

150790

FEDERAL FIREARMS LICENSING



HEARING
BEFORE THE
SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JUNE 17, 1993

Serial No. 24.

NCJRS

OCT 26 1994



ACQUISITIONS

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1994

73-253 CC

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-044182-X

MAY 2 6 1994

COMMITTEE ON THE JUDICIARY

JACK BROOKS, Texas, *Chairman*

DON EDWARDS, California
JOHN CONYERS, Jr., Michigan
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
DAN GLICKMAN, Kansas
BARNEY FRANK, Massachusetts
CHARLES E. SCHUMER, New York
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JOHN BRYANT, Texas
GEORGE E. SANGMEISTER, Illinois
CRAIG A. WASHINGTON, Texas
JACK REED, Rhode Island
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
DAVID MANN, Ohio
MELVIN L. WATT, North Carolina
XAVIER BECERRA, California

HAMILTON FISH, JR., New York
CARLOS J. MOORHEAD, California
HENRY J. HYDE, Illinois
F. JAMES SENSENBRENNER, JR.,
Wisconsin
BILL MCCOLLUM, Florida
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
STEVEN SCHIFF, New Mexico
JIM RAMSTAD, Minnesota
ELTON GALLEGLY, California
CHARLES T. CANADY, Florida
BOB INGLIS, South Carolina
BOB GOODLATTE, Virginia

JONATHAN R. YAROWSKY, *General Counsel*
ROBERT H. BRINK, *Deputy General Counsel*
ALAN F. COFFEY, Jr., *Minority Chief Counsel*

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE

CHARLES E. SCHUMER, New York, *Chairman*

DON EDWARDS, California
JOHN CONYERS, JR., Michigan
ROMANO L. MAZZOLI, Kentucky
DAN GLICKMAN, Kansas
GEORGE E. SANGMEISTER, Illinois
CRAIG A. WASHINGTON, Texas
DAVID MANN, Ohio

F. JAMES SENSENBRENNER, JR.,
Wisconsin
LAMAR S. SMITH, Texas
STEVEN SCHIFF, New Mexico
JIM RAMSTAD, Minnesota
GEORGE W. GEKAS, Pennsylvania

ANDREW FOIS, *Counsel*
DAVID YASSKY, *Assistant Counsel*
LYLE NIRENBERG, *Minority Counsel*

150790

U.S. Department of Justice National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this [redacted] material has been granted by

Public Domain/103rd Congress
U.S. House of Representatives

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the [redacted] owner.

CONTENTS

HEARING DATE

June 17, 1993	Page 1
---------------------	-----------

OPENING STATEMENT

Schumer, Hon. Charles E., a Representative in Congress from the State of New York, and chairman, Subcommittee on Crime and Criminal Justice	1
---	---

WITNESSES

Aborn, Richard M., president, Handgun Control, Inc., Washington, DC	68
Archer, Steven, Simke, Chodos, Silberfeld & Anteau, Los Angeles, CA	58
Daily, Edward, accompanied by Jeff Grabman, agent, U.S. Bureau of Alcohol, Tobacco and Firearms	8
Farley, William, Chesapeake, MD	55
Gardiner, Richard E., legislative counsel, National Rifle Association of America, Washington, DC	71
Higgins, Stephen E., Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, accompanied by Brad Buckles, Deputy Chief Counsel, and Gerald A. Nunziato, Special Agent in Charge, National Tracing Center	14
Shaw, Bernard, first sergeant, Maryland State Police Licensing Division, Woodlawn, Md	48
Travis, Jeremy, deputy commissioner, legal matters, New York City Police Department, New York, NY	51

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Aborn, Richard M., president, Handgun Control, Inc., Washington, DC: January 29, 1993, letter to Congressman Lamar Smith	109
Archer, Steven, Simke, Chodos, Silberfeld & Anteau, Los Angeles, CA: Prepared statement	60
Gardiner, Richard E., legislative counsel, National Rifle Association of America, Washington, DC: Prepared statement	75
Statement before the Senate Subcommittee on Federal Services, March 26, 1993	81
Higgins, Stephen E., Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury: Guns recovered from Branch Davidian compound	35
Information concerning the illegal gun market	31
Memoranda issued to all regional directors (Compliance) between November 17, 1992 and June 16, 1993	38
Prepared statement	18
Response to Chairman Schumer's questions	40
National Alliance of Stocking Gun Dealers: Prepared statement	86
Ramstad, Hon. Jim, a Representative in Congress from the State of Minnesota: Prepared statement	8

IV

	Page
Schumer, Hon. Charles E., a Representative in Congress from the State of New York, and chairman, Subcommittee on Crime and Criminal Justice: A list of the "Dirty Dozen" rogue gun dealers and case summaries	3
Shaw, Bernard, first sergeant, Maryland State Police Licensing Division, Woodlawn, MD: Prepared statement	50
Simon, Hon. Paul, a Senator in Congress from the State of Illinois: Prepared statement	63
Travis, Jeremy, deputy commissioner, legal matters, New York City Police Department, New York, NY: Prepared statement	54

FEDERAL FIREARMS LICENSING

THURSDAY, JUNE 17, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 12:09 p.m., in room 2237, Rayburn House Office Building, Hon. Charles E. Schumer (chairman of the subcommittee) presiding.

Present: Representatives Charles E. Schumer, Don Edwards, John Conyers, Jr., David Mann, F. James Sensenbrenner, Jr., Lamar S. Smith, and Jim Ramstad.

Also present: Andrew Fois, counsel; David Yassky, assistant counsel; Rachel Jacobson, secretary; and Lyle Nirenberg, minority counsel.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Mr. SCHUMER. The hearing will come to order.

The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods. In accordance with committee rule 5, permission will be granted unless there is objection. Without objection.

This hearing will examine flaws in the regulation of gun dealers. These loopholes have enabled criminals to arm themselves with thousands upon thousands of guns. In the worst, most distressing cases, it is actually the dealers themselves who are the criminals.

The regulations we have for gun dealers would be unthinkable lax in any other context. Imagine a substance that is useful if handled properly but can be highly dangerous, even deadly, in the wrong hands—a new drug, a toxic chemical. Common sense would dictate that we should regulate something like that, that it should be sold only by responsible dealers who can be easily monitored by a government agency. That indeed was the intent of the Gun Control Act of 1968. That law recognized that guns are highly dangerous, and it set up a system in which only licensed dealers can sell them, and these dealers are subject to rules forbidding them to sell to felons or other dangerous people.

Well, it sounds great on paper, but in practice the system has fallen into complete disrepair. The National Rifle Association, along with compliant friends in Congress, has made a mockery of the system. Now anyone who can afford the \$10 a year fee can get a license. You don't have to actually operate a store. You don't have to show that you are in compliance with State law or that the store

will keep the guns secure. You don't even have to be a human being, as one journalist showed recently by getting a license for his dog. The ATF, the agency in charge of monitoring gun dealers, is prohibited by statute—if you can believe this—by statute, they can't collect the gun records until after the gun dealer has gone out of business. They can only go inspect the gun store once a year.

To get the license, all you do is send in this simple form. In the box where it says, "Have you ever been convicted of a felony?" Check no. In the box where it says, "Are you a fugitive from justice?" Check no. Then attach your \$10 by check or money order, stick it in the mail, and the next thing you know, UPS is delivering packages of guns directly to your doorstep.

Predictably, the number of dealer licenses has skyrocketed. There are now 284,000 outstanding—more gun dealers than gas stations, according to a recent study—and most of these licensees do not actually operate storefront dealerships; instead, they sell from their homes, even from their cars. This has made the task of overseeing the dealers absolutely impossible. A dealer can expect to see a Federal agent about once every 20 years.

Now, of course—and I want to underline this—most of the licensees are perfectly law-abiding, but those who are not, the rogue gun dealers, can literally flood the streets with illegal firearms. Just as one thug can do a lot of damage if he has a gun, so too a single trafficker can do a lot of damage with a Federal license. That license enables a trafficker to order weapons by the truckload directly from the manufacturer, obviously across State lines.

Now I have collected the worst cases I could find from the past few years, a "Dirty Dozen" of rogue gun dealers. Most of these 12 men probably couldn't have qualified for a license to cut hair, but they got a gun dealer's license from your Federal Government that they could use to order guns by the truckload and sell them the next day on the street. These 12 hoodlums—and they are simply the tip of the iceberg—put more than 13,000 illegal guns on the street alone. Here are some examples, and they are listed on the chart over there.

John Zodda. Over 5 years, Zodda sold guns on the streets of New York City, 2,400 weapons. He never got a city or a State license, but the Federal license he got using a phony address allowed him to order the guns right from the manufacturer and then sell them to whomever.

John Adams had a gun for different purposes than his namesake. His five misdemeanor convictions would have disqualified him from selling guns in most States. It didn't stop him from getting a Federal license and selling more than a thousand firearms before the police caught up with him.

Carroll Brown. He sold guns from his car in Baltimore, more than 300. When several of his guns were used in homicides, the police finally tracked him down.

And I would like to make this actually a "Dirty Baker's Dozen." The worst offender of all, whose name we can't use because he has not yet been indicted, a gentleman from North Carolina, it is estimated sold between 6,000 and 10,000 illegal guns in the last several years.

[The chart follows:]

THE "DIRTY DOZEN" ROGUE GUN DEALERS¹

Name	Location	Number of guns sold illegally ²	Prison sentence
John R. Zodda	New York, NY	2,400	Awaiting sentencing.
Larry Wilson	Detroit, MI	2,170	N/A.
Milton W. Massengale	Temple, TX	2,000	41 months.
Gustavo Salazar	Los Angeles, CA	1,160	1 year.
John A. Adams	New York, NY	1,000	10 months.
David Taylor	Bronx, NY	800	5-15 years.
Richard Scherbarth	Wisconsin and Minnesota.	800	Awaiting sentencing.
James M. Ryan	Chicago, IL	600	4 years.
George G. Woods	New York, NY	500	Fugitive.
Donald Weiss	Richmond, VA	300	Committed suicide prior to sentencing.
Carroll L. Brown	Baltimore, MD	300	21 months.
Charles MacDonald	Los Angeles, CA	120	46 months.

¹ Of the federally licensed gun dealers convicted within the last five years, these are the 12 identified by the staff of the Subcommittee on Crime and Criminal Justice as having made the greatest number of illegal sales. In addition, a dealer suspected of making 6,000 to 10,000 illegal sales is currently under investigation by federal law enforcement agents and an indictment is expected shortly.

² Minimum number of illegal firearms linked to dealer by law enforcement officials familiar with the case.

THE "DIRTY DOZEN" ROGUE GUN DEALERS—CASE SUMMARIES

JOHN R. ZODDA

Over a five-year period Zodda purchased and distributed over 2,400 weapons, including semi-automatic assault weapons. Zodda purchased some of the weapons through falsified licenses; with other purchases, he used a valid FFL bearing his true name along with a false address. He never held a New York City permit. Zodda was convicted on eight counts and is currently awaiting sentencing.

LARRY WILSON

Wilson sold 2,169 assault rifles and handguns in the course of a year. He kept no records of the sales and diverted most of the weapons to the black market where he received premiums of 300 and 400 percent, earning him proceeds of up to \$1 million. Wilson's sentence is not available from the records center at this time.

MILTON W. MASSENGALE

Massengale was convicted in 1990 for diverting over 2,000 firearms into Mexico during the period between 1982 to 1989. He falsified his records to conceal diversion to a Mexican national who was identified as a major firearms trafficker. He was sentenced to 41 months in prison plus three years supervision and a \$20,000 fine.

GUSTAVO SALAZAR

Salazar obtained a dealers license in 1988 in Los Angeles. By using his FFL to purchase firearms from legitimate dealers, Salazar was able to bypass California's waiting period and background check and sell the weapons illegally. Salazar purchased over 1,500 firearms from at least three major distributors in the L.A. area and sold them to gang members and others. Ninety of the weapons distributed by Salazar have been recovered by law enforcement officials in crime incidents. Salazar was sentenced to one year in prison and two years probation.

JOHN A. ADAMS

Adams used his license to buy weapons through mail order and he flooded the streets with over 1,000 illegal handguns. He was arrested while taking a delivery of six cartons from Ohio with over 100 semi-automatic weapons in them. Adams had an extensive New York arrest history including 5 misdemeanor convictions for illegal drug and gun possession, which disqualified him from obtaining a locally issued dealer license.

DAVID TAYLOR

Taylor has a record of five misdemeanors including drug charges, as well as an indictment for murder at the age of sixteen. This record prevented him from obtain-

ing a New York gun dealers license, but it did not prevent him from obtaining a federal license because he had no felony convictions. Taylor bought and sold over 800 guns from wholesalers across the country, who shipped the guns via the United Parcel Service. Finally, an undercover operation was able to bring charges against Taylor by selling guns to him through the disguise of a United Parcel Service vehicle. Under the terms of his plea agreement, Taylor will be sentenced to 5 to 15 years in prison on 17 counts of illegal weapons possessions and sales.

RICHARD SCHERBARTH

Scherbarth was a former firearms dealer in Wisconsin, yet he continued to use his expired license to acquire 115 handguns between September 1991 and August 1992. An undercover Chicago ATF agent traced a purchase to Scherbarth, who confessed to selling at least 120 guns per year to a non-licensee, who in turn resold the guns at gun shows.

JAMES M. RYAN

Ryan was brought up on charges involving the selling of firearms to known convicted felons and failing to maintain records. Information later disclosed that Ryan was plotting the murder of the government's chief witness and BATF agents involved with the case.

GEORGE G. WOODS

Woods purchased over 500 handguns from a company in North Carolina within a one-year period. ATF agents were able to trace Woods through an undercover purchase of sixteen weapons at a barber shop that was selling his illegal guns. Woods was scheduled to be sentenced April 14, 1993. He failed to show and is now listed as a fugitive.

DONALD WEISS

Weiss and wife Hildegard were both officers at the Virginia Police Equipment Supply Company. They both pleaded guilty to falsifying reports. Prior to sentencing, it was discovered that over 300 guns recovered in New York were traceable to the company. Weiss committed suicide before sentencing was announced.

CARROLL L. BROWN

Brown sold more than 300 guns in a 17 month period. Several of the guns were subsequently used in crimes. Because he had been convicted of a misdemeanor assault charge in 1983, an ATF agent did an on-site investigation in order to see if Brown would qualify for licensing. The agent eventually recommended Brown for approval. It was later discovered that Brown only recorded about half of his sales. Brown also sold to convicted felons by simply telling them how to answer the purchaser questionnaire. ATF agents eventually caught up with Brown in December of 1990 through a trace. ATF agents arrested Brown a week after he sold an undercover agent a Glock 9mm out of the front seat of a 1989 Dodge. Some of Brown's guns were later discovered to be involved in homicides.

CHARLE MACDONALD

For 10 years MacDonald occupied room 744 of the Frontier Hotel in downtown Los Angeles. It was out of this room and on the street that MacDonald sold at least 122 guns. Although MacDonald was dishonorably discharged from the armed services, convicted of theft and carrying a concealed weapon, and also suffers from psychological disturbances, he was able to obtain an license from the BATF. Once he received his license, MacDonald began selling guns to gangs, drug dealers, and convicted felons. MacDonald was finally arrested after he sold a gun to a felon who was later arrested for attempted murder (using the weapon MacDonald sold him). MacDonald said he felt no responsibility for any of the crimes committed as a result of the guns he sold by stating, "Not my problem, I didn't shoot anybody".

Mr. SCHUMER. Well, you can see the problem.

Now gun control debates always get heated, but here, I think, is one area where we can probably put aside the other differences we have and just look at common sense. Everyone wants to keep guns away from criminals, and I think it is clear that gun dealers should

be a key point of control, just as it is crystal clear that they have ceased to perform this function up to now.

So I would like this hearing to explore some possible solutions, but we can already sketch the basic framework of reform. First, we have to do a better job of preventing fraud in dealer applications. Every applicant should be personally interviewed by a BATF agent and should get a fingerprint check. It sounds rudimentary; it is not done now. Second, only genuine gun dealerships should get licenses. No more kitchen table or car seat dealers. And, third, BATF must be given tools to enforce the law—more agents, freedom from the absurd restrictions like the statute limiting dealer inspections to one a year—and greater access to gun dealer records so that crime guns can be traced easily and trends in gun trafficking can be spotted quickly. All these elements will not do a thing to harm the legitimate gun owner.

The bottom line is—and I would like to be working with all members of this committee if they have ideas on how to deal with this—now we can no longer tolerate city streets ruled by war lords armed to the teeth. We are restoring order in Mogadishu; it is time to restore peace and safety here at home.

I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Today the subcommittee will learn more about the supply of guns, about dealers, both law-abiding, hard-working owners of small businesses, and about illicit dealers. We will get closer to answering how children are acquiring guns, guns which in many cases they are bringing into their schools and classrooms, and about how criminals are acquiring guns to use them in their nefarious trade, and about what is the role of stolen firearms in the supply of guns to criminals.

Over the last 6 months there has been a repeated focus on suggested gaps in the dealer licensing scheme; that is, loopholes in the system of getting a license to collect, sell, import, or manufacture firearms. In any event, it is unclear as to what extent any current problems with the system of licensing and with the ensuing compliance with related regulations are due to inadequate enforcement by ATF or due to a lack of laws or loopholes or gaps in current law.

Thus, among the questions to be addressed at this hearing are: Whether there are gaps or loopholes in the system of getting a dealer's license? How easy is it to get the license? Is it too easy? Are licenses abused? And what is the ATF doing to address abuses and to prosecute violations?

Under current law, an applicant is statutorily prohibited from receiving a dealer's license if less than 21 years old, a fugitive from justice, a convicted felon, a drug addict, adjudicated mentally incompetent, an illegal alien, or if the applicant has renounced U.S. citizenship or has been dishonorably discharged from the Armed Forces. There are still other qualifications. Moreover, current law gives ATF the right to inspect dealer records once every 12 months or at any time during the course of a criminal investigation.

Yet, are these provisions of existing law being used and enforced by ATF? It is easy to see that the use of background checks by ATF and actually doing such checks on each and every applicant is what

is envisioned by current law and could have the desired effect of rooting out the bad apples before a license is issued.

I hope to learn more from this hearing about how many Federal firearms licenses have been revoked, how many gun trafficking charges have been prosecuted against firearms dealers, and what sentences were received for those found guilty under current law. In 1990, the ATF revoked only 3 of the 235,684 licenses for gun dealers, or roughly one-thousandth of 1 percent. ATF must more thoroughly police the application process. Background checks are not being done.

One writer notes that 90 percent of all license applicants are not visited or interviewed by an agency inspector before a license is issued by ATF and that, on average, each year less than 6 to 8 percent of all license holders are inspected. One writer notes that it is much harder to get a license to operate a power boat on Chesapeake Bay than to get a Federal firearms license. When the writer applied, no one from ATF called to verify the application; no one interviewed him. Still other writers have succeeded in having licenses awarded to fictitious persons or even to their dogs, giving the word "guard dog" a whole new meaning.

On the subject of background checks, I cannot fail to mention the Brady bill. On May 8, 1991, H.R. 7, the Brady bill of the 102d Congress, passed the House by a vote of 239 to 186. Since the bill was first introduced in 1987, more than 75,000 Americans have fallen victim to firearm-related homicides. Why must we wait for such reasonable legislation? The current Brady bill proposal, H.R. 1025 introduced by Mr. Schumer and myself, creates a 5-business-day waiting period before a handgun can be obtained. During this time, law enforcement officials can help prevent individuals who are prohibited from owning a firearm under current Federal law from acquiring a handgun. The only persons who will be denied a handgun should the Brady bill become law are those who cannot legally own firearms. The waiting period provisions will sunset as soon as a national instantaneous background check hotline is operational. H.R. 1025 sets forth rules on timetables and accuracy requirements for the establishment of such an instant check.

Ironically, current law gives the ATF up to 45 days to do a background check of the applicant, yet we are told this is not enough time and that the 45 days should be extended and perhaps be open ended or without limit. Why is a 5-business-day waiting period enough for purposes of the Brady bill and 45 days insufficient here, especially when the pool of license applicants is far less in number than the pool of prospective purchasers of handguns?

ATF has begun to increase compliance inspections and enforcement. Since February 1993, ATF has been contacting every applicant for a firearms license; yet, I am curious what kind of questions were asked and whether ATF suggested or imposed restrictions not enacted by Congress and not found in law.

I have a copy of the application for a license, for a Federal firearms license, here, and I see that Mr. Schumer has got one as well.

Mr. SCHUMER. We are not applying, either of us, or I am not.

Mr. SENSENBRENNER. Well, I am not applying either. But it is interesting to note that in the instructions for filling out this application it says that you can't operate a firearms business out of your

home if your home is not open to the public, and yet we hear story after story that indicates that some people are doing just that or selling firearms out of cars in the street. Now that is a per se violation of Federal law and a per se violation of the conditions on which a license is issued, and a license would not been issued had there been appropriate checks.

So it is my hope that all sides can work together to plug any loopholes in the laws, to enact new laws where truly needed, and to increase enforcement of existing law. As one witness will frame the question, are we confusing a lack of enforcement power with a lack of enforcement? There is a big difference there. I look forward to hearing if there is a problem with current law and the procedures now in place.

Mr. SCHUMER. Thank you, Mr. Sensenbrenner, for what I think is a very well thought out statement.

Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, I have no statement, other than to compliment you and Mr. Sensenbrenner on your outstanding statements, and I endorse every word you said, Mr. Chairman.

You know, I am an ex-FBI agent, and I carried a gun, and I thought it was perfectly legitimate for me to carry a gun as an FBI agent, and I think that policemen ought to be able to carry guns, but, for the life of me, I don't know why ordinary citizens ought to be able to own handguns and carry them around and get people killed. I am ready to toughen up the laws, because this carnage in the United States is uncivilized. We are the only modern country that allows it. It sounds to me like we are run by a bunch of war lords.

Mr. SCHUMER. Thank you, Mr. Edwards.

Mr. Ramstad.

Mr. RAMSTAD. Mr. Chairman, very briefly because I would like to get to the witnesses, and I would ask that my statement be made a part of the record in its entirety.

Mr. SCHUMER. Without objection.

Mr. RAMSTAD. I, too, appreciate your holding this oversight hearing because I concur that we have a serious problem in our Federal firearms licensing system. Anyone who is concerned about the black market for firearms in our country and the proliferation of illegal weapons on the streets realizes we must thoroughly examine any possible loopholes, and there are, in my judgment, some glaring loopholes in Federal firearms licensing.

I am particularly concerned, Mr. Chairman, about the percentage of illegal guns which are finding their way into the hands of children in our public schools. In my district recently, a number of guns were found in the most—well, certainly one of the most respected high schools in the district. So this is not just a problem in the inner cities, this is a suburban, highly educated, relatively affluent district that I represent. So this problem is widespread.

The fundamental question that I hope the oversight hearing will examine is whether reform of Federal firearms licensing should be focused on enforcement of current law or new legislation.

Thanks again, Mr. Chairman, for convening this hearing because it is a matter which this subcommittee should properly address.

Mr. SCHUMER. Thank you, Mr. Ramstad.

[The prepared statement of Mr. Ramstad follows:]

PREPARED STATEMENT OF HON. JIM RAMSTAD, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MINNESOTA

Mr. Chairman, I very much appreciate you holding this oversight hearing on the serious problems in our federal firearms licensing system.

Recently, increased media attention has heightened awareness about the potential gaps in this system.

Anyone who is concerned about the black market for firearms in the United States and the proliferation of illegal weapons on our streets realizes that we must thoroughly examine any possible loopholes in federal firearms licensing.

I am especially concerned about the percentage of illegal guns which are finding their way into the hands of children, some of whom are now bringing these guns into our public schools every day.

The fundamental question, which I hope this oversight hearing will be examine, is whether reforms of federal firearms licensing should be focused on enforcement of current law or new legislation.

Mr. Chairman, I look forward to the testimony of Mr. Stephen Higgins, Director of the Bureau of Alcohol, Tobacco and Firearms, Senator Paul Simon, and other witnesses on how we can reform the licensing system to better control illegal firearms while respecting the rights of law-abiding citizens.

Mr. SCHUMER. Mr. Mann.

Mr. MANN. I have no opening statement, Mr. Chairman.

Mr. SCHUMER. OK. Then let us call our first witness, who today is Mr. Edward Daily.

If Mr. Daily and the people with him would come forward. Please have a seat.

Mr. Daily is currently serving a sentence of 71 months incarceration after having been convicted in Federal court of illegal firearms transactions. And maybe before we begin, Mr. Daily, we ought to go vote.

We are just deciding whether we should hear Mr. Daily's opening statement.

Mr. SENSENBRENNER. How long is Mr. Daily's opening statement?

Mr. SCHUMER. Basically, he doesn't have a written opening statement. I am going to ask him to describe the activities that led to his conviction, so we see how a gun dealer operates.

Mr. SENSENBRENNER. How long will it take? If he can do it in 5 minutes, let's have him do it. If it is longer, let's wait.

Mr. SCHUMER. OK. Why don't we, Mr. Daily, and then we will ruminate on your—sorry for this interruption.

Mr. DAILY. That's all right.

Mr. SCHUMER. Anyway, I want to thank you for coming, Mr. Daily, because we do want to know how dealers who are willing to abuse their licenses for profit operation—and I stress that most dealers are legitimate, but the few bad apples cost a tremendous number of lives.

Would you just describe for us, Mr. Daily, your activities that led to your conviction.

STATEMENT OF EDWARD DAILY, ACCOMPANIED BY JEFF GRABMAN, AGENT, U.S. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. DAILY. Mr. Chairman, I used the form of straw purchases, and when we went to purchase handguns in the State of Virginia, we would go to gun shows, which are held pretty much every week-

end, and I would basically point out the types of handguns that these straw purchasers would buy right in front of the gun dealers, and most of them didn't even pay any attention to me.

I would have someone with a legal Virginia license and another form of ID. I would hand them the money and then tell them to purchase this firearm, and then they would fill out the paperwork, and, basically, a lot of them would hand the guns to me after I purchased them, and I would walk out with the guns myself and put them in my car.

Mr. SCHUMER. It was obvious that you were violating the law?

Mr. DAILY. Yes.

Mr. SCHUMER. And these people were dealers—were gun dealers?

Mr. DAILY. Yes. At each gun show, there were about, maybe 250 tables with different gun dealers, and we would visit maybe 20, 30 tables. Some of them saw me every weekend, and they knew me, they knew my time. I would, you know: "Hi, How's it going?" You know: "Are you picking up any guns today?" "No."

Mr. SCHUMER. How many guns did you purchase?

Mr. DAILY. Physically, I only purchased four. I used the straw purchasers. We wound up with 150 handguns, 100 in Virginia and about 50 in North Carolina.

Mr. SCHUMER. Let me ask you this. Can you just describe for us, for some of the members of the panel and the audience who aren't familiar, what is a gun show, and how do you find out about these things and who goes?

Mr. DAILY. It is basically, I guess, household dealers that get together, you know. I knew a couple of the gun dealers that sold guns in Alexandria. Usually they rent an auditorium, and they set out all their stuff that they are going to sell, and they invite the public through those magazines, American Rifleman, Gun List, and I would imagine it would be in other gun magazines, and we would just read it and walk up and purchase guns.

Mr. SCHUMER. My colleague describes it as a flea market for guns.

Mr. DAILY. Yes, you could say that it is a flea market for guns. There is every type of gun that anyone would want.

Mr. SCHUMER. What did you do with all these guns you purchased?

Mr. DAILY. They were transported to New York City where they were traded for narcotics or sold individually.

Mr. SCHUMER. Did you do that? Did you drive up to New York City and do that?

Mr. DAILY. Yes, sir.

Mr. SCHUMER. And you were a drug addict, and that is how you supported your habit?

Mr. DAILY. No, sir.

Mr. SCHUMER. No. So explain that a little more.

Mr. DAILY. How I got into it?

Mr. SCHUMER. Well, maybe we will want to know that later, or other members of the panel, but basically, you said—what did you do with the guns? You said you traded them for narcotics.

Mr. DAILY. Traded them for narcotics.

Mr. SCHUMER. You drove up to New York City, gave someone some guns for narcotics.

Mr. DAILY. Yes, sir.

Mr. SCHUMER. Then you sold the narcotics to others?

Mr. DAILY. Yes, sir, because it was a better profit. You could buy the guns cheaper.

Mr. SCHUMER. Right.

How many guns did you buy at one time?

Mr. DAILY. Each individual would buy anywhere from 6 to maybe 8, and, as a group, 12 to 20 a weekend.

Mr. SCHUMER. And you always bought from the same few dealers?

Mr. DAILY. Yes, sir, usually the same dealers because they sold the type of weapons that we wanted.

Mr. SCHUMER. And this was always at gun shows?

Mr. DAILY. Always at gun shows.

Mr. SCHUMER. And the dealers knew that you weren't buying them for your own use.

Mr. DAILY. Oh, yes.

Mr. SCHUMER. It was obvious—you described that—from the way you filled out a form.

How much profit did you make on a gun?

Mr. DAILY. It depends on which type of pistol I would buy. If it was a smaller pistol, say a .25-caliber or a .38-, \$300 profit. If it was a 9-millimeter of the familiar Tech-9 and M-11, \$600 profit.

Mr. SCHUMER. Right.

I am just going to finish up a couple of questions, and then we will go vote.

Were you ever concerned that the police would catch up with you?

Mr. DAILY. It never really crossed my mind, because I saw other people doing the same thing I was doing at the gun shows. You know, someone like me would point out a gun to another person, and he would hand him the money and buy it for him.

Mr. SCHUMER. How many other people did you see doing the same thing, using straw purchasers?

Mr. DAILY. At each show, I would see basically sometimes the same people. I would say about four or five different groups of people coming in.

Mr. SCHUMER. So it would be fair to say that at these gun shows everyone knew that the gun dealers were violating the laws.

Mr. DAILY. Yes, sir. If I was a regular citizen watching someone purchase a handgun this way, I would know, you know, that this was wrong.

Mr. SCHUMER. And these are free and open and everywhere.

Mr. DAILY. Yes, sir. You go in, and there's 250 to 300 tables of guns, everything you need, laying out there. We not only purchased handguns, we would get, like, stiletto knives, brass stuff.

Mr. SCHUMER. Do they advertise these things publicly?

Mr. DAILY. Yes, sir. They have them in magazines: American Rifleman, Guns and Ammo, Gun List, which is a paperback magazine, where they also sell guns out of the magazine, private citizen to citizen.

Mr. SCHUMER. And there is no question in your mind that every dealer you dealt with knew what they were doing was illegal?

Mr. DAILY. Yes, sir.

Mr. SCHUMER. This is just—it is amazing and galling. You know, you hear about it; it sounds benign. You know what happened to the guns. Would you guess that one of the guns that you sold ended up killing some innocent person?

Mr. DAILY. Yes, sir.

Mr. SCHUMER. Do you know that for a fact, or you just surmise it?

Mr. DAILY. I surmise it.

Mr. SCHUMER. It would be your judgment then that guns are easily available to people with criminal records?

Mr. DAILY. Yes, sir. More available to criminals than to citizens, I would say.

Mr. EDWARDS. Will you ask him what does he mean by a gun?

Mr. SCHUMER. OK.

Well, go ahead, Don.

Do you mean handguns?

Mr. SCHUMER. Are you talking about rifles?

Mr. DAILY. Pistols, as in—no rifles—handguns.

Mr. EDWARDS. You are talking about handguns.

Mr. DAILY. Twenty-five-caliber, .38-caliber, 9-millimeter.

Mr. EDWARDS. Revolvers and automatics.

Mr. DAILY. Revolvers are not a market. People want more. They want 20 rounds in a clip, 15 rounds in a clip, 30 they don't want 6 rounds in a revolver.

Mr. EDWARDS. Weapons that are meant to kill people, and not—

Mr. DAILY. And quantity of people, not just be able to shoot a person one time, they want to shoot five people five times.

Mr. SCHUMER. Do you feel bad about what you did?

Mr. DAILY. Yes, sir.

Mr. SCHUMER. Have you done anything to help stop some of these dealers or gun shows?

Mr. DAILY. I cooperated with the Alcohol, Tobacco and Firearms Bureau.

Mr. SCHUMER. Have they indicted or convicted any of the people whom you bought guns from?

Mr. DAILY. Yes, sir. There's 24 people involved in my case.

Mr. SCHUMER. At least you made some good of a bad situation.

The bottom line is then—and you tell me if I am wrong here—there are lots of dealers who are breaking the law who have Federal licenses. They know they are breaking the law. They are selling lots of guns to people like you, and the guns end up killing people.

Mr. DAILY. Yes, sir.

Mr. SCHUMER. There is no doubt in your mind.

Mr. DAILY. No doubt in my mind whatsoever.

Mr. SCHUMER. OK. I think my colleagues will have questions, but probably we should go vote and come back. Since we have two votes, let us try to resume at 5 to 1. That will mean we will resume at 1 o'clock, but 5 to 1. OK, the hearing is temporarily recessed, and we thank you, Mr. Daily.

[Recess.]

Mr. SCHUMER. We will resume, and I just have one final question for you, Mr. Daily, other than thanking you for coming here and

telling us of your activities, and that is, why did you need straw purchasers? Why didn't you just get the guns yourself with either a fake ID or something like that?

Mr. DAILY. At the time, I didn't have an ID to do that with, and I really—I didn't want to.

Mr. SCHUMER. Why didn't you?

Mr. DAILY. I really never needed an ID, you know.

Mr. SCHUMER. You didn't have a driver's license?

Mr. DAILY. No. No, sir, nothing. I just didn't need it.

Mr. SCHUMER. How old were you at the time when you did this?

Mr. DAILY. Twenty, 21. I just turned 22.

Mr. SCHUMER. OK. And why not just buy a fake one?

Mr. DAILY. It was easier for straw purchasers. I had so many people willing to do it.

Mr. SCHUMER. And you paid them to do it?

Mr. DAILY. Yes.

Mr. SCHUMER. How much?

Mr. DAILY. Fifty dollars, \$25 a handgun.

Mr. SCHUMER. There is so much money in this business that that was not a consideration?

Mr. DAILY. No. And sometimes, instead of paying them cash, I would give them drugs.

