



Office of the Inspector General
U.S. Department of Justice



A Review of ATF's Undercover Storefront Operations

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EXECUTIVE SUMMARY

In this review the Office of the Inspector General (OIG) evaluated the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) use of undercover storefront operations – an investigative technique in which law enforcement operates a fake business or establishment from a location where illicit merchandise is exchanged or services are rendered. In 2013 ATF's use of undercover storefront operations came under scrutiny after news reporting about a storefront operation in Milwaukee, Wisconsin described numerous problems, including the theft of firearms, improper handling of sensitive information, and the alleged targeting of persons with disabilities. These and other reports about flaws in ATF's storefront operations prompted members of Congress to request the OIG to initiate this review.

The OIG examined five ATF undercover storefront operations to: (1) determine whether there are any systemic deficiencies in ATF's storefront policies; and (2) evaluate the effectiveness of ATF's Monitored Case Program (MCP) as an oversight tool for the storefront operations. ATF established the MCP to provide for heightened management scrutiny of the agency's most sensitive cases. We selected five undercover operations that continued or began after the inception of the MCP; these operated in Boston, Milwaukee, Pensacola, St. Louis, and Wichita. The storefront in Boston was mobile and operated from a cargo van. In addition, due to allegations that ATF was targeting persons with disabilities for enforcement action, we examined this issue at ATF's storefront in Portland, Oregon, as well as the other storefronts identified above.

Our review determined that while undercover operations can be an important component of ATF's efforts to fight violent crime, ATF failed to devote sufficient attention to how it was managing its undercover storefront operations. It lacked adequate policies and guidance for its agents, and in some cases supervision, necessary to appropriately address the risks associated with the use of this complex investigative technique. Although we did not find overarching problems with ATF's storefront policies as revised following disclosure of problems with the Milwaukee storefront, we determined that ATF should make additional changes to further improve them. We also found that ATF needed to make adjustments to its MCP to better focus on the most significant risks in ATF's investigative operations, including storefronts.

We found no evidence that ATF targeted or used individuals with intellectual or developmental disabilities in its storefront investigations because of their disability. However, we determined during the course of this review that the Department of Justice (DOJ) had failed to apply Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination against persons with disabilities, to its federal law enforcement activities. This Act imposes important compliance responsibilities on DOJ's law enforcement components, which include ATF, the Federal Bureau of Investigation (FBI), the

Drug Enforcement Administration (DEA), and the U.S. Marshals Service (USMS). When we inquired with ATF and the other DOJ law enforcement components about their compliance responsibilities under the Rehabilitation Act, we found that they lacked policies that addressed the Rehabilitation Act's applicability to law enforcement operations. The OIG raised this important issue with the Office of the Deputy Attorney General and, on September 3, 2015 the OIG wrote to the Attorney General and Deputy Attorney General to request quarterly updates on DOJ's efforts to ensure compliance with the Rehabilitation Act. The OIG intends to carefully monitor DOJ's progress in meeting its significant duties under the Act.

We provided 13 recommendations to assist ATF with its storefront operations. ATF concurred with all of them and has committed to their full implementation. They address the following issues: initiation, planning, safety and security, oversight, intelligence, vulnerable populations, revisions to the Storefront Investigations Manual, and training. In addition to strengthening ATF's policies, improving the MCP, and helping ATF and DOJ to meet their obligations under federal disability law, the recommendations will assist ATF to address three other areas of concern we identified during the review. The first involves predication and targeting. We believe ATF must do a better job in future storefront operations defining the crime problem that the storefront is designed to address and explaining how the strategy underlying it will lead to the apprehension of persons warranting federal prosecution. Our recommendations request ATF to make clear in the storefront initiation paperwork how the storefront will be targeted and how the resulting prosecutions will serve a substantial federal interest.

Second, ATF underestimated the level of experience, training, and expertise necessary to manage and oversee its storefront operations, which led to mistakes. Undercover storefront operations are complex and require the management of significant manpower and financial resources. ATF's assignment of inexperienced and shifting staff to run and supervise these operations without adequate Headquarters support and oversight had predictably negative consequences. Our recommendations request that ATF's Undercover Branch designate undercover agents/case agents with significant storefront expertise to work on-scene for the initial period of each storefront's operation to assist with planning, set-up, and early operations; that ATF minimize the turnover of supervisors during the operations; and that at least one undercover agent or the case agent on a storefront team have completed advanced undercover training, including training on storefront operations, before the storefront becomes operational.

Third, and closely related to the second issue above, is the problem told to us about ATF Headquarters' historic reluctance to intrude on the domain of its Special Agents-in-Charge. We believe that in addition to supplementing the expertise available for storefront operations, ATF Headquarters units - the Special Operations Division and its Undercover Branch - need to be stakeholders in future operations and provide active oversight of them. ATF undercover

storefront operations should not proceed unless experts within these units concur that they are properly designed and are being implemented appropriately. We have included recommendations in our report to encourage this oversight.

We believe that our recommendations will strengthen ATF's undercover operations. Undercover operations have been and should continue to be an important tool in ATF's fight against violent crime. Accordingly, ATF leadership should take steps to ensure that such operations are managed expertly and appropriately.

CHAPTER ONE INTRODUCTION

For many years, the Department of Justice (Department or DOJ) has used undercover operations to collect evidence of criminal wrongdoing in investigations targeting problems as diverse as public corruption, human trafficking, and financial fraud. In some cases, the use of the undercover technique has afforded agents and prosecutors information about criminal organizations and conspiracies that they otherwise would not have been able to obtain, and has resulted in highly publicized successes. Examples of these cases include the Federal Bureau of Investigation's (FBI) infiltration of the Bonanno crime family in Operation Donnie Brasco, and the Bureau of Alcohol, Tobacco, Firearms and Explosives's (ATF) infiltration of numerous violent motorcycle gangs. The effectiveness of undercover operations has led numerous federal law enforcement agencies outside of DOJ to utilize them, as have state and local police departments.

While the rewards from undercover operations can be considerable, the operations also present significant risks, such as danger to the undercover agents, harm to innocent third parties, and the potential to infringe on constitutional rights, which necessitate rigorous supervision and oversight. If not managed correctly undercover operations have the potential to cause significant harm. To address such concerns DOJ established Attorney General Guidelines for FBI undercover operations in 1981 that create detailed authorization procedures and requirements to ensure that these operations are properly designed and implemented. Although the Undercover Guidelines were written for the FBI, DOJ requires all of its law enforcement components to comply with them. The Department also has established risk management guidelines that address what are classified as "sensitive investigative activities," which can include activities during undercover operations.¹

One variation on the undercover technique is the undercover storefront operation. In these cases, law enforcement operates a fake business or establishment from a location where illicit merchandise is exchanged or services are rendered.² These operations may or may not be open to the public and have proven to be especially effective in cases that focus on stolen property and

¹ The policies of the Department's law enforcement components use different definitions of "sensitive investigative activities," owing to the components' differing missions.

² Undercover operations can vary according to the degree of government involvement in providing the opportunity to commit crimes. In some situations, such as undercover infiltrations of criminal organizations, the government may exercise little control and instead rely on the observations of the undercover agent. In contrast, in "sting" operations, the government creates a crime scenario, such as an illegitimate business, targeted on providing an opportunity for criminal conduct. Undercover storefront operations are a type of "sting" undercover operation. See David C. Larson, *Undercover Operations: Law and Policy Guide* (Thomson Reuters 2014) 41-50. Mr. Larson was formerly a legal counsel at the FBI.

contraband, such as narcotics. In the mid-1970s, many of the FBI's undercover operations were storefronts that took in stolen property. According to representatives of the FBI and Drug Enforcement Administration (DEA), it currently is uncommon for their agents to participate in storefront operations that are open to the public, though they may utilize an office or other location to conduct undercover meetings with suspects. They explained that they did not need to use public storefronts to identify new suspects or to gather intelligence. These agencies also may participate in task forces with state and local law enforcement agencies that are using undercover storefront operations.

ATF has used undercover storefront operations to target illegal firearms traffickers and to address other crimes involving firearms. From 2004 through 2013, ATF established 53 storefront operations, with a high of 12 operations started in 2010.³ ATF's storefront operations often involved the creation of an apparently legitimate business such as a retail store or tattoo parlor, coupled with use of a confidential informant or undercover agent to disseminate information that persons operating the business were interested in purchasing illegal firearms, narcotics, or other contraband.

ATF's use of undercover storefront operations declined markedly in 2013, however, following controversy surrounding a storefront operation in Milwaukee, Wisconsin, codenamed "Operation Fearless." ATF had opened this storefront operation in 2012 under the direction of its field division based in St. Paul, Minnesota. ATF established only a single storefront in 2013, and none were established or operational in 2014 and 2015. The Operation Fearless storefront came under scrutiny after news reporting described numerous problems with it, including the theft of firearms, improper handling of sensitive information, and the alleged targeting of persons with disabilities.⁴ These reports prompted Members of Congress to write to former ATF Director B. Todd Jones and ask for detailed information about the storefront.

At Director Jones' request, ATF's Office of Professional Responsibility and Security Operations (OPRSO) commenced an internal review to evaluate the St. Paul Field Division's handling of Operation Fearless. OPRSO completed an internal report on March 21, 2013, that identified numerous deficiencies with the Operation, including inadequate planning, poor security practices, and lack of proper supervision. The report also described problems with ATF's management of relations with the storefront landlord and with ATF's "Monitored Case Program," which ATF implemented in July 2011 in the aftermath of Operation Fast and Furious to better oversee its sensitive investigations.

Members of Congress also contacted the Office of Inspector General (OIG) about Operation Fearless and other storefronts and requested that the OIG

³ All of the ATF storefronts referred to in this report were open to the public.

⁴ See, e.g., John Diedrich and Raquel Rutledge, "ATF's Milwaukee Sting Operation Marred by Mistakes, Failures," *Milwaukee Journal Sentinel*, January 29, 2013.

conduct an investigation. Their correspondence highlighted public reporting about the theft of ATF property, including firearms; the misidentification of suspects; ATF's failure to protect sensitive information; the siting of storefronts near schools and churches; and allegations that ATF was utilizing juveniles and persons with disabilities in the undercover operations. The OIG opened its review in February 2014, and subsequently expanded it as described below.

I. Methodology

Our review examined five ATF undercover storefront operations to: (1) determine whether there are any systemic deficiencies in ATF's storefront policies; and (2) evaluate the effectiveness of ATF's Monitored Case Program (MCP) as an oversight tool for the storefront operations. The MCP provides for heightened management scrutiny of ATF's most sensitive cases. We initially selected four undercover operations that continued or began after the inception of the MCP. These were conducted in Milwaukee, Pensacola, St. Louis, and Wichita. We later decided to add a fifth storefront from ATF's Boston Field Division that also was initiated after the inception of the MCP because, unlike the other four storefronts which were in fixed locations, it was mobile and operated from a cargo van. We believed that this variation presented potential issues that warranted separate examination. In addition, due to allegations that ATF was targeting persons with disabilities for enforcement action, we examined this issue at ATF's storefront in Portland, Oregon, as well as the other storefronts identified above.

To complete our review, we conducted 85 interviews, including agents, prosecutors, ATF leadership, and the Chiefs of Police in Milwaukee and St. Louis, and the Sheriff of Escambia County, Florida. We reviewed approximately 8,000 documents that we obtained from ATF and U.S. Attorneys' Offices. These included investigative case files, correspondence, and internal memoranda that related to the storefront operations. We also examined thousands of e-mails, primarily from the accounts of ATF staff.

II. Organization of the Report

This report is divided into five chapters. The first chapter is this Introduction. Chapter Two provides background information about ATF's policies on undercover storefront operations, the MCP, and federal firearms laws and regulations. Chapter Three presents information about each of the five storefront operations that our review examined. Chapter Four presents our analysis of various topics concerning the storefronts, including safety, oversight, and targeting of criminal suspects. Chapter Five presents our conclusions and recommendations. Appendix A contains a response to the report from the Office of the Deputy Attorney General. Appendix B contains a response to the report from the Deputy Director for ATF.

III. Summary of Findings

Overall, we determined that the events giving rise to the controversy surrounding ATF's undercover storefront operations were avoidable and were caused primarily by poor management, insufficient training and guidance to agents in the field, and a lax organizational culture that failed to place sufficient emphasis on risk management in these inherently sensitive operations. Although our review did not find overarching problems with ATF's storefront policies as revised following disclosure of problems with the Milwaukee storefront, we determined that ATF should make additional changes to further improve them. We also found that ATF needed to make adjustments to its MCP to better focus on the most significant risks in ATF's investigative operations, including storefronts. At the end of this report, we make several recommendations to address the deficiencies in storefront operations that we identified. ATF has informed the OIG that it concurs with the recommendations and is committed to their full implementation.

We found no evidence that ATF targeted or used individuals with intellectual or developmental disabilities (I/DD) in its storefront investigations because of their disability. However, we determined in the course of this review that DOJ had failed to apply Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (the Rehabilitation Act), which prohibits discrimination against persons with disabilities, to its federal law enforcement activities. This Act imposes important compliance responsibilities on the Department's law enforcement components, which include ATF, the FBI, the DEA, and the U.S. Marshals Service (USMS). In April 2015, the OIG raised this important issue with the Office of the Deputy Attorney General and, on September 3, 2015 the OIG wrote to the Attorney General and Deputy Attorney General to request quarterly updates on the Department's efforts to ensure compliance with the Rehabilitation Act.⁵ The Department provided its first update on October 30, 2015. In that update, the Department acknowledged that the Rehabilitation Act applies to federal law enforcement activities and indicated that it has requested that the DOJ Office of Legal Policy (OLP) determine if policy guidance is necessary. According to the Office of the Deputy Attorney General, OLP has started working with the Office of Legal Counsel to develop legal guidance on the Department's obligations under the Rehabilitation Act. The Department provided a second update on February 19, 2016, that added little new information other than that OLP was meeting regularly with various components in the Department to discuss how the Department should proceed. On June 21, 2016, the Department provided its third update and reported that a working group has begun drafting guidance that will set out the Department's legal requirements under the Rehabilitation Act. The Department provided its latest update on September 2, 2016 which explained that the working group is

⁵ The ODAG told us that it presented these issues to the Department's Office of Legal Policy (OLP) for consideration in May 2015.

continuing its efforts to develop guidance. The OIG intends to carefully monitor the Department's progress in meeting its significant duties under the Act.

CHAPTER TWO BACKGROUND

I. ATF Storefront Policies

ATF's policies on undercover storefront operations have changed markedly over time. When ATF joined the Department in 2002, storefront operations were governed by an ATF order issued in 2001 that addressed the agency's undercover operations but did not differentiate storefront operations from other "sting" activities. ATF issued a new order in 2011 that separately addressed storefront operations and required that ATF's Undercover Review Committee (URC) evaluate and authorize them as appropriate. In March 2013, in response to its internal investigation of Operation Fearless, ATF issued revised, interim guidelines for storefront operations. Also in 2013, and building on the earlier guidelines, ATF issued a storefronts manual containing detailed guidance for conducting these undercover operations.

In this section of the report, we provide an overview of ATF's policies and guidance for storefront operations since 2001. These were the policies in place at various times during the storefront operations covered by our review.

A. 2001 Order Governing Undercover Operations

On October 26, 2001, ATF issued Order 3250.1A (the "2001 Order") containing policy and instructions relating to informant usage, undercover operations, and ATF's URC. The 2001 Order cancelled three prior ATF directives, including a 1997 order governing informant use and undercover operations.

Among other provisions, the 2001 Order provided guidance for a category of undercover investigations that included "sting/storefront operations," which the Order defined as "undercover operations that serve to attract criminals who are predisposed to violate Federal statutes within ATF's purview." It stated that such operations "may be conducted from a storefront, warehouse, residence, vehicle, or other location as the operation dictates," and noted that historically they have catered to "walk in" violators as opposed to scheduled undercover contacts with known offenders. ATF described the use of the storefront technique as "sensitive" in light of the possibility "that a person may commit additional criminal acts because of the nature of the operation," and the Order therefore cautioned agents to be alert to this possibility and to not encourage criminal activity. According to the 2001 Order, the goal of storefront and sting operations was to target "illegal traffickers of stolen firearms or explosives who operate outside the scope of local authorities" and who are "worthy of federal interest."

Headquarters authorization was required before initiating a storefront operation. The 2001 Order required that a Deputy Assistant Director (DAD) for Field Operations approve each storefront operation. The Order required that a memorandum be prepared under the DAD's name and sent to the Chief of ATF's

Special Operations Division for final authorization. The memorandum was required to include information about the participating law enforcement agencies, projected costs, proposed staffing, duration, security precautions, and anticipated problems. The 2001 Order also required a written agreement with agencies that participated in joint undercover operations with ATF. However, the 2001 Order did not require that storefront operations be approved by the URC. At that time, URC approval was only required for certain enumerated sensitive circumstances, and storefronts were explicitly excluded, without explanation, from that category.

The Undercover Branch (UCB) at ATF Headquarters played a limited role under the 2001 Order. It was generally tasked with supporting "undercover investigations by enhancing undercover agent safety and operations security", and specifically for storefront investigations, was required to contact the assigned case agent "to determine what support, if any, [was] deemed necessary." UCB support could include assisting with undercover agent selection, creating undercover identities, and disseminating "lessons learned" from prior operations. The role of the UCB did not significantly change under subsequent orders, including the undercover order that currently is in effect.

Under the 2001 Order, ATF expected its field division management to provide oversight after operations commenced. The Order indicated that the Special Agent in Charge (SAC) or Assistant Special Agent in Charge (ASAC) of the field office conducting an operation was expected to attend all planning sessions, and the SAC was personally required to meet with and ensure the support of the U.S. Attorney and the local prosecutor. In addition, the SAC, ASAC, or Resident Agent in Charge (RAC) was expected to participate in regular progress meetings with other participating agencies.

B. 2011 Order Governing Undercover Operations and the Undercover Review Committee

On November 17, 2011, ATF issued Order 3250.1B (the "2011 Order") containing policy and instructions relating to ATF's undercover operations and the URC. The 2011 Order cancelled the Informant Use and Undercover Operations chapters of the 2001 Order but retained much of its text. The 2011 Order included several modifications and significant additions that we describe below.

First, the 2011 Order specifically defined "storefront operations" in substance as businesses operated and financed by the ATF, either solely or in partnership with others, where undercover agents or confidential informants (CIs) act as employees of the business. The 2011 Order listed various examples of storefronts, including second-hand stores, pawn shops, military surplus stores, tattoo parlors, pool halls, barber shops, and wholesale or retail warehouses. The 2011 Order also added significant guidance on the acquisition, use, and disposition of legal merchandise offered for sale in storefront operations.

Second, the 2011 Order expanded the responsibilities of ASACs and RACs. Like SACs, ASACs and RACs became responsible under the 2011 Order for coordinating any storefront with the U.S. Attorney and the local prosecutor.

Third, the 2011 Order sought to enhance agent expertise by recommending that case agents and undercover agents who are inexperienced in storefront operations maintain regular contact, as necessary, with an experienced counterpart.

Most significantly for purposes of this review, the 2011 Order modified the approval process and oversight necessary for storefronts by requiring headquarters approval and authorization from the URC, and enrolling all storefronts in ATF's MCP.⁶ The written application that had to be filed before a storefront operation could begin operations was required to include information such as a synopsis of the operation and its goals, any available statistical data (*e.g.*, crime statistics for the locality), information about CIs or cooperators, and the projected costs and proposed staffing for the operation. The 2011 Order also mandated that a DOJ representative participate in all URC meetings for certain high-risk undercover investigations, including storefronts.⁷ In addition, due to the inclusion of storefronts in the MCP, field divisions were required to prepare a written "initial submission" and either 30-day or 90-day "updates" on the storefront to be sent to ATF Headquarters staff for review. Briefings were also required under the MCP – the case agent and first-line supervisor assigned to a monitored case were required to report at least monthly to field division management, and the SAC was required to report with the same frequency to the supervising DAD of Field Operations at ATF Headquarters.

C. March 2013 Revisions to Storefront Policy and Guidance

Following the public controversy surrounding Operation Fearless, former ATF Assistant Director (AD) and current Deputy Director Ronald B. Turk issued a memorandum entitled, "Revisions to Storefront Policy and Guidance" ("Turk Memorandum"). Turk told the OIG that the memorandum was ATF's response to its internal investigation into Operation Fearless. The Turk Memorandum was issued on March 21, 2013 – the same day as ATF's internal report on Operation Fearless – and stated that the ATF had initiated a review of its storefront operations after recently identifying weaknesses in its storefront policies, procedures, and oversight. The Turk Memorandum explained that the review would result in adjustments to current ATF Orders and the issuance of a new manual providing guidance on storefront operations. As described in the next subsection, the manual was issued in late 2013.

⁶ We describe the MCP in detail in Section II below.

⁷ In addition to the DOJ representative, the 2011 order stated that the URC would include the appropriate DAD, the Chief of ATF's Special Operations Division, the SAC of ATF's Undercover Branch, the Chief of ATF's Operations Security Branch, an ATF Associate Chief Counsel, and others as deemed appropriate and necessary by the appropriate DAD.

The Turk Memorandum outlined new policies that ATF expected to establish in forthcoming ATF Orders and that since have been included in the storefront operations manual, such as new requirements for the contents of storefront proposals. It provided that any proposed storefront must have a “clear and rational strategy” and document the intended targets of the operation, and specified that the objective of the storefront “must always be to reduce gun violence and illegal gun trafficking, not burglaries or property crimes.” The Memorandum also detailed a number of other requirements needed for approval of a storefront, such as an established end date, notification requirements for local law enforcement, mandatory training of agents participating in storefront operations, written concurrence from the U.S Attorney on the storefront plans, and the presence of generally experienced supervisors and undercover agents. The Memorandum required substitution of experienced supervisors for acting supervisors who were overseeing ongoing storefront operations. The adjustments to current ATF Orders have not been finalized.⁸

The Turk Memorandum also imposed immediate changes to certain ATF storefront procedures, including the following security requirements:

- 1) Storefronts must have both an inside cover team, or supporting law enforcement personnel stationed covertly inside the storefront area, and an outside surveillance team of supporting law enforcement personnel. The outside surveillance team must interdict anyone believed to have violated firearms laws who attempts to leave the storefront with a firearm;
- 2) Storefronts must establish daily procedures for removing from the storefront all material that could compromise operational security; and
- 3) Storefronts must not display drug paraphernalia or pornography on the storefront premises.

Lastly, the Turk Memorandum established numerous new requirements for the operation of storefronts. For example, agents were required to enter ballistic information into the National Integrated Ballistics Information Network (NIBIN) as the firearms are purchased.⁹ NIBIN checks can assist in promptly identifying whether a firearm has previously been used in a crime. Oversight was strengthened as well: the Turk Memorandum mandated that an ASAC or SAC conduct on-site inspections at the beginning and mid-way points of the investigation and complete monthly file reviews of the case. Personnel who oversee the MCP from ATF Headquarters also were required to scrutinize the storefronts, such as reviewing the contents of case reports and identifying

⁸ ATF has advised the OIG that it intends to revise the ATF Orders after it completes a review of this OIG report.

⁹ We describe NIBIN in Section III.C. below.

whether agents were late in submitting the reports, and Special Operations Division staff were assigned to conduct on-site inspections of the operations.

D. 2013 Manual for ATF Storefront Investigations

ATF issued an "ATF Storefront Investigations" manual ("Manual") in 2013 that provides comprehensive guidance on storefronts and establishes additional scrutiny and oversight of storefront operations. The Manual includes many of the interim guidelines from the Turk Memorandum, and represents ATF's current policy on storefronts.

The Manual includes four sections that contain specific guidance for conducting storefront operations: Storefront Guidelines, Case Initiation/Set-Up, Operational Aspects, and Special Operations Division. The first section – Storefront Guidelines – describes the information that must be included in storefront proposals that are sent for review to the supervising DAD, Undercover Review Committee (URC), and Chief of the Special Operations Division. For example, each proposal must clearly define the purpose for initiating the operation and the targeting strategy. The proposal should also include the results of an analysis of violent crime statistics, including the criminal use of firearms in the area of operation for the proposed storefront. These requirements expanded upon those contained in ATF's Undercover Operations Order.

Section 2 of the Manual, Case Initiation/Set-Up, provides guidance about partnering with other agencies to conduct a storefront, the requirements for siting the storefront, and operational security for the location. This includes guidance stating that cover teams are "an operational necessity and safety requirement" and personnel sufficient for both an inside and outside cover team are required in ATF storefront operations. In addition, Section 2 describes the expectations for the selection of a case agent, support staff, and oversight from field office management and ATF Headquarters. Agents also must confer with the U.S. Attorney and State prosecutor to ensure their concurrence with the proposed operation.

Section 3 of the Manual describes the requirements for several operational aspects of a storefront, including monitoring crime in the storefront's vicinity during the investigation and conducting interdictions, generating business at the storefront, conducting monthly status reviews, and planning for winding down and closing a storefront.

Section 4 describes the role of ATF's Special Operations Division (SOD), which includes the UCB, in planning and conducting storefront operations. According to the Manual, SOD is expected to provide subject matter experts for all aspects of a storefront, such as type, location, operational security, undercover guidance, and use of props and merchandise. The Manual identifies the specific branches in SOD that will provide these experts, and describes their respective functions. The UCB is responsible for assisting agents with

establishing their false identities, setting up the business establishments, and obtaining any necessary licenses and permits, among other duties.

The Manual also includes an appendix that lists 20 “Best Practices” that offer additional guidance and reminders in areas of intelligence collection, targeting, site selection, collaboration, contingency planning, and oversight.

Thus, ATF’s policies on undercover storefront operations have evolved over time both in breadth and particularity. ATF’s storefront manual represents ATF’s most comprehensive and thorough effort to date at providing guidance and detailing the required oversight for agents who are utilizing the storefront investigative technique.

II. ATF’s Monitored Case Program

The problems identified in Operations Fast and Furious and Wide Receiver led ATF to institute new procedures for sensitive operations, including storefronts.¹⁰ In July 2011, ATF Headquarters’ Office of Field Operations (OFO) established a “Monitored Case Program” (MCP) to enable ATF leadership to better oversee investigations, inspections, and special operations that present significant risks. According to the OFO Memorandum that announced the MCP, the new program was designed to “ensure close investigative, operational, and strategic coordination, as well as enhanced communication between the field and involved headquarters personnel” In May 2013, ATF codified the MCP in a 15-page ATF Order that describes the Program’s requirements. ATF O 3200.1 (ATF’s MCP Order).

Cases are included in the MCP based on criteria that are focused on activities that ATF has determined warrant close scrutiny. These include investigations with well-identified risks, such as those with a documented international crime nexus or that involve trafficking more than 50 firearms, as well as those that present broader security concerns, such as investigations that have “a widespread or critical impact on public safety.” ATF has adjusted these criteria over time. For example, in August 2012, ATF increased the limit on cash funds that can be used in an investigation without MCP oversight from \$50,000 to \$100,000, and no longer required all investigations involving wiretaps to be included in the MCP. ATF determined that such a level of funding and the use of wiretaps in certain circumstances – such as where the ATF is a minimal participant in another federal agency’s wiretap investigation – did not present sufficient risk to warrant automatic addition to the MCP. However, investigations that involve undercover storefront operations were and continue to be required to be included in the MCP.

¹⁰ See U.S. Department of Justice Office of the Inspector General, *A Review of ATF’s Operation Fast and Furious and Related Matters* (September 2012).

For cases within the MCP, there are reporting requirements on ATF field divisions. Agents must prepare a written “initial submission” and periodic “updates” that are sent to OFO for review. To assist agents with their written reporting responsibilities, ATF has developed standard report templates that collect case information, such as investigative goals, the number of firearms seized, and the resources expended. At the outset of this review, the initial submission template requested information about undercover storefront operations, though it was limited to accounting information such as the amount of funds and articles received at the storefront. The update template did not expressly request information about storefront operations. ATF has revised the MCP report templates several times based on the preferences of OFO leadership, and recently completed additional revisions based on recommendations from this review and our review of ATF's Operation Fast and Furious.¹¹

The MCP also requires agents to furnish oral briefings to ATF leadership. The case agent and first-line supervisor assigned to a monitored case report are required to provide such a briefing at least monthly to field division management, and the SAC is required to brief the supervising DAD of Field Operations at ATF Headquarters on the same basis. ATF's field divisions are grouped into three regions, each of which is overseen by a DAD. In accordance with MCP guidance that ATF issued in August 2012, the briefings and other reporting from the field division to ATF Headquarters address “progress, plans, problems” in each case. The ATF Director and Deputy Director also receive briefings each month on select monitored cases.

