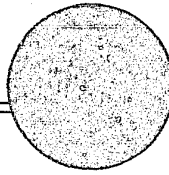


FIREARMS ENFORCEMENT EFFORTS OF THE BUREAU  
OF ALCOHOL, TOBACCO AND FIREARMS

MFL



HEARING  
BEFORE THE  
SUBCOMMITTEE ON CRIME  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
NINETY-SIXTH CONGRESS

SECOND SESSION  
ON  
FIREARMS ENFORCEMENT EFFORTS OF THE BUREAU  
OF ALCOHOL, TOBACCO AND FIREARMS

JULY 2, 1980

Serial No. 74



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ACQUISITIONS

**FIREARMS ENFORCEMENT EFFORTS OF THE  
BUREAU OF ALCOHOL, TOBACCO AND FIRE-  
ARMS**

WEDNESDAY, JULY 2, 1980

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2 p.m., in room 2237 Rayburn House Office Building; the Honorable John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Gudger, Volkmer, and Ashbrook.

Also present: Hayden Gregory, counsel; Franklin Lamb, assistant counsel; and Deborah K. Owen, associate counsel.

Mr. CONYERS. The subcommittee will come to order.

This is the Subcommittee on Crime of the Judiciary Committee, and we welcome you here today for an informative oversight hearing on firearms enforcement efforts of the Bureau of Alcohol, Tobacco and Firearms.

It has been awhile since we have heard from the Bureau regarding its efforts and enforcement programs, which responsibility was given to the Bureau under the provisions of the Gun Control Act of 1968.

We are here to learn firsthand what problems BATF is having under the present law and what its specific programs and proposals are for stemming the flow of illegal gun traffic around the United States.

We are facing a very serious and growing problem involving the use of handguns in crimes of violence. During the mid-1970's there were over 40 million handguns in the United States. Today it is estimated that there are over 50 million. This is approximately a 25-percent increase in the number of handguns over the past 6 years. While mainly for legal uses, it also indicates a large criminal demand for handguns. It is toward the latter that our enforcement efforts must be directed.

A number of bills are before the subcommittee which directly address the question of BATF enforcement responsibility and authority. One bill would transfer enforcement authority from the Treasury Department to the Justice Department. Another bill would leave authority with BATF, but would curtail the Federal enforcement authority in a number of respects.

Although this is an oversight hearing and not a hearing on the

bills as such, it is expected that some witnesses will wish to comment on provisions of these bills in the course of commenting on BATF's enforcement policies.

We welcome all the witnesses here today. Before recognizing our first witness, the chairman received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, photography, or by other methods, and in accordance with Committee Rule V(a) permission will be granted, unless there is objection. Hearing no objection, permission is granted.

We are very pleased to begin these oversight hearings with the chairman of the full committee of the Judiciary, Hon. Peter Rodino, the gentleman from New Jersey, who has served on Judiciary for many years and many years as a Congressman. His concern with this subject matter is very widely known and recognized. We wish to recognize the chairman at this point and incorporate his prepared remarks in the record and welcome him before the Subcommittee on Crime.

**TESTIMONY OF HON. PETER W. RODINO, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES**

Mr. RODINO. Thank you very much, Mr. Chairman and members of the subcommittee. I am delighted to appear before you today to discuss a subject that has been one of great concern to all of us, I know. Unfortunately, it has been a measure that has been fraught with controversy, and while it has been our responsibility to deal with this legislation, to effectively deal with gun control legislation, I believe there have been divergent views as to how we reach the kind of result that will protect society from the threat of handguns. All I would like to say is that by this time tomorrow, Mr. Chairman and members of the subcommittee, 26 Americans will be murdered in handgun fire, and the day after that there will be 26 more, and so on.

This has been a statistic that to me is fraught with great concern because it is just not 26 but it is 26 people who are killed with handguns. And as the chairman of the Committee on the Judiciary that has primary responsibility in the area of legislating what we might consider to be the kind of provisions that would effectively deal with this problem, I have long advocated what we might consider a reasonable proposal, knowing that there are on the part of some people some justifiable apprehensions as to whether or not the kind of gun control legislation that comes before us might do the job that we intend it to do.

As chairman of the committee, I have long advocated and worked for stronger and more effective legislation at the national, State and local levels to reduce the handgun slaughter in our country. The magnitude of the problem of handgun violence is well known to most of us here today.

I want to commend you, Mr. Chairman, especially, you personally, for your vigilance in this area, and for having in the past conducted many hearings which, I think, brought forth considerable testimony which justified action on the part of the committee.

While we were unable to bring to the floor handgun legislation which would have been adopted, I think that there certainly had been a basis and indeed there were grounds for favorable consideration of that measure by the Congress.

What has come to the attention of the Subcommittee on Crime are the alarming indications that the trends for violent crime—murder and aggravated assault—continue to increase and that the percentage of these crimes committed by handguns remains very high; that criminal misuse of firearms exacts a large social cost in terms of lives lost, personal injury and fear; and criminal justice resources expended is also well known to most of us here today.

Recent research—I know that this is plowing the same ground that we have been over before but I think it needs to be stated time and again—statistical data provides us with a measure of the seriousness of the firearm problem. And at the risk of imposing on the committee, let me recite again handguns are used in over 2½ times as many murders as any other weapon.

In our country during 1979 alone, firearms were used in over 307,000 offenses of murder, robbery, and aggravated assault reported to the police. These accounted for 63 percent of all murders, 41 percent of all robberies, and 22 percent of all aggravated assaults.

According to the Uniform Crime Reports, 79 percent of the firearm murders for 1978 involved a handgun. Since the passage of the 1968 Gun Control Act, nearly 100,000 Americans have been murdered with handguns and literally millions of Americans have been injured, threatened, assaulted, raped, and robbed at gunpoint.

The 1979 statistics have now been compiled for New York City, and they show that 4,000 persons were arrested for illegally carrying guns last year. In addition, 882 persons were murdered with handguns and 33,519 armed felonies were committed.

For adolescent and young adults the criminal misuse of handguns is particularly serious as a health problem. The Surgeon General recently reported that homicides are the leading cause of death among black males age 15 to 24, and that handgun availability is the leading homicide risk factor for homicide in the general population.

While many firearms have legitimate use, including the recreational sports of target shooting, and hunting, collection, self-protection, law enforcement and military, it is the large criminal demand for handguns which must be more effectively dealt with by the Congress and this committee. We are here to examine enforcement provisions of gun control legislation and the enforcement practices and experiences of the BATF.

Two years ago, I regret to say, Congress took a step backward by rejecting regulations containing stronger provisions for tracing firearms transfers. We had dealt with that at considerable length in our committee. Having the capability of tracing these instruments of violent crime is in my view—I don't think mine is a unique view, it is the view of many who have studied this field—it is a significant contribution to successful enforcement and control efforts, and I look forward to hearing the testimony of Mr. Dickerson of the Bureau as well as witnesses present today on this and related matters.



In 1968, Congress passed the Gun Control Act. Unfortunately, this legislation has not proven sufficiently effective to achieve its goal of limiting easy access to handguns for use in criminal activity.

The 1968 legislation and its ban on the importation of easily concealable handguns has been effectively undermined by the importation of handgun parts and their domestic assembly and there is, therefore, a need for stronger controls on the handgun industry to combat the illegal traffic in handguns.

It is my considered judgment that the Handgun Crime Control Act of 1979, which is currently before the House and the Senate, would provide substantial assistance to our efforts in dealing with violent crime, without transgressing on the rights of those who feel that we might be going too far. Specific provisions of this proposed law include a ban upon the manufacture, importation, assembly and sale of handguns classified as "Saturday night specials", and handguns which are easily concealable.

The bill requires also that handguns manufactured, imported or transferred conform to criteria which emphasize factors that determine whether the gun is easily concealable or is a gun with potential criminal use. All transfers of such handguns would be affected, including those between private individuals.

The Kennedy-Rodino bill would also ban the intrastate mail order sale of handguns and would limit to three the number of handguns that may be purchased from a commercial licensee during a full year, absent special approval by the Attorney General, and requires that the theft, loss or disappearance of handguns be reported to the police within 24 hours, and the Attorney General within 5 days.

The Handgun Crime Control Act of 1979 would also specify additional qualifications for securing a commercial license to manufacture, import or deal in handguns, including raising the fees for such licenses.

As disciplinary measures for commercial licensee violations, the bill allows license suspension or civil fine in lieu of license revocation. One particularly important feature of this legislation is the establishment of an accountability feature requiring record keeping, under which handgun manufacturers and importers would be required to maintain records on disposition of all handguns for 10 years from the date originally shipped or otherwise transferred. This provision, in my judgment, will be of enormous assistance to local police agencies which must deal with the bulk of firearms abuse and gun theft.

It will also help in keeping track of the source and flow of firearms necessary for effective tracing of guns. It is my view that along with the other provisions of the bill, the tracing provision will improve the ability to gather information necessary to enforce federal firearms laws, curtail thefts, and assist State and local enforcement agencies in their enforcement responsibilities.

While I presented this proposal, Mr. Chairman, as is always the case, while many of us take pride in our authorship and sponsorship of certain proposals, this is not the last word. But what I think is important for us to remember is that we do have a responsibility

to deal in this area. All of us keep talking about the need to do something, but apparently we keep talking about it and want to keep talking about it, and the 26 murders a day by handguns continue.

I think this is indeed not only deplorable but I think shows a lack of responsibility on the part of the Members of Congress who know that this is a fact, who respond every time that we see a headline about some outstanding officials or some individual that has great stature, but we forget that each day there are some 26 unknowns, unnamed, who are being killed, murdered, with handguns.

I would, therefore, urge that while it may be late in the session, while this is an election year, that we recognize our responsibility and at least present this proposal before this committee.

Thank you very much.

[The above statement in full follows:]

STATEMENT BY CHAIRMAN PETER W. RODINO, JR., AT GUN CONTROL HEARING

The Committee on the Judiciary of the U.S. House of Representatives is responsible for Gun Control legislation and oversees the Bureau of Alcohol, Tobacco and Firearms activities in its enforcement efforts. As Chairman of the Judiciary Committee, I have long advocated and worked for stronger, more effective legislation at the National, State and local levels to reduce the handgun slaughter in our country.

The great magnitude of the problem of handgun violence is well known to most of us here today. What has come to the attention of the Subcommittee on Crime, as well as to the full Judiciary Committee are the alarming indications that the trends for violent crime, murder, and aggravated assault continue to increase and that the percentage of these crimes committed by handguns, remains very high.

That criminal misuse of firearms exacts a large social cost in terms of lives lost, personal injury and fear, and criminal justice resources expended, is also well known to most of us here today. Recent research and statistical data provides us with a measure of seriousness of the firearm problem:

Handguns are used in over 2½ times as many murders as any other weapon.

In our country, during 1978 alone, firearms were used in over 307,000 offenses of murder, robbery, and aggravated assault reported to police. These accounted for 63 percent of all murders, 41 percent of all robberies and 22 percent of all aggravated assaults.

According to the Uniform Crime Reports, 79 percent of the firearm murders for 1978 involved a handgun.

Since the passage of the 1968 Gun Control Act, nearly 100,000 Americans have been murdered with handguns and literally millions of Americans have been injured, threatened, assaulted, raped, and robbed at gunpoint.

The 1979 statistics have now been compiled for New York City and they show that 4,000 persons were arrested for illegally carrying guns last year. In addition, 882 persons were murdered with handguns and 33,519 armed felonies were committed.

For adolescents and young adults, the criminal misuse of handguns is a particularly serious health problem. The Surgeon General recently reported that homicide is the leading cause of death among black males aged 15 to 24, and that handgun availability is the leading homicide risk factors for homicide in the general population.

While many firearms have legitimate uses, including the recreational sports of target shooting and hunting, collection, self-protection, law enforcement, and military, it is the large criminal demand for handguns which must be more effectively dealt with by the Congress.

We are here to examine the enforcement provisions of gun control legislation and the enforcement practices and experience of the Bureau of Alcohol, Tobacco, and Firearms (BATF). Two years ago, I regret to say, Congress took a step backward in denying funds for the provision of tracing firearm transfers. Having no capability of tracing these instruments of violent crime is, in my view, a significant detriment to successful enforcement and control efforts, and I look forward to hearing the testimony of Mr. Dickerson of the Bureau as well as the other distinguished witnesses present today on this or related matters.

In 1968, the Congress passed the Gun Control Act. But unfortunately, this legislation has not proven sufficiently effective to achieve its goal of limiting easy access to handguns for use in criminal activity.

The 1968 legislation and its ban on the importation of "easily concealable handguns" has been effectively undermined by the importation of handgun parts, and their domestic assembly, and there is a need for stronger controls on the handgun industry to combat illegal traffic in handguns.

It is my considered judgment that the Handgun Crime Control Act of 1979 which is currently before the House and the Senate, would provide substantial assistance to our efforts in dealing with violent crime.

Specific provisions of this proposed law include a ban upon the manufacture, importation, assembly, and sale of handguns classified as "Saturday Night Specials" and handguns which are "easily concealable." The bill also requires all handguns manufactured, imported, or transferred to conform to criteria which emphasize factors that determine whether the gun is "easily concealable" or is a gun "with potential criminal use." All transfers of such handguns would be affected, including those between private individuals.

The Rodino bill would also ban the intrastate mail order sale of handguns and would limit to three the number of handguns that may be purchased from a commercial licensee during a full year, absent special approval by the Attorney General, and requires that the theft, loss, or disappearance of handguns is to be reported to the police within 24 hours and to the Attorney General within 5 days.

The Handgun Crime Control Act of 1979 would also specify additional qualifications for securing a commercial license to manufacture, import or deal in handguns, including raising the fees for such licensees. As disciplinary measures in consequence of commercial licensee violations, the bill allows license suspension or a civil fine in lieu of license revocation.

One particularly important feature of the legislation is the establishment of an accountability feature requiring a record keeping system whereunder handgun manufacturers and importers would be required to maintain records on the disposition of all handguns for 10 years from the date originally shipped or otherwise transferred. This provision, I believe, will be of enormous assistance to local police agencies which must deal with the bulk of firearms abuse and gun theft. It will also help in keeping track of the source and flow of firearms necessary for the effective tracing of guns.

It is my view that along with the other provisions of the bill, the tracing provision will improve the ability to gather information necessary to enforce federal firearms laws, curtail thefts, and assist State and local enforcement agencies in their enforcement responsibilities.

I am very pleased to join you at this hearing today.

Mr. CONYERS. I thank you very much, Mr. Chairman, and we welcome your comments and your concerns about this subject matter, and I know that you will facilitate any of the work of this subcommittee in terms of what we must do to process any of the legislation.

Do any of the members of the subcommittee have questions of Chairman Rodino?

Mr. Volkmer?

Mr. VOLKMER. Yes.

Mr. CONYERS. I recognize the gentleman from Missouri.

Mr. VOLKMER. I would like to comment, Mr. Chairman, that this is an area in which there is some disagreement as to how to arrive at the same result. I am sure you recognize that, and although you do have a bill before the subcommittee, as I understand, I and other sponsors in the House also have a bill which we feel will end up with the same result and probably, in my opinion, better accomplish the result of reducing crime and reducing deaths in this country.

I too, agree with you that this committee should address the problem, that that bill of mine, cosponsored now by over 100 House

Members, was introduced last September—there hasn't been a hearing on this bill yet, I definitely feel that there should be—that bill has over 40 sponsors in the Senate, introduced by Senator McClure, and I feel that even if the present administration enforcement arm would look at that bill and follow the concepts in the bill, that we would have a more fair law enforcement policy than we do under the present methodology and past methodology.

I also feel, Mr. Chairman, that as one who is very strong on civil rights and the Constitution, and people's just plain property rights and personal rights, that you should acquaint yourself, and hope you will, with the activities of the present Federal enforcement people. If the same people, people like the FBI or somebody else was doing what BATF has done in the past, I don't think you would stand for it, I don't believe that we should in the name of gun control stand for some of the things that BATF has been doing to people.

I would like to have you review some of the activities of BATF in the past.

Mr. RODINO. I don't know what the gentleman is referring to specifically but I don't believe that a review would do—some of the activities give me great concern.

Mr. VOLKMER. You don't believe in entrapment?

Mr. RODINO. Of course not.

Mr. VOLKMER. You don't believe in taking people's property without due process?

Mr. RODINO. The gentleman recognizes that that is almost a rhetorical question.

Mr. VOLKMER. BATF clearly has done this in the past.

Mr. RODINO. Well, that is a matter that we need to deal with as well and I think that this committee, the Judiciary Committee, certainly has this subject under consideration. I believe that we are all apprehensive about whether or not there is abuse of certain authority, and I think we sometimes feel that an agency of the Government, which has authority to enforce the law, sometimes transgresses on those privileges.

Mr. VOLKMER. In other words, I don't believe that they should do it no matter what the end result. You still have certain constitutional rights. People have those rights and they should be observed no matter what the end. The end doesn't justify the means.

Mr. RODINO. I have no quarrel with the gentleman. The gentleman knows where I stand so far as that issue is concerned.

Mr. VOLKMER. Thank you.

Mr. CONYERS. Mr. Ashbrook.

Mr. ASHBROOK. I have no questions at this point, but I have an opening statement after he is done.

Mr. CONYERS. Mr. Gudger.

Mr. GUDGER. No, Mr. Chairman, I will in due course possibly address an inquiry to the chairman of the committee concerning his views on the transfer of the Department, BATF, from the Treasury to Justice. This transfer has not been mentioned in his comments but is, I think, the thrust of a bill that he has introduced and has not addressed in his comments here now.

Mr. RODINO. Well, I certainly think that the Department has ample expertise and has the facilities and can do the job that needs to be done. What I am searching for is the kind of vehicle that will effectively control what I believe to be the misuse of these handguns which result in the murder of individuals.

Mr. GUDGER. Am I correct in my belief that there has been a bill introduced, whether under your sponsorship, Mr. Chairman, or others, to transfer BATF from Treasury over to Justice?

Mr. RODINO. Yes.

Mr. GUDGER. I was merely indicating that I would address the question to you, since that is not a topic covered by our comments here during today's—

Mr. RODINO. I believe that such a bill has been introduced.

Mr. GUDGER. I did not want to take you out of the thrust of your remarks here, which have been very well presented and for which I am grateful.

Mr. RODINO. Thank you.

Mr. CONYERS. Mr. Chairman, I think that you have reindicated your continuing concern on the subject matter and we know that we have your cooperation and full support in the work of the subcommittee. Thank you very much for appearing before us.

Mr. RODINO. Thank you very much.

Mr. CONYERS. I understand the gentleman from Ohio wishes to make what he calls an opening statement.

Mr. ASHBROOK. Yes. I guess I thought we were still operating under the custom where, after the chairman made an opening statement, someone on the minority side would do the same.

Mr. CONYERS. All you had to do was let me know and I would have recognized you. So I recognize you at this point.

Mr. ASHBROOK. I must express my grave disappointment with these hearings. Not only have they been scheduled late, but I thought that we reached an agreement last year that we would have widespread hearings on the BATF.

Chairman Rodino said that he really did not know what my friend from Missouri was talking about when he discussed BATF abuse. Regrettably, I must say for the record that after today's hearing he will probably continue to be unaware of this problem because many of the witnesses who could tell us firsthand of their experiences with BATF will not be testifying today. These are witnesses, as a matter of fact, that I listened to in a press conference as recently as an hour ago. And, I would say to Mr. Dickerson of the BATF that it would probably be very appropriate for him to listen to some of these people relating their experiences.

I have seen statements by judges that BATF was not engaging in proper tactics. Even where the defendant has not been convicted, guns have been expropriated and never returned.

Mr. VOLKMER. Some guns that were taken, no charges filed, guns taken over 2 years ago still not returned.

Mr. ASHBROOK. For instance, in one case, valuable engraved guns worth \$6,000 to \$10,000 were dropped on a basement floor in one Federal building right in front of the owner. We can give you all the information you want.

I would repeat, Mr. Dickerson, that it would be very appropriate for you to hear this testimony. Unfortunately, our chairman, over

my protest, has seen fit not to include those witnesses today. I want the record to show very clearly that I think that is unfair.

Up to now, I think the chairman has acted in a very even-handed manner. But, I must say for the record, Mr. Conyers, I do not think that your actions in connection with the rehearings are in keeping with the previous leadership that you have given this subcommittee, particularly when I look at the witness list. For instance, I received a letter from you as recently as yesterday, I believe it was, where you said you did not want to hear Mr. John Snyder, of the Citizens Committee for the Right To Keep and Bear Arms, because he has already testified in the Senate. However, the National Coalition To Ban Handguns has similarly testified at an earlier hearing, yet they are on today's witness list. Are they a favored witness? Who is going to speak about the many abuses of the BATF?

I thought this was an oversight hearing, but it reminds me a little bit of the old statement: "What if we called a convention and nobody showed up?" In this case, it is: "What if we had an oversight hearing on the BATF and all of those people who have been abused by BATF were not permitted to show up?"

I hope that sometime in the future, as I thought we had agreed last year, these many witnesses, most of whom have not testified before the Senate, or had their day in court, will be permitted to testify. Many of them, like Mr. Wampler, wished to attend with their Congressmen. Congressman J. Kenneth Robinson was going to introduce Mr. Wampler. Congressman Ken Kramer of Colorado was going to introduce his witness. Similarly, Mr. Barry from South Carolina, who is present today, would have been introduced by his Member of Congress.

So, I must repeat, for the record, that I am disappointed that these hearings are not going to get into what I think are widespread abuses by BATF.

Mr. VOLKMER. Would you yield?

Mr. ASHBROOK. Yes, sir.

Mr. VOLKMER. I am pleased to note that these witnesses—what I am curious about, and I am going to say so, so Mr. Dickerson can inform me when he gets up here, Mr. Robert Wampler, Mechanicsville, Va., had confiscated guns from him, and all were finally returned after 2 years and the spending of a lot of money, no charges ever filed, BATF still has four guns.

I want to know where those guns are?

Mr. ASHBROOK. I think my point has been expressed and, as I say, I am very disappointed that these hearings are going to be very brief, and that they are scheduled just 2 hours before a district work period.

Mr. Robinson suggested that we might come up with some sort of solution this session, but I think we have lost 7 or 8 months on this. I only hope that we can schedule hearings where these witnesses will be permitted to come forward and testify concerning what they believe are abuses of the Bureau of Alcohol, Tobacco and Firearms.

I thank the chairman for recognizing me for that statement.

Mr. CONYERS. Any other opening statements?



We have several Members of Congress who would like to be witnesses. They are repeats, if I recall correctly. Senator McClure is not here but I think that we can go forward with our colleagues, Steve Symms and George Hansen of the Congress, distinguished Members from Idaho. We welcome both before us. We note that you are in constant contact with this subject and even sometimes the subcommittee, so we will incorporate your remarks in full into the record and permit you to proceed in your own way.

Welcome, gentlemen.

[The prepared statement of Hon. Steven D. Symms follows:]

#### STATEMENT OF STEVEN D. SYMMS

Mr. Chairman and Members of the Subcommittee, in 1968, in hasty and ill-though-out response to near public hysteria about the problem of crime, Congress passed the Gun Control Act. That law was allegedly aimed at reducing crime and preventing assassination attempts on public persons. As with other social programs and legislation sweeping this Nation in the 1960's, the Gun Control Act of 1968 completely missed the mark. Worse yet, that legislation gave rise to a bureaucratic monstrosity.

The Gun Control Act of 1968 allowed a wholesale expansion of federal criminal jurisdiction into firearms control without any showing of need or any justification. The Act was written into law without any study of its consequences. Those consequences in terms of constitution/civil rights questions, and the burgeoning of size and power of the Bureau of Alcohol, Tobacco and Firearms (BATF) since enactment of the 1968 gun law, are monumental.

In haste to pass the law, regulatory details were put in abeyance. General powers were given to what we now know as Treasury's Bureau of Alcohol, Tobacco and Firearms. The Congress naively assumed that in issuing regulations "reasonably necessary to carry out the provisions of" the law, BATF would pay due regard to the purpose of the law, which specifically steered clear of any attempt to place undue or unnecessary burdens on law-abiding citizens or to discourage private ownership and use of firearms for any lawful purposes.

Since enactment of the Gun Control Act of 1968, the BATF has disregarded congressional intent in its issuance of mandates which place a clear stranglehold on firearms dealers, collectors, and the nation's 60 million gun owners. BATF has established a series of technical requirements affecting commerce in firearms, the violation of which—under the Gun Control Act is a felony. A recordkeeping violation under Title I of the Act can result in a five-year jail term and/or a \$5,000 fine. A similar error in the realm of a Title II violation can double the penalty.

In many cases, the BATF, in its enforcement practices, has violated the very spirit of Anglo-American jurisprudence in dealing with federal firearms license holders. A gun dealer who has been charged with a record-keeping violation or a technical violation often finds himself further denied fundamental civil liberties. Even before a federal firearms license holder is brought to trial he may essentially find his business closed because the BATF has confiscated his firearms, his ammunition, and the records necessary to conduct daily activities. And many dealers, technically entitled to a hearing, simply give up their licenses. BATF makes it clear it intends to harass these dealers, occasionally threatens them with criminal prosecution or confiscation of arms if a license is not "voluntarily" surrendered, and the citizen-dealer waives his rights and gives up the license. In 1978, BATF Director Davis reported that 23,000—about one in seven—licensed dealers go out of business each year.

Both this year and last, several victims of BATF enforcement practices have testified before the U.S. Congress and addressed the inequities of the Gun Control Act of 1968. The Act does not have the inherent capacity to reach conduct traditionally viewed as criminal and rather serves to make innocent persons into "felons" under its myriad technical provisions.

It is important to remember that in the vast majority of Gun Control Act violations, no harm is caused to any citizen. Yet holders of federal firearms licenses as well as private citizens, have seen their firearm inventories and personal collections confiscated and have spent millions of dollars in legal fees to prevent themselves from becoming felons.

The BATF has simply found it easier to go after gun collectors and dealers than to go after hardened, violent criminals.

A Chicago judge, for example, has just written Washington complaining that when he refers local cases to BATF after conviction—due to clear violations of federal law prohibiting possession of certain types of weapons or of any firearms by ex-cons—BATF takes no action. Yet BATF's records of arrests of dealers shows no such reluctance. In its zealous pursuit of alleged Gun Control Act violators, BATF operates with reckless abandon, using insidious devices like "straw man sales" and enticement schemes.

Arrests and seizures of entire collections of firearms are made with excessive and unwarranted media play. BATF press releases are riddled with words like "cache" and "arsenal" substituted for "collection." Further, the BATF implies that it is arresting mobsters and revolutionaries rather than finding trivial paperwork violations by licensed dealers of trapping traders at a gun show.