Mr. SCHUMER. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Mr. Daily, I just have one question. We all know in Virginia that they have an instant check system that is on line to check out whether the person who is attempting to purchase a handgun there is legally entitled to do so. Did any of the people that you enlisted to buy guns at these gun shows get checked out by the dealers there who were selling them?

Mr. DAILY. Yes. A lot of times they would have to wait for the phone calls to go through. One time I had—one person had to wait an hour and a half for his phone call to go through because they were so busy calling and checking the ID's up on people. Usually there was a 25-, 30-minute wait for the gun because they would tell us—the gun dealer would say, "Oh, there's so many people buying guns; the phones are ringing off the hook."

Mr. SENSENBRENNER. So the Virginia gun dealers were complying with their State law in selling these handguns to your straw men and straw women.

Mr. DAILY. Yes, sir. Well, to the part, maybe on the form where it says, "Are you the true purchaser of this firearm?" you know, the person who was buying it wasn't.

Mr. SENSENBRENNER. Virginia recently passed a law that I believe limits people to one or two handgun purchases per month. If that law were in effect when you were doing what you were doing, how would that have affected your business?

Mr. DAILY. I would use more people, and I might try fake ID's, you know, because I only purchased four guns the last time I went when I was arrested. I got a \$10 ID at a check cashing place that I told them what the information was on it, and I went to the DMV and got a walker's ID, and I bought guns with that.

Mr. SENSENBRENNER. So, in your opinion, the law that the Virginia Legislature passed is not going to be effective in achieving slowing down the sales of guns at gun shows and flea markets.

Mr. DAILY. It might slow it down, but it won't stop it because people will still buy fake ID's or they will recruit more straw purchasers.

Mr. SENSENBRENNER. Thank you very much.

Mr. SCHUMER. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Daily, you have obviously been rehabilitated, and it is very much to your credit to be here today. We are grateful, and I hope the parole officer takes that into consideration.

Mr. DAILY. Thank you.

Mr. EDWARDS. And I am sure he will.

How rich did you get at the peak of your career in this business?

Mr. DAILY. It depends. When I went to gun shows, before and after, I never had really, you know, a bank account or wealth, I would have possessions. At the time I had three cars, I would walk around with \$2,000/\$3,000 in my pocket at a time. I never lived in an apartment, I stayed in hotels. I never had a home for the entire time, I was a hotel person every night.

Mr. EDWARDS. You lived a pretty high life.

Mr. DAILY. Yes, sir.

Mr. EDWARDS. And if you were in our shoes as legislators, what would you do about this runaway traffic and possession of handguns?

Mr. DAILY. There's, first of all, the fake ID's. I mean if you could stop the person from getting an ID real easy, you would probably stop a lot of the gun running, because a lot of people do use fake ID's. I do read the newspapers and stuff like that. And also background checks need to be longer.

We originally were going to purchase firearms in Fairfax, VA, and Alexandria, but we found out that there was a 3- to 5-day waiting period. As soon as I found out that I could go to a gun show in the lower parts of the State in Virginia—Richmond County, and I think it is Henrico County, Warrenton—and it was a 5-minute waiting period, the business started booming. We had 5 minutes and as many guns as we wanted.

The waiting period, it was a big factor. The reason we stopped doing it in North Carolina, which was where I originally started, was because the waiting period was too long, and it was two minimum. We could only get three handguns a month. When I found out Virginia was as many as I wanted, I just started my business here.

Mr. EDWARDS. Thanks very much.

Thank you, Mr. Chairman.

Mr. SCHUMER. So what you are saying is that the one gun a month law that just passed in Virginia would have greatly put a crimp in your activities.

Mr. DAILY. It probably wouldn't have because—

Mr. SCHUMER. Or would you have been able to have gone to just 20 or 30 different dealers in a day?

Mr. DAILY. Well, it is one gun a month. I don't know how the system works. From what I understand, it is one gun a month per per-

son, and it goes in the computer, so you couldn't go to a different dealer, but I had a lot of other people lined up that were willing to go.

Mr. SCHUMER. You just get straws to get around it.

Mr. DAILY. I'd just get a lot more people.

Mr. SCHUMER. Understood.

Mr. Smith.

Mr. SMITH. I don't have any questions. Thank you, Mr. Chairman.

Mr. SCHUMER. OK. Then I want to just join with my colleague, Mr. Edwards, in thanking you for cooperating here. Obviously, you know you have done some pretty bad things, but you are also trying to rehabilitate yourself, and you are also trying to educate not only our committee but the public on this kind of problem.

Mr. DAILY. Yes, sir.

Mr. SCHUMER. And that is much appreciated.

I hope after you finish your term in prison, you—I don't know what the term is any more.

Mr. DAILY. Straighten my life up.

Mr. SCHUMER. Straighten your life up—thank you. So that you straighten your life up and learn from your mistakes.

Mr. DAILY. Thank you, sir. I appreciate your time.

Mr. SCHUMER. Thank you, Mr. Daily, and I want to thank your officer for being here.

Mr. DAILY. He is ATF Agent Jeff Bragman.

Mr. SCHUMER. Thank you.

Mr. BRAGMAN. Thank you.

Mr. SCHUMER. Panel two is also just one person, and that is Mr. Stephen Higgins. He is the Director of BATF in the U.S. Treasury Department. He has served with BATF for 32 years, his last 10 years as Director. He has received numerous law enforcement and public service awards. He is accompanied by Mr. Brad Buckles. He is the Deputy Chief Counsel for BATF.

Mr. Higgins, your entire statement will be read into the record, and given the fact that we are going to have votes—the frequency of the votes is going to increase over the next little while—if you could summarize your statement, we would most appreciate it.

Mr. HIGGINS. I will rush through here as quickly as I can. I know you want to get to questions.

Mr. SCHUMER. Thank you.

STATEMENT OF STEPHEN E. HIGGINS, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY, ACCOMPANIED BY BRAD BUCKLES, DEPUTY CHIEF COUNSEL, AND GERALD A. NUNZIATO, SPECIAL AGENT IN CHARGE, NATIONAL TRACING CENTER

Mr. HIGGINS. Thank you, Mr. Chairman and members of the subcommittee for giving us this opportunity to testify.

It is obvious that a major problem facing society today is the ease with which criminals, mental incompetents, and others, including children, acquire firearms. Today I am going to give you an overview of some of our efforts in addressing the proliferation of guns being bought and used illegally by focusing on three areas: first, the licensing of dealers; second, the illegal activities by a certain

small percentage of firearms dealers; and finally, on our firearms tracing activities.

I will give you a few examples, but in the interest of time I will refer you to those in the written testimony as opposed to going into all of the specific cases.

What I can tell you, though, is that we can cite—

Mr. SCHUMER. And thank you for your help with putting together the "Dirty Dozen" as well.

Mr. HIGGINS. Thank you.

The examples in the written statement are from all over the country. They are just in not what people might think are high crime areas where they would expect this; they are in small, rural areas as well, and some of them are in your own backyards.

At the beginning of this fiscal year, 1993, we started the development of a program to address both the increasing number of licensed dealers and the increased use of firearms, particularly handguns in violent crimes. Our first focus was on implementing a program to deal with the influx of applications we were receiving as a direct result of the expanded publicity regarding the relative ease by which you could get a license.

In fiscal year 1992, we were receiving about 2,800 applications a month, and that had been pretty steady over the past few years. In December 1992, that number jumped to 5,200 applications a month. From January to April 1993, we received 24,000 applications, averaging at that time about 6,000 applications a month. So it went from an average of about 2,800 to 6,000.

The large number of license applications and the current volume are primarily the product of minimal licensing standards and fees contained in the existing law. For example, we can't deny a license application simply because the proposed business would violate State or local law, and the annual fee is \$10 a year.

By making it easy to obtain a firearms license, the current system encourages many people to file applications to engage in the business who don't actually intend to. Rather, they become licensees for a number of reasons. One is to acquire personal firearms in interstate commerce at a wholesale price and thereby save more than they paid for the license. Sometimes they obtain licenses to circumvent State and local laws which impose restrictions on the acquisition of firearms by nonlicensees. For example—and I think it has been mentioned—generally laws such as waiting period restrictions, and the one gun per month rule don't apply to licensed dealers. So if you get a license you can avoid those requirements.

While the vast majority of licensees don't contribute to the crime problem in this country, the sheer volume of licensees makes it difficult for ATF to focus our compliance program and our limited resources on those problem dealers where the problems arise.

While we have developed certain targeting strategies to use in our compliance program, it has been sometimes likened to looking for a needle in a haystack, and it may well be close to that.

Beginning in February, we started a new program to address the growing number of applications when that number shot up to 5,000 to 6,000 a month. Under that initiative, we now contact every applicant for a firearms license. The overwhelming majority of those contacts are by telephone. The inspectors ask a series of questions.

Depending upon the answers to those questions, the applicant might be selected for a subsequent visit and more intensive inspection, but that would only be a relative few. This is a program that is tremendously staff intensive and one that we cannot keep up for any sustainable period of time. We are doing that now because of this influx.

During the period from February 1 to April 30, we conducted 11,122 preliminary investigations under this program. We have looked at somewhere around 4,900 of those reports at this time.

Interestingly enough, about 19 percent, close to 20 percent, of the people we are contacting are withdrawing their applications or abandoning their applications when they find out either about the State and local requirements or the fact that they should actually be intending to go into business. Our previous experience had been that about 4 to 5 percent of applicants would typically abandon or withdraw their applications.

Since we have heightened those investigations—well, I will skip those examples because these are examples of some of the more outrageous things we found when we contacted certain applicants, one who shortly thereafter engaged in a shoot-out with local police. He fortunately abandoned his request for a license.

In New York City, we have been working with the local police department to inform the applicants of both their Federal and State responsibilities, and we go out together. During the period of November 1992 through May 1993, we received 211 applications from individuals in New York City. Some of those applicants, would list business premises in public housing projects where we knew the operation would be in variance of local law; they are not allowed to have those licenses in those projects.

Of the all applications received 140, or roughly 66 percent were either withdrawn or abandoned. So it paid off to have the local police department accompany us.

On June 2 of this year, the New York City Police Department received a grant from the Department of Justice's BJA Office for \$175,000 to continue the joint investigation program with us. I think the tremendous success of that effort—a collaborative ATF/NYPD project—is directly attributable to the close relationship that our people in New York have with NYPD and particularly with Police Commissioner Kelly. This working relationship is not limited just to firearms, but is true in arson and explosives cases as well.

According to the results of the survey we conducted over the past year—Operation Snapshot—we found that approximately 74 percent of the licensed dealers operate from their homes. We also estimate that approximately 43 percent of the licensees have no inventory of firearms and have not bought or sold any firearms in the past year.

Fifty-seven percent of all the licensees have some degree of sales. Of these "active" dealers, a majority conduct a minimum amount of business—that is, fewer than 10 sales a year.

What these figures mean, I think, is that the percentage of current and new firearms dealers actively engaged in conducting a firearms business of appreciable size is a relative minority, approximately 27 percent, and it may even be lower than that.

We have been criticized for the relative ease of obtaining firearms licenses and for issuing licenses to disreputable people. The fact is, only statutory amendments can truly remedy all of the problems. We can do greater things from an enforcement standpoint, and we don't deny that; whether we will continue to have the manpower to do that is a separate question, but there are certain things that can only be changed by statutory remedy.

Currently, for example, we can't deny an application based solely on the reputation of an individual, as we do in the alcohol business. Unless the applicant is statutorily prohibited, such as a convicted felon or an adjudicated mental defective, we are compelled to issue the license, period. Therefore, some individuals of questionable character are certain to obtain licenses as firearms dealers.

To talk quickly about sales of firearms to criminals—and you have heard one case today—there are several methods that criminals use to acquire firearms from licensed dealers. They can simply falsify the ATF form where they certify that they have never been convicted of a felony or are in any of the other prohibited categories. There is no Federal requirement that that answer be verified by the dealer.

Additionally, criminals falsify these forms by using fraudulent identification. Criminals also enlist—and that is what you heard today—friends or relatives or others to make purchases on their behalf, and they are referred to as straw purchasers. The method by which criminals acquire firearms that is of most concern to us, and I think is of equal concern to you, is where traffickers conspire with dealers in order to divert firearms to criminal use. Whether they buy their guns directly or whether they acquire guns for resale, virtually all the guns at some point pass through a licensed dealer's inventory, so we need to focus on that.

That is not to say it is commonplace for a licensed dealer to be corrupt and knowingly participate in putting guns in the hands of criminals or youths. That is the exception, although it doesn't take very many exceptions before you have a lot of guns out there.

Let me skip over the examples of people we have picked up—you have a trafficker here and other examples in the testimony—and finally turn to our tracing program. Efforts at stemming the association of Federal firearms licensees with the distribution of guns used in criminal activities are further enhanced by the tracing program. Information from our Tracing Center is used by our agents and other law enforcement officers to identify the ownership sequence of guns used in crimes. We also use tracing information to target firearms dealers who are frequent sources of guns used in crimes and to identify patterns of gun traffickers.

During fiscal year 1993, our Tracing Center thus far has responded to over 33,000 trace requests from various law enforcement agencies. That includes some 24,000 handguns. We have included with the written testimony a chart which shows the types of crimes those weapons were used in or that were involved with those traces.

Again, skipping over the examples of some cases, let me summarize by saying that although the number of Federal firearms license applicants has grown significantly in recent months, we have intensified our efforts by making direct contact with every appli-

cant. Our efforts regarding current firearms dealers have also been successful in identifying a number of those dealers operating outside the law. With continued analysis of information from the Tracing Center, we will continue to identify patterns of gun trafficking to address the increased use of handguns in violent crime.

We thank you for this opportunity to present our views and discuss them with you. Brad and I will be happy to answer any of the questions that we can.

Thank you.

Mr. SCHUMER. Thank you, Mr. Higgins, for your comprehensive testimony.

[The prepared statement of Mr. Higgins follows:]

PREPARED STATEMENT OF STEPHEN E. HIGGINS, DIRECTOR, U.S. DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear today and testify concerning the efforts and success of the Bureau of Alcohol, Tobacco and Firearms in curtailing the flow of firearms to criminals.

A major problem facing society today is the ease with which criminals, mental incompetents, and others, including children, acquire firearms. Today, I will give you an overview of some of our efforts in addressing the proliferation of guns being bought and used illegally by focusing on three areas—the licensing of firearms dealers, our efforts in stemming illegal activities by certain firearms dealers, and firearms tracing activities.

My testimony will include examples of our efforts in these three areas. I could recount typical examples from the known high-crime areas of the country, but I want to illustrate that our efforts span a wider range. Therefore, the cases mentioned will be of our successes in both high-crime cities, as well as other areas—some in your own backyards.

FEDERAL FIREARMS LICENSING

At the beginning of fiscal year 1993, we began development of a national firearms program to address both the increasing number of licensed dealers and the increased use of firearms, particularly handguns, in violent crimes. We first focused on implementing a program to deal with the influx of applications we were receiving as a direct result of the expanded publicity regarding the relative ease of obtaining a Federal firearms license.

In FY 92, our licensing center received an average of 2,800 applications per month. In December 1992, the number jumped to 5,200 applications. From January through April 1993, we received 24,014 applications, for an average of approximately 6,000 per month.

The large number of license applications, and the current large volume of licenses in the country (over 280,000), are primarily the product of minimal licensing standards and fees contained in existing law. For example, ATF cannot deny a license application because the proposed business would violate State and local laws. The annual fee for a dealer's license is a mere \$10.

By making it easy to obtain a firearms license, the current licensing system encourages many persons to file applications who have no intent to actually engage in a firearms business. Rather, they become licensees to acquire personal firearms in interstate commerce or at wholesale prices. Moreover, they obtain licenses to circumvent State and local laws which impose restrictions on the acquisition of firearms by nonlicensees. For example, restrictions like waiting periods and the Virginia one-gun-per-month rule generally do not apply to transactions between dealers. Since one of the purposes of the Gun Control Act of 1968 was to assist State and local authorities in the enforcement of their own laws, it is ironic that the licensing scheme under the Act is being used to circumvent these laws.

While the vast majority of licensees do not contribute to the crime problem in the country, the sheer volume of licensees makes it difficult for ATF to focus its compliance program and its limited resources on problem dealers whose firearms transactions should be scrutinized. In other words, ATF's compliance task is to "find the needle in the haystack".

Beginning in February, we implemented a program to address the growing number of applications. Under this initiative, we contact every applicant for a firearms

license. We have field inspectors in each office assigned to make direct contact with each applicant.

During these preliminary investigations, inspectors inquire about the need for the license, the adequacy of the proposed business premises, and whether the applicant intends actually to engage in a firearms business. Inspectors also discuss the record-keeping and conduct of business requirements with each applicant.

During the period of February 1 to April 30, 11,122 preliminary investigations were conducted. We have analyzed approximately 4,900 of the reports from those investigations, finding that due to our field efforts, approximately 19 of the applicants are withdrawing or abandoning their applications. At the same time, increased efforts by the licensing center resulted in 3,620 new and renewal applications either being withdrawn, abandoned, or voluntarily discontinued.

Since we have heightened our application investigation efforts, numerous individuals who may have otherwise received licenses have withdrawn or abandoned their applications. Among these were two separate individuals in north New Jersey. When an inspector visited one applicant, it was disclosed that the applicant's stated business premises was a room in the local YMCA. The applicant had several firearms in his room, and was in the process of reloading ammunition during the inspection. The applicant was also watching movies about the Vietnam War and appeared to be irrationally enthralled with that conflict.

After an inspector conducted a preliminary inspection on another applicant in north New Jersey, the application was withdrawn. One week later, the applicant was arrested for possessing NFA weapons (machine guns). He was subsequently released, only to later engage in a shootout with local police.

In New York City, inspectors have been working with the local police department to inform applicants of both their Federal and local responsibilities. During the period of November 1992 through May 1993, we received 211 applications from individuals in New York City. Some of these applicants listed business premises located in public housing projects where such an operation would be at variance with local law. Of the applications received, 140 (or 66%) have been withdrawn or abandoned due to our preliminary investigations.

On June 2, 1993, the New York City Police Department was awarded a grant of \$175,000 by the Department of Justice's Bureau of Justice Assistance to continue the joint investigations of applicants for Federal firearms licenses. The tremendous success of this collaborative ATF-NYCPD project is a tribute to the cooperative relationship between our field managers and Police Commissioner Raymond W. Kelly.

According to the results of a survey we conducted from February 1992 to February 1993, approximately 74% of licensed dealers operate from their homes. We also estimate that approximately 43% of licensees have no inventory of firearms and have not bought or sold any firearms in the preceding 12 months. Of the active dealers (57% of all licensees), a majority have conducted a minimal amount of business (fewer than 10 transactions).

What these figures mean is that the percentage of current and new firearms dealers actively engaged in conducting a firearms business of appreciable size is in a minority (approximately 27%).

We have been criticized for the relative ease of obtaining firearms licenses, and for issuing licenses to disreputable persons. The fact is, only statutory amendments can remedy these problems.

Currently, we cannot deny an application based solely on the reputation of the applicant. Unless the applicant is statutorily prohibited, such as being a convicted felon or adjudicated mental defective, we are compelled to issue the license. Therefore, some individuals of questionable character are able to obtain licenses as firearms dealers.

SALES OF FIREARMS TO CRIMINALS

There are several methods used by criminals to acquire firearms from licensed dealers. They may simply falsify the ATF form that certifies whether they have ever been convicted of a felony. There is no requirement with this form that the answer be verified by the dealer. Additionally, criminals falsify these forms by using fraudulent identification. Criminals also enlist friends or relatives to make purchases on their behalf—referred to as a "straw" purchase.

The method by which criminals acquire firearms that is of most concern to us is the scenario where traffickers conspire with licensed dealers to divert firearms to criminal use.

Whether criminals buy guns directly, or traffickers acquire guns for resale, virtually all of the guns that end up in the hands of criminals flow through licensed dealers at some point. This is not to say that it is commonplace for a licensed dealer

to be corrupt and knowingly participate in putting guns in the hands of criminals or youths. We have, however, taken actions against firearms dealers involved in illegal activities.

Since the beginning of fiscal year 1992, 187 firearms dealers have been subject to criminal prosecutions.

In 1990, a firearms dealer in Temple, Texas, was convicted for diverting over 2,000 firearms to Mexico. During the period of 1982 to 1989, the dealer had falsified his required records to conceal the diversion to a Mexican national who was identified as a major firearms trafficker.

More recently, a firearms dealer in North Carolina was arrested for providing between 6,000 and 10,000 handguns to the black market. A search warrant of the dealer's residence and business premises revealed equipment used to alter serial numbers. The serial numbers of the handguns had been obliterated and restamped with fictitious numbers. The illegal firearms had been distributed to purchasers in both North and South Carolina, as well as Tennessee and other states. Several of the firearms have been recovered from convicted felons in Tennessee and South Carolina, a firearms trafficker in New York City involved with Pakistan Nationals, drug dealers in Baltimore, and a bank robber in North Carolina.

FIREARMS TRACING PROGRAM

Efforts at stemming the association of Federal firearms licensees with the distribution of guns used in criminal activities is further enhanced by our firearms tracing program.

Information from our Tracing Center is used by our agents and other law enforcement officers to identify the ownership sequence of guns used in crimes. We also use tracing information to target firearms dealers who are frequent sources of guns used in crimes, and to identify patterns of gun traffickers.

During fiscal year 1993, our Tracing Center has responded to 33,764 trace requests from various law enforcement agencies. These requests can be broken down into 24,879 handguns, 8,848 longguns, and 37 machine guns that were subject of traces. Included with my written testimony is a chart showing the types of crimes involved with these traces.

A firearms dealer in the Bronx, New York, purchased over 500 handguns from a company in North Carolina in one year. Sixteen of these firearms were purchased by ATF undercover agents from a barber shop in the Bronx, which was selling them illegally. The Tracing Center verified the flow of the firearms to the firearms dealer.

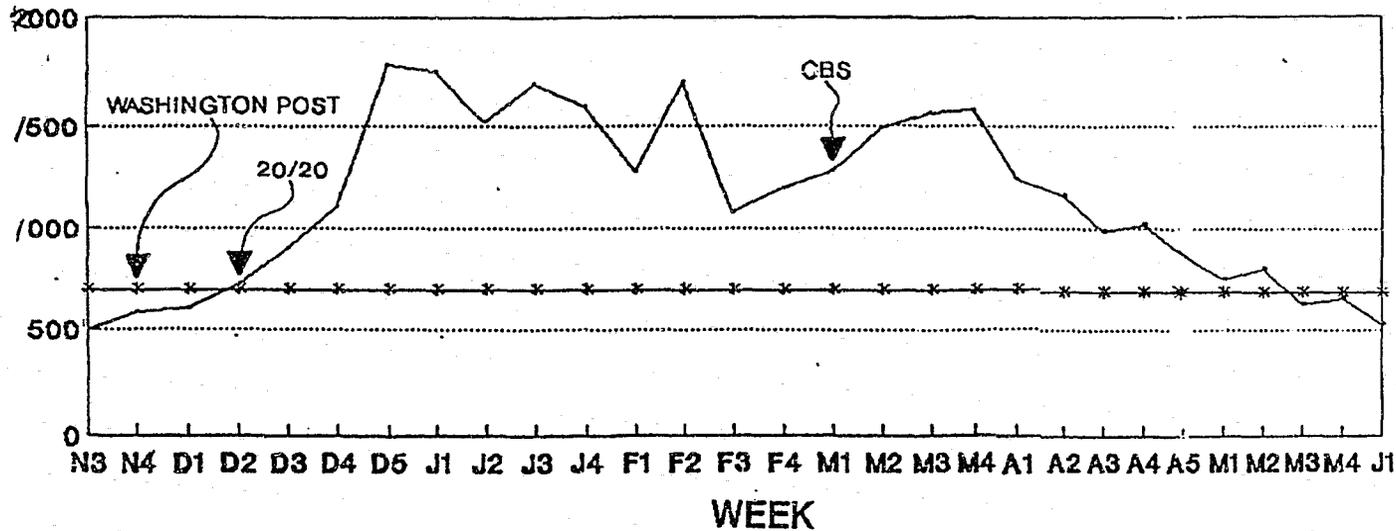
In another recent case, a firearms dealer was arrested for distributing firearms to members and associates of organized crime in Connecticut. The father of the dealer received 50 firearms that were delivered to the father's home in Connecticut from the dealer's premises in Rochester, New York. The serial numbers on the firearms were being obliterated. However, after the original serial number on one firearm was raised, the Tracing Center was able to determine the dealer as the source of the firearms.

In yet another case, a former firearms dealer in Wisconsin was the subject of an investigation by our St. Paul office. The dealer continued to use his expired license to acquire 115 handguns between September 1991 and August 1992. An undercover Chicago agent purchased 2 guns that were subsequently traced to the ex-licensee, who confessed to selling 120 guns per year to a non-licensee, beginning in 1989. The non-licensee resold the guns at gun shows. Through the efforts of our Tracing Center, we documented that 400 new handguns had been acquired by the former licensee and transferred to the non-licensee. Recoveries of these firearms were made in Chicago, Milwaukee and Colorado.

In summary, although the number of Federal firearms licensee applicants has grown significantly in recent months, we have intensified our efforts by making direct contact with every applicant. Our efforts regarding current firearms dealers have also been successful in identifying those dealers operating outside the law. With continued analysis of information from the Tracing Center, we will continue to identify patterns of gun trafficking to address the increased use of handguns in violent crimes.

Thank you for the opportunity to express our views on these very significant issues. I will be happy to answer any questions at this time.

NEW FIREARMS APPLICATIONS RECEIVED WEEKLY



— WEEKLY TREND *— FY92 AVERAGE

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
 OFFICE OF LAW ENFORCEMENT
 CRIMES OF TRACED GUNS - FISCAL 1993 TO MAY 31, 1993

CRIME	GUN TYPE					TOTAL	
	MACHINE	PISTOL	PISTOL O	PISTOL R	RIFLE		SHOTGUN
ARSON		9		5	6	5	25
ASSAULT		643	8	293	143	119	1206
ATTEMPTED BOMBING		1		1			2
BOMBING					1		2
BURGLARY	1	180	8	164	126	117	596
CONSPIRACY		27		4	10	5	46
EXTORTION		1					1
FALSE STATEMENT/REPORT/ID		31		8	5		44
FORGERY/COUNTERFEIT		1		2	1		4
ILLEGAL POSSESSION OF EXP		1		2	2	7	7
KIDNAP/ABDUCTION		21		11	4	2	38
LARCENY/THEFT		10	1	6	3		23
MAIL FRAUD		1				1	2
MANUFACTURING/POSSESSION		1					1
MONEY LAUNDERING		3		12		1	16
MURDER		1291	15	857	342	218	2723
NARCOTICS		2263	50	960	649	548	4413
ORGANIZED CRIME		13		12	5	3	33
OTHER (SPECIFY IN REMARKS)	34	9378	140	4853	2901	2271	19577
OTHER LIQUOR		1		2			3
PAROLE VIOLATIONS		5		1		1	7
POSSESSION STOLEN EXPLOSI		6		3	1	3	13
RECEIVING STOLEN PROPERTY		316	17	237	116	125	804
RICO		4			1		5
ROBBERY/HIJACKING		372	2	237	62	77	750
SEX CRIMES		5		5		2	12
SPECIAL DANGEROUS OFFENSE		161	4	60	73	75	373
TITLE 1 OR SIMILAR STATE	2	1229	21	716	335	369	2672
TITLE 18, USC, 924(C)		163	2	33	32	53	283
TITLE 18, USC, 924(E)		9		3	6	5	23
TITLE 2 OR SIMILAR STATE					1		1
TRANSPORTATION/POSSESSION		2				2	4
	37	16088	261	8488	4825	4007	33706

1993-06-03 16:09.49



**Bureau of Alcohol, Tobacco and Firearms
Office of Compliance Operations
Firearms and Explosives Division**

Open shot



June 1993

OPERATION SNAPSHOT

BACKGROUND

Since passage of the Gun Control Act of 1968 (GCA) there has been a steady increase in the population of Federal Firearms licensees (FFL's) in the United States. In 1968 there were about 87,000 licensees. Today there are over 287,000. In 1968 we did not have sufficient resources to inspect all licensees; nor do we today. Given our current commitment of resources, we project that it would take over ten years to inspect each and every licensee.

Historically, we have based our inspection targeting on some assumptions that we have made about the entire FFL population. We assumed that the vast majority of licensees were residential dealers, but couldn't, with any degree of certainty, calculate how many there were. We suspected that a large number of dealers obtained their Federal Firearms license but never engaged in the business contemplated by that license. It seemed that a significant number of dealers were found in violation of the GCA during our compliance inspections, but again, we couldn't quantify the results.

In an effort to bring the Federal Firearms licensee population into perspective, Operation Snapshot was conceived. We needed to know who the average licensee was; what kinds of activities and how much of these activities he/she engaged in; and a whole host of other questions which, when answered, would provide us basic information relative to the firearms industry.

Given that our resources would not permit an inspection program that targeted each and every licensee, we developed a program that would provide us the information we needed based on a statistical sampling of the entire firearms dealer population. This program, when completed, would provide us information about Federal Firearms licensees within defined degrees of accuracy.

METHODOLOGY

In January of 1992 there were approximately 287,000 Federal Firearms licensees, including manufacturers, importers, dealers, pawnbrokers, and collectors. Of that number, 244,042 licensees were dealers authorized to deal in firearms other than destructive devices. These dealers are commonly referred to as Type 01 dealers.

Using a software package designed for the task, ATF selected a random sample of 400 Type 01 dealers. Each dealer in the sample was inspected. ATF inspectors used a uniform workplan and questionnaire to ensure the accuracy of the information being gathered. In those instances where licensees had discontinued business, their records were examined at the ATF's Out of Business Records Center.

The rates of occurrence of specific findings, which are reflected in terms of percentages, can be projected to the entire Federal Firearms licensee population. The projections, based on a sample size of 400 dealers, will result in a precision rate of plus or minus 5%, with a confidence level of 95%. For example, Operation Snapshot inspections found that 26% of the dealers have commercial premises from which to conduct business. Therefore, we can project, with a 95% level of confidence, the true percentage rate of dealers having commercial premises will be between 21% and 31% of the total dealer population.

CONCLUSION

As a result of the information gathered during the course of Operation Snapshot, we can now conclude, with a high degree of probability, certain characteristics about the Federal Firearms licensee population in the United States.

LOCATION AND BUSINESS CHARACTERISTICS

- The typical federal firearms dealer
 - is a sole owner
 - is a 45-year old male
 - Has held a license for 7 years and 4 months
- 85% of dealers have other sources of income or employment other than a firearms business
- 56% of dealers have their business location in or within 25 miles of a city having a population over 100,000 people
- 74% of dealers conduct the firearms business in their homes
- 18% of dealers are located in commercial premises where other goods are sold to the public (e.g., sporting, hardware and general merchandise)

8% of dealers are located at other commercial premises not associated with sale of goods to the public (e.g., medical, real estate, insurance office, auto repair, beauty shop, etc.)