The MCP Order also requires ATF leadership to provide enhanced supervision of MCP matters. For example, SACs must “achieve and maintain in-depth personal awareness and accountability for all matters and all developments in a monitored case.” ATF O 3200.1. According to ATF's MCP Order:

Special Agents-in-Charge (SAC) or Deputy Assistant Directors (DAD) may not assume that appropriate direction and control has been established and is being followed. Rather, it is the role of the SAC and DAD to ask tough questions and delve into investigative details and plans. As an organization, we must establish with certainty that we have critically reviewed apparent and foreseeable risks, that our plans to mitigate those risks are sound, and that Bureau leadership is aware of the issues and proposed courses of action.

¹¹ In our recent report, *A Review of the Department of Justice's and ATF's Implementation of Recommendations Contained in the OIG's Report on Operations Fast and Furious and Wide Receiver* (February 2016), the OIG recommended that ATF revise these templates to collect information that will better assist ATF to assess risk. ATF completed the revisions in February 2016.

*Id.*¹²

Oversight of the MCP's implementation and administration is a primary responsibility of OFO's Investigative Support Branch (ISB). ISB personnel organize Headquarters briefings, evaluate and process the written MCP reports, and review case information. According to the Chief of the ISB, the role of his staff is to monitor cases in the MCP but not to provide case direction. ISB typically oversees 12 to 16 monitored cases within each of ATF's 3 regions.

III. Firearms Trafficking Enforcement

As noted, firearms traffickers are a frequent target of ATF storefront operations. We summarize below the federal criminal statutes and pertinent ATF investigative guidelines that typically apply in firearms trafficking investigations. We also summarize the role and capabilities of ATF's National Tracing Center (NTC) and ATF's National Integrated Ballistic Information Network (NIBIN).

A. Federal Firearms Laws and Regulations

The Gun Control Act of 1968 (18 U.S.C. § 921, *et seq.*) is the primary federal law that regulates the firearms industry and firearms owners. ATF, which was transferred from the Department of the Treasury and established as a separate component within the DOJ in January 2003, has primary jurisdiction over the administration and enforcement of the Gun Control Act. The other major federal law regulating firearms is the National Firearms Act of 1934, 26 U.S.C. § 5801, *et seq.* This law limits the availability, and taxes the manufacture and distribution, of machine guns, short-barreled shotguns, short-barreled rifles, sound suppressors (silencers), and other similar weapons that became prevalent during the Prohibition era. The National Firearms Act also requires that these specified weapons be registered with the ATF, and that owners notify the ATF when they are transported across state lines.

ATF defines "firearms trafficking" as the unlawful diversion of firearms "for the purpose of profit, power, or prestige, in furtherance of other criminal acts or terrorism." A firearms diversion is the movement of a firearm from lawful commerce into the illegal marketplace through an illegal method or for an illegal purpose. ATF's principal guidance for firearms trafficking investigations is provided in the Firearms Enforcement Program Order, ATF Order 3310.4B, and the Firearms Trafficking Investigation Guide, ATF Publication 3317.1.

The Firearms Enforcement Program Order defines common firearms trafficking terms, establishes general investigative procedures and

¹² ATF developed the MCP in response to problems identified in Operation Fast and Furious. As our report on Operation Fast and Furious noted, the kind of headquarters and field supervision now required under the MCP was absent in Operation Fast and Furious.

responsibilities for managers and agents, describes ATF's regulatory and enforcement relationship with Federal Firearms Licensees (FFL), and discusses several investigative techniques.¹³ The Firearms Trafficking Investigation Guide is a comprehensive reference that assists criminal investigators in identifying signs of illegal firearms trafficking and in thoroughly investigating illegal firearms trafficking violations. The Guide defines common firearms trafficking terms, identifies relevant investigative resources, describes firearms trafficking indicators, summarizes relevant legal information, provides investigative checklists for particular types of trafficking investigations, and suggests measures state and local law enforcement can take to address firearms trafficking.

B. ATF's National Tracing Center

A firearms trace refers to tracking the history of a "crime gun" – a firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime. The history includes identifying the source of the firearm (the manufacturer and/or importer), the chain of distribution (the wholesaler and/or retailer), and the first unlicensed purchaser of the firearm. ATF's National Tracing Center (NTC) conducts firearms traces that allow it to link suspects to a firearm in a criminal investigation, identify potential firearms traffickers, and detect domestic and international patterns in the sources and kinds of crime guns.

Trace requests can be made by any federal, state, or local law enforcement agency in the United States or abroad and are submitted by completing a specific ATF form that requires the requester to provide information about the circumstances of the firearm recovery, the agency making the request, the firearm (such as serial number, manufacturer, type, caliber, and model), and the possessor of the firearm. If the trace is successful, ATF provides the requester the identity of the first unlicensed buyer of the firearm, the FFL from which the firearm was purchased, and the date of purchase. Since January 2005, trace requests can be submitted through eTrace, a secure, Internet-based system that allows users from accredited domestic and international law enforcement agencies to submit requests, monitor the progress of the trace, and receive results electronically. The NTC considers eTrace to be the most efficient method for law enforcement to submit trace requests, and to receive and analyze data.

ATF procedures for tracing firearms are found in ATF's Firearms Enforcement Program Order, Order 3310.4C. While providing procedures for traces, Order 3301.4C contains no express guidance on when agents should

¹³ An FFL is a person, partnership, or business entity that holds a license issued by ATF that allows it to "engage in the business" of dealing, manufacturing, importing, or repairing firearms.

seek traces on firearms recovered during the course of ATF investigations.¹⁴ We found the absence of express guidance concerning given that on January 16, 2013, the President issued a memorandum requiring all federal law enforcement agencies to trace “at the earliest time practicable” all firearms recovered during the course of criminal investigations and taken into federal custody. ATF’s Order does not incorporate this language. In its 2013 Storefront Investigations Manual, ATF advised agents to address the timing of traces at the initiation of the case but did not specify a time limitation or other expectation concerning when traces should be performed. The Manual mandated that all recovered firearms be traced “up to the first retail distributor.” This type of trace does not require ATF agents to contact the FFL as would otherwise normally occur during a trace. During interviews, multiple ATF agents told the OIG that contacting the FFL during a trace could potentially expose the undercover operation in a situation where a retailer, or an employee of a retailer, was involved in illegal firearms trafficking. The Manual recognizes this possibility by noting that consideration should be given to “inadvertent notification” when dealing with long-term undercover operations.

C. National Integrated Ballistic Information Network (NIBIN)

In 1999, ATF established the National Integrated Ballistic Information Network (NIBIN) to provide federal, state, and local partner agencies with an automated ballistic imaging system. To use NIBIN, firearms examiners or technicians enter evidence – such as spent bullets or cartridge casings – into a computerized system that contains digital images of ballistic evidence from crime scenes or crime gun test fires. The evidence is then compared against previous entries in the NIBIN database in an attempt to identify the associated firearm or find other investigations involving that firearm.

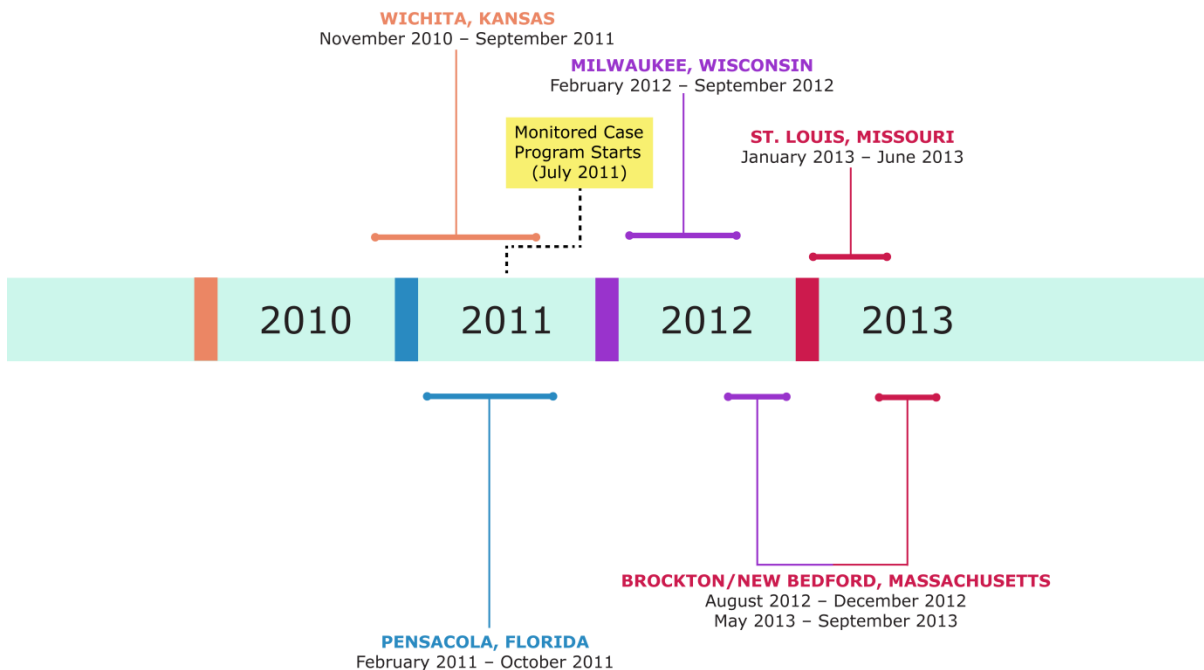
In 2001, the DOJ and Treasury directed their law enforcement components to enter ballistic information into NIBIN. On March 21, 2013, former Assistant Director Turk issued a memorandum requiring ATF personnel to enter ballistic information promptly into NIBIN for all firearms purchased in storefront investigations. ATF’s 2013 Storefront Investigations Manual noted that entering ballistic information from all recovered firearms is “a good practice and investigative strategy” and that all ballistic firearm and ammunition information must “be submitted for NIBIN analysis in a timely manner (not at the end of the case) . . .” unless otherwise authorized by the supervising DAD and the URC.

¹⁴ Order 3301.4C does require entry of seized firearms in N-Force within 10 days, at which point the firearms are traced automatically. However, agents have the option of deferring traces until the completion of the case. N-Force is ATF’s case management database.

CHAPTER THREE ATF UNDERCOVER STOREFRONT OPERATIONS

In this section of the report we describe five ATF undercover storefronts that operated after the initiation of ATF’s Monitored Case Program (MCP) in July 2011. We evaluated storefronts in Wichita, Pensacola, Milwaukee, and St. Louis, as well as a mobile storefront that ATF’s Boston Field Division deployed in two communities in southern Massachusetts. ATF ceased storefront operations in 2013 following controversy surrounding the Milwaukee storefront and as of June 2016 ATF has not resumed using them. The five storefronts and their operating dates are presented in the following diagram.

DIAGRAM I: Select ATF Storefront Operations 2010-2013



Source: OIG

In each of the storefront operations, we reviewed the following issues: initiation, planning, operations, oversight, vulnerable persons (juveniles and persons with disabilities), and closure of the storefront and its results. In addition, we identified many issues that cut across these topics, including agent undercover expertise, the role of confidential informants, criminal intelligence, public and agent safety, targeting, and others. These issues also are discussed in detail in the descriptions below.

I. The Wichita Storefront – Operation Bandit Trading (2010-2011)

ATF operated an undercover storefront in Wichita, Kansas from November 30, 2010, to September 20, 2011. The City of Wichita had a population of approximately 380,000 at that time, and in 2010 and 2011 had a rate of violent crime roughly double that of the U.S. average. According to ATF agents and staff from the U.S. Attorney's Office (USAO) in Wichita, the city had at that time, and continues to have, serious problems with gang-related crime and gun violence. The storefront, which masqueraded primarily as a clothing store, was located in a small strip mall on a major thoroughfare in central Wichita.

A. Initiation

The ATF case agent and two undercover agents assigned to the storefront told us that they were responsible for conceiving of and planning the Wichita storefront. One of the undercover agents was a task force officer (TFO) assigned to ATF from the local sheriff's office; he stated that he had attended a training presented by ATF undercover agents that prompted him to suggest that ATF consider opening a storefront in Wichita. The agents in Wichita said that they discussed the idea and concluded that a storefront operation likely would be successful because ATF had used the technique effectively elsewhere and, according to one agent, it was "an investigative technique that hadn't been tried in Wichita in decades" and would be unfamiliar to local criminals. The ATF undercover agent said that he had been working on many stolen firearms cases in Kansas and believed that the storefront would be an effective tool to recover stolen firearms in Wichita. He also stated that the storefront would provide a safer environment to conduct firearms transactions than a hotel room or other less-secure location that he was accustomed to utilizing. According to the case agent, the local ATF office was responsible for 70 counties in Kansas and the agents wanted to devote more of their efforts to combating crime in Wichita. He stated that the storefront afforded them that opportunity.

Before opening the storefront the agents said that they sought advice from other ATF agents who had worked on storefront operations. The case agent stated, however, that he never received instruction from ATF managers about whom to consult to properly operate a storefront, and had no contact with the Undercover Branch at ATF Headquarters. Instead, the agents relied upon their own contacts, including an agent who had previously been assigned to ATF's Enhanced Undercover Program. None of the agents or RAC assigned to the storefront had prior storefront experience, though the two undercover agents had worked on numerous undercover operations previously. Both the SAC and ASAC, who were based at the ATF field division office in Kansas City, stated that they did not have contact with the Undercover Branch concerning the Wichita storefront.

The case agent and undercover agents told us that they conferred with the USAO and local law enforcement to obtain their support. Staff from the USAO told us that they recalled meeting with ATF while the agents were planning the storefront and that the USAO supported the operation. The former

Acting U.S. Attorney and Criminal Chief said that he believed that ATF's proposal was a "great idea" and that it "fit in real well" with the USAO's priorities, which included firearms prosecutions. The case agent also stated that ATF met with leaders from the Wichita Police Department and Sedgwick County Sheriff's Department and requested manpower to assist with surveillance outside of the storefront. These agencies agreed to provide support.

On September 21, 2010, ATF's Wichita field office submitted a storefront proposal to ATF Headquarters through the SAC of the Kansas City Field Division. The proposal stated that the storefront would target suspects who violate state and federal firearms laws, such as felons in possession of firearms, or who use firearms in relation to drug trafficking or a federal crime of violence. It did not identify specific targets, such as particular violent gangs, that were determined to be worthy of federal interest. However, the proposal discussed stolen firearms investigations that the Wichita field office had conducted and that an objective of the storefront was to recover stolen firearms. The Chief of ATF's Special Operations Division at ATF Headquarters approved the proposal without apparent changes on September 27 following review by the supervising DAD. ATF's undercover operations policies at the time did not require authorization of storefronts by ATF's URC, and the URC did not evaluate the Wichita proposal.

B. Planning

While the authorization memo for the Wichita storefront indicated that the anticipated location would be "just north or just east of the downtown area," it did not specify a particular location. After receiving Headquarters' authorization to proceed, the ATF agents assigned to the storefront said that they evaluated numerous commercial properties that were available for lease in Wichita. ATF subsequently entered into a 12-month lease on a property beginning on November 1, 2010. According to the case agent, the agents selected a site close to downtown Wichita because it was on a major thoroughfare that had substantial foot and vehicular traffic and was nearby areas with crime problems. It also had several other features that appealed to the agents, including its proximity to a hospital, affordability, and that its interior layout allowed for the concealment of audio and video equipment. The agents said that there were no sites available at the time in the most crime-ridden areas of Wichita, which primarily were residential. The ATF RAC in Wichita told us, however, that the site's proximity to high-crime areas was not a major factor in the selection decision for the storefront location, as it was more important to be in a high visibility location, and it would have been difficult to place a commercial operation in a residential setting. The ATF undercover agent said that the agents rejected several locations because they were too close to a school or church.¹⁵

¹⁵ Agents made this determination independently; at the time ATF lacked guidance concerning the siting of storefront operations.

In preparation for the storefront's opening in late November 2010, the agents made numerous modifications to the storefront property to enhance its security, including adding an alarm system and shelving that limited access through windows. Staff from ATF's Special Operations Division at Headquarters assisted with the installation of audio and visual equipment. The case agent stated that as the storefront preparations proceeded he consulted with the Division Tactical Advisor (DTA) for ATF's Kansas City Field Division, who provided advice on the operational plan for the storefront and assisted with security issues. In mid-November, ATF agents and local officers assigned to the storefront participated in a training with the DTA to rehearse tactical operations, such as a response to a robbery attempt or hostage situation. The training did not address general storefront operations, and none of the agents had prior storefronts experience.

We asked the agents about their assigned security responsibilities within the storefront in case of emergency, including the representation in the proposal memorandum that "[a] covert cover/react team room will be built into the storefront. The storefront will operate with (2) agents acting in undercover roles while (1) agent monitors from the covert/react room." The case agent stated that no personnel were assigned to a react team inside the storefront because it was not possible to secret them into the storefront without being seen. Instead, the case agent monitored the storefront from a nearby apartment that was equipped with audio and visual equipment, and between two and four agents and TFOs provided surveillance and security coverage from outside the storefront. The case agent said that the DTA preferred that the agents furnish a react team inside the storefront but they were not able to follow his request. The case agent also stated that the RAC approved the security arrangements for the storefront.

ATF Division and Headquarters managers who authorized the storefront's opening stated that they were not aware that the only agents inside the storefront were the two undercover agents. The SAC and supervising DAD told us that they were unaware and should have been informed of the deviation from the proposal memorandum. The SAC stated that the change from the memorandum should have been briefed to the ASAC, and that the ASAC should have informed him. The ASAC told us that he believed that one agent either would be in the storefront or monitoring the storefront from an apartment, but the lack of an inside react team would not have been a concern for him given the other security arrangements that were in place at the storefront. The SAC also stated that the agents could avoid compromising safety by increasing physical surveillance outside the storefront. The DAD stated, however, that he would not have approved the storefront if he had known that there was not a react team inside the storefront as in his view, an inside react team was necessary to provide sufficient protection.

We also asked agents whether they had planned for the possibility of a known felon or other prohibited person leaving the storefront with a firearm. The case agent told us that the agents were not provided guidance on the issue

and that he could not recall “any specific strategy on it.” He said that in the event that someone left the storefront with a firearm that the agents did not want him to possess, he believed that ATF would request local law enforcement to conduct surveillance on the person and later stop him. Although the RAC told us that he recalled discussing this scenario with the agents, none of the other agents remembered it. Like the case agent, the ASAC stated that ATF would request local law enforcement to conduct surveillance on the person and later stop him.

The agents further stated that with the exception of one instance where they maintained surveillance on a convicted felon who left the storefront with a firearm, they did not recall any circumstances where they allowed a known prohibited person to exit the storefront in possession of a firearm. The agents stated that in this instance, they suspected the individual of manufacturing short-barrel shotguns, and they maintained surveillance on him until he returned to the storefront with the firearm that he had originally shown them.

C. Operations

ATF opened the storefront on November 30, 2010. According to the case agent, the storefront’s hours of operation typically were Tuesday through Friday from approximately 10:00 a.m. to 6:00 p.m., though the agents sometimes opened the store on other days for appointments with subjects to purchase firearms. The front merchandise in the store included clothing, shoes, candles, incense, and other miscellaneous items. Agents promoted the storefront by handing out business cards advertising this merchandise at a local bar.

With the help of the unwitting informant discussed below, word about the storefront’s interest in buying firearms and other illicit items got out quickly. Agents purchased their first firearm on December 2. ATF documents show that agents purchased numerous firearms and other illicit items as the storefront continued operation into 2011. By mid-January they had purchased 19 firearms, including a short-barrel shotgun, and by mid-April had acquired 116 firearms, approximately 7 ounces of cocaine, and 4 ounces of methamphetamine.¹⁶ We did not find that there were any guidelines as to what the storefront should purchase or from whom, and we found that agents purchased firearms from juveniles as well as adults.

The agents told us that they negotiated prices of the firearms, and when they were unsure of an appropriate price they researched the firearm on the internet using a computer that was set-up in the storefront. They also stated

¹⁶ It was anticipated in the original proposal that the storefront would purchase narcotics, though this was not the focus of the operation. While the quantities of drugs purchased were relatively small, we found no evidence that DEA was consulted regarding the sources from which they were obtained and any potential federal drug interest in them or organizations with which they might be affiliated. In this review we did not examine the handling of drug evidence by the storefronts.

that they did not find evidence – such as the firearms being in their original packaging – that their customers were purchasing firearms at retail establishments and then bringing them directly to the storefront for sale at a higher price. However, we identified one firearm that subsequent traces showed was purchased at another establishment the same day that it was sold to the storefront, and two others that were later determined to have been purchased 14 and 25 days prior to the date of their sale to the storefront.

We asked the agents about any procedures they adopted to guard against the storefront creating incentives for its customers to steal firearms and sell them at the storefront. The case agent told us that they did not have a plan to address this, and we found no documentation reflecting any contemporaneous consideration of the issue. The case agent stated that traces on the firearms were not completed until close to the end of the investigation. The RAC subsequently told the OIG that the agents were checking local police department databases to determine whether any of the firearms that they purchased had been stolen, but that they delayed running NIBIN checks or traces through ATF's National Tracing Center because of concerns that an FFL may inadvertently disclose their searches. ATF e-mail showed that the agents began NIBIN checks approximately 4 months after the storefront opened, though we did not see any documentation confirming earlier checks with the local police databases. The ASAC and SAC both told us that they expected that the firearms would be traced as the agents purchased them. The SAC stated that it was important to run the traces to try and ascertain the source of the firearms and to determine if they had been stolen.

We also asked about the role of confidential informants at the storefront and the collection of criminal intelligence. The agents said that they did not rely on informants because they did not want to risk exposing that the storefront was an undercover operation. However, shortly after the storefront opened a nearby resident, Daniel James, approached the agents and offered to arrange firearms deals for them.¹⁷ For the next 9 months James functioned as an unwitting informant for ATF. He identified persons willing to sell firearms or drugs and brokered purchases for the agents approximately 40 times. For many deals the agents paid James a finder's fee of between \$20 and \$50 or gave him merchandise from the storefront.

We did not find that the storefront generated any significant criminal intelligence. According to the case agent, except for persons who sold narcotics and firearms at the storefront, ATF developed only one new case based on information obtained from the storefront and cultivated one cooperating defendant. The case agent told us that ATF did not have the manpower to conduct surveillance on many of the suspects to identify their sources of supply or to develop new leads, and there was no other monitoring employed to assist in this. We also found that ATF did not prepare an after-action report on the

¹⁷ Daniel James is a pseudonym.

storefront or otherwise prepare any written intelligence products that evaluated intelligence obtained from the storefront, such as information collected on local gangs.

D. Oversight

We found little involvement from ATF Headquarters with regard to supervision of the storefront, and limited oversight in Wichita. The RAC in Wichita had no storefront or long-term undercover experience, and agents said that he did not provide much guidance over the storefront. The agents said that they met with him each day that the storefront was open but that he added little of substance to the operation. The agents said that there were no regularly scheduled meetings with the ASACs or SAC but they did attend some briefings with them and believed the RAC kept them informed about the operation. The ASACs confirmed that the RAC regularly informed them about events at the storefront. Our review of ATF e-mails showed that the case agent provided few written updates to the RAC or other supervisors. The agents were complimentary of the SAC and the oversight he provided, however. According to the case agent, the SAC "knew what his agents were doing." When we asked the SAC about his approach to storefronts, he stated:

[W]hether it's a storefront case or some other investigation that's significant, SACs and ASACs need to pay attention and engage people on many, many different levels. . . . I was hands-on engaged in cases where I'd seen absentee ASACs and absentee SACs lead to a lot of problems. And you better be in N-Force. You better be looking in there. You better call your local partners. You better call the U.S. Attorney's Office. And you better be engaged and not just take the word of somebody at a lower level that everything is hunky-dory.

We further found that ATF headquarters oversight was limited. The SAC told us he believed he discussed the storefront with the supervising DADs while providing them with status updates on the division's cases. The Wichita field office provided its first and only MCP briefing paper after the inception of the MCP on the Wichita storefront to ATF Headquarters on August 12, 2011. The paper summarized the status of the investigation and explained that the agents anticipated closing the storefront within approximately 3 weeks and conducting 60 to 65 arrests in mid-September. The RAC did not recall the Wichita field office participating in any MCP briefings. The Assistant Director of Field Operations at ATF Headquarters instructed that the storefront be removed from the MCP when the storefront ceased operations in September 2011.

E. Vulnerable Persons

We asked agents about their approach to vulnerable persons, such as those with intellectual and developmental disabilities (I/DD) and juveniles. They stated that under no circumstances were they targeting persons with I/DD for use in the storefront or for enforcement action, and that they had no knowledge of any storefront subject being disabled. During their planning for the

storefront, however, the agents did not discuss how to deal with persons with I/DD in the event that they entered the storefront.

With respect to ATF's use of Daniel James as an unwitting informant, the case agent told us that he appeared "relatively intelligent" and that his behavior did not indicate the presence of an I/DD. The undercover agents also stated that they did not observe conduct indicating that James suffered from a disability or had a low IQ. James was arrested at the close of the storefront, pled guilty to drug and firearms offenses, and was sentenced to 3 years in prison. We reviewed numerous videotapes that ATF recorded of James while he was in the storefront and did not observe conduct that we considered uncharacteristic of someone who was trafficking narcotics and firearms. Likewise, the Assistant U.S. Attorney (AUSA) who prosecuted James told us that he reviewed all of ATF's tapes of James and found that he was "able to negotiate very well with people" and that "[he] obviously knew what he was doing."¹⁸ In addition, we identified no evidence that the ATF agents referred to James in a way that would indicate that they believed he was disabled.

We also asked about how the agents managed their interactions with juveniles. We found that the agents purchased firearms from juveniles, and one juvenile in particular was responsible for approximately 15 percent of all firearms that the agents purchased. The agents said that they did not discuss how to handle juveniles who entered the store, and were not provided any guidance on the issue from their supervisors. The agents told us they did not ask juveniles to leave the premises. The SAC further told us that he did not recall a "specific plan" concerning how to handle juveniles in the storefront.

F. Closure and Results

The storefront closed on September 20, 2011. The case agent said that there was a consensus among them that the storefront had operated for a sufficient time, and the term of the undercover TFO's assignment to ATF was coming to an end. One agent told us that the storefront team was "burned out" from the work and that they believed that the storefront had achieved success. Arrests began the day of the closure and on that day three persons who had previously agreed with agents at the storefront to participate in a home invasion were taken into custody.¹⁹ Agents told us that no injuries were sustained at the storefront, no customers ever indicated an intention to commit an imminent act of violence, and there were no burglary attempts, though the storefront was vandalized on a couple of occasions during the operation.

¹⁸ The AUSA told us that after James was arrested, the USMS informed him that he was behaving strangely while in custody, such as continuously talking to himself. The AUSA said that he brought the matter to the attention of the court.

¹⁹ In an ATF "home invasion" undercover operation, ATF agents provide an opportunity for suspects to commit an armed robbery of a fictitious drug "stash house."

According to ATF documents, the operation resulted in the purchase of 243 firearms, including 7 illegal short-barrel shotguns and 7 firearms with obliterated serial numbers, 13.9 ounces of cocaine, and 13.5 ounces of methamphetamine. While not every seller was prosecuted, the operation resulted in plea agreements in federal court with 47 defendants, 31 of whom had a prior felony conviction, 24 of whom had a prior arrest for a violent crime, and 23 of whom were gang members. There were no multiple defendant or organizational prosecutions apart from the case arising out of the home invasion. The Government lost one case at trial and voluntarily dismissed lesser drug charges against three other persons. Sentences ranged from probation to 15 years. The storefront did not result in any state charges.²⁰ Agent cashier expenditures to fund the operation and to purchase firearm and drug evidence totaled approximately \$245,000.²¹

The ATF agents and majority of prosecutors we interviewed told us that the storefront was successful and led to the incarceration of many dangerous criminals. One prosecutor described that storefront as “a necessary and successful investigation.” The case agent stated that it was “a great investigative tool” that resulted in “[removing] a lot of crime guns off the street.” However, some AUSAs expressed skepticism about the large number of prosecutions that the storefront generated, as evidenced by the number of defendants who received probation (7) or sentences of approximately 1 year or less (13). One AUSA said that, due to limited resources, he typically attempts to prosecute cases that will result in a sentence of at least 5 years. The case agent also told us that he believed that some of the defendants were “marginal.” Although the RAC was very complimentary of the storefront and the agents assigned to it, stating that it’s “a great technique” and that the agents “did a great job,” he also cautioned that the storefront “was a very manpower-intensive operation” and that “it consumed the whole office.” As with other storefront operations we examined, we found that ATF did not prepare an after-action report on the storefront, including assessing whether the substantial investment of resources was reasonable in light of its impact on other Field Office operations.