BATF's media blitz squares with its announced legislative goal of reducing by three-fourths the number of dealers for easier regulation of those remaining in business. That goal is comparable, logically and numerically, to reducing by three-fourths the number of pharmacists in the nation in order to more easily regulate the illegal trafficking in drugs. What an outrageous proposition!

When the Gun Control Act of 1968 was passed, gun owners feared that the federal records on guns would become the basis for a firearms registration scheme. BATF has shown these fears to be fully justified. Already driving 23,000 dealers out of business each year, BATF announced it had a massive effort under way to centralize the records—the Form 4473s all dealers are required to keep on each gun sold. BATF announced in 1975 that requiring dealers to report multiple sales would amount to a form of registration Congress rejected in 1968. Yet, by regulation BATF proceeded to require these reports. And, while similarly acknowledging that requiring all dealers to send in quarterly reports on sales would amount to the congressionally-rejected registration scheme, BATF proposed through regulation such a back-door registration scheme in 1978. It seems clear that BATF is seeking to use the 4473 forms as a means of eventually centralizing a national firearms registry.

BATF has insisted that all ammunition sales—6-8 billion rounds a year—be recorded. When Congress insisted that rifle and shotgun ammunition be exempt, BATF responded by including some rifle ammunition which can be used in a few single-shot hunting handguns, such as .30-30 ammo. In addition, by considering .22 ammunition handgun ammunition, persons between 18 and 21 years of age, who can legally purchase a .22 (or any other) rifle cannot purchase the ammunition for that rifle.

BATF recordkeeping—by legislation and regulation—is a needless burden on the honest, law-abiding gun owner. There is no evidence that records of purchases of firearms of Form 4473 has been an aid in solving crime; instead, some 70 million firearms sold since the Act took effect have had added costs in paperwork requirements. Not one percent of those guns are used in crime, and the records on guns and ammunition sold do no good at solving that fraction of a percent involved in crime. But with 70 million forms for firearms, and perhaps as many as a quarter billion records of ammunition sales, BATF has an unlimited supply of records on which to make pure recordkeeping, technical violations against law-abiding citizens caught in the juggernaut that is the Gun Control Act of 1968.

By abusing its power to issue regulations, the BATF has created needless and expensive paperwork, all designed to discourage lawful gun ownership and use. None of these rules and regulations can be deemed "necessary to implement and effectuate the provisions" of Public Law 90-618 as spelled out in the purpose of the Gun Control.

There is no evidence that BATF is capable of correcting its own abuses, either in its reformist regulations or its anti-libertarian media-oriented enforcement. Annual promises of improvement are not enough. Occasional changes in leadership are not enough. Even small-scale legislation, as with the blackpowder exemption, is not enough. BATF is in need of drastic reform by clear and extensive legislative reform of the agency. Its efforts to go after gun dealers and collectors must be stopped legislatively. The Gun Control Act has not and cannot reduce crime.

Legislation is needed to narrow the definition of dealers so that innocent gun collectors are not harassed for selling a single gun for profit. Legislation is needed to protect gun dealers and collectors from BATF harassment and the wholesale confiscation of firearms. Legislation is needed to assure that acquittals result in a return of firearms and a retention of dealers' licenses. Legislation is needed to protect innocent citizens from entrapment schemes. Legislation is needed to redirect BATF efforts to those dealing or using firearms with criminal intent. And legislation is needed to force BATF to allow adequate public and congressional response to proposed regulations and thus prevent BATF from exceeding the authority Congress intended to give it back in 1968. We need legislation, in short, to prevent abuse of

power by BATF and to make it clear that gun ownership, acquisition, and use are not in themselves suspect acts.

It is fitting for the members of this Congress—making reform-minded attempts to dismantle bureaucracies, to eliminate paperwork, to lift government off the back of the American people—to repeal the onerous provisions of this law. We have talked a great deal about regulatory reform during this session, and I can confidently say that revision of the Gun Control Act of 1968 is reform at its best!

Consequently, I urge the Committee to take favorable action on H.R. 5225, the Federal Firearms Reform Act of which I am a co-sponsor.

These modest reforms will not suddenly make the Gun Control Act an effective crime-fighting tool, but at least they will prevent it from turning the honest and law-abiding gun owner into a figure subject to suspicion and harassment by the federal government.

Thank you.

**TESTIMONY OF HON. STEVEN D. SYMMS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF IDAHO**

Mr. SYMMS. Thank you, Mr. Chairman, and immediately preceding my testimony I would like to ask unanimous consent that the statement of Senator James McClure, who is a constituent of mine, from Payette, Idaho, be inserted in the record.

Mr. CONYERS. Without objection, so ordered.

Mr. SYMMS. I would just like to say to the committee, he was here and had another commitment and had to leave to go to the other side of the Capitol, but he wanted to extend his encouragement to this committee to move forward on the Volkmer bill immediately here in the House. As for Senator McClure's testimony, I think it would be excellent if Mr. Dixon could read it because it is full of examples of abuses by the BATF. Mr. Chairman, I think I can go through my statement more rapidly if I quickly outline the text of it, and I will try to expedite it as rapidly as possible.

Mr. CONYERS. How many pages?

Mr. SYMMS. It is 5½ pages. I will try to skim through it.

Mr. HANSEN. I have 1¼ pages.

Mr. CONYERS. Are these single spaced or double spaced?

Mr. SYMMS. I will go very fast, Mr. Chairman, and I will try to give the thought of each paragraph so I don't get diverted.

Mr. CONYERS. Is there anybody in your delegation not here from Idaho?

Mr. SYMMS. This is the entire House delegation.

Mr. CONYERS. OK.

Mr. HANSEN. We are unanimous.

Mr. SYMMS. In 1968, in hasty and ill-thought-out response to near public hysteria about the problem of crime, Congress passed the Gun Control Act. That law was allegedly aimed at reducing crime and preventing assassination attempts on public persons. As with other social programs and legislation sweeping this Nation in the 1960's, the Gun Control Act of 1968 completely missed the mark. Worse yet, that legislation gave rise to a bureaucratic monstrosity.

The Gun Control Act of 1968 allowed a wholesale expansion of Federal criminal jurisdiction into firearms control without any showing of need or any justification. The act was written into law without any study of its consequences. Those consequences in terms of constitutional/civil rights questions, and the burgeoning of size and power of the Bureau of Alcohol, Tobacco and Firearms (BATF) since enactment of the 1968 gun law, are monumental.

In haste to pass the law, regulatory details were put in abeyance. General powers were given to what we now know as Treasury's Bureau of Alcohol, Tobacco and Firearms—BATF. The Congress naively assumed that in issuing regulations "reasonably necessary to carry out the provisions of" the law, BATF would pay due regard to the purpose of the law, which specifically steered clear of any attempt to place undue or unnecessary burdens on law-abiding citizens or to discourage private ownership and use of firearms for any lawful purposes.

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In many cases, the BATF, in its enforcement practices, has violated the very spirit of Anglo-American jurisprudence in dealing with Federal firearms license holders. A gun dealer who has been charged with a recordkeeping violation or a technical violation often finds himself further denied fundamental civil liberties. Even before a Federal firearms license holder is brought to trial he may essentially find his business closed because the BATF has confiscated his firearms, his ammunition, and the records necessary to conduct daily activities.

Many dealers, technically entitled to a hearing, simply give up their license. BATF makes it clear it intends to harass these dealers, occasionally threatens them with criminal prosecution or confiscation of arms if a license is not "voluntarily" surrendered, and the citizen-dealer waives his rights and gives up the license. In 1978, BATF Director Davis reported that 23,000—about 1 in 7—licensed dealers go out of business each year.

Both this year and last, several victims of BATF enforcement practices have testified before the U.S. Congress and addressed the inequities of the Gun Control Act of 1968. The act does not have the inherent capacity to reach conduct traditionally viewed as criminal and rather serves to make innocent persons into "felons" under its myriad technical provisions.

It is important to remember that in the vast majority of Gun Control Act violations, no harm is caused to any citizen. Yet holders of Federal firearms licenses as well as private citizens, have seen their firearm inventories and personal collections confiscated and have spent millions of dollars in legal fees to prevent themselves from becoming felons.

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A Chicago judge, for example, has just written Washington complaining that when he refers local cases to BATF after conviction—due to clear violations of Federal law prohibiting possession of certain types of weapons or of any firearms by ex-convicts—BATF takes no action. Yet BATF's records of arrests of dealers show no such reluctance. In its zealous pursuit of alleged Gun Control Act

violators, BATF operates with reckless abandon, using insidious devices like "straw man sales" and enticement schemes.

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can be deemed "necessary to implement and effectuate the provisions" of Public Law 90-618 as spelled out in the purpose of the Gun Control Act.

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It is fitting for the Members of this Congress—making reform-minded attempts to dismantle bureaucracies, to eliminate paperwork, to lift Government off the back of the American people—to repeal the onerous provisions of this law. We have talked a great deal about regulatory reform during this session, and I can confidently say that revision of the Gun Control Act of 1968 is reform at its best.

Consequently, I urge the committee to take favorable action on H.R. 5225, the Federal Firearms Reform Act, of which I am a cosponsor.

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Thank you, Mr. Chairman.

[Mr. McClure's statement follows:]

#### STATEMENT OF U.S. SENATOR JAMES A. MCCLURE

Mr. Chairman and members of the committee, thank you for the opportunity to testify before you here today. I am particularly pleased to be able to contribute to this oversight of the Bureau of Alcohol, Tobacco and Firearms, something I have taken just a little interest in these past several months.

Mr. Chairman, twelve years ago when the Congress enacted the Gun Control Act of 1968, promises were made in the preamble of the legislation that the new law would not be used "to place any undue federal restrictions or burdens on law-abiding citizens . . ."

That promise was never kept. Nor can it be kept because of the very nature of the federal gun law itself.



GCA 1968 is a federal law which gives almost unlimited police power to the agencies enforcing it and provides only vague descriptions of what should be legal and what should be illegal.

It is a law which has been aptly described as "legal flypaper that not even competent lawyers claim to understand."

It is a law under which any and all transgressions, even the slightest technical violation, are federal felonies.

It is a law under which federal prosecutors are not required to prove criminal intent in order to establish guilt, so that a totally unintentional violation can lead to criminal felony conviction.

All this adds up to a lethal combination for the civil liberties of those citizens whose lives have been touched by GCA 1968.

In any hard look at the GCA 1968 or into the agencies which enforce it and prosecute violators, one fact keeps surfacing above all—most of the people charged with GCA 1968 felonies are not criminals. Most are law-abiding citizens—gun dealers or gun collectors—who have become ensnared into technical violations of the law they clearly don't understand.

With few exceptions there is nothing intrinsically wrong or criminal in the conduct prohibited by the GCA 1968.

This brings up the record of the agency which enforces the law, the Bureau of Alcohol, Tobacco and Firearms, and the agency which prosecutes, the U.S. Department of Justice.

For its part, BATF has built much of its seizure and arrest record on statistical felonies involving mere technical violations. It means riskless raids upon otherwise law-abiding citizens, and it means impressive sounding lists of "crime guns seized." To the BATF, a "crime gun" is not a gun used to commit a crime, but any and all guns belonging to an individual or dealer who violates any provision of the gun law. For example, a dealer charged with a recordkeeping technical violation involving just one firearm may see all his guns seized.

For its part, the U.S. Department of Justice must accept a large share of responsibility for civil liberties abuses committed under the provisions of the 1968 act. Federal prosecutors have routinely pressed ahead with cases which, if considered in the light of criminal intent, should never have been before a court. There is ample evidence that some prosecutions by the Department of Justice have involved a political zeal—after all this is gun control!

In reviewing the widespread excesses of the BATF, it has become apparent that there are very clear categories of abuse, and that they all are due to the vagueness of the law itself.

For example, large portions of the statistical records built by BATF during the mid-1970s were centered around something called "straw-sales". "Strawman" usually involves two federal agents, one posing as a non-resident of a state, the other posing as a resident. An attempt is made by the nonresident agent to purchase a gun. When the dealer informs him that under federal law he cannot sell a gun to a non-resident, the other agent steps in, usually claiming to be a relative or friend of the non-resident. He offers to buy the gun, showing proper identification and filling out the federal form. When the transaction is closed, BATF believes the dealer has committed a felony. There have been scores of arrests and prosecutions under the "strawman" schemes; yet, gnawing questions remain: as practiced by BATF against dealers, is a "strawsale" a crime? or should it be a crime?

Recently, one federal judge wrote to me about his deep concerns over the efficacy of "strawman" sales. In his letter, U.S. District Court Judge Robert F. Chapman explained: "After trying three of these cases in various parts of the state, I became convinced that dealers did not realize that the 'strawsale' was illegal. I advised the U.S. Attorney's office and the head of the BATF in South Carolina that no further cases would be tried until a letter was written and mailed to every gun dealer in South Carolina explaining the meaning of this language and that a 'strawsale' was illegal."

Judge Chapman went on to say that following his order, no further "strawsales" cases had been made by BATF.

Perhaps the most horrendous aspect of the whole "straw-sale" question was raised by G. R. Dickerson, Director of the BATF. Following Senate hearings in July, 1979, when BATF was confronted by testimony of abuse victims, Dickerson informed the Senate the "strawman" would no longer be used unless there was a proved connection between a dealer and some other crime, such as buying or selling stolen guns. Further, Dickerson said that no "strawman" scheme would be instituted without his direct review and approval.

In essence, Dickerson acknowledged the misuse of "strawman." But what about those who have been convicted in the past? What about all those felons?

In a recent letter, Dickerson told the Senate that the Agency—in many areas of enforcement, not just "strawman"—was undergoing an effort "to reexamine our practices, policies and the motivations and techniques".

He went on to say, "My primary effort will not be on the past. My emphasis will be on the steps BATF must take to prevent future problems and provide equitable enforcement of the law."

That is surely no consolation to those whose lives have been wrecked because of "strawman" in the past. And this illustrated very clearly that abuses will indeed continue. G. R. Dickerson may be an honorable fellow. He means well. But when he departs, what is to prevent a rebirth of massive "strawman" raids or other abusive policies? Nothing unless the law is changed.

Another vague aspect of the GCA '68 which has contributed to a record of BATF abuse is the question of what constitutes a firearms dealer.

Again, BATF has built a statistical record of felony arrests where gun collectors or gun fanciers were charged with "engaging in the business" without having a required federal firearms license. What constitutes "engaging in the business"? Is it the sale of six guns per year, or one gun per year? That question cannot be answered.

The truth is there has been no definition except the off-hand opinions of individual agents in the field. And yet there have been many arrests and there have been convictions and forfeitures of property based on charges of dealing without a license.

Because of the increasing awareness of BATF abuses, especially in the Congress, the agency finally—after almost 12 years—has proposed a federal regulation to define the term "engaging in the business". What about those past convictions? What about those arrests?

And, like in the "strawman practices", a change in the BATF regime could bring a change in policy regarding "being engaged in the firearms business". Such a change could bring renewed raids and more abuses. The law must be changed.

There is yet another standard practice in BATF's arsenal of abuse, which G. R. Dickerson has promised will end—the massive confiscation of whole gun collections and inventories and the "trashing" of those seized guns by BATF agents. Often firearms are seized where no formal charges are leveled.

Dickerson, in his recent letter to the Senate, put it this way: "We are reemphasizing the requirement to handle and maintain all seized firearms in such a manner as to ensure their preservation in their original condition prior to seizure. Further, it is now our policy to seize only those firearms involved in criminal activity or criminal investigation as opposed to seizure of the entire stock of collection." What about the entire collections seized in the past, many of which have found their way into BATF's own gun museum? What about those guns which have been intentionally damaged by agents? What is to prevent such actions reoccurring in the future, if they have indeed ended? Will it be a policy set by the Director of BATF or a protection guaranteed within the law itself? The law must be changed.

And there are yet other standard abuses which can be tied directly to the vague nature of the Gun Control Act. They center around the question of whether or not a federally licensed dealer can own and sell firearms from his own private collection. Recently, a young Maryland firearms dealer—a former police officer with an impeccable record of personal conduct—was convicted in Federal court of selling firearms from his private collection without registering the transactions in his federal book. In finding the young dealer guilty, the federal judge said he did so with "great reluctance" and called the violation "an isolated act of wrongdoing in an otherwise lawful and productive career."

Just one week after the judge found the dealer guilty, the then acting Director of BATF informed U.S. Senator S. I. Hayakawa that a dealer could indeed sell all private guns legally without running them through his books. So where was there a crime?

And then there is perhaps the worst abusive practice of BATF—vindictive pursuit. Where the government fails to win a criminal case and files a series of civil actions against the same defendant involving exactly the same allegations.

The case of Paul Hayes of Bosque Farm, New Mexico, is among the best of many examples of malicious pursuit. Hayes, a federally licensed firearms dealer, and his wife, Billie, own a mercantile, gun shop and gas station. Hayes was charged in April, 1978, with eight counts of "strawsale" violations. His entire gun store inventory of 170 guns was seized, and in the process of confiscating those firearms, federal agents removed the guns from protective boxes and wrappings and threw them in barrels.

After a week-long trial, Hayes was acquitted of all charges. Subsequently, BATF informed Hayes that his Federal Firearms License Renewal was denied. The reason:

The same eight "straw-sale" charges on which Hayes had been found not guilty in the U.S. District Court.

Hayes appealed and won the return of his license, but there was more to come. The government then filed an action in Federal Court seeking forfeiture of all 170 guns seized from the Hayes shop. Again, the reason boiled down to the same eight "straw-man" counts.

And he is still fighting for the return of his property. In all, this battle has cost the Hayes family their savings, their health and their livelihood. And where can there be any protection for people like Hayes or any of the other countless victims of BATF?

The answer is in changing the law and in Congressional action to provide restitution for those who have been abused by BATF under the GCA 1968.

The Federal Firearms Act, S. 1862 which I introduced in the U.S. Senate and which has some 45 members of the Senate co-sponsoring, is designed to amend the Gun Control Act by removing mechanisms which have spawned widespread civil liberties abuses.

The legislation, which has also been introduced in the U.S. House of Representatives by Rep. Harold Volkmer of Missouri with 111 co-sponsors, will provide specific protection against specific abuses.

It would shield against entrapment of law-abiding citizens by requiring proof that a violation was committed willfully. It would narrowly define which citizens would be required to obtain a firearms license and would provide statutory recognition of collectors and their rights.

It would protect against malicious or vexatious charges by providing that:

If criminal charges are brought and the defendant is acquitted, the BATF and Justice Department cannot use those same charges to deny or refuse to renew a dealer's license. Nor can they use them to justify withholding or seizing firearms from the defendant.

If firearms are confiscated from a collector and the government fails to bring criminal charges within 120 days, the firearms must be returned.

If firearms are confiscated and the gun owner brings suit for their return, the court must award him a reasonable attorney's fee if he wins.

And the bill would provide protection against wholesale gun confiscations by prohibiting government seizures of guns not involved in specific violations.

In brief, the Reform Act would remove the legal power to prosecute, seize the property of and generally harass law abiding citizens in most of the ways by which it has been done to date. It would enforce these provisions by giving the law abiding citizens a right to recovery of his legal costs for an unfounded prosecution and, in turn, penalize the agency which brings it.

The final impact would be to redirect Federal agencies away from the "path of least resistance" over law abiding and easily induced citizens and toward criminals who genuinely and knowingly violate the laws.

Mr. CONYERS. Thank you, Mr. Symms, for a vigorous statement in support of your position on this subject which, as I indicated before, is well known. You have been before this committee previously. You are no stranger to any of us here.

Our next colleague who will testify is George Hansen of Idaho, who has also been before the committee many times, serves on the Banking Committee, the Veterans Committee, and is ranking minority member of the Domestic Monetary Policy Subcommittee.

We welcome you before the subcommittee and incorporate your remarks. We would appreciate anything you may wish to add to your colleague's testimony.

#### TESTIMONY OF HON. GEORGE HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. HANSEN. Mr. Chairman, I appreciate this opportunity to present what I feel to be critical information regarding the Bureau of Alcohol, Tobacco and Firearms. I appreciate the graciousness with which you always accept us here. Certainly no one can complain about being deprived of free speech and an opportunity to get the facts on the table, and I appreciate this.

Due to the time constraints, I will not indulge the subcommittee with a long statement; however, with the permission of the chairman, I will submit written material for the record.

Mr. CONYERS. We welcome it.

Mr. HANSEN. As a cosponsor of H.R. 5225, a bill to improve the administration of Federal firearms laws, I encourage the committee to closely review this vital piece of legislation in order to provide a strong basis for its early consideration in the next Congress.

Having long been involved in the struggle with heavy-handed Government agencies, I commend this committee for its initiative in examining the procedures of the BATF. There are indeed power-hungry Government agencies—I am sure the chairman is aware of some of them. In fact I have had the dubious honor of helping to take the Occupational Safety and Health Act to the Supreme Court where we beat them on their idea that they can march in on anybody without a warrant. The victory told the Government that if they are going to invade a person's privacy they must have good cause which they can substantiate before a magistrate.

In my district, Mr. Chairman, another agency of the Treasury Department, the IRS, has been very aggressively pursuing people they consider to be tax resistors, and it is very interesting to see what lengths they will go to. They will take people who are not on record as taxpayers, because of the fact they may have been on a mission for their church or in a hospital for an extended period of time and had no income, and put them on special lists and even go after them with guns.

Speaking of gun control, I think we need to put the controls on some of the Federal agents that are using guns improperly in chasing innocent citizens over some crazy regulations or project that we contrive here or that are misinterpreted and misused by the bureaus.

Much like OSHA, the IRS, and numerous other organizations, the BATF is fast becoming known for the escalating number of reported citizen harassments and problems associated with misguided management.

This committee was instrumental in the past Congress in removing moneys from the BATF which were slated to be used in direct violation of stated congressional directives. Hopefully, it will again be as effective in its current efforts. When federally created organizations misuse the powers given to them by representatives of the people in harassing and alienating those same citizens, one cannot help but assume that they have lost sight of the purpose for which they were created. When cases, such as those I will submit today, occur with increasing frequency, it becomes necessary to reevaluate the organization involved and demand an accounting of such behavior, while also following through with the appropriate controls.

In view of the need for such an examination of the BATF, I would like to discuss from the material that I am submitting just one case, Mr. Chairman. I feel that it is one thing to control crime in this country, it is another thing for Government to commit more crimes in controlling crime than the crime you are controlling, and that may sound like double talk, but I believe that indeed is the case. Let me cite this:

At five minutes past ten o'clock on the morning of December 14, 1977 [a fellow] was walking across the parking lot of his father's business in Silver Spring. He heard cars and looked up to see about ten plainclothesmen, badges on their lapels, and a host of Montgomery County policemen. He recognized one of the plainclothesmen as a BATF agent and asked if he could be of any assistance.

"Are you Richard Boulín?" one of the agents asked.

"Yes." Whereupon the agents seized him, thrust him up against the side of his car and cuffed his hands behind his back. All they would tell him was that he was under arrest for violating the firearms act.

When agents searched Boulín's car they found a loaded pistol. "We're going to charge you with carrying a concealed weapon," he quotes one agent as saying. Boulín protested that he had a Maryland license for the pistol and was permitted to carry it when he had large amounts of money on him. He pointed out that he had more than \$1,000 in his wallet, money he intended to use that evening to buy a shotgun for his collection.

The agent was not impressed. "Is that personal money or business money?" one asked. Boulín bit his lip; he did not think a thief would make such a distinction. But he remained silent.

Agents thrust Boulín into the back seat of a car. "I've been an officer; I know when police are deliberately making it rough for a guy. I'm a big man; having to sit twisted in the seat, my hands behind my back, was darned uncomfortable for me, and they knew it."

During the ride to his home, an agent said, "We have information you own two trained killer dogs. If they make any move toward us, we intend to kill them."

Boulín stifled a laugh. "One of the 'killer dogs' was a miniature German shepherd, sweet as pie," he says. "She'll bark, but I don't think she even knows how to bite." The other was a nine-year-old police dog the department had planned to destroy because of a hip ailment.

I am just talking about overkill, Mr. Chairman, in the application of the law.

"I liked the dog, I didn't want to see him put to sleep, so I took him in. He was about as vicious as a sparrow."

Boulín made one request. He did not want to be paraded across his lawn handcuffed in front of neighbors. He told the agents he was a former policeman, that he did not intend to run, that he was outnumbered by about a dozen to one. Would they please remove the handcuffs?

That's your problem," one of the agents said.

Worse was yet to come. At the house, the agents made plain they intended to confiscate Boulín's collector weapons, which were displayed on wall racks and in cases. He protested that he had Federal documentation for each of these weapons and that they had nothing to do with his firearms business. Tough luck, the agents said, and one of them appeared with a stack of canvas mail bags.

Aghast, Boulín pleaded with the agents not to put the valuable guns in such a container. A nick or scratch could devalue each gun by \$50 or \$100. "You're not dealing with a bunch of Saturday-night specials," Boulín said.

He got no sympathy. After more argument, the agents agreed to put the collectibles in shipping cases Boulín had stored in a barn. Boulín continued to protest the rough handling. One of the agents hushed him. "Don't worry," Boulín remembers his saying, "after the boys in the BATF lab in Baltimore get through with them they won't be worth anything anyway."

I could go on and tell about the treatment he received through the rest of that evening. This could be magnified by dozens of stories, I am sure, by Mr. Volkmer, Mr. Ashbrook, Mr. Symms, and a lot of others of us. Senator Jim McClure provided extensive examples in the material he has presented to you. Certainly there can't be this many complaints without the fact that maybe this agency is misapplying the law.

I feel certain this subcommittee could do a great service to the country, to human rights, and to the civil rights of all the people of this country by looking into abuses of the application of this law to insure that something is done to protect the rights of people to be treated like human beings.

I thank you.

[The information follows:]

# HOW BATF RUINED ONE MAN'S LIFE

(By Joseph C. Goulden)

"The Fat Man," other gun dealers and collectors call him grossly overweight—"380 pounds, easy, maybe even more," one man recalls—he haunted gun shows in the Maryland suburbs. Almost as conspicuous as his girth was his wad of \$20, \$50 and \$100 bills. Dealers estimated he was spending \$2,000 or more at a single show.

Someone once asked him why. The Fat Man identified himself as a "horse farmer" from rural Westminster, Md., and said he brought pistols and rifles for resale to neighbors willing to pay \$50 to \$200 above the market price. Dealers found the story plausible. "Farmers in isolated areas don't know values, and they don't want to take the time to look around," says one of them. "They find it's easier to give an order to a regular and let him find it, at a profit."

Twenty-six-year-old Richard Boulín—avid gun collector, Vietnam veteran, one-time Montgomery County, Md., policeman—was among those who trusted the Fat Man: "He carried a Maryland driver's license, and he was one of the accepted crowd—not some mental weirdo who walks up to you at a show and talks funny about guns."

Still, the Fat Man was not universally liked. He often asked dealers to bend the law, to let him have guns without the transfer forms the federal Gun Control Act requires for certain firearms transactions. He could be a pest. He would badger dealers at shows, his wad of bills always ready to furnish extra profit if they would go along with him. He would telephone them at home in the evening, pleading for particular weapons. Many dealers shied away from him.