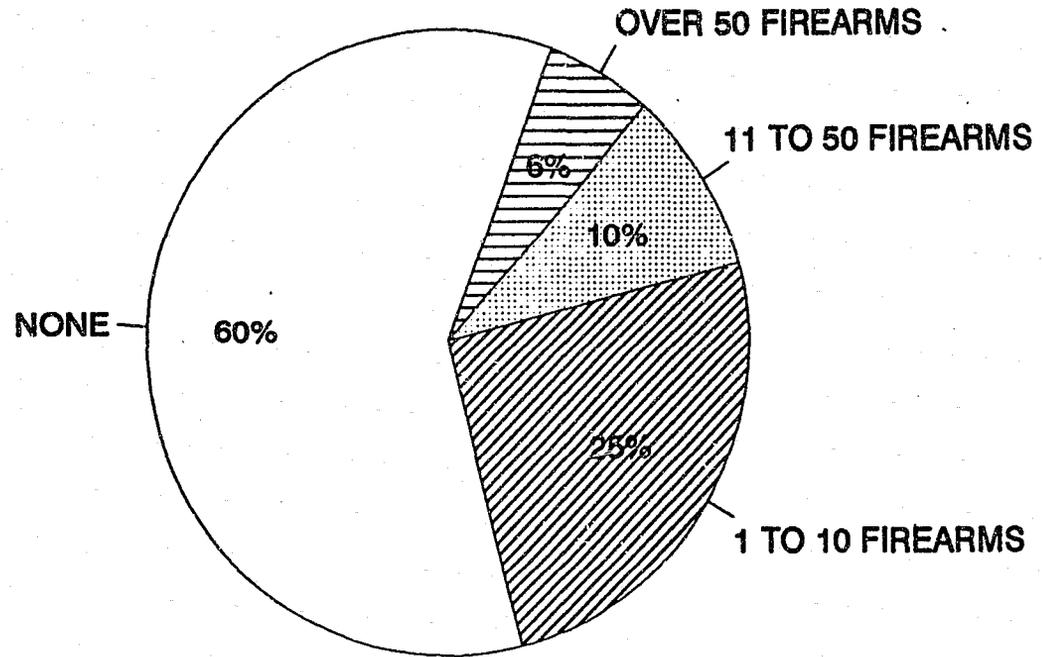
INSPECTION HISTORY

9% were the subject of an application investigation
10% were inspected for compliance with the gun control act of 1968
10% were the subject of a compliance inspection or application investigation during the ten-year period from 1982 to 1991
Federal firearms violations were found at 34% of dealers
7% of all dealers had violations for which followup inspection was required
3% of dealers could not account for the disposition of one or more firearms
12% of dealers surrendered license during ATF inspection
3% of dealers were out of business before ATF inspection

STATE AND LOCAL LICENSING

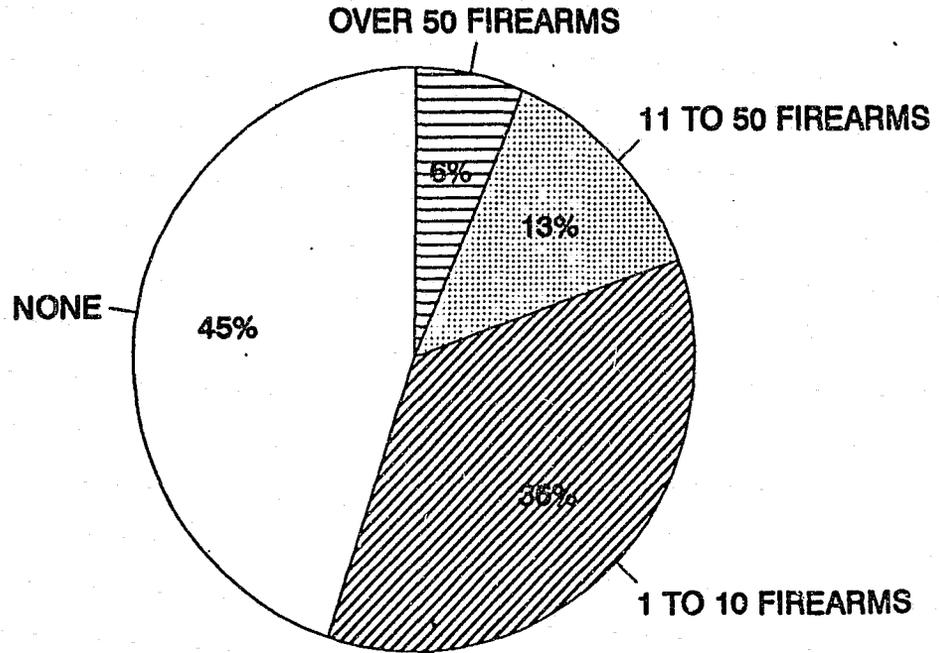
35% of dealers are required to have a state or local firearms license but only 6 of 10 comply
65% of dealers are not required to be licensed for firearms under state or local laws

OPERATION SNAPSHOT FIREARMS INVENTORY AT TIME OF INSPECTION



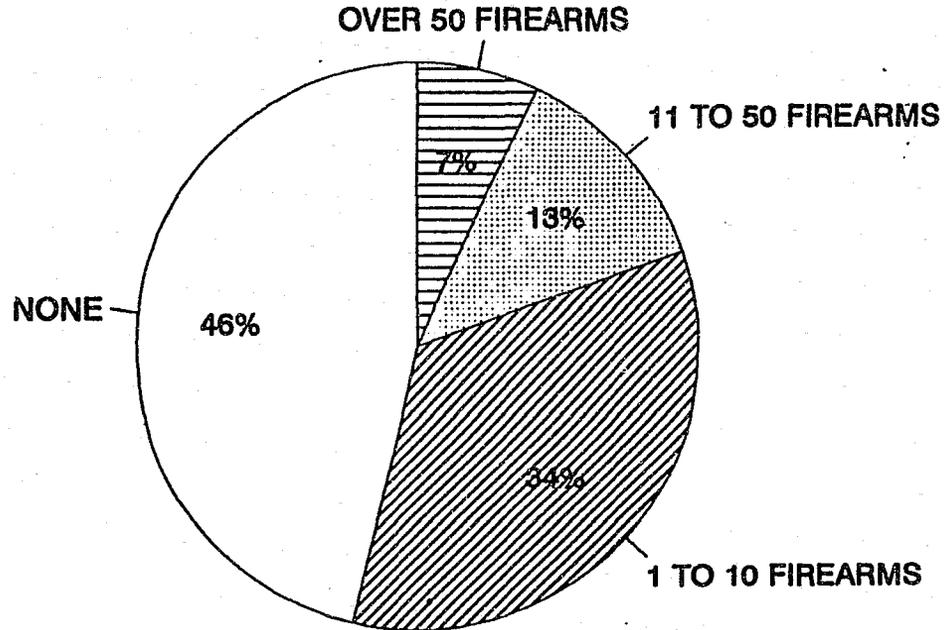
OPERATION SNAPSHOT

FIREARMS ACQUISITIONS 1 YEAR BEFORE INSPECTION



(Dealers whose records or business could not be located are included in the NONE category.)

OPERATION SNAPSHOT FIREARMS DISPOSITIONS 1 YEAR BEFORE INSPECTION



(Dealers whose records or business could not be located are included in the NONE category.)

Mr. SCHUMER. The number, the increase in the people applying for dealerships is astounding and, to me at least, frightening. I mean this is not just a minor increase, this is not just a linear increase, it is even more than exponential, and I would just like some of your wisdom on why it has increased so dramatically in the course of a year. Something is going on, something that potentially is very troubling and very dangerous.

Mr. HIGGINS. I think there are two or three things. We charted the times when the various programs highlighting how easily Federal firearms licenses can be obtained were run, whether it was a Washington Post article here locally or the "20/20" program or the "CBS Evening News" program. It may only be coincidental, but after those programs ran there were spikes in terms of the number of applications that were received, because those programs made it seem—

Mr. SCHUMER. But 2,800 a month to 6,000 a month can't be—

Mr. HIGGINS. I think there are two other reasons.

Mr. SCHUMER [continuing]. Just a TV show, you know.

Mr. HIGGINS. I think part of it is increased exposure to how easy it is to get one. I think also that as States enact certain laws designed to either limit handgun purchases to one gun per month or establish waiting periods or point of sale checks there will be people getting licenses so they can avoid those kinds of restrictions. Finally, I think there are people who simply want to save the money. It is relatively cheap to get a license. They can buy a gun interstate at wholesale prices.

Mr. SCHUMER. How many people do you have on the program that makes a verification of each licensee?

Mr. HIGGINS. Our firearms field inspections program is slightly over 200. About 25 of those are involved in the applications and 180 are involved in compliance.

Mr. SCHUMER. Is that an increase over last year?

Mr. HIGGINS. That is a considerable increase. In 1991, it was 146 total staff years; in 1992, which is the last full year for which we have figures it went up to 209; in 1987, it was 79. But we are still not anywhere near the capability of checking 100 percent of the licenses, as I have said in the testimony.

Mr. SCHUMER. I thought you now make a direct check, you talk to every applicant.

Mr. HIGGINS. I have not been able to because—

Mr. SCHUMER. That is the existing—

Mr. HIGGINS. Yes, that is in the current year. We know we are burning staff years a lot higher than the 209 we used last year. We can sustain that for a while but not—

Mr. SCHUMER. I think your statistics showed 8 percent were actually checked once they became licensed, some very small number.

On the other hand, it seems that your effort to reach out to each person is having an effect, that 20 percent simply drop out once the call is made. I suppose almost all of those are telephonic—I hate that word—reached by telephone.

Mr. HIGGINS. Well, only because the majority of the contacts we make are telephonic. I don't know the differences between the percent of telephone contacts versus the percent of physical contacts that actually result in applications withdrawn or abandoned.

Mr. SCHUMER. It has got to be next to nothing. You are getting 6,000 applications a month, and you have 280 people on it.

Mr. HIGGINS. Actually, just slightly over 200—225.

Mr. SCHUMER. Two-twenty. You are not visiting to many of those people.

Mr. HIGGINS. No.

Mr. SCHUMER. OK. Did you get more resources from Congress to do this, or you just sort of reshuffled the people you had?

Mr. HIGGINS. We have in the past received resources, but most of what we have done has been internal reshuffling of people.

Mr. SCHUMER. OK. Your explanations come a little closer, but the fact just that there is more publicity and the States are cracking down—something is really rotten in Denmark with a huge increase like that, and my guess is, we are going to pay the price for it somehow or other. I am troubled by that.

Let me ask you this. Is it correct that just about every gun held by a criminal passed through the hands of a licensed dealer at one point or another?

Mr. HIGGINS. I think if you take it back far enough that would be correct, because we have a fairly extensive system, yes.

Mr. SCHUMER. So if you really were able to tighten up the dealer laws in a variety of ways, which—I may not have time to ask you about each of them now; I am going to ask you in writing to respond to those—you could reduce the number of guns getting into the hands of criminals and people like that. Would that be a fair statement?

Mr. HIGGINS. That is a fair statement.

Mr. SCHUMER. OK.

What kind of enforcement efforts do you have directed at unlicensed dealers at gun shows? Mr. Daily was talking about that.

Mr. HIGGINS. We have two kinds of efforts. One is what we do from an educational standpoint. At a number of gun shows now we have inspectors set up booths explaining to people who are there, both licensed and unlicensed, firearms laws and what the requirements are to do business.

So we are trying, number one, from an educational standpoint, but there are thousands of gun shows every weekend in this country, and we cover only a very minute percent.

Mr. SCHUMER. Is that because of lack of manpower?

Mr. HIGGINS. Yes.

Mr. SCHUMER. Clearly, it would be effective if you had a Federal agent at every gun show.

Mr. HIGGINS. It would certainly be noted, and it might have a little bit of a chilling effect, I suppose, although, really, we have been pretty well accepted at the larger gun shows. People really seem to want the information.

The other is simply targeting dealers—or targeting individuals who are straw purchasing, and you know what that enforcement effort is.

Mr. SCHUMER. Right.

Are most of the gun shows clearly illegal enterprises, the way Mr. Daily was describing them, or is that just a small number of the gun shows? I mean are there a good number of legitimate gun shows where straw dealing and all this other stuff goes on?

Mr. HIGGINS. I think there are a large number of legitimate gun shows where dealers go and display their wares and fill out the forms and try not to sell to straw purchasers where they obviously know the person isn't the intended buyer. But there are so many thousands of gun shows, and it only takes one or two or a few bad places and you get a lot of guns on the streets. So while I think most gun shows are probably OK, legitimate, the problem ones are a major concern.

Mr. SCHUMER. You know, I find it utterly astounding what you have said. It is easier to get a license to sell a can of beer, or hard liquor anyway—a bottle of scotch—than it is to get a license to sell a gun.

Mr. HIGGINS. This is true at the wholesale level. I don't want to leave that impression that this applies to the retail level.

Mr. SCHUMER. I said it backwards. It is easier to get a license to sell a gun than it is to sell a bottle of scotch. I know in New York we look at the character pretty thoroughly of who gets a liquor license.

Do you have any estimates of the total size and the number of weapons, or in dollars, of the illegal gun market?

Mr. HIGGINS. I don't; I will provide something for the record.

Mr. SCHUMER. Could you?

Mr. HIGGINS. It is just so hard to get a good handle on how many out of 200 million-plus guns.

[The information follows:]

There is no national data on the number of firearms circulating in the illegal gun market, nor is it reasonably possible to estimate such a figure based on a percentage of a specified base (production or weapons recorded stolen). The compilation of information from which more accurate estimates could be drawn is not required under the Gun Control Act. However, the following overview is offered for your consideration.

There are an estimated 160 to 200 million firearms in the United States. There is no question that stolen firearms play a role in arming criminals. Over the past 3 years, ATF is aware of over 250 incidents involving the robbery or burglary of gun stores. The National Crime Information Center (NCIC) figures on stolen firearms are informative. In 1991, 207,481 firearms were reported stolen to NCIC. Of these, 141,846 were handguns. Through September of 1992, 190,305 firearms were reported stolen; 135,671 of which were handguns. The difficulty with the NCIC data is that it is only those firearms which were both reported stolen and for which the serial number was known. This figure is likely to be significantly lower than the actual number of stolen firearms in circulation.

In Fiscal Year 1992, ATF took into custody 17,718 firearms; of these, 1,811 were reported stolen. Unlike NCIC data, ATF's reporting allows for a determination that a firearm was stolen through later investigation based on trace data where the serial number was not known to the reporting person. The ATF figures show that stolen firearms constitute approximately 10% of the guns recovered.

When ATF surveyed armed career criminals on where they got firearms, 34 percent responded that it was from criminal acts and associates. This figure clearly involves stolen guns, although it does not exclude straw purchasers or gun runners.

The fact that stolen firearms are an important source should not obscure the significance of gunrunning and illicit dealing by licensees. As noted in our study of armed career criminals, "Protecting America," some portion of the 34 percent of armed career criminals interviewed by ATF cited sources that could include this trade. Another 6 percent cited gun shows and flea markets—gun shows involve activity by licensed dealers. The largest number, 37 percent, identified their source as "bought on the street." This figure also suggests diversion from legitimate channels, as does the 8 percent that cited as a source friends and relatives.

Criminals use multiple sources. Reasonably, successful intervention on one front yields dividends on the others. However, it is our experience that access to lawful channels of firearms in commerce is overwhelmingly attractive to criminals. Quan-

tity and selection that can not be provided consistently by home burglaries can only be obtained through the retail market.

ATF estimates that there are approximately 7.5 million retail firearms transactions a year in the United States. At the end of 1991, there were 241,706 Federally licensed retail firearms dealers in the United States or roughly 1 for every 1,000 Americans. If, as some have said, there are 70 million gun owners, then they are well served by having a dealer for about every 290 owners.

If the market were evenly divided, based on the 7.5 million sales, the retail dealers are making their living off an average of 31 gun sales annually. This is obviously not possible and while our experience suggests that the majority of licensees are either conducting legitimate business or have the license to make personal purchases, the direct access of even several hundred corrupt licensees a year to the interstate market in firearms has tragic consequences.

In a rational fashion, it is possible to identify the sources of guns to criminals: They steal them or purchase or otherwise obtain them from persons who have stolen them.

They purchase them from legitimate sources, either dealers or innocent private sellers.

They have them purchased for them by persons who will not alert the seller.

They purchase them from corrupt licensees or from persons who have made or had purchases made at corrupt or legitimate licensees.

What they obtain is more difficult to determine. It is our experience, and the result of our tracing studies in various cities, that while there are variables, criminals desire higher capacity firearms, concealment is an important issue and being untraceable is a premium. It is not a paradox to recognize that they will use what is most easily available or what is made available to them.

Where do criminals get guns? Figures suggest that around 6 percent of them go to gun stores and buy them. A Department of Justice study of prisoners who volunteered to be surveyed in medium security prisons yielded that figure several years ago. ATF determined that about 7 percent bought their guns directly at retail in the "Protecting America" survey of armed career criminals. Reports from States with instant check systems indicate approximately 2.5 percent to 6 percent of applicants are turned down because of their record.

This latter figure is important, even though it deals only with persons who are "apprehended" by a check. Based on the estimate of 7.5 million retail sales a year, using the lowest figure for apprehensions, and presuming only one gun is purchased, this places a possible 187,500 handguns a year, of whatever type and size preferred, directly into criminal hands. This is entirely independent of private transactions, straw purchases, illicit activity by a dealer, and stolen firearms transactions.

Mr. SCHUMER. Finally, I have been told that Mr. Nunziato, who is the special agent in charge of tracing was going to be here today. Might I ask him a few questions?

Mr. HIGGINS. Certainly.

Mr. SCHUMER. OK. As I understand it, Mr. Nunziato—and welcome to our panel—this is Jerry Nunziato, the special agent in charge of the National Tracing Center—gun dealers are required to keep records of whom they sell the guns to, but a provision in the Treasury Department appropriations bill prohibits BATF from "centralizing or consolidating" the sales records kept by dealers. So a BATF agent who needs to see these records has to actually go to the gun store where they are kept.

Would you be able to trace more gun crimes if the records were centralized?

Mr. NUNZIATO. Possibly, but if you look at the volume of guns that are sold every year, close to 7 million, keeping records on them in a central location would be very burdensome.

Mr. SCHUMER. You would have to have a lot of keypunchers.

Mr. NUNZIATO. A lot of keypunchers. An average keypuncher probably could do 3,000 to 4,000 serial numbers a day. That is just the serial number with no names or addresses or definition of the type of weapon. So it would be very, very difficult.

Mr. SCHUMER. OK. I am asking that same thing. So, right now, if you wanted to trace a gun, the average agent, working all day, could trace eight.

Mr. NUNZIATO. This is our out-of-business records.

Mr. SCHUMER. I understand. But with some investment in computers and keypunchers, you could probably trace hundreds or thousands, if you made that initial investment.

Mr. NUNZIATO. Correct.

Mr. SCHUMER. How much would such an investment cost?

Mr. NUNZIATO. I could give you just general ideas. We have right now on file at the Tracing Center 48 million records that are in various formats, and everything has to be physically looked at. They can't be computerized, such as scanned into a system; they have to be actually reviewed. They first have to be microfilmed because they deteriorate after a couple of years. We microfilm them, and then we have to look at each document and keypunch in the numbers.

Mr. SCHUMER. Would it cost more than \$10 million?

Mr. NUNZIATO. We had an estimate that it would take 5 years with 30 people working on it full time.

Mr. SCHUMER. What does that come to?

Mr. HIGGINS. I was afraid you were going to ask that. It is roughly \$900,000 a year for 30 people.

Mr. SCHUMER. Five years, did you say?

Mr. NUNZIATO. That is with our current estimate of the records we have. But we only receive the records of 20 percent of the dealers that go out of business.

Mr. SCHUMER. I understand.

Mr. NUNZIATO. So if we got all the records, it would be five times larger.

Mr. SCHUMER. Once you did it, it might have a real effect.

Mr. NUNZIATO. It would definitely have an effect, because right now we see a trend where guns are being resold, and we have no way of tracing those weapons. We call them used weapons. This way, we may be able to track it.

We had one instance where we had one gun dealer sell the same weapon five times over a 2-year period, and it was just through a test project that we were able to identify this.

Mr. SCHUMER. If we were simply to repeal this statute that said you couldn't centralize or consolidate, would that be of some help to you, understanding that the main help would be only if the records were centralized and punched in, computerized?

Mr. HIGGINS. Gerry knows, and he knows he is free to speak, and I think also the Assistant Secretary sent you a letter to the effect that Treasury would support that.

Mr. SCHUMER. Right.

Mr. HIGGINS. So I don't want to put the pressure on Gerry.

Mr. SCHUMER. Very good.

I don't have any more questions. I thank all of you for your testimony.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you.

Mr. Higgins, I have been one who believes that people who hold licenses from the Government, for whatever purposes, should pay

for at least the bulk of the cost of obtaining that license and maintaining the license as well as whatever enforcement activity there is and discipline in case there should be a violation that should cause either a suspension or revocation.

The Gun Control Act of 1968, which you are the primary enforcement agency of, does envision a background check of everyone who applies for a Federal firearms license. How much do you think that would cost if you had the personnel to do the background checks that were envisioned in this act before issuing the license and doing it within the 45 days that is required?

Mr. HIGGINS. The background check now, given where the licensing standards are, would probably take about 750 staff years, and then you are going to ask me to multiply that again. That is—I don't know—30—

Mr. SCHUMER. Thousand staff years.

Mr. HIGGINS [continuing]. Thirty-five million—I don't know. I will give you the exact figure.

Mr. SCHUMER. Yes, 35 million.

Mr. HIGGINS. Yes, 35 million sounds about right, to do a background on every person and try to get out—

Mr. SENSENBRENNER. And how many licenses are there currently valid?

Mr. HIGGINS. There are about 289,000 licensees. Some of those are collectors. So about 244,000 actual.

Mr. SENSENBRENNER. I am trying to do the division too, but that would require somewhere between \$750 and \$1,000 per license in order for it to pay for itself rather than have the taxpayers pay for it?

Mr. HIGGINS. We have done it the other way. I can tell you what it will cost. To do a license application would cost about \$100-plus per application.

You see, we could get anywhere from 35,000 to 50,000 new applications a year. So about \$100 an application.

Mr. SENSENBRENNER. Well, it seems to me that, at minimum, these fees ought to be raised so that the taxpayers are not subsidizing giving someone a license, that they would have to pay for the cost of getting that license themselves.

Mr. HIGGINS. We would agree.

Mr. SENSENBRENNER. OK. Thank you. That is very useful information.

I have got a couple of questions relative to the incident at Waco. Was Vernon Howell, who was also known as David Koresh, licensed by the ATF to possess fully-automatic machineguns?

Mr. HIGGINS. I don't want to get into title II information, but I don't believe he had any licenses.

Mr. SENSENBRENNER. Do you know if anybody in the Branch Davidian compound had either an ATF license, Federal firearms dealer's license, or collector's license?

Mr. HIGGINS. I am not aware of anybody having one. I don't believe anybody did.

Mr. SENSENBRENNER. OK. So the answer is no.

Mr. HIGGINS. No.

Mr. SENSENBRENNER. That is very interesting since, according to the affidavits that were submitted to the Federal magistrate, there

were lots of orders from a licensed gun dealers to deliver firearms, either semiautomatic as well as parts that could be used to upgrade them to fully automatic, and yet no one had a firearms dealer's license there.

Do you know if any firearms have been removed from the Branch Davidian compound?

Mr. HIGGINS. I know there was evidence, and the evidence was in the affidavit that was returned, for the search warrant. There were firearms in that. I don't know what they are, but that is available. I think that is a matter of public record.

Mr. SENSENBRENNER. I know that, but I am wondering if there were any firearms that were removed from the Branch Davidian compound after it burned down. We in Congress and the press have not seen any reports that firearms were removed from the ashes there.

Mr. HIGGINS. Yes, that is what I was saying. The evidence that was there when it burned down and that was recovered by the rangers and the others who worked the crime scene, that evidence is listed on a search warrant that was returned, and I think it is a matter of public record.

Mr. SENSENBRENNER. That was before the fact rather than after.

Mr. HIGGINS. No. This is after the fire. This is what was taken after the fire.

Mr. SENSENBRENNER. OK.

Mr. HIGGINS. That is available. That is a matter of public record. There were approximately 250 guns. I don't have the exact figure here, and I can provide it for you.

Mr. SENSENBRENNER. OK. I would appreciate that.

Mr. SCHUMER. Without objection, that will be submitted for the record.

[The information follows:]

There were 237 firearms recovered from the rubble of the Branch Davidian compound.

Mr. SENSENBRENNER. My final question is relative to the licensure process and the investigations. The application form that I read off in my opening statement indicates that in order to get a dealer's license you have to have a part of the address that is listed on the application being open to the public, and unless you open your home to the public you cannot possess a Federal firearms license for that particular address.

In your testimony, you indicated that about 75 percent or 74 percent of the addresses listed on applications were in private homes. Why aren't these applications being denied if the homes aren't open to the public?

Mr. HIGGINS. It is my understanding that they must agree to open that home to the public, and there is an area that we can inspect.

Mr. SENSENBRENNER. OK. That poses some interesting questions relative to zoning laws, because if you are living in a residential area you can't conduct a business open to the public in most of the zoning laws that I am familiar with.

Mr. HIGGINS. Mr. Sensenbrenner, it is both ways. When we conducted Operation Snapshot, we found that about 60 percent of the licensees were meeting State and local requirements. So there are,

surprisingly, a fair number of places that will let you sell firearms from a residence. New York City I don't think happens to be one of them.

Mr. SCHUMER. If the gentleman would yield—

Mr. SENSENBRENNER. I yield.

Mr. SCHUMER. Even if the State law should prohibit it, you would be required, unless the applicant were prohibited for one of the specific reasons that Jim read off before—you would be required to send them a license.

Mr. HIGGINS. We would be required to send them a license, and that is what is happening in the city of New York. They explain to them that they also have to meet zoning requirements.

Mr. SENSENBRENNER. Thank you very much.

Mr. SCHUMER. Mr. Edwards has just a couple of questions, so maybe we will do that now, and then we will briefly recess.

Mr. EDWARDS. Just one question. Thank you, Mr. Chairman.

Mr. HIGGINS, over the last 6, or 8, or 10 years, in enforcing this worthless law, it must have been very discouraging for your splendid outfit. Isn't that correct?

Mr. HIGGINS. It is frustrating at times, yes.

Mr. EDWARDS. Frustrating. And I am sure sometimes you have wondered what in the world Congress was doing in enacting such, as I say, a worthless law.

Did you ever complain and explain to Secretaries of the Treasury that this law should be changed or done away with?

Mr. HIGGINS. To answer your question, yes, we have provided documents recommending certain changes. That is even going on today. It would be interesting to note that one of the last times we appeared before congressional committees on this subject in 1980 and 1981 where we were being criticized for straw purchases and otherwise entrapping dealers who were selling weapons illegally. So we have come kind of full circle. Today we get criticized for not doing enough with certain dealers, and there we were getting criticized for doing too much. So it has been a little frustrating.

But yes, we have recommended changes, including raising license fees, changing the standard so applicants have to comply with State and local laws before they get a license. Those are examples.

Mr. EDWARDS. Thank you.

Mr. SCHUMER. Thank you, Mr. Edwards.

My colleague, Mr. Smith, does have some questions of you. So if we could recess and if you could remain around, and Mr. Smith will finish his questions, and then we will move on to the next panel.

We will resume at 2 o'clock. We have two votes. Thank you. We are temporarily in recess.

[Recess.]

Mr. SCHUMER. The hearing will resume, and Mr. Smith will now take his shot at the questions.

Mr. SMITH. Mr. Chairman, first of all, thank you for holding this panel open, and I thank the panelists themselves for waiting for us to return from the vote.

Director Higgins, in 99 percent of the enforcement measures that you have described today, 99 percent of the responses to the questions show me that the steps that you have taken in enforcement

have been not only necessary but productive. I do want to get into one area that I have some concerns about that is very much the exception to the rule.

In your testimony, on page 2 of your prepared testimony, you talk about, "ATF cannot deny a license application because the proposed business would violate State and local laws." I think you would agree that the BATF does not have the authority to enforce local zoning measures, for example, or business ordinances or things like that. Is that correct?

Mr. HIGGINS. That is correct.

Mr. SMITH. I have to tell you that I have—in fact, I have with me a couple of dozen letters from law-abiding dealers who say that they have been coerced by BATF agents into either surrendering their licenses or made to feel that they cannot conduct business because the agents have mentioned and used a threat of the ordinances and zoning laws to try to basically succeed in having a chilling effect upon these dealers. First of all, would you respond to that?

Mr. HIGGINS. Sure. I don't know whether you would like to at some point later—if you want to share who those people are. The intent of what we are doing now, and we are doing it—because we are checking 100 percent of the applications coming in—is to inform people of applicable State and local requirements. Now whether an inspector is going beyond this or not, I cannot determine without looking at the specifics.

But what we are telling people in those cases is, "Here's what the ordinances are." In many of those places, we have a continuing agreement with either the State or local authorities or both that we are going to be providing them the names of the licensees as licenses are issued in their area. They, in turn, are going to check for compliance with either State or local ordinances. The problem is, I am not sure how this is being said.

Mr. SMITH. Isn't part of the problem the fact that it is being said at all? And I am just wondering why the agents would even be talking about local ordinances.

Mr. HIGGINS. No, I wouldn't fault an inspector who is trying to tell a prospective applicant, as an example, that, "You are in violation of a State or local law." To me, he is at least doing him a favor by telling him that that law is there.

The intent of the Gun Control Act is to support State and local government, and, to me, ATF is supporting them by providing them information that people may be violating their laws, if that is the case. We are not saying the licenses are, we are simply trying to support the efforts of State and local governments, and I think they appreciate it.

Mr. SMITH. As you suggested, maybe it is the way the information is being provided.

Mr. HIGGINS. Yes.

Mr. SMITH. What efforts are you making to make sure that the agents are either trained or being told not to pass along that information in a threatening way?

Mr. HIGGINS. Just anecdotally, I get reports each day from each one of our field areas. People that work for me know that I religiously scan those, looking to see if we have gone beyond the

bounds of what we said we would do, and that is simply to inform people and not to coerce them.

If I see even an example of that, I inquire, "Are you sure that there wasn't some coercion here? Are you sure these people are doing this?" I don't know that I am catching all of them. That is why I asked you if you have any examples. I will be happy to look at them, because it is not our intent we do that.

Mr. SMITH. Have you issued some kind of a written directive to the agents as to how they should or should not present that information?

Mr. HIGGINS. I am pretty sure we have something in writing explaining what the ground rules are before inspectors make that contact and what they should be saying.

Mr. SMITH. I know in one instance a procedure was in writing. I don't know to what extent it was disseminated. But there was one procedure I saw that reads as follows: "In no event should ATF personnel suggest to a licensee that a license be surrendered because of such violations." They are speaking here of zoning laws and other business type ordinances.

But I am just wondering, one, is that being disseminated to all the individuals involved? And, two, are they being told specifically not to engage in any type of coercion, not to engage in any type of threat that the licenses might be revoked if they are violating such ordinances?

Mr. HIGGINS. Yes, it is being disseminated to them. We do try to detect any abuse, but I can't say that with 200-plus inspectors making contact, that it doesn't occur. So I can't say to you today that it has never been, but I will check any examples you have.

Mr. SMITH. So far as you know, it is in writing to the agents.

Mr. HIGGINS. It is in writing, I was just informed. It is in writing. I will provide you what is in writing.

Mr. SMITH. OK. And you are just going to try to do a better job of making sure they understand the meaning of that.

Mr. HIGGINS. Yes.

[The writing follows:]

The following are relevant excerpts, quoted verbatim, from memoranda issued by the Associate Director (Compliance Operations) to all Regional Directors (Compliance) between November 17, 1992 (when the increased emphasis on screening applicants began) and June 16, 1993. The Office of Compliance Operations is responsible for licensing and compliance of Federal firearms licensees.

"To assist field offices in determining if an applicant, or renewal candidate is engaged in a bona fide firearms business, the Firearms and Explosives Operations Branch is compiling a comprehensive list of specific State and local licensing requirements.

"This list will also be forwarded to field offices by next week. We recommend the establishment of liaison with local law enforcement and regulatory agencies (i.e., licensing bureaus, zoning boards, sales tax offices, etc.) to assist in determining if dealers and applicants are in compliance with all applicable regulations."

"Existing statutes preclude ATF from conditioning the issuance of a Federal firearms license (FFL) on compliance with State and local laws. Consequently, the failure of a firearms business to conform to State or local laws is not in itself sufficient legal grounds to deny an application. However, it may be evidence that an applicant does not have the requisite premises from which business is intended to be conducted. Thus, the fact that the applicant does not intend for the premises to comply with State and local laws may well indicate that he does not actually intend to engage in a business at all, or at least does not intend to conduct business from the premises listed on the application.

"Your Area Supervisors should establish, if they have not already done so, effective liaison with ATF Law Enforcement, as well as State and local authorities concerned with the regulation of firearms businesses. Contacting State and local authorities will ensure awareness on the part of Compliance personnel of all current State and local requirements that applicants must meet when engaging in a firearms business.

"When it appears that an applicant may not be able to conduct business in compliance with State or local requirements, the applicant will be advised that ATF will refer the matter to State or local authorities should a Federal license be issued. The applicant will also be advised that, in lieu of this contact, the application may be voluntarily withdrawn. If the applicant insists that ATF act upon the application, a comprehensive investigation will be conducted to determine if the applicant has the requisite premises from which he or she intends to conduct a firearms business."

"When applicants may not be able to operate in compliance with State or local requirements, they are to be advised that ATF will refer this matter to the appropriate State or local agency, should a license be issued. Before making these referrals, the applicants should be given the opportunity to withdraw their applications until such time as they can meet State or local requirements."

"While everyone is to be commended for their efforts, it is imperative that we remain cognizant of the increasing attention being focused on ATF due to our firearms program. A professional attitude and non-confrontational behavior must be exemplified at all times, especially by Inspectors.

"Our mission is not to put Federal firearms licensees out of business, but to ensure that all licensees adhere to the requirements of the Gun Control Act (GCA).

"Similarly, any determination as to whether an FFL should be issued must be within the scope of the GCA. Non-compliance with State or local law, or not conducting business from a commercial location, are not prohibiting factors to obtaining an FFL. If an applicant/licensee is not in compliance with State or local law, advise them that the information will be referred to the appropriate State/local officials. An applicant is to be afforded the opportunity to withdraw the current application for an FFL and re-apply when compliance with State/local law has been achieved. Do not deny applications or revoke licenses due to these factors. In cases where referrals are to be made, they should be forwarded to all appropriate agencies on each occasion where an applicant or licensee is found to be operating in violation of State or local laws."

Mr. SMITH. You asked me for examples. I have a couple of dozen letters here from, as I say, law-abiding licensed dealers that I will pass on to you as you leave right now, in fact.

Mr. HIGGINS. I appreciate that.

Mr. SMITH. And if you could get a written response back to me trying to respond to some of their concerns.

Mr. HIGGINS. I will do that, absolutely.

Mr. SMITH. OK. Thank you, Director Higgins.

Mr. HIGGINS. You are welcome.

Mr. SCHUMER. Thank you, Mr. Smith.

I just had one final question which was touched on before, and that is, considering the widespread use of false ID cards to evade restrictions on felons buying guns, do you think a national gun owner's ID card would help prevent criminals from obtaining firearms?

Mr. HIGGINS. I don't know whether a national one is needed. I think the system in Illinois, for example, which has a firearm owner's identification card, and maybe in New Jersey, have some strengths. I think there are some strengths in setting up that because a better job can be done of identifying whether the person has a false ID.

Several years ago when the Attorney General was looking at systems to do this, we did as an agency suggest that that might be the way to go but it might be through State model laws as opposed to a Federal statute.

Mr. SCHUMER. Thank you, Mr. Higgins and Mr. Buckles. We appreciate your being here and your patience. I apologize to everyone, including the next panel and the subsequent one to that. It is just a lot of votes, and it is stretching things out a little bit.

Mr. HIGGINS. Thank you.

[Response to Chairman Schumer's questions follow:]

MAJORITY MEMBERS
 JACK BROOKS, TEXAS, CHAIRMAN
 BOB DODD, CALIFORNIA
 JOHN EDWARDS, JR., MICHIGAN
 RONALD L. MACCOLL, KENTUCKY
 WILLIAM J. HURDLE, NEW JERSEY
 RICK STALL, DELAWARE
 PATRICIA SCHROEDER, COLORADO
 DAN RUDOLPH, IOWA
 GARETT FRANK, MASSACHUSETTS
 CHARLES C. SCHUMER, NEW YORK
 HOWARD L. BIRMAN, CALIFORNIA
 RICK BOUCHER, VIRGINIA
 JOHN SPARTAN, TEXAS
 GEORGE E. SANDERSON, ILLINOIS
 CHRIS A. WASHINGTON, TEXAS
 JACK KEMP, INDIANAH
 JEROME RYAN, NEW YORK
 ROBERT C. SCOTT, VIRGINIA
 BRUCE BAKER, OHIO
 MELVIN L. WADE, NORTH CAROLINA
 JAMES OREGON, CALIFORNIA

ONE HUNDRED THIRD CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

MAJORITY MEMBERS
 HAROLD FORD, JR., NEW YORK
 CARLOS J. MOOREHEAD, CALIFORNIA
 RICHARD J. HELMS, FLORIDA
 F. JAMES BRIDGES, MISSOURI
 BOB MCCOLLIN, FLORIDA
 GEORGE W. CARRAL, PENNSYLVANIA
 HOWARD COBLE, NORTH CAROLINA
 LAMAR B. SMITH, TEXAS
 STEVEN SCHIFF, NEW JERSEY
 JIM AMSTUTZ, ILLINOIS
 ELTON SULLIVANT, CALIFORNIA
 CHARLES T. CANAVY, FLORIDA
 BOB MOHR, SOUTH CAROLINA
 BOB GOODLATT, VIRGINIA
 MAJORITY—113-3091
 MINORITY—113-4099

June 28, 1993

Honorable Stephen Higgins
 Director
 Bureau of Alcohol, Tobacco, and Firearms
 U.S. Department of the Treasury
 600 Massachusetts Avenue
 Washington, D.C. 20226

Dear Mr. Higgins:

Thank you very much for your testimony on June 17, 1993, before the Subcommittee on Crime and Criminal Justice on the topic of federal firearms licensing. Your testimony was most illuminating.