II. The Pensacola Storefront – Operation Pensacola Periodicals (2011)

ATF operated an undercover storefront in Pensacola, Florida, from February 2011 through October 2011. Pensacola had a population of

²⁰ Near the end of the case, the case agent and an AUSA visited the local district attorney’s office to discuss possible state prosecutions of some of the storefront subjects. These cases concerned narcotics violations that did not meet federal prosecution guidelines. According to the case agent, the district attorney’s office did not accept any ATF storefront referrals for prosecution. No juveniles were prosecuted.

²¹ An audit of the handling of these funds, or those in the other storefront operations, was beyond the scope of this review.

approximately 52,000 at that time, and in 2010 and 2011 had a rate of violent crime roughly 1.7 times the U.S. average. In response to a sharp increase in local gun violence in 2010, the Escambia County Sheriff approached ATF about opening an undercover storefront to help address the rising violence. The RAC of ATF's Pensacola Resident Office was receptive to the idea and the offices began planning the operation. The eventual storefront was located in Escambia County immediately west of the Pensacola city limits. For approximately 9 months, it operated as a second-hand store that sold various types of second-hand merchandise such as clothing and electronics.

A. Initiation

After the Escambia County Sheriff's Office (ECSO) proposed conducting the storefront operation in early to mid-2010, ATF consulted with the USAO for the Northern District of Florida and the Office of the State's Attorney. The RAC told us that he believed the success of the storefront depended upon these offices being engaged in the operation, and that he therefore sought their input at the earliest stages of planning. According to the RAC, the U.S. Attorney and the Florida State's Attorney indicated their support for the operation in early meetings and assigned an AUSA and Assistant State's Attorney from their respective offices to assist the operation. The Escambia County Sheriff, who also attended these early meetings, told us that the U.S. Attorney and State's Attorney provided significant input into the operation, such as reviewing the storefront's operational plan. The AUSA and Assistant State's Attorney attended several early planning meetings with representatives from ATF and ECSO where they discussed, among other things, the operation's strategy and the potential federal and state crimes that could be pursued. Other topics included gun walking, the risk that the storefront would draw criminals into the community and lead to the creation of crime, and residents' response to the storefront once the existence of the undercover operation was made public. The AUSA told us that the Pensacola storefront was "the most pre-planning that I've ever seen in an operation."

On February 17, 2011, ATF's Tampa field office submitted a storefront proposal to ATF Headquarters' Special Operations Division. The proposal described the Pensacola office's coordination on the operation with the USAO, local law enforcement, and the Naval Criminal Investigative Service (NCIS), and stated that ECSO had committed to being "full partners" with ATF by providing investigators and backstopping in support of the storefront.²² The proposal also described the Pensacola office's efforts since 2008 to combat the sale and distribution of guns to prohibited persons in secondary gun markets in northwest Florida, and how the storefront would be a continuation of those efforts. ATF had been identifying illegal firearms sales through the use of a confidential informant (CI) who would contact individuals selling firearms at local flea

²² NCIS was included as a potential partner in the storefront due to the large naval presence in the Pensacola area, but ultimately did not participate in the operation.

markets and in a local periodical and indicate that he was a convicted felon or, with regard to operations at the flea markets, that he was a convicted felon or an out-of-state resident, and that we was looking to purchase firearms. The sale of a firearm to a person the seller knows or has reasonable cause to believe is a convicted felon or, with limited exceptions, who does not reside in the state is a violation of federal law (18 U.S.C. § 922). According to the storefront proposal, this strategy resulted in 5 federal convictions and approximately 82 guns being removed from these secondary markets.

The proposal, however, went on to note that it was “inherently more difficult to investigate” the sale of stolen firearms because “those who steal firearms . . . trade or sell the firearms to known and trusted individuals. Those individuals in turn avoid overt sale of the stolen firearms at flea markets, gun shows or periodicals.” The proposal explained that the primary CI used in those earlier investigations had experience operating second-hand stores, and that ATF intended to use this same CI for the storefront operation. The objective of the storefront, which would be known as “Anything for a Buck,” was to “identify violent criminals, prohibited individuals, and gang members in the community who are involved in the illegal possession and sale of firearms, and to gather enough evidence against them to obtain a successful prosecution in federal court.”

The RAC told us that he learned during a conversation with his supervisor from ATF’s Tampa field office that the proposal had been approved by ATF Headquarters. The storefront became operational in February 2011 and continued operations until October 2011.²³

B. Planning

As described above, the storefront operation was an outgrowth of ATF’s previous undercover activities targeting the secondary firearms market in northwest Florida. The ATF case agent told us that the advantage of the storefront was that it would provide law enforcement with a “safe place” to purchase firearms in an undercover capacity instead of continuing to purchase firearms in parking lots or other locations that presented greater risks. Focusing on two Pensacola neighborhoods with high crime rates, the RAC and the ECSO supervisors scouted locations for the storefront for nearly a year before making a final selection. Both the RAC and the primary ECSO Lieutenant assigned to the case stated that they wanted a location with a month-to-month lease in order to minimize costs. The RAC told us that he identified a space during a drive through one of the neighborhoods under consideration and immediately contacted the landlord. According to the RAC, after being satisfied with the cost, rental period, and suitability of the space, he authorized the case agent to lease the property in an undercover capacity.

²³ The only document we identified indicating ATF Headquarters’ approval of the storefront operation is a copy of the proposal with the signature of the Special Operation Division Chief dated May 24, 2011.

The case agent told us that one of the attractive features of the location was its close proximity to the Sheriff's office and to a hospital. However, the case agent also told us that although he was familiar with the geographic area, ATF did not conduct a security assessment of the surroundings to identify potential risks to the operation. The RAC acknowledged to us that a more comprehensive understanding of the surroundings prior to the operation commencing would have been a good idea. On that point, the RAC told us that he learned after the operation concluded that a Salvation Army facility was located within 1,000 feet of the storefront's property line. The RAC had been aware of the facility but not its proximity to the storefront. He said the Salvation Army is considered a church under Florida state law and that this particular facility also contained a daycare center.²⁴ According to the RAC, there were no incidents during the storefront's operation that created safety concerns among the personnel involved with the case or at the Salvation Army facility.

The physical space for the storefront, which consisted of a main store area with a small back room, required limited modifications. Ballistic drywall was added to a preexisting retail counter and mirrors were added to give agents better visibility throughout the store. ECSO technical personnel installed the necessary video and audio recording equipment, including a pole camera outside the store. The Wi-Fi connection that was installed allowed real-time audio and video of activities in the storefront to be transmitted to the ATF and ECSO offices. The RAC told us that after consulting with technical personnel in ATF's Tampa field office, he determined it would be more cost-effective for ECSO personnel to install the surveillance equipment. He also told us that because the ECSO technical personnel were closer, they would be able to respond more quickly to troubleshoot any problems with the equipment.

Prior to the storefront opening, ATF agents and ECSO officers met on several occasions to discuss security procedures, such as where to position themselves when customers were in the store and where to secure the firearms in the store. They created an operational plan that described the specific security procedures for the storefront. For example, the plan listed daily procedures for opening and closing the storefront, how purchased firearms would be secured, and how the undercover agents would provide cover for one another during daily operations. The case agent told us that it was standard procedure for at least one member of the storefront team to be in the back room during transactions with customers so that at least that team member would have access to a long gun and other tactical equipment. This team member was also responsible for monitoring activities in the store and being prepared to provide assistance as needed. Storefront personnel periodically met during the course of the operation to review security procedures.

²⁴ ATF found out about the daycare when the State's Attorney's Office advised that the state crimes committed at the storefront were within 1,000 feet of a child care facility, which would enhance the severity of the crime. F.S.A. § 893.13.

ATF Division Tactical Agents (DTA) from the Tampa field office did not visit the storefront to conduct a formal review and provide tactical approval until after the store opened. However, prior to this visit, the RAC sent photographs of the storefront to his supervisors in Tampa. According to the RAC, the DTAs reviewed these photographs and made recommendations for improving the security of certain aspects of the storefront, such as placing a chain behind the counter to dissuade customers from entering that area. The case agent told us that during the visit, the DTAs reviewed various tactical scenarios with storefront personnel and discussed how they should respond. The ASAC in the Tampa field office told us that he anticipated the DTAs would be a resource to the storefront but would not be consulted on tactical decisions during operations.

The planning for the Pensacola storefront did not include an outside cover team that would be responsible for responding to emergency situations involving the store. One of the undercover agents who worked at the storefront and who possessed extensive undercover experience told us that he felt it was better not to have a dedicated outside cover team because they are often identified as law enforcement, or "burned," by criminals. If this were to occur, it could create suspicion about the legitimacy of the storefront. The agent also told us that in the event of an emergency, the outside cover team would have to enter through the front door, creating a potentially dangerous cross-fire situation. An ECSO undercover officer who was part of the storefront team told us that he agreed with this agent's assessment. The ECSO officer also said that he did not believe it would have been feasible to have an inside "rescue" team because it would have been difficult to bring the team into the store every day and keep them in the back room without drawing attention.

According to personnel at the storefront, the lack of an outside cover team did not mean the store was unprepared to handle an emergency situation. For example, the case agent told us that the storefront team always had an ECSO radio available in the back room and that ECSO personnel could respond to an emergency in the storefront within minutes given their office's close proximity to the store. The case agent told us that on some occasions – such as when the storefront team knew that a subject was bringing a firearm to the store – the team would request that personnel from ECSO conduct surveillance or act as an outside cover team. Another team member told us that the live video and audio feeds of the storefront to ATF and ECSO offices, together with the presence of ECSO patrols in the surrounding area, provided an additional measure of security in the event of an emergency situation. Both the RAC and the ECSO Lieutenant overseeing the operation echoed this and told us that they frequently watched the live feed on the storefront from their offices and occasionally on laptop computers while parked outside of the storefront monitoring activities.

C. Operations

ATF opened the storefront in early February 2011. According to the operations plan, the storefront was open from 10:00 a.m. to 5:00 p.m., Monday through Friday. The storefront operated as a second-hand store and carried

various types of second-hand merchandise, such as clothing and electronics. The storefront was usually staffed by three undercover agents and the CI. As described above, the CI had previously worked with ATF undercover personnel in Pensacola and had significant prior experience operating second-hand stores and flea market booths.²⁵

As noted above, the primary objective of the storefront was to identify individuals in the community who were involved in the illegal possession and sale of firearms. In order to do this, ATF spread the word in the community that the store was looking to purchase firearms with "no questions asked" and to then resell the weapons at high markups to a "connection" abroad. ATF also planned to use the storefront as a location for the CI to purchase firearms from individuals who advertised firearms for sale in local periodicals and who had been contacted and informed by the CI that he was a felon interested in purchasing firearms.²⁶ We were told by ATF that conducting the transaction in the store was far safer than doing so in a parking lot or other makeshift location.

In addition to firearms, the storefront purchased narcotics and stolen property, both priorities for ECSO. However, the case agent told us that purchases of stolen property were limited to items that could be traced back to a victim by, for example, connecting the property to police reports. The case agent told us they were wary of purchasing items that appeared to be stolen solely for the purpose of selling the items to the storefront.

The case agent's daily routine typically included stopping by ATF's Pensacola office each morning to check out any cash or other supplies needed for the storefront and to talk to the RAC about the storefront's schedule for that day. The case agent then met the other undercover agents and the CI at the storefront at 10:00 a.m. to open the store. At the end of each day, the firearms, narcotics, and property that had been purchased were removed from the store and logged into evidence at ATF's or ECSO's offices. According to the case agent, they did not leave overnight at the store any evidence, equipment, or other items that might suggest it was affiliated with law enforcement. The case agent told us that he usually returned to the ATF office at the end of the day and briefed the RAC on the day's activities.

There was minimal customer traffic in the storefront at the beginning of the operation. During the first 3 months, the storefront team purchased 16 firearms and conducted 7 narcotics transactions and 1 transaction involving stolen property. The case agent described this period as "slow," stating that many potential customers appeared to be "suspicious" of the storefront.

²⁵ In February 2012, several months after the storefront closed, the CI was arrested after brandishing a weapon during a dispute in Fort Walton Beach, Florida. The CI was federally charged with being a felon in possession of a firearm and ultimately sentenced to 6 months in prison.

²⁶ Storefront records documented at least five instances during the operation where individuals refused to sell firearms to the CI after being informed that he was a convicted felon.

However, after the team purchased 19 firearms during the month of May, traffic increased significantly, and over the next 3 months the team purchased a total of 177 firearms. The case agent attributed the increase to customers becoming more "comfortable" with the storefront. Another factor included the RAC's decision to approve a request to modify the storefront's hours of operation, permitting it to open at irregular hours – such as Saturdays and by appointment – in order to create the appearance that it was neither a legitimate business nor associated with law enforcement. Also, an ESCO officer contacted a drug dealer who he had been investigating prior to joining the storefront and told him that he was now working at the storefront and asked that he stop by to sell some narcotics. The ECSO officer told us that business began to increase after this contact and that he believed it improved the storefront's credibility on the street.

The case agent told us that the team began opening the storefront on an appointments-only basis toward the end of the operation and described this as the "winding down" of the operation. Business at the storefront diminished throughout September and into October, when the storefront eventually closed. Storefront personnel purchased 33 firearms in September and 10 firearms in October.

The team used several methods to identify customers entering the storefront. For example, photographs of customers taken from video stills were often shown to ECSO detectives familiar with members of the community and storefront personnel occasionally followed subjects to establish their identity or their sources for firearms and narcotics.

According to the case agent, the prices they paid for particular items were set in different ways. For narcotics, the case agent deferred to one of the undercover ECSO officers with significant experience as an undercover narcotics officer. For firearms, the team frequently consulted a "blue book of gun values" to help establish prices. However, the case agent told us that the gun market is very similar to a "used-car market" and value was often difficult to establish.

We identified several measures the storefront team took to protect against the operation creating crime in the community. For example, the ECSO Lieutenant supervising the storefront told us that his officers reviewed crime and arrest statistics "multiple times a day" to ensure the storefront was not creating crime; one ECSO sergeant was specifically assigned this responsibility. Similarly, ATF personnel conducted NCIC traces as soon as possible on all firearms that were purchased in order to determine if the guns were recently stolen. The case agent told us they identified very few instances of this.

Storefront personnel also limited their purchases of stolen property so as not to create a market in stolen goods, and when they had concerns that particular customers were stealing items in order to sell them to the store, the team developed tactics to deter those customers from returning. For example, when agents realized that a firearm purchased from two suspects at the storefront had been recently stolen, an undercover agent told the suspects that

he had discovered an electronic tracking device inside the grip of the firearm, accused the sellers of being informants for law enforcement, and told them they were no longer welcome in the store.

Storefront personnel also coordinated with other law enforcement offices on the arrests of certain individuals prior to the storefront operation closing. For example, storefront personnel worked with law enforcement in another jurisdiction to have a suspect with an outstanding warrant arrested as he travelled through that jurisdiction.

The storefront was burglarized once and several other break-ins were attempted. These incidents were captured by surveillance cameras and at least one of the suspects was identified and prosecuted. According to storefront personnel, most of the items stolen during the burglary were used as store inventory and not valuable. The store was not alarmed, a decision that the RAC told us was based on the lack of properties in the neighborhood that had alarm systems and the concern that having one would have made the individuals they were targeting suspicious. Following the burglary, the team replaced the door to the store and installed wire mesh over the other points of entry. The case agent told us that the burglary actually increased the storefront's credibility with potential customers and cited one suspect as stating he was convinced the store was not associated with law enforcement based, in part, on the fact they did not contact the police after the burglary.

The initiation and planning documents for the storefront operation did not address how the team would handle prohibited possessors who attempted to leave the storefront with firearms. According to the RAC, both he and the team members were nevertheless attuned to the issue and he trusted them to take appropriate action in those circumstances. The case agent told us that the storefront team understood that if a prohibited possessor left the store with a firearm that the individual "must be taken down." This occurred in one instance when a felon attempted to leave the storefront with a firearm after negotiating on price with undercover personnel. To prevent the felon from leaving armed, the undercover personnel increased the amount of their offer and purchased the gun. In another instance, a felon who had previously sold multiple firearms to undercover personnel at the store refused to sell a pistol despite several offers. The storefront team contacted ECSO about pursuing the felon; however, the felon coincidentally was arrested by the Pensacola Police Department later that evening in an unrelated traffic stop. The pistol was discovered in the felon's vehicle during the stop.

D. Oversight

The RAC and an ECSO Lieutenant were primarily responsible for the day-to-day supervision of the storefront. The Lieutenant told the OIG that he and the RAC were practically "attached at the hip" and in constant communication with the storefront team. The RAC echoed this, describing the storefront as a "true partnership" with ECSO. As described earlier, the case agent told us that he briefed the RAC each morning about the storefront's schedule for the day and

usually briefed the RAC in the evening about the day's activities. The primary undercover ECSO officer told us that he met on almost a daily basis with the ECSO Lieutenant overseeing the storefront.

The RAC said that he kept the ASAC and SAC informed of all developments regarding the storefront, and that the SAC was "very involved" in the supervision of the operation. The RAC and the ASAC told us they communicated regularly about storefront activities and in particular focused on indications the activities correlated with any increase in local criminal activity.

As described earlier, the USAO and the State's Attorney's Office were consulted frequently about the storefront, especially during the planning phase of the operation. The assigned AUSA and Assistant State's Attorney continued to have weekly meetings with ATF and ECSO after the storefront became operational. The AUSA told us that he would use these meetings as an opportunity "to watch some of the videos and [see] what was going on in the operation." He said that he would sit down and discuss with the storefront team any concerns he had with operations and possible corrective actions. About these meetings, the AUSA told us, "I welcomed that. I mean, it's not all the time that they invite us to go over and sit down and see what they're doing and critique it." By way of example, the AUSA said the CI initially was not explicitly stating to potential sellers that he was a convicted felon during firearms deals, and might instead just state he could not purchase firearms in a store. The AUSA told the storefront team that to make the cases prosecutable, the CI had to be "crystal clear" and explicitly state he was a convicted felon. According to the AUSA and the RAC, the storefront team adopted this suggestion.

As described in Chapter Two, ATF issued its MCP requirements on July 19, 2011. ATF's Tampa field office submitted its first monitored case briefing on the Pensacola storefront operation on August 8, 2011; the last report was submitted in December 2011 after the storefront had ceased operations. The August submission described the activities of the storefront to that point in time and reported that the Pensacola office intended to continue the storefront at its present location for another 60 days. The RAC told us that he recalled preparing the initial MCP briefing paper with the case agent, but said that no one at ATF knew what to expect from the program given that it had only recently been initiated. The RAC did not recall receiving any feedback in response to the MCP submissions.

E. Vulnerable Persons

We asked storefront personnel about their approach to vulnerable persons, such as juveniles and those with intellectual and developmental disabilities (I/DD). They told us that juveniles were discouraged from entering or hanging out in the storefront, and that juveniles were not targeted. However, storefront personnel also told us that at least two juveniles in fact sold firearms to undercover officers at the store. For example, in May 2011 an individual later identified by a CI as a 16-year old juvenile sold two firearms to an undercover agent. The RAC also learned that the juvenile had a prior juvenile felony

conviction, was a suspect in a recent shooting, and was the defendant in a charging document filed by the State's Attorney's Office for possession of a firearm by a felon/delinquent. Although according to the case agent the juvenile was not "encourage[d]" to sell more firearms, he in fact did sell 10 additional firearms to undercover personnel during the course of the storefront. The case agent told us that because the juvenile claimed he had access to numerous firearms, the team decided "we'd rather get them in our possession than have him out there with" the guns. The case agent also told us that because the State's Attorney's Office had responsibility for prosecuting juveniles, he deferred to the ECSO Lieutenant on handling those cases. The juvenile was ultimately prosecuted by the State's Attorney's Office in connection with his sales to the storefront and sentenced to 3 years confinement.

The agents told us that they also did not target persons with I/DD or otherwise use them to further the storefront operation. However, one individual prosecuted as a result of sales to storefront personnel was later diagnosed as being "on the breakpoint of Borderline Mental Retardation and Mental Retardation."

The undercover agents first made contact with this defendant through an advertisement in a local periodical in which the defendant had listed firearms for sale. At the undercover agents' direction, the CI telephoned the defendant and over the next several months purchased numerous firearms from him. According to storefront personnel, they did not observe any signs that the defendant was intellectually or developmentally disabled. One team member described the defendant as "normal" and each member of the team told us the defendant actively negotiated the transactions with the undercover agents. Similarly, the AUSA who prosecuted cases arising from the storefront told us that he "never thought" the defendant "had any kind of mental issues."

Storefront personnel and the AUSA told us about two details relating to the defendant's interactions with the storefront. The first was that the defendant was always accompanied by his father, mother, or fiancée during interactions with undercover agents. The second was that the defendant often appeared under the influence of narcotics when dealing with undercover agents. The undercover ECSO officer with significant narcotics experience described the defendant in this way:

A young guy, always came in there with his fiancée or his parents. I don't remember thinking that he was mentally challenged. I remember thinking that he was really, really on pills. When you talk to somebody that's on pills, and I mean, you can just see it. He couldn't hardly, you know, I don't think it was his mental capability where he couldn't hold himself up. It was his drug addiction, really high all the time. I mean, nose running, you know, stuff like that. Now, as far as how he was, you know, as far as IQ, I wouldn't be able to tell you. But he didn't seem mentally challenged to me. I just [thought] he was just on drugs.

The defendant was charged by federal prosecutors with four counts of selling a firearm to a convicted felon and one count of selling a firearm and ammunition to a convicted felon. He ultimately pled guilty to all five counts and was sentenced to 3 years of probation, including 6 months of home detention.

F. Closure and Results

During an October 2011 meeting to discuss the status of the storefront, representatives from ATF, the USAO, the State's Attorney's Office, and ECSO reached consensus that the time had come to close the operation. According to witnesses who attended the meeting, the State's Attorney expressed his opinion that the storefront had been operational long enough, had succeeded in seizing a significant amount of firearms, and had experienced limited problems or incidents. The Escambia County Sheriff told us that he agreed with the decision and said he was concerned the team was becoming fatigued by the amount of work the storefront required. The case agent told us that no one opposed closing the storefront and said that by this time the storefront team was only opening the storefront on an appointments-only basis.

According to ATF records, undercover personnel purchased approximately 260 firearms during the operation – 54 of which were reported stolen – and conducted over 100 drug transactions. Twenty-two defendants were charged in federal court based on activities at the storefront and 55 were charged in state court. Of the federal defendants, 15 were charged with being a felon in possession of a firearm and four were charged exclusively with selling firearms to a felon (the CI). Each of the 22 federal defendants pled guilty and 21 were sentenced to time in prison. The sentences ranged from 12 to 180 months. The state defendants were primarily charged with offenses relating to dealing in narcotics and stolen property. At least 27 of the state defendants had previously been convicted of a felony.

Witnesses involved in the operation were unanimous in the view that the Pensacola storefront was a success. The Escambia County Sheriff told us that in addition to measurements such as the number of weapons seized and individuals successfully prosecuted, the operation also succeeded in terms of management and oversight. The Sheriff said the mutual cooperation between ECSO, ATF, and the state and federal prosecutors through every step of the operation was one of the most important features of the storefront. He also noted that Escambia County experienced virtually no violent crime during the period the storefront was operational, though it coincided with another anti-crime operation his office conducted jointly with the USMS.²⁷

The AUSA told us the storefront was considerably more successful than he had anticipated and that he was surprised by how many individuals brought firearms and narcotics into the store to sell. The AUSA also said that he

²⁷ We did not independently examine the crime rate during the period the storefront was operational, or what happened to the rate after the operation was concluded.

believed ATF did an excellent job conducting and managing the operation, and that the agents presented very well organized and prepared cases for prosecution. The RAC told us that the operation demonstrated the ability of law enforcement at all levels in the Pensacola area to work seamlessly together on an operation, and said that he believes the relationships built during the operation would make the law enforcement community in Pensacola increasingly effective in future years.

III. The Milwaukee Storefront – Operation Fearless (2012)

ATF operated an undercover storefront, known as Operation Fearless, in Milwaukee, Wisconsin from February 8, 2012, to September 22, 2012. As we described in the Introduction, the storefront came under scrutiny after news reporting described numerous problems with it, including the theft of firearms, improper handling of sensitive information, and the alleged targeting of persons with disabilities. ATF's Office of Professional Responsibility and Security Operations (OPRSO) conducted an internal review to evaluate the St. Paul Field Division's handling of the operation. OPRS issued a non-public report on March 21, 2013, that identified numerous deficiencies, including inadequate planning, poor security practices, and lack of proper supervision. The report also described problems with the MCP. We include a brief summary of OPRS's findings in this section following the OIG's description of the operation from initiation to closure.

A. Initiation

The idea for Operation Fearless was formulated in late summer 2011 during another ATF investigation in Milwaukee, known as Operation Smokin' Piston. Operation Smokin' Piston involved untaxed cigarettes and targeted members of the Outlaws and Black Pistons motorcycle gangs believed to be involved in firearms and narcotics trafficking. The case agent told us that she considered using numerous investigative techniques in that case, including an undercover storefront. In July 2011, two ATF undercover agents with experience investigating the Outlaws travelled to Milwaukee to provide guidance and advice to personnel involved with Operation Smokin' Piston. According to the Milwaukee ATF personnel who met with them, the undercover agents advised that any investigation involving undercover tobacco sales was unlikely to be successful due to ATF's prior use of tobacco to infiltrate the Outlaws in other parts of the country. They recommended that Milwaukee instead conduct a storefront investigation and use the storefront as means for the Milwaukee undercover agent to infiltrate the Outlaws.

Over the next few months, the ASAC, RAC, case agent, and lead TFO discussed the prospective storefront on multiple occasions. The case agent and lead TFO travelled to Cleveland in August 2011 to observe an ongoing ATF undercover storefront and meet with individuals involved with that storefront. Of the agents assigned to Operation Fearless, only the case agent had prior storefront experience. One of the undercover agents had received training on

storefront operations. The Operation Fearless case file was opened shortly after the case agent and TFO returned to Milwaukee, and the case agent began drafting a proposal memorandum for the storefront in September 2011.

According to the case agent, the initial goal of the operation was to use the storefront as cover for the primary undercover agent to affiliate with members of the Outlaws. The case agent therefore sought to locate the storefront near the Outlaws' territory in police District Two on the south side of Milwaukee. However, in October 2011, the ASAC determined that the storefront should target violent crime more generally in the city and not be focused solely on the Outlaws.²⁸ The ASAC told the OIG that he believed the storefront was more likely to be successful with this broader focus and that they would limit its potential effectiveness if placed in police District Two. For these reasons, the ASAC suggested to the case agent that the target of the storefront be broadened to include Districts Five and Seven on the north side of Milwaukee, which historically have had the most firearms violence in the city.

The USAO for the Eastern District of Wisconsin was first informed of the potential storefront investigation in September 2011. Both the U.S. Attorney and the AUSA involved with the case told the OIG that they were unfamiliar with the storefront technique at that time and were initially skeptical of its utility. They said their skepticism was alleviated after speaking with AUSAs in other districts who had worked with ATF on storefront operations and who described them as effective. The U.S. Attorney told the OIG that he communicated to ATF his concern, in part based on Operation Fast and Furious, about ensuring the safety and security of the community during the operation and that he wanted to ensure that no gun walking would occur. Ultimately, the USAO supported the broader storefront proposal and agreed to prosecute cases resulting from it. On the local side, ATF informed the Milwaukee District Attorney's Office of the storefront in late spring 2012 and provided periodic updates to the office throughout the operation.

Milwaukee Police Chief Edward Flynn told the OIG that the Milwaukee Police Department (MPD) and ATF have had a collaborative and positive relationship throughout his nearly 8-year tenure and that he had no reservations with ATF's request for two MPD officers to be detailed to ATF to support a storefront operation. Chief Flynn told us that he was briefed on the storefront in its early stages and that he supported placing the storefront on the north side of Milwaukee, which he said was "awash" in firearms and gun violence. Chief Flynn did not recall any mention of the Outlaws motorcycle gang.