Three times in the autumn of 1977, Richard Boulín sold weapons to the Fat Man—six pistols and a .22-caliber rifle. Each time he gave the Fat Man a careful explanation: Even though he had a federal firearms dealer's license, the weapons involved came from his private collection, not his business stock. He had obtained each of them before taking out his federal license the previous year. As far as Boulín was concerned, he was making a private sale that did not require the federal paperwork.

Boulín was wrong. First about the Fat Man, who was not a bumpkin earning a few extra weekend dollars buying guns for his rustic friends. He was a government informant, desperately trying to avoid jail on a charge of owning an illegal machine gun. His "employer," the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (BATF), charged with enforcing federal gun laws, had been chillingly blunt: Either the Fat Man helped agents "make cases" against other gun dealers, or he would go to the penitentiary.

Not much of a choice. So the Fat Man let the BATF agents wire his overstuffed torso with a recording device, and he put the BATF money in his overalls pocket and made overtures to dealers and collectors at gun shows in such places as the Greenbelt Armory and the National Guard hall in Baltimore.

Boulín's second mistake was, innocent intentions notwithstanding, that he violated the law. The hoariest of dicta is that ignorance of the law is no excuse for violating it. In this instance, however, the law that Boulín transgressed is legal flypaper that not even competent lawyers claim to understand. Further, its enforcing agency, BATF, has deliberately left interpretations vague as to what can and cannot be done under its terms.

Richard Boulín's story is one of how a federal law enforcement agency used a murky law to destroy a man—and to harass hundreds of other Americans who know more about guns than they do about the intricacies of the United States Code.

The 1968 Gun Control Act, the federal government's first serious foray into firearms regulation, requires anyone "in the business" of selling firearms to acquire a federal license. It bans most interstate sales of firearms between any persons but two licensed dealers; no longer can a Lee Harvey Oswald buy a mail-order rifle through a post-office box. It requires all dealer sales to be recorded on a Treasury Department form, the 44-73. It forbids sales to convicted felons, mental incompetents, drug users and residents of a state other than the seller's.

The act contained a couple of features that critics thought Draconian. Most federal criminal laws provide for prosecution as either felonies or misdemeanors. Not so the Gun Control Act: Any violation is a felony. Nor does the prosecution have to prove criminal intent; even an unwitting technical violation is enough to land a citizen in court.



Passage of the Gun Control Act came at an opportune time for the Bureau of Alcohol, Tobacco and Firearms, which was about to go out of business as a result of the demise of the moonshine industry.

Unfortunately for BATF's bureaucratic health, the precipitate rise in sugar prices in the early 1970s did more to wipe out moonshining than any enforcement technique ever devised by a revenue agent. BATF knocked off 2,981 stills in 1972; in 1976, agents had to scratch all over the South to find 609; in 1978, the toll dropped to 361. Clearly, BATF had to find other work for its idle hands, and tobacco was not the answer, for the cigarette industry is compact and easily regulated.

BATF found bureaucratic salvation in the Gun Control Act. By the hundreds, it shifted agents from the moonshine beat to guns. But the bureau had a peculiar view of its mission under the law, as a former director, Rex Davis, once revealed in congressional testimony. Davis noted that about 140,000 persons held gun dealer licenses. The bureau wanted to cut down the number to around 40,000, for easier policing. As one disgruntled official of the National Rifle Association (NRA) states, "BATF goes after dealers for picayune technical violations rather than the IRA or domestic terrorist groups. Why? Easy. BATF runs up statistics that look good on paper but don't really reflect any real work."

Gun collectors, for example, are patsies for a clever BATF agent or informant, for reasons, inherent in the psyche of any actively acquisitive person. Says Neal Knox of the NRA: "The problem is that some people collect guns in the same way other people collect Ming vases, but Ming vases don't come under federal law. When the guy who is a collector goes out, he may be collecting a particular kind of fine firearm, or he may be collecting a hodgepodge of guns, because his goal is to outwit his fellow collectors."

"He will try to go in like a guy swapping a pocketknife and winding up with a racehorse. He will go in with a bolt-action .22 rifle and hope to come out with a \$5,000 Purdy shotgun. It doesn't happen very often, but he has a lot of fun trying."

Richard Boulin certainly had fun—until the Fat Man materialized. Boulin's love of guns began when he was a teenager; he read books on them and subscribed to firearms magazines. During military service, he says, he was the best shot in a 300-man military police unit. After discharge in 1972, he joined the Montgomery County police department.

All the while he collected guns—not just any guns, but the fancy commemorative weapons that manufacturers produce in limited editions, fancily engraved rifles honoring Buffalo Bill or the Texas Rangers or some other historical event or figure. As a subspecialty, he sought specific serial numbers. He was especially proud of a Golden Spike Winchester commemorative rifle numbered 20,000, last of the production run.

Over the years, Boulin accumulated more than five dozen of the commemoratives. "These represented my savings," he says. "My wife and I never bought stocks or stuff like that. Firearms appreciate in value just like antiques. I had thousands of bucks on my walls and in my display cases."

Boulin kept the commemoratives in mint condition. None had ever been fired—a single round through the barrel can cut the value of a collection gun by half. He wore gloves when he handled them, and even then would not touch any metal parts. His neighbors in Gaithersburg, Md., knew he collected guns, but he did not show them off.

#### BEGINNING OF A NIGHTMARE

At five minutes past ten o'clock on the morning of December 14, 1977, a fellow was walking across the parking lot of his father's business in Silver Spring. He heard cars and looked up to see about ten plainclothesmen, badges on their lapels, and a host of Montgomery County policemen. He recognized one of the plainclothesmen as a BATF agent and asked if he could be of any assistance.

"Are you Richard Boulin?" one of the agents asked.

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He got no sympathy. After more argument, the agents agreed to put the collectibles in shipping cases Boulin had stored in a barn. Boulin continued to protest the rough handling. One of the agents hushed him. "Don't worry," Boulin remembers his saying, "after the boys in the [BATF] lab in Baltimore get through with them they won't be worth anything anyway."

By the time the agents finished, they had seized 89 firearms. "Quite an arsenal," one told Boulin. "'Jesus,' I said to myself, 'none of these people has ever even seen a gun collection before.'"

The agents next drove Boulin to a federal magistrate's office in Rockville for a hearing. During the drive, he complained of feeling ill, so they released his handcuffs. He says one of them dared him: "Go ahead and run; I'd like to take a shot at you."

Other BATF agents were busy elsewhere in Maryland the same hour, making further arrests—all on cases stemming from information supplied by the Fat Man. A total of 22 people were picked up. By noon, Washington and suburban radio stations were carrying BATF-supplied news of a "crackdown" on illegal gun dealers trafficking in machine guns and other weapons.

Out on bond, Boulin and his then lawyer, former U.S. attorney George Beall, were summoned to the federal prosecutor's office in Baltimore. There he met for the first time a BATF agent named William J. McMonagle, who had been using the Fat Man as an informant for four months. McMonagle got right to the point. According to the Fat Man, Boulin had a machine gun, and BATF wanted it. Boulin quotes him as saying, "We are going to send agents out to your house to tear up the walls and the floor."

"I argued and pleaded with them for half an hour," Boulin says. "I told them that I left that sort of stuff in Vietnam, that the last machine gun I touched was in the Montgomery County police department. I finally convinced McMonagle I told the truth."

#### THREATS AND DEALS

So the agent tried another tack. The Fat Man had also told BATF that Boulin was selling guns to the Irish Revolutionary Army. "Absurd," retorts Boulin. "I made these sales [to the Fat Man] at the retail price. I would get five, six times the price if I was dumb enough to sell to the IRA—which I'm not. Hell, if I had wanted to make a buck off illegal sales, I wouldn't sell pistols for \$150; I could go to New York City and sell them on the street corner for \$500."

Boulin knew he was in deep trouble, so he listened to McMonagle and assistant U.S. attorney Marsha Ostrer when they offered him a deal. If he would turn informant for BATF and help make cases against other dealers, perhaps his own problems could be forgotten, or at least minimized; otherwise, he was going to jail.

"I told them I would not do the type of work they did to me—dirty work against an innocent dealer. I also told them, 'If you want me to go after machine guns and the IRA, I will help you.'" So they signed an agreement: Boulin would work as an undercover officer under the direction of McMonagle.

In something of a panic as weeks went by and he could not find anything to report, Boulin asked other gun-collector friends for leads. One man, the finance manager for a foreign car company, helped. He had heard of a person who owned an illegal machine gun. "My friend gave me this name to help me out, and I passed it to BATF. But they said, 'It's not enough. We want more.' But I refused to do dirty work for them. They finally said, 'You are noncooperative.' They canceled the agreement."

"Fine with me. Setting up innocent people goes against my fiber. I won't do it. I know what the arrest did to me. I wouldn't put an innocent guy through that wringer, not even to save my own neck."

Some days after the arrest, Boulin and his wife walked into a Rockville restaurant. He saw two police officers with whom he had worked. He stopped to say hello. One waved him away. "We don't talk to crooks. Get the hell out of here."

He went into a gun store where he had done much business. "Get out of here," the owner said. "I don't want any trouble."

Boulin heard via the grapevine that BATF was going through his record as a policeman, apparently trying to find evidence of illegal gun deals while he was with the department. A friendly lieutenant told him, "They are calling you a 'bad person.'" Boulin asked the lieutenant to testify as a character witness if he came to trial. The lieutenant sounded agreeable, but he called a few days later with an apology. A superior had ordered him to keep out of the case.

Not everyone turned his back on the former cop, however. A onetime colleague, knowing of his plight and of how law enforcement agencies work, telephoned him with a tip. He had the license number of a van being used as a rolling gun/cocaine distributorship. Give BATF the tip, the officer said; maybe the credit will help you. Boulin telephoned McMonagle. I won't talk to you about anything, the agent said, and hung up.

Federal judge Herbert Murray, who heard Richard Boulin's case, indicated that he felt the federal government had made a mistake in bringing the young ex-cop into court.

Months after his arrest, Boulin sought support from the NRA and received it in the form of David H. Martin, a former Secret Service lawyer now with the firm of Santarelli & Gimer. With the facts not in dispute—BATF had surreptitious tape recordings of Boulin talking with the Fat Man during the sales—Martin decided to try it on a question of law: Did the Gun Control Act make it illegal for a person with a dealer's license to sell from his private collection without doing the federal paperwork? During the summer of 1978, Martin and the U.S. attorney's office in Baltimore submitted stipulated facts to Judge Murray.

Eleven months dragged by without decision, an indication that the case was troubling Murray, a hard-working jurist. His opinion, released August 6, 1979, explained why. Under the law, he said, he had "no choice" but to find Boulin guilty. He continued: "The court does this with great reluctance because the potential civil penalties in this case far out-weigh the criminality of [the] defendant's conduct."

Murray referred to Boulin's prized gun collection, which BATF still held, with the ultimate intention of having a court declare it forfeit to the government after his conviction. BATF has sought this, with varying success, in countless other cases around the country. Boulin values the seized guns at between \$30,000 and \$35,000—provided they have not been ruined by haphazard storage and handling by BATF.

#### A LIFE IN SHAMBLES

Over beer and hamburgers in a Maryland roadhouse, Boulin talks about his life since the arrest. He is estranged from his father, who was angered by federal agents appearing at his business. He works 12 hours a day, six days a week, piling up savings to support his wife in case he has to go to prison. He drives 70 miles round-trip daily to his present job, which is in sales; all he thinks about on the road is "the case."

He is cutting himself off from a society he believes has wronged him. He talks with his wife about buying a house in rural Maryland—there are some mighty remote areas in the state—"and putting a chain across the driveway and telling everybody to stay the hell out." Most of his old police friends shun him as a "rogue cop." Neighbors avoid him, or speak in strained tones when they encounter him. Sometimes he can't bear to tell his wife about adverse developments. For months, she was not aware that he would have to stand trial.

Fantasies, scenarios, awesome schemes for revenge have tumbled through his tormented head: to put his hands on a gun, a big, mean automatic gun, and go to the BATF offices in Baltimore and blast away his tormentors; to use a gun on himself; to disappear, to take what money he has saved against a jail term and simply not be Richard Boulin anymore. "But I'm past that now," he says. "There's

no sense in compounding your troubles. What hasn't soaked in yet is that I am a convicted felon. A *felon*. How I'm going to live with that is something I've yet to face."

There are practical penalties to go along with the stigma. Boulin is a bonded employee. When the bond comes up for renewal, he can either admit his conviction—whereupon he loses the bond essential to his work—or he conceals it—whereupon he risks another felony charge for making a false statement.

He cannot renew his Maryland state sales license, meaning he can't even sell used cars, much less have a managerial position in a first-line agency. Technically, the mortgage company could demand the full amount owed on his home. "This really worries me. BATF plays dirty; I wouldn't be surprised at all if some agent who has it in for me dropped a dime on me"—that is, notified the mortgage company of his conviction. And, of course, he cannot work as a law enforcement officer.

At age 28, thanks to his government, Richard Boulin is as close to being dead in the water as a man can be.

The Fat Man, meanwhile, is nowhere to be found on the Maryland gun scene. He had disappeared into the folds of the federal government's program to protect informants.

A postscript: Last fall, an openly sympathetic Judge Murray praised Boulin's record as soldier and policeman, and said he believed Boulin's protestations that he had not intentionally violated the law.

On the other hand, the judge continued—and Boulin, standing at a military parade rest, seemed to sag—Congress passed the Gun Control Act with the aim of regulating the circulation of handguns. So Boulin must be punished. Thirty days in jail under a work-release program, so he could continue at his auto agency job, then a period of probation, plus a \$500 fine.

Murray repeated what he said in his earlier opinion: that the government should work out an arrangement whereby Boulin got proceeds from the sale of the valuable firearms collection.

Weeks later, BATF still had this suggestion "under advisement," according to lawyer David Martin. Meanwhile, Martin prepared to take the case to the Fifth Circuit Court of Appeals. So Boulin has a year, maybe eighteen months, of freedom left.

I asked Boulin if he had a picture of the gun collection to illustrate this article. He laughed. "BATF took all the pictures," he said. "They called them 'contraband.' I've asked for them back, now that the trial is over, and they just laugh at me."

#### GUN LAWS AND GUN COLLECTORS

(By David T. Hardy)

If firearm ownership is commonplace in America—and surveys repeatedly indicate that it is—then the firearm collectors compromise the aristocracy amid the popular movement. These collectors are virtually a "nation unto themselves", with their own shows, at which they compete in display of their finest firearms, their own organizations, their own specialties—one may choose British military firearms 1760-1945, another may strive to obtain all calibers and chamberings of the Marlin 1893. There are also general collectors, and most specialists have a general collection "on the side," which may feature such favored pieces as the exquisitely crafted Parker shotguns (which begin at about \$900), the Winchester Model 21 (the only American shotgun fitted to the individual's dimensions; the "economy" line starts at \$3,500), or scarce "presentation pieces," engraved and inlaid pieces given by inventors and companies to both Eastern and Western national leaders (Samuel Colt, in the 1870's and 1880's, created quite a few of these pieces). They have their own magazine now, independent of all other firearm publications, in which it is not uncommon for a collector to take out a full page, tastefully illustrated advertisement to attract other collectors for purchase or exchange of a few unneeded pieces.

Even individuals who support strict firearm regulation might well be tempted to consider these individuals a relatively riskless segment of the population. Persons bent upon robbing a drugstore simply do not seek a Winchester 21; domestic homicides are unlikely to be settled at dawn with a cased pair of Durs Egg flintlock duelling pistols. Indeed, the federal agency which enforces the firearm laws, the Bureau of Alcohol, Tobacco and Firearms (BATF), has repeatedly claimed that criminals predominantly use cheap handguns—valued under \$50, caliber .32 or less, barrel 3 inches or less. No true collector would even use one of these as a paperweight: the risk of being seen with it by other collectors would be too great.

## LAW ENFORCEMENT AGAINST COLLECTORS

It is therefore surprising to note that federal agencies enforcing firearm laws have often appeared to devote a large amount of their energies to sending such collectors to jail, and confiscating their collections. It is even more surprising to discover that the federal government itself is becoming a large-scale collector—its collection established primarily by choice items appropriated, without compensation, from these collectors.

In part, the collector's very law-abiding qualities make them perfect targets for law enforcement. The BATF has been faced with some unique bureaucratic difficulties of late. Since 1972, the skyrocketing prices of sugar, main component of "moonshine", has drastically curtailed illegal brewing. Between 1972 and 1978, the number of "stills" raided by BATF dropped from nearly 3,000 to only 381. The Bureau suddenly saw itself faced with obsolescence of its traditional area of enforcement, a rather unique experience in law enforcement (one may imagine the consternation at the Drug Enforcement Administration if the entire drug-using populace suddenly turned to meditation or alcohol). Self-preservation dictated a sudden increase in firearm enforcement. But agents seeking to push up their "body counts" of arrests and firearms seized were faced with serious problems. To invade fields where firearms are feloniously used is apt to prove quite dangerous; it also takes time, and this is unavailable when Washington makes it clear that arrests in your district must be doubled within the next year. A safe and easy target had to be located.

## "DEALER" DEFINED

Agents therefore quickly evolved a method of entrapping collectors, through a technique which I term the "implied dealership". This depends upon a clause in the 1968 Gun Control Act which provides that "dealers" in firearms must be federally licensed, and makes it a felony to conduct business as a "dealer" in firearms without such license. Private sales of one's own property by a nondealer are not subject to federal licensing.

The statute contains no definition of "dealer". Nor do the Bureau regulations, ostensibly promulgated to clarify and enforce the statute, provide such definition. Since 1972, the Bureau has actively discouraged applications for licensing, in a political move to create an impression of reduction in "firearms traffic". Under its regulations, for example, the applicant must have business premises separate from his residence and must keep regular "business hours". Collectors who reported sales only to other collectors and hours "by appointment" soon found their licenses being revoked. Moreover, a "dealer's" premises are statutorily subject to search, without warrant or probable cause. Collectors, who asked whether licenses were needed, were usually informed that five to ten firearms sales per year did not constitute acting as a "dealer". Actually, while the statute has no definition, federal appellate courts have defined "dealer" very broadly. They have repeatedly noted that there is no minimum number of sales necessary; that no minimum level of profit from sales of firearms is essential, and that the sole question is whether the jury believes the accused citizen to have engaged in "any business" of selling firearms. The Bureau has frequently obtained collections on as few as four to six sales per year, and these actions have been universally upheld.

## OBTAINING EVIDENCE

The agents thus can easily lead an individual, who all the while believes he is obeying the law, into a felony indictment. Undercover agents approach the collector at a gun show. Their routine is already choreographed and has been tested in previous cases. Different agents may make one or two purchases at this gun show, followed by a few more at the next gun show, until four to six sales are obtained. The agents offer a very high price, and purchase with little bargaining; thus the collector can easily be shown to have made a profit on their sale. As "icing on the cake", they may lead the collector into stating that he could obtain an additional firearm from a different collector for them; at this point he is acting as a broker for matter not already in his collection.

After the evidence is obtained, the collector is indicted on felony charges. The burden on him is immense. Legal defense costs usually run between \$3,000 and \$20,000. Conviction on the felony count means total loss of right to possess firearms within the United States. It also carries a penalty of 5 years imprisonment and a \$5,000 fine.

In an effort to add to these burdens, the Bureau generally confiscates the collector's prize collection. This is done under a provision of the Act which permits confiscation of firearms "involved in or used in or intended to be used in" any

violation. The confiscation puts additional financial pressure on a collector who may already be impoverished by the legal costs.

These activities have been frequently reported among collectors, but little work to compile and analyze them has been done. Recently, I have had the privilege of serving as project director to a Task Force seeking to compile a comprehensive report on Bureau activities, which report was sponsored by the Second Amendment Foundation. The objective evidence which was compiled on this particular activity proved compelling. I could not escape the conclusion that the Bureau had carefully preyed upon misinformation as to the status of the law, some of which had been given out by the Bureau's own agents, in order to entrap law-abiding citizens and confiscate substantial amounts of their private property for the Bureau's own collection!

## ENTRAPMENT

First, the Bureau seeks to entrap law-abiding individuals who would not disobey the law, if it were not for the agent's activities and deception; it does not aim entrapment at individuals who would violate the law anyway and are but given an opportunity. Many of the individuals contacted, in various parts of the nation, with no opportunity to confer with each other, reported acting on advice of agents that five to ten sales per year of their own firearms did not constitute "dealing". In one especially well documented case, we obtained a government transcript of a recording of the defendant speaking to the agent.

"I don't want to know anybody what does anything wrong with guns. No, I'm serious. I collect, and, to me, there's a lot of fine people collecting. Several chiefs of police, several detectives here, and otherwise . . . I don't want, I would never want to contribute to anything that might make it look bad for all of us . . . There's a few people who are making it look bad for the many."

This individual was enticed into the sale of a sufficient number of firearms, his collection was confiscated at a gun show, and, when he filed suit for their recovery eight months later, an indictment was handed down within ten days. He is today a felon on probation. Given that "the first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite to crime . . .", the entrapment of an individual of this type, solely for the virtue of increasing a "body count" of convictions and confiscations, is hardly justifiable conduct on the part of a public agency.

## CONFISCATION

A second reprehensible aspect of the BATF attack on collectors is the tendency to focus on large and expensive collections. Confiscations tend to center upon these collections to the exclusion of the cheap firearms which the Bureau so often claims are the roots of violence. During the course of the Second Amendment Foundation study, I utilized the Freedom of Information Act to obtain copies of the Bureau's "Reports of Property Subject to Judicial Forfeiture", which gave inventories of seizures by collector name, value, firearms, and ultimate disposal. A few examples will suffice. In one, the Bureau confiscated 83 firearms from a Pennsylvania collector. The Bureau's own appraisal fixed the value at \$18,020.00. The collection was devoted primarily to antique Marlin rifles, especially the 1893 model, although some 1881 models in .40-.62 caliber and an especially rare .30-.40 "baby carbine" were included. Only five of the 83 were handguns—and the average handgun appraisal was \$116. A second major example also came from Pennsylvania. There, 136 firearms valued at \$28,335.00 were taken. These included five Parker shotguns (one valued at \$1,000), a Winchester model 21 (undervalued at \$900), and a number of French and German collector shotguns. Private reports have also been received (from time frames outside of the period requested under the statute) of numerous confiscations; an Eastern collector reported a seizure of \$10,000 worth of items; two years after the confiscation, he has neither been charged with any offense nor has the collection been returned.

A South Carolina collector reported seizure of over 100 firearms valued at over \$15,000.00. He was acquitted of charges. Two weeks after the acquittal, the Bureau served him with notice of intent to forfeit his collection, maintaining that the criminal acquittal did not bind them in subsequent "civil" forfeiture proceeding. (Further, three persons, in Connecticut, Arizona, and Nebraska, reported that their automobiles were seized on claims that they had used the vehicles to transport firearms).

## OBTAINING COLLECTIONS

A third reprehensible aspect lies in the Bureau's use of its powers to furnish its own private collection. The reports obtained through the Freedom of Information Act requests showed that approximately one-third of the collections were being



routed back to the BATF with the purpose of acquiring a "reference collection". The two Pennsylvania seizures mentioned earlier alone contributed 75 firearms valued at \$18,000 to this Bureau collection. The collection is not easily filled, obviously, especially with reference to the expensive shotguns; the Bureau apparently needed no less than five Parkers, three of the same gauge. Modern firearms are also found useful. One report from a Texas case disclosed a seizure of 86 firearms valued at over \$20,000.00. The local Bureau office chose to keep 48 of these firearms for their local arsenal (and, presumably, for issue to the agents who confiscated them). Interest in filling this collection may explain the Bureau's tendency, reported by several collectors, to dismiss charges or permit pleas to a misdemeanor in the event the collector would permit them to keep the collection. These offers were transmitted through the prosecutor's office to the defense attorney's office; in several cases, I was able to contact the defense attorney and confirm that such offers had been made.

#### VINDICTIVE INTENT

Finally, some of the seizures appear to display a vindictive intent. In a famous Texas case, the agents seizing an expensive collection were seen to deliberately drop the firearms to the floor before storing them. Several firearms, in "as manufactured" condition and unfired, were "test fired", greatly reducing their collector value. Despite the dealer's acquittal, agents refused to return the firearms. Even after judgment was rendered in the collector's favor on a civil proceeding, they still refused. Only after contempt proceedings were brought against them did they return the collection, then disclosing that it had been stored in a damp warehouse which had seriously rusted many of the finer pieces. A Colorado defendant reported, and his attorney confirmed, that his collection (including a Parker valued at \$10,000) was thrown across the room as each firearm was booked in, and permitted to fall to a concrete floor. A Virginia defendant reported (and, once again, his attorney confirmed) that his firearms were thrown into a 50-gallon drum and wheeled to court in that manner. They were taken out and slammed down in a pile during the trial. When a request was made to treat them more gently, the result was only more violent treatment. In several cases in addition to the Texas one mentioned above, the Bureau refused to return firearms despite acquittal and then bought civil proceedings to confiscate the collection. Some collectors reported having to give up their collection because the criminal trial had exhausted their financial resources and the legal expense of the fight would be \$2,000 or more. The collector, of course, does not recover his attorney's fees in the event he is acquitted, nor does he secure the return of the firearms. The Bureau, on the other hand, is served by attorneys paid from tax funds contributed to by the dealer.

Is this apparent focus on the law-abiding gun collector an isolated occurrence, or part of a general pattern? Since the Bureau does not itemize prosecutions by collector status, it is most difficult to tell. One might expect a rational, albeit ruthless, administrator to focus upon these individuals. As noted above, they are generally naive sorts who believe that "since I am law-abiding, I have nothing to fear from the law", are unlikely to shoot informants, are easily arrested without violence, and, in short, make a perfect target for a quick increase in arrests at minimal risk. What information we do have suggests that the Bureau has been assessing its probabilities in this manner. During Project CUE, the Bureau published breakdowns of prosecutions in certain cities. In Washington, D.C. for example, out of 1,603 investigations, only 206 dealt with felons in possession of firearms, only 58 with stolen firearms, and only 20 with use of firearms in a felony. Of Chicago's 1,980 investigations, 135 dealt with felony possession, 54 with theft, and only 9 with use in a felony. Considering that studies have repeatedly documented that approximately 25 percent of handguns used in crime are stolen, one might expect that more than 3.6 percent of the Bureau's Washington investigations, for example, would deal with firearms theft. But we must reflect that catching firearm thieves and marketers of stolen firearms may be dangerous and difficult, hardly the type of thing to undertake when large numbers of quick arrests are needed.