As I stated at the hearing, I have several additional questions on this topic which I would like to pose in writing:

- 1) What level of expense is currently required to process applications for federal firearms dealer licenses? Does the revenue realized from the license fee cover this expense? If not, how much would the license fee have to be raised if the current level of service were to be made self-supporting?
- 2) How much would the license fee have to be raised to pay for a thorough background check of each applicant for a federal firearms dealer license, including a premises inspection and a fingerprint check?
- 3) In your testimony, you indicated that every applicant for a federal firearm dealer license is now being contacted by a BATF agent. Do you have adequate resources to continue this initiative?
- 4) You also indicated that most of these contacts are conducted by telephone. What information is obtained in these interviews? For what portion of license applications does a BATF agent actually visit the premises from which the applicant proposes to sell firearms?
- 5) If the interviewing agent believes that an applicant does not intend actually to maintain a business at the address on the

application--by, among other things, opening the premises to the public and keeping regular business hours--does the agent have authority to deny the application?

- 6) How many federal firearms dealer licenses were revoked in each of the past five years because the licensee failed to comply with the conditions of licensure?
- 7) How many licensees were fined or criminally prosecuted in each of the past five years for failure to comply with the conditions of licensure?
- 8) Which, if any, of the following specific legislative proposals would aid BATF enforcement efforts:

- amending Title 18 to require that federally licensed firearms dealers maintain a business premises;
- requiring dealer license applicants to show compliance with state and local regulations before getting their licenses;
- eliminating the 45-day limit on the application review process for dealer licenses;
- eliminating the one-a-year limit on dealer inspections;
- increasing penalties for willful violations of dealer restrictions;
- requiring dealers to respond to BATF tracing inquiries by telephone;
- requiring dealers to report thefts of guns to BATF;
- requiring a common carrier who is shipping guns interstate to verify that the recipient is a valid licensee;
- drug testing licensees to ensure that they are not involved with narcotics trafficking?

Thank you for providing this information, and for your continued cooperation with the Subcommittee as we endeavor to combat violent crime.

Sincerely,

Charles E. Schumer

CHARLES E. SCHUMER
Chairman
Subcommittee on Crime and
Criminal Justice



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226
AUG 11 1993

Honorable Charles E. Schumer
House of Representatives
Washington, DC 20515-6216

Dear Mr. Schumer:

This is in response to your letter dated June 28, 1993, in which you request information pertaining to Federal firearms licensing.

In response to your specific questions, we have submitted the following information:

- 1) **What level of expense is currently required to process applications for Federal firearms dealer licenses? Does the revenue realized from the license fee cover this expense? If not, how much would the license fee have to be raised if the current level of service were to be made self-supporting?**

We estimate that it costs approximately \$100 to process an application for a Federal firearms license (FFL). This estimate does not include the costs of a preliminary or full field investigation normally performed by Bureau personnel in connection with the submission of each new application. When a preliminary investigation is warranted prior to the issuance of a FFL, the costs rise to as much as \$300. Full field investigations of applicants cost on average \$500.

Currently, an FFL costs \$10 per year. If the current level of service were to be made self-supporting, we estimate the cost of a license to be \$350-500.

- 2) How much would the license fee have to be raised to pay for a thorough background check of each applicant for a Federal firearms dealer license, including a premises inspection and a fingerprint check?

As stated above, we believe a license fee in the \$350-500 range would be sufficient to defray the expenses necessary to conduct either a preliminary or full field investigation, including a fingerprint check, on each applicant.

- 3) In your testimony, you indicated that every applicant for a Federal firearms license is now being contacted by a BATF agent. Do you have adequate resources to continue this initiative?

No, we have had to temporarily re-align program resources and detail inspectors to other geographic areas in order to execute the current firearms program.

- 4) You also indicate that most of these contacts are conducted by telephone. What information is obtained in these interviews? For what portion of license applications does a BATF agent actually visit the premises from which the applicant proposes to sell firearms?

ATF inspectors contact the applicant by telephone to inquire about their eligibility for a firearms license, the adequacy of the proposed business premises, and whether the applicant intends actually to engage in the business of buying and selling firearms. Inspectors also discuss the recordkeeping and conduct of business requirements with each applicant. To date, we have analyzed the results of over 11,000 reports of these contacts. Of those 11,000, 363 (3.3 percent) reports recommended that a field investigation be conducted prior to the issuance of the license. These investigations require a visit by an ATF inspector to the actual business premises, prior to the issuance of the license.

- 5) If the interviewing agent believes that an applicant does not intend actually to maintain a business at the address on the application--by, among other things, opening the premises to the public and keeping regular business hours--does the agent have authority to deny the application?

If an inspector determines at the time of initial contact that the applicant does not intend to actually maintain a business at the address on the application, a full field investigation will be conducted. If the investigation discloses that an applicant does not intend to engage in a firearms business at the location shown on the application, the applicant will be asked to withdraw the application. If the applicant refuses to do so, the inspector will recommend denial of the application. Since we have heightened our application investigation efforts, in excess of 28 percent of individuals who may have otherwise received a license have withdrawn or abandoned their applications.

- 6) How many Federal firearms dealer licenses were revoked in each of the past five years because the licensee failed to comply with the conditions of licensure?

<u>YEAR</u>	<u>NUMBER OF REVOCATIONS</u>
1988	4
1989	12
1990	9
1991	17
1992	24
1993 (to date or pending)	69

- 7) How many licensees were fined or criminally prosecuted in each of the past five years for failure to comply with the conditions of licensure?

<u>YEAR</u>	<u>NUMBER OF PROSECUTIONS</u>
1988	93
1989	101
1990	130
1991	118
1992	159

There are no provisions for fines.

8) Which, if any, of the following specific legislative proposals would aid BATF enforcement efforts:

- amending Title 18 to require that federally licensed firearms dealers maintain a business premises;

Assuming "business premises" means a commercial building, requiring such premises would likely mean that in excess of 75 percent of existing licensees would not qualify for a firearms license. The bulk of these licensees operate from their residence and, at most, do a minimal amount of business.

- requiring dealer license applicant to show compliance with State and local regulation before getting their license;

A licensing standard based upon compliance with State and local laws would eliminate many licensees who have no intent to actually engage in a firearms business. It would enhance one of the major purposes of the GCA; i.e., to assist the States in enforcement of their firearms laws. The amendment would substantially reduce the number of licensees and enhance ATF's enforcement efforts.

- eliminating the 45-day limit on the application review process for dealer licenses;

ATF currently has the authority to determine that licensees have a premises from which they intend to engage in business and conduct background checks on applicants. Currently, proposed legislation could require that applicants submit fingerprints for identification purposes. Repeal of the 45-day limit for action on applications would remove a serious impediment to our having sufficient time to adequately scrutinize applicants for firearms licenses.

-- eliminating the one-a-year limit on dealer inspections;

The current limitation on ATF's inspection authority enables unscrupulous licensees to conceal violations of the law and is an impediment to ensuring compliance with the provisions of the GCA. Elimination of the one-a-year limit would provide us with additional enforcement tools.

-- increasing penalties for willful violations of dealer restrictions;

An increase in the penalty for making false statements on license applications would strengthen the GCA from a law enforcement standpoint. An increase in the penalty for willful recordkeeping violations would close the loophole in current law which does not provide felony treatment for serious recordkeeping violations; e.g., a licensee who willfully keeps no records or falsifies his records to conceal unlawful sales to the criminal element.

-- requiring dealers to respond to ATF tracing inquiries by telephone;

ATF has statutory access to licensee records by physical inspection. The Bureau also may require written reports of licensees upon request. However, effective gun tracing often means asking licensees to provide information on firearms sales by telephone. While most licensees cooperate with ATF's telephone requests, some licensees have refused to respond. This proposal would resolve the problem by specifically requiring licensees to provide timely trace information by telephone in connection with an ongoing criminal matter.

-- requiring dealers to report thefts of guns to ATF;

Under current law, ATF has the responsibility for enforcing 18 U.S.C. 922(j) which makes it unlawful to receive, conceal, store, or dispose of any stolen firearm. There is not, however, a requirement for licensees to report thefts of firearms directly to ATF. Absent such a requirement, firearms moving from legitimate businesses into the criminal element cannot be timely investigated. This proposal would enable ATF to make more timely investigations of these firearms.

-- requiring a common carrier who is shipping guns interstate to verify that the recipient is a valid licensee;

This proposal would enhance the traceability of firearms and prevent the diversion of firearms into criminal channels.

-- drug testing licensees to ensure that they are not involved with narcotics trafficking?

Current firearms law already makes it unlawful for illegal drug users to receive or possess firearms. We do not view this proposal as necessarily enhancing already existing statutes. Implementation of this proposal would be extremely costly and resource intensive.

We trust we have satisfactorily responded to your questions. If we may be of further assistance, please do not hesitate to contact us.

Sincerely yours,

(signed) Steve Higgins

Director

Mr. SCHUMER. OK, why don't we bring the third panel up. It is going to be Shaw, Travis, Farley, and Archer, so you may as well sit in that order.

Our fourth panel today begins with Sgt. Bernard Shaw of the Maryland State Police. Sergeant Shaw has served the Maryland State Police for 22 years. He is currently supervisor of the firearms licensing section, and he is responsible for licensing and regulation of all Maryland pistol and revolver dealers. He was also instrumental in developing Governor Schaefer's gun show bill.

Mr. Jeremy Travis is the deputy commissioner for legal matters for the New York City Police Department. He has served New York City in numerous capacities, and briefly he was former chief counsel for this House Subcommittee on Criminal Justice. Ten years ago, Mr. Travis also served as law clerk to Judge Ruth Fader Ginsburg, who of course this week was nominated for Associate Justice of the Supreme Court. So we didn't know we were having such a distinguished witness working for two Madison High School graduates, myself being the other one.

Mr. Farley from Chesapeake, VA, also joins us this morning, William Farley. He is here to testify about the senseless murder of his wife—and I have read your testimony and very much appreciate your being here, Mr. Farley—and about his successful lawsuit against the gun dealer that sold the weapon used in that crime.

Our fourth witness on this panel is Attorney Steven Archer of L.A., CA. Mr. Archer represents Mrs. Lillian Goldfarb, who also sued a licensed firearms dealer successfully after the dealer sold a gun to a mentally unstable woman who then shot and killed Mrs. Goldfarb's husband, Gerald.

So obviously we have serious issues here.

I am going to try to ask all the witnesses to limit their testimony to the 5 allotted minutes. We have been going over that, but we are going to have more votes, unfortunately, and it is going to extend the hearing. So I would ask unanimous consent that every statement be read into the record in its entirety and begin with Sergeant Shaw.

STATEMENT OF BERNARD SHAW, FIRST SERGEANT, MARYLAND STATE POLICE LICENSING DIVISION, WOODLAWN, MD

Sergeant SHAW. Mr. Chairman, members of the committee, thank you for the opportunity to speak.

My testimony is in, and I am going to quickly go over that. The first thing I said in paragraph one is that presently the illegal sale of firearms may be as profitable as the illegal sale of drugs, and I think Mr. Daily, the first gentleman you had here who had been arrested, may have enforced such statement somewhat with the profit and the way—his manner of living.

Maryland identified a problem with gun shows back in 1991. As a result of that, we started attending gun shows and have made arrests at each one we have attended.

Mr. SCHUMER. That is a pretty good record, Sergeant Shaw, and it says a lot about the gun shows.

Sergeant SHAW. The picture I am showing you right now—and throughout my testimony I said that the people that come in, I am not talking simply of Federal firearms licensed dealers, I am talk-

ing about private citizens that work for Federal firearms licensed dealers, and the reason I brought this picture is, this gentleman at the Westminster Gun Show in June 1991 was basically that. This is a picture of his display, and I'll explain it. He had in excess of 35 regulated firearms, and when I say regulated firearms, Maryland does not regulate the sale of rifles and shotguns, so he had in excess of 35 regulated firearms, including an assault weapon, that he was selling.

He sold under the table a banned firearm for \$125. Now that may not sound like much, but when the value of the firearm is \$45, then you can understand the profit margin.

The problem that Maryland has identified is that Federal firearms licensed dealers from out of State come into the State of Maryland at gun shows. They sell whatever they have, no questions asked.

The Pikesville show—we just attended a show on May 29 at Pikesville. A Virginia Federal firearms licensed dealer sold me a gun directly across the table—of course I wasn't across the table—but directly across the table, no questions asked.

Mr. SCHUMER. I wouldn't think they would be that brazen, Sergeant.

Sergeant SHAW. No. No, he wasn't quite that brazen. But it goes on.

We have identified the problem. As a result of identifying the problem, the Governor of Maryland, Governor Schaefer, and the general assembly last year passed senate bill 330, and that dealt strictly with gun shows, which will be effective on October 1, 1993, and we are hoping that that will take care of some of our problems.

The problem is not simply with Federal firearms licenses, it is with some of the other Federal laws. In the Federal law right now, to be engaged in the business, it allows occasional sales. Maryland does not allow occasional sales, and when the Federal firearms licensed dealer goes into a gun show and sells what we consider a regulated firearm, and that goes back to the definition of engaged in the business by Federal law, it doesn't work in Maryland, and the problem is that people may be obeying Federal law but not the State laws, and they are coming out of State.

Mr. SCHUMER. Coming out of State, per se, is a violation.

Sergeant SHAW. And at the Pikesville Gun Show we had Federal firearms licensed dealers from New Jersey, New Hampshire, Vermont, Virginia, North Carolina, that are coming into our State selling firearms and, really, with no intent of obeying our laws.

The Westminster show that I am showing you a picture of—I also said in my testimony that the displays of private sales and FFL's embarrass the displays of the licensed dealers, and this is a display at the Frederick show. This gentleman had videos. He was selling something called Hellfire. He was selling assault weapons, no questions asked. If you have got the money, he has got the gun; that is it. We need to resolve this problem, and hopefully with our law.

At the Pikesville show, this gentleman was selling for \$1,750 and HK-91 assault rifle, which I believe is banned for importation into the United States.

The problem that we have in Maryland right now is, we have over 3,000 Federal firearms licensed dealers within the State limits. We have a total of 399 licensed pistol and revolver dealers. And the red light went off. I'm done.

[The prepared statement of Sergeant Shaw follows:]

PREPARED STATEMENT OF BERNARD SHAW, FIRST SERGEANT, MARYLAND STATE
POLICE LICENSING DIVISION, WOODLAWN, MD

The illegal sale of firearms may be as profitable as the illegal drug trade. Persons who may be prohibited by Federal or State laws from purchasing a firearm will pay more for an unregistered sale. It is an attractive business for those who are willing to make short trips to any state that conducts weekly gun shows, such as Maryland, Virginia, Carolinas, Georgia, Florida, Oklahoma, Texas, and many others. Sales of firearms at these shows circumvent federal and state laws.

Some of the persons who attend these shows are Federal Firearms licensees with business addresses at their homes, who work out of their vehicle or work on commission for other Federal Firearms licensees. These persons are known as "Hobby dealers" or "Gun show dealers". They sell and transfer firearms at gun shows with little or no restriction due to the lack of enforcement personnel to deal with the number of gun shows in the United States. These persons do not record the sales of these firearms in a permanent record and any possibility of tracing this particular firearms is lost.

An example of an illegal sale occurred in Maryland June 15, 1991 when an individual arrested and charged with several violations of the Maryland law at the Westminster gun show in Westminster, Maryland. This individual advised an undercover Corporal of the Maryland State Police that all guns were legal for sale in the United States. He sold a handgun that was banned in Maryland. In addition, he purchased a handgun from another citizen and resold that handgun to an undercover Sergeant of the Maryland State Police along with a switchblade knife and another handgun. This individual did not ask any questions as to residency or name, but if the Sergeant was a cop. His only concern was the amount of money he made on the sale. Upon arrest it was discovered that he had a Virginia drivers license and Virginia registration on his vehicle, yet was selling regulated firearms at a Maryland gun show. A search and seizure warrant was executed on several locked cases and copies of Federal Firearms licenses were located in other dealers names.

Another example is of an individual who was employed by a licensed Maryland Pistol and Revolver dealer who possessed a Federal Firearms license and was contacting prospective purchasers at the gun shop and ordering regulated firearms for them without a Maryland license. This person sold firearms without background checks, on parking lots, and on at least one occasion to a fugitive from justice.

A third example is when a person who possessed a Federal Firearms license in Virginia sold and transferred a pistol to an undercover First Sergeant in the Maryland State Police at the Pikesville gun show in Pikesville, Maryland without completing any registration forms and he did not ask for any identification until after the sale was completed.

Another problem at gun shows are the sale of so-called "private collections" that are put up for sale by individuals who sell their firearms to anyone who has cash in hand. Very often, the sellers of these "private collections" have table displays that rival those of the licensed dealers. They display video taped promotions, manufacturers' display set ups, and offer brand new firearms for sale in original factory packaging. Yet these individuals can sell their wares to anybody. The problem is straightforward. Individuals who are prohibited from purchasing of firearms through legal means find easy access to firearms from these private sellers. These non-registered sales completely undermine the validity of law enforcements' efforts to keep firearms out of the hands of convicted criminals.

Currently the Governor of Maryland and the Maryland General Assembly has taken measures to address these problems with Senate Bill 330 to be enacted on October 1, 1993. This new legislation will require anyone who does not have a State license to obtain a Temporary Transfer Permit prior to any sales of regulated firearms at gun shows. In addition they must comply with the same laws as a licensed dealer.

Federal Firearms licensees have been determined to be "engaged in the business" by the Maryland Attorney General's office and are not permitted to sell or transfer any regulated firearms at gun shows or elsewhere within Maryland without a Maryland Pistol and Revolver Dealers' License. Yet, as previously stated they continue to violate Maryland law.

Currently there are over 3,000 Federal Firearms licensees in Maryland as compared to 399 licensed Maryland Pistol and Revolver Dealers. With the number of Federal Firearms licensees growing each day, a unique problem is presented to Federal and State law enforcement agencies in preventing the sale of firearms to convicted criminals.

Mr. SCHUMER. Thank you not only for your testimony, Sergeant, but for your trailblazing work in this area. You have achieved a national reputation in terms of gun shows.

Sergeant SHAW. If I could take one more—

Mr. SCHUMER. Please. You can take 1 more minute.

Sergeant SHAW. OK. This is a gun show calendar, and to show you the problem that we have, not just in Maryland but in the United States, here is an example of Sooner Gun Shows, the Grand National Gun and Knife Show, on August 21 and 22, 1993, 2,200 tables at \$40 each [indicating poster]. Now who is going to regulate that? I think that identifies the problem for you. What law enforcement agency is going to control 2,200 tables? So it is going on, and we need to resolve it.

Mr. SCHUMER. Thank you, Sergeant.

Jeremy Travis.

**STATEMENT OF JEREMY TRAVIS, DEPUTY COMMISSIONER,
LEGAL MATTERS, NEW YORK CITY POLICE DEPARTMENT,
NEW YORK, NY**

Mr. TRAVIS. Mr. Chairman, it is a particular honor for me to be here today with you this afternoon, and I would like to point out that I am joined by Lt. Kenneth McCann, who is sitting right behind me, who is the commanding officer of the New York City Police Department's Joint Task Force, which we operate with the Bureau of Alcohol, Tobacco and Firearms.

Mr. SCHUMER. Welcome, Lieutenant.

Mr. TRAVIS. And I would like to echo the Director's statement. This is an excellent example of Federal-local cooperation.

Let me just summarize my prepared statement. As the chairman is aware and I think this committee is aware, New York City and New York State have some of the toughest gun control laws in the Nation, and we are very proud of that fact. However, what we find is that in the absence of effective Federal legislation, gun traffickers are in a position to bring illegal guns into our city.

Just to make the point, last year the New York City Police Department took over 17,000 guns off the streets of the city of New York, and, according to a number of Federal studies, 90 percent of those guns were purchased outside the State of New York. So we are the victims, and the people who live in our city are the victims, of the lax Federal regulations as well as the lax State regulations in the supplying States.

We should ask ourselves, how did these illegal guns get into New York City? Our joint investigations with BATF have established two principal forms of gun smuggling. One is what we refer to as overland gun running, where individuals go to States with lax gun control statutes and purchase usually small quantities of guns and bring them back to New York City at a significant markup, as you heard testified to this morning from your first witness.

But guns are also smuggled into our city and other jurisdictions via common carriers by the criminal abuse of the Federal firearms

licensing system, and, compared to the overland gun runners, the FFL gun trafficker typically moves hundreds, sometimes thousands, of guns, as was demonstrated by the "Dirty Dozen" listing that the committee put together. We are hopeful that this hearing and what I think is a genuine public outrage over the FFL system will result in legislation to shut down this source of illegal guns into our city.

So in the prepared statement I have given you some examples, some of which you have already referred to in your "Dirty Dozen," of cases that we have made in New York City of people who have abused the FFL. It is with no pride that I note that four of the "Dirty Dozen" are individuals who were arrested in New York City.

Mr. SCHUMER. And we thank you, Mr. Travis, and NYPD for their help in putting that together.

Mr. TRAVIS. You are very welcome.

Our view of the current FFL system is that it operates on a fiction, and the fiction is that the individuals who hold the type 1 FFL license are, in fact, legitimate dealers, and, again, some New York City numbers may help just to make this point.

There are approximately 550 individuals who are New York City residents who hold the FFL dealer's license. However, there are only 88 individuals who are licensed as dealers by the New York City Police Department under the applicable State and local laws. So there are 400-plus people who have what is called a dealer's license. It is, in fact, a Federal dealer's license. Through that license, they are enabled, even though it may be illegal, to bring guns into the city.

What is a dealer in our definition? Let me just give you some sense of how we regulate dealers who deal in firearms. First, they must meet all Federal and State criteria to possess a firearm. The applicant is fingerprinted and fills out a detailed questionnaire. We conduct a criminal history check, a check of mental health records. Then we inspect the applicant's proposed business location. We verify that it complies with all local zoning regulations, fire codes regarding the storage of ammunition; we determine whether the location has adequate security devices to deter the theft of weapons. Once granted a dealer's license, the business is then subject to regular inspections of books and records, and the license can be revoked by the New York City Police Department for any violations.

I don't mean by making this comparison to suggest that all of the 400-plus FFL holders in New York City who are not regulated as dealers by us are engaged in criminal activity, that is not the case, but what we are finding is an abuse of the system.

As the Director of the BATF mentioned before, we have now a joint operation with ATF where we are contacting new applicants, and we, too, have witnessed the increase in applications following the publicity about the easy availability of the FFL license.

In the months of March and April, we in the New York City Police Department contacted the 67 individuals, New Yorkers, who applied for Federal firearms licenses. We spoke to them, usually over the phone but sometimes in a home visit, and informed them that if they possessed a firearm and weren't licensed by us we would arrest them, if they dealt in firearms and weren't licensed by us we would arrest them on the additional charge of dealing

without a license. Of those 67, 64 withdrew their application; one has filled out a local dealer's application; the remaining two we have not heard from.

I think this just underscores the soft underbelly of the FFL system that is not really licensing dealers. Dealers have another purpose and are legitimate business people and should be licensed.

Let me just make four quick suggestions for legislative reform, some of which have been alluded to already. First of all, following on this thought, we think that the FFL system should be changed so that it only allows legitimate dealers to receive the Federal dealer's license. In order for that to occur, we support the bill that was introduced last session that would require FFL applicants first to get approval, in essence, from their local licensing entity or from their local police department that they are a legitimate dealer. That would cut down on the numbers significantly.

Apropos some of the earlier dialog, it also makes us do the work of the primary investigation rather than the Federal agents, so we would be able to weed out some of the problems that come up much later in the process.

Second, we also strongly support the notion of a computerization of FFL records. During the break, Lieutenant McCann and I were talking about the computer system now in place for checking stolen cars. This is the analogous situation. There should be a computer in place for checking the trafficking in guns.

Third, we recommend that the shipment of guns also be controlled. Without saying that we have had particular problems with private common carriers, we think that the shipment of guns is so important in terms of the public health and the public safety of our communities that some of this should be limited to the U.S. Postal Service. This would enable us to work with Federal inspectors if there are problems in terms of theft or shipments going to somebody who is not authorized to receive them. It would also make the theft a Federal offense.

Fourth, we suggest that there be credible audit and revocation procedures. It is now possible for somebody who holds an FFL, who is in prison, convicted of gun trafficking offenses, to use a prison phone to order guns to be delivered to his home as long as a copy of the FFL is sent to the dealer or the wholesaler. There must be a system for revocation of the dealer's license so that those who abuse it will no longer be entitled to that privilege.

So we think, as the chairman indicated, that this is an area where there should be no debate that reform is necessary and stringent reform will be possible. We think that legitimate gun owners will support this. Speaking on behalf of the law enforcement community, since it is our personnel who are out on the streets every day facing these firearms, there is no question that you will get law enforcement community support, and we hope that reform is possible as soon as you can make it happen.

Mr. SCHUMER. I want to thank you, Mr. Travis, for comprehensive, well thought out testimony.

[The prepared statement of Mr. Travis follows:]

PREPARED STATEMENT OF JEREMY TRAVIS, DEPUTY COMMISSIONER, LEGAL MATTERS,
NEW YORK CITY POLICE DEPARTMENT, NEW YORK, NY

Mr. Chairman, Members of the Subcommittee on Crime and Criminal Justice:

I consider it an honor to appear before you today to discuss the role of the federal firearms licensing system in supporting a pattern of illegal interstate gun trafficking.

I am joined this afternoon by Lt. Kenneth McCann, Commanding Officer of the New York City Police Department's Firearms Task Force, a joint Task Force with the federal Bureau of Alcohol, Tobacco and Firearms.

In New York City, we are faced with the following paradox: The gun control statutes of the State and City of New York are among the toughest in the nation. We have successfully kept most criminals from getting guns that originate in New York City. However, the absence of effective federal legislation has enabled gun traffickers to get guns in other states and sell them in New York City. As a result, we find ourselves facing more guns—and more deadly guns—on the streets each year. Last year, the New York City Police Department confiscated 17,635 guns. According to federal estimates over 90 percent of these guns were purchased outside the State of New York.

How did these illegal guns make their way into our City?

Our joint investigations with the Bureau of Alcohol, Tobacco and Firearms have established two principal forms of gun trafficking. Guns are smuggled into New York City by overland gun runners who travel to states that have lax gun laws, make purchases in small quantities (either directly or through a straw purchaser) and sell them at a significant mark-up on the streets of New York City. Through the arrests by the Task Force, and the enactment of tougher laws in the supplying states, we hope that this source of guns will be diminished.

Guns are also smuggled into New York City via common carriers by the criminal abuse of the Federal Firearms Licensing system. Compared to the overland gun runners, the FFL gun traffickers typically move hundreds and thousands of guns. We are hopeful that this hearing, and the widespread public outrage about the FFL system, will result in legislation to shut down this source of illegal guns into our City and others around the country.

How extensive is the problem posed by the criminal abuse of the FFL system? We cite three examples from our own experience:

David Taylor had a criminal history that included four misdemeanor convictions for charges such as gun possession and sale of dangerous drugs, yet he qualified for a Federal Firearms Dealers license. He used his FFL to order over 800 handguns to be shipped to his apartment in the Bronx. We arrested him when he was about to receive a United Parcel Service shipment of another 108 handguns.

John Zodda was granted a Federal Firearms Dealers License listing a fictitious business address. He used the FFL to purchase and distribute over 2,000 firearms after he defaced the serial numbers. He was indicted on 248 counts of illegal trafficking in firearms. He was found guilty in federal court, pleaded guilty in state court, and now awaits sentencing.

John Adams was an FFL holder living in a residential area of Queens. He purchased over one thousand guns for approximately \$95,000 and resold them, with defaced serial numbers, for a quarter of a million dollars. He was sentenced to 10 months in federal jail.

Between them, these three men pumped nearly 4,500 guns into the hands of criminals. We cannot begin to calculate the human misery, victimization, loss of life, loss of property that can be traced to their actions.

How could a federal licensing system make illegal gun trafficking possible? How could the FFL system undermine state gun control laws and thwart local law enforcement efforts?

In our view, the current FFL system operates on the fiction that holders of FFL Type 1 licenses are legitimate "dealers". There are currently 330 individuals in New York City who hold FFL dealers licenses. Yet the License Division of the Police Department only licenses 88 dealers under state law—and only 32 are authorized to sell handguns. These legitimate dealers must pass rigorous tests. We first determine whether the applicant meets all federal and state criteria to possess a firearm; the applicant is fingerprinted and fills out a detailed questionnaire; we conduct a criminal history check and a check of mental health records. Then, we inspect the applicant's proposed business premises and verify that it complies with local zoning regulations and fire codes regarding storage of ammunition. We determine whether the location has adequate security devices to deter theft of the weapons. Once granted

a dealers license, the business is then subject to regular inspections of books and records and the license can be revoked for any violations.

We are not suggesting that the remaining FFL holders are engaged in criminal activity—but they are certainly not legitimate firearms dealers. This has been dramatically underscored by a new pilot program, conducted jointly with BATF under a Department of Justice grant. During the months the March and April of this year, a police officer from the License Division and an inspector from the BATF personally contacted each new FFL applicant—explaining the federal, state and local laws on gun possession, gun selling and operating a gun dealership. Sixty-four of the sixty-seven applicants withdrew their applicants. One applicant has applied for a local dealers license and two are still pending.

We believe these results highlight the fiction that the FFL is a true dealers license. We intend to pay similar visits to the 550 current holders of FFLs in New York City. We expect similar results.

We believe that the Federal Firearms Licensing system needs fundamental reform and respectfully suggest that this Subcommittee consider the following recommendations.

1. *Dealers Licenses Reserved for Legitimate Dealers.* We support legislation introduced by Senator Moynihan and former Representative Green that would require applicants for FFL dealers licenses to first comply with state and local laws regulating gun dealers. In addition, this Subcommittee might consider establishing certain minimum federal standards, such as maintaining a business premise, installing anti-theft and fire safety devices, and recording all transactions contemporaneously with the ATF. If this legislation is enacted, the number of FFL holders in New York City will drop from 550 to approximately 88, thereby closing a major method for importing illegal guns into our City. New dealers would have to comply with existing regulations. If this system is implemented nationwide, the only interstate commerce in guns will be between manufacturers and legitimate dealers who comply with state law. All purchases for personal use will be through a local dealer, not through interstate carrier shipments. Local law enforcement agencies will know who is buying guns.

2. *Computerize FFL Records.* Under current federal law, the records of transactions by an FFL holder cannot be computerized. This prohibition has several serious consequences. Law enforcement investigators cannot readily trace gun shipments to determine how a gun used in a crime got into the criminals's hands. Manufacturers and dealers cannot verify whether the FFL of a prospective gun purchaser is valid, has been altered, or has been revoked. Prior to shipment, a manufacturer or dealer should be required to verify the status of the FFL holder, much as credit card checks are now conducted to retail stores.

3. *Control Gun Shipments.* Guns are now shipped by a variety of common carriers. Even though the bill of lading does not typically indicate that guns are contained in the package, there is a serious problem of theft. To control the flow of guns, we recommend that all shipments must be made by the United States Postal Service and that all shipments must be by registered mail. In this way, the postal inspectors can be part of law enforcement investigations of gun trafficking and theft of packages containing guns will be a federal offense.

4. *Establish Credible Audit and Revocation Procedures.* Now, BATF can only inspect FFL dealers once a year. Now, new applicants for FFLs can only be reviewed for 45 days at which time the FFL must be granted if not disapproved. Now, a person holding an FFL can continue to use his FFL even after he is convicted of the crime of gun trafficking—theoretically, an FFL felon in prison could use a prison phone to order guns shipped to his home. To be credible, the FFL system must be based on full investigations of applicants, frequent audits if appropriate, and swift revocation of the FFL for abuse or criminal conduct.

We believe these changes would end the abuse of the FFL system and reduce the flow of illegal guns across state lines. We believe legitimate gun owners will support these reasonable reforms—no one wants guns in the hands of criminals. We believe that the law enforcement community will support these reforms—police officers face these illegal guns on the streets every day and see their fellow officers and fellow citizens fall too often to deadly gunfire. We urge Congress to enact these reforms and stand ready to assist this Subcommittee in any way we can.

Mr. SCHUMER. Mr. Farley, you may read from your statement or proceed however you wish.

STATEMENT OF WILLIAM FARLEY, CHESAPEAKE, MD

Mr. FARLEY. OK. I will just basically summarize it.

Mr. SCHUMER. If you want to read it, that is fine, too.

Mr. FARLEY. OK. I will read it then.

On a weekend in September 1988, Nicholas Elliott, a 15-year-old who lived in Norfolk, VA, called his older cousin, Curtis Williams, and asked him to take him to a gun store to look at guns. I might add that Curtis Williams is about 30 years old. At first, Williams tried to put Elliott off but finally agreed to take him because he felt sorry for Elliott since he is from a broken home and didn't have a father figure in his life.

Williams picked up Elliott, and they headed for a gun store in nearby downtown Norfolk. Elliott said he didn't want to go there, he wanted to go to Guns Unlimited out in Isle of Wight County approximately 40 miles away. Williams said he wouldn't take him out there, but Elliott gave him \$20 for the gas, so they drove to Guns Unlimited.

