE and Interagency Cooperation It was previously noted that a more pressing concern of the United States in regards to firearms trafficking lay at the southern border and this venue is appropriate for the assessment of the BATFE as the lead agency in this effort. The BATFE operates with intelligence stemming from the El Paso Intelligence Center (EPIC) and works in conjunction with Immigration and Customs Enforcement (ICE) Customs and Border Protection (CBP) and the Drug Enforcement Agency (DEA). In 2006 the BATFE initiated Project Gunrunner as an effort to disrupt the flow of illegal guns to Mexico and according to the BATFE, from 2006 through 2010, the Project has recommended over 1,100 cases with over 2,500 defendants for prosecution. Investigations have seized over 10,000 firearms and over a million rounds of ammunition that were to be smuggled into Mexico. The Bureau has dedicated over 100 special agents and 25 investigators to the project (BATFE, 2011). The Bureau was allocated \$37.5 million in 2010 for the project and the project has received funding since 2008 in the amount of \$73.5 million for three years through the Meridia Initiative to Combat Illicit Narcotics and Reduced Organized Crime Authorization Act of 2008 (Krouse, 2011).

The Bureau also maintains an attaché in Mexico City to manage the e-Trace program (in 2009, the Spanish language version of e-Trace had yet to be fully implemented (GAO, 2009)) but the Congressional Research Service report concluded that while traced

firearms frequently originate in the United States, unbiased comprehensive tracing has not been conducted that would allow any statistically significant conclusions to be drawn on the prevalence of U.S. weapons used in Mexican crime. The e-trace system for Mexico was fully implemented in 2010 but a DOJ Office of Inspector General report later that year found that the e-trace system produced little in the way of investigative leads. They suggested that the Bureau work with DOJ to produce a workable long gun multiple sale reporting requirement and suggested that the Bureau “focus it’s investigative efforts on more complex criminal conspiracies involving high level traffickers rather than low level straw purchasers” (Krouse, 2011 p. 21).

Operation Fast and Furious As part of Project Gunrunner, Operation Fast and Furious, based out of the Phoenix field office, has generated some controversy. Bureau whistleblowers alleged that the field office was allowing straw purchasers to amass large amounts of weapons as part of long term trafficking investigations. Concerns were heightened when it was reported that as many as 2,000 guns made it into the hands of criminals and traffickers before they could be arrested and the firearms seized. Some of these weapons were found to be connected to Mexican crimes including the murder and wounding of two ICE special agents in February 2011. Congressional investigations continues into the operation and lapses in oversight of Fast and Furious. (Krouse, 2011). In a deposition to Congress in July 2011, head of the BATFE Kenneth Melson stated that his chief intelligence officer was upset with the operation but did little to shut it down. However the current acting director B. Todd Jones claims that Melson allowed overzealous field agents and supervisors to use unapproved tactics. (McClatchy Newspapers, 2011).

It is this zealousness that has characterized many of the negative incidents involving the BATFE. If the culture within the BATFE is such that the overriding mandate over limiting access to firearms becomes so detrimental to the Bureau's public image and allows violations of civil rights, then it is possible that the Bureau's cultural view may be incompatible with the expectations that should be had for a federal law enforcement agency. It is possible that a change in the Bureau's mission involving reducing law enforcement operations activities and increasing industry compliance, education, training and coordination with other agencies may help scale back some of the heavy-handed approaches that have come to be associated with the BATFE and may help foster change in an overzealous Bureau culture.

High Level Trafficking Recommendations

The Southwest Border Initiative that the BATFE has employed involves significant financial and personnel resources and has generated controversy over its operations and focuses. To justify this level of expenditure it is recommended that a joint effort be undertaken by the BATFE and Mexican authorities to develop the appropriate statistical data in order to draw firm conclusions about the level that trafficking from the U.S. contributes to illegal Mexican guns, where and to who the guns go to, be they street criminals, criminal gangs, or Mexican DTOs, and examine how data, trace requests, and interagency intelligence may be shared and communicated more effectively.

Without a more comprehensive picture of the nature and sources of illegal firearms trafficked to Mexico, resources cannot be allocated toward the most effective interventions. The ability to analyze intelligence and data is crucial in establishing effective interventions and without knowing if the focus of Project Gunrunner is appropriate (i.e. a significant

amount of firearms trafficking that warrants the expenditures of the Project), resources could be wasted. If data warrants a continued focus on trafficking from the U.S. then it is recommended that Project Gunner be re-evaluated as to its design and implementation. The GAO in their 2009 report also suggests increased interagency cooperation and coordination and evaluating the Project's effectiveness, goals and strategies.

Operations like Fast and Furious, while lambasted in the press, are instrumental in disrupting trafficking organizations. As noted in the CIFTA document, controlled deliveries are not only acceptable but expected in combatting firearms trafficking. Undercover trafficking investigations of any sort will invariably allow some criminal activity to occur, so steps should be taken to minimize the harm that ongoing criminal activity causes while conducting investigations. This risk of harm can be minimized through quality operational control and oversight. In Operation Fast and Furious, there appeared to be little coordination with Mexican authorities and BATFE personnel in Mexico, (Ellingwood, Serrano, and Wilkinson, 2011) little oversight from stateside supervisors, (Serrano, 2011) poor case management practices followed by field agents, (Serrano, 2011) and substandard electronic tracking technology employed in the firearms shipments (Pavlich, 2010). This southern border operation was not the only one lacking in oversight. In 2006 and 2007, Operation Wide Receiver utilized the same tactics and also lost weapons to Mexican criminals (Serrano, 2011). Thus it is recommended that an assessment of operational procedures of special agents be conducted to insure there is understanding and uniformity in acceptable operational practices and parameters. The Bureau has a long history of overzealous agents acting with impunity in their individual operations and it may be necessary to assess the culture within the Bureau itself to

determine if the Bureau needs to reassess its goals and missions as an agency, perhaps taking a smaller role in special operations and re-focusing on industry compliance, regulation, and the training of law enforcement personnel.