On November 21, 2011, the SAC for the St. Paul Field Division, which oversees the Milwaukee office, submitted a memorandum to ATF Headquarters seeking authorization for a "Surplus Shop" storefront that would operate as a retail business selling items such as cigarettes, t-shirts, and motorcycle parts, as

²⁸ In 2010 and 2011, Milwaukee had a rate of violent crime more than double the United States average. In this period Milwaukee had a population of approximately 600,000.

well as a side-business purchasing firearms, illegal drugs, and stolen items.²⁹ The memorandum stated that the objective of the storefront was “to identify gang members in the community who are involved in the illegal possession and sale of firearms, and to gather evidence against them to obtain a successful prosecution in Federal court.” According to the memorandum, this goal would be obtained through the undercover purchase of firearms and other contraband at the storefront. One ATF agent in Milwaukee told us that the agents’ purchase of narcotics enhanced their credibility with criminals. Despite the ASAC’s previous determination that the storefront should target violent crime throughout the city, the memorandum identified police District Two as the proposed storefront location and stated that it would target “violent crime and gang crimes on the south side of Milwaukee, specifically District 2.” The memorandum included a summary of the street and motorcycle gangs operating in District Two and the pertinent crime statistics. The memorandum did not reference Districts Five or Seven and did not provide any crime statistics for those jurisdictions, though ATF had statistics for those Districts as well. We were unable to determine what caused the proposal to specifically target crime in District Two and to state that District Two would be the storefront location , though as noted below the storefront did not end up in that District.

In late November or early December 2011, the case agent identified a commercial property that she believed was suitable from a security standpoint for a storefront operation on East Meinecke Avenue in police District Five. The case agent told us that her survey of the surrounding neighborhood raised no security or public safety concerns and that she considered the location ideal because it was in neutral gang territory and was accessible from both the north and south sides of the city. The primary undercover agent, acting in an undercover capacity, signed a lease for the property on December 12, 2011.

The St. Paul Field Division did not inform ATF Headquarters that the lease was for space located in District Five, and not in District Two. According to the ASAC, the location change was dictated entirely by operational considerations and he did not consider the change problematic because ATF Headquarters was not familiar with the City of Milwaukee. However, he also told the OIG that if the situation arose again, he would include general crime statistics for the City of Milwaukee in the storefront proposal memorandum instead of statistics specific to District Two.

The storefront proposal was approved by the DAD via e-mail on November 22, 2011, the day after the authorization memorandum was submitted. Written approval followed on December 19, 2011, when the DAD and the Chief of the Special Operations Division noted their approval on the memorandum without comments or modifications. On December 19, 2011, the Milwaukee Field Office submitted its first Monitored Case Briefing Paper for the

²⁹ We determined that ATF did not consult with DEA about its investigative findings while the storefront was in operation.

storefront. The paper focused on District Two and described various street and motorcycle gangs operating in that area, but did not mention that the storefront was actually located in District Five. The ASAC told the OIG that the focus of the storefront had changed by this time and the paper should have been updated to reflect that. The URC convened on January 9, 2012, and approved the storefront on the basis of the November memorandum. No personnel from the St. Paul Field Division attended the URC meeting and no materials relating to the Milwaukee storefront were considered other than the authorization memorandum. The URC's approval was transmitted to the field office on February 6, 2012.

B. Planning

ATF and MPD personnel assigned to the storefront began physically modifying the leased space in January 2012 to fit the needs of the operation. ATF technical personnel installed 15 surveillance cameras and 12 microphones throughout the building. Merchandise for the storefront was obtained primarily from ATF personnel in Portland, Oregon, who had recently concluded a storefront operation. Some merchandise also came from an MPD investigation. ATF's Undercover Branch (UCB) assisted the storefront by providing undercover identities for agents involved in the operation and putting agents in Milwaukee in contact with other ATF agents who had conducted storefront operations. In addition, ATF Columbus Field Division personnel with storefront experience travelled to Milwaukee in January to view the storefront and provide advice.

The Milwaukee agents told the OIG that security planning for the storefront was handled in several ways. According to the case agent, the initial step in the security evaluation was locating a building that met the operation's needs. The case agent stated that the building that had been selected in late November or early December 2011 was ideal for a number of reasons. First, the building itself was large enough for the cover team to share the space inside the building. Second, there were multiple entrance points to the building and, given the residential character of the neighborhood, the cover team was able to enter and exit the building without an escort. Third, the neighborhood had little foot traffic and a commercial building across the street closed in the early afternoon. The ASAC told the OIG that this lack of foot traffic was important in minimizing risk to the public. The RAC also noted that the location was not close to any areas where children would gather, such as a school or daycare center.

The RAC stated that ATF personnel in Milwaukee determined that six law enforcement officers – two undercover agents and four members of the cover team – were required to staff the storefront. The cover team was located inside the storefront building and there was no outside cover team. The RAC told us that the DTA for the St. Paul Field Division, who visited the storefront in late January to view the location and conduct tactical training, concurred with this assessment and recommended a four-person cover team. According to the ASAC, this was "standard operating procedure" and an outside cover team "wasn't routinely done" in other ATF storefronts. The ASAC also said that, given the layout of the building and the ease with which the cover team could exit,

many of the benefits of an outside cover team could be accomplished by the inside cover team in Operation Fearless. The DTA told us that he provided advice on the use of a cover team, but could not recall why an outside team was not used. As discussed below, the absence of an outside cover team became a potential factor in a dangerous situation that played out during the operation of the storefront.

The DTA's tactical training also included discussion of other security and safety issues relevant to the storefront, such as planning for the rescue of an undercover agent. Agents told us that the storefront team frequently discussed safety issues and contingency plans, though nothing was put in writing. These discussions included strategies for reacting to an attempted robbery of the storefront and "blue on blue" situations, where local police unknowingly enter or raid the storefront as part of an investigation. The case agent described as a result of these discussions the decision to enter the storefront location and the undercover agents' identities into a law enforcement deconfliction database in order to alert the storefront team to any potential police activity. Also, as a result of these discussions, the TFOs assigned to the storefront were assigned MPD radios as a way to alert MPD in case of an emergency.

We asked agents about the potential for the storefront to generate crime and how this issue affected their planning and operation of the storefront. The agents told us they were attentive to the issue and recognized that the storefront could create incentives for people to commit crimes. The case agent told the OIG that they decided to avoid purchasing personal property based on other storefronts' experience with this activity creating a market for stolen goods. Agents told us that they also reviewed the crime reports on an ongoing basis for the neighborhood surrounding the storefront to ensure there was no increase in local crime, though we did not find any instances where they changed their operations as a result. Agents also told us that all firearms purchased through the storefront were immediately entered into the National Crime Information Center (NCIC) to determine if they were stolen.³⁰ However, the case agent told us that the firearms were not traced immediately and that they decided to postpone tracing "until the conclusion of the investigation so that nobody got tipped off."

On the issue of gun walking, the authorization memorandum for the operation stated, "Under no circumstances will firearms sales or walking of firearms take place." Agents told us that they believed they were required to purchase all firearms from any known felon or other person prohibited from possessing a firearm, a status agents would learn from criminal history checks conducted as they identified individuals before or while they were at the storefront. The RAC told us that both the ASAC and USAO were adamant that

³⁰ The NCIC is a computerized database containing criminal justice information that is accessible to law enforcement agencies nationwide.

no guns be allowed to walk. This issue was of heightened concern due to the controversy surrounding ATF's Operation Fast and Furious.

In early January 2012, ATF contacted the FBI about participating in Operation Fearless. The ASAC stated that he thought this would be a good opportunity to strengthen the relationship between ATF and FBI locally, and he briefed the SAC on the proposal. The FBI agreed to participate and detailed an agent to the operation's cover team. The FBI agent joined the storefront in mid-January and helped set up the storefront and assisted on the cover team in its early operations. However, the FBI agent told us he had a number of concerns about the operation's tactical planning and security, such as the undercover rescue plan being insufficiently detailed. The FBI agent told the OIG that his concerns were not taken seriously by ATF personnel and were never addressed in any meaningful way. The agent was also concerned that any intelligence developed during the storefront's operation would not be used due to ATF's decision not to disseminate such information until the operation concluded. The FBI agent communicated these concerns and others to his FBI supervisors, one of whom told the OIG that she shared the agent's concerns and became "uncomfortable" with the entire operation. ATF and FBI supervisors met to discuss the FBI's concerns, which included security issues and intelligence dissemination, but no resolution was reached. The FBI subsequently decided to end its participation in the storefront. The FBI agent's last day working on it was February 28, 2012, meaning that the FBI's active participation while the storefront was operational lasted less than 3 weeks. The decision to withdraw from the storefront was made by the FBI ASAC and SSA, and neither the ATF SAC nor ATF Headquarters were informed or required to be informed of the FBI's withdrawal from the operation.

C. Operations

The storefront opened to the public on February 8, 2012. In the first few months of the operation, ATF sought to attract customers by sending the undercover agents to various parts of Milwaukee to advertise the storefront. Agents visited bars, parking lots, and street corners in high crime areas and passed out flyers for the legitimate goods to be sold at the storefront. They sometimes brought store merchandise with them, such as sneakers or jerseys, and conducted transactions with people they encountered. The undercover agents also paid individuals to hand out or post flyers in an attempt to attract business to the storefront.

ATF struggled to attract criminals to the storefront during its initial months of operation. Undercover agents did not purchase their first firearm until May 2012 and purchases totaled only five by the end of June. In May 2012, the case agent began using a confidential informant (CI) in an attempt to attract more targets to the storefront that the CI knew were involved with drug and firearms trafficking. The CI proved effective in this regard, but was also unreliable and interjected himself into deals at the storefront despite being

repeatedly instructed by the agents not to do so. ATF eventually stopped using the CI due to these issues.³¹

Business at the storefront increased significantly in July 2012. Agents purchased 23 firearms during that month, compared to 5 firearm purchases in the prior 5 months. The trend continued into August and September when 54 and 62 firearms were purchased, respectively. One agent attributed the increase in activity to word finally spreading that the storefront was buying firearms. The increase in business created an overwhelming administrative workload for the storefront team, yet the ATF and MPD did not increase the staff size assigned to the operation. As a result, agents struggled to meet administrative deadlines set by ATF policy for completing reports and logging evidence. See ATF Order 3270.10C § 3.b; ATF Order 3400.1B § 2.b. We also were told by many of the agents that the lack of resources and personnel also hindered the agents' ability to pursue leads, conduct adequate surveillance on suspects, and develop intelligence. According to one agent, this situation was especially problematic during the takedown phase of the operation when the team lacked intelligence on certain suspects. The period of increased activity also created a financial strain for ATF. According to the Acting RAC, he struggled on a daily basis to obtain enough money to buy guns and drugs to keep the storefront operating.

It was during this period of increased activity at the storefront that agents were confronted with a potentially dangerous situation. On July 13, 2012, a known felon entered the storefront for a pre-arranged narcotics transaction with the primary undercover agent. According to an ATF report of investigation, during the meeting the felon showed the agent a silver revolver and armor piercing bullets. The agent immediately attempted to purchase the revolver from the felon, who stated that he "would sell it for \$250.00, but he wanted to keep it at that time because he needed it to go and retaliate against some people that had shot his cousin recently." The felon stated he would bring the gun to the storefront for the agent to purchase after he handled that situation. The felon then left the storefront with the revolver.

The undercover agents on duty immediately closed the storefront and informed the cover team of the situation. A TFO contacted an MPD lieutenant, MPD neighborhood task force, and MPD's Fugitive Apprehension Unit to inform them about the felon's statements, including where the shooting would be likely to occur. ATF also notified the local District Attorney of the situation. According to the TFO, MPD saturated the neighborhood where the threatened retaliation was to occur and also attempted to locate the felon. However, he was not located and agents did not obtain any information suggesting the retaliatory attack was carried out. The undercover agent reestablished contact with the felon in the following weeks, including the periodic exchange of text messages

³¹ Three state prosecutions for drug offenses at the storefront were later dropped by the Milwaukee District Attorney's Office because ATF had lost contact with the CI who had been directly involved in the transactions.

and at least one face-to-face meeting on July 30 in which agents paid the felon \$50 to pass out flyers advertising the storefront. While there also was discussion about another possible firearms transaction that did not occur, there was no further mention of the gun and bullets that had been discussed with the felon previously, and ATF did not attempt to arrest him. The case agent stated that given the amount of time that had elapsed, combined with the absence of word of a shooting involving the felon in the community, the storefront team decided that the immediate threat had passed and they would focus on "perfect[ing] criminal charges on" the felon. Ultimately, the felon was arrested by local authorities in Minnesota on November 17, 2012, on charges unrelated to the storefront. Multiple team members told the OIG that the lack of an outside cover team limited the storefront team's ability to follow and ultimately interdict the felon on July 13. The Acting RAC called the lack of an outside cover team "an obvious flaw" that was exposed by this incident.

D. Oversight

Oversight of Operation Fearless was impacted by substantial turnover among supervisors; in fact, the operation was managed most of the time by supervisors who were in acting capacities. The ASAC who initiated the operation was transferred to another field division in early February 2012 just before the storefront became operational. The RAC was named Acting ASAC at that time and an agent who had no involvement in the initiation of the storefront became the Acting RAC. Then, in late July 2012, just as the storefront was beginning to attract more customers, the Acting ASAC was transferred to another ATF office and a second Acting ASAC was placed over the operation. This second Acting ASAC was located in St. Paul, had no prior involvement with the storefront, and was the lone ASAC for the entire St. Paul Field Division, which then had 62 agents covering 278 counties in the states of Minnesota, Wisconsin, and the Dakotas. ATF did not assign a permanent RAC and ASAC to Milwaukee until after the storefront had ceased operations. Further, the DAD who originally approved the operation left his post in early March 2012 and the position remained vacant until mid-June. The SAC for the St. Paul Field Division was the only supervisor who remained in his position for the entirety of the operation.

Both agents and supervisors told us that the turnover in supervisors negatively affected the operation. In addition to creating a sense of instability, many of the incoming supervisors were not adequately briefed on the storefront. The second Acting ASAC told us that he knew little about the storefront prior to becoming Acting ASAC and had limited conversations with his predecessor about the operation. Likewise, the Acting RAC stated that he had little knowledge of the storefront prior to assuming his position and initially had little involvement with the storefront even after becoming Acting RAC. He stated that his predecessor, who became the first Acting ASAC, had primary responsibility for dealing with the storefront while he worked on other matters in the Milwaukee office. The Acting RAC said his involvement in the storefront increased significantly after the first Acting ASAC departed. When we asked the SAC about the turnover in supervisors, he told us that in hindsight he should have requested that ATF Headquarters send an experienced ASAC to oversee the

storefront after the initial ASAC was transferred in February 2012. The SAC said the initial ASAC's anticipated involvement in and supervision of the storefront was an important factor in his approval of the operation.

Personnel turnover also impacted the amount of day-to-day supervision during the course of the storefront. The case agent told us that she was in constant contact with the initial RAC during the early phases of the storefront and also in regular communication with the initial ASAC. However, that contact diminished after the initial ASAC departed and the RAC became Acting ASAC. The case agent told us that the Acting RAC, who continued to carry his own caseload, was not as available as a full-time supervisor, and that she, the case agent, did not meet with the Acting ASAC as often as she did when he had been her RAC because she was attempting to adhere to the chain of command. That agent said that after the Acting ASAC was replaced with yet another Acting ASAC, she had very little contact with that level of supervision.

According to the SAC, his primary source of information about the conduct of Operation Fearless was the weekly updates provided by the responsible ASAC and the monthly MCP updates. The MCP updates, typically provided in PowerPoint slides, included an overview of the narcotics and firearms purchases, profiles of potential defendants, an accounting of funds expended to date, and a summary of the operation's goals. The SAC stated that he had little, if any, interaction with the case agent and the Acting RAC who had assumed immediate supervision over the operation.

As part of the MCP, the SAC was required to provide monthly briefings and written materials about the storefront to the DAD and ATF Headquarters staff. With the exception of the initial MCP briefing, the SAC was the only person from the St. Paul Field Division with knowledge of the storefront who participated in the MCP briefings. An ATF Headquarters staff member attended the briefings and took notes, which primarily consisted of information that was included in the PowerPoint slides used to brief the SAC. Our review of the notes from these briefings reflect that few problems or issues were discussed regarding Operation Fearless until September 2012, when the primary undercover agent's firearms were stolen (as discussed in Section G below). The case agent, Acting RAC, and Acting ASAC each told the OIG that they received almost no feedback from the MCP briefings.

E. Vulnerable Persons

We asked agents about their approach to vulnerable populations during the storefront operation. Agents stated that they did not target or interact with juveniles, and we found no evidence that contradicted this. Agents also told us that they did not target persons with I/DD for enforcement action or otherwise use them to further their investigation. However, one defendant prosecuted as a result of the storefront was diagnosed as "mildly mentally retarded" during a court-ordered evaluation following the storefront operation. This defendant, a prior felon, was indicted in federal court on eight counts, including charges of being a felon in possession of a firearm and charges relating to the distribution

of various narcotics. The defendant ultimately pled guilty to one count of being a felon in possession of a firearm and was sentenced to probation for 4 years with 6 months' home confinement.

The primary undercover agent told the OIG that the undercover agents first met this defendant when they were distributing flyers for the storefront in a Wal-Mart parking lot in District Five. The primary undercover agent stated that the defendant called the number on the flyer and asked for a job. After declining to hire the defendant on a number of occasions, the primary undercover agent gave him \$10 to distribute advertising flyers for the storefront. The agent stated that he hoped the defendant would be able to generate business for the storefront given the defendant's connections to the neighborhood. For the remainder of the storefront, the ATF undercover agents intermittently paid the defendant to distribute flyers. The defendant also visited the storefront frequently and would often spend significant amounts of time speaking with the undercover agents. The storefront log that was maintained by the agents indicates that the defendant visited the storefront on at least 40 separate occasions. The undercover agents told the defendant that they wanted to purchase narcotics and firearms; according to the agents, the defendant replied that he could help them. During the course of the storefront, the defendant arranged at least 10 deals between his associates and the undercover agents, including the sale of at least 9 firearms. For each transaction he brokered, agents paid the defendant in either cash or merchandise from the storefront. The defendant also sold narcotics or firearms directly to the agents on at least 5 occasions.

Agents described the defendant to the OIG as an "unwitting informant" used to generate business for the storefront, and told us that they saw no signs that he was intellectually or developmentally disabled. The primary undercover agent described the defendant as "completely normal" and stated he was very surprised to learn of the defendant's diagnosis. The case agent described the defendant as "articulate" and stated that he was always inserting himself into deals at the storefront. Other storefront team members echoed these descriptions, and added that the defendant appeared "lonely" and considered the undercover agents at the storefront his "friends."

One of the TFOs assigned to the storefront stated that he used a program available to MPD personnel to research the prior criminal history of all suspects identified in connection with the storefront. The TFO stated that he used this program as a general practice out of both safety concerns for the undercover agents and to ensure that a potential target of the storefront could be prosecuted. The TFO stated that the criminal histories are "fairly detailed" and he noticed no red flags in the defendant's file reflecting that mental capacity was raised as a defense in any of his prior criminal cases. The AUSA who initially handled the defendant's case told the OIG that he did not notice any I/DD issues when interviewing the defendant during a debriefing. During our investigation, which included a review of storefront videos, we found no evidence that the agents believed that the defendant was intellectually or developmentally

disabled. In addition, we found no evidence that the agents targeted individuals because of their I/DD.

F. Closure and Results

ATF closed the storefront following the theft of an undercover agent's firearm from his vehicle and the discovery during the investigation of that incident that the storefront's cover had been compromised. The undercover agents assigned to the storefront typically parked their government-owned vehicles in a secure parking garage and then drove an undercover vehicle to the storefront. However, on September 13, 2012, the primary undercover agent parked his government-owned SUV in the parking lot of a coffee shop, where he was picked up by another undercover agent and driven to the storefront in an undercover vehicle. The primary undercover agent told the OIG that he parked at the coffee shop because he had to leave the storefront early that day and the coffee shop was closer to the storefront – about one mile away – than the secure parking garage. The case agent stated that the storefront team had used the coffee shop for "occasional parking" throughout the course of the operation. When the primary undercover agent returned to his government-owned SUV at approximately 3:25 p.m., he found it burglarized. Among other items, three ATF-issued firearms were stolen, including an M-4 .223 caliber rifle. These firearms had been stored in a locked vault in the rear of the SUV. ATF later concluded that the firearms had been stored in the vehicle in accordance with agency policy.

The theft was immediately reported to MPD and ATF initiated a separate investigation, led by the Acting RAC, that focused on the stolen firearms. The day after the theft, a suspect entered the storefront and sold the primary undercover agent one of the stolen firearms. The suspect also gave the undercover agents descriptions of the other stolen firearms and told them he would bring them to the storefront. However, the suspect never produced the firearms and undercover agents at the storefront were unable to recover the remaining two stolen firearms.

One of the witnesses interviewed by the Acting RAC during his investigation of the stolen firearms stated that he knew of individuals "who were selling guns to some 'White, Undercover, ATF person.'" The Acting ASAC told us that this information, coupled with the circumstances of the theft, led him to conclude that the storefront's operational security had been compromised and informed his SAC of his assessment. Similar concerns were expressed by the U.S. Attorney who, after learning of the theft, contacted the SAC to request that the storefront be shut down. The SAC told us that after he was informed of the theft, he directed all ATF personnel in Milwaukee to focus on recovering the stolen firearms, and that after learning the information from the interview indicating a possible compromise, he immediately ordered the storefront closed.

The storefront was closed on September 22, 2012. The SAC told the OIG that he instructed personnel in Milwaukee that the undercover agents should not return to the storefront and that it should be emptied out as soon as possible.

This instruction was communicated to the relevant personnel by the new RAC who had recently arrived in Milwaukee. The case agent stated that law enforcement equipment and records and other sensitive materials were removed from the storefront over the next week. However, some of these items remained and much of the storefront's merchandise and electronic equipment was not immediately removed because the agents were "working through [the] logistics" of how to move the items and where to distribute them. The agent also said the storefront was kept largely intact in anticipation of a tour by MPD command staff.

On October 10, 2011, agents discovered that the storefront had been burglarized and that much of the merchandise was stolen, including clothing, televisions, and DVD players. A DEA money counting machine and an ATF tactical ballistic bunker were also stolen.³² ATF estimated the value of the stolen property to be in excess of \$39,000. Surveillance cameras still present in the storefront were examined, but it was determined that they had ceased working on October 7, 2011, when electrical power to the building was lost after the electrical meter had been vandalized.³³ Months after the agents discovered the burglary, the landlord of the property found an ATF operational plan in the building.³⁴

ATF records show that the undercover agents purchased 144 firearms from 22 defendants during the course of the storefront. Undercover agents also purchased narcotics in 68 separate transactions. Overall, 31 defendants were arrested, 15 on federal charges and 16 on state charges. Thirteen of the 15 federal defendants had prior felony convictions, and all pled guilty. Six cases in state court were ultimately dismissed. Three of the dismissals involved mistaken identification by the undercover agents, including one individual who was incarcerated at the time of the alleged crime. The other three cases were dismissed after the state prosecutor discovered that ATF had lost all contact with the confidential informant involved in the underlying transactions at the storefront as noted above.³⁵

Though most ATF personnel we interviewed expressed disappointment about how the storefront ended, they also considered the operation a success in

³² A tactical ballistic bunker is a shield used to protect against bullets and other projectiles. Two unidentified males turned in the stolen tactical ballistic bunker to an MPD police station shortly after the burglary. They reportedly found the bunker in a nearby alley. The DEA money counter machine had been loaned to ATF for the operation and was never recovered.

³³ The storefront building was damaged during the period of ATF's lease and, according to the landlord, some property belonging to the landlord was also taken. Upon learning the true identity of his tenant, the landlord demanded compensation from ATF for all damaged and missing property. This resulted in a lengthy and contentious dispute between the landlord and ATF. ATF ultimately paid the landlord \$25,000 to settle the claim.

³⁴ OPRSO was not able to determine who was responsible for the security breach of leaving the operational plan at the storefront site.

³⁵ We did not track the results of the other 11 state cases.

terms of the number of firearms seized and felons prosecuted. The SAC added that he considered Operation Fearless to be a “good operation” even with the shortcomings later identified. However, there were not organizational cases investigated or made as a result of the storefront operation, and it does not appear that ATF attempted to determine through reviewing crime statistics or otherwise whether and to what extent it made an impact on the crime problems it was intended to address.

G. ATF’s Review of Operation Fearless

As noted earlier, following Congressional inquiries and media attention regarding Operation Fearless, former ATF Director Jones ordered ATF’s Office of Professional Responsibility and Security Operations (OPRSO) to conduct a management review of the operation. OPRSO issued its report on March 21, 2013. The report made numerous findings concerning the planning and management of Operation Fearless, including the following:

- The storefront’s insufficient staffing contributed to operational deficiencies.
- Nearly half of the reports of investigation were not timely completed.
- Evidence was not handled in accordance with ATF policy.
- Operational planning concerning blue-on-blue situations, or situations involving the presence of uniformed law enforcement at the storefront, was insufficient.
- Planning for interdicting and arresting targets away from the storefront was insufficient, as evidenced by the failure to interdict the felon who left the storefront armed.
- “[T]he practice of purchasing every firearm presented for sale, regardless of expense, was a deficient and risky practice and reflected a misunderstanding of [ATF] policy regarding firearms transfers.”
- A marijuana plant was improperly used as a prop during the operation.
- The misidentification of storefront targets was attributed to the failure of agents to conduct sufficient investigation to confirm the undercover agents’ initial identifications.
- Deficient operational security for the storefront contributed to the storefront’s burglary and jeopardized officer safety.
- Deficient management of the lease of the storefront premises compounded the operational security problems.
- In connection with a dispute involving the landlord and a utility company, the case agent improperly opened the landlord’s mail and

another agent improperly impersonated the landlord in a phone conversation with the utility company.

- The case agent and first-line supervisors failed to report problems with the storefront to management, resulting in the failure of the MCP to identify and correct deficiencies in the planning and management of the case.
- The SAC, ASACs, and Field Management staff administering the MCP failed to “critically or proactively inquire[] whether the operation was as free from problems as was being reported.”

Based on its review, OPRSO recommended that ATF should develop comprehensive guidelines and “best practices” for undercover storefront operations, and made numerous recommendations in this regard. As discussed earlier, this led to the revised 2013 storefront policy and guidance. In addition, OPRSO recommended that several of its findings be referred to the Assistant Director for appropriate disciplinary or corrective action. This recommendation led to one supervisor being issued a letter of reprimand and five other individuals being issued memoranda of caution.³⁶

IV. The St. Louis Storefront – Operation Hustle City (2013)

ATF operated an undercover storefront in St. Louis, Missouri from January 30, 2013, to June 12, 2013, in an area of the city beset with violent crime. According to FBI crime statistics, St. Louis is one of the most violent cities in America, with a rate of homicide and other violent crime that far exceeds that of communities with comparably sized populations. In 2012, the City had a population of approximately 320,000 within the much larger metropolitan area. In October 2012, ATF’s Office of Strategic Intelligence and Information (OSII) prepared an assessment that found that St. Louis had the highest rate of violent firearms-related crime for cities with populations over 250,000, and that much of this crime was concentrated in several police districts, including District Five where ATF located its storefront.

A. Initiation

In response to the level of violence in St. Louis, ATF began planning in approximately September 2012 for a major enforcement operation that involved a large but temporary influx of ATF personnel into the St. Louis region, referred to as “the surge.” The SAC for ATF’s Kansas City Field Division, which oversees ATF operations in St. Louis, told us that ATF had experienced success with “surge operations” in other cities where crime-related violence was a severe problem. ATF assigned approximately 80 agents from around the country to participate in operations with local law enforcement in St. Louis and East St.

³⁶ Under ATF policy, a letter of reprimand is a formal disciplinary action; a memorandum of caution is not, and the document is not included in an employee’s official personnel folder.

Louis, Illinois for a 4-month period beginning in April 2013. These efforts included the storefront, historical investigations, assistance to the St. Louis Police Department (SLPD) with shooting incidents, and other initiatives targeting violent offenders, the tracing of firearms, and the use of confidential informants and undercover agents. ATF transferred an ASAC from the Denver Field Division to oversee the surge operation.