Guns Unlimited has long been a favorite of those looking for cheap handguns where there is no waiting period. The store is located in the small community of Carrolton on U.S. Highway 17 about 8 miles south of Newport News, convenient to both the Tidewater and peninsula areas of Virginia, the total population of those areas being over a million people. There are several such gun stores headquartered in Isle of Wight County since there is no waiting period and a low overhead because of the rural area in which it is located.

When Williams and Elliott arrived at the store, they were waited on by Tony Massengill, a former police officer and part-time salesman. Massengill showed Williams and Elliott a couple of handguns, but Elliott said he wasn't interested in them. Then they began to look at a Cobray MAC-11 assault type pistol. Elliott was very interested in guns. While his classmates would be reading sports magazines, he would be reading magazines about handguns. At that time, he apparently owned a small handgun himself. He had previously had a difficult time in school and been suspended from public school at least six times. He was once quoted as saying, "The only friend I had was my gun."

As Massengill and Elliott began talking about the technical aspects of the gun—muzzle, velocity, et cetera—Williams started to look at other displays in the store. Williams didn't know about the technical aspects of the handguns and lost interest.

After a while, Williams came back near the counter and Elliott approached him saying that he had found the gun he wanted to buy but he wanted Williams to buy it so his mother wouldn't find out about it. Elliott handed the money to Williams in front of Clerk Massengill, and Williams paid Massengill for the gun. Massengill then informed Williams before he sold him the gun he would have to fill out the Federal firearms form 4473. Massengill told Williams that all he needed to do was give the proper response to all the questions and signed the form. Williams checked the appropriate box, signed the form, and returned it to Massengill. Massengill then wrote a receipt and handed the gun to Nicholas Elliott.

The gun Elliott chose was a Cobray MAC-11, a cheap copy of the Uzi. It was manufactured by the less than reputable S.W. Daniels Co., in Atlanta, GA. The only use for this gun, in my consideration, is to maim and kill. It is constructed so cheaply that it is very inac-

curate, but with a 32-round clip of 9-millimeter bullets that can be emptied in a matter of seconds, one can almost always hit something. Even an employee of Guns Unlimited admitted that it was "good for nothing."

On the morning of December 16, 1988, Nicholas Elliott came to school at Atlantic Shores Christian School in Virginia Beach. In his book bag he brought his MAC-11, 6 ammunition clips each containing 32 bullets, and over 400 rounds of ammunition. At about 10:30 a.m., Elliott entered the classroom of my wife, Karen Farley. He shot her to death at almost point-blank range. Then he went to the next classroom and shot another teacher, Sam Marino. Elliott then chased another teacher across the schoolyard, firing at her more than 10 times. Fortunately, due to the inaccuracy of the gun and the fact that it kept jamming, she was never hit. Elliott gave up on her and then went back to where he had shot Mr. Marino and, seeing that Marino was again on his feet, promptly shot him again.

Elliott went to the next classroom, where he confronted a student he didn't like. Elliott pointed the gun at the boy and pulled the trigger. The gun jammed, and the teacher in the room jumped Elliott and wrestled the gun away from him.

As a result of his actions, Elliott was sentenced to life in prison plus 114 years and is currently incarcerated. Williams also served time in prison for the straw purchase—giving the gun to Elliott. Also as a result of the straw purchase which took place at Guns Unlimited, my children and I sued Guns Unlimited for the straw purchase—participating in it—and won.

Since the incident at Atlantic Shores, it has been reported that Guns Unlimited has, one, sold a handgun to a man with a history of mental illness and didn't get him to sign the Federal firearms form; the man subsequently used the gun to shoot three people in Philadelphia; sold 23 handguns to a woman in a 2-week period; they, of course, reported the sale after they had their money and sold the guns; sold a handgun to a man when it was found that his girlfriend wasn't old enough to purchase the gun; he was told it was OK, you just had to sign the Federal firearms form for it; sold 5 handguns to a Maryland man who used one of them to kill someone; sold 48 handguns to a 22-year-old college student in a 1-month period; the man, a permanent resident of New York State, used a stolen Virginia driver's license for identification; the license was for a 5-foot-5 inch, 131-pound man; the buyer was a 215-pound weightlifter. They also sold 21 handguns to a local gang in a 2-month period. The guns wound up in New York being traded for crack cocaine.

To my knowledge, no action whatsoever has been taken against Guns Unlimited for any of these sales.

Showing their complete insensitivity, Guns Unlimited opened a branch store in the shopping center across the street from Atlantic Shores Christian School. If they had customers come into their store or their Portsmouth, VA, store that wanted to buy a gun the same day, a Guns Unlimited salesman would carry the gun to their Carrolton store so the sale could be made without the waiting period required in Portsmouth and Virginia Beach.

I believe the irresponsible actions by gun stores like Guns Unlimited are a major contribution to the proliferation of handgun violence.

Thank you, sir.

Mr. SCHUMER. Thank you, Mr. Farley. I know it is hard for you to testify about this. The events up to the slaying of your wife just tell it all.

I just have one quick question which I think is important to put into the record now. Was Guns Unlimited prosecuted for violating any law at all?

Mr. FARLEY. No. From what I understand from the Federal agents, they had not violated any laws whatsoever.

Mr. SCHUMER. Even by selling the gun to a straw—you know, to a different person right in front of them?

Mr. FARLEY. Like I say, from what I understood from Federal agents, as long as there was somebody there to sign the form that met the criteria, that is all they needed.

Mr. SCHUMER. Mr. Archer.

**STATEMENT OF STEVEN ARCHER, SIMKE, CHODOS,
SILBERFELD & ANTEAU, LOS ANGELES, CA**

Mr. ARCHER. Thank you, Mr. Chairman.

My statement is based entirely upon facts that were obtained during the pretrial discovery in a case called *Goldfarb v. Ayers*. I represented the Goldfarbs in that case.

Pamela Ayers, as of 1989, was a 45-year-old woman with over a 20-year psychiatric history. Although she had been a modestly successful person in business, during the period of 1985 through 1989 she began to decompensate and became unable to manage her own affairs. During the year 1989, she became such a danger to herself and was so greatly disabled that she was the subject of two involuntary psychiatric hospitalizations totaling over 40 days as an inpatient. She was also the subject of two involuntary conservatorship petitions. She was seen and treated by over six psychiatrists in the year 1989, and each of them felt that she was disabled and required intensive long-term psychotherapy and psychopharmacology.

Nonetheless, despite a diagnosis of "paranoid psychosis of involuntional variety, possible underlying atypical manic depressive disorder, borderline personality with psychotic transference reactions, with severe erotic, psychotic transference and a tendency toward hysteria and obsessive-compulsive symptomatology," she was able to get out of that last hospitalization in April 1989, and she returned to her home in Newport Beach, CA.

Her decompensation continued, and ultimately she alienated most of her family and friends. One notable exception was her long-time friend Gerald Goldfarb, my client's husband. Gerald continued to show concern for Pamela and continued to attempt to convince her to get more care and treatment. She resisted. She became so unable to care for herself that she would sleep on the floor of her home amid piles of garbage. Periodically, she would leave her home for weeks at a time acting as a homeless person and living, with her dog, out of her car. Only in California do homeless people drive Mercedes Benzes.

She haunted various business establishments in Orange County, asking complete strangers to help her kill herself. Ultimately, she became convinced that she needed a gun to do that. On August 9, 1989, Gerald drove the 50 miles or so from his home to Pamela's. He again tried to convince her that she needed further care and treatment, and again she resisted. Unbeknownst to Gerald, while he was literally on his hands and knees cleaning up the garbage in her home, she was out buying a gun.

Earlier on that morning, she had called a local sporting goods/gun store. As luck would have it, she had spoken to the president of the company, who was also one of the sales people. She told him that she feared for her safety, and she gave him an address where she lived, or claimed to live. She told him that she needed a gun and wanted to go in that day and buy a handgun and take it home with her, and he told her she could buy the gun but under California law there was a 2-week waiting period.

About 15 or 20 minutes later, she placed an identical call to the same store and, as luck would have it, spoke to the same person; they had the same conversation. An hour later, Pamela went to the gun store and was waited on by that same person. She recounted to that person her version of the conversations—that she had been told she could come in and pick up a handgun and take it home that day. He identified her as the woman he had spoken to earlier that day. He knew she was lying to him because he remembered those conversations. He again told her she couldn't take a handgun, but then he suggested, "The 15-day waiting period doesn't apply to long weapons; let me show you and sell you a long weapon." He proceeded to sell her a pump action riot shotgun.

During the course of that transaction, he became so concerned about her, about the strange way she was behaving, that surreptitiously he asked one of his business workers to go and call the local police department to ask them to run a warrants check on her to, in his words, "give us a reason not to sell her a gun." There were no outstanding warrants, and the sales transaction continued.

During her time in the store, the sales person observed that Pamela avoided eye contact, was in a hurry, didn't properly respond to questions, was dirty and disheveled, was distraught and nervously pacing around the gun room floor, and that she appeared as if she was doped or in a daze, all classic symptoms of her psychosis. During the transaction, Pamela even asked the gun seller, "You are afraid of me, aren't you?" Still the transaction continued.

While the salesman was filling out that portion of the form 4473, the Alcohol, Tobacco and Firearms form, he filled it out for her. He discovered that she had given him a false address as to where she lived and telling him why she was fearful. Despite all of this, he sold this pump action riot shotgun to a 5-foot tall, 95-pound woman who was obviously disturbed.

He specifically told her she could only load it and keep it loaded at home or in a firing range, and then he watched her go out into the parking lot and load it in the parking lot. She was so shaky, she was dropping shells on the pavement. He went out and got the gun and escorted her back in. He unloaded the gun, put the shells back in their box, put the gun in its box, took her car keys from her, and escorted her out to her car. He put the weapon and the

ammunition in her trunk, slammed the lid, put her behind the wheel and told her to leave, and as soon as she left he called the local police and he described her as being dangerous, unstable, and in possession of a weapon.

Thirty minutes later, Gerald Goldfarb was murdered by Pamela Ayers. She then attempted suicide with this same riot shotgun, but because of the size of the weapon and her small stature she was unsuccessful, she only sustained an abdominal wound. When the SWAT team finally broke down the door and got into her home, Gerald was dead, Pamela was lying on the floor screaming that she wanted to die, and the pump action riot shotgun was between them with the price tag still on it.

Pamela was arrested and taken to the hospital ward for emergency surgery. She was later transferred to a jail ward and subsequently, while awaiting trial, hanged and killed herself.

I represented Gerald's widow and his father in the wrongful death case.

Mr. SCHUMER. How old was Gerald?

Mr. ARCHER. He was 49. He was a Harvard-educated appellate lawyer.

It became clear to both Mrs. Goldfarb and myself during the course of this case that this was a murder of opportunity. Had there been a 15-day wait that applied to all firearms and not just handguns, Pamela wouldn't have gotten that riot shotgun and Gerald wouldn't have been murdered that day.

Thank you.

[The prepared statement of Mr. Archer follows:]

PREPARED STATEMENT OF STEVEN ARCHER, SIMKE, CHODAS, SILBERFELD & ANTEAU,
LOS ANGELES, CA

On behalf of both myself and my client, Lillian Goldfarb, I would like to thank the committee for the invitation to attend and testify at today's hearings.

It has been my privilege to represent Mrs. Goldfarb in a wrongful death lawsuit arising as a result of the death of her husband, Gerald. Mrs. Goldfarb is unable to attend today because to do so would reopen deep emotional wounds that she has and continues to attempt to deal with. Both she and I feel very strongly about the issue of gun control and appreciate the committee's willingness to accept my statement and testimony in her place.

My statement is based entirely upon facts obtained during the pretrial discovery phase of a lawsuit entitled *Goldfarb v. Ayers*. Mrs. Goldfarb's story has great relevance to today's hearings on the issue of firearm licensing and waiting periods.

In August, 1989 Pamela Ayers was a very troubled 45 year old woman, with a long and involved psychiatric history going back over 20 years. At times during her long history various treating mental health care providers diagnosed her as being or exhibiting:

1. Suicidal ideation beginning at 25;
2. Exhibiting a "strong neurotic transference;"
3. Depressed and starving herself in an attempt to commit suicide;
4. "Gravely disabled and a danger to [her]self;"
5. Exhibiting major depression with melancholia, obsessed with thoughts of poverty, and inability to conceive, and as being anorexic and bulimic.

Although she had been a modestly successful designer and businesswoman, during the years 1985-1989 she began to decompensate and became unable to manage her own affairs. During the year 1989 she became such a danger to herself and/or so greatly disabled that pursuant to California Welfare and Institutions Code Section 5150 she was the subject to 2 involuntary psychiatric hospitalizations—totalling over 40 days as an inpatient. She was also the subject of two petitions for conservatorship.

She was seen and treated by over 6 psychiatrists during 1989 and each of them felt that she was disabled and required intensive, long term psychotherapy and

psychopharmacology. Nonetheless, despite a diagnosis of "paranoid psychosis of involuntal variety, possible underlying atypical manic depressive disorder, borderline personality with psychotic transference reactions with severe erotic/psychotic transference and tendency toward hysteria and obsessive-compulsive symptomatology" she was able to obtain her release from the last hospitalization in April, 1989 and returned home to her condominium.

As a result of her increasing decompensation, she became alienated from her family and most of her friends. One notable exception was her friend, and my client's husband, Gerald Goldfarb. Mr. Goldfarb continued to show concern and attempted to convince Pamela that she needed more care and treatment. She resisted.

She became so unable to care for herself that she slept on the floor amidst piles of garbage. Periodically she would leave her home for weeks at a time, acting as a homeless person and living with her dog in the back seat of her Mercedes Benz.

She haunted various business establishments in Orange County, asking complete strangers to help her kill herself. Ultimately, Pamela became convinced that she needed a gun to kill herself.

On August 9, 1989 Gerald drove the 50 or so miles from his home to Pamela's condominium. Again he tried to convince Pamela of her need for further care and treatment and again she resisted. Unbeknownst to him, while Gerald was, literally, on his hands and knees cleaning up the garbage from the floor of her home, Pamela went in buy a gun.

Earlier on the morning of August 9, Pamela had called a local sporting goods/gun store. As luck would have it, she spoke to the president of the company who was also a salesperson, told him that she feared for her personal safety and expressed a desire to come in to the store, purchase and take possession of a handgun. The store president told her she could purchase the handgun, but that there was a 2 week hold before she could take possession of it.

Pamela called back to the store about 30 minutes later spoke with the same person and had the same conversation.

About an hour later, Pamela showed up at the gun store. She was waited on by the same person that she had spoken to that morning. During the course of the transaction, Pamela lied about what the person on the phone had told her, stating that she was told that she could buy and take possession of a handgun that day. The salesperson identified her as the person that he had spoken to on the phone earlier that morning. Although he knew she was lying about their conversations, he again told her of the waiting time requirement for purchase and possession of a handgun. Still the sales transaction continued.

The salesperson then told Pamela that since the delay only applied to handguns, he would be more than happy to show her some long guns and that she could purchase and take one home that day. They continued to look at weapons, the salesman became so concerned about Pamela that he had another employee call the local police department asking that they run a warrants check on her to "give us a reason not to sell her a gun." There were no outstanding warrants. Still the sales transaction continued.

During the course of the sales transaction, the salesperson observed that she avoided eye contact, was in a hurry, didn't properly respond to questions, was dirty and disheveled, was distraught and nervously pacing about the gun room floor, and appeared as if she "was doped or in a daze." During the course of the transaction Pamela even asked the salesman if he was afraid of her. Still the sales transaction continued.

While filling out the necessary Bureau of Alcohol, Tobacco & Firearm forms, the salesperson was shown Pamela's license and realized that she had given him a false address earlier. Still the transaction continued.

Ultimately, despite all of the foregoing, the salesman sold a 5 foot tall, 95 pound, obviously disturbed woman a pump action riot shotgun and a box of ammunition? They specifically told Pamela that she could only keep the weapon loaded at home or at a shooting rang. Then the salesperson and his cashier watched her go out into their parking lot and begin to load it. She was so shaky that she was, literally, dropping shells onto the pavement.

The salesman then went out into the parking lot, took the gun from Pamela and escorted her back into the store. He again reminded her that she could only load it at home or at the range. He unloaded the riot shotgun, put it back into its box, put the shells back into their box, took Pamela's car keys from her and escorted her into the parking lot. He placed the boxed gun and ammunition in her car trunk, slammed the lid, and put her behind the wheel. He then told her to leave and she drove off.

Immediately after watching Pamela drive away, the salesman went back inside the gun store called the police and described Pamela and her car. He described her as being mentally incompetent in possession of a weapon and dangerous.

Approximately 30 minutes later Gerald Goldfarb was murdered by Pamela Ayers. She then attempted suicide with the riot shotgun but because of its size and her small stature she was unsuccessful. When the SWAT team finally broke into her home Gerald and Pamela were lying on the floor, the pump action riot shotgun between them, with the price tag still on it.

Pamela was arrested, taken to the hospital for emergency surgery, and later transferred to a jail ward where she was to be held awaiting trial. Shortly thereafter she hung herself and finally succeeded in committing suicide.

I represented Gerald's widow and elderly father in the wrongful death case against the gun store and Pamela's estate. What became clear during the course of that litigation was that this murder, like countless others, was a murder of opportunity. If the 15 day waiting period that applied to handguns had applied to long weapons Pamela wouldn't have gotten the shotgun and Gerald wouldn't have been murdered on August 9, 1989.

As a result of her husband's murder, just six short months after their marriage, Mrs. Goldfarb became committed to the cause of gun control. She became active in support of this cause, testified before various legislative groups within the State of California and was instrumental in the State of California's adoption of a mandatory waiting period for the purchase of any firearm, whether handgun or long weapon. She and I both hope that my testimony here today will have the same effect on Federal legislation and we urge you to amend the appropriate act or acts to require a mandatory 15 day waiting period apply to any and all firearms.

Thank you again for your kind invitation. I am happy to respond to any questions that you may have about my testimony or any of the facts of the underlying wrongful death litigation.

Mr. SCHUMER. Thank you, Mr. Archer, and, again, I think these two—Mr. Farley and your client's situation—sure show how we have to do something about this, and I want to thank all the panelists for their testimony. There is really very little to ask. You have all covered it. I just have a couple of questions, first for Sergeant Shaw.

From your knowledge, since you are one of the experts on this, gun shows—you mentioned the extent to which they exist in Maryland—are they all around the country? Do they exist in greater number in Maryland?

Sergeant SHAW. I believe Texas and the one that I gave you an example of with the 2,200 tables was in Oklahoma. Maryland probably has in the nature of 40 in a given year—40 to 50 in a given year.

Mr. SCHUMER. Some claim that the gun shows' real purpose is for antique firearms—you know, collectable type guns.

Sergeant SHAW. We don't regulate antique firearms in the State of Maryland; anything that was manufactured prior to 1899 is not regulated.

Mr. SCHUMER. If we were to outlaw gun shows—this is just off the top of my head—would legitimate gun owners have any trouble getting guns?

Sergeant SHAW. No, sir.

Mr. SCHUMER. You know, allowing that you keep the antique ones. I can understand you might need a show for something like that. OK.

Mr. Travis, you have really said it all, and now the Federal Government is evidently doing something the same, but it is obvious—and I just want to underscore this—that if there are interviews a lot of people back out of being dealers. You have pointed out an

anomaly in the law whereby the Federal Government helps people actually violate State law.

Mr. Farley, you said no enforcement action was taken against Guns Unlimited. So I guess the store is still in business.

Mr. FARLEY. Yes.

Mr. SCHUMER. I will have to check on this, but you were told the dealer, even though he obviously sold to a straw purchaser, didn't violate any—certainly didn't violate Virginia law.

Mr. FARLEY. Actually, they contend that they don't remember anything. They don't remember what happened, when it happened.

Mr. SCHUMER. I see. So they are saying it is an evidentiary question as much as anything.

Mr. FARLEY. Right. But in a Federal trial and a State trial, you know, they were found wrong by a jury.

Mr. SCHUMER. Mr. Archer, how about the gun store in the case where you have sued? Are they still in business?

Mr. ARCHER. They are still in business. They are doing a lot of business.

Mr. SCHUMER. OK. Well, I guess both of you gentlemen might advocate a Federal law making gun dealers liable for any injury caused by selling a gun negligently to a felon or to a minor. I guess that would make gun dealers more responsible.

Mr. ARCHER. We would hope.

Mr. SCHUMER. My guess is, in both of your cases gross negligence would really be a standard that would be applicable anyway if we wanted to go higher than a negligence standard.

OK, I don't have any more questions.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have no questions, Mr. Chairman.

Mr. SCHUMER. OK. Well, I want to thank all four of you. It was really an excellent panel.

Mr. FARLEY. Thank you.

Mr. SCHUMER. Finally, our last panel. Senator Simon had been scheduled to testify, but he was held up by business in the Senate and he will not be able to make it. His statement will be read into the record at this point.

[The prepared statement of Mr. Simon follows:]

PREPARED STATEMENT OF HON. PAUL SIMON, A SENATOR IN CONGRESS FROM THE STATE OF ILLINOIS

First, I would like to thank Congressman Schumer for convening this hearing. He has been and continues to be one of the most powerful voices in Congress against gun violence. His efforts, and those of the subcommittee, have been a tremendous help in our joint desire to end the violence caused by guns.

The United States has the highest rate of violent crime in the developed world. One factor contributing to this onslaught of terror is clearly the proliferation of handguns: the Bureau of Alcohol, Tobacco and Firearms estimates that there are potentially 200 million firearms in civilian hands—with nearly 4 million new firearms added each year. Over the past two years, these firearms have killed 60,000 Americans, more than the number of U.S. soldiers killed in the Vietnam War and have been involved in one of every four deaths among persons age 15 to 24. In 1990 alone, guns involved in homicides, suicides or accidents caused the deaths of nearly 4,200 teenagers. Furthermore, a recent Atlantic Monthly article noted that: "Handguns terrorize more than they kill: Department of Justice statistics also show that every twenty-four hours handgun-wielding assailants rape thirty-three women, rob 575 people, and assault another 1,116".

In 1991, in Chicago, the number of firearm-related deaths was 927. In contrast, a Chicago Tribune story noted that "Toronto, which like Chicago has 3 million residents and tough handgun laws, noted only 17 firearm deaths in 1991."

Hard as it is to believe with all this violence, the number of firearm dealers in this country has increased by 112,000 since 1980 to a total of 286,000. That means there is 1 firearm dealer for every 1,000 Americans, or 1 dealer for approximately every 290 firearm owners (ATF). The Violence Policy Center put it into perspective when they noted that there are more gun dealers in our country than there are gas stations. There are 9,182 federally licensed firearm dealers in Illinois alone.

While the number of dealers has increased by 59% since 1980, the number of investigators assigned to inspect these dealers has decreased by 13%. In 1991, ATF issued 270 licenses a day, for a grand total of 91,000 new and renewed licenses that year. Only 37 of the 34,000 requests for new licenses that year were denied. Amazingly, fewer than 10% of dealer applicants undergo an actual inspection in the form of a personal interview or on-site visit. Bureau spokesman Jack Killorin noted: "There is no question that illegal activity by [dealers] is a threat to the community. The volume of licenses has outstripped our ability to keep up" (Washington Post, December 12, 1992).

Type I dealers (the basic federal license needed to sell guns in the U.S.) fall into two categories: those who operate storefront businesses, called "stocking dealers;" and those who operate out of their homes, called "kitchen-table" dealers. ATF estimates that only about 20% of all federally licensed dealers are actually storefront operations. ATF also projects that a majority of these "kitchen-table" dealers acquire a license for the purpose of buying guns in bulk at special prices and in order to skirt state and local laws, such as waiting periods and other restrictions.

How much damage can one dealer do? At least 600 federally licensed dealers have been arrested on criminal charges in the last five years. A few examples:

More than a dozen federally licensed dealers in Detroit alone have been charged with providing more than 2,000 firearms to criminals in the city (Washington Post).

"During a six-month period in 1990, Gustavo Salazar, a [federally licensed gun dealer] in Los Angeles purchased more than 1,500 guns and sold them to gang members and other individuals. An ATF check on 1,165 handguns sold by Salazar revealed that only four had been registered under California law." [Violence Policy Center]

From February to June in 1990, Detroit kitchen-table dealer McClinton Thomas ordered hundreds of handguns. All of the guns were sold off the books, including 90 guns to a "big-time dope dealer". [Violence Policy Center]

Carroll Brown was a federally licensed dealer in Baltimore, who sold weapons from his home and car. Fewer than half of his gun sales were properly recorded and some weren't recorded at all. When he did bother to write down names and addresses, they were often bogus. Of the approximately 300 weapons Brown sold, most have not been recovered, including more than 100 Brown is believed to have sold to a single buyer. At least 14 of the weapons he sold have turned up at Baltimore crime scenes. [Washington Post]

Obviously, something must be done to ensure that gun licenses are not used for such improper purposes. Legislation I introduced earlier this year with Senators Feinstein, Kennedy and Lautenberg, S. 496, takes a number of important steps in this direction.

Specifically our bill would:

Raise the license fee for gun dealers.

This bill would raise the license fee for firearm dealers to \$750. The current fees, \$50 per year for pawnbrokers who deal in firearms and \$10 per year for all other dealers, have remained unchanged since enactment of the Gun Control Act of 1968. The proposed new fees will help absorb the increasing costs of processing and investigating license applications and renewals. In addition, the increased fee will help to discourage individuals from obtaining a dealer's license merely to obtain personal firearms at wholesale prices or to skirt state and local laws. *It is more expensive to join the nra than it is to get a federal firearms license!*

Senator Moynihan introduced a bill earlier this year that we are including in this package as well. The bill would require dealers to certify that they are in compliance with state and local laws before receiving a new license.

This provision would strengthen the licensing provisions of the Gun Control Act by requiring, as a prerequisite to the issuance of a new license, that the business to be conducted is not prohibited by any state or local law applicable in the jurisdiction where the applicant's premises are located. For example, to

receive a Federal firearm license, a dealer would need to be in compliance with local zoning laws.

Drop the 45-day requirement for action on firearm dealer license applications.

Current law requires the Secretary of the Treasury to approve or deny applications for federal firearms licenses within 45 days of receipt of such applications. Further, if action is not taken within such period, an applicant may seek mandamus to compel the Secretary to act. The 45-day period has proven to be unrealistic since the time needed to conduct a thorough background check of an applicant and to determine whether the applicant meets all of the eligibility requirements for licensing routinely takes longer than 45 days. In order to ensure that licenses are only issued to qualified applicants, S. 496 would omit the 4-day review period requirement from the Act.

Allow the Bureau of Alcohol, Tobacco and Firearms to investigate a dealer more than once a year, if necessary.

Under existing IGW a warrant is required to conduct more than one inspection of a federal firearms licensee to ensure compliance with the record-keeping provisions of the Act during any twelve-month period. This restriction against unannounced inspections enables unscrupulous licensees to conceal violations of the law and is too infrequent to ensure compliance with the Act's restriction. It should be noted that, prior to the amendment of the Gun Control Act in 1986, there was no limit on the number and types of warrantless inspections which could be conducted of firearms licensees, and such inspections had been upheld by the Supreme Court (*U.S. v. Biswell*, 406 U.S. 311 (1972)). Furthermore, the Bureau, which also has jurisdiction over federal alcohol regulations, has unlimited authority to inspect liquor wholesalers. The laws for gun dealers should be consistent with that standard.

Require dealers to report a shortage in a firearm shipment, or lost or stolen inventory to the Bureau.

Under current law, ATF has the responsibility for enforcing 18 U.S.C. 922(j) which makes it unlawful to receive, conceal, store, or dispose of any stolen firearm. There is not, however, a requirement for licensees to report thefts of firearms to ATF. S. 496 would require these reports which will enable ATF to make more timely investigations of violations of the statute.

Require dealers to comply with the Bureau's firearm trace requests.

The Bureau of Alcohol, Tobacco and Firearms has statutory access to physically inspect licensee records. The Bureau may also require written reports of licensees upon request. However, effective gun tracing often necessitates that licensees submit information on firearm sales by phone. While most licensees cooperate with ATF's phone requests, some licensees have refused to respond to such requests. Our bill would resolve the problem by requiring licensees to provide trace information by telephone.

Require common carriers (UPS for example) to obtain identification from individuals who receive a firearm shipment.

Persons acquiring firearms for illegal purposes and for illegal firearms trafficking are known to receive shipments of firearms away from their place of residence. Taking delivery of firearms in this manner helps conceal the identity of the recipient. Our proposed legislation would help resolve the problem by requiring carriers to identify persons who take delivery of firearms.

Require identification (fingerprints and photograph) for individuals applying for a license to sell machine guns. (Currently, this is a requirement for individuals who are applying for a license to possess a machine gun, but not for those applying for a license to sell machine guns.)

Current law requires individuals to whom National Firearms Act weapons (e.g. machine guns) are transferred to be identified by photographs and fingerprints to ensure that the weapons may be lawfully received and possessed. Ironically, there is no similar requirement for individuals engaged in the firearms business of selling such weapons. This legislation would impose such a requirement on individuals doing business in these types of weapons prior to commencing such business.

Criminalize the sale of firearms or ammunition when there is reasonable cause to believe the weapon will be used in a crime of violence.

Dealers must be held responsible for selling guns to individuals who are likely to commit crimes of violence. This bill would make it unlawful for a dealer to sell or otherwise dispose of a firearm if that dealer has reasonable cause to believe that the firearm will be used in such a crime. The term "reasonable cause" is found throughout the firearm sections of the federal code. For example, one closely analogous provision in the code states that:

"Whoever, with knowledge or reasonable cause to believe that an offense punishable by imprisonment . . . exceeding one year is to be committed . . . ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined not more than \$10,000, or imprisoned not more than ten years, or both," 18 924(b).

S.496 extends the scope of this prohibition to cover all guns transferred between two individuals, not just those a dealer "ships, transports, or receives." Again, I thank you, Congressman Schumer, for your leadership in this area and I look forward to working with you in the months ahead on this and other important crime control issues.

GUN DEALER LICENSING REFORM ACT

SENATOR PAUL SIMON, SPONSOR

Increase license fee for firearm dealers

The bill would raise the license fee for firearm dealers to \$750. The current fees, \$50 per year for pawnbrokers who deal in firearms and \$10 per year for all other dealers, has remained unchanged since enactment of the Gun Control Act of 1968. The proposed new fees will help absorb the rising costs of processing and investigating license applications and renewals. It also will help discourage some from obtaining dealer's licenses merely to obtain personal firearms at wholesale prices or in interstate commerce.

Eliminate the 45-day requirement for action on firearms license applications

Current law requires the Secretary of the Treasury to approve or deny applications for federal firearms licenses within 45 days of receipt of such applications. The 45 day period has proven to be unrealistic since the time needed to conduct a thorough background check of an applicant—and to determine whether the applicant meets all of the eligibility requirements for licensing—routinely takes longer than 45 days. In order to ensure that licenses are only issued to qualified applicants, this bill would omit the 45-day review period requirement from the Act.

Require licensees to comply with firearm trace requests

The Bureau of Alcohol, Tobacco and Firearms has statutory access to licensee records by physical inspection. The Bureau also may require written reports of licensees upon request. However, effective gun tracing often means asking licensees to provide information on firearm sales by phone. While most licensees cooperate with ATF's phone requests, some licensees have refused to respond to such requests. This bill would resolve the problem by requiring licensees to provide trace information by telephone.

Require compliance with state and local laws before issuance of a firearm dealer license

The bill would strengthen the licensing provisions of the Gun Control Act by requiring, as a prerequisite to the issuance of a new license, that the business to be conducted would not be prohibited by any state or local law applicable in the jurisdiction where the applicant's premises are located. For example, to receive a Federal firearm license, a dealer would need to be in compliance with local zoning laws. This provision would advance one of the major congressional objectives of the Act: to coordinate federal, state and local laws into an effective system of firearm regulation and to provide support to state and local law enforcement officials.

Eliminate restrictions on compliance inspections

Under existing law, a warrant is required to conduct more than one inspection of a federal firearms licensee to ensure compliance with the record-keeping provisions of the Act during any twelve-month period. This restriction against unannounced inspections enables unscrupulous licensees to conceal violations of the law, it allows inspections too infrequently to ensure compliance with the Acts intent. Prior to the amendment of the Gun Control Act in 1986, there was no limit on the number and types of warrantless inspections which could be conducted of firearms licensees, and such inspections had been upheld by the Supreme Court [*U.S. v. Biswell*, 406 U.S. 311 (1972)]. Furthermore, the Bureau, which also has jurisdiction over federal alcohol regulations, has unlimited authority to inspect liquor wholesalers. This change would bring requirements for gun dealers into consistency with that standard.

Require dealers to report the theft or loss of firearms

Under current law, ATF has the responsibility for enforcing 18 U.S.C. 922(j) which makes it unlawful to receive, conceal, store, or dispose of any stolen firearm. There is not, however, a requirement for licensees to report thefts of firearms to ATF. This bill to require theft reports would enable ATF to make more timely investigations of violations of the statute.

Require identification of persons engaged in commerce in national firearms act weapons

Current law requires individuals to whom National Firearms Act weapons, e.g. machine guns, are transferred to be identified by photographs and fingerprints to ensure that the weapons may be lawfully received and possessed. Ironically, there

is no similar requirement for individuals engaged in the firearms business of selling such weapons. This legislation would introduce such a requirement on individuals doing business in these types of weapons prior to commencing such business.

Require common carriers to obtain identification before delivering firearms

Persons acquiring firearms for illegal purposes and for illegal firearms trafficking are known to receive shipments of firearms away from their places of residence. Taking delivery of firearms in this manner helps conceal the identity of the recipient. The proposed legislation would help resolve the problem by requiring carriers to identify persons who take delivery of firearms.

Criminalize the sale of firearms or ammunition when there is reasonable cause to believe the weapon will be used in a crime of violence

Dealers should be held responsible for selling guns to individuals who are likely to commit crimes of violence. This bill would make it unlawful for a dealer to sell or otherwise dispose of a firearm if that dealer has reasonable cause to believe that the firearm will be used in such a crime.