#### CONCLUSION

In short, it appears that the Bureau of Alcohol, Tobacco and Firearms has devoted a significant portion of its investigative and law enforcement efforts to entrapping naive collectors of firearms, of a type unlikely to be contributing to criminal firearm markets. This campaign has enabled the Bureau to boast of impressive statistics of convictions and firearms seizures, with minimal effort and personal risk. It has also permitted the seizure of significant numbers of collector items, of which substantial numbers are appropriated, without compensation, for the Bureau's own collection. The underlying practice of encouraging, rather than avoiding, crime can hardly be

justified: its exploitation for Bureau property gains, or as part of a vengeance motive, is even more repugnant.

Mr. CONYERS. We have every intention of doing that. We want to do it fairly, of course, and we will have to hear both sides of these complaints and allegations, some of which are rather shocking.

I want to thank you for appearing before us, and, before you leave, let me find out if any of the members of the subcommittee would wish to question or comment on your testimony.

Mr. ASHBROOK. I want to thank you for coming. One of these days we may be able to get some of this information on the record.

Mr. VOLKMER. I wish to thank them for their support for our bill.

Mr. GUDGER. May I ask a question of Congressman Symms, Mr. Chairman?

Mr. CONYERS. Yes, of course.

Mr. GUDGER. One feature of the McClure-Volkmer bill that strikes my mind is the feature which would allow recovery of costs where there is a successful pursuit of seized guns or any successful pursuit of action to recover property which has been wrongfully taken by BATF agents.

Also, I believe any costs that might be incurred in addition to your attorney's fees and that sort of thing.

Would you analyze that for me, just how you see the justification for this, as being peculiarly applicable to this particular circumstance? I refer to the situation where there is a confiscation, and a taking of property, and retention of that property.

Do you perceive that there is a need then for the person, the license holder, the gun licensee to hire counsel, go to court, take care of his property?

Mr. SYMMS. Yes, sir. The fact is if I had my druthers, I would broaden the scope of that section to any time that someone is harassed.

In fact, I have cosponsored legislation in the Congress that says the Federal Government would be responsible to pay the legal fees when they seek action against a citizen in a civil case and lose the case, that that citizen should then be able to recover court costs from the Federal Government.

But specifically in this, I think Congressman Hansen made a good example of where a gun collection may be damaged, or may be taken, confiscated. Sometimes they don't get it back. They interfere with the process of doing business when it is over.

Say a strawman sale, for example a small dealer who is going to sell the gun to someone and finds out it is from out of State so he comes back in with a relative and says sell it to my relative and then I will do it.

So he does it and finds out that the relative worked for the BATF. Then they close him down and take his collection. I think most certainly they should be liable—if he wins his day in court, pay him back.

Mr. GUDGER. Mr. Hansen has described a particular instance. There are others. I have just been scanning the McClure testimony.

Mr. Symms, you very kindly skipped over any particular case history in your own testimony. But how frequent is this instance of seizure? How many cases do we know of? Apparently we are only

involved here with about 2,345 arrests in 1978, one of the years that is reported here.

I would assume that in each case where there is a seizure, there is an arrest. Is that the case, or are we talking about different figures?

Mr. SYMMS. I don't think always that there would be an arrest, but I think it is happening quite often. I would be very happy to get some of the correspondence I have in my office, and present it to the committee, if you would be interested in it.

Mr. GUDGER. I was astonished at these figures here indicating that in 1978 the Bureau received appropriations of \$64 million and only had 2,345 arrests, 1.5 per agent.

If these figures are correct, then it certainly would seem that they would have been able to give very careful attention to any case that was prosecuted, if each agent only prosecuted one and a half cases per year. I don't know whether this data is accurate or not, but perhaps you can give me some more data on this.

Mr. HANSEN. I think there are two points to be made. I am speaking off the cuff, because it has been some time since I reviewed these statistics firsthand. First, I think that the agents are not necessarily productive and spend a lot of time in cloak-and-dagger work sleuthing around, doing things they really don't need to do to carry out the law—setting up decoys and strawmen and things like this.

It is not very productive when the agents don't go where the real problems are. I certainly think the committee could direct them to a more productive use of their time. That is one point.

The second is, and I may be wrong but I think there are a number of times where the guns are confiscated and a person seems to have the option of whether to try to claim the guns and get involved, possibly in a way where he might be arrested, punished or fined, or just forget it and let BATF keep the guns.

It becomes a matter at least of an economic decision with him; and sometimes it is more than economic—it can be serious and personal, such as if a misdemeanor or a felony is involved. It costs him one way or the other but he can't win either way.

What I am saying is there might be other ramifications that don't show in the figures on BATF charts.

Mr. GUDGER. Mr. Chairman, one final conclusionary remark. It is very likely BATF agents in their testimony here will reveal that arrests are only a very limited part of their work.

I don't know, but if seizure of property is a substantial part of their work, then the right of attorney's fees to be recovered by the offended licensee would certainly seem to be a justified, sound feature in the McClure-Volkmer bill.

Thank you for your comments.

Mr. SYMMS. From July 1, 1979, to March 31, 1980, 670 of the 3,740 firearms seized were rifles, 440 of the 3,740 firearms seized were shotguns, and 1,282 of the 3,740 firearms seized were pistols. The remaining 1,300 firearms were unregistered machineguns, silencers, sawed-off shotguns, et cetera.

Mr. GUDGER. Congressman Symms, would you kindly supply that first figure, the number of rifles?

Mr. SYMMS. 670 of the confiscated firearms seized, were rifles.

Mr. HANSEN. A total of 3,740 weapons seized and 670 were rifles.

Mr. GUDGER. Thank you very much.

Mr. CONYERS. To our colleagues, Mr. Symms and Mr. Hansen, you are always welcome before the subcommittee. Thanks for your testimony.

The subcommittee will stand in recess until we have concluded with the vote that is now taking place on the floor, and we will resume with Director Dickerson.

The subcommittee stands in recess.

[Brief recess.]

Mr. CONYERS. The subcommittee will come to order.

We will resume the hearings by welcoming the Director of the Bureau of Alcohol, Tobacco and Firearms before the House Judiciary Subcommittee on Crime, Mr. G. R. Dickerson, who has been in this capacity since February 1979, and was formerly a Deputy Commissioner of Customs.

We note, of course, that BATF is charged with the enforcement of the gun control law of 1968 and many other matters. We welcome you here today with your Chief Counsel, Marvin Dessler; Deputy Director Stephen Higgins; and Miles Keathley, Assistant Director of Criminal Enforcement.

We welcome you all. We will incorporate your prepared testimony, and you may proceed in your own way, Mr. Dickerson.

I would like to ask the subcommittee, as the case with the other witnesses, to allow the Director and his staff to complete their testimony and then we will be able to question them at length.

Welcome, Mr. Dickerson, before the subcommittee.

**TESTIMONY OF G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, ACCOMPANIED BY MARVIN DESSLER, CHIEF COUNSEL; STEPHEN HIGGINS, DEPUTY DIRECTOR; AND MILES KEATHLEY, ASSISTANT DIRECTOR OF CRIMINAL ENFORCEMENT**

Mr. DICKERSON. Thank you, Mr. Conyers.

I have a lengthy statement which I have submitted for the record; and a shorter statement I would like to read. It summarizes the longer submission.

Mr. Chairman, I am pleased to have an opportunity to participate in these important hearings. As you know, the Bureau of Alcohol, Tobacco and Firearms is the lead Federal agency in enforcement of the Federal firearms laws.

I know that you are no stranger to the emotionalism which surrounds the general issue of gun control. You have presided over numerous hearings in past years, during which all sides of this issue have been represented.

Mr. Chairman, your committee endeavors to strike a fair balance in establishing the law in this area. ATF, I believe, also strives to maintain a fair balance enforcing those laws. I am not here this afternoon either to advocate increased or decreased gun control or deal with the related philosophical problems that this issue holds, but to describe the enforcement efforts of my agency.

The mission of ATF in this area is to fairly enforce the laws which you pass; to enforce the laws in a manner which reflects the intent of Congress. It is our official policy to concentrate our regu-

latory and criminal enforcement efforts to prevent criminal misuse of firearms.

It is our policy to keep firearms out of the hands of criminals and apprehend those who use firearms in crime.

In carrying out our responsibilities, we strongly recognize the legitimate uses of firearms and the need to protect citizens from crime and violence.

As you know, the primary statute at the Federal level is the Gun Control Act of 1968. I believe that under this act ATF has made a significant and successful contribution to law enforcement through programs designed to make criminal acquisitions of firearms a difficult act.

I would like to take the time to review for you various provisions of the Gun Control Act which we frequently use in attempting to combat the criminal misuse of firearms.

Under title I, ATF attempts to regulate interstate traffic in weapons and to utilize information obtained from the recordkeeping of licensed dealers. We are assisted in this task by the more than 170,000 firearms dealers and manufacturers in the industry.

With the assistance of dealers records, we have been able to develop a National Firearms Tracing Center, which has provided invaluable assistance to all levels of law enforcement in tracing crime guns.

Examples of this success are documented—such trace evidence being used in the infamous Zebra murders in California and assistance in the *Son of Sam* case in New York.

We are proud of the positive contribution ATF makes to law enforcement across the country through our tracing center.

In a recent sampling of completed traces, for the period June 1979 to March 1980 of selected traces, of 10,526 traces made primarily for State, local, and Federal law enforcement agencies, 60 percent were considered to be of value in dealing with crime.

I have provided a more detailed breakdown of these statistics in my statement for the record. But I can tell you, Mr. Chairman, that these traces have contributed to solving murders, rapes, burglaries, robberies, and in many instances are the direct piece of evidence needed in leading to the apprehension of violent criminals.

Since the establishment of our tracing function, ATF has processed over 334,000 firearms trace requests for city, county, State, Federal and, in many instances, for foreign law enforcement agencies.

I have also provided, in my statement, some recent significant cases where traces have played a major part.

The second provision of the Gun Control Act which ATF enforces is the prohibition against possession of unregistered machineguns, sawed-off shotguns, incendiary, and other destructive devices.

ATF has seized 20,259 weapons and devices under this title in the period July 1, 1968, through December 31, 1979. There were 6,443 convictions of persons trafficking in or in illegal possession of these weapons during the same period.

One current crime problem involves Mac-10 machinegun. This has become a favorite weapon of narcotic traffickers because of its small size and high firepower. This fully automatic weapon, which

fires 20 rounds per second, has definitely been identified in 9 of 60 drug-related murders in the Miami area in recent months. It has been extensively distributed in underworld channels.

ATF has seized over 500 of these illegal weapons and other law enforcement agencies have seized approximately 500 more. We are acting to cut off the illegal source of this weapon.

Again, in my more lengthy statement I have provided other examples of trafficking in machineguns and other illicit weapons.

Another frequently used provision of the Gun Control Act is the prohibition against receipt or possession of firearms by convicted felons. We attempt to use this provision in an effort to protect our society from those individuals who have shown a propensity to violate the law.

In the period from June 1, 1969, through September 30, 1979, ATF has recommended 9,443 defendants for prosecution under this title. Again, I have listed cases in which this law has been used to apprehend persons who have a tendency for violence and illegal use of weapons.

The investigation and arrests of most common criminals is the responsibility of State and local law enforcement agencies. However, in view of the fact that guns are often used in violent crimes, ATF assists in the investigation of significant cases and quite often, through the gun control statute, can effectively support local action against dangerous and violent criminals.

Mr. Chairman, I commented earlier that an essential part of the ATF firearms program involves cooperation with other Federal law enforcement agencies. In fact, I have, since I have been in this job, undertaken action to initiate close cooperation with the Drug Enforcement Administration, with the FBI, with the Customs Service, and with State and local organizations, to see how we can assist them in their enforcement efforts.

Since often guns and explosives are the tools of crime and violence, we can work closely with the FBI, Drug Enforcement Administration, Customs Service, using the Gun Control Act to apprehend major criminals. Examples of this have been provided in the statement.

I think a significant example is how working in cooperation with these agencies we were able, not too long ago, to arrest a large number of the Hell's Angels motorcycle gang members who are now undergoing trial in California.

Mr. Chairman, as the Gun Control Act is the foundation for ATF's gun law enforcement mandate, the thing that contributes to that is a close working relationship between our criminal enforcement and our regulatory enforcement personnel.

Our regulatory and criminal enforcement missions are closely interrelated. In fact, these two components of ATF, by merging their respective responsibilities, provide the mechanism by which ATF regulates the industry, detects violations of regulations, investigates these violations and, in some cases, takes administrative or criminal actions where appropriate.

In 1979 we received 32,678 original applications for dealer licenses, and 143,000 renewal applications. We conducted 1,037 regulatory inspections and 14,744 compliance inspections.

Of those small number of dealers inspected, it was found that 4,000, or 28 percent, were in some varying degree of noncompliance with the regulations.

In the vast majority of cases where noncompliance is found, the regulatory inspector works with the dealer to correct whatever deficiencies may be present. In a small number of cases we may find that the dealer either refuses to comply or that his violations are so significant that some remedial action may be taken.

However, these are limited. In fiscal year 1979, 12 licenses were revoked as a result of regulatory action; 93 renewals were denied and 234 warning letters were issued.

But again, I wish to emphasize that the majority of firearms dealers in this country are legitimate businessmen who cooperate with ATF, who attempt to insure that firearms do not reach the criminal element.

In fact, during that same period of time, dealers voluntarily provided to ATF information which led to the opening of some 311 criminal investigations, investigations of alleged criminal misuse of weapons.

This year, in 1980, an additional 184 such investigations have been initiated.

One local case not too long ago occurred where dealers brought to our attention illicit trafficking in firearms to Iran by a number of Iranian students in this country.

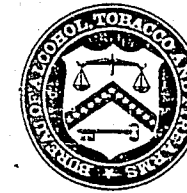
Mr. Chairman, in addition to our direct law enforcement and regulatory action, we are making every effort to study gun enforcement problems, to see how we can better deal with it, and how we can develop a sensible strategy of dealing with this problem while still recognizing the legitimate use of guns.

We have defined the legal supply and criminal demand for firearms. We define four basic sectors where we are concentrating our law enforcement efforts in trying to deal with major traffickers and illegal use of weapons.

Mr. Chairman, if I might, rather than go into detail on that, we have a strategy paper, the ATF firearms program, which has charts, details on activities we have. I would like to submit it for the record.

Mr. CONYERS. Without objection, so ordered.  
[The information follows:]

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DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO  
AND FIREARMS

FIREARMS  
PROGRAM



APRIL 1980

PURPOSE

The purpose of this document is to:

- provide background information on ATF's legal authorities for firearms enforcement
- describe the legal supply system and criminal demand for firearms
- state ATF's objective, role and strategy for firearms enforcement
- state ATF Firearms policy.

INTRODUCTION

Few contemporary issues generate such emotion, controversy, and polarization as firearms crime and firearms control. On the one extreme, there are those who advocate an absolute ban on firearms, particularly handguns, citing the fact that firearms are an instrument of crime and a common denominator in violent crime. At the other extreme are those who oppose any controls over firearms. Any organization at the Federal, State, or local level charged with the responsibility for enforcement of firearms laws or administration of firearms regulations must acknowledge these diverse views and carry out its responsibilities, recognizing both the legitimate sporting and self protection purposes of firearms and the need to protect citizens from crime and violence. The modern debate over firearms, firearms crime, and firearms control predates the turn of the century. This debate becomes most heated during periods of spectacular crime and violence or in response to some catastrophic event such as the assassination of a public official.

The following materials outline the Bureau of Alcohol, Tobacco and Firearms' program for reducing the criminal misuse of firearms. It is this criminal misuse of firearms which provides perhaps the only common ground of concern for those on all sides of the firearms issue. This paper presents a thorough program which addresses the movement of firearms from legitimate commerce or uses to criminal or potentially criminal misuse. The firearms supply and distribution cycle is complicated, and the firearms abuse problem is even further complicated by the vast inventory of firearms already in existence. Concentration on only one area of the supply system will be ineffective. The program described in this paper addresses those areas of the firearms supply system which have the greatest potential for criminal misuse and on which F can have the most significant impact.



BACKGROUND

The Bureau of Alcohol, Tobacco and Firearms and its predecessor agency in the Department of the Treasury has historically been the Federal entity charged with the responsibility for enforcement of Federal firearms legislation. ATF has had this responsibility since enactment of the National Firearms Act (NFA) in 1934.

The NFA was passed in response to public outrage over the continuous eruptions of armed violence in the 1920's and 1930's. A major part of the firearms problem was perceived to be civilian ownership and access to certain "gangster" type weapons; i.e., machineguns, sawed off shotguns, and silencers. The Federal taxing powers were used in the NFA to impose a transfer tax of \$200 per weapon and imposed mandatory registration of all such weapons. Due to the tax provisions of the act, enforcement responsibility was assigned to the Department of the Treasury. All prohibited weapons were required to be registered in the National Registration and Transfer Record and subsequent transfers were subject to Treasury Department approval. Possession of an unregistered weapon or the illegal manufacture or transfer of a prohibited weapon was punishable by imprisonment of up to five years and/or a fine of up to \$2,000. During the hearings which led to the passage of the NFA, there was movement to include conventional weapons within the scope of Federal control. This led to the passage of the Federal Firearms Act (FFA) in 1938.

The FFA was an effort to impose minimum Federal control over the interstate movement of all firearms and to prohibit interstate transportation of firearms by certain classes of convicted felons, fugitives, and persons under indictment. It attempted to exercise Federal controls over the firearms industry through a system of Federal licensing at all levels of the industry. Licensees were required to maintain records of acquisition and disposition of firearms but were not required to verify the identification of purchasers.

Critics of the FFA cited the following deficiencies:

- easy accessibility to firearms licenses given the nominal licensing fee of \$1.00
- lack of regulatory controls over the issuance of firearms licenses
- failure to provide a mechanism to ensure compliance with the recordkeeping requirements
- failure to regulate the interstate movement of firearms through mail-order sales, purchases by nonresidents, etc.

Beginning in early 1960, efforts were made to amend the FFA to eliminate mail-order sales of firearms and to provide more effective controls in the licensing and recordkeeping requirements of the act. These efforts culminated in the passage of the Gun Control Act of 1968, the present Federal firearms statute.



THE GUN CONTROL ACT OF 1968

The Gun Control Act of 1968 became effective on December 16, 1968. Congressional intent in the enforcement of this legislation is clearly indicated in the preamble to the act, which states:

" . . . the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate any private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

The Act was divided into three titles which incorporated and amended existing legislation.

Title I of the Gun Control Act replaces the Federal Firearms Act. This Title addresses itself to the movement of all firearms in interstate and foreign commerce both within the firearms industry and by private individuals. It outlaws mail-order sales of firearms and greatly restricts the sale of firearms to out-of-state residents. The Act also significantly broadens the classification of persons prohibited from purchasing and transporting firearms in interstate commerce to include all classes of convicted felons, adjudicated mental incompetents, and narcotic addicts. Sales of firearms to minors are also restricted.

Title I further provides for a licensing system with standards to assure that licenses will be issued only to qualified persons. The Act and its implementing regulations provide sufficient authority to ensure

compliance with the recordkeeping provisions, thus enabling law enforcement authorities to trace firearms used in crimes.

Title II of the Act amends the National Firearms Act of 1934, by broadening the definition of prohibited firearms to include the category of "destructive devices" which includes bombs, grenades, mines and other such ordnance as well as their component parts if designed or intended as weapons. The category of "any other weapon" was also amended within the act to include smooth-bore shot pistols. Registration, transfer procedures, and recordkeeping requirements were streamlined and made consistent with the provisions of Title I.

Title III of the Act amends Title VII of the Omnibus Crime Control Act of 1968 and became effective on the date of enactment, October 2, 1968. This Title prohibits the receipt, possession or transportation of firearms in or affecting interstate or foreign commerce by the following categories of persons:

- convicted felons
- persons discharged under dishonorable conditions from the Armed Forces
- adjudicated mental incompetents
- persons who have renounced their United States citizenship
- aliens unlawfully in the United States.

On October 22, 1968, the President issued Executive Order 11432 which transferred jurisdiction over the importation provisions of the Mutual Security Act of 1954 from the Department of State to the Treasury Department. This act became part of the Arms Export Control Act of 1976 and requires permits and licenses for the importation of munitions of war which include firearms, ammunition, and military ordnance.

FIREARMS PROGRAM OBJECTIVE

The long-range objective of the ATF Firearms Program is to reduce the criminal misuse of firearms and assist State and local law enforcement agencies in their efforts to suppress crime and violence. The specific objective of the firearms enforcement program is to bring available ATF enforcement and regulatory resources to bear in those areas where maximum impact can be obtained in the interdiction of firearms to the criminal element.

FIREARMS SUPPLY AND DEMAND

In order to achieve the objectives outlined above and to develop a strategy to combat illegal firearms trafficking, it is necessary to have an understanding of the firearms supply and demand system in the United States. The firearms supply and demand system in the United States consists of the following four sectors:

- the supply sector which depicts the legitimate commerce in firearms from manufacture to consumer
- the migration sector which traces the flow of firearms from legitimate sources to criminal hands
- the demand sector which represents the arsenal of firearms in the hands of the criminal community
- the impact sector in which the criminal community uses the firearms in the commission of crime.

The following sections describe each of the four sectors.

Supply Sector

Data is available on the domestic manufacture of firearms and the number of importations and exportations. Estimates have been made of the number currently held in the United States. The firearms supply is also fueled by thefts of military guns and illicit manufacture; however, these numbers are thought to be negligible at this time. While illicit manufacture and military sources are now believed to be relatively insignificant when compared to the total number of firearms, these sources could become significant in the event that action is taken to alter the supply system. Just as guns move into the

supply system, there is a movement out of the system. Exportation, law enforcement seizures, buy-back or turn-in programs, and aging and deterioration account for the means by which firearms move out of the supply.

Figure 1 is a graphic representation of the firearms supply system in the United States.

Legitimate input into the system is achieved through Federally licensed firearms dealers which number approximately 175,000. Within the circle representing the inventory of firearms in the United States, the arrows represent a largely informal and unregulated system of firearms transfers. These are accomplished by sales at gun shows, private sales, gifts, etc. Through the Gun Control Act of 1968, Federally licensed firearms dealers are required to maintain records of the first over-the-counter sale. These records facilitate the tracing of guns used in crimes. No records are required by the Federal Government beyond the retail level.

A cursory analysis of Figure 1 suggests the following:

- any efforts to reduce the supply would be extremely long-term in view of the large number of firearms currently in circulation and the rate of new manufacture
- criminal demands for use in crime tend to be miniscule compared to supply
- supply system is largely undocumented and unregulated beyond the retail level
- supply system is characterized by a large number of transfers and is dynamic in terms of inputs, outputs, and internal activity
- more research is needed on the elements and dynamics of the supply system.

Strategies for dealing with the supply system range from the conservative to the radical: status quo, public awareness, security programs, registration, licensing, importation and/or manufacturing controls, waiting periods, buy-back or turn-in programs, or

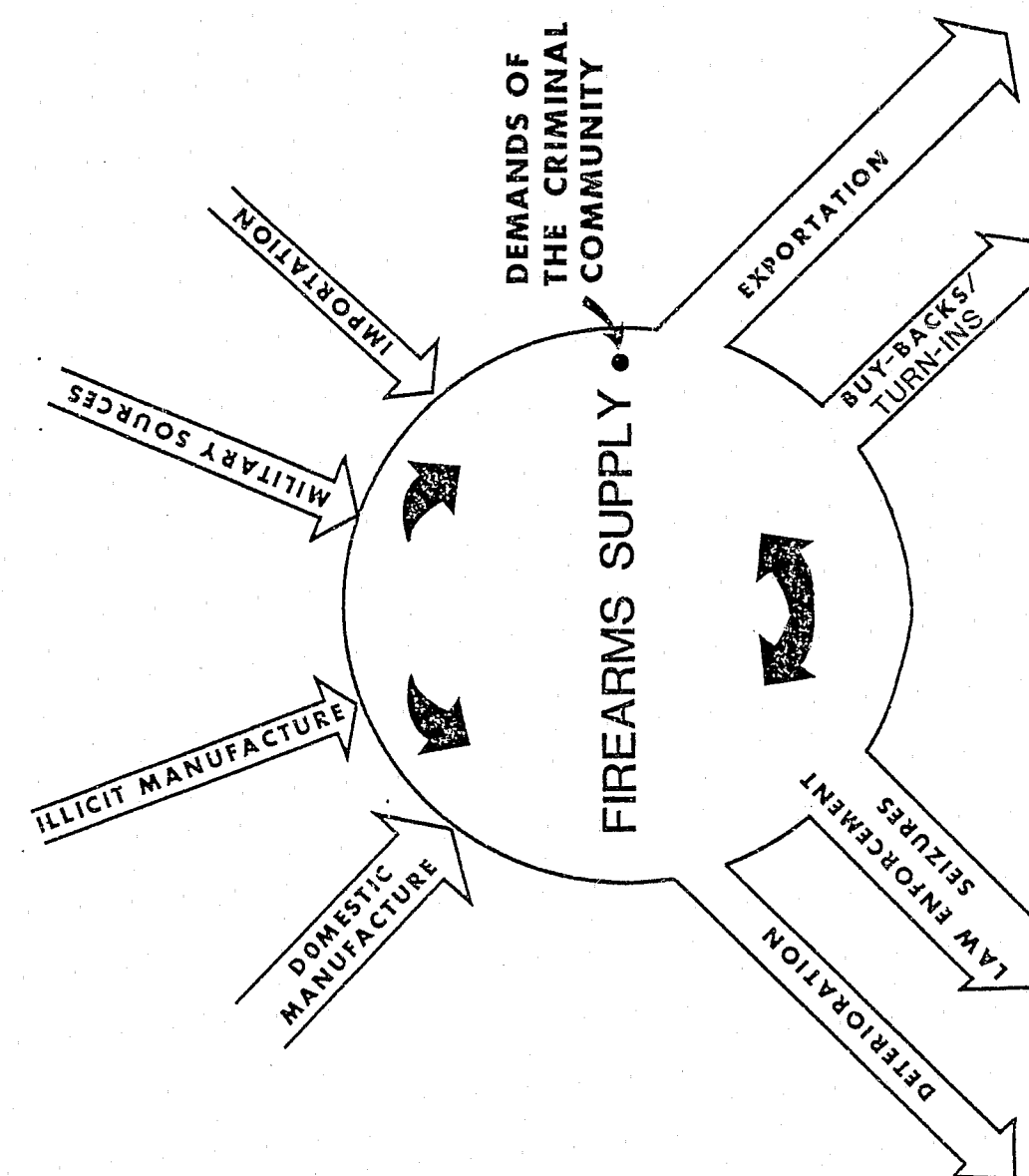


Figure 1

seizures. The significance of these steps will vary according to individual perceptions regarding the firearms issue. ATF is not urging that any one of these paths be followed. Based on available research data, however, it is safe to say that the vast majority of these firearms are purchased for legitimate purposes (self protection, collection, sporting) and are resident in legitimate households.