The U.S. Attorney for the Eastern District of Missouri told the OIG that he supported ATF's surge and believed that the City of St. Louis merited federal assistance. He stated that one of the justifications for the expenditure of federal law enforcement resources to combat violent crime was present when the level of violence in a community was overwhelming local authorities.

ATF agents told the OIG that they began discussing whether to use the undercover storefront technique while planning for the surge operation. ATF's RAC in St. Louis said that the Kansas City Field Division had used the storefront technique in other cities within the Division, including Wichita, and believed it would work well in St. Louis. In addition, one of ATF's most experienced undercover agents worked in St. Louis at the time and told us that he was eager to participate in a storefront operation and advocated for its use due to the level of violence in the city. The RAC, undercover agents, and case agent told us that they did not have prior storefront experience, though the undercover agents told us that they had received training on storefronts as part of an ATF advanced undercover course.

Before deciding whether to initiate a storefront, agents in St. Louis consulted with other agents within ATF who had participated in storefront operations, the USAO, and the SLPD. The agents told us that they received positive feedback about the idea from all three sources. The RAC said that ATF staff had several meetings with the USAO in St. Louis prior to seeking authorization from ATF Headquarters.³⁷ The U.S. Attorney told us he supported using a storefront based on experiences he had with the technique as a state prosecutor, and that he had suggested its use to his own staff before ATF recommended it to him.³⁸ The RAC also told us that SLPD supported the storefront and that ATF would not have undertaken such an operation without SLPD's cooperation and assistance.

ATF entered into a Memorandum of Understanding (MOU) with the SLPD prior to commencing storefront operations in which SLPD committed to providing officers and staff to assist with the development of criminal intelligence,

³⁷ ATF also provided a briefing to state prosecutors after the storefront became operational.

³⁸ The U.S. Attorney also stated that while he agreed with and supported ATF's use of a storefront, he did not believe that he specifically authorized it and accordingly did not provide a concurrence letter to ATF. ATF policy at the time did not require written concurrence from the U.S. Attorney to conduct a storefront operation, a requirement that was added in the March 2013 Turk Memorandum issued following Operation Fearless, as described above.

including the identification of suspects. The Chief of the SLPD, Samuel Dotson, signed the MOU. He told us that it was important to him to "try to get as many cases as we can into the federal system" because the state courts routinely impose suspended sentences and probation and "[t]hose outcomes don't keep people safe." The Chief of the Violent Crime Unit at the USAO expressed similar concerns. She told us that the state judges in St. Louis "are very lenient on gun crimes" and that her office repeatedly has seen referrals for prosecution where the subject has received four or five suspended sentences from state judges.

By November 2012, ATF decided to include the storefront in the surge and the RAC and a case agent began to prepare a proposal to ATF Headquarters. The agents told us that a key consideration in their decision to proceed with the storefront was safety for the agents and the public. They stated that a storefront provided a secure location for them to meet with criminals and minimized risk to the public. They also stated that they favored the storefront technique because they believed that it would result in the seizure of firearms from violent offenders.

Agents told us that they inspected several possible storefront locations. ATF intelligence analysts had collected crime statistics by police district in St. Louis and the agents focused their search for a suitable property in areas that were the most violent. They eventually settled on a site in St. Louis' Jeff Vander Lou neighborhood in police District Five. According to the RAC, the area had the highest crime rate in the city. Chief Dotson told us that the storefront was in the "right spot" and that the surrounding neighborhood was "challenged by violence."

In late November 2012, the SAC for the Kansas City Field Division submitted a memorandum to ATF Headquarters seeking authorization for a storefront that would operate as a tattoo parlor and retail clothing store. The memorandum identified two primary objectives for the storefront: "the gathering of criminal intelligence" and "the investigation and prosecution of violent armed criminals, firearms traffickers, armed drug traffickers, repeat offenders, and gang members." Agents told us that they expected to obtain intelligence about activities in the area from dealing with persons who visited the storefront. They also stated that the storefront was targeted on dangerous criminals collectively and not specific individuals, though ATF hoped to attract members of gangs who were known to operate in the vicinity of the storefront location. Prior to the start of storefront operations, ATF undercover agents had made drug purchases from members of a particularly notorious local gang and hoped to attract them to the storefront. Chief Dotson told us that due to the level of violence in the neighborhood surrounding the storefront, a narrow focus on a few individuals was not advisable and that "a larger net was actually a good thing in St. Louis." ATF agents, staff from the USAO, and Chief Dotson also stated that targeting particular gangs and their leadership in St. Louis is difficult because the structure of gangs there is far more diffuse and less organized than in some other major cities, such as Los Angeles or Chicago.

ATF's Undercover Branch (UCB) assisted with processing the storefront proposal at ATF Headquarters, including facilitating a meeting of the Undercover Review Committee (URC) on December 14, 2012. ATF Headquarters approved the proposal on December 20, 2012, and ATF staff in St. Louis entered into a year-long lease for the storefront the same month. Agents told us that they had no conflicts with the landlord during the operation of the storefront.

B. Planning

As part of ATF's planning for the storefront, agents completed a security assessment before operations commenced. The SAC told us that numerous agents were involved in the assessment, including the St. Louis RAC, the case agent, the undercover agents, and the DTA for the Kansas City Field Division. The RAC told us that the assessment evaluated security from the perspective of the agents as well as the public generally. We interviewed the DTA who told us that he reviewed an operational plan for the storefront, visited the storefront and examined its layout, and provided advice to the agents concerning the possibility of a critical incident inside the storefront, such as an attempted robbery. However, the DTA said that he did not evaluate the possibility of a shooting on the sidewalk in front of the storefront. The RAC told us that he evaluated that possibility, and that the agents on the outside cover team would have been responsible for handling such a situation.

Our review discovered that the Boys and Girls Club of Greater St. Louis ("Club") is located approximately 600 feet from the site of the former storefront. The Club provides after-school programs for children, and OIG staff observed children being dropped-off at the Club from a school bus during a visit to the storefront location. The view between this drop-off site at the Club, as well as a large portion of the Club's façade, and the storefront was unobstructed during the period when the storefront was operational. With the exception of the RAC and one agent assigned to the outside cover team, ATF staff told us that they were not aware that the Club was near the storefront. The RAC told us that he did not consider the proximity of the Club to the storefront to be problematic because it was an urban environment and in the Jeff Vander Lou neighborhood the children likely were safer with the ATF agents close-by. However, the DTA said that the Club's presence would have been a concern to him if he had known about it, and that conducting operations when "children are coming or going is never a good idea." ATF Headquarters staff, including participants on the URC, said that the proximity of the Club should have been disclosed to them. Moreover, the supervising DAD in the Office of Field Operations who participated in the URC told the OIG that he was not aware of the Club and that he would not have approved the storefront unless it was closed during periods when children were at the Club or the Field Division presented a compelling reason why the storefront could not be sited elsewhere.

Agents told us that they developed contingency plans if a known felon or other person prohibited from possessing a firearm attempted to leave the storefront with a firearm. Agents indicated that they were under verbal instructions from their supervisors to interdict such persons. They stated that

on one occasion, however, a known felon with a firearm evaded them. They said that he entered the storefront and showed the undercover agents a firearm, which the agents offered to purchase. He refused and then exited the storefront. One of the agents followed him but he escaped in an unidentified vehicle that was parked in an alley adjacent to the storefront.

As a result of its security assessment, ATF made a number of physical modifications to the storefront, including the installation of an alarm system and adding locks to doors. The agents also stated that after the storefront became operational, they did not leave sensitive items such as ATF paperwork, firearms, or other evidence in the storefront overnight. According to the agents, there were no robbery attempts at the storefront, no threats of violence, and no thefts or burglaries.

Members of the storefront team told us that the controversy surrounding Operation Fearless in Milwaukee impacted their planning for the storefront. After news reporting about Operation Fearless appeared in late January 2013, which was after ATF Headquarters had approved the St. Louis storefront but before it was operational, the RAC and agents met to discuss the errors identified from the news reporting, such as the reported lack of security at the storefront and carelessness in handling of law enforcement sensitive documents, and that they committed not to repeat them in St. Louis. Staff from the USAO also inquired with ATF about the reported errors made in Operation Fearless. This included a call from the U.S. Attorney to former Director Jones, in which the U.S. Attorney was provided assurances that the errors in Operation Fearless would not be repeated in St. Louis.

We asked agents about the potential for the storefront to generate crime and how this issue affected their planning and operation of the storefront. Agents told us that they discussed the issue after the concerns about the Milwaukee storefront became public, and that they recognized that the storefront could create incentives for people to commit crimes, such as stealing firearms and then selling them at the storefront. Agents stated that to address this problem they promptly completed firearms traces to see if the firearms had been stolen or recently purchased. ATF Headquarters' guidance issued to remedy problems identified from the Milwaukee storefront required agents to promptly enter information into NIBIN and to perform traces. This practice was not followed in the Wichita and Milwaukee storefronts, both of which predated the guidance. Agents in these storefronts told us that they delayed running traces out of concern that an FFL may learn of the trace and disclose it to the purchaser. The St. Louis agents said that they identified one seller who had purchased two firearms and then brought them directly to the storefront and sold them there, and that they subsequently refused to purchase additional firearms from this individual. The undercover agents also told us that they always attempted to bargain down the price of the firearms and not to overpay for them so as not to provide an incentive to steal guns for a large sum of money.

C. Operations

ATF records show that the storefront opened on January 30, 2013, and that agents purchased three firearms that day. ATF's UCB provided some logistical support for the opening, such as "backstopping" the false identities of the undercover agents.³⁹ However, agents told us that the UCB did not provide training to the case agent or the undercover team assigned to the storefront. The case agent also told us that he was never provided written guidance on how to manage a storefront operation.

Agents stated that the storefront was open Tuesday through Friday from approximately 12:00 p.m. to 6:00 p.m., and that they used Mondays to complete reports and other administrative matters. Typically, 7 to 10 agents and detectives from the SLPD worked at the storefront. These included 2 undercover agents, 2 to 3 agents and a detective assigned to an "inside cover team" which was positioned in a room adjacent to the public areas of the storefront, and 2 to 4 agents and detectives assigned to an "outside cover team" stationed in vehicles around the storefront. The case agent, who was assigned to the inside cover team, was responsible for administrative matters, including the processing of evidence. The agents told us that they had no prior storefront experience, though one of the undercover agents had extensive undercover experience. Both undercover agents had received some limited storefront training in an ATF advanced undercover course.

Although ATF originally contemplated operating the storefront as a tattoo parlor and clothing retail establishment, agents said that after the problems in Operation Fearless became public they received instructions from their supervisors to limit the operation to tattooing services, apparently because of the risk of theft of undercover goods. The agents in St. Louis said that they retained a confidential informant with a tattoo license, who they learned about from ATF agents in Kansas City who had recently used him in an undercover storefront operation that masqueraded as a tattoo parlor. According to the agents in St. Louis, the informant functioned as a "prop" to give the St. Louis storefront legitimacy as a tattoo parlor and, while he did perform some tattoo services, he was not involved in any drug or firearms transactions at the storefront. We did not find evidence that contradicted these statements.

Our review of ATF's file on the informant showed that an ATF agent in Kansas City had most recently completed a suitability review of him on January 7, 2013, approximately 3 weeks prior to the opening of the St. Louis storefront. The agents in St. Louis said that they did not thereafter vet the informant and

³⁹ "Backstopping" involves the provision of documents and information to support the undercover agent's fictitious identity.

did not check any criminal databases to determine whether he had any arrests during the period when he was working in the St. Louis storefront.⁴⁰

Serious allegations regarding the informant's conduct while he worked for ATF in Kansas City arose approximately 3 weeks before the St. Louis storefront closed in mid-June 2013. A subject in another ATF case provided information indicating that the informant had been using cocaine and methamphetamine and selling narcotics while he was in Kansas City. When ATF agents from the Kansas City office interviewed the informant in St. Louis about the allegations, he admitted to using narcotics but denied selling them. He further disclosed that his girlfriend had revealed to a subject in the Kansas City storefront that he worked for law enforcement there. The RAC overseeing the St. Louis storefront told us that he knew about the allegations at the time but did not consider polygraphing the informant, and that he did not recall the girlfriend's disclosures being a concern. The SAC and ASAC who supervised ATF operations in St. Louis received reports describing the interviews of the subject and informant. They stated that they believed that the USAO in St. Louis had been informed of the allegations. Other agents in the St. Louis storefront, including the case agent, told us that they were unaware of the drug abuse allegations and of the girlfriend's disclosure. They stated that the girlfriend lived with the informant in St. Louis and that she occasionally visited him at the storefront. The ASAC supervising the surge and the storefront told us that he was unaware of any allegations concerning the informant consuming or trafficking in drugs either in St. Louis or Kansas City, or that the informant's girlfriend had disclosed that he had worked with law enforcement, and that he should have been informed of that information. We also found that the derogatory information above was not included at that time or thereafter in ATF's file on the informant, and was not raised in MCP briefings to staff at ATF Headquarters.

Approximately 4 months following closure of the St. Louis storefront for unrelated reasons discussed below, the informant was charged with first degree sexual assault on a minor in another state, at which time ATF terminated its relationship with him. Agents who worked with the informant told us that they saw no indication that the informant had a fondness for children.

D. Oversight

We asked the agents about supervision of the storefront operations and were told that both field division and headquarters staff provided oversight. Agents told us that the RAC provided day-to-day supervision and was intimately involved in the operation. The case agent said that he spoke with the RAC at least once each day, and that the RAC often attended a briefing that the agents held each morning to prepare for the day's events at the storefront. The ASAC overseeing the surge operations stated that he received a briefing at least twice

⁴⁰ At the time of the storefront's operation, ATF policy required agents to conduct informant suitability reviews in January and July of each year. ATF O 3252.1. ATF's current policy requires suitability reviews every 90 days.

a week about the storefront. The SAC told us that he spoke with his supervisors daily about the surge and, because the storefront was included in the MCP, he received a formal briefing about it each month from the RAC and case agent, as well as an MCP written submission that updated basic information about the operation, such as the amount of firearms and drugs that were purchased.

The SAC stated that as required by the MCP he provided monthly briefings and written materials about the St. Louis storefront to the Office of Field Operations (OFO) DAD – the former SAC in St. Paul who oversaw Operation Fearless. The SAC or a designee from the Kansas City Field Division participated in six briefings for the DAD. An OFO staff member attended these briefings and told us that she recorded in her notes the questions that the DAD asked.⁴¹ Our review of these notes revealed that the DAD asked few questions. The SAC told us, however, that he had numerous discussions with the DAD about the storefront outside of the monthly MCP briefings he provided.

In addition to briefings for the DAD, field division staff provided four briefings to former Director Jones. These occurred approximately 1 month after the storefront opened, twice midway through the operation, and 2 weeks after the storefront closed. OFO staff prepared written briefing materials for the Director with the assistance of the field division that presented information about the operation's "progress, plans, and problems." With each briefing, staff noted no problems with the storefront, and explanations about its progress generally were limited to reciting the amount of firearms and narcotics purchased and the number of suspects identified. Notes from the briefings showed that the Director and Deputy Director asked questions about the storefront related to anticipated charges against the defendants and liability issues regarding the work of the tattoo artist.

Additional oversight was provided by the Undercover Branch (UCB), which conducted an on-site inspection of the St. Louis storefront in May 2013. Following the controversy surrounding Operation Fearless, the UCB organized inspections of its ongoing storefronts in accordance with the March 2013 Turk Memorandum. The inspection did not find any problems with the storefront operations. As with the MCP, the inspection did not identify issues with the confidential informant or of unevaluated risks related to the storefront's proximity to the Boys and Girls Club.

E. Vulnerable Persons

Agents told us that they did not target persons with I/DD for enforcement action or otherwise use them to further their investigation. We found no evidence that contradicted these statements. Agents also said that they did not allow juveniles into the storefront and when found they were asked to leave.

⁴¹ In addition to recording this information, OFO staff told us that to assist with oversight of the operation they reviewed entries that the storefront agents made in ATF's case management system (N-Force).

F. Closure and Results

ATF operated the storefront for approximately 20 weeks. The last event at the storefront was the arrest on its last day of operations, June 12, 2013, of a notorious gang member who was a person of interest in several homicides and shootings and had sold guns to the storefront on March 5 and April 6, 2013. The same day, ATF also arrested four persons who had visited the storefront previously and who had agreed to participate in a home invasion. Agents told us that the decision to close the storefront coincided with the end of the surge operations in St. Louis and was influenced by limitations on funding. The storefront was not closed due to the issues with the confidential informant described above. Agents stated that they wanted to complete arrests of the storefront defendants while agents assigned to the surge were still in St. Louis. Cash expenditures on the storefront totaled approximately \$260,000.

ATF records show that the storefront resulted in 235 undercover purchases, including 129 firearms, 363 grams of heroin, 153 grams of cocaine, and 26 grams of methamphetamine. Overall, 32 defendants were arrested, 25 on federal charges and 7 on state charges. All of the federal defendants either pled guilty or were convicted at trial, 18 of the 25 had prior felony convictions. The federal sentences imposed ranged from 12 months and 1 day to 144 months.

With the exception of the home invasion mentioned above, the storefront operation did not generate new cases apart from ones against persons who entered the storefront. Agents told us that they lacked the manpower to identify the sources of supply for the drugs and firearms of the subjects who visited the storefront. ATF also was unsuccessful in developing new informants from the operations.

Although one of the key objectives of the storefront was the collection of intelligence, we did not find evidence that the storefront generated intelligence about gangs or other criminal organizations that operated in the vicinity of the storefront and that was preserved by ATF. Nor did the storefront generate actionable intelligence about any gun trafficking organizations. ATF did not prepare an after-action report for the storefront or create any written intelligence products based on the information that the agents learned.⁴² However, ATF developed historical evidence against individual subjects who entered the storefront based on their unlawful trafficking of firearms and/or narcotics there, and conducted traces on all firearms that the undercover agents purchased. ATF's National Integrated Ballistics Imaging Network (NIBIN) program conducted an examination that linked one of the firearms purchased

⁴² ATF did prepare an after-action report for its surge operation in St. Louis that included a 1-page description of the storefront; the report assessed crime statistics and concluded that the surge was "very successful." With regard to the storefront, the report found that "[p]lanning, budgetary considerations and manpower allocations are all critical aspects related to storefront operations."

during the storefront investigation to a homicide. This information was shared with the SLPD. An ATF agent told us that he believed that the information helped to solve the case. Agents also told us that they worked closely with the SLPD to identify suspects who entered the storefront, and that they did not have problems with misidentifications of these individuals.

Agents and others involved with the storefront told us that they believed the storefront operation was a success. Chief Dotson told us that he believed that the storefront contributed to reducing crime on a short-term basis and that if ATF proposed another storefront in St. Louis he would support it. The Chief of the USAO Violent Crime Section also stated that she believed the storefront was worth the effort based on the number of firearms that ATF recovered and the number of defendants charged who were previously convicted felons.

V. The Brockton/New Bedford Storefront – Operation Fugazi (2012-2013)

In addition to the four storefronts that operated from fixed locations, our review examined a mobile storefront that ATF conducted south of Boston in Brockton and New Bedford, Massachusetts using a cargo van. These cities are located approximately 25 and 60 miles respectively to the south of Boston and have populations of roughly 95,000 each. ATF agents told us that within ATF's Boston Field Division, Brockton and New Bedford had significantly more crime than surrounding communities and were plagued by gang violence. In 2012, the cities had combined rates of violent crime that exceeded the national average by approximately 300 percent. ATF operated its mobile storefront from August 13, 2012 to September 26, 2013, but ceased operations during the winter months when few people were outdoors.

A. Initiation

ATF documents and e-mails show that the two agents who co-managed the storefront started discussing the possibility of using a storefront in early 2012. They told us that they were attracted to the storefront technique because they believed it could be an effective way to fight violent crime without having to rely on confidential informants. One of the co-case agents stated that he had become frustrated with problems caused by his informants and wanted to try a new investigative technique that did not involve them. He said that a storefront appealed to him because it was staffed exclusively with law enforcement personnel. A supervisor who oversaw the storefront for a period told us that one of its advantages was that it provided a means to introduce undercover agents to a target directly without a middleman.

Following these preliminary discussions the agents began exploring the possibility of using a vehicle rather than a building for their undercover operation. One of the co-case agents said that he began contacting colleagues he met when he attended the ATF academy as a new agent and asked them whether they had experience with storefront operations. He said that he

received a lot of feedback, including advice from an agent who had used a mobile storefront. The co-case agent said that he liked the mobile storefront option because the expense was significantly less than for a fixed location and it allowed agents to move the storefront to new crime "hot spots" at times that the agents selected. In addition to this potential benefit, the RAC based in Bridgewater who oversaw ATF operations in Brockton and New Bedford told us that he believed that the mobile storefront was not as labor-intensive as a fixed location storefront and that he would not have to devote an entire ATF agent group to the operation for several months. He said that the mobile storefront could operate for a few hours 2 or 3 days a week and his agents would remain available for other duties during off-hours.

Before preparing a proposal to ATF Headquarters, agents met with an AUSA in the USAO in Boston. The AUSA told us that he conferred with his supervisors about the storefront and that they agreed to proceed with the investigation provided that it was closely supervised by ATF with advice from the USAO. ATF also obtained support from the Brockton and New Bedford Police Departments, which assigned task force officers to the operation.

By late April 2012, the case agents had completed a proposed authorization memorandum for the storefront, which the SAC for ATF's Boston Field Division forwarded to ATF Headquarters on April 25. The memorandum stated that the objective of the storefront was to identify gang members involved in the illegal possession and sale of firearms, monitor the activities of criminal "impact players," and gather evidence against such persons through the undercover purchases of firearms and narcotics. Agents told us that they hoped either to purchase firearms at the location where the mobile storefront was parked, or make arrangement with subjects who visited the storefront to purchase the firearms elsewhere. Following review by its Undercover Review Committee, ATF Headquarters approved the operation on May 10, 2012, on condition that: (1) the vehicle used in the operation include a GPS tracker and kill switch (which could be used to track and disable the vehicle if it was stolen or the agents were about to be overcome); and (2) personnel assigned to the operation receive vehicle assault training.

B. Planning

The lack of a fixed location for the storefront reduced some of its planning requirements. For example, agents did not have to invest effort redesigning the interior of a building. The co-case agents and RAC told us that their planning for the storefront, such as the selection of merchandise and security preparations, did not involve discussions with the UCB at ATF Headquarters. One of the case agents told us that the UCB had no role in the operation. However, the RAC for Brockton and New Bedford who oversaw the storefront had extensive undercover training and experience, including work on storefront operations, and he assisted the agents with planning the storefront. The co-case agents assigned to the mobile storefront had no previous storefront experience or training.

C. Operations

After obtaining authorization for the storefront, ATF leased a cargo van and obtained cigarettes and footwear that had been seized in other law enforcement operations. Agents sold these items from the back of the van, which was equipped with audio/video-recording cameras. The storefront typically operated 2 days per week during the afternoon. Two undercover agents staffed the van while approximately 10 other agents and task force officers, including an ATF Group Supervisor, were assigned to two cover teams and other units that scouted areas to park the van. ATF records showed that the van was deployed 31 times between August and December 2012, and 27 times between May and September 2013.

We asked the agents about how they selected the sites where the van operated. The RAC told us that "targeting is everything" to the success of a storefront and that it was important for these operations to be driven by criminal intelligence. Agents told us that the task force officers assigned to the storefront provided important information about locations in Brockton and New Bedford where gang members were known to frequent, and that data from firearm shot sensors in both cities identified areas where firearms had recently been discharged. Agents used this information when making location selections. There was no general advertising employed in the operation, which utilized a standard rental van. In addition, agents said that before deploying the van, the task force officers would perform surveillance in target areas looking for known criminals. The RAC said that one of the benefits of the mobile storefront was that it could move on short notice to areas where these persons were present. However, both the agents and the AUSA assigned to the storefront said that it was very difficult to target the leadership of the local gangs because they were unlikely to approach a van. One of the case agents told us that the agents hoped that contacts from the van would lead to later contacts with gang leaders.

Agents also stated that they performed a security assessment each time that they deployed the van, which included the task force officers conducting pre-operational surveillance. Agents said that they did not put the van near playgrounds, schools, or housing projects. While the agents said that they wanted the van to be in locations where pedestrians were present, they positioned it so that it was separated from the most heavily travelled areas. Thus, the van typically would be positioned in the back of a parking lot rather than immediately adjacent to a sidewalk.

Our analysis of the locations where the van operated identified one instance where agents parked the van for no longer than 20 minutes in an area that was adjacent to a school. At approximately 4:30 p.m. on September 11, 2012, agents stopped the van and met with a person whose associates later contacted the agents about exchanging drugs for merchandise. One of the case agents told us that "obviously a school should be taken into consideration" and that he did not recall learning that the van had parked near a school. An agent who was operating the van at the time said that he had no recollection of the school or of any children being present when agents stopped the van, and that if

children had been present it would have alerted him. The agents told us that if children approached the van they were encouraged to leave.

Once the van was in place agents assigned to the cover teams watched to see if individuals in the vicinity of the van appeared to be preparing to rob it. In that case, the agents planned on shutting down the van and leaving the area before a robbery could occur. The agents said that in the event of a robbery, their plan was to allow the perpetrators to leave the scene and have the surveillance team and local police arrest them away from the storefront. Agents said that they did not encounter any threats of violence while operating the van and that there were no robbery attempts or thefts. They also stated that to their knowledge no persons who were prohibited from possessing a firearm left the storefront with a firearm.

D. Oversight

We also asked the agents about supervision of the storefront. Agents said that ATF managers closely monitored the storefront. They said that the assigned RACs who oversaw it had an "intimate knowledge" of the operations and that they participated on one of the cover teams for the storefront. A RAC who later became the ASAC and Acting SAC overseeing the storefront said that there was a lot of "dialogue back and forth" with supervisors within the Boston Field Division about the operation and that they were fully informed about it.

The storefront also was included in the MCP, though not until February 2013 after problems became public concerning Operation Fearless in Milwaukee. Agents told us that they submitted paperwork in September 2012 seeking to include the storefront in the MCP, but the supervising DAD at ATF Headquarters rejected the request. One agent told us that Headquarters staff did not believe that the mobile storefront met the criteria for a monitored case.⁴³ ATF Headquarters reversed this decision on February 4, 2013, following a review of other existing storefront operations in the wake of publicity surrounding the Milwaukee storefront, and agents submitted their first MCP briefing memorandum to Headquarters the same day. Agents thereafter provided monthly written submissions and oral briefings to Division supervisors as required by the MCP, who in turn briefed the DAD. All MCP briefing papers indicated that no problems had been encountered or were anticipated with the operation.

The ATF Director and Deputy Director received briefings on the storefront in February and June 2013. After receiving the briefing in February, the Director temporarily suspended the storefront until he could obtain information about how the agents were targeting the operation. Agents from the Boston Field Division told us that the February briefing was provided by Headquarters staff and that they did not participate in it. The Boston agents told us that they furnished the requested information and that the Director agreed to lift his

⁴³ Storefront operations have been included in the MCP since its inception in July 2011.

suspension within approximately 2 weeks. The Director's suspension did not affect use of the van, however, because the agents were not deploying it during the winter months.

We asked agents whether Operation Fearless had other effects on the storefront besides its addition to the MCP. They told us that it did not significantly impact their operation, though it did result in some changes. They stated that ATF Headquarters' decision to prohibit acting supervisors from overseeing storefronts following Operation Fearless made scheduling the storefront operations more difficult. For example, an acting supervisor who had been providing oversight for a brief period beginning in 2013 had to be replaced by ATF supervisors from outside the Brockton and New Bedford areas. Agents also had to begin unloading the van following each use and placing the merchandise and other equipment in a secure storage unit.

E. Vulnerable Persons

We also asked agents about any interactions they had with persons with I/DD. They told us that they did not target such persons for enforcement action and did not utilize them in the storefront. The agents said that they did not rely on confidential informants of any sort during their operations. They also stated that they had no recollection of ever meeting a person who they believed to have an I/DD at the locations where the storefront operated. Agents said that children would at times approach the van but their presence was discouraged, such as by artificially raising the price of the goods, and young children would be asked to leave.