Mr. SCHUMER. Our final panel today includes Mr. Richard Aborn. He is the president of Handgun Control and the president of the Center to Prevent Handgun Violence. He is a former prosecutor in the Manhattan District Attorney's Office where he handled homicide and illegal gun distribution cases. Our second panelist is Mr. Richard Gardiner. He is the legislative counsel for the National Rifle Association. He has been with the NRA since 1979 in a number of different capacities.

I think I am going to let Mr. Gardiner have his choice as to whether he would go first or second since he obviously is a lone witness among all the others.

Would you rather lead off, or would you rather follow Mr. Aborn?

Mr. GARDINER. I am always glad to follow up.

Mr. ABORN. Why did I think he would do that?

Mr. SCHUMER. OK, Mr. Aborn, you are on first. I have complete faith in your ability, so I knew you would do a good job no matter if you were first or second.

STATEMENT OF RICHARD M. ABORN, PRESIDENT, HANDGUN CONTROL, INC., WASHINGTON, DC

Mr. ABORN. Thank you.

Mr. Chairman, let me begin by commending you for your strong record of leadership on the gun violence issue. In your work for the Brady bill and for restrictions on assault weapons, you have been an eloquent voice for sanity in addressing our Nation's epidemic of gun violence.

And, Mr. Sensenbrenner, on behalf of Handgun Control, may I also thank you, sir, for your tireless work on behalf of the Brady bill. You represent all the Americans in this country who are also fighting tirelessly for that very sensible, sane gun law, and I think we will see that bill signed into law in this Congress. So we thank you for that help.

We at Handgun Control and at the Center to Prevent Handgun Violence are also grateful for the opportunity to share our views on another aspect of the gun violence problem, the very one that you are addressing today, the absence of meaningful regulations of the Nation's gun dealer.

Every year, nearly 640,000 violent crimes are committed with handguns, including more than 12,000 homicides. Although the path of a handgun into a wrongdoer's possession may involve mul-

multiple transactions, virtually every handgun used in crime originated with a licensed gun dealer. Firearms are, without question, our most dangerous consumer product. A license to sell such a product should be regarded as a public trust carrying with it legal obligations that would not ordinarily govern the retail sale of other products.

According to ATF, there are approximately 286,000 Federal firearm licensees, but in contrast to the number of licensees it is estimated by OTA that only about 15,000 licensees operate storefront gun shops and another 5,000 operate retail gun sections in sporting goods stores. The vast majority of licensees, often referred to as kitchen table dealers, operate from their homes out of sight of Federal, State, and local authorities. We must stop the granting of licenses to persons who do not intend to engage in a bona fide business.

ATF could take several regulatory actions under current law to address the problem of the unregulated kitchen table dealers. Current Federal law already requires that a license applicant have premises from which he conducts business subject to license or from which he intends to conduct such business within a reasonable period of time.

The business of a licensed gun dealer as defined by the Gun Control Act would be a regular course of trade or business with a principal objection of livelihood and profit through repetitive purchase and resale of firearms. We see nothing in the statute which would preclude ATF from requiring dealers as a condition for license renewal to submit tax returns and aggregate purchase and sale information sufficient to demonstrate that they meet the statutory definition of engaging in the business of being a gun dealer.

The existing business premise requirement could be more aggressively enforced in other ways. According to ATF's interpretation of this requirement, licensees operating out of their homes must open up a part of their home to their clientele. Accordingly, ATF requires license applicants to specify the hours in which they are open for business. As a corollary to this business hour requirement, ATF could, by regulation, once again, require that licensees actually post their business hours. In addition, random checks by ATF, working with local law enforcement, could easily determine whether the licensee has misrepresented his business hours on his application, and such misrepresentations would be grounds for revocation.

Several legislative changes also are needed to ensure that dealer licensees operate bona fide businesses. First, to diminish the financial incentive to be a kitchen table dealer, legislation should be enacted to increase the license application fee from the current \$10 per year to at least \$500 per year.

Second, legislation should be passed to require as a condition for license grant and renewal compliance with all State and local licensing and zoning requirements. Only a small percentage of federally licensed gun dealers make a serious effort to comply with State and local law. For example, there are more than 1,100 Federal licensees in the city of Los Angeles, but fewer than 130 have obtained local permits required to sell more than five guns annually.

We also know far too little about the people entrusted to engage in the business of selling firearms. For the vast majority of applicants, issuance of a dealer license is virtually automatic upon payment of the \$10-per-year license fee and completion of a 2-page form. Of the 34,000 applications for new licenses in 1991, only 37 were denied. In too many cases, licenses have been granted to convicted felons and others prohibited by law from selling or buying firearms.

For instance, last year the L.A. Times reported the case of Federal licensee Charles MacDonald who was not only a convicted felon but also received a dishonorable discharge from the military. Over the course of 2 years, MacDonald sold 122 guns from a hotel room in Los Angeles, more than a dozen of which have been connected by authorities to specific crimes, including crimes of attempted murder.

Some important steps can also be taken without the new law. For instance, ATF in this area could require fingerprinting of license applicants and photo ID's. Neither of those steps would be prohibited by current existing law. ATF has the current statutory power to require that. Both fingerprinting and photo ID's could be required, and such would enable us to have a greater sense of who is actually applying for these licenses.

In addition, ATF should change its current policy of permitting licensees who are convicted of felonies to retain their licenses during the appeals process. The Gun Control Act permits licensees indicted for felonies to retain their licenses until any conviction pursuant to the indictment becomes final. Under ATF's rather unique interpretation, a conviction does not become final until all appeals are exhausted. I think, Mr. Chairman, you will recognize that that is inconsistent with the concept of finality that exists in other sections of the U.S. Code and certainly is not required by the Gun Control Act.

In order to ensure a sufficient background check not only for prior felony convictions but for other disqualifying conditions as well, Congress must change the current statutory requirement that a license be approved or denied within 45 days of ATF's receipt of the application. The 45-day limit is totally arbitrary and represents a perverse ordering of priorities in which the applicant's interest in speed is given more importance than the public's interest in being protected from unscrupulous gun sellers.

Legislation should also be enacted requiring that individuals employed by licensed gun dealers also undergo a background check, including fingerprinting, to determine eligibility for possession and sale of firearms, and to ensure compliance with the law once the license is issued, the current statutory limitation of one warrantless recordkeeping inspection per year added by Congress in the 1986 McClure-Volkmer Act should be eliminated.

As ATF has acknowledged, theft of guns from licensed dealers is a serious problem. Stolen guns inevitably fuel the interstate illegal market, yet many gun dealers take fewer precautions than the average jewelry store and implement adequate security measures only after they are victimized.

In 1978, a Federal court ruled that ATF has the authority to promulgate regulations requiring that licensees implement adequate

security measures—it is time for that authority to be used—in addition, facilitate a coordinated law enforcement attack on gun theft. New legislation should be enacted requiring that dealers report all firearm thefts and losses promptly to both ATF and to the local police.

In conclusion, we believe that new regulatory initiatives and legislation proposed here will do much to create order out of the chaos that is our current system for licensing gun dealers. At best, the current system occasionally punishes dealers for illegal conduct long after the illegality has committed the act of selling guns on the street and thus creating havoc in our communities.

We need a strategy to prevent unscrupulous gun dealers from diverting guns into the hands of the criminal element in the first place. We urge ATF to take those actions which can be initiated now under current law, and we urge Congress to enact new legislation to give ATF additional power to curb the flow of deadly firearms to the criminal element.

Thank you.

Mr. SCHUMER. Thank you, Mr. Aborn.

Mr. Gardiner.

STATEMENT OF RICHARD E. GARDINER, LEGISLATIVE COUNSEL, NATIONAL RIFLE ASSOCIATION OF AMERICA, WASHINGTON, DC

Mr. GARDINER. Thank you, Mr. Chairman.

First of all, Mr. Chairman, I would ask that my written testimony be—

Mr. SCHUMER. Without objection, your entire statement will be read into the record.

Mr. GARDINER. Thank you.

I would also ask, since we had believed that Senator Simon was going to be here earlier, that our correspondence with him about his bill be entered into the record as well.

Mr. SCHUMER. Without objection.

Mr. GARDINER. Thank you.

At the outset, I should emphasize that the NRA is, like everyone else here today, interested in having a responsible and fair firearms licensing policy. Without exception, the NRA is willing to work with all Members of Congress and the administration to craft legislation which addresses both the genuine needs of law enforcement to achieve real crime control and at the same time upholds the rights of law-abiding citizens and firearms dealers.

Turning to what we believe are the appropriate reforms of the Federal firearms licensing system, I should first point out that it is undisputed that the vast majority of firearms licensees are honest, hard-working citizens who strictly comply with Federal law. Certainly there has not been shown to be wholesale dishonesty or abuse in the firearms business in this country or that current laws need to be dramatically strengthened rather than actually enforced.

I should also point out that the large volume of Federal licenses was an intended consequence of the 1968 Gun Control Act. As those who were involved in the passage of that act will remember, the FFL process was devised in response to the prohibition on the

interstate sale and transfer of all types of firearms, which remains the law with the exception of long guns from dealers.

When the interstate sale or transfer of firearms was banned, Congress created various types of FFL's to ensure that no monopolies were created. In fact, it would not be incorrect to say that the original purpose of the FFL license was to create a sufficient number of licensees, all keeping records of transactions, to ensure that the legal supply of firearms could meet legal demand at reasonable prices so as not to make firearms ownership the exclusive realm of the elite and the wealthy.

I should point out that if the current fee for licenses is too low, BATF could, simply by regulation, lengthen the term of the license and, as a consequence, collect a larger license fee. For example, they could make it a 10-year license and collect the \$100 that Mr. Higgins earlier said was about what they need to do the background checks. The statute does not place any limits on their doing that. Indeed, up until about 10 years ago, it was a 1-year license; ATF, on its own, extended it to 3 years and charged \$30.

In keeping with that model of Federal law, ATF's enforcement and inspection powers were written to allow annual, unannounced inspections on every dealer and unlimited inspections when conducted in conjunction with a criminal investigation. Those who suggest that this inspection power is somehow inadequate are confusing enforcement power with lack of enforcement. The problem is not that BATF does not have the power to inspect dealers but, rather, they lack the personnel, and I might note, Mr. Chairman, that you were not correct in stating that the BATF cannot obtain records from dealers. In fact, subpoenas and search warrants and even the statutorily created administrative search warrant are available to ATF as they are to all other Federal agencies.

So too with ATF's ability to investigate and issue Federal firearms licenses. If there is a flaw in the current system it is again in lax enforcement and/or the lack of enforcement, and I was pleased to hear this morning—I guess earlier this afternoon—that Mr. Higgins is reorienting the directions of his inspectors.

The first reform of the current law that NRA would like to suggest relates to theft of firearms. NRA believes that trafficking in stolen firearms is a serious crime and deserves to be treated as such by Federal law. That is why we would like to see Federal legislation making it unlawful for a person to steal, take, or carry away from the person or premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms any firearms in the licensee's business inventory that has been shipped or transported in interstate commerce. We believe that any person who commits such an offense during any robbery or riot should be sentenced to imprisonment for 30 years, no part of which may be suspended, or, if a death results, to life imprisonment without release or possibly even to the death penalty.

Second, we believe that the types of firearms a person with a collector's license—and that is one of the four types of licenses that is currently available—should be expanded so that collectors will be encouraged to obtain collectors' licenses and not dealers' licenses. I might note that this also could be done without additional legislation. It could be done simply by regulation by the BATF. In-

deed, I would think that this one change in the regulations—expanding the use of the collector's license—would probably eliminate virtually all of the concerns that have been expressed by a lot of the witnesses today. If that were to be done, BATF could therefore concentrate its inspections on true retail dealers.

Third, we would support a requirement that notification of the application for a license be provided to local law enforcement. Past and current legislative proposals to require approval by the chief local law enforcement officer before the issuance of a license are entirely inappropriate. When similar approval requirements have been mandated in the past, the rights of law-abiding individuals have been subject to abuse.

It is instructive to note, moreover, that such approvals cannot be mandated by the Federal Government under the U.S. Constitution pursuant to the U.S. Supreme Court's recent decision in *New York v. United States*. Requiring only notice removes the potential for arbitrary abuse while continuing to provide information to ensure compliance with State and local law.

Fourth, we would support a measure to help prevent the theft of firearms by limiting the unnecessary interstate shipping of firearms. ATF currently maintains that a licensee may not personally transfer a firearm to another licensee in a face-to-face exchange but must ship it from his licensed premises by common carrier, thereby exposing it to the risk of theft. We believe that a licensee should have the right to transfer or deliver firearms to, and receive firearms from, another licensee at any location without regard to the State which is specified on the license, thereby preventing thefts of firearms between licensees.

Fifth—and I think this is probably the most important because it fits in with what Mr. Higgins was saying earlier—we believe that adequate notice should be provided to all licensees of all State laws of revoked licenses and regulations. Indeed, the current law requires the ATF to publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge. They are also required to provide all amendments to those laws.

Despite this law, passed in 1986, the last compilation of State laws provided by BATF to licensees is from 1989, and that information was already dated at that point. ATF has never provided to licensees amendments of State laws, much less done it on a yearly basis. We agree with Mr. Higgins that education about the Federal law is important. Complying with current law would be a very good place to start with that program.

In addition, ATF has no mechanism to inform licensees that a particular dealer's license has been revoked. We believe that such a mechanism should be created by Congress to mandate that.

Finally, ATF has no regular mechanism to notify licensees of rules, regulations, and rulings. The latest compilation of Federal laws was dated 1988, and I have set out in my written testimony some specific proposals about how to deal with some of these problems.

I would finally like to turn to the problems we see with the current administration of the law. In recent months, my office has received hundreds of inquiries from law-abiding citizens across the

United States concerning actions taken by agents of the BATF in regard to the issuance of Federal licenses. While not a comprehensive list of all the actions taken by ATF agents, the majority of inquiries involve the following:

ATF has informed applicants that a dealer license cannot be obtained unless the applicant is in compliance with State and local business and zoning laws. I was pleased to hear Mr. Higgins say this morning that he would look into that because that is not what he has directed the field to do. Unfortunately, that is what far too many agents in the field are doing. They have told applicants that they cannot have a dealer license for their residence, that they must sell a certain number of firearms per year and that they must have regular business hours. Indeed, in some cases applicants have been told that they must have permission of their landlord if their building is rented or leased or that they have to have an ATF-approved security system or security guards. In virtually all of these cases, the ATF has strongly urged the applicants to withdraw the application "voluntarily."

Mr. Chairman, none of these requirements is in Federal law. Indeed, it is ironic that the issues raised in the majority of inquiries have already been ruled on by the Federal appellate courts. The information being given to citizens is directly contrary to the rulings of those courts. For example, the U.S. Court of Appeals for the District of Columbia Circuit in an opinion by then Judge Scalia expressly held that Federal law does not require compliance with State and local law to obtain a Federal dealer license. As I said, I was pleased to hear earlier that Mr. Higgins is going to make some effort to ensure that agents in the field are going to start complying with that.

The court also held that Federal law does not require that an applicant for a Federal dealer license be engaged in a regular commercial enterprise. And in *NRA v. Brady*, out of the fourth circuit, the court held that Federal law does not require licensees who work out of private dwellings—and this is a quote—"to throw open their homes to the general public or even to observe regular business hours."

Yet despite these clear pronouncements of the Federal appellate courts, ATF agents, who are not generally members of the bar and in giving legal advice are likely engaging in the unauthorized practice of law, have intimidated law-abiding citizens into withdrawing applications.

I might note, Mr. Chairman, that the BATF's efforts I have just described may, to some degree, explain why ATF does not have the manpower to enforce current law. If ATF would stick to enforcing the law as Congress has written it and the Federal courts have interpreted it, they would certainly have far more resources to go around.

In closing, Mr. Chairman, I am certain that while we may disagree as to what the law should be, we can agree that it is wrong for an enforcement agency to impose restrictions that Congress has not enacted. We hope that you and members of this committee will use your good offices to ensure that Congress, not the agencies, makes the laws.

Thank you.

Mr. SCHUMER. Thank you, Mr. Gardiner.
 [The prepared statement of Mr. Gardiner and correspondence with Senator Simon follow:]

PREPARED STATEMENT OF RICHARD E. GARDINER, LEGISLATIVE COUNSEL, NATIONAL RIFLE ASSOCIATION OF AMERICA, WASHINGTON, DC

Mr. Chairman and Members of the Committee, I appreciate having the opportunity to testify today on behalf of the 3.2 million members of the National Rifle Association and their families. My name is Richard Gardiner and I am the Legislative Counsel for the NRA. I have dealt extensively with the law on federal firearms licenses (FFLs) from a legislative and a litigation perspective, and am aware how and why the current system was developed. I am also aware of the impact which changes to the current system will have on FFLs.

At the outset, I should emphasize that the NRA is, like everyone else here today, interested in having a responsible and fair firearms licensing policy. Without exception, the NRA is willing to work with Members of Congress or of the Administration to craft legislation which addresses both the genuine needs of law enforcement to achieve real crime control and, at the same time, upholds the rights of law-abiding citizens and firearms dealers.

In regard first to the issue of firearms importers licenses, we support, and will continue to support, the right of law-abiding citizens to import lawfully produced products into our country. Under current law, a person who obtains an importer's license from the Bureau of Alcohol, Tobacco, and Firearms (BATF) may import firearms into this country that are "generally recognized as particularly suitable or readily adaptable to sporting purposes," rifles and shotguns that are "curios and relics" as defined by BATF, and handguns that are "curios and relics" if they also meet the "sporting purposes" test. To import a firearm, the licensed importer must apply for, and receive, specific authorization from the BATF. I might note that many imported firearms are semi-automatic firearms, which are the primary competition firearm produced today, are a mainstay of any firearms collection having been produced for over one hundred years, and remain a tool of self-defense for millions of decent, honest Americans and their families.

Turning to what NRA believes are appropriate reforms of the federal firearms licensing system, I should first point out that it is undisputed that the vast majority of firearms licensees are honest, hard-working citizens who strictly comply with federal law. Certainly there has not been shown to be wholesale dishonesty or abuse in the firearms business in this country, or that current laws need to be dramatically strengthened, rather than actually enforced. To those who suggest otherwise, I would urge that they examine the empirical evidence. For instance, how many FFL licenses have been revoked, how many gun trafficking charges have been prosecuted against firearms licensees, and what is the average sentence that has been levied on offenders? Obviously, if the law is being seriously enforced, this data should be available for review. The absence of such data should signal to an objective observer that there is either not a problem, or that those charged with enforcing the law are not taking the problem seriously.

I should also point out that the large volume of dealer licenses was an intended consequence of the 1968 Gun Control Act. As those who were involved in the passage of the 1968 Gun Control Act will remember, the FFL process was devised in response to the prohibition on the inter-state sale or transfer of firearms. When the inter-state sale or transfer of firearms was banned, Congress created the FFL to ensure that no monopolies were created. In fact, it would not be incorrect to say that the original purpose of the FFL license was to create a sufficient number of FFL dealers, keeping records of all transactions, to ensure that legal supply of firearms could meet legal demand at reasonable prices so as not to make firearms ownership the exclusive realm of the wealthy.

In keeping with that model, BATF's enforcement and inspection powers were written to allow annual unannounced inspections on every dealer, and unlimited inspections when conducted in conjunction with a criminal investigation. Those who suggest that this inspection power is somehow inadequate are confusing enforcement power with lack of enforcement. The problem is not that the BATF does not have the power to inspect dealers—but rather that they lack the manpower. So, too, with the BATF's ability to investigate and issue FFL's. If there is a flaw in the current system, it is, again, in lax enforcement and/or the lack of enforcement. Any suggestion that BATF requires unlimited time is insupportable. In fact, a recently released GAO report found that, except in a very few cases, the 45 day maximum time period is more than adequate.

The first reform that the NRA would like to suggest relates to the theft of firearms. NRA believes that trafficking in stolen firearms is a serious crime, and deserves to be treated as such. Specifically, we believe that, until criminal behavior is penalized commensurate with the actual impact of the crime, such behavior is going to increase. That is why we would like to see federal legislation making it unlawful for a person to steal, take, and carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate commerce. We also believe that any person who commits such an offense during any robbery or riot should be sentenced to imprisonment for thirty years, no part of which may be suspended or, if a death results, to life imprisonment without release or to death.

Second, we believe that the types of firearms a person holding a collector's license can collect should be expanded so that collectors will be encouraged to obtain the collector's license. BATF can therefore concentrate its inspections on true retail dealers. Collectors obtain firearms for their personal collection and not for a business inventory and retail sale.

Third, we would support a requirement that notification of the application for an FFL be provided to local law enforcement. Past and current legislative proposals to require approval by the local chief law enforcement officer before the issuance of an FFL are entirely inappropriate. When similar approval requirements have been mandated in the past, the rights of law-abiding individuals have been subject to abuse. It is instructive to note, moreover, that such approvals cannot be mandated by the federal government under the U.S. Constitution pursuant to the Supreme Court's recent decision in *New York v. United States*, 112 S.Ct. 2408 (1992). Requiring notice only removes the potential for arbitrary abuse, while continuing to provide information to ensure compliance with local and state ordinances. Moreover, the process removes BATF from the equation in what is not an issue of federal concern.

Fourth, we support a measure to help prevent the theft of firearms by limiting the unnecessary interstate shipping of firearms. BATF currently maintains that a licensee may not personally transfer a firearm to another licensee in a face to face exchange, but must ship it from his licensed premises by common carrier, thereby exposing it to the risk of theft. We believe that a licensee should have the right to transfer or deliver firearms to, and receive firearms from, another licensee at any location without regard to the State which is specified on the license, thereby preventing thefts of firearms shipments between licensees.

Fifth, we believe that adequate notice should be provided to all licensees of state laws, revoked licenses, and regulations. Section 110(a) of the Firearms Owners' Protection Act, P.L. 9908, 100 Stat. 460-61 (1986) provides:

[The Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this Act. All amendments to such State laws and published ordinances as contained in the aforementioned compilation shall be published in the Federal Register, revised annually, and furnished to each person licensed under chapter 44 of title 18, United States Code, as amended by this Act.

Despite this command, and BATF's own regulation, 27 C.F.R. § 178.24, the last compilation of State laws provided by BATF to licensees is dated 1989. BATF has never provided to licensees any amendments to the State laws, much less done it on a yearly basis. Yet knowledge of State laws by licensees is necessary for compliance with the Gun Control Act.

In addition, BATF has no mechanism to inform licensees that a particular dealer's license has been revoked. Section 926(a) provides that the Secretary may prescribe regulations providing that a licensee shall provide to another licensee a certified copy of his license, and for the issuance of certified copies. See 27 C.F.R. § 178.95. The transferee of a firearm must furnish a certified copy of his license to the transferee, who may rely on that license until it expires. 27 C.F.R. § 178.94.

Finally, BATF has no regular mechanism to notify licensees of rules, regulations, and rulings. The latest compilation of federal regulations and rulings provided by BATF to licensees is dated 1988.

In the interests of both fairness and law enforcement, BATF should provide to licensees, on a timely basis, amendments to State laws, notice of revoked licenses, and notice of regulations and rulings. In view of the fact that such a requirement for annual notice has been ignored by BATF each year since 1989, such require-

ments must be coupled with mechanisms to make BATF follow Congress' commands. What we propose is that;

In addition to such other requirements of law as may be applicable, no rule or regulation shall be effective until thirty days after being mailed to all persons licensed under this chapter.

The Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances which are pertinent to compliance with this chapter. Each year thereafter, the Secretary shall publish and provide to licensees all amendments to such State laws and published ordinances. Failure of the Secretary to do so would create a rebuttable presumption that the licensee had no knowledge of the applicable law.

The Secretary shall publish and provide to all licensees, not less than on a quarterly basis each year, all official rulings concerning this chapter and concerning chapter 53 of Title 26, United States Code.

The Secretary shall publish and provide to all licensees, at such times as he shall deem necessary, the names and license numbers of all revoked firearms licensees.

I would finally like to turn to the problems we see with the administration of the current licensing system.

In recent months, my office has received hundreds of inquiries from law-abiding citizens across the United States concerning actions taken by agents of the BATF in regard to the issuance of federal dealer licenses. While not a comprehensive list of all the actions taken by BATF agents, the majority of inquiries have involved the following: the BATF has informed applicants that a federal dealer license cannot be obtained unless the applicant is in compliance with state and local business and zoning laws; that applicants cannot have a dealer license for their residence; that applicants must sell a certain number of firearms per year; and that applicants must have regular business hours. In some cases, applicants have been told that they must have permission of the landlord when their licensed premises are rented or leased or that they must have BATF-approved security systems. In virtually all of these cases, the BATF has strongly urged the applicants to withdraw the application "voluntarily" without explaining to the applicant what his federal statutory rights are.

Mr. Chairman, none of these requirements is in federal law. Indeed, it is ironic that the issues raised in the majority of inquiries have already been ruled on by the federal appellate courts. And the information being given to citizens is directly contrary to the rulings of the courts. For example, the U.S. Court of Appeals for the District of Columbia Circuit, in an opinion by then Judge Scalia, has expressly held that federal law does not require compliance with state and local law to obtain a federal dealer license. *National Coalition to Ban Handguns v. Bureau of Alcohol, Tobacco, and Firearms*, 715 F.2d 632 (D.C. Cir. 1983). The court also held that federal law does not require, that an applicant for a federal dealer license been engaged in a regular commercial enterprise. And, in *NRA v. Brad*, 914 F.2d 475 (4th Cir. 1990), the U.S. Court of Appeals for the Fourth Circuit held that federal law does not require licensees who work out of private dwellings "to observe regular business hours." Yet, despite these clear pronouncements of the courts, BATF agents—who are generally not members of the bar and, in giving legal advice, are likely engaging in the unauthorized practice of law—intimidated law-abiding citizens into withdrawing applications.

Mr. Chairman, I am certain that, while we may disagree as to what the law should be, we can agree that it is wrong for an enforcement agency to impose restrictions that Congress has not enacted. We hope that you, and members of the committee, will use your good offices to ensure that Congress, not the enforcement agencies, make the laws.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20038

April 19, 1993

The Honorable Paul Simon
United States Senate
462 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Senator Simon:

I was recently contacted by an NRA member who told me, in response to his question regarding S. 496, a bill introduced by you which significantly alters current Federal Firearms License (FFL) standards, costs, and procedures, that your response was 'the NRA is very supportive of my bill'. Without having been privy to this conversation, I cannot respond to the veracity of this statement or the accuracy of the questions which you were asked.

In light of the importance of this issue to the literally hundreds of thousands of law-abiding firearms retailers and collectors who will be directly and dramatically affected by the changes you have proposed, I thought it instructive to reiterate our views presented to you in testimony by Richard Gardiner, Legislative Counsel for NRA-ILA, at the Senate Governmental Affairs, Subcommittee on Federal Oversight, on March 26, 1993. I have enclosed a copy of our written testimony which outlines in detail our comments on S. 496, and the outline of reforms to the current law which we think would help to promote a more fair and effective system. Briefly, the reforms we would like to see are as follows.

We strongly believe that the penalties for firearms theft and gun trafficking should be dramatically strengthened -- and stringently prosecuted. In particular, we strongly support life imprisonment, or the death penalty where applicable, when a death results from a crime committed against a federal licensee during a robbery, riot, or insurrection. We would support an affirmative fingerprint and photographic check on dealer, importer, and manufacturer applicants to minimize the risk of criminals being granted licenses. We welcome an interpretation by BATF of the law governing the use and responsibilities of a licensee in line with its original legislative intent. In particular, a more reasonable interpretation of "face-to-face" exchanges between FFL holders would facilitate a fairer, more honest and secure process for everyone. We would also welcome a more workable application of the uses to which a collector's license may be put, consistent with the actual needs of a bona fide collector.

It would also be extremely instructive to licensed dealers, and help to insure a more honest process, if BATF would comply with existing law in regard to publishing the annual notification to dealers of changes to state and local laws. It should also be noted that if BATF were actually to provide to dealers a regular listing of active dealers, as well as those dealers whose licenses have been revoked, it would substantially alleviate the problem of sales to such dealers. In regard to S. 496, our comments are as follows.

- * Your proposal to increase the licensing fee from the current \$10 a year to \$750 is excessive and completely unjustified by current or past circumstance. We do not oppose increasing the licensing fee to recover the actual cost of the licensing process. However, a \$750 yearly fee will work a severe hardship on many small retail operations and dealers, and is more than five times what Stephen Higgins, the Director of BATF, testified as the actual cost of conducting an investigation and issuing a license.
- * S. 496 displays a somewhat disconcerting perspective regarding the actual problems involved with legally moving firearms in interstate commerce. Strengthening the requirements that firearms moving in commerce be readily identifiable as such and that a carrier deliver only to a specific individual, with a signature for verification, will do little to effectuate a more honest process. The most profound effect of these new requirements will be to spotlight firearms and firearms dealers to the public at large, which should contribute the already significant problem of firearms theft. The affirmative delivery requirements will dramatically increase the liability of common carriers for errors, but add nothing to the prevention of fraudulent sales. To understand this issue from the proper perspective one need only substitute the word "currency" or "precious jewels" for the word "firearm" as used in this section.
- * The requirement in S. 496 for BATF to issue or withhold licenses based on local laws is unworkable and will result in a diminution of the effectiveness of BATF's overall manpower and resources. As you may know, BATF currently has approximately fifty full time counsel nationwide. Requiring BATF to interpret local zoning and business ordinances would quickly become a full-time job which is neither feasible or desirable from anyone's perspective. We support requiring that a copy of the application be provided to the local authorities for review which should address the problem.
- * The time period for the approval of a license should not be changed to make it open-ended, particularly since neither BATF nor a recent GAO report on this issue contends that the 45 day issuance period present a problem. If more time is actually required for the investigation and issuance of a license, we believe the case should be publicly made, at which time we would comment on the time period. Leaving the requirement open-ended is a prescription for abuse, and something we strongly oppose.

- * In regard to mandatory reporting of theft or loss of firearms, your bill confuses two very different issues. It is difficult to justify the imposition of criminal penalties, as S. 496 requires, juxtaposed against circumstances which may have less to do with wrongdoing than simple business inventory practices. Suffice it to say that we do not disagree with your ostensible intent, but we suggest that more equitable changes would prescribe only civil penalties and allow for a more reasonable time for reporting.
- * Lastly, we strenuously oppose asking licensee to allow BATF or any other law enforcement agency unrestricted access to their records and business premises, other than in the course of a criminal investigation. Moreover, given the fact that BATF now inspects only about 10% of all FFL holders yearly, it would seem reasonable, before changing current law, to justify how or why the needs of law-enforcement will be served by such a change. Further, increases resources for BATF inspectors should be considered under current federal restrictions.

There is absolutely no one more interested in advancing the common goal of keeping firearms out of the hands of criminals, and other prohibited persons, while maintaining essential constitutional guarantees, than the NRA. And, I might add, this fact pertains to the overwhelming majority of licensed dealers as well. We are sincere in our commitment to assist anyone concerned with drafting or advocating policies which will serve to maintain or advance responsible firearms ownership among law-abiding citizens. Please let me know how we can help.

Sincerely,



James Jay Baker

James Jay Baker

STATEMENT OF RICHARD E. GARDINER, LEGISLATIVE COUNSEL, NATIONAL RIFLE ASSOCIATION OF AMERICA, WASHINGTON, DC, BEFORE THE SENATE SUBCOMMITTEE ON FEDERAL SERVICES, MARCH 26, 1993

Mr. Chairman and Members of the Committee, I appreciate having the opportunity to testify today. My name is Richard Gardiner and I am the Legislative Counsel for the National Rifle Association of America. I have dealt extensively with the law on federal firearms licenses (FFLs) from a legislative and a litigation perspective, and am aware how and why the current system was developed. I am also aware of the impact which changes to the current system will have on FFLs.

At the outset, I should emphasize that the NRA is, like everyone else here today, interested in having a responsible and fair firearms licensing policy. Without exception, the NRA is willing to work with Members of Congress or of the Administration to craft legislation which both addresses the genuine needs of law enforcement to achieve real crime control and, at the same time, upholds the rights of law-abiding citizens and firearms dealers.

Let me begin by expressing the NRA's neutrality regarding the question of whether allowing importation into this country of products manufactured by the Chinese military is an appropriate policy. In our view, this is a foreign policy issue, not a question of the Second Amendment rights of Americans nor, based on the criminological data available, a crime control issue. Organizationally, we believe it is, or perhaps should be, instructive to those who would disarm the American people that, in a country in which thousands, and perhaps tens of thousands, of young people were slaughtered by the government a few short years ago, the only people who have firearms are the military and those firearms are produced by slave labor.

In regard to the issue of firearms importers licenses, we support, and will continue to support, the right of law-abiding citizens to import lawfully produced products into our country. Under current law, a person who obtains an importer's license from the Bureau of Alcohol, Tobacco, and Firearms (BATF), may import firearms into this country that are "generally recognized as particularly suitable or readily adaptable to sporting purposes," rifles and shotguns that are "curios and relics" as defined by BATF, and handguns that are "curios and relics" if they also meet the "sporting purposes" test. To import a firearm, the licensed importer must apply for, and receive, specific authorization from the BATF. It is under this law that firearms manufactured in China are imported. I might note that many of the imported firearms are semi-automatic firearms, which are the primary competition firearm produced today, are a mainstay of any firearms collection, having been produced for over one hundred years, and remain a tool of self-defense for millions of decent, honest Americans and their families.

I might further note that there is no evidence that these firearms, are at present, a significant factor in, or becoming a significant factor in, crime in the streets. To those who suggest otherwise, let them come forward with the empirical data to buttress their claims. NRA has repeatedly urged Congress and the Executive branch to request from the states information concerning the makes and models of firearms that are used to commit violent crimes so that the notion that certain types of firearms are used to commit violent crimes can be put to rest.

Turning to what NRA believes are appropriate reforms of the federal firearms licensing system, I should first point out that it is undisputed that the vast majority of firearms licensees are honest, hard-working citizens who strictly comply with federal law. Certainly there has not been shown to be wholesale dishonesty or abuse in the firearms business in this country, or the current laws need to be dramatically strengthened, rather than actually enforced. To those who suggest otherwise, I would urge that they examine the empirical evidence. For instance, how many FFL licenses have been revoked, how many gun trafficking charges have been prosecuted against firearms licensees, and what is the average sentence that has been levied on offenders? Obviously, if the law is being seriously enforced this data should be available for review. The absence of such data should signal to an objective observer that there is either not a problem, or that those charged with enforcing the law are not taking the problem seriously.

