

**Testimony of Legal Community Against Violence
before the Subcommittee on Commerce, Justice, Science, and Related Agencies
of the House Appropriations Committee**

on

**Funding Restrictions Imposed on the Bureau of Alcohol, Tobacco, Firearms and Explosives
(ATF) Related to the Release of Crime Gun Trace Data**

(Submitted via e-mail on April 26, 2007)

Legal Community Against Violence (“LCAV”) appreciates the opportunity to submit testimony to the subcommittee on Commerce, Justice, Science, and Related Agencies in opposition to restrictions contained in previous appropriations for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) that prohibit the release of information contained in the Firearms Trace System database (the so-called Tiahrt amendment). LCAV is a national public interest law center dedicated to preventing gun violence. Founded in 1993 in the aftermath of the assault weapon massacre at 101 California Street in San Francisco, LCAV is the country’s only organization devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV serves governmental entities and nonprofit organizations nationwide, focusing on policy reform at the state and local levels. We conduct legal research, analyze existing and emerging policy strategies, review proposed legislation, generate model regulations and develop legal and analytical materials to help governmental entities and nonprofit organizations achieve their policy goals. Our website, www.lcav.org, is the most comprehensive resource for information on U.S. firearms laws in either print or electronic form.

Restrictions on the release of firearms trace data have been in place in various forms in ATF appropriations since 2004. The current version prohibits ATF from using appropriated funds to release crime gun trace data except to “a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure.” There is also a prohibition on use of the data in civil litigation.

These restrictions prevent law enforcement from accessing the crucial information needed to investigate and prosecute gun traffickers. In addition, they hinder public officials who are seeking regulatory solutions to gun trafficking, and keep the public from fully understanding the epidemic of gun crime and violence and finding solutions that could help prevent many of the almost 30,000 gun deaths in the U.S. every year.

Historically, ATF data has been an important tool for LCAV to craft policy approaches to help curb illegal trafficking. ATF’s annual “Youth Crime Gun Interdiction Initiative Trace Reports” (1997-2002) and the 2000 report “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers” provide valuable analysis of thousands of gun trafficking investigations. This information has helped us understand the channels through which guns are trafficked, which guns are typically trafficked, and the common characteristics of persons involved in trafficking.

In the last version of the Youth Crime Gun Interdiction Initiative Trace Report, released in 2002, ATF described the purpose of analyzing and disseminating the information:

The reports provide extensive analyses of crime gun traces submitted in calendar year 2000 by law enforcement officials in selected cities throughout the country participating in ATF's Youth Crime Gun Interdiction Initiative. The analysis of a large number of individual traces from many similar jurisdictions helps identify consistent crime gun patterns that may not be apparent from information in a single trace or traces from a single jurisdiction or State. With information about patterns and trends, more violent criminals can be arrested more efficiently, more focused regulatory enforcement can be undertaken, and more gun crime and violence can be prevented.

We have used the information contained in these reports to formulate numerous policy approaches to attack the problem of gun trafficking. These policy approaches form the framework for our nationally disseminated educational materials and model legislation and help us respond to requests for assistance from activists and public officials across the country. For example, our understanding of gun trafficking helped us partner with the City of Chicago to identify and promote legislative solutions to gun trafficking in Illinois. In 2005 we provided legal support to public officials and advocates in connection with the enactment of state legislation requiring background checks at gun shows, and we are continuing to work in Illinois on measures that will close other channels that allow guns to move from legal to illegal markets. In California, our understanding of gun trafficking helped us conduct a local ordinance initiative that resulted in hundreds of local ordinances, including those requiring one gun per person per month, a measure that eventually became a California state law.

As a result of the Tiahrt Amendment, ATF no longer publishes these valuable reports, and current trace data analysis is not available to groups like LCAV, making it virtually impossible to identify the sources of crime guns that are increasingly being used in our communities and to formulate innovative approaches to crack down on illegal gun trafficking.