F. Closure and Results

ATF closed the mobile storefront in late September 2013. The co-case agents told us that by that time they believed that they had operated the van for a sufficient period to determine that it did not appear likely that they would be able to identify firearms traffickers. ATF records show that the agents purchased 4 firearms, 45 grams of heroin, 77 grams of cocaine, 44 grams of marijuana, and a numerous assorted prescription pills, such as OxyContin and Percocet. ATF recommended 24 defendants for prosecution on narcotics charges. Of these proposed defendants, approximately 10 were submitted to the USAO for review and all were declined, primarily due to the lack of a sufficient criminal record or gang involvement needed to satisfy federal prosecution guidelines. According to ATF, the State accepted 22 of 24 proposed defendants for prosecution, and either a complaint or indictment has been presented for each of the defendants for narcotics offenses. One defendant was indicted on firearms and narcotics charges. None of the cases target organizations. As of March 2016, 8 defendants had pled guilty to narcotics charges and been sentenced to terms ranging from probation to 24 months incarceration. The defendant indicted on firearms and narcotics charges pled guilty and was sentenced to 6 to 7 years. ATF documents indicate that approximately half of the defendants are gang members. We did not seek to

independently verify gang participation. Agent cashier expenditures totaled approximately \$24,000.

One of the co-case agents told us that he was disappointed that ATF was unable to develop firearms cases from the storefront. The agents explained the result in part based on Massachusetts' strict firearms laws and that the criminals in Brockton and New Bedford ultimately were not willing to sell their firearms. The agents purchased all firearms that were offered for sale to them. The AUSA told us that in Massachusetts "it's very difficult to get people to part with their guns." Despite the very limited results, the agents told us that they considered the storefront a success because they were able to bring narcotics charges against persons with lengthy criminal records that included violent crimes.

In addition to the lack of firearms charges, one of the co-case agents said that the storefront did not achieve its objective of generating intelligence about gang and firearms activities. He said that the storefront did not lead the undercover agents to firearms traffickers or other sources of firearms-related intelligence. The first RAC who supervised the storefront told us, however, that he did not believe that intelligence gathering was an objective of the storefront. Instead, he stated that the focus of the storefront was on identifying and arresting violent individuals.

We asked the agents whether there were important lessons to be gained from their experiences with the storefront. A RAC who supervised the storefront for a period told us that he believed that the storefront would have had a better chance of success if the agents had spent additional time investigating the individuals who visited the storefront and used them to build cases against significant targets. He said that "the likelihood of bumping into an individual that just happens to be walking down the street as you're selling product out of the back of a van that's willing to trade you a gun for sneakers is nil." He stated that the operation "morphed more into a numbers game" concerning how many people had visited the van and that the agents should have devoted less time to operating it. The AUSA assigned to the case told us, however, that the objective of the storefront had always been to use contacts from the storefront to collect evidence against more significant targets, but that the storefront was not successful in attracting individuals who had relationships with such persons. One of the co-case agents also stated that, in hindsight, the storefront may have been more successful if ATF had used a reliable informant to introduce criminals to the undercover agents.

CHAPTER FOUR

OIG ANALYSIS AND RECOMMENDATIONS

In this section of the report we analyze the ATF undercover storefront operations included in our review. We first discuss the benefits and inherent limitations of undercover storefront operations generally, followed by an assessment of numerous issues that arose in the operations we examined, including security, targeting, and oversight. We pay special attention to whether ATF's Monitored Case Program (MCP) was an effective oversight tool for the storefronts and whether ATF's storefront policies contain systemic deficiencies. We also assess ATF's approach to two vulnerable populations in the context of storefront operations: those with intellectual disabilities and juveniles.

I. The Undercover Storefront Operation as an Investigative Technique

The use of undercover storefront operations is not unique to ATF. Many law enforcement agencies have successfully utilized the storefront investigative technique, including federal agencies such as the FBI. Storefronts have shown to be especially effective in cases that involve stolen or contraband items. For example, in 2012, the FBI operated a sham financial services storefront in North Miami, Florida where undercover agents accepted fraudulently obtained tax refund checks. The case led to numerous federal prosecutions. State and local law enforcement agencies similarly have obtained favorable results from use of the storefront technique. In Operation Oliver Twist, the Seattle Police Department's Major Crimes Task Force set up a storefront in 2012 with the assistance of the FBI that fenced stolen property. Undercover officers purchased drugs and over 900 stolen items during the operation, including vehicles, stolen firearms, and explosives. The operation led to the arrest and prosecution of numerous criminals, including multiple federal prosecutions. While we do not believe that numbers of arrests standing alone are dispositive, such operations have generally been viewed as very successful in addressing specific crime problems in a targeted way.

Officials at FBI Headquarters told us that the FBI's use of storefront operations was infrequent, however, and that they could not recall recent authorizations for use of the technique. DEA officials told us that DEA did not utilize storefronts that were open to the public. They stated that storefronts can be effective at identifying persons who are committing crimes, but that DEA already had sufficient criminal intelligence to identify targets for its investigations and therefore it did not need to rely upon storefronts to build its cases.

We also asked ATF managers about their views concerning the storefront technique and, more generally, the importance of undercover operations to ATF's mission. They told us that undercover operations are very important to

ATF's efforts to fight violent crime and that they allowed the agency to build cases that otherwise would not be possible. Former ATF Director Jones testified to Congress about the importance of undercover operations to the agency:

Of all of the activities undertaken by ATF agents in the field, none is more risk-laden – or potentially more valuable – than undercover work. ATF agents working undercover have infiltrated and brought down notorious motorcycle and street gangs, thwarted murder-for-hire plots, and removed thousands of guns from the hands of criminals.

Both Jones and Acting Director Brandon also have testified that undercover storefront operations are “a valuable investigative technique” and have described large numbers of defendants and firearms recoveries that ATF has obtained from use of the technique. The vast majority of ATF leaders and agents we interviewed during our review expressed confidence in the effectiveness of storefront operations to reduce violent crime and to make communities safer. Those who expressed reservations about the technique referred primarily to problems related to resources, which we discuss further below.

Whether employed by ATF or another investigative agency, we found that undercover storefront operations have a number of advantages and inherent limitations. Safety, evidence quality, and the potential for enhanced intelligence and evidence gathering were the benefits most frequently cited to us. Agents told us that agent and public safety were key considerations in their decision to propose the use of the storefront technique. They said that in contrast to typical street encounters with criminals, the storefront afforded them the ability to better control their interactions and that the presence on-site of a react team and the use of other safety measures helped to ensure safety in the event of a confrontation.

Another important benefit of the storefront operations that agents and prosecutors described to us was the high quality of the evidence that the storefronts generated. ATF made audio and visual recordings of their firearms and drug purchases from the defendants, which we were told limited factual disputes during the prosecution phase of the cases. Agents also told us that the storefront provided them with an opportunity to interact more extensively with criminals and to obtain criminal intelligence. They said that the storefront provided a justification for the undercover personnel to be in locations where they otherwise likely would be identified as law enforcement officers, which enhanced their ability to gather evidence.

Our review also determined that storefront operations have inherent drawbacks that should not be mistaken for mismanagement. We believe that this is an important point that provides valuable context for our critique of ATF's storefronts later in this report. First, storefronts are resource intensive due largely to safety considerations. With the exception of ATF's mobile storefront, we found that they typically occupied the work of an entire ATF agent group,

which totaled approximately 8 to 10 agents, full-time for the duration of the storefront. This did not include the assistance of local law enforcement, which often contributed multiple task force officers. The expenditure of agent and officer time in the operation of the storefront makes less time available for following up on leads and devising and pursuing additional investigative strategies, and for working on other potentially important cases. Also, cash outlays excluding salaries and overtime exceeded \$200,000 for each of the fixed storefront operations, though these expenditures were much less for the mobile storefront, for which the total outlay was approximately \$30,000.

Second, storefronts that are open to the public and not operated in conjunction with other investigative techniques, such as the use of confidential informants, can face challenges with targeting and attracting high-value criminals. Agents told us that it was difficult to employ the storefront technique against leaders of criminal organizations because they were unlikely to visit the storefront in the first instance, and even less likely to be seen committing criminal acts there, owing to their wariness of law enforcement. Because agents are limited in their ability to influence the movements of criminal subjects, public storefronts thus include an element of chance that its visitors may not include the targets of the investigation. If the location is misplaced or if the storefront offers products or services that do not appeal to the targets, the storefront has less probability of engaging them and hence less likelihood of success. Attempts to compensate for such drawbacks by expanding the targeting objectives to include broad categories of offenders can create other risks and lead to allegations of federal law enforcement “trolling” for low-level offenders and pursuing cases that do not have a substantial federal interest. This is particularly true with regard to street crimes and other offenses, such as low-level drug and gun offenses, that are generally the province of local law enforcement and local prosecutors. It also can lead to law-abiding local residents visiting what otherwise appears to be a legitimate business, potentially placing them in harm’s way because of the illegal activity that is also occurring at the storefront. In light of such limitations, the head of the FBI’s undercover program told us that storefronts were “a crude tool to target a crime problem” and that any storefront employed by the FBI would have to have predicated targets.⁴⁴

Third, storefronts have the capacity for incentivizing criminals to commit additional crimes, potentially increasing criminal activity in the neighborhood where the storefront is located. For example, a storefront specializing in firearms purchases may prompt criminals to steal firearms in order to sell them at the storefront. Although precautions can be taken to mitigate this problem, such as promptly tracing firearms after they are purchased, crime generation remains an inherent risk of the storefront technique.

⁴⁴ A “predicated target” is a person or organization that is the focus of an investigation and for which evidence or information of criminal wrongdoing exists.

In addition to the general strengths and weaknesses of the storefront technique, we also asked about the added value that federal law enforcement in particular provides to storefront operations. Agents, prosecutors, and police officers we interviewed identified four benefits of federal participation: manpower, funding, undercover expertise, and federal sentences. Agents told us that they believed that the local law enforcement agencies that they worked with lacked the manpower and financial resources to staff a storefront for months-long periods as ATF did with its operations. We also found that several of ATF's agents had a tremendous wealth of undercover experience and were true experts in undercover operations. We found that these agents provided important guidance to their colleagues during the operations.

Lastly, we were told that the availability of lengthy federal sentences, as compared to state or local penalties, for firearms and associated narcotics offenses was an important benefit of federal participation in the storefront operations.⁴⁵ While the availability of longer federal sentences may undoubtedly be the case in many jurisdictions, we do not believe that this rationale, standing alone, should be the basis for supporting a storefront operation that targets street-level crimes and street-level criminals. As has been well-documented, the federal prisons are substantially over-capacity and consuming an ever-growing share of the Department's budget, and adding to that population low-level offenders who could be, and traditionally have been, prosecuted by state and local prosecutors simply because federal sentences are significantly longer is inconsistent with the Department's strategic plan and its *Smart on Crime* initiative.⁴⁶

II. Evaluation of ATF's Use of Storefronts

We evaluated five ATF undercover storefronts that operated after ATF's initiation of its Monitored Case Program (MCP) in July 2011. With the exception of the mobile storefront, the operations we examined resulted in numerous federal prosecutions for firearms and narcotics offenses, though at considerable investment of manpower and financial resources. They did not, however, result in criminal enterprise prosecutions or lead to the development and dissemination of intelligence products for use in future cases. In addition, we did not find evidence that ATF examined the impact of the operations to determine if they had achieved measurable success on the specific crime problems that they were designed to address. For example, ATF did not prepare after-action reports for the storefronts we examined (though a more general review was done of the

⁴⁵ For example, 18 U.S.C. § 924(c) provides for a 5 year mandatory minimum sentence when a defendant uses or carries a firearm in connection with a felony drug trafficking offense covered by the Controlled Substances Act (21 U.S.C. § 801, *et seq.*), regardless of the quantity or type of narcotics involved.

⁴⁶ U.S. Department of Justice Office of the Inspector General, *Top Management and Performance Challenges Facing the Department of Justice*, Memorandum for the Attorney General and Deputy Attorney General (November 10, 2015).

surge in St. Louis, of which the storefront was a part, and included a brief discussion of the storefront operation).

Despite these shortcomings, we did not identify circumstances that cause us to recommend that ATF eliminate undercover storefront operations as an investigative technique that is available to its agents. However, we do believe that there are significant steps that should be taken to improve the use of this technique as part of ATF's effort to address crime problems such as the illegal possession of firearms and violent crimes. In particular, ATF needs to increase its support to agents involved in these complex operations, and ensure that the investigations are properly targeted and result in prosecutions that serve a substantial federal interest.

Overall, our review identified a number of problems with ATF's storefront operations that resulted from inexperience, lack of specialized training, poor planning, and lack of oversight. While we did not substantiate claims that ATF knowingly was targeting persons with I/DD for enforcement action or use in its storefronts, we determined that DOJ was failing to apply the Rehabilitation Act of 1973 to its federal law enforcement activities, which requires prompt attention from the Department. Overall, we found that many of the new policies that ATF instituted following the controversy over Operation Fearless in Milwaukee should assist in addressing problems with ATF's management of storefront operations. However, we found several areas where additional changes should be made and we make 13 recommendations to address those areas. If ATF is going to utilize undercover storefront operations – or any undercover operation – it must plan and manage them expertly.

Below we discuss several areas of concern that we identified during our review.

A. Initiation and Planning

Our review examined the initiation of each of the storefront operations and ATF's planning for them. We determined that the decisions that ATF staff made in the storefronts' initial planning phases were highly consequential and greatly influenced how the storefronts functioned. These decisions concerned issues such as location, the selection of the case agent, and the service or merchandise offered at the storefront. ATF staff told us that preplanning and the initial gathering of criminal intelligence in support of the decision to initiate the storefront were critical to the storefronts' success.

Following the controversy surrounding Operation Fearless, ATF instituted new policies in 2013 that imposed predication requirements for the initiation of storefront operations. Before starting a storefront agents now must undertake "[a] detailed analysis of statistics concerning violent crime and the criminal use of firearms in the proposed area of operation . . .", and furnish "documentation as to the intended targets [of the] storefront investigation." Intelligence assessments also are required to "clearly identify a [] violent criminal target base." We believe that these changes were necessary improvements and that

ATF should be able to furnish an evidence-based justification to initiate the storefront planning process.

Our review of the pre-2013 storefront proposal documents revealed that some did not address many of the requirements now found in ATF policies, including predication and the need to specifically identify the crime problem that the storefront is intended to address. For example, the proposal for Operation Fearless misidentified the location and targets of the investigation, and the Wichita proposal was not clearly predicated to address specific individuals or gangs determined to be worthy of federal interest. We believe that ATF needs to standardize its storefront proposals and ensure that they include information that is necessary for ATF decision-makers to make informed judgments about whether to initiate a storefront operation, including whether there is a sufficiently well-defined and specific crime problem that the proposed operation is tailored to address. In this regard, future proposals should, at a minimum, account for the 2013 revisions to ATF's storefront policies.

Besides evaluating the proposal materials used to initiate a storefront, we asked ATF staff whether there were particular circumstances that justified use of the storefront investigative technique. For example, our review found evidence that storefronts may be well-suited to situations where both the local gang structure is decentralized and violent crime is highly concentrated geographically. We did not see any evidence of such consideration in the proposals that we saw, however. Additionally we found that ATF does not require agents to prepare an after-action report following completion of its storefront operations and otherwise has not preserved and evaluated its institutional knowledge about the circumstances where storefronts are most effective. We believe that ATF should require consideration of such circumstances in the initiation of a storefront operation, and preparation of after-action reports addressing such factors in future storefront operations. We also believe that ATF should conduct an assessment of information currently available to better determine when storefront operations would be most likely to be successful. The results of this examination should then be considered in the standardized storefront proposal.

In addition to issues surrounding the initiation of storefront operations, our review identified a number of problems with ATF's planning practices. We found that the agents assigned to the storefront operations often lacked undercover experience and advanced undercover training, and ATF at times overestimated their ability to plan and execute the operations. The agents' lack of expertise and specialized training caused various missteps, such as inadequate security assessments, insufficient staffing, and the failure to trace firearms. Moreover, this deficit in experience was compounded by the absence of guidance from ATF Headquarters. Case agents told us that they had no written instructions on how to manage a storefront, and that the Undercover Branch (UCB) provided little assistance concerning administration of the storefront. One case agent described the role of the UCB in the operation he was assigned to as: "Minimal. None." The Chief of the UCB told us that the UCB provides training and backstopping support for ATF's undercover

operations, including training on storefronts in an advanced ATF course on undercover operations. Overall, we believe that the agents assigned to the storefront operations, including Operation Fearless in Milwaukee, were disadvantaged due to the failure of ATF Headquarters to furnish adequate guidance concerning the initiation and management of undercover storefront operations and to foster a working climate that sufficiently valued expertise in these particular operations.

As with its policies concerning storefront initiation, ATF responded to problems with Operation Fearless by establishing policies that affected the storefront planning process. According to ATF's new Storefront Investigations Manual ("Manual"), when a field division proposes a storefront operation the Special Operations Division (SOD) at ATF Headquarters will provide subject matter experts (SMEs) to assist with planning, including site selection, security, and guidance on supervision practices. In circumstances where the case agent or undercover agents lack storefront experience, the Manual provides that "the UCB will assign agents experienced in such operations to travel to and assist with the storefront prior to and during the operation." We believe that these policies are commonsensical and overdue. Many of the problems that led to the controversy surrounding ATF's use of storefronts could and should have been avoided through better planning and support from ATF Headquarters. ATF storefront SMEs should work on-site for at least portions of the planning and initial implementation of storefront operations. Future storefront proposals submitted to ATF's Undercover Review Committee should account for the views of the SMEs and include a certification from SOD that it has reviewed the proposed operation, concurs that it complies with ATF policy, and that SOD supports the operation presented in the proposal. We believe that this degree of engagement from SOD is important to ensure that adequate expertise within ATF has been made available to the storefront.

Our review further determined that early consultations with prosecutors and local law enforcement agencies were important to the storefront operations. We found that with each of the storefronts ATF agents discussed the operations with representatives of the USAO and local law enforcement to obtain their support. Agents told us that the storefronts could not have operated without manpower provided by local law enforcement, and that information sharing with the prosecutors, including state prosecutors, facilitated the cases during their prosecution phase. ATF's new storefront policies impose various requirements regarding these local consultations. The USAO "must be involved in all preliminary discussions to ensure [its] concurrence with the proposed investigation," and the U.S. Attorney must provide a written concurrence letter for the operation. Similar consultations are required with state prosecutors. And we believe that ATF should go beyond this to ensure that the agents and prosecutors are on the same page as to the goals of the storefront operation, and the means utilized to achieve them. There is a disconnect if agents believe that an operation is successful because it produces a number of low level drug cases that do not advance a federal law enforcement interest and that are not acceptable for federal prosecution. We found that the Pensacola storefront was

a model of federal-state cooperation, and that the AUSA assigned to the storefront was fully engaged in the details of the operation.

Similarly, current ATF policy requires that an MOU must be executed with all participating agencies. According to the Manual:

ATF has partnered with other agencies in many successful storefront operations. An instrumental part of these successes was solidified through a memorandum of understanding (MOU) agreed to by all participating agencies. These MOUs outlined the objectives and goals of the investigation as well as the responsibilities and expectations of each participating agency.

Manual at 2.

As with the prosecutors, such MOUs are an important step in ensuring that expectations and goals are aligned among the participants in the operations.

We also believe that ATF should share with DEA any significant intelligence it receives concerning narcotics transactions related to its storefronts. Although we found that ATF was deconflicting suspects, we did not identify instances where ATF was communicating with DEA about potential leads. We acknowledge that the quantities of narcotics typically purchased in storefront operations are below thresholds that normally would warrant DEA's attention. However, information provided by ATF may assist in identifying members of drug distribution networks and otherwise provide evidence of criminal conduct by low level conspirators that could assist in identifying or developing cases against such organizations.

B. Objectives, Strategy, and Targeting

Our review determined that the objectives and strategy of an ATF storefront operation should be clearly defined and targeted on a specific, identified crime problem that is a priority for federal law enforcement, that is within ATF's jurisdiction, and that is likely to be positively impacted through use of the storefront technique.

We found that the authorization memoranda and agent explanations to us typically identified one or both of two broad objectives for the storefront operations: (1) the collection of criminal intelligence to enable ATF to identify violent criminals, persons prohibited from possessing firearms, and gang members; and (2) the gathering of sufficient evidence against such persons to prosecute them. The St. Louis storefront proposal expanded on the first objective and included "the gathering of criminal intelligence that involves both on-going criminal activity and future criminal acts occurring in the metropolitan area." While these are worthy objectives, we found that they provided little insight into the value of the proposed storefront operation because they are not significantly distinguishable from an ATF agent's routine job responsibilities. We believe that future proposals should include objectives that account for targeting factors unique to the storefront operation, such as gangs of special interest, and

should explain the strategy supporting it. Only the St. Louis and Boston Field Division proposals sufficiently accounted for targeting considerations. Foremost, an ATF storefront proposal should not contemplate use of techniques that amount simply to indiscriminate “trolling” for street criminals, for which there is little to no federal interest, and the storefront objectives and strategy should be written with sufficient precision to foreclose this possibility. As one expert on undercover operations recently wrote:

The first step in minimizing virtually all the legal and policy risks associated with undercover operations (UCOs) is to ensure it is employed against the right targets or subjects. Indiscriminate casting of either too wide a net or too indiscriminate an inducement – even if it results in statistical success in terms of indictable subjects – may eventually lead even the strongest supporters to doubt the propriety of the undercover technique. Many believe, therefore, that the single most important factor in determining the success of an undercover operation is the proper selection of the subjects of the operation – i.e., those individuals or enterprises against whom the operation will be directed and from whom evidence will be sought. . . . Only one factor will virtually guarantee failure, or some result less than success: directing the operation at nonpredicated or poorly predicated subjects.⁴⁷

ATF’s new storefront policies take into account such concerns and emphasize the importance of targeting:

The purpose of initiating a storefront operation should be clearly defined in the authorization memorandum for review by the DAD and [Undercover Review Committee]. This should include a clear strategy with specific criminal groups, streets gangs or criminal organizations identified, and focus on violations within ATF’s primary jurisdiction.

Manual at 1. A targeted approach also is better aligned with the Department’s strategic plan, which requires that any federal prosecution serve “a substantial federal interest” and “that the defendant is not subject to effective prosecution elsewhere.”⁴⁸

Moreover, if storefront operations are intended to comprehensively target criminal organizations and larger community crime problems, we believe that the proposal should address the feasibility of investigative follow-up for leads that the storefront generates. While getting guns out of the hands of prohibited persons is a very worthwhile objective, we believe that to maximize the benefits from storefront operations ATF should pursue promising leads where practicable to identify sources of supply for firearms and narcotics traffickers. In some

⁴⁷ Larson, *Undercover Operations* at 56.

⁴⁸ U.S. Department of Justice, *Strategic Plan – Fiscal Years 2014-2018*, at 50.

circumstances, this may necessitate temporary cessation of storefront activities. As we discuss below, resource limitations affected the ability of ATF to do even basic follow-up investigations in the storefronts that we examined, and we recommend that ATF consider the potential for such investigation and the requisite resource needs to accomplish it in future operations.

Our review found that ATF's primary means of targeting was geographic through the siting of the storefronts, though it also relied in some cases upon the use of informants, unwitting informants, and promotional activities by undercover officers to engage subjects. Each of the storefronts targeted its operations, though in varying ways and degrees. For example, in St. Louis the storefront was located in a part of the city that was experiencing rampant violent crime and relied on an informant to assist in attracting criminals worthy of federal prosecution. In contrast, the Wichita storefront was not centrally located in a crime "hot spot." Targeting was less developed with that storefront, though agents did utilize an unwitting informant to facilitate firearms purchases. In Milwaukee, agents resorted to randomly passing out flyers at a Walmart. We do not believe that such an untargeted tactic is appropriate or should be repeated in future storefront operations.

We found that the mobile storefront demonstrated greater tactical flexibility than the fixed storefronts as it could move to particular targets, though the quality of these targets turned out to be low in the communities in Massachusetts where it operated. In light of what we found regarding the inherent limitations of the storefront technique to entice direct participation by the higher level participants in criminal enterprises and the absence of significant investigative follow up on the transactions that did occur, *see* Section I above, we were not surprised that ATF's storefronts did not lead to the arrest of leading gang figures or the dismantling of criminal organizations. In the case of the mobile storefront, we agree with the agents who told us that it likely would have had greater success if the agents had focused more attention on subjects identified from leads that the storefront generated as opposed to operating the storefront on a continuous basis. We further believe that the use of innovative tactics should be encouraged within ATF and that while the mobile storefront did not obtain the results anticipated in Southern Massachusetts, the results could be quite different elsewhere and that the practical knowledge ATF gained from the experience might help to achieve that in appropriate circumstances. The comparative success of different targeting strategies should be an issue that ATF evaluates on an ongoing basis and addresses in particular storefront proposals in the future.

Consistent with this conclusion, we believe significant changes in objectives or strategy, such as relocation of the storefront to focus on a different target base or criminal problem, should require reauthorization from ATF Headquarters, including the URC. In Operation Fearless, the strategic direction of the storefront differed significantly from the proposal that the URC reviewed. In such circumstances, ATF Headquarters should reevaluate the operation.

C. Safety and Security

Our review examined safety and security procedures for each of the undercover storefronts. Again, we found that insufficient training and guidance from ATF Headquarters was a significant factor in the problems we identified. However, we also found that ATF agents and supervisors in the field, as well as officials at ATF Headquarters, were highly cognizant of the risks inherent in a storefront operation. This awareness was reflected in the planning and operation of the storefronts, and in our view, contributed to a safety record that does not include any acts of violence or physical injuries at the storefront operations that we examined as part of this review.

However, we did identify several deficiencies in security planning that we believe are attributable to inadequate training and guidance for agents conducting and participating in storefronts, and their lack of undercover experience. For example, while agents told us that they evaluated public safety when they planned their storefront operations, in several instances we found that they did not conduct comprehensive assessments of the areas near the planned storefront in order to avoid proximity to vulnerable populations, such as children at schools or day care centers. In the Pensacola operation, the storefront was located in a neighborhood known by the agents and their supervisor as a high crime area. Yet, no one conducted a security assessment of the neighborhood to identify potential risks to the operation, and consequently no one learned that the nearby Salvation Army facility housed a day care center.

Similarly, in St. Louis the storefront was approximately 600 feet from a Boys and Girls Club. Although its presence was observed by the RAC and at least one other ATF agent, no one above the RAC was ever advised of the Club's proximity to the storefront. Also, this information was not shared within the storefront team. The lack of communication in this case is particularly troubling because the DAD for operations at ATF Headquarters told us that he was not aware of the Club and that he would not have approved the storefront unless it was closed during periods when children were at the Club or the Field Division presented a compelling reason why the storefront could not be moved elsewhere. We acknowledge the view of the RAC there who told us that he believed that the children near the storefront likely were safer with armed federal agents in the vicinity in what was a very dangerous neighborhood. Nevertheless, DOJ leadership – including the USAO and ATF Headquarters – should not have learned of the proximity of the storefront to the Club from the OIG; rather it clearly is a circumstance that should have been considered from the outset in determining the location of the storefront.

We believe that ATF has taken steps to minimize the likelihood of such oversights occurring in the future. Following the controversy surrounding Operation Fearless and other storefronts, ATF issued its Storefront Investigations Manual, which includes a section devoted to site selection. In conjunction with the recommendations contained in this report, we believe that the guidance ATF has furnished on site selection and public safety issues will

assist in mitigating the risk that agents will make uninformed decisions that implicate public safety, including the decision as to where to site a storefront operation, in the future.

We also found that ATF missed opportunities to correct errors in security planning through review by a tactical advisor who was specially trained in the storefront technique. In every storefront operation that we examined agents consulted with the DTA; however in a few instances the DTA was not consulted until after the operation had commenced and none of the DTAs had specialized storefront training. In addition, we identified instances where the DTA did not sufficiently account for risks concerning public safety outside of the storefront, such as a subject opening fire after exiting the storefront. Again, we believe that ATF has taken steps to address these problems. The Storefront Investigations Manual now provides that ATF Headquarters will provide subject matter experts to assist in setting up its storefronts, including security experts, and that the DTA must be involved in the site selection process. As we explain in the next Chapter, we recommend that ATF specially train a limited number of DTAs on the storefront technique and then use them to evaluate future storefronts.

Our review also identified security lapses that resulted from poor internal communications. For example, in Wichita, the agents did not alert the SAC that they had opted to deviate from the terms of the storefront authorization memorandum and not use an inside react team. In addition, the SAC was unaware that the agents were not regularly tracing the firearms purchased at the storefront. In Milwaukee, agents changed the location of the storefront without notifying ATF Headquarters. In response to recommendations based on our review in this report and in our recent follow-up report concerning implementation of our recommendations contained in our review of Operations Fast and Furious and Wide Receiver, ATF has taken steps to improve reporting in its MCP. In future storefronts, agents will be required to answer specific questions in their MCP reports about changes in operations that warrant review by ATF's URC, any problems with agencies that are participating in the storefront, and other significant issues, such as compliance with ATF's Firearms Transfer Policy, informant unauthorized illegal activity, and whether the U.S. Attorney expressed any concerns about the storefront operation and how those concerns were addressed.