I should also point out that the large volume of dealer licenses was an intended consequence of the 1968 Gun Control Act. As those who were involved in the passage of the 1968 Gun Control Act will remember, the FFL process was devised in response to the prohibition on the inter-state sale or transfer of firearms. When the inter-state sale or transfer of firearms was banned, Congress created the FFL to ensure that no monopolies were created. In fact, it would not be incorrect to say that the original purpose of the FFL license was to create a sufficient number of FFL dealers, keeping records of all transactions, to ensure that legal supply of firearms

could meet legal demand at reasonable prices so as not to make firearms ownership the exclusive realm of the wealthy.

In keeping with that model, BATF's enforcement and inspection powers were written to allow annual unannounced inspections on every dealer, and unlimited inspections when conducted in conjunction with a criminal investigation. Those who suggest that this inspection power is somehow inadequate are confusing enforcement power with lack of enforcement. The problem is not that the BATF does not have the power to inspect dealers—but rather that they lack the manpower. So, too, with the BATF's ability to investigate and issue FFL's. If there is a flaw in the current system it is, again, in lax enforcement, and or the lack of enforcement. Any suggestion that BATF requires unlimited time is insupportable. In fact, a recently released GAO report found that, except in a very few cases, the 45 day maximum time period is more than adequate.

The first reform that the NRA would like to suggest relates to the theft of firearms. NRA believes that trafficking in stolen firearms is a serious crime, and deserves to be treated as such. Specifically, we believe that, until criminal behavior is penalized commensurate with the actual impact of the crime, such behavior is going to increase. That is why we would like to see federal legislation making it unlawful for a person to steal, take, and carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate commerce. We also believe that any person who commits such an offense during any robbery or riot should be sentenced to imprisonment or thirty year, no part of which may be suspended or, if a death results, to life imprisonment without release or to death.

Second, we believe that applicants for an importer's, manufacturer's, or dealer's license should be required to submit fingerprints for the purposes of conducting a criminal record check. By no stretch of the imagination do we believe, however, that such a requirement should be extended to any transactions involving private citizens, and would strenuously oppose such an extension.

Third, we believe that the types of firearms a person holding collector's license can collect should be expanded so that collectors will be encouraged to obtain the collector's license. BATF can therefore concentrate its inspections on true retail dealers. Collectors obtain firearms for their personal collection and not for a business inventory and retail sale.

Fourth, we would support a requirement that notification of the application for an FFL be provided to local law enforcement. Past and current legislative proposals to require approval by the local chief law enforcement officer before the issuance of an FFL are entirely inappropriate. When similar approval requirements have been mandated in the past, the rights of law-abiding individuals have been subject to abuse. It is instructive to note, moreover, that such approvals cannot be mandated by the federal government under the U.S. Constitution. Requiring notice removes the potential for arbitrary abuse, while continuing to provide information to ensure compliance with local and state ordinances. Moreover, the process removes BATF from the equation in what is not an issue of federal concern.

Fifth, we would support increase in the fees for FFL licenses, but certainly not to the levels suggested in S. 496, recently introduced by Senator Simon, that would increase the fees seventy-five times current levels.

Sixth, we support a measure to help prevent the theft of firearms by limiting the unnecessary interstate shipping of firearms. BATF currently maintains that a licensee may not personally transfer a firearm to another licensee in a face to face exchange, but must ship it from his licensed premises by common carrier, thereby exposing it to the risk of theft. We believe that a licensee should have the right to transfer or deliver firearms to, and receive firearms from, another licensee at any location without regard to the State which is specified on the license, thereby preventing thefts of firearms shipments between licensees.

Seventh, we believe that adequate notice should be provided to all licensees of state laws, revoked licenses, and regulations. § 110(a) of the Firearms Owners' Protection Act, P.L. 99-308, 100 Stat. 460-61 (1986) provides:

[The Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this Act. All amendments to such State laws and published ordinances as contained in the aforementioned compilation shall be published in the Federal Register, revised annually, and furnished to each person licensed under chapter 44 of title 18, United States Code, as amended by this Act.

Despite this command, and BATF's own regulation, 27 C.F.R. § 178.24, the last compilation of State laws provided by BATF to licensees is dated 1989. BATF has never provided to licensees any amendments to the State laws, much less done it on yearly basis. Yet knowledge of State laws by licensees is necessary for compliance with the Gun Control Act.

In addition, BATF has no mechanism to inform licensees that a particular dealer's license has been revoked. § 926(a) provides that the Secretary may prescribe regulations providing that a licensee shall provide to another licensee a certified copy of his license, and for the issuance of certified copies. See 27 C.F.R. § 178.95. The transferee of a firearm must furnish a certified copy of his license to the transferor, who may rely on that license until it expires. 27 C.F.R. 178.94.

Finally, BATF has no regular mechanism to notify licensees of rules, regulations, and rulings. The latest compilation of federal regulations and rulings provided by BATF to licensees is dated 1988.

In the interests of both fairness and law enforcement, BATF should provide to licensees, on a timely basis, amendments to State laws, notice of revoked licenses, and notice of regulations and rulings. In view of the fact that such a requirement for annual notice has been ignored by BATF each year since 1989, such requirements must be coupled with mechanisms to make BATF follow Congress' commands. What we propose is that;

In addition to such other requirements of law as may be applicable, no rule or regulation shall be effective until thirty days after being mailed to all persons licensed under this chapter.

The Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances which are pertinent to compliance with this chapter. Each year thereafter, the Secretary shall publish and provide to licensees all amendments to State laws and published ordinances. Failure of the Secretary to do so would create a rebuttable presumption that the licensee had no knowledge of the applicable law.

The Secretary shall publish and provide to all licensees, not less than on a quarterly basis each year, all official rulings concerning this chapter and concerning chapter 53 of title 26, United States Code.

The Secretary shall publish and provide to all licensees, at such times as he shall deem necessary, the names and license numbers of all revoked firearm licensees.

I would finally like to turn to Senator Simon's bill, S. 496, which would make substantial changes to the current FFL system. Some of the "reforms" which the bill suggests as necessary will not only have a detrimental impact on the conduct of legal firearms transactions, but will also lead to an increased incidence of theft and illegal firearms trafficking and black market activity.

Mr. Chairman, there are sections of the Simon bill that we can support, there are provisions with which we do not agree, and we will tell you exactly why, and there are particular areas that Senator Simon touches on in which we believe the process should be strengthened.

POINT-BY-POINT ANALYSIS OF S. 496

Section 1, "Identification of Recipient of Firearm", would amend Section 922(e) in two interrelated ways. First, it would require a person to notify a common carrier that the person is shipping a firearm to a licensee, such as to a manufacturer for repair of a firearm. Current law does not require such notice, and with good reason. Firearms, like cash, jewels, drugs or a host of other products are a fungible commodity. Current law helps prevent theft by employees of the common carrier, because a shipper need not disclose the nature of the article being shipped.

There are no exact figures for the amount of firearms which are stolen each year moving in commerce, but just last year some 850 firearms were stolen from by a UPS driver in Alexandria, Virginia. All rhetoric to the contrary, an unloaded firearm is not an inherently dangerous item to be transported at the peril of the carrier, such as hazardous chemicals or nuclear materials. Attaching a "this box contains a firearm" label in the real world, as S. 496 suggests is appropriate, is roughly analogous to attaching a "steal this box" label. We believe that legislation expressly forbidding identification of a container as containing a firearm is far preferable.

The second part of Section 1 would make it a crime for a common carrier not to identify the person to whom a firearm is delivered. Current firearms law requires that firearms transported in interstate shipping be conveyed only to lawful parties. If there is a problem with fraud, or receipt by an unlawful party, it is impractical to place a burden of knowledge on a common carrier that is not sustained by the original transferor. While we understand and agree with the intent of this section,

we believe that the language can be improved upon to remove ambiguity and clarify the exact duties of common carriers when delivering firearms. Thus, we would support language which would require the signature of the recipient of a firearm, an already common practice in the industry.

Section 2, "Sale of Firearm or Ammunition Having Reasonable Cause to Believe it will be "Used by Another Person to Commit a Crime of Violence". Section 2 would further criminalize what is already a serious felony under state homicide law, which punishes an accessory before the fact, conspirators, and aiders and abettors. We agree with the ostensible intent of the section, and urge only that language be inserted to maintain the interstate commerce nexus of current federal law.

Section 3, regarding the "License Application Fess for Dealers" is unreasonable and excessive. We agree that there should be an increase in the fee, particularly since the fee for an FFL has not increased since 1968. However, in proposing a fee of \$750.00 the drafters of this legislation are unaware of the realities of the current firearms industry. \$750.00 may be a pittance in Washington D.C., but at the general store in Clifton, Tennessee, or Piggot, Arkansas or Grafton, Illinois it is the difference between keeping the odd shotgun or rifle for your local customers and making them drive to the Wal-Mart. A fee increase to \$50 per year we believe is a fair increase. Certainly, if evidence is presented to justify a larger increase, we would consider it objectively. However, using licensing fees to drive out the smaller dealers is entirely inappropriate.

Section 4, "Action on the Application for License". This section would repeal Section 923(d)(2). This particular change highlights a rather sad irony. As currently written, the provision requires the Secretary to act on a license in 4 days; allows a person to sue for a writ of mandamus to require the Secretary to act on the license if the Secretary does not do so; and requires the Secretary, once he approves the application, to issue the license upon payment of the fee. These requirements are necessary to protect the due process rights of applicants. We would support, however, extending the time period, in line with what the actual time required to do a thorough background check, although we would object strenuously to leaving the time frame open-ended and therefore subject to abuses.

The irony to which I previously referred, is that some of the proponents of the Brady Bill—of which Senator Simon is one—which requires a 5-7 day wait, depending on the version of the bill, argue strenuously that this is adequate time to do a background check on handgun purchasers. Yet, some of those same individuals supporting this bill, now appear to be arguing that multiplying the time period by 9 times is inadequate. It would be interesting, and perhaps instructive, to discover the rationale for such an inconsistency.

In regard to Section 5, "Compliance with State and Local Law as Condition to License", we believe this puts the federal government in the business of interpreting thousands of often complex and changing zoning ordinances that are within the purview of local civil authorities and are not even local law enforcement matters. Federal regulations should remain focused on the enforcement of laws that seek to prevent the acquisition of firearms by criminals, the ostensible rationale for introducing this legislation.

As an alternative, and in addressing an ongoing concern regarding obedience by FFL holders of local and state ordinances, we propose that an applicant show evidence of having notified local authorities. We believe this is both the most feasible and fair mechanism for insuring compliance by an FFL holder. Moreover, it should serve notice to, and help to screen those applicants who are attempting to receive or conduct a firearms business under false pretenses.

Section 6, "Inspections of Firearms Licensees". This would delete current federal requirements that compliance inspections take place no more than once every year. Obviously our concern with this provision centers on balancing the reasonable requirements of law enforcement with the necessity of being free from unnecessary harassment. Under current law, BATF may conduct an unannounced yearly inspection of any FFL dealers records and inventory at any time. Additionally, BATF has access to the records and inventory of the licensee at any time to conduct bona fide criminal investigations. Given the demands an inspection may place on an FFL holder and his business establishment in providing access to an agent or a team of agents, it is not unreasonable to require that such inspections be limited to the actual need to conduct them.

Section 7, "Reports of Theft or Loss of Firearms". We believe that it is not appropriate to treat theft and loss equally; penalties for not reporting losses should not be included. First, licensees already have every incentive to report firearm thefts to local authorities, who are free to contact BATF should any need arise. As a practical matter, BATF is hardly in a position to collect, collate, store, or even to access informatica on stolen firearms within 24 hours. It is unjust to punish a crime victim

with a felony—again involving severe criminal penalties for noncompliance—for not reporting the crime within 24 hours. We would, therefore, urge to at the time to report thefts be expanded to a more reasonable 5 business days and that the report be made either to the BATF or the chief law enforcement officer of the locality.

In regard to requiring that the "loss" of a firearm to be reported within 24 hours, there are a few points which should be raised. First, it is hard to discover what purpose is served by to this provision. As a matter of routine business, large firms frequently cannot locate inventory on their premises for commercially reasonable periods of time. The important fact remains that such items remain within the control of the business and, as such, may normally be expected to be located in time; a criminal penalty is unwarranted. It must also be remembered that a felony penalty, for which the sentence is in excess of one year's time, permanently bars the owner of a firm from continuing in business. To levy a such a penalty would result not only on a hardship for an individual but would extend to other individuals dependent on the firm for employment.

Section 8, "Responses to Requests for Information." Currently, licensees already communicate with BATF in connection with lawfully conducted traces. Thus, we would have no objection to this proposal if it was made clear that the request had to be in writing or in person to ensure that it was the BATF communicating with licensees. In addition, the proposal should make clear that it applies only to traces of firearms in the course of a bona fide criminal investigation.

Section 9, "Registration to Require a Photograph and Fingerprints". We concur with this proposal.

In closing, Mr. Chairman, we support many of the provisions of S. 496 and general reforms to the FFL process and stand ready to assist in the drafting of more responsive provisions where we do not agree.

Mr. SCHUMER. Let me ask you a couple of questions here. First, I have received testimony from the National Alliance of Stocking Gun Dealers which basically agrees with the kinds of things that I am talking about, and these are legitimate gun dealers who sell guns, and none of us want to put them out of business.

[The prepared statement of the National Alliance of Stocking Gun Dealers follows:]



NATIONAL ALLIANCE OF STOCKING GUN DEALERS

15 May 1993

Mr David Yassky
Majority Counsel
Crime And Criminal Justice Subcommittee
Room 362, Ford House Office Building
Washington, D.C. 20515

Dear Mr Yassky,

As Congress once again lays out its plans to defeat the criminal element, I would like to offer any assistance that we can possibly be in your efforts. No one has a greater self-interest in seeing to it that criminals don't get their hands on firearms than those of us who have invested our life's savings in the legitimate firearms trade.

No legitimate manufacturer, distributor or retail dealer wants to lose his life's savings, his business, his means of earning a living because some human predators misuse the product that we sell.

Over the next few months and years you will hear all sorts of proposals that will "solve" all our problems with predators who use firearms in the conduct of their criminal activities. The problem with most of the proposals that you will hear is that the proponents don't understand what is really happening now and thus are ill equipped to offer workable solutions.

I have always believed that you cannot devise a real solution until you have properly defined the problem that is to be solved.

If we can start with the assumption that we must come to grips with the flow of firearms to the criminal element and to children, then we can start defining the problem.

conventional "wisdom" of the kind touted by the Bureau of Alcohol, Tobacco and Firearms (BATF) information office is that the principle source of firearms for criminals are stolen firearms. There are two flaws in this argument.

1. The sheer volume of firearms in criminal hands and in the hands of unauthorized youth, exceeds by orders of magnitude, the numbers of firearms reported or known to be stolen.

2. The best way to derail an attempted trace of a firearm that was deliberately sold into the black market is to simply report to the BATF tracing officer that the firearm was stolen. End of trace!

In addition the simple fact that the BATF is unsuccessful in so many trace efforts of firearms used by criminals should have long ago rung a bell that their vaunted "tracing system" has holes in it as big as Greyhound buses.

After several years of careful research, we say to you that in your state as in the other 49 states, the principle source of firearms for the criminal element is that self-same BATF! Now let me tell you how it is done.

The BATF is charged by federal statute with the regulation of the firearms industry. Most law enforcement agencies and most law-makers in the various states believe that the BATF truly does regulate the firearms industry. It simply isn't true! Here's why.

The BATF has issued more than 286,000 Federal Firearms Dealer's Licenses throughout the United States. It is imperative that you understand what this \$30.00 piece of paper really does.

This little federal license(FFL) allows interstate access to the entire gamut of firearms(excluding machine-guns) anywhere in the United States. This little piece of paper is all that is required to obtain all these firearms at dealer's prices direct from any distributor or manufacturer in the country.

The FFL allows an unscrupulous individual to simply ignore local and state requirements of any kind and operate in the

firearms black market at will. Also quite profitably. For example a Davis 380 semi-auto pistol that costs \$59.95 and may bring a legitimate dealer a sales price of \$69.95 can earn a street price of \$250.00 and up.

No papers, no permits, no questions earns a much higher price on the street where no criminal wants to positively identify himself in the purchase of a firearm.

So, how do you take part in this lucrative firearms black market? Easy, call the BATF and they will send you a Form 7 application for a license. Fill out the form, lie when they ask for real business information(it truly is a business license in the law but the BATF hasn't treated it that way for years) enclose \$30.00 for three year's fees and send the form to the BATF.

In a short period of time the BATF will send you a Federal Firearms Dealer's License.

Now if you wish to stay in the black market unhampered by anyone, don't tell the state, county or city that you are peddling firearms and don't put up any signs that would point out that you are a gun-peddler. Besides the state, county and city will want to license you, regulate you and tax you if they find out about you. They also might frown on your black market activities.

You must now obtain a copy of Shotgun News or the Gun List wherein you will find listings of all the thousands of firearms from anywhere in the country that you now have access to and the prices that you will pay to order them and have them shipped to your doorstep by UPS. The folks who are ostensibly "distributors" doing business through these papers know full well that most of their sales are to black-marketeters, so they won't ask very many questions that might tend to expose you and lose the sale for them.

Two days later the UPS man pounds on the door of your home and asks you to sign for this heavy package. You do so, and

lo and behold when you open the package you are fondling your very first shipment of firearms.

The next step is to not log them in your bound book as required by federal law but to load them in the trunk of your car and do a slow cruise through the portion of your town where you never see a police cruiser and learn to bargain with the denizens of the street for the most dollars you can get for the favored small autos and revolvers.

If you wish to maximize profits as a street dealer then you should find a "friend" from one of the larger cities in any state where the firearms laws are most stringent. The same Davis 380 that will bring \$250.00 in Charlotte or Raleigh will easily earn \$400.00 on the streets of Washington, D.C. or New York or Jersey City. A trip to D.C or New York City every other weekend will earn enough that you won't need your "regular" job any more.

Top dollar for your efforts, work out of your own home, work any hours that you choose, no local, state or federal taxes and the BATF will send you a license renewal to your home before the thing expires. What more could an entrepreneur ask for?

In addition the BATF doesn't inspect your operation for compliance with the federal laws unless you have a storefront business open to the public the way it is supposed to be. Since no one at the state or local level even knows that you exist, you are free to do as you choose.

If doing business directly with street predators and the night hours are a little more than you bargained for, then there is another consideration for a little black market income. The BATF has established rules and regulations for these things they call "gun shows". The opportunity for the black marketeers is that the BATF doesn't enforce those regulations and there isn't anyone else to do so.

Consequently there are literally hundreds of "gun shows" scattered around the country where you may rent tables, display your wares, sell what you please to whomever you

please and once again the sale that is made with no records, no questions and no papers, earns the highest sales price.

The near weekly Charlotte, N.C. show is fairly small in comparison with shows like Houston, Texas but it is a reliable source of firearms for North Carolina's criminal element. There will be the traveling gun show dealers from out of state in addition to our own black marketeer dealers to provide a plethora of firearms to please any desire.

If there are any legitimate dealers there who are selling only with pistol purchase permits, there is almost always someone who has a pad of permit forms that you can buy and fill out yourself so that you won't miss a purchase.

In addition if you want conversion parts to create a full-auto machine gun from your semi-auto, you should have no trouble finding exactly what you need at the show or in the parking lot outside.

Should you be concerned that some law officer might see you peddling firearms at a show, you must realize that federal law only applies to "licensed firearms dealers" and very few states have laws that deal with an individual selling his own "collection" of firearms. So go to the show as an "individual" and neither the state nor the federal governments care what you do. You only need to be a "dealer" when you are purchasing firearms.

Finally, should the state ever find out that you have an FFL and inquire about your firearms sales, simply tell them that you haven't sold any firearms. Neither the state nor the feds have any way of ever determining how many firearms you have received and they are totally dependent upon you to tell them what you did with them.

Thus the BATF will provide an access license to firearms for anyone with the fee of \$30.00 and the ability to fill out a form 7 application. The Alliance can identify and represents approximately 16,000 legitimate storefront independent firearms dealers. There are approximately 5500 chain and

department stores such as K-Mart, Wal-Mart and Neiman-Marcus that also have retail firearms outlets. They are certainly legitimate in their operations but they are not members of the Alliance.

That leaves 264,500 that the BATF has licensed and put into the business. Despite their denials these folks do sell firearms, they just don't do it legally because the black market is more profitable.

There are wide open "gun shows" the length and breadth of the United States, wherein anyone may do as he chooses, including buy firearms for children. The BATF simply does not enforce their own regulations at gun shows and the states all assume that the BATF is in charge. NO ONE IS IN CHARGE!

Neither the federal government nor the state governments have addressed the sale of firearms by an "individual".

These last four paragraphs, are the problem when we consider criminal (and youth) access to firearms because this is how the black market is created and allowed to operate with impunity.

If we treat the criminal use of firearms by attacking the source of the firearms, then we may well be successful, all else is much ado about nothing. Nothing done to legitimate firearms dealers will have any effect whatsoever on the thriving black market in these 50 states.

The current idea of piling more and more restrictions on the purchaser of firearms can only have an effect on those citizens who are willing to obey the restrictions. We can already see at any gunshow that there are thousands of citizens who are going to traffic in firearms illegally despite a plethora of laws against such actions.

Possible solutions to the real problem might well start with state Attorneys General raising Cain with the Secretary of

the Treasury to force the BATF to simply comply with current law that says that the FFL is a business license. No proof of an existing business, no license. This is not likely to happen.

Therefore the choice returns to Congress. If you intended that the federal government sponsor the world's largest firearms black market then do nothing and it will continue.

If you believe that we cannot tolerate armed gangs of children roaming the streets and halls of schools then join with the firearms industry in applying a solution in the only area where there is a chance to do some good -- the source of firearms.

That source is or should be under the firm control of the BATF by its position of being the sole source of the licenses that allow entry into the firearms industry.

Insist that the BATF only license legitimate businesses instead of every twit whose only interest is how much money he can make in the black market this month. Give the BATF the authority to revoke a license when the holder ignores state and local law. Get the federal government out of the business of sponsoring the world's greatest firearms black market.

Do something about the "gun shows". Either shut them down or regulate them and restrict their activities to legal transactions in firearms. The Grand Bazaar approach that we now have ensures that every pugnacious child with a grudge to settle and every other form of human predator have easy access to all the firearms that they might desire, while the legitimate firearm owner is increasingly saddled with more and more onerous restrictions.

Sincerely .

B. R. Bridgewater
Executive Director



NATIONAL ALLIANCE OF STOCKING GUN DEALERS

15 May 1993

Ms. Rachel Jacobson
Subcommittee on Crime
Room 362
Ford House Office Building
3rd & D SW
Washington, D.C. 20515

Dear Ms Jacobson,

Included herein are the summary comments that the Alliance submitted to the Senate Judiciary Committee concerning "The Gun Dealer Licensing Reform Act" by Senator Paul Simon.

I hope that you will find the comments useful

INCREASE LICENSE FEE FOR FIREARM DEALER

The proposed fee increase to \$750.00 is a bit excessive. There is no question that the current fee of \$10.00 is inadequate to cover the cost of processing and issuing the license. Even if a full FBI check is done, and it should be, it shouldn't cost that much. A fee range of \$350.00 to \$500.00 should be quite adequate.

ELIMINATE THE 45-DAY REQUIREMENT FOR ACTION ON FIREARMS LICENSE APPLICATIONS.

If 45 days are inadequate to properly process the license application then increase the time to 60 or 90 or even 120 days. But set a time limit at whatever is deemed adequate. Open ended processing delays with no set limit lend themselves too easily to abuse.

REQUIRE LICENSEES TO COMPLY WITH FIREARMS TRACE REQUESTS

I was shocked to learn that some licensees refuse to cooperate with trace requests by law enforcement. Require cooperation and if someone causes any problem burn his license.

REQUIRE COMPLIANCE WITH STATE AND LOCAL LAWS BEFORE ISSUANCE OF A FIREARM DEALER LICENSE

Considering that at least 200,000 federally licensed firearms "dealers" use the license to deliberately sidestep state and local laws, it is high time that this requirement was imposed. The statute already requires that licensees comply with all state and local laws but no enforcement of the statute has ever been attempted. At least this way they will start out in compliance with the law.

ELIMINATE RESTRICTIONS ON COMPLIANCE INSPECTIONS

I see no useful purpose in restricting unannounced inspections. It simply allows those who hold the law in utter contempt adequate time to cover up illicit activities. It might be a good idea to consider some form of redress for a licensee who is harassed by a vengeful inspector.

REQUIRE DEALERS TO REPORT THE THEFT OR LOSS OF FIREARMS

This could prove to be quite useful not only in the law enforcement efforts to find stolen firearms but also to thwart one of the most often used methods of stopping a trace on a firearm that was deliberately sold into the black market.

REQUIRE THE IDENTIFICATION OF PERSONS ENGAGED IN COMMERCE IN NATIONAL FIREARMS ACT WEAPONS

This requirement totally misses the mark! Why just one category of dealer? In these fifty United States we require a firearms purchaser to jump through hoops of the most unbelievable kinds to buy one firearm. But if you want obtain one of the federal firearms licenses that allows you access to the entire array of firearms, interstate for three years, you pay a \$30.00 fee, fill out a form 7 application with any name on it from the graveyard and you will get the bloody license! This is INSANE!!!!

All applicants for any kind of firearms license or pawnbrokers license should be required to submit two photos, side and front, and a full spread of ten fingerprints taken and certified by the local police department or sheriffs office.

Pray tell what earthly purpose any kind of check on the applicant serves without POSITIVE IDENTIFICATION of the applicant to start with. Maybe this will help the BATF stop licensing felons and dogs!

REQUIRE COMMON CARRIERS TO OBTAIN IDENTIFICATION BEFORE DELIVERING FIREARMS

This should have been done a long time ago.

CRIMINALIZE THE SALE OF FIREARMS OR AMMUNITION WHEN THERE IS REASONABLE CAUSE TO BELIEVE THE WEAPON WILL BE USED IN A CRIME OF VIOLENCE

While there can be no question that the dealer must always reserve the right to refuse to sell a firearm or ammunition to anyone who is under the influence of alcohol or drugs, I am not sure how you can tell otherwise that the firearm will be used in a crime. This smacks of telling the dealer that he is responsible for the future actions of someone else. For what length of time into the future is the dealer responsible? Just the immediate future of tomorrow or five years from now? I think this needs a little more definition.

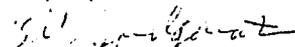
Put yourself behind the counter with the dealer and refuse to make a sale to a black or a latino no matter how questionable the sale may be. We have spent the last forty five years taking people to court for doing this.

I believe that the dealer needs to fully understand that he has the clear right, the moral obligation and the duty to refuse a sale that he believes, for any reason, may

be questionable. Many dealers believe that they can be sued for violating someone's civil rights if they refuse to sell where there is no clear proof of disqualification of the purchaser.

Perhaps this portion of the bill should read "Criminalize the act of knowingly selling a firearm that will be used in a crime".

Sincerely



Bill Bridgewater
Executive Director



NATIONAL ALLIANCE OF STOCKING GUN DEALERS

15 May 1993

DISCUSSION OF FEDERAL FIREARMS LICENSE

A careful reading of the statute governing the issuance of Federal Firearms Dealers Licenses (FFL) leaves absolutely no doubt that the intention of the statute is to regulate the "business" of selling firearms at retail.

The Form 7 application for a federal dealer's license contains fifteen references to the "business" to be licensed. Thus it is a little difficult to understand how the BATF came to the position of having issued TWO HUNDRED EIGHTY SIX THOUSAND (286,000) firearms dealers licenses to engage in the "business" of selling firearms at retail.

Even the BATF readily admits that the majority of those that they have licensed are "hobbyists" not businesses. Nowhere in chapter 44 of title 18, US Code is there even a passing reference to licensing "hobbyists", so it is difficult to understand where the BATF believes they obtained the authority to license "hobbyists" as firearms businesses.

By so doing, what the BATF has created is one of the most efficient black markets in firearms in history. Through the simple process of filling out a Form 7 application with a fictitious name or one that is "clean" and forwarding \$30.00 one can obtain a Federal Firearms Dealers License that gives the licensee access, interstate, to every source of firearms in the United States. The licensee can engage in buying and selling firearms from the day he receives the license and need do nothing else!

The licensee may simply ignore all state and local laws and requirements and most do exactly that. There is no state in the land that licenses firearms dealers that is regulating more than a very small portion of those that BATF has placed in the "business". Do not delude yourself that these other "dealers" who are intentionally disregarding the state and local laws are NOT selling firearms.

The reason that they don't want state and local folks to know they are in the business is because they are selling in the black market. This is done several ways.

One of the most popular ways among the various gangs such as Hell's Angels, various Jamaican groups and other groups of street thugs and extremists is to simply have one of the group with no record or who uses a phony name, obtain a Federal firearms License. Thus was born the Gang Armorer who can obtain all the firearms that the gang could possibly need, no strain, no pain.

A "black market street dealer" can purchase a box of small semi-auto pistols for \$49.00 each and sell them on the street for at least \$250.00. If he wants to team up with a street wise partner from one of the states with harsh gun laws he can obtain \$350.00 to \$400.00 for the same pistol.

Meanwhile the legitimate storefront dealer who is selling into the legal market will obtain about \$69.95 for the self-same pistol.

Should you feel a little queasy about the late night hours and the face-to-face negotiations with the street folk then you can become a "gun-show cowboy". Simply drive by your friendly "distributor" who supports the gun show trade, load up 250 handguns and hit the weekend circuit of gunshows where you may exhibit and sell your wares for green pictures of dead presidents.

If you choose to do the "cash and carry" routine then you will command higher prices than those who insist on selling lawfully with all the attendant ID and paperwork. However, since you will most probably be selling at gunshows in states other than where you are licensed, it is unlawful for you to sell and deliver on the spot, so you will not want to identify yourself either.

Attendees (purchasers) at gunshows include the entire spectrum of the criminal element. Felons, gangs who don't

have their own armorer, underage youth, buyers for underage youth, multi-state gun runners and such. There are very few in this country who want a firearm for illicit purposes who do not know that they can get anything they want at the gunshows.

Though the gunshow cowboys won't achieve quite as high a profit as the street seller, he can sell in very high volume and easily earn the same dollar amount and feel a lot safer.

Perhaps now the two stage black market (direct street/gang and the "gunshow") that the BATF has created through the profligate issuance of a license that allows access to firearms is more clear. The fact that the BATF has licensed both dogs and felons is not at question. The only real question is, "When will the BATF's black market, the primary source of firearms for felons, be shut down?"

For starters the BATF could begin to comply with existing law and issue the dealer's license to those who are in fact operating legitimate businesses.

1. Require all applicants to submit two photos, one side, one front and a full fingerprint card taken and certified by the local police department or sheriffs office.
2. Require a photo of the intended business location both inside and outside, accompanied by a statement from the cognizant zoning inspector that a firearms business may be operated at that location.
3. Require copies of all state and local permits and licenses with the application.
4. Upon receipt of the application conduct a thorough background check (preferably by the FBI) to determine whether the applicant is a dog, human, felon, or a clean citizen.

5. Charge a fee sufficient to defray the cost of processing the application, doing a comprehensive background check, preferably by the FBI, and accomplishing the other administrative tasks. I believe that this can be accomplished properly for a fee in the range of \$350.00 to \$500.00.

6. Do a compliance audit six to eight months after the licensee opens for business to ensure that the new licensee starts out properly.

7. If notified by a responsible state or local agency that the licensee is not in compliance with state or local law, give licensee notice that he has 30 days to comply with local law or lose his license. If licensee fails to comply, burn his license.

8. Note that there is no Federal Firearms License for "personal use". Nor is there a "hobbyists license", so prohibit the issuance of a business license for these purposes.

9. At present there is no Gunsmith's License. Gunsmithing is simply lumped in together with the retail dealers license, yet many gunsmiths do not sell firearms and do not wish to sell firearms in the future.

Consideration might be given to creating a Service License that would allow a gunsmith to order, stock and install all firearms parts necessary to the repair of a firearm to include a serialized frame or receiver. This license would specifically exclude the sale of new or used firearms and is intended solely for the use of a gunsmith in the conduct of a repair facility.

Mr. SCHUMER. Let me ask you—and they support all of these—what your views are on these specific issues. This is what the Alliance of Stocking Gun Dealers says we ought to do: “Insist that the BATF only license legitimate businesses instead of every twit”—I wouldn’t use quite that language—“whose only interest is how much money he can make in the black market this month. Give the BATF the authority to revoke a license when the holder ignores State and local laws. Do something about gun shows; either shut them down or regulate them, and restrict their activity to legal transaction in firearms.”

Now let me ask you if you agree with some of the specific measures that they call for in their written testimony.

Mr. GARDINER. Let me make two initial observations. Then if you could take them one at a time—I don’t have the testimony in front of me.

Mr. SCHUMER. That is OK.

Mr. GARDINER. First of all, most dealers, people who have Federal licenses, in this country are legitimate. They are lawful, law-abiding people, and I would dispute the characterization that anybody who doesn’t have a storefront is not a legitimate person.

Mr. SCHUMER. Let the record show I don’t think they are all twits either—

Mr. GARDINER. Well, at least we can agree on something.

Mr. SCHUMER [continuing]. Whatever a twit is. Yes.

Mr. GARDINER. Second of all, I want to make it clear that that organization, which is not in any way affiliated with NRA, has a different interest than NRA does. Our interest is in protecting the rights of consumers. Their interest is in protecting the rights of a business. So there is going to be a clear conflict between us, and we do not agree with many of their positions.

Mr. SCHUMER. That is understood, but they are a very legitimate organization, and—

Mr. GARDINER. They certainly are a legitimate organization.

Mr. SCHUMER. Right. So let me ask you if you would agree with the specific measures they call for, and others have called for these too. How about requiring dealers to comply with State and local law?

Mr. GARDINER. With regard to the sales of firearms, that is already current Federal law. That is section 922(b)(2).