#### Firearms Flow to Criminal Hands

It has been estimated that as few as 100,000 to 500,000 firearms are required by criminal users to meet their demands in crime each year. By contrast, the universe of firearms in the previously discussed supply sector is in the range of 100 to 200 million. This section will discuss both the illegal flow of firearms (migration sector) and the criminal demand (demand sector).

Firearms migrate out of the legitimate supply system by the following means:

- residential burglaries
- thefts from dealers
- thefts from interstate commerce
- private transfers
- sales at gun shows
- sales from dealers.

The criminal may obtain firearms directly by any of these means. Alternatively, this migration of firearms from the legitimate to illicit market may be facilitated by an organized firearms trafficker who obtains his weapons from these same sources.

These transfers of guns to criminals are of two types. The first type is a transfer to a person prohibited under the GCA. The second type is to non-prohibited purchasers with criminal intent but

with no disabling factors. The latter category presents a particular problem to law enforcement and the firearms industry.

Figure 2 is a graphic illustration of the migration and demand sectors building upon the supply sector in Figure 1.

We can make the following observations based on Figure 2:

- supply tends to be infinite when compared to criminal demand
- law enforcement, regulatory, or legislative actions that focus on supply reduction would tend to be extremely long-range
- the means of migration from the legitimate system to criminal hands are limited
- law enforcement impact is potentially greatest at the points of interface between the legal and illegal markets
- much more information is needed on the demands of the criminal population
- addressing one element of the migration sector in isolation will cause reactions in other elements and will reduce effectiveness
- roles and strategies for Federal, State, and local law enforcement and regulatory activities can be devised
- addressing the migration and demand sectors has potential for impacting violent crime.

Strategies for addressing these sectors could include: public and industry awareness, security programs, improved relations with dealers, carrier involvement, documentation of transfers, mandatory sentencing, and traditional and innovative regulatory and enforcement approaches.

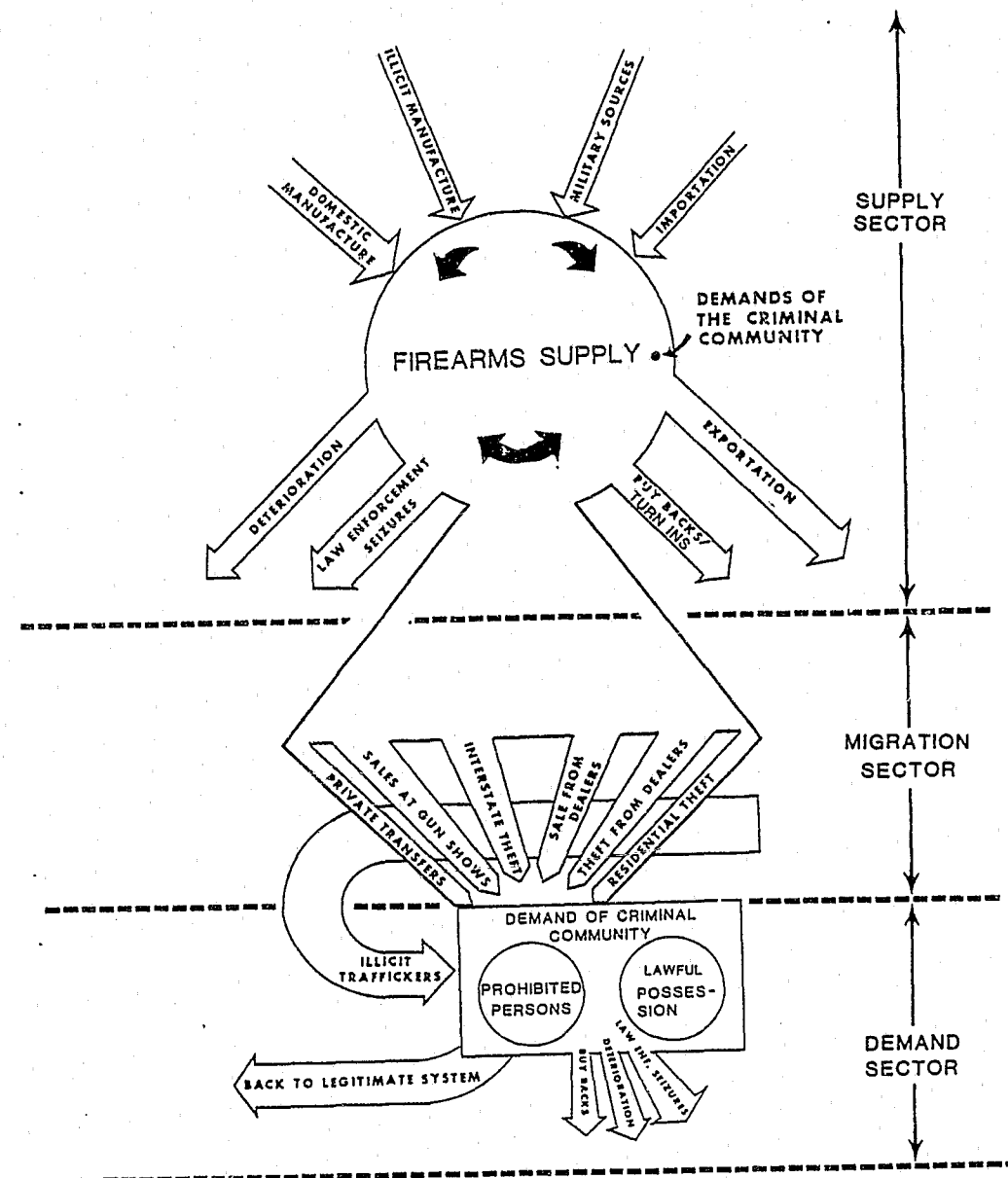


Figure 2

### Impact Sector

Figures 1 and 2 illustrate the movement of firearms from manufacture through the legitimate supply system to the hands of the criminal. To this point any crimes or violations are crimes in which no act of violence is itself involved.

Figure 3 introduces the impact sector in which the criminals use firearms in the perpetration of their substantive crimes. The impact sector has been the focus of traditional law enforcement efforts. Law enforcement action in this sector is reactive, after the fact, and emphasizes the substantive crime rather than the instrument of the crime.

The following observations can be made on Figure 3:

- crimes in the impact sector are malum in se
- law enforcement action is reactive and focuses on the substantive crime rather than the instrument of crime
- the actual commission of a gun crime as represented in the impact sector frequently reflects a failure in the law enforcement and/or regulatory functions
- research is needed on gun crimes and crime guns.

Strategies for addressing the impact sector must build upon previous strategies and could include traditional and innovative law enforcement techniques, mandatory sentencing, improved data collection, enhanced tracing capability, and additional research.

### Comments on the Supply and Demand System

In previous sections we have defined the firearms supply and demand system, made observations on means by which firearms are diverted to criminals both prohibited and non-prohibited, and identified potential law enforcement and regulatory strategies for preventing this diversion.

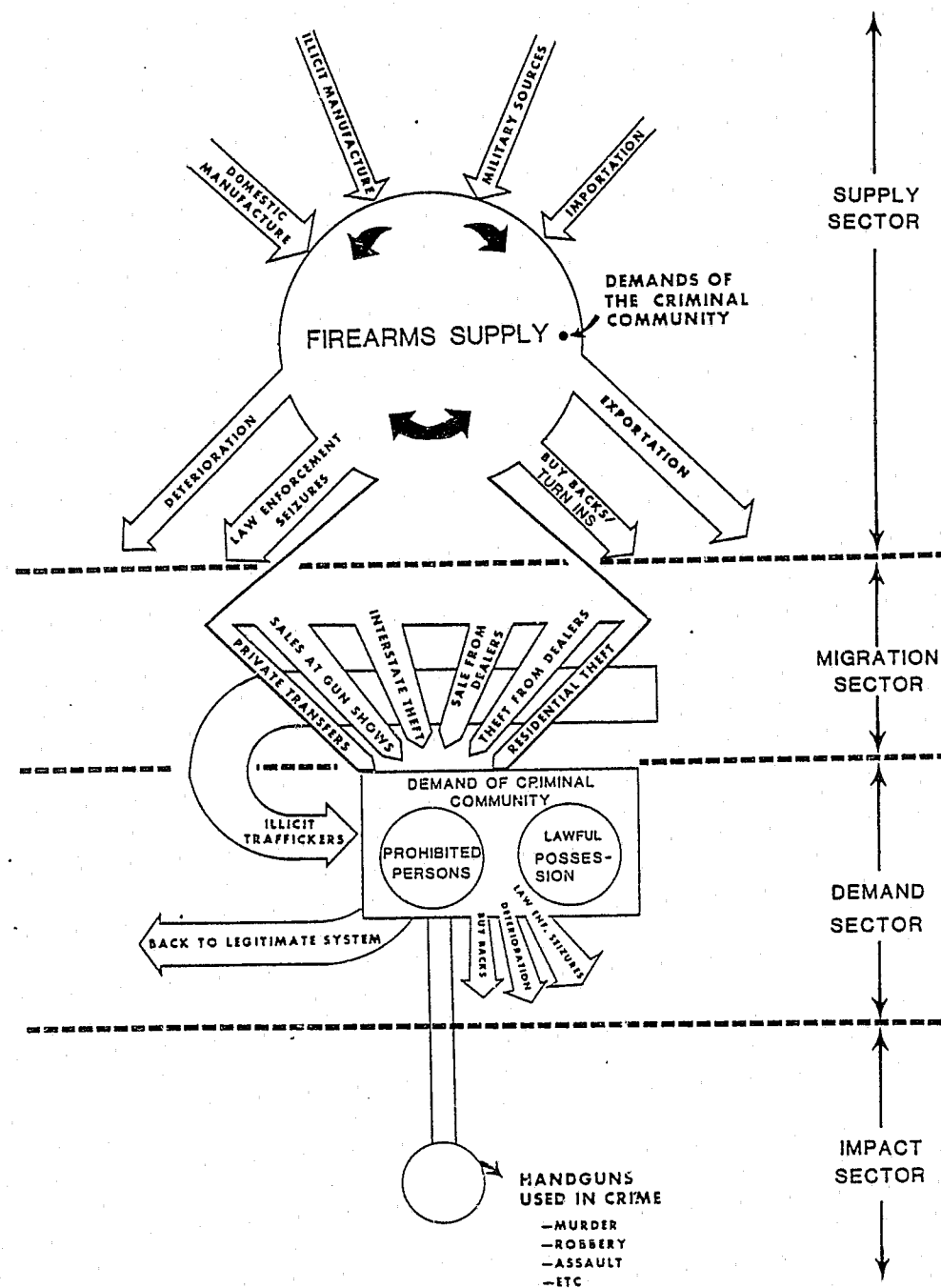


Figure 3

When considering potentially viable alternatives impacting the system, it is important to focus on the interrelationships of one variable to another. For example, institution of a buy-back or turn-in program with no effort to control production or importation of cheap handguns or parts will have little effect if accompanied by an increase in the supply of those weapons. Similarly, a complete ban on production and importation of all firearms may well result in an increase in illicit manufacture or importation, which are currently believed to be negligible sources of supply.

Considering the controversy surrounding the firearms issue, the immense size of the firearms inventory in the United States, and the potential for impacting crime in the migration, demand, and impact sectors, it appears that the most productive law enforcement, regulatory and research efforts can be applied as shown in Figure 4.



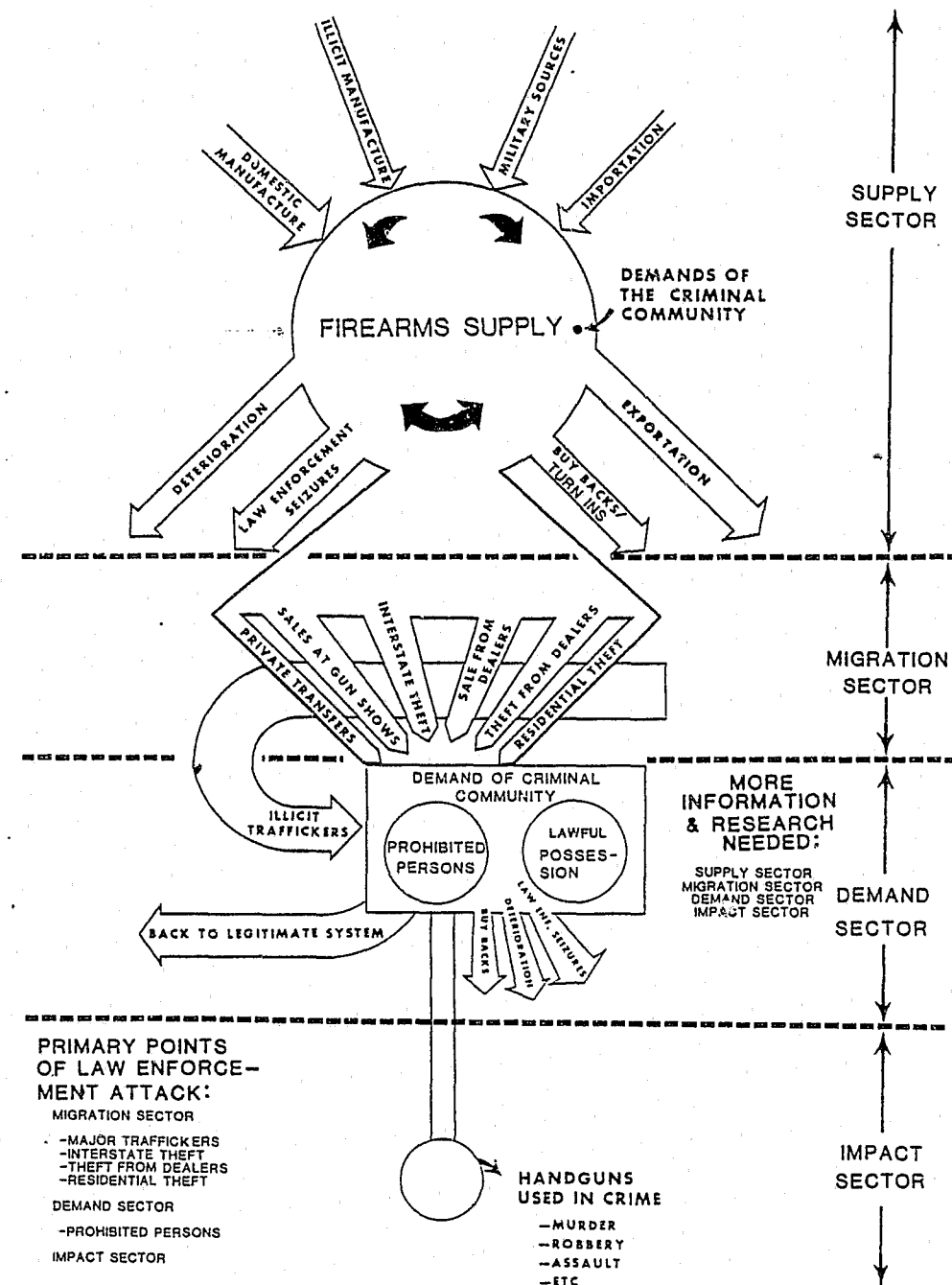


Figure 4

### FIREARMS STRATEGY

Based upon the analysis of the firearms supply system discussed above and on the program objective outlined earlier, ATF has developed the following strategy for its firearms program which is designed to maximize the impact on the firearms crime with minimal disruption on firearms commerce and legitimate use:

- identification and apprehension of repeated or significant suppliers of firearms to criminals through
  - continued investigation of sources of firearms to criminals
  - analysis of information obtained through firearms traces to identify sources of firearms
  - improved intelligence collection, analysis, and dissemination on firearms trafficking patterns
  - continued close liaison with U.S. Customs to identify sources of firearms for illegal export
  - identification of sources of possible diversion of firearms from legitimate commerce to criminal hands
- concentrate ATF activity and support State and local efforts on the elements of the migration sector to prevent the flow of firearms to criminal hands through
  - increased use of the firearms tracing facilities
  - increased liaison with State and local enforcement agencies to identify local sources of firearms
  - increased emphasis on firearms theft prevention from interstate carriers, dealers, and private residences

- perform compliance and application inspections to prevent the acquisition of firearms by criminals and to ensure the integrity of recordkeeping for firearms traces through
  - screening firearms license applications to prevent prohibited persons from gaining entry into the legitimate firearms industry
  - increased compliance inspections on a selected basis of firearms manufacturers, importers, NFA dealers, pawnbrokers, problem dealers, and major volume firearms dealers, identify and prevent potential areas of diversion
  - develop seminars for dealers to ensure the integrity of the recordkeeping system
- assist in the apprehension of major criminals identified by other Federal, State, and local law enforcement agencies who may also be in violation of firearms laws through
  - continued liaison with other Federal agencies, such as the Drug Enforcement Administration, for target identification and investigation
- cooperate with the U.S. Customs Service and Department of State to prevent the illicit export of firearms through
  - continued and improved liaison with Federal agencies to identify and interdict illicit firearms traffickers
  - increased utilization of foreign seizure information to identify firearms smuggling and illegal export patterns and methods
- cooperate with the firearms industry and representatives of other organizations in efforts to develop public awareness and firearms security programs to promote the safeguarding of firearms through
  - seminars for dealers and interstate carriers

- improve the institutional capabilities of State and local law enforcement to combat firearms crime through
  - increased tracing, training, and laboratory support
  - continued liaison with organizations such as the Internal Association of Chiefs of Police (IACP)
  - continued support to State and local firearms enforcement programs and experiments such as the Rochester, New York project
- develop a comprehensive firearms data base and intelligence system on gun crimes and crime guns using information from
  - tracing requests
  - investigative case reporting
  - national intelligence sources
  - State and local intelligence sources
  - National Crime Information Center (NCIC) stolen firearms data.

ATF FIREARMS POLICYPurpose

To define the Bureau of Alcohol, Tobacco and Firearms (ATF) policy in regard to the enforcement of the Federal firearms laws and the regulation of the firearms industry.

Policy

It is the policy of the Bureau of Alcohol, Tobacco and Firearms to enforce the Gun Control Act of 1968 and to regulate the firearms industry as required by the Act in a professional manner consistent with the intent of the Congress as stated in the preamble of the Act. This policy is equally applicable to regulatory inspectors in carrying out the regulatory and compliance aspects of the legislation and to the special agents enforcing the criminal statutes and supporting other Federal, State, and local enforcement agencies.

The Congressional intent in the enforcement of this legislation is clearly presented in the preamble to the Act, which stated: "Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

In order to ensure effective and equitable enforcement of firearms laws and regulation of the firearms industry, ATF has developed specific policy in the following areas:

- regulation: licensing, inspection, education
- enforcement of Federal firearms laws
- cooperation with and support to Federal, State and local agencies (including gun tracing)
- firearms seizure policy.

Regulation Policy

The purpose of regulation is to ensure that applicants meet all requirements for obtaining a license, and that licensees are aware of their rights and responsibilities for conducting their business and maintaining records necessary for firearms tracing and other law enforcement purposes in accordance with the Gun Control Act of 1968.

To meet that goal, it is, therefore, the ATF firearms regulation policy that:

- available resources will be used to ensure that applicants meet all requirements of the Act
- licenses to all qualified applicants, or notices of denial to those disabled under the Act, will be issued promptly and within a 45-day period
- applicants and licensees will be advised of their rights and responsibilities as firearms licensees
- a program of licensee education by inspection and other means of contact will be developed and administered to reinforce the concept that compliance with the Act is an integral part of the nationwide crime-control effort
- any evidence of criminal involvement by applicants or licensees will be referred for criminal investigation.

It is not the policy of ATF to artificially control or otherwise limit the number of complying dealers as that is not the policy reflected in existing statutes.

#### Enforcement Policy

ATF authority for firearms enforcement is derived from the Federal firearms statutes. The purpose of the legislation is to prevent crime and violence, to halt illegal international and interstate trafficking of firearms, and to keep firearms from the hands of criminals.

It is, therefore, the ATF enforcement firearms policy to:

- enforce the applicable Federal firearms statutes in a professional manner consistent with the intent of the Congress as expressed in the preamble to the Gun Control Act of 1968
- emphasize those violations which have the greatest potential to impact on crime, and to disrupt illegal firearms activity to include the following:
  - illegal international trafficking in firearms within ATF's jurisdictional authority
  - illegal interstate trafficking in firearms
  - repeated suppliers of firearms to criminals
  - concentration on illegal firearms activities of organized crime
  - significant criminal violations involving the manufacture, possession and transfer of gangster-type weapons
  - cooperation with other Federal, State, and local enforcement agencies in firearms enforcement providing the request for assistance is consistent with the cooperation policy outlined below.

Professional and effective enforcement of the firearms laws requires the application of resources to those functions which are of primary importance and have the potential for providing maximum results. The priorities outlined above are consistent with this philosophy. Use of straw man investigative techniques or the investigation of gun show or flea market activities require specific justification and the approval of the Director or his designee.

#### FEDERAL, STATE, AND LOCAL COOPERATION POLICY

Effective firearms enforcement and regulation cannot be accomplished by ATF alone. In fact, the primary responsibility for the reduction of violent street crime, the enforcement of local gun control statutes, and illegal intrastate trafficking in firearms is with State and local authorities. At the Federal level responsibility for firearms enforcement is also shared among agencies such as the FBI, Customs, and the Department of State. Good management, common sense, and good law enforcement practices demand the cooperation of all law enforcement organizations at every level to curb illegal trafficking in firearms and minimize the availability of firearms to the criminal element.

It is, therefore, the ATF policy on cooperation with other agencies to:

- provide technical support to all jurisdictions on a timely basis with particular emphasis on gun tracing
- utilize the unique ATF authority in firearms enforcement to assist other Federal, State, and local authorities including the U.S. attorney in their fight against violent crime and organized crime
- cooperate with other Federal agencies and other countries in the fight to suppress illegal international and interstate trafficking in firearms to the extent ATF has jurisdictional authority.

The cooperation policy outlined above will ensure proper coordination and best application of resources at every level of government. Services and capabilities of ATF will be available to other jurisdictions in their effort to accomplish their assigned responsibilities where appropriate and when consistent with the overall ATF policy. If requests for ATF cooperation and assistance are in conflict with ATF policy or priorities and the issue cannot be resolved at the local level, the question should be referred to Headquarters.

#### Firearms Seizure Policy

In the execution of its firearms enforcement and regulation responsibilities, ATF has occasion to seize large numbers of firearms. Those firearms and other devices used in crimes or with criminal intent are the target of ATF's seizure activity. However, in the absence of criminal intent, seizure of the firearm may not be the most equitable resolution of the case.

It is, therefore, the ATF firearms seizure policy to:

- handle and maintain all seized firearms in such a manner as to ensure their preservation in their original condition prior to seizure
- seize only those weapons involved in criminal offenses or the object of criminal investigation as opposed to wholesale seizure of the entire stock in trade unless either the public safety is jeopardized or the individual is a prohibited person.

Further, it is the ATF policy in regard to Title II firearms to pursue other available alternatives in the absence of criminal intent such as the following:

- voluntary abandonment of the firearm to ATF for disposition
- allow request for modification of the firearm to remove it from the NFA classification; such modification done with prior approval of ATF but at the individual's expense, machineguns are excluded from this provision

- donation of the firearm to a Federal, State, or local government agency, museum or historical society for display purposes providing the museum or historical society is an instrument of a Federal, State, or political subdivision, and the Federal, State, or local government agency referred to above must be involved in criminal investigations, this is also done at the expense of the organization
- if the person refuses to comply with one of the options listed above, ATF has no recourse but to seize the firearm.

#### Conclusion

The ATF policy outlined herein is intended to provide guidance to operational and management personnel at all levels. All personnel should be familiar with and will be held accountable for compliance with this policy.

Mr. DICKERSON. Basically, Mr. Chairman, we have identified the supply sector which represents the total universe of weapons we have, and the migration sector, which is the way the weapons move from legal use into illegal hands.

There are six primary means by which this takes place. Interstate shipments, thefts from private residences, sales at gun shows, flea markets, private transfers, and dealer sales. We are trying to look at each of these and come up with a strategy to deal with each that will have impact on the illegal trafficking in weapons.

The demand sector is that which represents the arsenal of weapons in criminal hands, and the impact sector represents the actual use of firearms in crime.

It is in the demand sector that we are trying to use the Gun Control Act to prevent criminal misuse of weapons and in the impact sector to deal with those who have already criminally misused weapons.

We have developed a comprehensive strategy for carrying out our firearms enforcement and regulatory responsibilities. We attempt to concentrate our efforts on major sources of guns for criminal use and on the interjurisdictional trafficking in guns outside of the reach of the local authorities.

Our priorities focus manpower commitment, toward the most severe, involved, and flagrant violations which State and local government officials are unable to address.

The program is complementary. It is designed to fill a void in the jurisdictional authority of State and local law enforcement agencies by interdicting the interjurisdictional flow of firearms.

I might describe one area where law enforcement does not lend itself to dealing with what is a severe problem.

The area of residential thefts is one that goes beyond the scope of existing statutes. Over 200,000 guns are stolen in residential burglaries each year. Many end up in criminal hands.



One study which was done in a large metropolitan area recently indicated that more than 50 percent of weapons stolen in residential burglaries are actually used in the commission of violent crimes.

Recognizing this as a major source of crime guns, we are working with others involved in the gun issue, law enforcement agencies, gun control groups, and those involved in protecting the rights of the use of guns, to develop a firearms security and public awareness program in which we hope to be able to deal with this problem.

We are encouraging firearms owners and dealers to protect their firearms, record their serial numbers, report thefts to the local police.

We are also working in this way with dealers in a voluntary program, working with dealers through toll free information phones, newsletters, and seminars provided for dealers to encourage better voluntary compliance and awareness of their responsibilities and contributions that they can make under the Gun Control Act.

Our current strategy of concentrating on major traffickers and significant criminals has necessarily resulted in the perfection of more complex, significant cases, requiring more staff hours per case.

But while we have fewer cases, by concentrating on major problem areas I believe that we will make more significant cases, and I believe that we will better achieve our objective in reducing the criminal use of guns.

As I indicated earlier in my statement, in enforcing the Gun Control Act, this Bureau attempts to reflect both the enforcement needs of the Nation and the rights of individual citizens.

In this regard, we continually review our enforcement and regulatory practices to assure they are as effective as possible while being reasonable in their impact.

We have made several adjustments recently which I would like to bring to your attention.

First, because of criticism in the Senate by the National Rifle Association and other organizations that our regulations were deliberately vague, we have moved to attempt to better define the phrase "engaged in the business of dealing in firearms."

We have sent out a notice to the public asking for their views as to how we can better define this, and we have received a sizable response to this.

We are currently evaluating the comments which we have received. Senator DeConcini asked me to attempt to define this, and we are attempting to do so.