Other recommendations that can be applied to both borders are the development of enhanced security measures. The GAO report (2009) notes that infrastructure on the southern border is not sufficient to handle the traffic flow necessary to conduct a significant amount of searches of vehicles bound for Mexico. Enhanced checkpoints utilizing vehicle x-ray equipment, as is being used in Canada, can increase the effectiveness and speed of vehicle searches. Electronic surveillance, including the use of unmanned aerial drones has been implemented on both borders for trafficking interdiction. It is recommended that these security enhancements be considered, especially as their cost effectiveness can be considered in the context of general border security and as interdiction in not just firearms, but drug and human trafficking as well. But it also must be considered that such measures will likely entail a large financial appropriation and to do so may require some empirical justification in reduced trafficking for the financial outlay required.

SUMMARY AND CONCLUSION

The ability to assess the means and methods, trends and patterns in trafficking will allow law enforcement agencies to more efficiently and effectively investigate and hinder illegal firearms trafficking. This report has shown that there are deficiencies in the data about what we know about trafficking and unless addressed, efforts to combat trafficking may lack focus. This report has also found that while there is a wide variety of efforts both legislative and operational designed to address trafficking, improvements can be made, and that some recommendations are applicable to more than one level of trafficking. This report recommends that for low level trafficking:

- Rather than a focus on federal legislation, state legislatures should take the lead in addressing their local trafficking problems.
- A federal ban on assault weapons would be ineffective considering the large number of assault weapons on the market and their limited use in street crime.
- State laws regarding the limitations and regulations on possession, certain types of firearms, and dealers can fill the gap in federal regulations that hamper effective trafficking investigations.
- Multiple sales reporting mandated by state law will allow states to better assess trafficking and assist in investigations.
- The BATFE and firearms industry should promote, through a variety of means, the safe storage of firearms to reduce their theft.
- Evaluate the Don't Lie For The Other Guy campaign to determine if an effective message is being conveyed, and if there are any actual reductions or changes in attitudes about straw purchases.

- The firearms industry should continue and expand on efforts to make serial numbers on firearms difficult to remove in order to facilitate tracing.
- The Youth Crime Gun Interdiction Initiative should be expanded and the data gathered used to provide comprehensive assessments of the degree and nature of trafficking problems in their jurisdictions so that effective strategies can be developed based on the assessments.
- Though at a significant financial outlay, the hiring of more industry investigators should be undertaken to increase the number of inspections of FFL dealers.
- Efforts should be undertaken to insure that industry investigators are properly trained and performance standards are established and met to increase the number of inspections conducted by individual investigators.
- Local law enforcement should assess their potential trafficking problems and develop programs with a specific local focus to be effective at limiting trafficking.
- Local or State task forces should be developed if assessment warrants their need.
- The BATFE pulls back from low level trafficking investigations and allow state and local task forces take the lead.

In regards to mid-level trafficking, the report recommends that

- Similar to the recommendation for low level trafficking, state laws that enhance the inspection of FFLs, especially in regards to multiple handgun and rifle sales, will enhance investigative capabilities.
- Prompted by the BATFE, the DOD should assess potential and actual weapons loss and implement enhanced security measures on military bases, as warranted, to limit these losses.

- Renewed efforts should be made by the military branches to eliminate potential trafficking risks by improved recruiting methods and standards that more thoroughly vets potential recruits with possible gang connections.
- DOD and BATFE coordinate on possible gang investigation leads.
- BATFE should evaluate the extent that gangs are actively trafficking firearms.
- BATFE should evaluate the effectiveness of its VICT program.
- Local or state task forces should be developed if assessment warrants their need.
- BATFE should assess special agent operational procedures for best practices and effective oversight.
- The NIBIN should be assessed to determine the most effective means for increasing the participation of law enforcement agencies in the program.
- Efforts should be made toward increasing voluntary compliance from law enforcement agencies on submitting crime guns for tracing.

In regards to high level trafficking, this report recommends that

- That an assessment be conducted of the contribution of U.S. firearms to crime guns in Mexico and Canada as a means of determining the appropriate level of focus and resources to assign to the issue.
- Evaluate the effectiveness of e-Trace usage in Mexico so that improvements or changes to the program can be made to possibly increase its effectiveness.
- That if conditions warrant the use of operations like Project Gunrunner, that operations be assessed to insure proper oversight and inter and intra-agency communication is well developed.

- Enhanced physical measures like fencing, improved design at major border crossings to facilitate the inspection of more vehicles, and the increased use of electronic surveillance and electronic cargo inspection should be implemented on the borders to help restrict firearms trafficking.
- That the mission of the BATFE be re-assessed taking into account the possibility of a culture that exists amongst agents, investigators, and supervisors that is not conducive to effective operation of the agency and may require redefining of their mission toward less aggressive operational tactics and refocusing on other aspects of the Bureau's mission.

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