Mr. SCHUMER. Yes, but what about other State and local laws which apply to gun dealers?

Mr. GARDINER. With regard to local business laws to get licenses, you mean?

Mr. SCHUMER. There are a whole variety of local laws about what you can and cannot do.

Mr. GARDINER. There are really only two sets of laws. One is dealing with licensing generally. The other is dealing with sales and possession of firearms.

Mr. SCHUMER. For instance, there are some States that would want to measure the character, not simply that they weren’t a felon or whatever the words are on the form Mr. Sensenbrenner read. We do this for liquor licenses in New York State; we do it for gun licenses in New York State. It is not an attempt on the part of the

liquor agencies to bring back Prohibition or in the gun licensees to have no one have firearms.

If a State had that, would you support that the Federal Government not give a license to someone the State thought was in bad character and shouldn't have that license?

Mr. GARDINER. I don't mean to be difficult, Mr. Chairman, but I am not sure I understand your question. Are you talking about with regard to the sale of firearms—that is, if a purchaser is not allowed by State law to purchase a firearm?

Mr. SCHUMER. To sell firearms, deal in firearms. These are dealers, correct?

Mr. GARDINER. That is, the eligibility for a State license is what you are talking about?

Mr. SCHUMER. Correct.

Mr. GARDINER. No, I don't think that the Federal Government should be in the business of enforcing State and local laws.

Mr. SCHUMER. No, that is not the issue.

Mr. GARDINER. OK.

Mr. SCHUMER. You made that point clear in your testimony, and Higgins agreed with you, but this is a different issue. This is the issue of passing a law that says that the Federal Government ought not give a license, a Federal license, to someone who would not qualify for a license in that State.

Mr. GARDINER. As I said in my testimony, I don't have any problem with the State and local agencies being notified, but I don't believe that ATF—they only have 50 lawyers all over the country.

Mr. SCHUMER. Well, let's say they had adequate personnel.

Mr. GARDINER. I think you are talking about a lot of personnel. There are thousands and thousands of State and local laws.

Mr. SCHUMER. There was a law introduced last year by Senator Moynihan and I believe it was Congressman Green that would have done just that. Do you have a position on that bill? It was a bill, sorry, not a law.

Mr. GARDINER. That bill, as I remember it, indicated that when you applied for a Federal dealer's license you had to just merely provide evidence of compliance with State and local laws.

Mr. SCHUMER. Right.

Mr. GARDINER. The only problem I have with that is, in many, many areas, as Mr. Higgins notified, there is no law to comply with, so I am not sure how, as an administrative issue, we deal with that.

Mr. SCHUMER. OK. You are not unequivocally opposed to such a law, your organization?

Mr. GARDINER. No. I think there are ways to write it.

Mr. SCHUMER. OK. That is good. I understand.

Mr. GARDINER. Now let me just hasten to add that I believe at the same time, as I said in my testimony, that the collector's license, the rights that a person has under a collector's license, should be expanded.

Mr. SCHUMER. I understood that from your testimony.

Mr. GARDINER. And if you look at the history of the 1968 act—I will just finish with this point—it is very, very clear that the intent of Congress then was to have people get collectors' licenses, not dealers' licenses.

Mr. SCHUMER. I'll tell you, my view is, if there is a legitimate way to define collectors by what we are both meaning here, I would not have a problem having two sets of rules, one for legitimate collectors and one for real dealers, and squeezing out those people who are now using the dealer license to traffic illegally.

Mr. GARDINER. And we would not either. That is where we think the act ought to go.

Mr. SCHUMER. All you are trying to do in your reluctance is, because there are collectors who legitimately want to have their own collections and at times trade them—I understand that.

Mr. GARDINER. That is right, and this can be done, as I said, by regulation, you do not need a statute to do it.

Mr. SCHUMER. OK. Let me ask you this one. What about requiring dealers to report thefts?

Mr. GARDINER. We don't have any problem with it as long as there is a reasonable time period within which it is done, maybe 5 business days.

Mr. SCHUMER. You like that number.

Mr. GARDINER. Well, it has a certain symmetry to it.

Mr. SCHUMER. OK. How about requiring common carriers to verify that the recipient of a firearms delivery is a real dealer?

Mr. GARDINER. I think you have got an administrative problem with that because a common carrier is a private entity, not a government official, and of course if they are delivering firearms to nondealers that would be a crime already, so there is already an implied requirement that they verify that.

Mr. SCHUMER. I don't think it works very well.

Mr. GARDINER. I will not disagree with you that the enforcement of much of the laws now is not very good; there is no doubt about that.

Mr. SCHUMER. OK. Let me ask you this one. What about requiring dealers to respond to BATF telephone inquiries?

Mr. GARDINER. The problem I have with that is, you don't know if it is an ATF agent on the other end; you don't know if it is some joker, or some twit, calling up and just trying to get information, and I believe that it should be required that the ATF somehow provide evidence, their badge of office. Now if they want to do it by letter, I don't have any problem with that, or if they want to do it by personal visit, but some way—

Mr. SCHUMER. So you are not against phone inquiries, per se. Here is a way you could do it. You could ask the dealer, the legitimate dealer, to call back on a number that he or she would know would be a legitimate ATF phone number.

Mr. GARDINER. That would certainly be one way to do it, and I have never heard of a problem with that being done.

Mr. SCHUMER. No, but I think what you raise is a legitimate point of view there.

What about eliminating the 45-day limit on license application reviews, given how many there are now? And a secondary question not related to this: Do you have any idea why the number of applications for licenses has gone up so dramatically?

Answer the first one and then the second part.

Mr. GARDINER. All right. With regard to eliminating it totally, we would be very much opposed to that. We believe there has got to

be some kind of very clear statutory limit. Now if 45 days is inadequate and ATF can make the case that it is inadequate, then there is certainly no reason that consideration couldn't be given to a different time period. I note that if these changes that we are talking about with regard to collectors' and dealers' licenses were implemented, the problem would probably evaporate.

To move on to your second question, why have licenses gone up—

Mr. SCHUMER. Applications for them.

Mr. GARDINER. I'm sorry—applications. I think Mr. Higgins was quite right when he said that after the Washington Post article I think it was, he mentioned a series of media articles, and unfortunately people hear that and they think, "Well, I'll apply for one." I believe all the reasons he gave were correct, and I would endorse those.

Mr. SCHUMER. All right. These are not now in the proposal by the Stocking Gun Dealers, but let me ask you about this. What about FFL applicants should be drug tested to be sure they are not involved with narcotics trafficking?

Mr. GARDINER. That question I have never heard before. It is troubling to me, and I am not sure, without giving it a lot of consideration and looking at the case law, that I would be prepared at this point to give you an answer.

Mr. SCHUMER. All right.

Finally, what about some kind of standards to promulgate security standards for the dealer? You talked about how many guns are stolen, and that is something we agree on. In fact, I put into the crime bill last year the very penalties that you have asked for in terms of making it a Federal crime to steal.

What about promulgating security standards for the dealers?

Mr. GARDINER. I think that is not a very good idea. I don't think the Federal Government should be in that particular business. I think insurance companies are probably by and large going to deal with that adequately.

Mr. EDWARDS. And can I ask a question on that?

Mr. SCHUMER. Yes. We are going to come back, but please go ahead.

Mr. EDWARDS. Yes, but I have to go.

Mr. SCHUMER. Go ahead.

Mr. EDWARDS. What about requiring fingerprints so we can see if he has a criminal record?

Mr. GARDINER. I think with regard to dealer license applicants, again, if we end up with a regime that we have in mind, I don't see a particular problem with that.

Mr. EDWARDS. Why? No particular problem?

Mr. GARDINER. No particular problem.

Mr. EDWARDS. It would cost at least \$25 or \$30.

Mr. GARDINER. Right. I think \$17 is the current fee. As I said, what we would recommend is that ATF, as it has done before, simply by regulation, expand the length of the license, and then they can charge, if they want, \$150; they can make it a 15-year license.

Mr. SCHUMER. How about a 200-year license?

Mr. GARDINER. Whatever.

I might note, one of the earlier witnesses—let me just make this point—observed that there is no mechanism for revoking a Federal dealer's license. That is already found in section 923(e). I don't know where that idea came from, but I am sure you don't have that misperception.

Mr. SCHUMER. OK. That finishes up my questions, but I know Mr. Sensenbrenner has questions. And do you, Mr. Smith?

Mr. SMITH. Yes, I do.

Mr. SCHUMER. So we will come back. This is only one vote, so let's try to do it by 20 of 4. We will try to be back by 20 of 4 and finish up.

Mr. GARDINER. We will be here.

[Recess.]

Mr. SCHUMER. Mr. Sensenbrenner has the floor for as long as he wishes.

Mr. SENSENBRENNER. It won't be very long, Mr. Chairman. I have a couple of questions of Mr. Gardiner.

I think that your proposal to increase the application fee and extend the license period from 3 to 10 years is interesting. Do you support legislation that would increase the fee, however it is done, so that the fee would pay for the full cost of the background check of an applicant for a Federal firearms license?

Mr. GARDINER. We don't have any problem with the applicant paying for the cost. As I said, I don't think it requires legislation. I think the ATF could issue a regulation tomorrow and take care of the problem.

Mr. SENSENBRENNER. But if the ATF does as you have suggested and charges \$100 for a 10-year license, doesn't that mean that there is no money to enforce the law on existing licensees?

Mr. GARDINER. Obviously, it would have to be phased in over time. As 3-year licenses would expire, people would reapply for a new license.

Mr. SENSENBRENNER. That doesn't answer my question. You know, if all the money is being used from the fees to investigate people who have applied for the license, where is there money to investigate violations by existing licensees?

Mr. GARDINER. That is what the existing budget from the Congress is used for.

Mr. SENSENBRENNER. OK.

Now do you think the taxpayers should end up paying for the regulation of a licensed profession, or do you believe that the license holders of that profession should pay for the regulation of it?

Mr. GARDINER. When you say regulation, are you including criminal investigations and criminal prosecutions of dealers who have violated Federal law?

Mr. SENSENBRENNER. License revocation for whatever reason.

Mr. GARDINER. I wouldn't have a problem with the dealer whose license was revoked being fined in some way to cover the cost of that activity, but I don't think that the license fees should go up so that the 99.9 percent, or whatever the number is, of the law-abiding dealers are paying those costs.

Mr. SENSENBRENNER. I am a member of the State Bar of Wisconsin. All lawyers licensed in my State have got to be members of the bar pursuant to a State supreme court order. Every year I get a

bill in addition to my bar dues for the policing mechanism of the bar commissioners, where they investigate allegations of unethical activity by members of the bar. Some of these allegations are followed up, a lot of them are dismissed as being without merit, but, nonetheless, the taxpayers of my State do not pay for the regulation of the bar, the license holders do that through the assessment that is imposed upon them, and the same thing is true with every other licensed profession in my State, whether it is medical doctors or nurses or barbers or cosmetologists or security firm operators. Anybody who has got a license from the State of Wisconsin to engage in a trade or profession is required by law. Those license fees pay for the whole operation of the licensing agency. Shouldn't the same thing be true here with Federal firearms licenses?

Mr. GARDINER. I don't think so. I think that assumes that we would agree, or I would agree, with that concept at the bar. I am a member of the D.C. Bar and the Virginia Bar, and I pay those dues as well, but I don't think that is necessarily appropriate.

Mr. SENSENBRENNER. Why isn't it necessarily appropriate?

Mr. GARDINER. If you are acting in the interest of the public, which is the purpose for that kind of law, then it ought to be the public that pays the costs.

Mr. SENSENBRENNER. But 99 percent of all lawyers are honest, and barbers are honest, and cosmetologists are honest, and medical doctors are honest, and, you know, the honest people are paying for the policing of those professions. Why shouldn't everybody who holds a license pay for the policing of the gun dealer profession?

Mr. GARDINER. Because I think that is a special tax imposed only on a small number of people for the general good of the public, and I think that is the kind of thing that the public generally should pay for.

Mr. SENSENBRENNER. But getting back to the whole purpose of licensure, isn't licensure a requirement that someone who applies for and obtains a license meet certain qualifications and maintain certain standards?

Mr. GARDINER. Yes.

Mr. SENSENBRENNER. That includes firearms dealers?

Mr. GARDINER. Right.

Mr. SCHUMER. Would the gentleman yield?

Just for the good of the public. A cosmetologist's license is not for the cosmetologist, it is for the public who might be served by them. I yield back.

Mr. GARDINER. I agree with the chairman.

Mr. SENSENBRENNER. Then why should firearms dealers be treated differently and have the taxpayers end up borrowing money, adding to the national debt, and paying interest on that debt, because the fees are not adequate to pay for the activities of issuing and maintaining the licenses?

Mr. GARDINER. With all due respect, I don't think two wrongs make a right. Just because it is going on somewhere else doesn't mean that it should go on everywhere.

Mr. SENSENBRENNER. Does that mean that your and my bar license fees ought to be reduced and the taxpayers pay for getting at the bad apples in our profession and revoking their licenses?

Mr. GARDINER. I believe so, yes. I don't believe that a special tax should be imposed on me and the however many other thousand lawyers there are in Virginia.

Mr. SENSENBRENNER. Then what you are saying is that it is not in the interest of the honest lawyer to help kick the dishonest lawyers out of the profession.

Mr. GARDINER. I don't know because, as a lawyer, I am paying—

Mr. SENSENBRENNER. Then do you know if it is in the interest of the honest firearms dealer to kick the dishonest firearms dealer out of that trade?

Mr. GARDINER. It is in his interest as well as the interest of all the public, and I pay taxes to the Commonwealth of Virginia, which I believe is used for law enforcement activities, which would include enforcing the law on the legal practice of law.

Mr. SENSENBRENNER. Mr. Gardiner, I think you are being a little bit inconsistent, you know. Having said that, let me ask one other series of questions relating to your suggestion that the fee be raised to \$100 on application and the license term be extended to 10 years. Isn't it a lot easier for a government agency not to renew a license than it is to revoke an existing license?

Mr. GARDINER. Yes, it is more difficult to revoke a license, but I said that if a license is revoked I don't have any problem with the revoked licensee paying the cost of the revocation process.

Mr. SENSENBRENNER. Well, you know, most of these people whose licenses would be revoked for firearms violations would be in jail, and they would be spending all of their money on lawyers' fees defending themselves in the criminal trial that provoked the revocation.

Mr. GARDINER. Mr. Sensenbrenner, in that case they are not going to litigate the revocation of their license, because under the current revocation process they are sent a letter revoking their license. If they don't ask for a hearing within 15 days, the revocation becomes final.

Mr. SENSENBRENNER. But that costs money.

I would really urge the NRA, if you are interested in protecting the honest firearms dealer, that maybe the honest firearms dealer should pay a little bit more money to get the dishonest people out of the business, and maybe the reputation of that trade, which isn't very high at the present time, would be increased.

Thank you.

Mr. SCHUMER. Thank you, Mr. Sensenbrenner.

Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Aborn, let me start my questions with you. You mention in your opening statement, and I am reading from it, that every year nearly 640,000 violent crimes are committed with handguns. A couple of questions in regard to that figure, the 640,000 violent crimes committed with handguns. I guess the first question is, what percentage or what number are obtained illegally from gun dealers? Of the weapons used in those 640,000 violent crimes, do you have a figure or number?

Mr. ABORN. The Department of Justice in 1989 estimated that about 27 to 30 percent of all guns used in crime originate illegally

over the counter. We don't have a further breakdown on that because there are so many blocks on the tracing mechanisms that ATF could utilize.

Mr. SMITH. So something around a quarter of those—

Mr. ABORN. No, sir, I would not say it is a quarter. I would say it is possibly much, much more than that, but because of all the administrative and congressional blockages on the ability of ATF to do systematic tracings we don't have that information.

Mr. SMITH. Do you have any information as far as the number of handguns used in these crimes that were purchased within a week of the crime?

Mr. ABORN. I don't know if that data is available. I don't know off the top of my head. I would have to check. I don't know if that is available.

Mr. SMITH. Do you have any figures at all as far as the number or percentage of handguns purchased within any time period of the crime?

Mr. ABORN. Well, yes, you could go back and compile it. I don't have that piece of information with me. That I could provide to you though.

Mr. SMITH. Because it seems to me that Handgun Control in particular has made much, for instance, of the Brady bill, which I realize is not being considered today, but I am just wondering if you have any statistics, any figures at all, to show that the Brady bill would have any significant impact on crime based upon the number of weapons or handguns purchased within—

Mr. ABORN. Oh, absolutely, and I will be happy to go into those now, but it is a lengthy discussion.

Mr. SMITH. I don't mean to make it lengthy. Give me the percentage of handguns, that are used in crimes, that are purchased within a week of the crime.

Mr. ABORN. I'm sorry, I don't know that off the top of my head. I will be happy to provide that to you in writing. I think that information is available. I don't know it off the top of my head.

Mr. SMITH. The Department of Justice once told me that 2 percent of all weapons, I believe it was, were purchased within a month of the crime. So would you have any problem with saying it was less than 2 percent?

Mr. ABORN. I would have a problem with that, yes.

Mr. SMITH. Why so? Do you disagree with the Department of Justice?

Mr. ABORN. Because their data regarding the number of guns used in crime is in excess of 27 percent. What I don't know is the amount of time it took for that gun to be used in the crime from its date of purchase; I just don't know that information.

Mr. SMITH. It is amazing to me, with all the times that you must have testified in regard to the Brady bill, that you don't know the percentage of handguns, used in crimes, that were purchased within a week. But, you don't have that figure?

Mr. ABORN. I do not have that.

Mr. SMITH. Do you have that figure available, did you say?

Mr. ABORN. I believe, sir, it is.

Mr. SMITH. OK, and you don't have any idea what it is?

Mr. ABORN. I think I am clear. I am not sure that it is. I believe it is. I will be happy to provide it to you in writing if, in fact, that information is available.

Mr. SMITH. I would like to have it. I am just amazed that you don't have it.

[The information follows:]

HANDGUN CONTROL

Richard M. Aborn
President

ONE MILLION STRONG . . . working to
keep handguns out of the wrong hands.

June 29, 1993

The Honorable Lamar Smith
2443 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Smith,

This letter is in response to your question at the recent hearing conducted by the Subcommittee on Crime. At the hearing you asked whether I knew how many handguns had been used to commit a crime within five days of purchase. As I originally responded and have now confirmed, such data does not exist. We do, however, have many examples of the effectiveness of waiting periods in keeping handguns out of the hands of persons dangerous to themselves or to others. I would point out that in the states where a waiting period/background check system is in place, thousands of prohibited persons are stopped each year from buying guns.

In both 1991 and 1992 in California, which has a fifteen-day waiting period, nearly 6000 prohibited persons—including murderers—were stopped from buying guns. Illinois denied 2,274 individuals Firearms Owners Identification cards, and revoked more than 2500 previously issued cards in 1991, due to felony convictions. In New Jersey, nearly 1,000 criminals—and in Oregon, more than 200 criminals were screened out through the waiting period and background check in these states in a one year period.

The following are examples of incidents where the Brady Bill may have prevented a tragedy:

On April 23, 1987, Georgia Power Company payroll employee Mozella Dansby purchased a .38 calibre snub-nose revolver in Smyrna, Georgia. The next morning she shot two of her supervisors and then killed herself because she was distraught at having been passed over for a promotion. Although an Atlanta resident, Dansby went to Smyrna to avoid Atlanta's background check and waiting period law.

In May, 1987, 21-year old Eddy Beermann bought a .357 Magnum and killed himself four hours later. Beermann purchased the gun in Martin County, Florida, because his own county, Palm Beach, had a 14-day waiting period law. Eddy's father believes, "If my son had been forced to wait and think about owning a gun, this might not have happened."

In August, 1987, Tulsa, Oklahoma resident, Larry Dale, bought a .22 calibre revolver and 24 hours later opened fire in a grocery store, killing one customer and wounding another before turning the gun on himself. Dale had been previously convicted of unlawful possession of a sawed-off shotgun, a felon which should make him ineligible for purchasing another firearm. He simply falsified the form and left the gun store with his gun and ammunition.

In August 1987, a man named Dwain Wallace was gunned down after brandishing a handgun in the Pentagon. Wallace has purchased the handgun just two days earlier from a Youngstown, Ohio, pawn shop. If police had the opportunity, they could have learned that Wallace had a history of mental illness and it was unlawful for him to purchase a handgun.

On October 26, 1987, Arthur Kane, distraught over the stock market crash, purchased a handgun and only 45 minutes later murdered his stockbroker in his Miami Merrill, Lynch office. Had police undertaken a background check, they would have determined that Kane was a convicted felon who was prohibited from purchasing the gun.

On May 20, 1988, a Gainesville, Texas, woman named Sharon Wilson pawned two diamond rings to buy a .38 calibre handgun. Later that same day, she killed her 13-year old son, 8-year old daughter, and herself.

In October, 1988, Doug Marx bought a .357 Magnum in Wichita, Kansas. The next day he used it to kill his two children and himself. His sister, Paula Sue Marx, said, "We'll never know what was on Doug's mind. He loved his kids so much, I guess he wanted them to be with him. But I think there's a strong possibility they wouldn't be dead now if there was a waiting period."

On January 8, 1989, Robert Hughes robbed a West Chester, Pennsylvania, McDonald's and shot to death restaurant workers, Jean Reider and Charles Hegarty, execution-style. Hughes had worked at the McDonald's in the summer of 1988 but lost his job when he was arrested for stealing license plates, pleaded guilty, and was sent to jail and to a state mental hospital. After his release, Hughes went to a local gun shop and lied about his record on the federal form in order to purchase a .38 calibre pistol, ammunition, and targets. Although Pennsylvania has a 48-hour waiting period which the gun dealer obeyed, it was simply too short a period of time for the police to investigate Hughes. The handgun was picked up from the dealer on January 6, less than 48 hours before the robbery/murder occurred.

On April 24, 1989, Richard Papineau bought a handgun in Winchester, New Hampshire, and hours later shot and killed Frank Thibeault. Papineau was both a convicted felon with a criminal record and a former state and federal mental hospital patient.

On August 22, 1989, 85-year old Angelo Nicosia bought a .38 calibre handgun in Florence, South Carolina, and hours later used it to kill Police Lieutenant Rick Gould. Nicosia then shot and killed himself. Nicosia's family had notified Florence police that Nicosia had mental problems, and Lt. Gould had made extraordinary efforts to help him, but Nicosia was obsessed with the thought that Gould had wronged him.

On April 23, 1990, James Calvin Brady was released from an Atlanta, Georgia, mental hospital where he had been involuntarily committed and hours later purchased a revolver from a DeKalb County pawn shop. Brady went to DeKalb County because Atlanta had a handgun waiting period. The next day, Brady randomly shot five people at Perimeter Mall. Michael Musick was shot and killed.

On June 16, 1990, David Stewart bought a 9mm pistol in Shawnee, Kansas. The next day, he travelled to Beatrice, Nebraska to shoot and kill a 31-year old school teacher, Melody Wolken. Nine hours later, Stewart committed suicide. Stewart had been previously arrested for attempted murder and the charge was still pending.

On April 18, 1991, Chung Dinh Vu bought a Polaroid camera and a .45 calibre pistol in Houston, Texas. Less than eight hours later, he lined up his four children aged 8, 12, 16, and 18, took their pictures, and shot each one in the head. All four died. Vu then committed suicide. He was distraught because his wife had left him four days before, and that morning had filed for divorce. Apparently, the killing of the children was meant as revenge upon his wife.

In April 1991, in Odessa, Texas, Richard Law was admitted to a state psychiatric hospital because he was threatening to kill himself over his separation from his wife. Officials decided he was not a threat to society and released him. The next day, he purchased a pistol and one hour later killed his wife, his step-daughter, his two sons, and himself.

In Tempe, Arizona, in April, 1992, Donald Lonny Prunty, 25, bought a .45 calibre handgun and one hour later killed a pregnant waitress in a restaurant where his estranged wife worked. He wounded his wife and two other people before killing himself.

On March 5, 1993, in Wichita, Kansas, using a .25 calibre handgun bought that day at a pawn shop between liquor purchases, Brent Alford showed up at a Burger King restaurant where his former girlfriend worked, and shot her at least four times. Because Alford went to prison in Oklahoma on a felony embezzlement conviction, he was not allowed to purchase or own a gun under federal law...but no one checked.

On March 20, 1993, Brian Shults bought a .32 calibre semi-automatic handgun and a box of bullets from an Arlington, Texas pawn shop. The same day, Shults, a Fort Worth Star-

Telegram journalist, reviewed a comedy act, turned in his story before the 11:00 p.m. newspaper deadline, and then shot himself in a field across from his apartment.

On May 22, 1993, Jimmy Sweeney bought a .38 calibre revolver and went to Dillard's Department Store in Little Rock, Arkansas where his former girlfriend worked. Sweeney shot her several times and then turned the gun on himself.

Handgun Control, Inc. has never offered up the Brady Bill as a panacea to end all gun-related violence. Rather, we have advocated—along with every major law enforcement organization in the country—that it is a means to keep handguns out of the wrong hands, the hands of those who have a criminal record, or who are bent on committing an act of violence in the heat of passion.

I trust that this letter has responded to your inquiry and also illuminates why we feel so strongly about the importance of the Brady Bill.

Very truly yours,



Richard M. Aborn

Mr. SMITH. You also make the statement that virtually every handgun used in crime originated from a licensed gun dealer. It seems to me that that is sort of stating the obvious. The only time that would not be true would be if someone stole a firearm that was coming off the assembly line at a factory—

Mr. ABORN. Or from a military base.

Mr. SMITH [continuing]. That produced firearms.

So I don't see anything necessarily nefarious about that particular statement.

Mr. ABORN. There is nothing nefarious, but I think what it does, if I may, is, it illustrates the need for increased regulations over these dealers.

Mr. SMITH. OK. What is your figure on the number of gun dealers? We will go to that.

Mr. ABORN. Two hundred and eighty-six thousand.

Mr. SMITH. OK. Give me a rough estimate as to what percentage of those gun dealers you feel engage in illegal activity as far as selling or buying firearms.

Mr. ABORN. You know, Mr. Smith, in all due respect—

Mr. SMITH. Do you have any figure for that at all?

Mr. ABORN. It is unfair to say give us this sort of information when Congress itself has blocked ATF from compiling that sort of information. These are exactly the sorts of information, of data, that we want to compile.

Mr. SMITH. My point is, we are talking about legislation that is going to impact the lives of a lot of law-abiding citizens, we are talking about legislation that is going to cost a lot of people money perhaps, and I am just appalled by the lack of any figures or statistics that are available to either back up this legislation or to prove some of the accusations that are being made.

Let me give you a figure in return, and tell me if you think this is somewhat in the ball park. I am told that of those, whatever it is, 200 and—what did you say?—80—

Mr. ABORN. Six.

Mr. SMITH [continuing]. Six thousand gun dealers, that last year I think BATF investigated 6 percent of that—say that is 18,000 or something like that—and revoked three licenses, which would come out to 1 out of every 6,000 that they investigated. That is not a very high percentage of gun dealers who are engaged in illegal activity. I realize you would like and a lot of people would like to have everyone investigated every year, but as far as those who are investigated, it doesn't seem like very many are doing anything wrong.

Mr. ABORN. But I am not sure what that tells us, because out of the 8,766 inspections that they did in 1991, there were 7,500 violations found, and that is 88 percent of all the inspections result in a violation. Also, if I may, sir, if you look at another piece of data, of the 286,000 licenses that are out there, OTA has said that there are only 15,000 licensed gun dealers in retail operation and only another 5,000 in sporting good shops.

Mr. SMITH. I understand all of that, but to me violations is not really getting to the nub of the problem. We talk about illegal activity. Most of those violations were paperwork violations, for example. It wasn't that these gun dealers were illegally buying and

selling or exchanging firearms. So I think it is also a question of what kinds of violations you are talking about. But the fact that only 3 licenses out of 18,000 that were pulled once again says to me that most are engaged in very legitimate activity.

Mr. ABORN. Or it tells us that there is not enough enforcement.

Mr. SMITH. Let me go to the next question, if I may. You say in another part of your testimony here, "The ATF is only able to conduct compliance inspections of a minuscule fraction of licensed dealers." As you say, it is incumbent upon Congress to provide more funds so that more personnel can engage in those types of inspections.

The minuscule fraction, I think, as I mentioned a while ago, is 6 percent. Is the thrust of what you want to see done—do you want more inspections to occur, more detailed inspections to occur, or are you primarily interested in reducing the number of gun dealers themselves?

Mr. ABORN. I would say both. In fact, our principal interest is more on the prevention side and making sure that those individuals that seek FFL's really intend to engage in the retail sale of guns as the law requires. If Congress were to give ATF the power to deny licenses to those that really do not intend to engage in the retail sale of guns, I think you would not need to vastly expand the number on the force, but I think unless Congress does that you do need a lot more enforcement.

Mr. SMITH. I agree with the enforcement. I agree with the need for more funds.

Mr. Gardiner, before I go to your questions, Mr. Aborn, when will you be able to get me those statistics that I asked for in writing as far as the percentage of crimes committed with handguns within a week of purchase?

Mr. ABORN. Certainly by Monday or Tuesday.

Mr. SMITH. OK.

Mr. SCHUMER. If the gentleman would yield.

Mr. SMITH. I would be happy to.

Mr. SCHUMER. Just two points for the record. One is, and I am not exactly sure what this means, but in ATF's testimony they said 12 percent of all dealers whom they inspected surrendered their license during the inspection. So maybe three went through a lengthy fight of the revocation, but 12 percent is a heck of a lot.

Mr. SMITH. Voluntarily gave up their licenses?

Mr. SCHUMER. Well, all it says here, and I am just reading—

Mr. SMITH. OK. Let me just respond to that figure. I don't know what someone else might say, but the fact that they gave it up may mean that they haven't used it in 10 years. It is not any—and you don't mean to imply that there is anything wrong—

Mr. SCHUMER. Right. Neither is the revocation.

Mr. SMITH [continuing]. Or that they have done any illegal activity whatsoever.

Mr. SCHUMER. No, no, no. Neither is the revocation. It may just be that the people who fought it all the way up—

Mr. SMITH. And perhaps the 10-year limit, that is where you catch perhaps most of that percentage.

Mr. SCHUMER. The only other point I would make in terms of the efficacy of Brady, with the 5-day waiting period and even in the

conference agreement, that if and when an instant check system were truly applicable in the States, there would be no waiting period.

I think for many of us who support Brady or the waiting period is somewhat important; but far more important was the selling of guns to felons, and in States that have such laws we have found ample evidence of lots of felons attempting to buy guns from gun dealers.

So whatever the statistic is, if it is available—and I am less sanguine that it is available than Mr. Aborn—that I don't think the cooling off period is the main reason that most of us are so eager to pass Brady.

Mr. SMITH. I am glad to hear that because so often when this subject is discussed—that is, the Brady bill—you oftentimes read this figure, the 640,000 violent crimes, and the implication is, if we had the Brady bill, we would reduce a substantial number of those crimes, and I am glad to hear you say that that is not—

Mr. SCHUMER. Well, I think that is true. I am just saying the cooling off period isn't the reason for most of those crimes.

Mr. SMITH. Right, and my point and the point I am trying to make is that because so few crimes are probably committed with firearms that are purchased within a week, you are not going to substantially reduce the number of crimes that is often cited as going to be impacted.

Mr. SCHUMER. My point, again, is the felons part of Brady that is far more important, as our compromise indicated, than the cooling off period. A felon could have bought the gun 3 weeks before and be prohibited in Brady from having gotten the gun altogether if he or she used that gun in a crime.

Mr. SMITH. Yes.

Mr. SCHUMER. OK. We are not here to debate Brady.

Mr. SMITH. We are both probably agreed on the need for background checks, and the instant background checks is the ultimate goal, but the waiting period itself is not going to substantially reduce the number of crimes.

Mr. Gardiner, just to follow up on something that was brought out earlier, I am told, for example, that New York State alone has something on the order of 20,000 gun laws. Maybe that is wrong. Tell me what your feeling is.

Mr. GARDINER. The 20,000 figure generally refers to nationwide, when you include Federal, State, and local laws.

Mr. SMITH. And is it not incumbent on the Department of Treasury, by law, to compile those laws and be sure that gun dealers are aware of those laws?

Mr. GARDINER. Yes. In my testimony, my formal written testimony, I have the statute actually quoted. It is required.

Mr. SMITH. We have the statute up here and the Criminal Code, and it is your understanding as well that since 1989 the Department of the Treasury has not mailed out any compilation of those laws to the gun dealers?

Mr. GARDINER. That is correct.

Mr. SMITH. What would be the impact if they did? Would that help alert gun dealers to the laws that they might be regulated by?

Mr. GARDINER. It would be tremendously helpful.

Mr. Higgins was correct when he said that education about what the law is is something that needs to be done, and we couldn't agree more because the vast majority of gun owners and gun dealers in this country want to be law abiding. The problem is that they don't necessarily always know what the law is, they don't know how to go about finding out what it is, and that was the reason that in 1986 Congress imposed that requirement on the Treasury Department.

Mr. SMITH. I appreciate your confirming that with me.

Mr. Chairman, I don't have any other questions except to say that unless someone else comes forward with evidence that we are not aware of, it seems to me that the vast majority, a high percentage, of gun dealers are law-abiding citizens of this country, and I think that we need to avoid legislation that would be an undue burden upon them and we need to pass legislation that would stop the traffic and illegal sale or purchase and exchange of firearms.

Mr. SCHUMER. On that note, which I agree with, we have had a hearing that has had more consensus than we have had on guns in a long time, and maybe we can do something good.

I want to thank the final two witnesses for their patience. It is, after all, 4 hours and 15 minutes since this hearing began. I also want to thank all the staff who did a great job on this: David Yassky—I think this was an excellent hearing in terms of laying out the problem and its scope—as well as Andy Fois, the subcommittee counsel; Rachel Jacobson, the clerk; Leonard McCullough, an intern who helped on the hearing; as well as Lyle Nirenberg, who is the minority counsel; and finally, I always like to thank the unsung heroes of these hearings—if there are any heroes, you are it, Alma Kristoffersen—who is the stenographer.

With that, the hearing is adjourned.

[Whereupon, at 4:15 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ISBN 0-16-044182-X



9 780160 441820