We have also issued an advanced notice concerning appropriate penalties for dealers who fail to comply with the requirements of the Gun Control Act. Presently the only administrative recourse we have is a warning letter or revocation of a dealer's license. Revocation is a serious matter, and puts him out of business.

We are seeking advice on the wisdom of also having recourse to suspension for those cases not serious enough to warrant revocation, but falling in the middle ground. Not to increase the number

of actions that we take, but to provide a less severe action to us where the type of violation is less serious.

We have recently completed a substantial reorganization of both our Office of Internal Affairs and our Office of Criminal Enforcement. Changes I have made to provide more direct oversight and control of our field activities, changes I have made to put into the field, personnel from our Internal Affairs Office who can be aware of allegations, of derelictions on the part of ATF agents and rapidly move to deal with those allegations.

To assure both the public and Congress concerning questions relating to certain types of undercover investigations, only I or my deputy can authorize the use of strawman investigative techniques or approve the investigation of licensed dealers or gun shows.

Mr. Chairman, I have authorized the strawman technique one time in the last 15 months.

This will insure that these techniques are used only when ATF has reason to believe there is specific criminal misconduct. Such investigations are reviewed by me or my deputy, each case, on a case-by-case basis.

We have moved to re-examine our definition of certain weapons, many of which are sought by collectors, but which are now classified as destructive devices to see if we can make these available.

To better preserve weapons which have been seized as evidence, we have entered into a contract for purchase of special protective bags into which all seized firearms will be immediately sealed.

However, even more important than that, I have issued instructions to restrict seizure of weapons only to those which are directly related to a criminal offense, which will greatly reduce the number of weapons seized.

We have also taken steps, when permitted by law, to promptly return seized firearms in those cases where a defendant is acquitted of criminal charges; I also issued guidelines regarding the taking of civil action against a licensee after dismissal or acquittal on criminal charges. This could only be done in extreme circumstances, such as where during plea bargaining the U.S. attorney may direct us to proceed administratively on what had been submitted as a criminal case.

I have issued a notice to the public soliciting their views on permitting legitimate authorized dealers to make sales at gun shows. Our view is that the use of this would provide a better record of sales that take place at gun shows, and also assist by eliminating the profit motive on illegal sales that are now made by those operating without legitimate license.

I believe that these changes demonstrate the willingness of ATF to respond to changing situations and to the concerns of the Congress. Many of these concerns are contained in some of the bills that you are considering.

I believe true progress in controlling the criminal misuse of weapons in our society must be a product of cooperation, cooperation between the Congress, the law enforcement community, the legitimate firearms industry, and the public. We stand ready to cooperate with all those bodies in trying to do a better job.

I also assure you that we will provide you whatever information we have that you may need.

Mr. Chairman, I would like to conclude my testimony by addressing several issues which you have certainly heard many times before.

Since I became Director of this Agency in February of 1979, I have appeared numerous times before the House and Senate to respond to allegations of impropriety which have been alleged about ATF. I believe any enforcement agency must be able to meet the test of serious scrutiny for its actions.

Congress certainly has a right to conduct continuing oversight over this Agency, and I welcome the opportunity to explain the job we do.

I would be first to say that given the fact that we conduct in excess of 8,000 investigations a year, there is no way that any agency could say that it would not at some time make mistakes, make errors, make mistakes in judgment in its actions.

However, I do find that I am asked to address in many instances the same issues over and over again. Every case that has been brought to my attention I have exhaustively investigated. Many of these cases investigated by the committees have been investigated by our Office of Internal Affairs, and in some instances by Federal and local prosecutors.

I am not aware of any case in which it has been substantiated that there has been a violation of civil liberties on the part of ATF employees. I admit in some instances that the severity of the alleged violation may, in the eyes of some, have warranted criminal prosecution.

In one instance a gun organization issued a so-called fact sheet to Members of Congress alleging numerous cases of ATF abuse. I directed that each of these allegations be investigated and answered with our response on a case-by-case basis.

Mr. Chairman, I would like to submit those allegations and our response for the record.

Mr. CONYERS. Without objection, ordered.

[The information follows:]

1. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JANUARY 20, 1977

"BATF agents entered the home of Patrick Mulcahey and confiscated his entire collection of firearms which was valued at over \$15,000. Included in the guns confiscated were a shotgun given to Mulcahey when he was 11 by his grandfather, the first .22 calibre rifle he bought for himself when he was 15, and a custom engraved rifle worth over \$1000. Mulcahey was acquitted by a judge and jury of all charges against him. But BATF has refused to return his guns and have been holding them two years now since the trial."

ATF response

Twenty-one of the guns possessed by Mr. Patrick Mulcahey in his "collection" were stolen firearms. These stolen firearms along with 85 others were seized on January 20, 1977, from Mr. Mulcahey under authority of a Federal search warrant issued by the United States Magistrate. This seizure culminated an ATF investigation into the firearms activities of Mr. Mulcahey.

On January 13, 1977, based on the ATF investigation, Mr. Patrick Mulcahey was indicted by a Federal grand jury. On March 9, 1977, ATF authorized the United States attorney to commence forfeiture proceedings against those firearms owned by Mr. Mulcahey.

On March 16, 1977, Mr. Mulcahey was acquitted in Federal Court and steps were initiated to return the stolen firearms to their rightful owners. On March 31, 1977, the United States attorney filed a complaint against Mr. Mulcahey's firearms and on April 14, 1977, the United States Marshal's office executed a warrant of arrest

against the firearms. This action removed Mr. Mulcahey's firearms from ATF control, and since that date they have been in the custody of the Court.

2. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JULY 1972

"Alcohol, Tobacco, and Firearms Division of IRS becomes a full Treasury Bureau under the name of Bureau of Alcohol, Tobacco, and Firearms. In its first year as a Bureau it is staffed by 1,622 special agents, inspectors, and supporting staff."

ATF response

In July 1972, the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service was given Bureau status under the Treasury Department and became the Bureau of Alcohol, Tobacco and Firearms. The staffing in July 1972 was a total of 3,749 employees comprised of 1,630 special agents, 856 inspectors and 1,263 other supporting staff.

In August 1979, the staffing included 1,524 special agents, 676 inspectors and 1,629 supporting personnel totaling 3,829 employees.

3. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., OCTOBER 4, 1977

"As has happened to dozens of other law-abiding Gun Dealers, BATF rigged the arrest of H. W. Phillips, a Parksley, Virginia Gun Dealer, by making him the subject of a "strawman" sale.

An undercover BATF agent, presenting Delaware identification, tried to buy a gun from Phillips. Phillips refused to sell him a gun because it was illegal for him to sell firearms to a non-resident. Even though the BATF agent tried to force Phillips to violate the law, he did not succeed. The agent later returned with Virginia identification, but Phillips again refused to sell him, believing that the credentials were falsified. BATF then sent in another BATF agent who was a Virginia resident, to try and buy the gun the nonresident was unable to buy. The agent presented proper I.D. and Phillips sold him the gun. The gun was then transferred by the resident to the non-resident and BATF agents then arrested Phillips for selling a nonresident.

In the trial that followed, the judge dismissed all charges against Phillips. But, these are the sort of tactics BATF will use to harass law-abiding Gun Dealers.

Another trick used by BATF to entrap Gun Owners and Collectors is for the agent to tell the dealer that he has Mafia connections—and that unless the dealer sells to him—he'll get his Mafia friends to go after he and his family. Then once the dealer sells to the agent after he and his family have been threatened the dealer will be arrested for making an illegal sale."

ATF response

ATF conducted investigations in 1974 and 1975 which resulted in convictions in the Federal Courts of three individuals for the illegal acquisition of firearms. ATF received signed sworn statements from four individuals that Mr. Phillips aided one of the defendants in the illegal acquisition of 38 firearms which continued their illegal movement in interstate commerce. Additionally, Mr. Phillips, doing business as Jaxon's, Inc., was warned on at least five occasions by an ATF agent of the requirement to obtain proper identification from firearms purchasers.

Four firearms recovered by ATF or local police in New Jersey, Pennsylvania, and Kentucky were traced to Jaxon's, Inc. These firearms were involved in crimes to include attempted armed robbery, assault, and multiple homicides.

In 1977, based on the aforementioned, ATF initiated an investigation of this dealer. Out of state undercover officers acquired four firearms from Mr. Phillips through the use of a "straw man" and evidence of numerous GCA recordkeeping violations were found in Jaxon's, Inc.'s records. Mr. Phillips was found not guilty in Federal court.

In 1973, an allegation was made that an ATF agent used threats in an attempt to cause an individual to illegally sell firearms. The special agent was suspended while ATF conducted an investigation and determined that the allegations were factual. ATF prepared a criminal case and recommended criminal prosecution of the agent. The agent was prosecuted and convicted of sending threatening communications through the mail. ATF terminated the employee.

Such activities, while both illegal and immoral are also counterproductive to successful criminal prosecutions and are not condoned by ATF.

4. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., APRIL 13, 1978

"Frank Chismar, Joseph Paolucci, and Miss Brenda Thomson, all neighbors in Yonkers, New York, had their automobile run off the road by several carloads of

undercover BATF agents. In a beating that was described by one eyewitness as "brutal, unmerciful, and vicious," Chismar was pistol whipped, kicked, and punched by BATF agents till he lost consciousness. Miss Thomson had her hands cuffed behind her back and was forced to kneel by the side of the road.

The BATF agents—supposedly looking for a lost pistol never identified themselves. And when Paolucci told them he was going to report them to the local police, one BATF agent told him that "if he knew what was good for him, he'd keep his mouth shut."

No firearms of any kind were found on Chismar, Paolucci, or Miss Thomson."

#### ATF response

This allegation arose from circumstances surrounding an attempt by ATF special agents to execute Federal arrest warrants on two individuals for the theft of government property.

Independent investigations into the alleged incident of April 13, 1978, were conducted by the FBI, the Civil Rights Division (criminal section), Department of Justice, the Westchester County District Attorney's Office, ATF Office of Inspection and the New York City Police Department.

The Civil Rights Division presented evidence obtained during the course of its investigation to a Federal grand jury. No action against the agents was taken by the grand jury.

In a letter dated July 13, 1979, the Westchester County District Attorney stated, "We find that there is insufficient evidence to warrant presentation of the matter to a grand jury. Our inquiry is closed."

In that there is an internal investigation continuing and civil litigation pending by Mr. Chismar, et al, against the agents, and, also, by the agents against Mr. Chismar, et al, any further comment would be improper.

#### 5. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., MAY 1976

"BATF agents in New York, San Francisco, and Atlanta actively participated in an anti-gun political demonstration sponsored by National Coalition to Ban Handguns."

#### ATF response

In 1976, The National Coalition to Ban Handguns did have a program in New York, Chicago, San Francisco, and Atlanta whereby individuals could voluntarily turn in their firearms to that organization. An organization representative contacted ATF with a request that the Bureau participate by accepting those abandoned firearms for disposition. ATF did not participate in this program.

ATF neither supports nor opposes handgun control and has taken no position on either side of this issue. The sole objective of ATF is to impartially enforce laws which are passed by Congress.

#### 6. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JANUARY 1977

"BATF agents burst into the home of a Maryland man who had been confined to a wheelchair since 1970. The man was held at gun point while six BATF agents ransacked his home. Supposedly looking for sawed-off shotguns, the BATF agents read his mail, destroyed personal property, and confiscated his son's legal Montgomery Wards shotgun."

#### ATF response

On January 4, 1977, a Federal search warrant was executed at the residence of a convicted felon in Glen Burnie, Maryland. The warrant required a search for sawed-off shotguns in violation of Title II of the Gun Control Act and firearms in possession of a convicted felon in violation of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968.

The subject of the investigation was in a wheelchair when the warrant was served. No sawed-off shotguns were found, however, one full length shotgun was found in the subject's bedroom. This firearm was seized by ATF. A subsequent trace of the firearm indicated that his wife had purchased the firearm in 1974.

On March 29, 1977, the United States attorney advised the subject that, in his opinion, the subject, a convicted felon, was in actual or constructive possession of a firearm and was therefore in violation of Federal firearms laws. However, due to the subject's physical condition and the age of his prior felony conviction, his office had decided not to prosecute.

On April 27, 1977, the United States attorney's office notified ATF that, in their opinion, the firearm seized on January 4, 1977, was in the constructive possession of

a convicted felon and that its return would be inappropriate. They recommended that the firearm be administratively forfeited to the United States.

#### 7. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JUNE 1975

"BATF agents in the Southeast were informed that the Bureau's expensive computer system was not receiving enough data. Agents were told by their bosses to collect all available information. Lists of associates, license tag numbers, as well as the telephone and social security numbers of law-abiding Gun Owners were fed into the BATF computer. Some reports on Gun Owners that BATF had on file even included floor maps of their homes!"

#### ATF response

ATF utilizes the Treasury Enforcement Communication System (TECS) as an index for both criminal and noncriminal investigations. It includes names of individuals and businesses coming within the purview of ATF jurisdiction.

When search warrants are executed, "maps" of the rooms searched are usually made so locations where evidence is found can be displayed later in trial. These "maps" are retained in the files as evidence. However, ATF has no policy of making or maintaining floor maps of gun owners not involved in criminal activities.

#### 8. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., 1969

"After passage of the "Gun Control Act of 1968" the Alcohol, and Tobacco Division of the Internal Revenue Service becomes the Alcohol, Tobacco, and Firearms Division."

#### ATF response

The Alcohol and Tobacco Tax Division of the Internal Revenue Service was delegated authority to enforce the Gun Control Act of 1968, and in 1969 became the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service.

In 1972, ATF gained Bureau status within the Department of the Treasury and became the Bureau of Alcohol, Tobacco and Firearms.

#### 9. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JULY 1977

"BATF Executive Director, Rex Davis, submits legislation to Congress that would authorize BATF to "tag" all gunpowder with a chemical that could be detected with a mechanical "sniffer" carried by BATF agents. Under the proposed legislation, BATF agents could use their mechanical "sniffers" to detect arms and ammunition in the average citizens home. And it would establish federal record keeping for every ounce of powder sold in the United States—from the manufacturer all the way through to your home."

#### ATF response

The Bureau of Alcohol, Tobacco and Firearms has been conducting research to determine if taggants placed in explosives could be used to identify sources of explosives after use in a crime or to detect explosives which are intended to be used in a crime (e.g. aircraft hijacking.) Identification taggants are microscopic bits of coded plastic which are mixed with explosive material at the time of manufacture. Detection taggants are comprised of allergens which emit a vapor detectable by mechanical sniffers and would permit identification of explosives on persons or in baggage of persons entering restricted areas. *The system could not identify arms or commercial ammunition.* No additional recordkeeping by dealers would be required since existing records show distributions to retailers and purchasers.

#### 10. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., NOVEMBER 1977

"BATF launches "Operation Score." Federal agents conducted early morning raids in 30 cities in 8 states. Over 1000 firearms were confiscated including valuable antique shotguns and commemorative collections—guns that are rarely ever used in crimes.

In a press conference following the raids BATF Executive Director, Rex Davis, announced that "gun shows were a major possible source of guns for law breakers and that the purpose of the raids was "to keep guns out of the hands of criminals . . . ." However, to our knowledge, no indictments have been returned and no criminals have been taken off the streets as a result of BATF's massive gun-grab "Operation Score."

In fact while most anti-gunners at BATF readily admit that so called "Saturday Night Specials" are used in the highest proportion of crimes. Less than 5% of the

thousands of guns BATF has confiscated can be classified as "Saturday Night Specials." Over 50% of the guns BATF has confiscated were rifles and shotguns!"

*ATF response*

During 1977, ATF conducted a series of investigations in an eight state area that came to be known as "Operation Score."

These investigations resulted in the seizure of 1,148 firearms and the indictment of 21 individuals. Those indicted were charged with dealing without a license or dealing away from a licensed premise.

Of the 21 indicted, 15 pled guilty, 3 were found guilty at trial, and 1 pled nolo contendere; prosecution was declined on two individuals after indictment.

11. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JULY 16, 1974

"For no apparent reason, BATF agents—with fully automatic M-2 carbines—surrounded Jensen Custom Ammunition, one of the largest suppliers of sporting goods in the State of Arizona. BATF agents entered the store, frisked all employees, and required all customers to present identification before being permitted to leave. Firearms and personal business records were confiscated."

*ATF response*

ATF agents were not present nor did they participate in the execution of a search warrant at Jensen's Custom Ammunition on July 16, 1974. This warrant was executed by another Federal agency.

12. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JUNE 3, 1978

"Twenty armed BATF agents raided the San Jose Gun Collectors Show. Hundreds of law-abiding Gun Owners and Gun Dealers were held against their will for nearly 2 hours. BATF photographed gun exhibitors and bystanders and forced everyone present to sign "warning" forms issued by BATF."

*ATF response*

On June 3, 1978, ATF participated with local authorities in an enforcement operation at the San Jose Gun Show. The purpose of this operation was to ensure compliance with the Gun Control Act of 1968 and the laws of the State of California.

Due to civil litigation which is presently pending in the United States District Court, it would not be appropriate to comment on any of the facts in this case at the present time.

13. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., OCTOBER 30, 1978

"In a para-military style operation, BATF agents invaded the Kirkland, Washington neighborhood of Mr. and Mrs. Elmer Tungren. A four block area was sealed off, neighbors were evacuated, and the Tungren home was surrounded. The Tungren home was then ransacked while the Tungrens were held at gun point with automatic rifles. A thorough search of the Tungren home revealed only a few rifles and a .22 calibre target pistol—all of which were properly registered.

Following the raid, Mr. Tungren told the press "It was like a bunch of storm troopers. We don't need this in our country." Then a lawyer from the American Civil Liberties Union—an organization that normally sides with the anti-gunners—told newsmen "it sounds about as serious an action the government can take on a family."

*ATF response*

On October 30, 1978, the King County Police executed a State search warrant directing them to search for hand grenades, a pipe bomb and illegal firearms at the Tungren residence. One ATF agent, on a request for assistance, and after verifying that the search warrant met Federal standards, accompanied the police to the residence. ATF did not participate in the initial entry or the service of the warrant. After the police made their entry one ATF agent entered the premises. No illegal items were found. ATF did not participate in the pre-raid investigation. This case is currently under litigation in the King County, Washington, Superior Court.

14. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., MARCH 22, 1978

"BATF Executive Director, Rex Davis proposed a nationwide gun registration file that would give BATF access to the name and address of every Gun Owner in the country."

*ATF response*

This is not true. In March 1978 the Director of ATF did propose additional firearm regulations. These regulations would have required:

1. Unique serial numbers on each gun manufactured or imported.
2. Prompt reporting to ATF of all thefts from licensees.
3. Quarterly reporting to ATF of all commercial firearm dispositions between licensees, and quarterly reporting by retailers of firearms sold, without identifying the purchaser.

These proposed regulations did not require the reporting of the names or addresses of any private citizen gun owners or purchasers.

The regulations were never implemented in any form, and there are no present plans to implement them.

15. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., MARCH 10, 1978

"Following criticism of some of BATF's illegal actions by the National Rifle Association, two BATF agents retaliated by confiscating 3 inoperable rifles and two pistols from the display cases at the NRA Museum in Washington, D.C."

*ATF response*

In March 1978, ATF seized seven unregistered Title II firearms that were displayed by the NRA in their firearms museum in Washington, DC. The weapons were seized after a determination was made that four of the weapons were machine-guns, one was a short barreled rifle and two were destructive devices, none of which were registered to the NRA. The NRA took the position that the weapons were not required to be registered under the Act. ATF, charged with impartially enforcing the laws as enacted by Congress, instituted forfeiture proceedings against the firearms and the matter is currently under litigation in the United States District Court.

16. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., NOVEMBER 24, 1977

"BATF agents raided Gus Cargile's home in Corpus Christi, Texas and confiscated 187 firearms. During the raid, agents dropped firearms—many of them valuable antiques on a concrete floor. Then Cargile watched his valuable firearms get dented, chipped, and scraped as BATF agents piled his guns "like cordwood" in the front yard.

All charges against Cargile were dropped and a Federal Court ordered the return of all Cargile's guns. But BATF refused to give them back. It took Cargile 5 months and a costly law-suit just to get his guns returned. Then when they were finally returned, they were all rusted because BATF had stored them in a damp warehouse.

Another Gun Owner in Colorado had his collection confiscated and he watched while BATF agents removed each gun from its padded carrying case, then pitched them across the room into a pile. Among the firearms so treated was the collectors pride—a Parker shotgun valued at \$10,000."

*ATF response*

In September of 1976, information and observations led ATF to believe that Mr. Gus Cargile, Jr., was dealing in firearms without being licensed as required by law.

On September 22, 1976, Mr. Cargile was advised by ATF that to be in compliance with the law, anyone engaging in the business of dealing in firearms must be licensed under the Gun Control Act of 1968.

A subsequent investigation resulted in the purchase of six firearms from Mr. Cargile and associates and the identification of Mr. Cargile's display of over 100 firearms as being for sale.

On November 24, 1976, United States Magistrate Phillip A. Schraub found sufficient probable cause to issue a Federal search warrant for the residence of Mr. Gus Cargile, Jr. On that same date, ATF executed the search warrant and seized 186 firearms, one of which was a machinegun not registered to Mr. Cargile as required by law.

On February 10, 1977, ATF recommended to the United States attorney that Mr. Cargile be prosecuted for illegally engaging in the firearms business and illegally possessing a machinegun not registered to him as required by law. Sworn statements relative to Mr. Cargile's alleged illegal firearms activities were obtained from 11 private individuals and included in the investigative report.

On March 1, 1977, Mr. Cargile filed a motion for the return of the seized firearms. The hearing on this motion was held on March 10 and 11, 1977.



On March 14, 1977, Magistrate Schraub then found that no probable cause existed for the issuance of the search warrant and ordered the return of all the firearms, except the machinegun, to Mr. Cargile.

On March 16, 1977, ATF recommended to the United States attorney that he initiate proceedings to stay the effective date of the Magistrate's order pending an appeal. On this same date, ATF authorized the United States attorney to initiate judicial forfeiture proceedings against the seized firearms.

On March 17, 1977, the United States District Judge ordered ATF to show cause why it should not be held in contempt for not complying with the Magistrate's order.

On March 22, 1977, the United States attorney's office declined to prosecute the criminal case stating that there was a "lack of jury appeal" and "insufficient evidence."

On March 24, 1977, the United States District Judge ordered ATF to comply with the prior order of Magistrate Schraub. On that date, all seized firearms, with the exception of the Machinegun, were returned to Mr. Cargile. The return of the firearms, 10 days after the Magistrate's order, was within the time period allowed for the government to appeal that order.

There is no deliberate attempt on the part of ATF to damage firearms that are not the property of the United States.

17. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., NOVEMBER 10, 1976

"Van Buren County (Iowa) Historical Society's World War I gun collection is confiscated by BATF agents even though all firearms were welded to make them inoperable."

*ATF response*

The National Firearms Act, as amended by Title II of the Gun Control Act of 1968, requires all machineguns to be registered with the Secretary of the Treasury. The firearms in this matter had not been registered as required by law. When ATF became aware of the fact that the Van Buren County Historical Society possessed four such firearms, ATF sought to resolve the matter to the satisfaction of those concerned, while at the same time complying with the requirements of the law. The firearms were temporarily taken into ATF custody while efforts for a satisfactory resolution were pursued. On March 21, 1977, the firearms were legally registered. They are currently displayed by the Van Buren County Historical Society.

18. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JUNE 1971

"Without warning, four BATF agents, on a "routine inspection," kicked down the door of Ken Ballew's Maryland home. Ballew was shot four times by BATF agents and is now paralyzed for life. It was later discovered that all firearms in Ballew's collection were properly registered and legal."

*ATF response*

On June 7, 1971, ATF agents and local police executed a Federal search warrant at the Silver Spring, Maryland, residence of Kenyon Ballew. Ballew was shot and seriously wounded by a Montgomery County police officer when he confronted the search team with a revolver. During the search of Ballew's residence, agents seized (among other items) a fused practice fragmentation hand grenade, a fused plastic baseball type grenade, a fused smoke/gas grenade canister and several cans of smokeless powder.

During the trial in United States District Court, District of Maryland, Judge Alexander Harvey II, in a Federal Tort Claims action, held that under the evidence presented, "Federal agents acted reasonably and in exercise of due care in procuring the search warrant, in planning the search and in actually carrying it out." The Court ruled that the officer, in firing his pistol at Mr. Ballew, was acting reasonably under emergency conditions then existing in order to avoid injury to himself and that Ballew's injuries were the direct results of his own contributory negligence. In addition, the Court found . . . "that these 3 grenades together with the powder seized were in combination both designed and intended to be used as destructive devices."

Judgment was found in favor of the government and affirmed by the Fourth Circuit Court of Appeals. A petition for a writ of certiorari was denied by the United States Supreme Court.

19. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., AUGUST 1976

"David Moorhead, a disabled Vietnam veteran and local gun smith, had his shop raided by five BATF agents. All his firearms were confiscated and he was charged with possession of an M-14 rifle which was completely inoperable and on public display in his shop. BATF prosecuted, but the Judge dismissed all charges against Moorhead."

Two years after the trial Moorhead stated that he had not returned to the gun smithing business. He explained, "It is a sorry thing to say, but I'm too afraid of my own government."

*ATF response*

In 1975 ATF received information that David Allen Moorhead possessed an unregistered M-14 machinegun. A search warrant for the firearm and an arrest warrant for Moorhead were then sought and issued. In November 1975, both warrants were executed. Moorhead, a disabled veteran, was ambulatory when the warrant was served. Moorhead was treated in a professional and courteous manner throughout the entire period of arrest, processing, and appearance before the Magistrate. Moorhead himself acknowledged that fact to the arresting agent.

On January 14, 1976, the United States Attorney presented evidence against Mr. Moorhead to the Federal Grand Jury and on that date a true bill was returned.

On April 8, 1976, the Court entered a judgement of acquittal on a defense motion for dismissal. All of the firearms were returned to Mr. Moorhead or other rightful owners.

20. "FACT" AS PRESENTED BY GUN OWNERS OF AMERICA, INC., JULY 29, 1975

BATF Director Davis announces his intention to "tighten BATF's regulation of licensed firearms dealers" to "reduce the numbers of firearms dealers from the present 159,000 to about 30,000. This reduction," said Davis, "will make their regulation more manageable".

*ATF response*

There is no ATF policy or effort to reduce the number of legitimate licensed firearms dealers. In 1976, Congress considered H.R. 11193 which would have tightened requirements for dealer qualification. Those requirements were designed to limit firearms licenses to those who are bonafide firearms dealers. No such legislation was enacted. The number of licensees has increased from 159,000 in 1975, to approximately 170,000 in 1979.

Mr. ASHBROOK. Mr. Chairman, since it will be in the record, and since you said earlier you want to hear both sides, will we later have a chance to ask him questions about his response to these cases? In other words, is he going to come back at a future time so we can take a look at them? They are serious charges.