Another important safety issue we inquired about during our review concerned ATF's handling of known felons who appeared at the storefronts and then departed after agents learned that they were armed. Agents told us that they were under instructions to prevent persons whom they knew were felons from leaving the vicinity of the storefronts with firearms. We identified two instances where armed felons succeeded in eluding the storefront teams, but no other circumstances where agents should have detained storefront visitors. In both of these cases the agents knew the individual was prohibited from possessing a firearm, but the individual managed to exit the vicinity of the storefront without being stopped. In St. Louis, a known felon who had previously sold guns and drugs at the storefront came into the store with a gun.

The agents offered to buy it, but he declined because he said it belonged to someone else and that he might have to return it. The subject then quickly left the store and walked down an adjacent alley where his car and a driver were waiting. He departed before one of the outside cover agents who was following him could detain him. In Milwaukee, a known felon entered the storefront for a pre-arranged drug transaction armed with a revolver that he said contained armor piercing bullets. When the agents offered to buy the gun he said that he would sell it, but first he had to go shoot someone who earlier had shot his cousin. The subject left the store without interference from the agents. However, they immediately notified the Milwaukee Police Department, which mobilized a neighborhood task force – the Fugitive Apprehension Unit – and sent agents to the area where the subject advised the attack would take place. He was not located at the time and was not arrested until approximately 4 months later and there was no indication that the attack ever occurred. ATF agents and supervisors in Milwaukee acknowledged that the lack of an outside cover team severely limited the ATF’s ability to interdict the subject in this case. The Milwaukee RAC characterized the absence of an outside cover team as an obvious flaw in their operational plan that was exposed by this incident.

We believe that future storefront operations must undergo a more rigorous security evaluation to avoid situations in the future such as occurred in Milwaukee. We recommend that agents prepare a written security plan that should be included with the storefront authorization memorandum. We elaborate on this recommendation in the next Chapter.

D. Oversight

ATF leaders told us that oversight was important to the success of the storefront operations. However, our review identified weaknesses in ATF’s supervision both locally and at ATF Headquarters. We found that undercover storefront operations require supervision that is active, expert, and stable, and that problems developed when one or more of these characteristics was lacking.

1. Field Division Supervision

Each of the storefronts we evaluated was supervised by a Group Supervisor or RAC, who reported to an ASAC and SAC within the respective ATF field division. A senior ATF executive with substantial storefront experience told us that successful storefronts typically have “good first line leadership, good strong Group Supervisors or Resident Agents in Charge.” Our review confirmed the accuracy of this observation. In most cases we found that field division supervisors were engaged in the operations and attentive to developments. For example, the St. Louis RAC met daily with members of the storefront team, and the RAC in Bridgewater often accompanied the agents and provided surveillance and backup to the mobile storefront. Agents said that the SAC overseeing the Wichita storefront was knowledgeable about their activities and was effective.

However, we identified some instances where field division supervisors failed to make sufficient inquiries with agents assigned to the storefronts and

were not aware of significant events and issues. For example, the SAC of Operation Fearless told us that he was not aware that the FBI had withdrawn from the storefront until months afterwards, and the ASAC and SAC overseeing the Wichita storefront were unaware that agents were not performing NIBIN checks and lacked an inside cover team. The SAC of Operation Fearless told us that he believed oversight of the storefront was "bad" after the first ASAC assigned to the storefront departed the division for another assignment. Although there were instances in which storefront agents should have highlighted particular issues for their supervisors, it remains incumbent upon supervisors to ask sufficient questions to properly manage risk throughout the duration of such operations. Such vigilance is mandated by recent policies issued by the Office of the Deputy Attorney General that govern risk management. See Memorandum from James M. Cole, Deputy Attorney General, *Baseline Risk Assessment and Mitigation Policies for Law Enforcement Operations in Criminal Matters* (December 7, 2013)(requiring supervisors to assess risk during the course of investigations). The new storefront policies that ATF implemented in 2013 also emphasize the importance of active supervision. According to ATF's Storefront Investigations Manual, the "complexity of storefront investigations requires active, routine involvement with Field Division leadership." The first-line supervisor is required to be "actively involved in the day to day operations," and ASACs and SACs must "maintain active awareness of the plans, progress and problems." The ASAC and/or SAC also must conduct routine on-site inspections of the storefront and document them in the case management log. The MCP, which we discuss in greater detail below, also requires regular communication within the field division and with ATF Headquarters.

We found that, in addition to lacking engagement, some supervisors did not have sufficient undercover or supervisory experience to be charged with the responsibility of managing a storefront. This problem was exacerbated by the lack of Headquarters guidance on storefront operations and the limited information provided to supervisors who joined storefronts already underway. The Acting RAC who oversaw Operation Fearless during critical phases of the investigation had limited ATF supervisory experience. Moreover, he told us that he was not relieved of his existing agent caseload while he managed an ATF group on an interim basis and was responsible for overseeing the storefront. The Acting RAC also stated that he had little knowledge of the storefront prior to assuming supervisory responsibilities and, in fact, had limited involvement in oversight of the storefront until the first Acting ASAC departed midway through the operation. Many supervisors in the operations we reviewed had not taken ATF's advanced undercover training or had no significant experience with long-term undercover operations. Some agents told us that the supervision they received from their immediate supervisor was inadequate or involved little verbal communication. We believe that ATF underestimated the expertise and involvement required to properly manage these complex and dynamic undercover operations, and also failed to provide its agents with basic support, including written guidance and a proactive Headquarters undercover unit designed to assist with management issues.

ATF's new storefront policies address some of these issues in part. They require that storefront supervisors must be experienced in managing "complex and long-term investigations," and if necessary will be recruited from outside the originating field division for the duration of the investigation. In addition, acting supervisors are no longer permitted unless they have been "appointed specifically for the particular case based on training and experience."

In addition to sometimes resulting in a lack of experienced supervisors, turnover in supervision was another major problem that hindered the storefront investigations and led to instability and lack of continuity in leadership and oversight. One supervisor in the Boston Field Division told us that due to changes in supervisors, there were times when the mobile storefront could not operate because a supervisor was not available. In Operation Fearless, the position of DAD at ATF Headquarters remained vacant for 3 months, and for the bulk of the period when the storefront was operational both the RAC and ASAC were temporary replacement supervisors. One of the ASACs assigned to Operation Fearless told us that the lack of consistent oversight caused problems in the investigation and resulted in "mixed messages or no message" to the agents. Another agent assigned to the storefront agreed that supervisory instability was a problem and stated that "[h]aving supervisors here from start to finish is crucial." In contrast, the St. Louis storefront had consistent supervision and experienced few problems. Due to the importance of the case agent and group supervisor or RAC to the storefront, we believe that ATF should make best efforts to ensure that these staff selected to directly supervise such operations are expected to remain in place throughout the storefront's planning and operational phases.

2. Headquarters Supervision and the Monitored Case Program

We determined that one of the primary failings of the storefronts that we examined was the absence of guidance and supervision from ATF Headquarters. We found that the proposal process for the storefronts and the MCP was not sufficiently structured to collect information on risks, and that some issues that warranted evaluation were overlooked.

ATF did not develop its manual on Storefront Investigations until late 2013 in the wake of the public controversy over Operation Fearless, and agents who worked on the storefronts told us that they did not have written guidance on how to manage a storefront operation prior to that time. They also reported little contact with Headquarters' personnel other than to obtain technical assistance with audio and visual equipment and backstopping of their undercover identities. Agents reported that they sought out advice on their own initiative from other agents who had worked on storefront operations.

We determined that ATF Headquarters did not furnish sufficient direction regarding the information that should be included in the proposal memoranda. Although ATF's undercover operations policy specified general categories of information that must be included, such as the participating law enforcement

agencies and the projected funding, it omitted important risk-related information. ATF O 3250.1A. Examples include public safety considerations, whether informants would be used in the storefront, and planning on firearms interdiction. With the exception of proposals from within the same field division, we found that the storefront proposals were developed individually on an *ad hoc* basis and, though they shared some similarities, this resulted in substantial differences in format and, more importantly, the information presented. We believe that ATF needs to standardize its proposals for storefront operations and to tailor them to account for the requirements of the Storefront Investigations Manual and other guidance and ensure that all relevant safety and operational considerations are adequately addressed.

ATF instituted the Monitored Case Program in July 2011. Although we believe that the MCP has fostered more consistent communications between ATF Headquarters and its field divisions concerning the agency's most sensitive cases, as with its storefront proposal documentation, we determined that the MCP reporting requirements were not sufficiently probing and focused on issues that posed the highest risk to ATF and to the public. We found that many of the sections of the MCP reporting templates were devoted to the collection of accounting information. For example, the MCP initial submission template requested financial information about payments to confidential informants but did not inquire whether the informant had engaged in unauthorized illegal activity or committed other misconduct. Questions concerning storefronts were limited to inquiries about funds received at the storefront and items received or given in trade.

Although both the initial and update submission templates requested information on "issues or problems" in the investigation, we found that field divisions at times failed to report significant developments. One senior ATF official who evaluated problems in Operation Fearless told us that it "became equally clear at Headquarters that we needed to independently verify information and not solely rely on what we were being told by field divisions." However, our review of notes taken from Headquarters' monitored case briefings showed that some DADs asked few questions, and in the case of Operation Fearless, that the supervision of the operation lacked a DAD for 3 months. Numerous problems in Operation Fearless were not identified through the MCP, including that the agents failed to detain a known felon who left the storefront with a firearm, and that the FBI had withdrawn from the storefront. We identified similar problems with communicating issues to headquarters regarding other storefronts. The same senior ATF official above stated that one of the "institutional weaknesses" with the MCP that became apparent following the controversy surrounding Operation Fearless was that it was "not being proactive enough."

We recognize that MCP briefings are not the only way that ATF management can learn about operations. We also acknowledge that it is not feasible for ATF Headquarters components to directly manage investigations in the field, and that ATF took steps following Operation Fearless to strengthen its oversight of storefront operations. For example, the Undercover Branch

instituted inspections of storefronts, and the Storefront Investigations Manual highlighted the role of staff from the Investigative Support Branch in identifying information “for potential ‘risk’ factors.” Our interviews with ATF leaders also revealed a shift in attitude as concerns the level of Headquarters oversight necessary in a storefront operation. For example, the Assistant Director of ATF’s Office of Field Operations told us that the questions he would ask today if he were a DAD would be more detailed and address issues such as whether the storefront had an outside cover team, a question he considered so fundamental to operational security that he had not thought he would have to inquire about it.

We advised ATF that we believed that additional actions were necessary to strengthen ATF Headquarters’ oversight of storefront operations. First, in our recent follow-up report on Operation Fast and Furious, we recommended that ATF modify its MCP report templates to better focus on risk. In February 2016, ATF revised the “Storefront Investigations” section of the initial submission template and the update submission to identify whether any changes in storefront operations implicate issues presented in the storefront application to ATF’s URC. These include safety and risk factors identified in ATF’s Storefront Investigations Manual and in its Storefront guidance (“Revisions to Storefront Policy and Guidance,” March 21, 2013), including site selection, security assessments, and the role of other agencies. Second, we believe that the Undercover Branch should be more proactively engaged in ensuring the success of storefront operations and should devote a portion of its efforts to oversight and compliance duties, as it recently did by instituting inspections of storefront operations. ATF should seek to expand upon this initiative, and proactively share best practices and lessons learned with the field so that agents operating storefronts have the most timely and relevant information on how to address the myriad situations that may arise in such operations.

3. Informants

ATF’s use of confidential informants (CI) in the storefronts necessitated significant oversight which, in some limited circumstances, we found lacking.⁴⁹ Of the five storefronts we reviewed, only two, Hustle City in St. Louis and Pensacola Periodicals in Pensacola, planned for the use of a CI at the outset of the operations. ATF recruited a CI at the Milwaukee storefront after agents realized that they needed help attracting subjects to the location. The Boston and Wichita storefronts did not utilize CIs.⁵⁰ Agents in those storefronts told us that they did not want to take the risk that a CI would expose the undercover operation.

⁴⁹ The OIG’s Audit Division has initiated an audit of ATF’s confidential informant program.

⁵⁰ Shortly after the Wichita storefront opened a customer, Daniel James, offered to arrange firearms deals for the agents in exchange for a small finder’s fee. The agents agreed and James functioned as an unwitting informant for ATF for the next 9 months. James helped broker approximately 40 gun purchases at the storefront. ATF also used an unwitting informant to generate business for the Milwaukee storefront.

Our review identified problems with ATF's oversight of the CI in St. Louis, who functioned as a tattoo artist in the storefront. ATF had used the CI in another storefront in Kansas City prior to bringing him to St. Louis. The CI had an extensive criminal record that included prior narcotics dealing and use. Approximately 3 weeks prior to the closure of the St. Louis storefront ATF received allegations about the CI's conduct while working at the earlier storefront. These included narcotics dealing, cocaine and methamphetamine use, and inappropriate sexual contact with subjects in the storefront investigation. ATF agents from outside St. Louis promptly interviewed the CI, who admitted the following actions while working at the earlier storefront:

- Buying and using illegal drugs;
- Sexual relationships with multiple storefront subjects;
- Patronizing escorts and facilitating prostitution; and
- His girlfriend divulging to a subject in another storefront operation that he was working with law enforcement.

We were especially concerned with the last admission because ATF agents in St. Louis told us that the girlfriend accompanied the CI to St. Louis and was allowed to visit the storefront. Moreover, we did not believe that there was sufficient follow-up on the allegation that the CI had been dealing narcotics. We found that ATF did not consider polygraphing the CI on this issue, and had not run any background checks during the period when the CI was working in the St. Louis storefront.⁵¹

Soon after Kansas City agents completed their interview of the CI, information about the results of the interview was sent to an ATF ASAC supervising St. Louis and to the SAC in Kansas City. However, this information was not included in the CI's file, provided to the USAO, or reported to ATF Headquarters through the MCP. ATF's case agent for the St. Louis storefront told us that he also was not made aware of the allegations, nor was the ASAC who supervised the surge and storefront made aware.

We do not believe that ATF leadership in St. Louis properly managed or reported on the risks associated with the CI in the St. Louis storefront. We believe that ATF should have considered polygraphing him in order to probe the allegations further and also to ascertain whether his girlfriend had made other disclosures about the CI's association with law enforcement while she was in St. Louis. We did not find comparable oversights in the other storefronts.

⁵¹ As we described in our recent follow-up review of ATF's Operation Fast and Furious, ATF has established a new policy reminding agents about the availability of polygraphs in selecting and managing informants. See U.S. Department of Justice Office of the Inspector General, *A Review of the Department of Justice's and ATF's Implementation of Recommendations Contained in the OIG's Report on Operations Fast and Furious and Wide Receiver* (February 2016) at 15. We cannot say whether the new policy would have resulted in the CI in the St. Louis storefront being polygraphed.

However, we recommended to ATF in our recent follow-up on Operation Fast and Furious that it update its MCP reporting materials to better account for issues concerning CIs, especially unauthorized illegal activity.⁵² ATF has implemented that recommendation.

E. Criminal Intelligence and Lead Generation

A significant benefit of undercover storefront operations can be the generation of criminal intelligence. Agent interactions with criminals who visit a storefront may result in the development of leads for new cases and the collection of information about organizational criminal activity. In testimony before Congress in 2014, former ATF Director Jones identified the intelligence gathering capabilities of storefronts as one of their primary purposes, along with the removal of firearms from criminals.

While several of ATF's authorization memoranda for the five storefronts we examined and agents' descriptions to us identified the collection of criminal intelligence as an objective of the operations, we found that none of the storefronts we reviewed gathered actionable intelligence on gun trafficking organizations. Our review found that the extent of ATF's intelligence gathering at the storefronts was, with few exceptions, limited to the collection of basic information about subjects who entered the storefronts and the firearms that they sold to the undercover agents.⁵³ Agents told us that due to resource limitations they typically were unable to investigate the sources of supply of firearms and narcotics for the traffickers who visited the storefronts, such as by conducting surveillance on them after they exited the storefronts, much less by conducting additional follow-up investigations. An agent at one of the storefronts told us that the intelligence the agents were able to collect about criminal activities in the neighborhood surrounding the storefront was "zero." Moreover, we identified only three new cases that were "spin-offs" of the storefront investigations, two of which were home invasion cases targeted on one or more visitors to the storefronts, and there were no enterprise cases that resulted from the operations of any of the storefronts that we examined.

In light of the paucity of strategic intelligence collected, we were not surprised to find that ATF did not produce any written intelligence products based on information obtained from the storefronts. We also found that ATF did not prepare after-action reports on the storefronts that could be used to refine the technique and further develop best practices.

Overall, we did not find in the execution of the operations a practical appreciation within ATF for the importance of the intelligence cycle (planning,

⁵² *Id.* at 12-13.

⁵³ We acknowledge that such isolated evidence may still be important in particular cases. For example, in St. Louis, evidence obtained about a firearm assisted in closing a homicide investigation.

collection, processing/collation, analysis, dissemination, and reevaluation).⁵⁴ ATF's capacity to preserve intelligence is limited and relies heavily upon a case management system (N-FORCE) that is antiquated. An Intelligence Research Specialist who was assigned to one of the storefronts told us that she was not aware of any repository of gang intelligence within ATF where she could preserve the information that was obtained about gang members during the operation. When we asked ATF's Assistant Director for the Office of Strategic Intelligence and Information, who oversees ATF's intelligence operations, about the collection and dissemination of gang-related criminal intelligence, he stated that the information should be entered into GangNet, a national gang database that is maintained by a private contractor. In our interviews, no agent or analyst reported that they had received instructions to utilize GangNet, and we saw no evidence that any such information was ever entered into it. Dissemination of information also was a problem, as evidenced in the Milwaukee storefront. We found in that case that a lack of appreciation for the need to disseminate intelligence in a timely manner contributed to the FBI's decision to withdraw from the storefront altogether. In short, we did not find that agents at the storefronts were fully briefed on ATF's expectations regarding how they should manage criminal intelligence, or that the storefronts were designed or operated in a manner that resulted in the collection or use of such intelligence in pursuing criminal organizations. We believe these are significant issues that ATF needs to address in future storefront operations, and we make several recommendations in this report that will assist that effort.

III. Vulnerable Populations

A. Persons with Intellectual or Developmental Disabilities

Our review examined allegations that ATF personnel targeted persons with intellectual and developmental disabilities (I/DD) during undercover storefront operations. The OIG received requests from members of Congress to examine these claims. In addition to investigating this issue in the five storefronts mentioned above – Pensacola, Wichita, Milwaukee, St. Louis, and Brockton/New Bedford – the OIG reviewed similar allegations involving ATF's storefront in Portland, Oregon. The Portland storefront, known as Operation Kraken, operated from June 7, 2010, through March 2, 2011.

We found no evidence that ATF targeted or recruited persons with I/DD in either the Brockton/New Bedford or St. Louis storefronts. However, the Pensacola, Wichita, Milwaukee, and Portland storefronts each had one or two persons who regularly frequented the storefront, provided assistance to the undercover agents at times, and who were later alleged to have an I/DD. For each of these storefronts, we interviewed agents, local law enforcement

⁵⁴ See generally David L. Carter, *Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies*, 2nd ed. (U.S. Department of Justice, COPS Office 2009), at 57.

personnel, and federal prosecutors who had contact with the identified individuals. In addition, we examined documents that referred to the individuals, such as agent reports, and reviewed video and audio recordings of the storefront operations, which allowed us to evaluate interactions with the undercover agents. We also spoke about issues surrounding interactions between law enforcement and persons with I/DD with subject matter experts at the Department's Civil Rights Division (CRT) and The ARC, a national non-profit organization that serves people with I/DD and their families. Ultimately, we found no evidence that ATF targeted or used the identified individuals in its storefront investigations because of their disability. In fact, we found no evidence that the agents involved in the storefronts knew or even suspected that the identified individuals were intellectually or developmentally disabled.⁵⁵

Although we did not substantiate the allegations that ATF personnel targeted persons with I/DD, we found that neither ATF nor any other Department law enforcement component was aware of the legal obligations that apply to interactions with such persons. We consulted with representatives of CRT and were informed that Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits federal agencies from discriminating against persons due to their disability. According to the Office of the Deputy Attorney General (ODAG), the Department construes Section 504 to prohibit disability discrimination in federal law enforcement operations.

ODAG's interpretation of Section 504 is consistent with CRT's longstanding application of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, which prohibits disability discrimination at the state and local level. Title II of the ADA prohibits a "public entity" from discriminating against a "qualified individual with a disability," *Id.* at § 12132, and was modeled after Section 504 of the Rehabilitation Act.⁵⁶ The Department has taken the position that Title II of the ADA applies to state and local law enforcement agencies and affects "all of their operations, including arrests."⁵⁷ CRT's Disability Rights Section also has issued detailed guidance concerning the application of Title II to the operations of state and local law enforcement and interprets the ADA to affect "virtually everything that officers and deputies do," including receiving citizen complaints; interrogating witnesses; and arresting, booking, and holding suspects.⁵⁸ ODAG informed us that the Rehabilitation Act covers all of the activities of federal law enforcement operations as the ADA does to all state and local law enforcement operations.

⁵⁵ For purposes of this review, we assumed that the individuals in question had an intellectual or developmental disability.

⁵⁶ See Brief for the United States as Amicus Curiae at 11 n.2, *City & Cnty. of San Francisco v. Sheehan*, 135 S. Ct. 1765 (2015) (No. 13-1412) (Section 504 "served as the model for Title II").

⁵⁷ *Id.* at 11

⁵⁸ See U.S. Dep't of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement* § I, http://www.ada.gov/q&A_law.htm (Apr. 4, 2006).

The absence of a prior Department-wide position on the applicability of the Rehabilitation Act to federal law enforcement activities resulted in a lack of attention to this issue from the Department's law enforcement components. When we inquired with ATF and other Department law enforcement components about their compliance responsibilities under the Rehabilitation Act, we were told that they were unaware of any such duties, and we found that the components lacked policies that addressed the Rehabilitation Act's applicability to law enforcement operations.⁵⁹ We also found that the Department had not issued any guidance to federal law enforcement agencies under the Rehabilitation Act as it had done with state and local enforcement agencies under the ADA. When we raised with ODAG the components' lack of awareness of any responsibilities under the Rehabilitation Act regarding law enforcement activities, we were told that historically the Department primarily had addressed the Act in the context of litigation involving individuals' claims, but had not focused on the broader need to address the Department's overall compliance responsibilities, such as through the establishment of express policies, training, and oversight.

Upon learning of these issues during the course of this review the OIG notified ODAG in April 2015 and, in a letter dated September 3, 2015, the Inspector General wrote to the Attorney General and Deputy Attorney General and advised them of the OIG's concern with the Department's compliance with the Rehabilitation Act.⁶⁰ The OIG requested quarterly reports from the Department commencing October 30, 2015, that describe its efforts to ensure that its law enforcement activities comply with the Act. The Department submitted its first response on October 30, 2015. According to the ODAG, the Department's Office of Legal Policy (OLP) was working with the Office of Legal Counsel to develop legal guidance on the Department's obligations under the Rehabilitation Act, and OLP was attempting to determine if policy guidance is necessary. The Department provided a second update on February 19, 2016, that explained that OLP was meeting regularly with various components in the Department to discuss next steps. On June 21, 2016, the Department provided its third update and reported that a working group has begun drafting guidance that will set out the Department's legal requirements under the Rehabilitation Act. The Department provided its latest update on September 2, 2016 which explained that the working group is continuing its efforts to develop guidance. We believe the Department should promptly design and implement a comprehensive plan to ensure that its law enforcement and detention

⁵⁹ During the course of our review, ATF did introduce training on I/DD issues. On June 24, 2015, the Acting Director of ATF announced mandatory "Intellectual and Developmental Disability Awareness Training" for all ATF law enforcement personnel. This training discusses various types of I/DD and provides instruction on identification of persons with I/DD. The training also provides ATF personnel with instructions on how to manage interactions between law enforcement and individuals with I/DD. It does not specifically address contact with persons with I/DD in the context of storefronts or other undercover operations.

⁶⁰ As previously noted, the ODAG told us that it presented these issues to the Department's Office of Legal Policy (OLP) for consideration in May 2015.

components comply with the Rehabilitation Act and are implementing best practices to carry out the Act's broad purposes.

B. Juveniles

We found that ATF's approach to juveniles at the storefronts was inconsistent. Agents in Wichita and Pensacola told us that juveniles were permitted on the premises, and, in fact, a juvenile was one of the primary customers of the former storefront, providing 15 percent of the firearms purchased during the operation. By contrast, juveniles were prohibited at the St. Louis storefront and discouraged from visiting the mobile storefront in Massachusetts. An agent in St. Louis said that when juveniles came into the storefront they were told to leave. Agents in Milwaukee reported that juveniles did not attempt to visit the storefront. We found no evidence that ATF actively sought to incorporate juveniles into the storefront operations.

We determined that there were few, if any, discussions in the planning and approval process concerning how the undercover agents would handle juveniles who sought to visit the storefronts. For example, the St. Louis RAC told the OIG that he could not recall a specific conversation in which he discussed prohibiting juveniles from the storefront. In his view it was common sense and understood by the agents. The agents in Wichita stated that prior to the start of operations they did not discuss the issue and were not provided any guidance from their supervisors. They said that it would have been helpful to have received guidance. However, an ASAC who supervised the Wichita storefront recalled that he had addressed the issue with the agents and informed them that he did not want juveniles to sell firearms at the storefront. The Kansas City SAC said he could not recall a "specific plan" concerning how to handle juveniles though he said he would like to think that if a small child came into the storefront that the undercover agents would not engage the child in a conversation about firearms trafficking, and that they would employ common sense. Overall, we found that in the absence of clear direction from their supervisors ATF undercover agents defaulted to their experience and common sense to make judgments on how to manage their encounters with juveniles.

We found that neither the ATF nor the USAOs targeted juveniles for prosecution and understood that juvenile cases would be prosecuted locally consistent with general Department policies and procedures. For example, the AUSAs in Wichita told us that during the planning and prosecution phases of the storefront, they discussed with ATF presenting cases to the state district attorney's office, including ones involving juveniles. The Kansas City SAC said he assumed that if ATF developed a case against a juvenile, it would be prosecuted at the local level.

During our review some ATF agents and supervisors discussed the danger that juveniles can pose to the public. The Kansas City SAC told us that he assumed there could be a wide range of people coming into the Wichita storefront – including 16 or 17 year-olds who were "trigger-pullers" or engaged in firearms or narcotics trafficking. The case agent in the Wichita storefront said

that the undercover agents often purchased firearms from juveniles and that, as noted above, one juvenile alone was responsible for selling approximately 15 percent of all firearms that the agents acquired in the operation. He stated that if juveniles had been prohibited it would have limited the storefront's effectiveness.

We believe that ATF should amend its Storefront Investigations Manual to provide guidance on undercover agent interactions with juveniles in the storefront setting. ATF's approach will need to balance the important interests of removing firearms from juveniles and addressing participation in serious crimes by offenders of all ages while ensuring the safety of the storefront and its occupants. We believe that ATF field divisions should address in the storefronts' planning and approval phases how juveniles will be handled when encountered, and anticipate issues concerning coordination with state authorities for any prosecutions.

CHAPTER FIVE

OIG CONCLUSIONS AND RECOMMENDATIONS

Our review was prompted by allegations of ATF's mismanagement of its undercover storefront operations. We examined a subset of these operations to determine whether there are systemic problems with ATF's storefront polices and to evaluate the effectiveness of ATF's Monitored Case Program as an oversight tool for the storefronts. We found that while undercover operations can be an important component of ATF's efforts to fight violent crime, ATF failed to devote sufficient attention to how it was managing its undercover storefront operations. It lacked adequate policies and guidance for its agents, and in some cases supervision, necessary to appropriately address the risks associated with the use of this complex investigative technique. Following the controversy surrounding its Milwaukee storefront, code named "Operation Fearless," ATF made substantial revisions to its storefront policies. We did not find overarching problems with ATF's current storefront policies, though we believe ATF should make changes to improve them. We also found that ATF needed to make adjustments to the Monitored Case Program (MCP) to better focus on the most significant risks in ATF's investigative operations, including storefronts.