This information has become even more critical in light of increasing rates of gun violence and violent crime. The Bureau of Justice Statistics reports that the rate of firearms violence increased almost 50 percent between 2004 and 2005, from 1.4 to 2.0 victimizations per 1,000 persons age 12 or older.¹ Moreover, the Police Executive Research Forum (PERF) has been monitoring trends in violent crime in 56 jurisdictions for the past 24 months. According to PERF:

[T]he 24-month trend, starting on January 1, 2005, is unmistakable: Among the jurisdictions filing reports with PERF, total homicides in 2006 were 10.21 percent higher than they were in 2004. Robberies increased 12.27 percent; aggravated assaults increased 3.12 percent; and aggravated assaults with a firearm increased 9.98 percent.²

¹U.S. Department of Justice, Bureau of Justice Statistics Bulletin, "Criminal Victimization, 2005," (September 2006).

² Police Executive Research Forum, "Violent Crime in America: 24 Months of Alarming Trends," (2007).

The PERF findings are startling and highlight the urgent need to make every tool—including comprehensive crime gun trace data—available to help identify and interrupt the sources of illegal firearms.

There is simply no evidence to support the arguments made to justify restricting access to the crime gun trace data. In fact, independent, respected entities, including a U.S. Court of Appeals and the National Academy of Sciences have supported release of the restricted trace data to academics and the general public.

The claims made that release of tracing data could interfere with ongoing law enforcement investigations were roundly rejected by the U.S. Court of Appeals for the Seventh Circuit in 2002 (prior to imposition of the Tiahrt restrictions). In its opinion ordering release of the data that ATF sought to withhold under the Freedom of Information Act, the court stated:

ATF's hypothetical scenarios do not convince us that disclosing the requested records puts the integrity of any possible enforcement proceedings at risk....ATF has provided us with only far-fetched hypothetical scenarios...[A]rguments that the premature release of this data might interfere with investigations, threaten the safety of law enforcement officers, result in the intimidation of witnesses, or inform a criminal that law enforcement is on his trail are based solely on speculation.³

The court also noted that release of the data serves the public interest in that it provides a mechanism to evaluate ATF's effectiveness, helps control gun trafficking, and aids cities' ability to enforce their gun laws.

In 2004, in *Firearms and Violence: A Critical Review*, a committee of the National Academy of Sciences recommended that “appropriate access be given to data maintained by regulatory and law enforcement agencies, including the trace data maintained by the Bureau of Alcohol, Tobacco and Firearms...for research purposes.”

In short, the funding restrictions on ATF's release of crime gun trace data serve only to frustrate the efforts of law enforcement and policymakers to stop illegal gun trafficking and help reduce gun-related crime. We respectfully request that these provisions not be included in ATF's fiscal year 2008 appropriations legislation.

Thank you for the opportunity to submit testimony on this vital public safety issue.

³ *City of Chicago v. United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, 287 F.3d 628, 2002 U.S. App. LEXIS 7537 (7th Cir. 2002). The court subsequently ruled that the data must be withheld as the appropriations rider “amounts to a change in substantive FOIA law in that it exempts from disclosure data previously available to the public under FOIA.”

**LANGUAGE TO STRIKE RIDER ON CRIME GUN TRACE DATA FROM
COMMERCE, JUSTICE, SCIENCE APPROPRIATION**

We request that the Subcommittee strike the so-called “Tiahrt Amendment” language, which restricts the ability of local police and civil enforcement authorities to acquire, use, and share illegal gun trace data. More than twenty national and state police organizations, and more than 150 mayors from around the country, have called for removal of these restrictions that put the police and the public at risk.

Specifically, we ask that you strike from Title I, under “General Administration -- Bureau of Alcohol, Tobacco, Firearms and Explosives -- Salaries and Expenses,” the language starting with “*Provided further*, That no funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database” and all that follows through “licensed manufacturer (as defined in section 921(a)(10) of such title),” as it appeared in the FY 06 bill (Public Law No. 109-108, 119 Stat. 2290) on pages 2295 and 2296.