Mr. DICKERSON. I would be very willing either to follow up or to entertain questions here.

I just wanted to point out in this that in every case here ATF does not come out fully innocent. In many cases the facts are totally incorrect. In one case it says ATF surrounds Jensen Custom Ammunition, uses M-2 carbines, and frisked employees.

ATF was not present at that arrest. It was another Federal agency.

Another case, ATF "in paramilitary style invaded the home of Mr. and Mrs. Elmer Turngern." That was the action of local and State officers, at which one ATF agent was present, did not participate in obtaining the search warrant; did not participate in the actual search of the house.

In one case it is alleged that ATF took weapons away from the Van Buren Historical Society. ATF worked with the Van Buren Historical Society to see that the automatic weapons that they had were properly registered. Those weapons are currently on exhibit at the Van Buren Historical Society.



"ATF Participates in Anti-Gun Political Demonstrations." We were requested to be present. We did not participate in that.

I merely point out that while I certainly believe our actions should be subject to scrutiny—and I welcome the opportunity to deal with them—that I also would hope that we deal with what are factual matters.

We often hear that ATF makes a practice of harassing licensed dealers in an attempt to drive them out of business. I point out to the committee in the period July 1, 1979 through April 30, 1980—that is the period after I testified in the Senate—we had over 8,700 firearms investigations. Only 162 involved licensed dealers.

I can assure you that the investigations that we conducted involved allegations of serious criminal involvement, trafficking in stolen guns, supplying weapons to revolutionaries for use in foreign countries, and other criminal acts of some significance.

It is alleged that ATF concentrates its enforcement operations against innocent persons preferring the less challenging and less dangerous investigations. For the record, I wish to state that over 50 percent of our arrests are of persons with prior criminal backgrounds.

Over 87 percent of the cases that we present to the U.S. attorneys are accepted for prosecution—possibly one of the highest acceptance rates of any Federal law enforcement agency.

For the record, tragically, since 1968, 23 special agents have died in the line of duty. During that period, there have been 267 assaults on ATF investigators, 50 of these by firearms.

Finally, Mr. Chairman, in an area which I know concerns you personally, and concerns the other members of this group, we have been accused of violating civil rights of American citizens.

I am not aware at this time of any case where this has been fully substantiated, but let me say this. I would not tolerate such behavior in my Agency.

I commit to you in the event you receive specific allegations of misconduct by employees of ATF, we will fully investigate the allegations and report to you with documentation our findings.

I would also not object to investigations of such allegations by the FBI or the General Accounting Office, or by any other responsible investigative body that could do a reputable job.

I have made this same commitment to the Senate. I make this commitment to you.

Thank you, Mr. Chairman. I thank you for giving me the opportunity to present my testimony. My colleagues and I are available and will attempt to answer any questions here or supply any information available which will help you in your deliberations.

[Statement of G. R. Dickerson follows:]

STATEMENT OF G. R. DICKERSON DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. Chairman, I am pleased to have an opportunity to participate in these very important hearings. As you know the Bureau of Alcohol, Tobacco and Firearms is the lead Federal Agency in Enforcement of Federal Firearms laws.

Mr. Chairman, I know that you are no stranger to the emotionalism which surrounds the general issue of gun control. You have presided over numerous hearings in past years during which all sides of this issue have been represented. This morning you heard statements from Members of Congress and other concerned citizens representing organizations both for and against gun control.

As Director of ATF I acknowledge the deep controversies surrounding this issue. Just as your committee endeavors to strike a fair balance in establishing the law in this area, my agency strives to maintain an equitable balance in enforcement. I am not here this morning either to advocate increased or decreased gun control or deal with the related philosophical problems.

The mission of ATF in this area is to fairly and impartially enforce the law. It is our official policy to concentrate our regulatory and criminal enforcement efforts to prevent criminal misuse of firearms, keep firearms out of the hands of criminals, and apprehend those who use firearms in crime.

In carrying out our responsibilities we must balance the legitimate use of firearms against the need to protect citizens from crime and violence.

Mr. Chairman, it will be extremely difficult for any law or regulation to completely eliminate the criminal misuse of firearms from our society. No law enforcement agency, regardless of its size or resources, could ever completely eliminate the violence associated with the criminal misuse of firearms. I think, rather, that we should look to the law and the enforcement community to do the best job possible, acknowledging the practical limitations of law enforcement in a free society.

At the Federal level, the primary statute is the Gun Control Act of 1968.

This act, which is enforced by ATF, replaced the Federal Firearms Act of 1938 and amended the National Firearms Act of 1934.

Congress enacted the Gun Control Act to apply Federal resources to the national fight against crime and violence. The Bureau of Alcohol, Tobacco and Firearms (then a division of the Internal Revenue Service) was delegated by the Secretary of the Treasury the responsibility for enforcing the law.

The congressional intent of this legislation is clearly presented in the preamble to the act, which states:

"Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

CONGRESSIONAL FINDINGS SUPPORTING THE GCA

In passing the GCA the Congress issued nine findings of fact, they were:

1. That there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce, and that the existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;

2. That the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the functions of duly constituted public authorities, and others whose possession of such weapons is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;

3. That only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible;

4. That the acquisition on a mail-order basis of firearms other than a rifle or shotgun by nonlicensed individuals, from a place other than their State of residence, has materially tended to thwart the effectiveness of State laws and regulations, and local ordinances;

5. That the sale or other disposition of concealable weapons by importers, manufacturers, and dealers holding Federal licenses, to nonresidents of the State in which the licensees' places of business are located, has tended to make ineffective the laws, regulations and ordinances in the several States and local jurisdictions regarding such firearms;

6. That there is a causal relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior, and that such firearms have been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior;

persons were charged with violation of the National Firearms Act while the remaining six were charged with narcotics violations.

Following the narcotics arrests, the undercover agents met with the source of the automatic weapons and silencer who was not aware of the arrest of the other suspects. The agents then arrested the suspect after he delivered two more weapons converted to fire fully automatic. The suspect, a federally licensed dealer, was convicted last month and sentenced to 15 years in prison.

This investigation resulted in the pending prosecution of six ATF defendants, as well as the recovery of 6 machineguns, 1 silencer, and 70,000 quaalude tablets.

The MAC-10 machinegun, which I just mentioned, has become a favorite weapon of narcotics traffickers because of its small size and high fire power. ATF has seized over 500 of these weapons, and other law enforcement agencies have seized approximately 500 more.

There have been 60 drug related murders in Florida in the past year which are believed to have been committed with the MAC-10. Nine additional murders have been directly linked to this weapon.

#### ENFORCEMENT OF GCA TITLE VII

Mr. Chairman, another frequently used provision of the Gun Control Act is the prohibition against receipt or possession of firearms by convicted felons.

We attempt to use this provision in an effort to protect our society from those individuals who have shown a propensity to violate the law. In the period from June 1, 1969 through September 30, 1979, ATF recommended 9,443 defendants for prosecution under this title. An example of this area of enforcement is the case involving Gary Richard Waugh.

Mr. Waugh was convicted in 1970 for the bombing of the Post Office in Hughes-ton, West Virginia and sentenced to serve 5 years. In 1975, he was again arrested, convicted for possession on a firearm and imprisoned for 18 months.

In 1977, after Waugh's release from prison, he shot an acquaintance during a card game.

For the next 4 months, he remained at large committing several violent crimes including the robbery-beating of a police officer and the armed robbery of two Canadian tourists in New York, the armed robbery of a service station in Connecticut and the hired beating and intimidation of a small town Mayor. He threatened the witnesses to the shooting, beating two of them and ending one assault with an exchange of gunfire. In July of 1977, Waugh was finally arrested, while armed, outside the scene of a breaking and entering.

He was charged by ATF with malicious wounding, possession of firearms, and obstruction of a criminal investigation. During the Federal proceedings, he threatened to kill his codefendants and other witnesses. One witness admitted being with Waugh when he shot down an elderly man walking on a rural road.

Waugh was convicted of both counts of firearms possession and sentenced to a total of 4 years on those charges. After his conviction for obstruction of a criminal investigation, the court determined him to be a special and dangerous offender and sentenced him to an additional 30 years in prison. Subsequent to his Federal convictions, Waugh pled guilty in State court to criminal assault and was sentenced to serve one year concurrent with his Federal time.

He was the first defendant to be declared a "Special and Dangerous" offender in the Southern Judicial District of West Virginia. On March 7, 1979, the United States of Appeals, 4th Circuit Court, affirmed Waugh's conviction on the firearms charges.

An additional case demonstrating the utility of this title involves James Holiday. Holiday is the founder of the "black guerrilla family," a black prison gang organized while he was in the California prison system. While he was on State parole, ATF agents identified parole violations which led State Officers to search Holiday's residence with our assistance. Two stolen firearms were recovered along with stolen Government checks, narcotics, and black guerrilla family literature.

Holiday was indicted on May 1, 1978, for violation of title VII, following a 7-day trial, he was found guilty and sentenced to serve 15 months and pay a \$500 fine.

Mr. Chairman, the cases which I have just outlined for you are representative of some of the ways in which ATF applies the criminal provisions of the Gun Control Act. In keeping with the congressional intent of the act, our policies stress the providing of support to other Federal and State and local law enforcement agencies.

The investigation and arrest of most common criminals is the responsibility of State and local law enforcement agencies. In view of the fact that guns are often used in violent crime, ATF willingly assists in the investigation of significant cases.

Along these same lines we continue to work with the strike force attorneys and other jurisdictions to target major violators and potentially violent criminals who misuse firearms or are in violation of the Federal firearms laws.

#### COOPERATION WITH OTHER FEDERAL AGENCIES

Mr. Chairman, I commented earlier that an essential part of ATF's firearms program involves cooperation with other Federal law enforcement agencies.

In fact, cooperation between ATF and the other members of the Federal law enforcement community has never been better.

I am particularly pleased with our ability to assist the Drug Enforcement Administration in their efforts to apprehend major narcotics violators. When DEA identifies a major violator who is also violating provisions of the Gun Control Act, we begin a joint investigation.

This cooperative strategy has resulted in a number of highly significant recent cases. I would like to briefly outline two of them for you since they clearly demonstrate the value of the Gun Control Act in impacting on other areas of serious criminal misconduct.

On March 25, 1980, ATF special agents executed a Federal search warrant on the residence of a major (class I) narcotics violator in the Southwest.

A large quantity of firearms, all of which were loaded, were seized along with a quantity of ingredients used in the manufacture of methamphetamines. A large quantity of other hard drugs was also found.

The defendant is a convicted felon with an extensive criminal history. He has been arrested on 37 occasions on charges ranging from homicide to narcotics to gambling.

Of the firearms seized, 4 have been determined to have been stolen, 3 from a house burglary, and 1 from a parked automobile. The remaining weapons are still being traced.

In a similar case, ATF agents in Florida began an investigation of a suspect alleged to be selling quantities of firearms at gun shows throughout the South Florida area. Many of the weapons were determined to have been stolen, and many were later recovered from criminals in other States. The suspect had been observed in possession of some 100 to 150 guns per show, and claimed a profit of \$4,000 per show. A series of purchases were made from the suspect including one purchase of four firearms stolen in a residential burglary. In February 1979, the suspect sold a stolen firearm to the undercover agent and agreed to deliver 80 additional firearms to the agent for \$7,000. In February 1979, agents seized 80 handguns, 8 long guns, and 2 prohibited weapons.

In May 1979, four narcotics suspects were arrested by DEA and local officers in Mississippi when found in possession of a machine gun, fragmentation grenades, and four handguns, one of which was traced directly to the defendant. One suspect was a known narcotics trafficker from Miami and was in possession of \$50,000 cash.

As this case continued, in June 1979, Alabama authorities arrested 16 persons in connection with their attempt to smuggle 16,000 pounds of marijuana into the United States by aircraft. Ten firearms were recovered incident to the arrests and two have been traced back to the defendant in the original ATF investigation. Prosecution of this individual is pending at this time.

#### COOPERATION WITH THE FBI

In a case which we worked together with the FBI, information received from them resulted in a joint 12-month undercover investigation. Acting on a tip from an informant that a suspect, James Russell Harrington, was dealing in fully automatic military weapons, agents contacted the subject and were offered AR-15 rifles that had been converted to fire as fully automatic weapons, undercover special agents were to be provided with 40 of these machineguns per month by the subject.

This investigation resulted in the ATF seizure of 18 machineguns and the arrest of the subject. After pleading guilty in Federal court in Los Cruces, New Mexico, the defendant was sentenced to 3 years imprisonment, plus 3 years probation.

In a case worked jointly by ATF, FBI and DEA, the agencies formed a joint Hells Angels task force in San Francisco under the direction of the United States attorneys office.

The task force consolidated information independently developed by the three agencies into the firearms and narcotics trafficking activities of the Hells Angels. On June 13, 1979, 32 members or associates of the group were indicted for violation of the racketeer influenced and corrupt organizations (RICO) statute.

Joint agency arrest teams took 22 suspects into custody. Four of the 10 initial fugitives have been arrested and ATF has perfected 24 firearms and explosives cases

7. That the United States has become the dumping ground of the castoff surplus military weapons of other nations, and that such weapons, and the large volume of relatively inexpensive pistols and revolvers (largely worthless for sporting purposes), imported into the United States in recent years, has contributed greatly to lawlessness and to the Nation's law enforcement problems;

8. That the lack of adequate Federal control over interstate and foreign commerce in highly destructive weapons (such as bazookas, mortars, antitank guns, and so forth, and destructive devices such as explosive or incendiary grenades, bombs, missiles, and so forth) had allowed such weapons and devices to fall into the hands of lawless persons, including armed groups who would supplant lawful authority, thus creating a problem of national concern;

9. That the existing licensing system under the Federal Firearms Act does not provide adequate license fees or proper standards for the granting or denial of licenses, and that this has led to licenses being issued to persons not reasonably entitled thereto, thus distorting the purposes of the licensing system.

ATF has made a significant and successful contribution to law enforcement and to the legitimate industry, through programs designed to make criminal acquisition of firearms a difficult act. ATF attempts to apprehend those who would misuse firearms for crime and violence, and those who deliberately provide weapons to criminals.

I wish to review for you various provisions of the Gun Control Act which ATF frequently uses in attempting to combat the criminal misuse of firearms.

#### ENFORCEMENT OF GCA TITLE I

Under this title ATF attempts to regulate the interstate traffic in weapons and to utilize information obtained from the recordkeeping of licensed dealers.

ATF has been assisted in this task by the more than 170,000 firearms dealers and manufacturers in the industry.

Through the use of dealer records, as required by the GCA, ATF has been able to develop a National Firearms Tracing Center which has provided invaluable assistance to all levels of law enforcement in tracing crime guns.

Examples of this success are documented by such trace evidence being used in the infamous Zebra murders in California.

We are proud of the positive contribution ATF makes to law enforcement across the country through our Tracing Center. A recent survey of a sample of completed traces indicates that in the period June 1979 through March 1980, of the 10,526 traces selected, 60 percent were considered by the requesting agency to have been of value. They are broken down as follows:

Traces resulting in the recovery of stolen property (14 percent).....	1,433
Traces resulting in arrests or expected arrests (15 percent) .....	1,585
Traces resulting in the seeking of indictments (14 percent).....	1,450
Traces which assisted in solving a crime .....	3,148
ATF violations .....	488
Murder.....	326
Assault.....	232
Robbery/burglary.....	942
Narcotics violations.....	163
Other.....	924

Since the establishment of our tracing function, ATF has processed over 334,000 firearms trace requests from city, county, State, Federal and foreign law enforcement agencies.

Mr. Chairman, I would like to provide you with the details of a recent case which was made possible through the efforts of the Firearms Tracing Center. In 1979, ATF offices in New York City and Cleveland, Ohio began an investigation following the recovery of a handgun by officers of the New York Port Authority in August 1979. The weapon was traced to a pawn shop in Akron, Ohio and multiple sales records showed that the purchaser and an associate, both New York residents, had acquired some 60 handguns between them. Both had claimed fictitious Ohio addresses in purchasing the weapons.

Further investigation identified four suspects in New York and five in Ohio responsible for the purchase of 199 handguns from licensed firearms dealers in Akron, Warren, Youngstown, and Lake Milton, Ohio. To date, 21 of the firearms have been recovered by local authorities in New York City, including one which had been used in the attempted murder of a police officer in December 1979.

Another weapon was recovered from a narcotics trafficker.

Two suspects have been convicted, and we anticipate additional prosecutions in the future. More importantly, this significant source of crime guns has now been severed.

In an additional major case, on August 17, 1979, two New York City police officers, Thomas Schimenti and Gregory Demetiuo, were shot and severely wounded during the apprehension of suspects in a bank robbery. Schimenti later died from his wounds. Peter J. Donahue of Newark, New Jersey, was arrested by local officers. The murder weapon, an Iver-Johnson, .380 caliber pistol was recovered incident to Donahue's arrest.

ATF traced the murder weapon at the request of the New York City Police Department. The weapon was found to have been purchased on February 2, 1979, from Dud's Gun Shop, Pompano Beach, Florida, by an individual identifying himself as Demetrios Asimacopoulos. Asimacopoulos used a Florida driver's license which had been obtained on the date of purchase. The address listed on the driver's license and ATF Form 4473 proved to be a fictitious Miami Beach address.

The murder weapon was one of seven weapons purchased on the same date by Asimacopoulos. Asimacopoulos was found to be a resident of Uniondale, New York, at the time of purchase and had a prior criminal record, but no convictions. A complaint was filed with the United States magistrate in Miami, Florida, charging Asimacopoulos with violations of the Gun Control Act. He was arrested on August 22, 1979, in New York. At the time of his arrest, Asimacopoulos was already under indictment for burglary in Nassau County, New York.

Asimacopoulos subsequently was convicted of the State burglary charges and also entered a plea of guilty to violations of the Gun Control Act pursuant to a rule 20 agreement between the United States attorney's offices in Miami and New York. On March 21, 1980, Asimacopoulos was sentenced to serve a term of 3 years in prison and was fined \$5,000 in the United States District Court in New York. This sentence was to be served consecutively with a 1-year sentence Asimacopoulos had previously received in connection with a burglary conviction.

We successfully concluded a similar case when on June 1, ATF agents broke up a weapons smuggling ring between Ohio and New York City with the arrest of three persons. The ring had previously transported approximately 700 firearms from Ohio for distribution in New York.

At least five handguns have been recovered in New York crimes which have been traced to this ring. Two Ohio residents were arrested after they transported 114 handguns to Brooklyn, New York. A third party, recently released from prison after being convicted from distribution of cocaine, was also arrested. Arrest warrants are being obtained for two other persons at this time.

In each of these cases firearms tracing provided the lead necessary to cut off significant sources of crime guns.

With regard to our impact on organized crime, in April 1978, ATF and DEA initiated a complex investigation into the firearms and narcotics trafficking activities of a prominent south Florida organized crime figure who was identified as a significant member of the Giancana family in Chicago.

The undercover investigation was centered in Miami and Chicago.

Undercover ATF agents purchased 4 machine guns and 4 silencers as well as a quantity of narcotics from the defendant. On November 28, 1978 the principal suspect and four associates in the Miami area as well as a fifth suspect in Chicago were arrested. Agents recovered 5 handguns, 2 machine guns, and 51 silencers incident to the arrest. On May 25, 1979 the principal suspect was sentenced to 25 years in prison on 21 counts of violation of the Federal firearms and narcotics laws. His associates received commensurate sentences.

#### ENFORCEMENT OF GCA TITLE II

Mr. Chairman, a second provision of the Gun Control Act, (which was originally enacted as the National Firearms Act to control gangster-type weapons in the 1930's) is the prohibition against possession of unregistered machine guns, sawed-off shotguns, incendiary devices, and other destructive devices.

ATF seized 20,259 weapons and devices under this title in the period July 1, 1968 through December 31, 1979.

A typical enforcement action invoking this provision of the law involved a case we conducted jointly with the Drug Enforcement Administration (DEA).

In March 1980, ATF undercover agents and informants purchased a silencer and four semiautomatic MAC-10 weapons which had been converted to fire fully automatic, from the group of suspects who later claimed to have access to a one million tablet shipment of quaaludes. DEA was advised and a joint investigation was begun.

After extensive negotiations, a total of nine persons were arrested when they delivered 70,000 quaalude tablets to the undercover agents. Three of the arrested



persons were charged with violation of the National Firearms Act while the remaining six were charged with narcotics violations.

Following the narcotics arrests, the undercover agents met with the source of the automatic weapons and silencer who was not aware of the arrest of the other suspects. The agents then arrested the suspect after he delivered two more weapons converted to fire fully automatic. The suspect, a federally licensed dealer, was convicted last month and sentenced to 15 years in prison.

This investigation resulted in the pending prosecution of six ATF defendants, as well as the recovery of 6 machineguns, 1 silencer, and 70,000 quaalude tablets.

The MAC-10 machinegun, which I just mentioned, has become a favorite weapon of narcotics traffickers because of its small size and high fire power. ATF has seized over 500 of these weapons, and other law enforcement agencies have seized approximately 500 more.

There have been 60 drug related murders in Florida in the past year which are believed to have been committed with the MAC-10. Nine additional murders have been directly linked to this weapon.

#### ENFORCEMENT OF GCA TITLE VII

Mr. Chairman, another frequently used provision of the Gun Control Act is the prohibition against receipt or possession of firearms by convicted felons.

We attempt to use this provision in an effort to protect our society from those individuals who have shown a propensity to violate the law. In the period from June 1, 1969 through September 30, 1979, ATF recommended 9,443 defendants for prosecution under this title. An example of this area of enforcement is the case involving Gary Richard Waugh.

Mr. Waugh was convicted in 1970 for the bombing of the Post Office in Houston, West Virginia and sentenced to serve 5 years. In 1975, he was again arrested, convicted for possession on a firearm and imprisoned for 18 months.

In 1977, after Waugh's release from prison, he shot an acquaintance during a card game.

For the next 4 months, he remained at large committing several violent crimes including the robbery-beating of a police officer and the armed robbery of two Canadian tourists in New York, the armed robbery of a service station in Connecticut and the hired beating and intimidation of a small town Mayor. He threatened the witnesses to the shooting, beating two of them and ending one assault with an exchange of gunfire. In July of 1977, Waugh was finally arrested, while armed, outside the scene of a breaking and entering.

He was charged by ATF with malicious wounding, possession of firearms, and obstruction of a criminal investigation. During the Federal proceedings, he threatened to kill his codefendants and other witnesses. One witness admitted being with Waugh when he shot down an elderly man walking on a rural road.

Waugh was convicted of both counts of firearms possession and sentenced to a total of 4 years on those charges. After his conviction for obstruction of a criminal investigation, the court determined him to be a special and dangerous offender and sentenced him to an additional 30 years in prison. Subsequent to his Federal convictions, Waugh pled guilty in State court to criminal assault and was sentenced to serve one year concurrent with his Federal time.

He was the first defendant to be declared a "Special and Dangerous" offender in the Southern Judicial District of West Virginia. On March 7, 1979, the United States of Appeals, 4th Circuit Court, affirmed Waugh's conviction on the firearms charges.

An additional case demonstrating the utility of this title involves James Holiday. Holiday is the founder of the "black guerrilla family," a black prison gang organized while he was in the California prison system. While he was on State parole, ATF agents identified parole violations which led State Officers to search Holiday's residence with our assistance. Two stolen firearms were recovered along with stolen Government checks, narcotics, and black guerrilla family literature.

Holiday was indicted on May 1, 1978, for violation of title VII, following a 7-day trial, he was found guilty and sentenced to serve 15 months and pay a \$500 fine.

Mr. Chairman, the cases which I have just outlined for you are representative of some of the ways in which ATF applies the criminal provisions of the Gun Control Act. In keeping with the congressional intent of the act, our policies stress the providing of support to other Federal and State and local law enforcement agencies.

The investigation and arrest of most common criminals is the responsibility of State and local law enforcement agencies. In view of the fact that guns are often used in violent crime, ATF willingly assists in the investigation of significant cases.

Along these same lines we continue to work with the strike force attorneys and other jurisdictions to target major violators and potentially violent criminals who misuse firearms or are in violation of the Federal firearms laws.

#### COOPERATION WITH OTHER FEDERAL AGENCIES

Mr. Chairman, I commented earlier that an essential part of ATF's firearms program involves cooperation with other Federal law enforcement agencies.

In fact, cooperation between ATF and the other members of the Federal law enforcement community has never been better.

I am particularly pleased with our ability to assist the Drug Enforcement Administration in their efforts to apprehend major narcotics violators. When DEA identifies a major violator who is also violating provisions of the Gun Control Act, we begin a joint investigation.

This cooperative strategy has resulted in a number of highly significant recent cases. I would like to briefly outline two of them for you since they clearly demonstrate the value of the Gun Control Act in impacting on other areas of serious criminal misconduct.

On March 25, 1980, ATF special agents executed a Federal search warrant on the residence of a major (class I) narcotics violator in the Southwest.

A large quantity of firearms, all of which were loaded, were seized along with a quantity of ingredients used in the manufacture of methamphetamines. A large quantity of other hard drugs was also found.

The defendant is a convicted felon with an extensive criminal history. He has been arrested on 37 occasions on charges ranging from homicide to narcotics to gambling.

Of the firearms seized, 4 have been determined to have been stolen, 3 from a house burglary, and 1 from a parked automobile. The remaining weapons are still being traced.

In a similar case, ATF agents in Florida began an investigation of a suspect alleged to be selling quantities of firearms at gun shows throughout the South Florida area. Many of the weapons were determined to have been stolen, and many were later recovered from criminals in other States. The suspect had been observed in possession of some 100 to 150 guns per show, and claimed a profit of \$4,000 per show. A series of purchases were made from the suspect including one purchase of four firearms stolen in a residential burglary. In February 1979, the suspect sold a stolen firearm to the undercover agent and agreed to deliver 80 additional firearms to the agent for \$7,000. In February 1979, agents seized 80 handguns, 8 long guns, and 2 prohibited weapons.

In May 1979, four narcotics suspects were arrested by DEA and local officers in Mississippi when found in possession of a machine gun, fragmentation grenades, and four handguns, one of which was traced directly to the defendant. One suspect was a known narcotics trafficker from Miami and was in possession of \$50,000 cash.

As this case continued, in June 1979, Alabama authorities arrested 16 persons in connection with their attempt to smuggle 16,000 pounds of marijuana into the United States by aircraft. Ten firearms were recovered incident to the arrests and two have been traced back to the defendant in the original ATF investigation. Prosecution of this individual is pending at this time.

#### COOPERATION WITH THE FBI

In a case which we worked together with the FBI, information received from them resulted in a joint 12-month undercover investigation. Acting on a tip from an informant that a suspect, James Russell Harrington, was dealing in fully automatic military weapons, agents contacted the subject and were offered AR-15 rifles that had been converted to fire as fully automatic weapons, undercover special agents were to be provided with 40 of these machineguns per month by the subject.