In addition to ATF's storefront policies and the MCP, our review examined allegations that ATF was targeting persons with I/DD for enforcement action or use in the storefronts. Although we did not find evidence to sustain this allegation, we found that the Department of Justice and its law enforcement components had failed to apply the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*, to their federal law enforcement activities. We have brought this issue to the Department's attention, and will carefully monitor the Department's response and will make additional recommendations if necessary.

Our review also identified three other areas of concern that merit comment. The first involves predication and targeting. We believe ATF must do a better job in future storefront operations defining the crime problem that the storefront is designed to address and explaining how the strategy underlying it will lead to the apprehension of persons warranting federal prosecution. As we explained in Chapter Four, the undercover storefront technique has limitations in its ability to attract the most senior and influential members of criminal organizations to participate directly in its operations. ATF storefront proposals should expressly identify the targets of the undercover operation and the information that establishes their priority status for federal law enforcement, and provide for sufficient resources to enable the follow-up investigation necessary to pursue any enterprise targets or larger crime problems that the storefront is intended to address.

We do not suggest, however, that ATF should target only criminal organizations in its use of the storefront technique. ATF has demonstrated that storefronts can be successful in attracting convicted felons who possess firearms, and at times persons with multiple prior felonies. Some of these individuals, depending on the nature of their prior felonies and their activities

within the community, may present an imminent danger to the public and could be worthy targets for federal law enforcement, whether or not they belong to a particular group. For example, the St. Louis storefront demonstrated how the storefront technique can function effectively in a neighborhood that is experiencing extreme violence caused by criminals who are only loosely affiliated or unaffiliated with criminal organizations. We do not believe it is difficult to identify other similarly situated neighborhoods across the United States that would benefit from the removal of armed felons even if they are not gang members. In short, the goals of a storefront may vary depending on local crime circumstances, and ATF should ensure that its use of this technique is appropriately targeted to best address such situations and that they are consistent with a substantial federal law enforcement interest. And then, during and after such operations, ATF should evaluate the impact of the storefront on the crime problem that it was designed to address.

Second, ATF underestimated the level of experience, training, and expertise necessary to manage and oversee its storefront operations, which led to mistakes. Undercover storefront operations are complex and require the management of significant manpower and financial resources. ATF's assignment of inexperienced and shifting staff to run and supervise these operations without adequate Headquarters support and oversight had predictably negative consequences. ATF needs to consolidate its storefront expertise and ensure that it is fully engaged in each operation. ATF's revision of its storefront policies and implementation of recommendations in this report should be a good first step in avoiding the repetition of past errors, and we make additional recommendations in this report to further that process.

Third, and closely related to the second issue above, is the problem told to us about ATF Headquarters' historic reluctance to intrude on the domain of its Special Agents in Charge. We believe that in addition to supplementing the expertise available for storefront operations, the Special Operations Division and its Undercover Branch need to be stakeholders in future operations and provide active oversight of them. The Undercover Branch's initiative to inspect the storefronts following the controversy over Operation Fearless is a good example of the kind of Headquarters engagement that should be occurring. Our interviews revealed, however, that SOD and UCB staff primarily view their roles as providing assistance when requested rather than direction or oversight. ATF undercover storefront operations should not proceed unless experts within SOD and the UCB concur that they are properly designed and are being implemented appropriately. ATF Headquarters' staff should be accountable for the success of these operations.

Below we provide 13 recommendations to assist ATF with its storefront operations. They address the following issues: initiation, planning, safety and security, oversight, intelligence, vulnerable populations, revisions to the Storefront Investigations Manual, and training. ATF concurs with the recommendations and has committed to their full implementation. See Appendix B (Deputy Director, Bureau of Alcohol, Tobacco, Firearms and

Explosives, memorandum to Inspector General, U.S. Department of Justice, August 22, 2016).

Initiation:

Future storefront proposals should account for the significant revisions that ATF made to its storefront policies since 2013. Our review of proposal materials in the storefront operations we examined found that they lacked a standard format and in some cases omitted important information. We believe that the process of initiating a storefront would be more consistent and comprehensive if ATF would standardize its storefront application materials to address the categories of information that ATF policy currently identifies as necessary for managers to make informed judgments whether to initiate storefront operations, and to provide for appropriate investigative follow-up and case development. We also recommend that the application expressly account for the review of key actors within ATF by requiring their certification that they have evaluated the operation, find it consistent with ATF and DOJ policies, and concur with its implementation.

Recommendation 1: ATF should develop a standard undercover storefront operations proposal template that: (1) incorporates requirements from the ATF Storefront Investigations Manual, such as target identification, statistical analysis, siting the storefront, and command staff experience; (2) specifies how prosecutions resulting from the storefront will serve a substantial federal interest; and (3) requires review and certifications from the Division Tactical Advisor, Division Counsel, Special Agent in Charge, and the Chief of the Undercover Branch.

Planning:

ATF's Storefront Investigations Manual affords agents written instructions on the initiation and planning of storefront operations and is a significant improvement in ATF's guidance. We believe, however, that ATF should provide additional support to its agents by assembling a packet of materials for use primarily by the case agent and group supervisor that includes copies of the various forms and other paperwork that must be completed to properly administer a storefront. This could include items such as sample MOUs with local law enforcement and guidance on leasing and evidence processing issues. Due to the critical role of the case agent, ATF should develop a storefront case agent job description. We also recommend that ATF prepare a checklist of issues that must be assessed before submitting a proposal to ATF Headquarters, and assign one or more subject matter experts from the Special Operations Division to the field division to review and provide input the proposal prior to its submission to Headquarters and to assist with the initial setup and operation of the storefront.

Recommendation 2: ATF should develop a standard storefront informational packet that includes written guidance on job duties for the storefront case agent and a checklist of issues that should be addressed in every

operation, as well as best practices on how to address them. ATF should put in place procedures to ensure that the checklist is used as a guide for preparation of the storefront proposal and the MCP initial submission. See Recommendations 1 and 6.

Recommendation 3: ATF's Undercover Branch should designate undercover agents/case agents with significant storefront expertise to work on-scene for the initial period of each storefront's operation to assist with planning, set-up, and early operations.

Safety and Security:

Our review identified instances where security issues were not properly evaluated. Although ATF utilizes operational plans to memorialize its tactical security planning, our review of these documents for the storefronts showed that they were not sufficiently comprehensive. We recommend that the field division proposing a storefront be required to complete a written security assessment with the assistance of a trained tactical advisor, and include the assessment with the storefront proposal.

Recommendation 4: ATF should require that a written security assessment be completed for each storefront with input from a Division Tactical Advisor trained on the storefront technique, and should encompass the vicinity surrounding the storefront. At a minimum, the assessment should include maps of the vicinity, a diagram and photographs of the proposed storefront, a description of security enhancements anticipated for the storefront, and an explanation of the security planning and training measures undertaken. The assessment should be added as an attachment to the storefront proposal.

Recommendation 5: ATF should ensure that any Division operating a storefront has one or more Division Tactical Advisors who have been specifically trained on storefront security, and that they are consulted on a regular basis as issues arise during storefront operations. The Division Tactical Advisors also should assist in developing security best practices for storefronts that should be provided to ATF Headquarters and disseminated to the field as part of the standard storefront informational packets.

Oversight:

A problem that hindered some of the storefront investigations was turnover in supervision that resulted in a lack of continuity in oversight. We recommend that ATF mitigate this problem in future storefronts.

Recommendation 6: ATF should develop mitigation strategies to minimize turnover of supervisors overseeing storefront operations, including requiring that best efforts to ensure that the case agent and supervising Group Supervisor or Resident Agent in Charge selected to directly supervise such operations are expected to remain in place during the planning and operational phases of the storefront.

Intelligence:

We found that although ATF has identified the collection of criminal intelligence as an objective of its storefront operations, in practice ATF's intelligence efforts were largely limited to the identification of subjects in specific transactions. We did not find that ATF provided for the follow-up investigation that would be required to pursue enterprise cases, that it prepared written intelligence products resulting from its storefront investigations, or that it required the preparation of after-action reports that critically evaluated the results achieved through these labor-intensive operations. We believe that these omissions represent lost opportunities to maximize the impact and effectiveness of the storefront operations.

Recommendation 7: The Office of Strategic Intelligence and Information should develop guidance on intelligence protocols (collection, analysis, dissemination, etc.) for storefront operations. ATF's administrative packet for storefronts (see Recommendation 2) should include this guidance.

Recommendation 8: ATF should require that storefront proposals evaluate the necessity of appropriate follow-up investigation for leads generated by the storefront as needed to address any enterprise or larger crime problems sought to be addressed through the storefront, including an assessment of and provision for sufficient resources to carry out such plans.

Recommendation 9: ATF should require the preparation of after-action reports for all storefronts, that includes statistical and other analysis of the impact of the storefront on the crime problem to which it was addressed.

Vulnerable Populations:

We found that the Department has not addressed its responsibilities under the Rehabilitation Act of 1973 with regard to law enforcement operations, and that it should take prompt action to do so. We provide a recommendation concerning juveniles in our discussion below regarding the Storefront Investigation Manual.

Recommendation 10: DOJ should promptly design and implement as expeditiously as possible a plan that ensures that its law enforcement and detention components comply with the Rehabilitation Act of 1973 and are implementing and providing training on best practices to carry out the Act's broad purposes.

Tracing Firearms:

We determined that ATF's Firearms Enforcement Program Order, Order 3310.4C, which establishes ATF procedures for tracing firearms, does not require agents to perform traces on firearms taken into ATF's custody "at the earliest time practicable," as required in a memorandum issued by the President to all federal law enforcement agencies in January 2013. In addition, ATF's Storefront Investigations Manual does not specify a time limitation or other

expectation concerning when agents should perform traces in storefront operations. (We address revisions to the Manual in Recommendation 12 below).

Recommendation 11: ATF should modify its Firearms Enforcement Program Order to require agents to complete firearms traces “at the earliest time practicable.”

Storefront Investigations Manual:

Below we provide several suggested revisions to the Storefront Investigations Manual based on findings from this report.

Recommendation 12: The Storefront Investigations Manual should be amended to include the following:

(1) A section that provides instructions on how to prepare the storefront proposal, including identification of how prosecutions resulting from the storefront will serve a substantial federal interest, and the supporting security assessment;

(2) A section that discusses the importance of providing for appropriate follow-up investigation on promising leads generated by the storefront and requires evaluation of the availability of resources in order to accomplish this objective and to achieve the goals of the storefront;

(3) A section that emphasizes the importance of intelligence sharing and appropriate coordination with the DEA regarding drug cases and individuals selling drugs to the storefront who may be connected to larger organizations or investigations;

(4) A section on Intelligence that discusses the intelligence cycle and how intelligence collected from storefront operations will be processed;

(5) A section on Oversight that discusses the requirements of the MCP and includes examples of information that should be identified as “problems” and included in MCP written “update” submissions;

(6) A section on Confidential Informants that discusses considerations regarding the use of CIs in support of storefront operations;

(7) A section on Vulnerable Populations that discusses considerations regarding interactions with persons with I/DD and juveniles, and includes provision for appropriate coordination with state law enforcement and prosecution authorities; and

(8) A section that requires that firearms traces be completed “at the earliest time practicable.”

Training:

Our review identified instances where neither the undercover agents nor the case agent had completed advanced undercover training, including training on storefront operations. We believe that at least one agent on a storefront team should receive advanced undercover training before the storefront becomes operational.

Recommendation 13: ATF should require at least one undercover agent or the case agent on a storefront team to have completed advanced undercover training, including training on storefront operations, before the storefront becomes operational.

We believe that the recommendations above will strengthen ATF's undercover operations. We emphasize, however, that the focus of this review was limited to ATF's application of the storefront investigative technique, and our findings and conclusions concerning ATF's conduct should not be construed expansively as a critique of the technique itself. Nevertheless, we do think that there are principles that we garnered from this review that extend beyond the context of undercover storefront operations. These include the need to recognize when specialized expertise is necessary, to train agents to identify risks that require evaluation by a supervisor, to focus undercover operations in those areas where there is a substantial federal interest, and to ensure that there is sufficient and consistent local supervision and Headquarters oversight of these sensitive and ever-changing operations. Undercover operations have been and should continue to be an important tool in ATF's fight against violent crime. Accordingly, ATF leadership should take steps to ensure that such operations are managed expertly and appropriately.

ATTACHMENT

A



U. S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

September 6, 2016

MEMORANDUM

TO: Michael Horowitz
Inspector General
U.S. Department of Justice

FROM: Carlos Felipe Uriarte *CFU*
Associate Deputy Attorney General

SUBJECT: Response: A Review of ATF's Undercover Storefront Operations

We appreciate the review undertaken by the Department of Justice (DOJ or the Department), Office of the Inspector General (OIG) regarding the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) undercover storefront operations. As noted in the report, during its review, OIG raised concerns that the Department's law enforcement and detention components lacked policies to address their obligations under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq. (Rehabilitation Act). When OIG first raised this issue in April 2015, the Department quickly started a process of considering whether additional guidance on the Rehabilitation Act would be helpful to the Department's law enforcement and detention components. Accordingly, in May 2015, the Deputy Attorney General requested that the Office of Legal Policy (OLP) conduct a review of the Department's law enforcement and detention components' efforts to comply with the Rehabilitation Act and determine if additional policy guidance was necessary. The working group is now drafting Department-wide guidance to ensure compliance with the Rehabilitation Act and to convey best practices for dealing with individuals with disabilities.

The working group is comprised of representatives from the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Bureau of Prisons; the Drug Enforcement Administration, the Federal Bureau of Investigations, the U.S. Marshals Service; the Criminal Division, the Civil Division, the Civil Rights Division; and the Executive Office for U.S. Attorneys. Over the past

year the working group has met regularly and intends to produce a final guidance document to the Deputy Attorney General this fall. Once this guidance is complete, each component will be responsible for developing policies and training consistent with the Department-wide guidance.

The Department appreciates OIG's recommendation that it design and implement a plan to ensure that its law enforcement and detention components comply with the Rehabilitation Act and that the law enforcement components are implementing and providing training on best practices to carry out the Act's broad purposes. That is why the Department requested that OLP work with the Department's law enforcement and detention components to develop Department-wide guidance, which will guide the components in the development of their own policies and training.

cc: Jonathan Wroblewski, Principal Deputy Assistant Attorney General, Office of Legal Policy

ATTACHMENT B



U.S. Department of Justice

**Bureau of Alcohol, Tobacco,
Firearms and Explosives**

Office of the Director

AUG 22 2016

MEMORANDUM TO: Inspector General
United States Department of Justice

FROM: Deputy Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT: The Bureau of Alcohol, Tobacco, Firearms and Explosives Response
to the Office of Inspector General's Review of Undercover Storefront
Operations

Thank you for allowing the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) the opportunity to review and comment on the report entitled "A Review of ATF's Undercover Storefront Operations." ATF concurs with the recommendations directed at ATF and acknowledges the findings made by the Inspector General. Specifically, the report found that ATF's future storefront operations should better define the crime problem to be addressed by the storefront operation. Second, the Inspector General's report finds that ATF should ensure that staff assigned to storefronts have the experience, training, and expertise necessary to manage and oversee these sensitive operations. Third, the report finds that ATF Headquarters should have a larger role in the planning, operation and execution of storefront operations. Last, the Inspector General's report found the allegations that ATF's storefront operations had targeted or utilized vulnerable populations, such as minors and persons with intellectual or developmental disabilities (I/DD), were not accurate.

As noted in your report, ATF has utilized the undercover storefront technique to "target illegal firearms traffickers and to address other crimes involving firearms."¹ In utilizing this valuable investigative technique, ATF has consistently striven to improve the management and oversight of these operations. Notably, the Inspector General's report found that as a result of its internal review of the storefront in Milwaukee ("Operation Fearless."), ATF implemented substantial improvements to the policies governing storefront operations. As a direct result of the operational deficiencies identified by ATF's internal assessment of that operation, ATF issued new comprehensive guidelines that sought to enhance the planning and execution of storefront operations, while fostering nation-wide consistency through better headquarters oversight.

As the Inspector General's report further notes, the use of undercover storefront operations is not unique to ATF. This technique, or derivations of this technique, have or are currently being

¹ Inspector General's Draft Report at 2.

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utilized by some federal, state and local law enforcement partners. The Inspector General acknowledges that when this undercover technique is utilized by an investigative agency, it can have several operational benefits, to include “[s]afety, evidence quality, and the potential for enhanced intelligence and evidence gathering.”²

The Inspector General’s report also recognizes that this technique has structural limitations that can impact the outcome of the operation. More specifically, the report finds that storefront operations are resource intensive operations that “typically occupied the work of an entire ATF agent group, which totaled 8 to 10 agents, full-time for the duration of the operation.”³ Such demand on agent and officer resources posed a substantial challenge to allocating the time necessary to “follow[] up on leads and devise[] and pursue[] additional investigative strategies, and [to] work on potentially important cases.”⁴ ATF concurs that allocation of additional, sufficient resources to Divisions operating storefronts would have enabled ATF to more effectively use the strategic intelligence derived from the undercover operation. Nevertheless, although limitations on investigative resources will consistently be an issue for an agency the size of ATF, we believe that ATF’s past storefront operations have directly benefited public safety, and, with the enhancements recommended by the OIG, storefronts should remain an investigative option. In the five operations reviewed by the Inspector General, ATF was able to interdict over 780 firearms from entering illegal commerce and recommend approximately 120 defendants for federal prosecution. While ATF agrees that enterprise-level cases and the development of investigative leads against organization leaders should be a goal of our enforcement efforts, we concurrently believe that community-impact operations such as storefronts are an appropriate and necessary option in the catalog of federal law enforcement techniques. Operations that directly benefit public safety, either predicated or broadly-targeted, should not be considered a “crude tool”⁵ of law enforcement.

To ensure that undercover storefront operations are appropriately tailored to the challenges facing the community, ATF only conducts these operations in partnership with the state and/or local law enforcement agencies, state prosecutor and United States Attorney’s Office that have jurisdiction over the community. In fact, the Inspector General’s report notes that ATF agents engaged with prosecutors’ offices and local law enforcement in each of the five storefront operations reviewed by their office. Such cooperation between federal, state and local law enforcement is a crucial component to ATF’s enforcement efforts, and ensures that sensitive operations, like undercover storefronts, are directed towards communities where violent crime is prevalent.

Thank you again for the opportunity to comment on the Inspector General’s report. ATF provides the following formal response to the recommendations contained in the Inspector General’s draft report.

² *Id.* at 63.

³ *Id.* at 64.

⁴ *Id.*

⁵ *Id.*

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Recommendation #1: ATF should develop a standard undercover storefront operations proposal template that: (1) incorporates requirements from the ATF Storefront Investigations Manual, such as target identification, statistical analysis, siting the storefront, and command staff experience; (2) specifies how prosecutions resulting from the storefront will serve a substantial federal interest; and (3) requires review and certifications from the Division Tactical Advisor, Division Counsel, Special Agent in Charge, and the Chief of the Undercover Branch.

ATF's Response: ATF concurs with this recommendation. Moving forward, ATF will develop and utilize a standard template for agents who are proposing and seeking authorization to initiate an undercover storefront operation. This template will incorporate requirements contained in the Storefront Investigations Manual, including sections on target identification, statistical analysis, location of the storefront, and a prosecution strategy that ties the storefront operation to the Division's most recent Domain Assessment. As part of the approval process, this standardized template will require review and certifications from the Division Tactical Advisor (DTA), Division Counsel, the Special Agent in Charge, and the Chief of the Undercover Branch. This standardized template will then be submitted to the regional Deputy Assistant Director and the Undercover Review Committee (URC) for consideration and approval.

Recommendation #2: ATF should develop a standard storefront informational packet that includes written guidance on job duties for the storefront case agent and a checklist of issues that should be addressed in every operation, as well as best practices on how to address them. ATF should put in place procedures to ensure that the checklist is used as a guide for preparation of the storefront proposal and the MCP initial submission.

ATF's Response: ATF concurs with this recommendation and will begin work on developing a standard storefront informational packet that will be included as part of the Storefront Investigations Manual. This informational packet will have written guidance that would serve as an operational checklist, outlining specific issues that need to be addressed during any storefront investigation. This guidance will also contain sections on best practices and recommendations to address commonly occurring issues in storefront operations. The informational packet and Storefront Investigations Manual will additionally include descriptions of the unique job duties of the principal undercover and the case agent. Procedurally, ATF will require each storefront proposal to submit the completed information packet to the URC to aid the committee's review.

Recommendation #3: ATF's Undercover Branch should designate undercover agents/case agents with significant storefront expertise to work on-scene for the initial period of each storefront's operation to assist with the planning, set-up, and early operations.

ATF's Response: ATF concurs with this recommendation. The UCB will seek to identify a cadre of agents in the undercover program who possess experience in storefronts or other similar sensitive undercover operations. Should a Division subsequently request to initiate a storefront, the UCB will be able to provide an undercover agent with significant storefront experience to work on-scene for the initial period of each storefront operation.

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Recommendation #4: ATF should require that a written security assessment be completed for each storefront with input from a Division Tactical Advisor trained on the storefront technique, and should encompass the vicinity surrounding the storefront. At a minimum, the assessment should include maps of the vicinity, a diagram and photographs of the proposed storefront, a description of security enhancements anticipated for the storefront, and an explanation of the security planning and training measures undertaken. The assessment should be added as an attachment to the storefront proposal.

ATF's Response: ATF concurs with this recommendation. ATF will begin to develop a security assessment template with the assistance of current or former Division Tactical Advisors with experience running storefronts. This template will be incorporated in the newly revised Storefront Investigations Manual/informational packet. The Storefront Investigations Manual will also be revised to require the security template to be completed by the appropriate DTA, and will serve as the written security assessment for each storefront. As suggested, this security assessment template will include maps of the vicinity, a diagram and photographs of the proposed storefront, a description of security enhancements anticipated for the storefront, and an explanation of the security planning and training measures undertaken. Procedurally, ATF will require submission of this assessment with each storefront proposal.

Recommendation #5: ATF should ensure that any Division operating a storefront has one or more Division Tactical Advisors who have been specifically trained on storefront security, and that they are consulted on a regular basis as issues arise during the storefront operations. The Division Tactical Advisors also should assist in developing security best practices for storefronts that should be provided to ATF Headquarters and disseminated to the field as part of the standard storefront informational packets.

ATF's Response: ATF concurs with this recommendation. Moving forward, as part of the review and vetting process for each storefront proposal, ATF will assign to each approved proposal a Division Tactical Advisor with experience running storefronts to consult on operational security issues. In conjunction with the development of the security assessment template discussed above in recommendation #4, ATF will leverage the assistance of that same group of current or former Division Tactical Advisors with experience running storefronts to develop security best practices for inclusion in the revised Storefront Investigations Manual.

Recommendation #6: ATF should develop mitigation strategies to minimize turnover of supervisors overseeing storefront operations, including requiring that best efforts to ensure that the case agent and supervising Group Supervisor or Resident Agent in Charge selected to directly supervise such operations are expected to remain in place during the planning and operational phases of the storefront.

ATF's Response: ATF concurs with this recommendation and will employ strategies to minimize turnover of supervisors and case agents directly involved in managing storefront operations. Consistent with merit promotion principles, ATF will emphasize strategies that

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ensure continuity among key personnel assigned to storefronts (and similar operations), and will consistently seek to improve such strategies. Existing strategies include requiring selecting officials in the field to communicate and obtain the concurrence of their overseeing deputy assistant directors (DADs) before selecting lateral applicants for vacancies. Similarly, other directorate DADs are expected to communicate with their counterparts in Field Operations when seeking to select lateral applicants for vacancies. Finally, ATF's merit promotion process allows the Chair of ATF's Merit Promotion Board to seek input from applicants' supervisors to factor into selection decisions. These strategies are designed to facilitate communication, as well as organizational and situational awareness, thereby enhancing ATF's operational effectiveness and risk mitigation.

Recommendation #7: The Office of Strategic Intelligence and Information should develop guidance on intelligence protocols (collection, analysis, dissemination, etc.) for storefront operations. ATF's administrative packet for storefronts should include this guidance.

ATF's Response: ATF concurs with this recommendation. The Office of Strategic Intelligence and Information (OSII), in coordination and consultation with the Office of Field Operations, will develop guidance on intelligence protocols for storefront operations. This guidance will be designed to serve as an intelligence template, so that Divisions looking to initiate and run a storefront operation will have the ability to both establish an intelligence collection plan and utilize information derived from the operation in the most efficient manner. ATF will include this guidance in the administrative packet for storefronts.

Recommendation #8: ATF should require that the storefront proposals evaluate the necessity of appropriate follow-up investigation for leads generated by the storefronts as needed to address any enterprise or larger crime problems sought to be addressed through the storefront, including an assessment of and provision for sufficient resources to carry out such plans.

ATF's Response: ATF concurs with this recommendation, and will include guidance in the Storefront Investigations Manual/informational packet that will require each proposal to articulate a plan to assess the need for follow-up investigation. Allowing for variations in operational planning and execution, this guidance will generally suggest addressing specific investigative follow-up concerns during a daily out-brief and require the case agent to provide a written summation of specific matters for follow-up to Division management, e.g. the Resident Agent in Charge, Assistant Special Agent in Charge and Special Agent in Charge.

Recommendation #9: ATF should require the preparation of after-action reports for all storefronts, that includes statistical and other analysis of the impact of the storefront on the crime problem to which it was addressed.

ATF's Response: ATF concurs with this recommendation and will develop guidance for the Storefront Investigations Manual that requires the completion of an after-action report at the conclusion of each operation.

Inspector General

Recommendation #11: ATF should modify its Firearms Enforcement Program Order to require agents to complete firearms traces “at the earliest time practicable.”

ATF’s Response: ATF concurs with this recommendation. ATF notes that existing policy requires that all recovered evidence be input into N-Force within ten days from the date of seizure (ATF O 3111.1A *Use of N-Force*, Para. 10). Once a firearm has been entered into N-Force as seized property, those entries are “automatically traced as Routine Traces, unless the user prevents it by indicating as such within the system” (ATF O 3310.4C *Firearms Enforcement Program*, Chap. F. Para. 93). For example, if there is an operational or security concern, users may select an option within the N-Force system to prevent the trace from running automatically. To address this recommendation, ATF will amend the Firearms Enforcement Order to require agents to enter firearms seized as part of an ATF investigation into the N-Force system pursuant to the evidence policy and “as soon as practicable.” Prior to submission, agents will be directed to assess both the safety and investigative impact of submitting the trace request at that time. As is allowed under current policy, should agents determine that submission of the trace request would negatively impact the operation or agent/public safety, they may opt to delay submitting the trace.

Recommendation #12: The Storefront Investigations Manual should be amended to include the following:


- (1) A section that provides instructions on how to prepare the storefront proposal, including identification of how prosecutions resulting from the storefront will serve a substantial federal interest, and the supporting security assessment;
- (2) A section that discusses the importance of providing for appropriate follow-up investigation on promising leads generated by the storefront and requires evaluation of the availability of resources in order to accomplish this objective and to achieve goals of the storefront;
- (3) A section that emphasizes the importance of intelligence sharing and appropriate coordination with the DEA regarding drug cases and individuals selling drugs to the storefront who may be connected to larger organizations or investigations;
- (4) A section on Intelligence that discusses the intelligence cycle and how intelligence collected from storefront operations will be processed;
- (5) A section on Oversight that discusses the requirements of the MCP and includes examples of information that should be identified as “problems” and included in the MCP written “update” submissions;
- (6) A section on Confidential Informants that discusses considerations regarding the use of CIs in support of storefront operations;
- (7) A section on Vulnerable Populations that discusses considerations regarding interactions with persons with I/DD and juveniles, and includes provision for appropriate coordination with state law enforcement and prosecution authorities; and
- (8) A section that requires that firearms traces be completed “at the earliest time practicable.”

Inspector General

ATF's Response: ATF concurs with this recommendation, and will begin to amend the Storefront Investigations Manual to incorporate the sections recommended by the Inspector General's report.

Recommendation #13: ATF should require at least one undercover agent or the case agent on a storefront team to have completed advanced undercover training, including training on storefront operations, before the storefront becomes operational.

ATF's Response: ATF concurs with this recommendation, and will further change the Storefront Investigations Manual to require the principle undercover agent on a storefront operation to have completed the advanced undercover training course, which includes training on storefront operations, before the storefront becomes operational.


Thomas E. Brandon

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