This investigation resulted in the ATF seizure of 18 machineguns and the arrest of the subject. After pleading guilty in Federal court in Los Cruces, New Mexico, the defendant was sentenced to 3 years imprisonment, plus 3 years probation.

In a case worked jointly by ATF, FBI and DEA, the agencies formed a joint Hells Angels task force in San Francisco under the direction of the United States attorneys office.

The task force consolidated information independently developed by the three agencies into the firearms and narcotics trafficking activities of the Hells Angels. On June 13, 1979, 32 members or associates of the group were indicted for violation of the racketeer influenced and corrupt organizations (RICO) statute.

Joint agency arrest teams took 22 suspects into custody. Four of the 10 initial fugitives have been arrested and ATF has perfected 24 firearms and explosives cases.

as a result of this investigation. The prosecution of the RICO violations is ongoing at this time.

#### COMBINED OPERATIONAL APPROACH

Mr. Chairman, just as the Gun Control Act is the foundation for ATF's gun law enforcement mandate, the close relationship between our criminal enforcement and our regulatory enforcement personnel is the foundation for our operational structure.

Our regulatory and criminal enforcement missions are closely interrelated and, in fact, these two components of ATF, by merging their respective responsibilities, represent the mechanism by which ATF regulates the industry, detects violations of those regulations, investigates the violations, and takes administrative or criminal action as appropriate. Pursuant to the mandate of the Gun Control Act, the Office of Regulatory Enforcement inspects selected applicants for Federal firearms licenses and issues licenses to qualified applicants. They subsequently conduct compliance inspections to be certain that the dealers understand the regulatory requirements and properly maintain their records.

In 1979 ATF received 32,678 original applications and 143,000 renewal applications. Regulatory inspectors conducted 1,037 application inspections and 14,744 compliance inspections.

Of those dealers inspected, it was found that 4,159 or 28.2 percent were in varying degrees of violation of the regulations.

In the vast majority of cases where violations are found, the regulatory inspector works with the dealer to correct whatever deficiencies may be present. In a small number of cases, however, we find that the dealer either refuses to comply or that his violations are so significant that some form of remedial action must be taken. A portion of these dealers are referred to the Office of Criminal Enforcement for investigation of what may be deliberate criminal activity.

I wish to emphasize, however, that the great majority of firearms dealers in this country are legitimate businessmen who cooperate with ATF to attempt to ensure that firearms do not reach the criminal element.

In fact, in fiscal year 1979 dealers voluntarily provided ATF with information which led to the opening of 311 criminal investigations. To date in fiscal year 1980, an additional 184 such investigations have been initiated.

Our regulatory division also works closely with our criminal division in modifying or clarifying regulatory requirements under the Gun Control Act. Again, it is through this close coordination that ATF attempts to issue regulations which recognize both the legitimate use of firearms by honest citizens and the criminal acquisition of firearms for unlawful purposes.

#### FIREARMS SUPPLY SYSTEM

Over the past year we have devoted a great deal of effort to developing an appropriate strategy for addressing the firearms crime problem. Our first step was defining the legal supply and criminal demand for firearms. We defined four basic sectors which are illustrated on the charts appended to this statement. They are:

The supply sector, which represents the universe of firearms in the United States. This includes all firearms already existing as well as the inputs to the system from manufacture and importation.

The migration sector, which represents the movement of firearms from the legal supply to criminal hands.

While the supply is large, we have identified six primary means by which the migration to criminal hands is carried out: thefts from interstate shipment, thefts from dealers, thefts from private residences, sales at gun shows, private transfers, and dealer sales. Facilitating this flow is the illicit trafficker—a major target of ATF enforcement efforts.

The demand sector, which represents the arsenal of weapons in criminal hands and includes proscribed persons as well as individuals with no criminal record or prohibiting factors. As you can see, in relation to the supply both the means of migration and the demand are small.

Finally, the impact sector, which represents the actual use of firearms in crime.

#### FIREARMS PROGRAM STRATEGY

Bearing in mind the intent of Congress in passing the Gun Control Act and the four sectors of the firearms supply and demand system, we developed a comprehensive strategy for carrying out our firearms enforcement and regulatory responsibilities.

In the supply sector ATF's strategy is designed to provide reasonable regulation without impeding the legal commerce and the legitimate recreational use of firearms.

We have established a system for the issuance of firearms licenses for over 170,000 Federal firearms manufacturers and dealers. We perform FBI checks to screen out those not entitled to hold a license. We developed a firearms compliance system to ensure proper recordkeeping as required by the act.

Our compliance system requires that we work closely with firearms dealers to achieve voluntary compliance. We publish a periodic newsletter for firearms licensees and are now developing a series of educational seminars for dealers, and other publications for their use. We have also established toll free telephone service to answer quickly any questions which they may have.

In the migration sector our strategy is to prevent the flow of firearms from the legitimate supply sector to criminal hands. Our major emphasis and responsibility in the migration sector is geared toward the major trafficker and interstate theft. We have developed programs to target these areas.

In regard to the other means of migration from legitimate to criminal hands, we are taking the following action:

We have recently published in the Federal Register an advance notice of proposed rulemaking inviting public comment on the feasibility of permitting licensees to make sales at gun shows within their home states. Sales at gun shows have been a major source of crime guns. Licensed dealers are not now permitted to sell firearms at gun shows.

Under our firearms compliance program we work with dealers to ensure awareness of provisions of the act that prohibit sale to persons such as convicted felons.

This is largely an educational function. We also encourage dealers to report thefts of firearms and to the extent possible endeavor to recover and return stolen weapons.

The area of residential thefts is beyond the scope of the GCA.

However, recognizing thefts as a major source of crime guns, our strategy is to work with the private sector and develop a firearms security and public awareness program to encourage firearms owners and dealers to protect their firearms, record the serial numbers, and report thefts promptly to local police.

In the demand sector our strategy is to work closely with other Federal, State, and local officials to identify and apprehend prohibited persons, particularly violent criminals and organized crime figures, in illegal possession of firearms. Our cooperative program with the drug enforcement administration is one example.

The impact sector represents the traditional focus of law enforcement activities. Police become involved after the crime is committed and tend to focus their efforts on the substantive crime rather than the instrument of crime. However our liaison with police organizations has resulted in their recognizing the Gun Control Act as a valuable enforcement tool, and the vulnerability of criminals to provisions of the act. Law enforcement agencies frequently call upon ATF to assist in the apprehension of violent criminals and other significant violators who might otherwise avoid prosecution.

I wish to submit a copy of our current firearms program at this time.

As you can see, ATF serves as an important focal point and information source for coordinating Federal, State, and local efforts.

Our priorities focus manpower commitment and utilization toward the most severe, involved and flagrant violations which State and local government officials are unable to address.

Our firearms enforcement program is complementary, that is, it is designed to fill a void in the jurisdictional authority of State and local law enforcement agencies to reduce crime and violence, by interdicting the inter-jurisdictional flow of firearms destined for the criminal element.

This strategy has necessarily resulted in the perfection of more complex, significant cases requiring more staff-hours per case.

Increasing complexity of our cases is reflected by the fact that defendants per case increased between fiscal year 1978 and fiscal year 1979, and staff-days per investigation increased substantially during the same period.

In establishing our priorities, we have worked closely with the Justice Department and U.S. attorneys to ensure the establishment and pursuit of mutual priorities. The overall acceptance of ATF cases by U.S. attorneys was 89.4 percent in the first 6 months of fiscal year 1979.

We devote a significant portion of our resources to firearms enforcement and regulation.

Currently, we apply approximately 1,200 special agent staff-years to firearms enforcement and 130 staff-years to firearms regulation. In recent years we have



redirected the portion of our enforcement effort previously being applied to street level cases and street level crime operations to the targeting of major illicit inter-jurisdictional traffickers.

An integral part of any effective enforcement strategy is a current awareness and understanding of the problem.

Accordingly, we have initiated a number of programs designed to increase our understanding of the firearms crime problem.

A program that will support our efforts in this regard is the firearms traffic analysis.

Through this study our objective is to trace crime guns and integrate this information with theft information, and other firearms data to provide an accurate picture of the movement of crime guns.

With this information, we can better develop our own enforcement strategy and better support the efforts of State and local law enforcement agencies in carrying out their responsibilities.

Completion of this study and implementation of the system will be an important contribution to the growing information on the misuse of firearms in the United States.

As I indicated earlier in my statement, in enforcing the GCA this Bureau attempts to reflect both the enforcement needs of the Nation and the rights of individual citizens. In this regard, we continuously review our enforcement and regulatory practices to assure that they are as effective as possible while being reasonable in their impact.

We have made several adjustments recently which I would like to bring to your attention. First, we have moved to attempt to better define the phrase "engaged in the business of dealing in firearms." An advance notice of proposed rule making was issued last December, and we are continuing to receive public comment on this issue.

Similarly, we have also issued an advance notice concerning appropriate penalties for dealers who fail to comply with the requirements of the GCA. Presently, the only administrative recourse more severe than an admonitory letter is revocation of the dealers license.

In 1979 we formed a task force to develop a policy statement regarding ATF's national firearms policy. A copy of this document was submitted earlier in my statement.

We have recently completed a substantial reorganization of both our Office of Internal Affairs and our Office of Criminal Enforcement. These changes were implemented to enhance the relationship between ATF headquarters and their field components.

To reassure both the public and the Congress concerning questions related to certain types of undercover investigations, I have committed to personally authorize the use of the straw man investigative technique or investigations of gun shows.

This will ensure that these techniques are used only when ATF has evidence of specific criminal misconduct. Such investigations are reviewed on a case by case basis.

We have moved to reexamine our definition of certain weapons, many of which are sought by collectors, but which are now classified as destructive devices.

To better preserve weapons which have been seized as evidence we have entered into a contract for purchase of heavy gauge plastic bags into which all seized firearms will be sealed. We have also taken steps to ensure prompt return of seized firearms in those cases where the defendant is acquitted of criminal charges.

I have also issued guidelines regarding the taking of civil action against a licensee after dismissal or acquittal of criminal charges. Only in extreme circumstances will ATF proceed with such administrative action.

We have rewritten our public information guidelines in response to criticism that our former guidelines appeared to encourage prejudicial pretrial publicity.

I believe that these changes demonstrate the willingness of ATF to respond to changing situations and to the concerns of the Congress.

Mr. Chairman, this concludes what has been a lengthy, but I hope informative, statement. In closing I would like to extend my appreciation to you for your continuing interest in this most difficult area.

As I indicated in my opening comments, true progress in controlling the criminal misuse of weapons in our society must be a product of cooperation between the Congress, the law enforcement community, the legitimate firearms industry, and the public.

We are all concerned with the impact that the violent criminal has in this country. I assure you, Mr. Chairman, that this Bureau will attempt to provide you with whatever information we may have that might make your deliberations better

informed and more productive. My colleagues and I are available to you at this time to answer any questions which the committee might have.

Mr. CONYERS. Thank you, Director Dickerson. We appreciate your testimony. It has been thorough. We will now begin questioning under the 5-minute rule. I will recognize, if he seeks time, the gentleman from North Carolina, Mr. Gudger.

Mr. GUDGER. Mr. Chairman, my questions will be much more brief I think than 5 minutes.

I would like to ask the Director to refer to page 37 of his written remarks in which he points out that in 1979 ATF received some 32,000 original applications and 143,000 renewals, conducted a little over 1,000 application inspections and 14,000 compliance inspections.

In the course of these dealer inspections they found about 28.2 percent in varying degrees of violation.

Would you explain to us what you mean by that—varying degrees of violation? I am trying to get a concept of just what is taking place with the 170,000 firearm distributors over whom you are asserting either initial or review supervision.

Mr. DICKERSON. Yes, Mr. Gudger.

These would be violations found by our inspectors during the course of their checking the records maintained by the dealers. If I could, I would like to call on my deputy to respond more fully. He has actually done this type of work.

Mr. GUDGER. Twenty-eight percent out of some 4,000 inspections. Sort of give me an idea what these irregularities were.

Mr. HIGGINS. The majority of the numbers listed there, I think over 80 percent of those, would be recordkeeping violations where, for example, a form 4473, which was prepared each time a gun is sold to someone, where that form may have not been filled out completely, where there may not have been adequate identification of the purchaser, some blocks have not been filled in.

In other cases, since each dealer is required to keep a record of receipts and dispositions, he may have not entered some of the receipts. He may have guns on hand for which he has no record of receipt. He may have records of receipt and no disposition, but he doesn't still have the guns.

Those are a major part of the types of violations we would be talking about.

Mr. GUDGER. Now, in those instances, such as that 80 percent where there has been just a clerical error, or a posting error, you would ordinarily check that out with the dealer, point out his irregularities, ask him to make sure he did not make those mistakes in the future and sign off. Would that be substantially correct?

Mr. HIGGINS. That is correct.

Mr. GUDGER. On the other hand, if you found some more substantial irregularity, or a failure entirely to make the inquiry and fill out the forms showing whether or not the purchaser revealed previous felony convictions and this sort of thing, then you would proceed further, I take it, where the violation might have been of a more significant or substantial nature.

Mr. HIGGINS. That is correct.

Mr. GUDGER. I have had some experience in the practice of law dealing with some of your forms.

My question then is this. Does this experience, where you have this rather high rate, nearly a 30-percent rate, of failure to comply strictly with rules and regulations, largely in the filling out of forms and reports, indicate to you that maybe your forms and reports are too complicated or should be simplified, so that these businessmen could comply with your requirements.

Mr. HIGGINS. I would think we would always have to acknowledge the fact that any government form may be too complicated. Where we see them all the time we tend to think perhaps they are more simple than they actually are, but in many cases it is simply "enter somebody's date of birth", and there is no entry. It is hard to get much simpler than that on the form.

We constantly take a look at the form and try to make it as easy as we can. We conduct seminars for dealers, explaining how to fill out the forms. We send them information packages. Any way that we can to educate them, we try very seriously.

Every time a record is wrong, that means the gun is going to be that much more difficult to trace.

Mr. GUDGER. May I ask one further question along that same line. Isn't it true that over the past decade you have been increasing the data collected and making the forms more complex?

Mr. HIGGINS. My feeling would be no. I think probably the form is basically the same.

Mr. GUDGER. Basically the same since the implementation of the 1968 act.

Mr. HIGGINS. That is correct.

Mr. GUDGER. All right.

Mr. DICKERSON. Mr. Gudger, if I could add one thing to that. I think that figure of 28 percent violations may be somewhat misleading because we try and be selective in the investigations we do. In other words, we don't go at random.

Mr. GUDGER. I realize actually you have already screened out at the top level to get down to that 4,000. I assume that is the case. When you get to the 4,000, you are then finding the irregularities at the site.

Mr. DICKERSON. We try to visit the big volume people where we think the advice will be more helpful, and in the long term more helpful to us.

Mr. GUDGER. Now, one other question, and I think I will be done.

I see on page 48, you ascribe a good deal of your staff years to firearms enforcement—you say 1,200 special agent staff years to firearms enforcement, 130 staff years to firearms regulation.

I take it you mean in effect that these are the ratios of the personnel assignments. There are those who are responsible for regulation development and implementation, and then there are those in the field actually inspecting and carrying out your requirements.

Is that substantially correct?

Mr. DICKERSON. We have two major components.

Mr. CONYERS. The gentleman's time has expired.

Mr. DICKERSON. Our criminal enforcement and regulatory side. The regulatory are inspectors who go to the field. They are not

investigators. They look at the records, visit dealers, have many other responsibilities, too.

We have the alcohol responsibility, the explosives responsibility. So that of 600 inspectors we have, about 137 are involved in firearms compliance. Of our 1,500 agents, about 1,200 are involved in firearms investigations.

Mr. GUDGER. I would like to ask unanimous consent for one further question. It is really a very simple one.

Earlier you heard me question a 1.5 arrest experience per agent. Would you confirm or deny that.

Mr. DICKERSON. That is probably right, yes, sir.

Mr. GUDGER. Thank you very much.

Mr. CONYERS. The Chair recognizes Mr. Ashbrook, from Ohio.

Mr. ASHBROOK. I have a series of questions, and it will probably take two rounds of questioning to get them out. They are rather lengthy.

You mentioned the MAC-10 machinegun. When the original National Firearms Act was written, the so-called M-2 conversion kits were being sold. These kits consisted of the parts necessary to convert an M-1 carbine to fire fully automatic, like the M-2 machine gun.

Section 5845 of title 26 of the United States Code defines machineguns to include any combination of parts designed and intended for use in converting a weapon to a machinegun. In light of what appears to me to be the clear intention of the law, I am somewhat surprised to see the so-called autoseries, which allows semiautomatic rifles to be converted to machinegun fire, being advertised openly in publications such as Shotgun News.

Shotgun News has also advertised the MAC-10 machinegun which has been deactivated in accordance with what they say are instructions issued by your agency. Shotgun News has also advertised the parts necessary to restore these deactivated MAC-10 machineguns to normal operation.

The Shooters' Equipment Companion ads state that the MAC-10 lower receiver kit is not classified by the BATF as a part of any firearms. Is this correct? If so, how can the statement be made in light of a clear reading of the law?

Mr. DICKERSON. Could I ask our firearms expert to answer that? This is Mr. Owens.

Mr. ASHBROOK. As I understand it, he is the one who has written most of these regulations.

Mr. DICKERSON. Mr. Owens is qualified as an expert in firearms.

Mr. ASHBROOK. I think he is the one involved in these regulations.

Mr. CONYERS. Welcome, Mr. Owens. What is your first name?

Mr. OWENS. Ed, sir. Chief, Firearms Technology Branch.

Mr. ASHBROOK. You heard my question. What would be your response?

Mr. OWENS. The advertising stated the lower receiver blank was not classified as a firearm by BATF. The reason it was not classified is it had never been submitted for classification. When it was submitted, we examined the lower receiver blank, classified it as a firearm, subject to the provision of title 10 of the Gun Control Act.

Mr. ASHBROOK. So it would constitute a legal sale?

Mr. OWENS. If he purchases in accordance with the provisions of the Gun Control Act. It would have to be sold as a firearm. He would have to be licensed as a dealer in firearms. The lower receiver would have to be serialized.

Mr. ASHBROOK. As a firearm?

Mr. OWENS. Yes, sir. It is a receiver to a firearm, sir.

Mr. ASHBROOK. These ads have been running for months. Has your agency contacted the advertiser or the publication at all?

Mr. OWENS. I do not know.

Mr. DICKERSON. I would like to provide you a more technical answer in writing.

First, we have no control over that advertising. That is no illegal activity, even though they make the claim in an advertisement. We couldn't deal with that per se. We have contacted those distributors, we are aware of this. We have advised them as to our ruling in this regard.

Mr. ASHBROOK. Obviously, I am asking these questions to get to a point. You have displayed MAC-10 machineguns at earlier hearings in the Senate. You also testified that some 500 of these guns have been seized by your agency.

Let me ask a direct question. Have any of the people from whom these guns have been seized been prosecuted? It is my understanding that none of them have.

Mr. DICKERSON. We have a current extensive investigation ongoing.

Mr. ASHBROOK. That was not my question. Have any of the people from whom these 500 guns were seized by the BATF been prosecuted? Again, it is my understanding that no one has.

Mr. DICKERSON. I am informed we have had one case.

Mr. ASHBROOK. It seems rather strange to me that these ads continue to run. It would appear to me that people are permitted to buy them, then the guns are seized after purchase. That raises a few other questions that I will ask on my second round.

Mr. CONYERS. All right. Would the gentleman who has joined the table identify himself? I know he is a witness from the Bureau.

Mr. PATTERSON. Jack Patterson, Assistant Chief Counsel.

Mr. CONYERS. Mr. Volkmer, the gentleman from Missouri, is recognized for 5 minutes.

Mr. VOLKMER. I hope my 5 minutes aren't running. I lost my piece of paper.

Mr. CONYERS. We will suspend.

Mr. VOLKMER. No. I will go ahead with another question and get it in a minute.

In December you started on the definition of a dealer. We still don't have it. When can we have a definition?

Mr. DICKERSON. Mr. Volkmer, it is an extremely complex subject, as you know. I know you tried to deal with it in the bill you submitted. We sent out solicited comments. We received, as I recall, about 800 comments. About 500 of those think it would be a good idea for us to try and define it; and of those 500, there's about 500 different variations as to how they think it can be done.

At this point, I can't predict exactly what that definition will be, but we are going to try to deal with it very soon. I am in the

process of evaluation of those comments now, and we are hopeful that we can come out with something that would be helpful.

Mr. VOLKMER. When you do, I would appreciate it if you would furnish me with what your proposal is. I would like to get a look at it. When is a dealer a dealer and when is a dealer not a dealer, and when is a person a dealer and when is a person not a dealer?

Is a part-time person, a collector who sells, a dealer or not a dealer?

In other words, are we going to prosecute people? It's a felony, isn't it? Everything is a felony, isn't it?

Mr. DICKERSON. Of course, what makes the situation complex is there are two sides to this. If a person is selling guns in violation of the Gun Control Act, then he is acting as a dealer without being properly licensed. That is one side of it.

The other side is that the applicants for a dealer's license must also meet the same test of that definition. That is what makes it complex. If the test is, on the one hand, too liberal, then it permits many sales which would not be recorded; if, on the other hand, it is too complex, or restrictive, it would make it difficult to issue a license for many people that now have a license. That is the limit we are attempting to deal with.

The courts have issued fairly definitive definitions and, of course, we are going to be bound somewhat by the finding of the courts on this. We are also reviewing the definition you have in your act to see if it can be applied.

Mr. VOLKMER. Another question I would like to ask relates to the strawman sales. How many have you approved since you have been there?

Mr. DICKERSON. Since I have been Director and have been personally reviewing these, I have approved one use of a strawman technique.

Mr. VOLKMER. What activities are you now taking in order to return confiscated weapons to persons who have not been charged or a true bill was not given, no indictment? What are you doing in that regard?

Mr. DICKERSON. As I mentioned in my statement, I have taken action, in the first place, that we will seize only those weapons involved in illegal activity rather than taking the complete stock of a dealer because he allegedly violated this act.

I have also directed after a person is tried or a case dismissed or he is acquitted that we will promptly return those weapons unless there is some legal reason we couldn't. For example, title II.

The point you raise is an issue between this. I do not know that I have dealt with that.

Mr. VOLKMER. That is the next one.

Mr. DICKERSON. What happens is, sometimes we will refer a case to a U.S. attorney for possible prosecution; weapons will have been seized. He will not take prosecution action for a period of time. In the meantime, he will not confer with us. Unfortunately, in those circumstances it is not within my administrative jurisdiction to do anything about it. I am bound by the actions of the court until he makes a decision whether or not he will prosecute.

As I say, I have cut down on the number of guns that will be seized, so I do not think that the problem will be as acute as it may have been.

Mr. VOLKMER. There is still a problem, I suppose, under the previous administration—Mr. Davis—of weapons. I know of an instance of a person by the name of David Jewell in Boulder, Colo.

Can you just tell me where those weapons are? And also the same thing of why Mr. Robert Wampler of Mechanicsville, Va., didn't get his other four back?

Mr. DICKERSON. Let me if I could respond in a general way, with the right to provide that.

Mr. CONYERS. The gentleman's time has expired.

Mr. VOLKMER. Let him finish if he may, Mr. Chairman.

Mr. CONYERS. I am going to let him finish. I just notified you your time has expired.

Mr. VOLKMER. Thank you, Mr. Chairman.

Mr. CONYERS. You are welcome.

Mr. DICKERSON. I had not heard of Mr. Wampler. I understand there was a press conference at which he was there. That is a case I mentioned. We did file a report with the U.S. attorney. No action was taken. The U.S. attorney, I believe in May, decided to decline prosecution and authorized the return of those.

Mr. VOLKMER. All except four.

Mr. DICKERSON. Let me say that I will have to provide that for the record.

Four of the guns did go in the library. That concerns me because nothing should go in the library until it has been properly seized. I am going to investigate this. However, I have checked enough to know that three of those guns are title II weapons—pardon me, one of them. I'm not sure what the issue is on the other three. I will find out why that action took place.

Mr. VOLKMER. My time expired. I'll wait for my next time around.

Mr. CONYERS. General Counsel Joe Nellis.

Mr. NELLIS. Thank you, Mr. Chairman.

Mr. Dickerson, you have received quite a bit of criticism. There is probably more to come. I am going to give you a compliment.

I had an opportunity to interview your undercover informant who worked on the *Hell's Angels* case. I want you to know I sat in that courtroom with all of that security and watched those 18 defendants point their fingers at him every time he got up on the stand. You are to be complimented on the caliber of men you have risking their lives to make sure malefactors are brought to justice.

Now I want to ask you a question about a recommendation that you might have. You were here when the chairman of the full committee spoke, Mr. Rodino. He mentioned that the importation of handgun parts is driving everybody up the wall.

Do you have any recommendations with respect to the regulation of parts that are imported from foreign countries?

Mr. DICKERSON. Let me preface any comment I make: I am not speaking on an official position. The only thing I would say on that is I do find an inconsistency: On the one hand to say that you can't import something—and this probably comes from my customs expe-

rience—on the other hand, to permit the parts to be imported and, therefore, to bypass the law.

So let me answer it this way: Assuming there is a need for the law and it serves a useful purpose in the first place—and I would have to have that judged—you think it would be consistent if the law applied to parts as well as to the complete article.

Mr. NELLIS. Where are most of these parts coming from, Mr. Dickerson?

Mr. DICKERSON. Again I think I would have to provide that for the record, but I understand from talking to some of the manufacturers that it is Italy and Germany. I will clarify that.

Mr. NELLIS. I wish you would supply that for the record. I'm sure the subcommittee would like to know.

I also wish that you would possibly make some recommendations with respect to the kind of amendments the Gun Control Act should have relating to the importation of parts. Would you be willing to do that?

Mr. DICKERSON. I'm sorry.

Mr. NELLIS. Recommendation for any legislation that you might want us to consider with respect to the importation of parts?

Mr. DICKERSON. I do not think that I could really provide off the top of my head any recommendations on that.

Mr. NELLIS. I do not mean now. I mean at a later time when you have a chance to think about it.

Mr. DICKERSON. I would like to discuss with you and with the other staff members of this committee things that we think might be helpful. Let me say, if I could, along this line of questioning that the one test that I applied in thinking about this, is what is being proposed going to be helpful in preventing criminal violations?

I think that is a good test.

Mr. NELLIS. I assure you that is what the chairman is thinking about as well.

Finally, let me ask you about the subject of domestic violence, terrorism. Are you involved with the FBI when it investigates acts of terrorism involving firearms? I'm talking about organized terrorism such as Omega Seven, FARN, that type of thing.

Mr. DICKERSON. Yes, very much.

Let me explain that. We work closely with the FBI, both in the enforcement of the explosives laws, which is another regulatory and criminal enforcement responsibility we have, and firearms laws.

In explosives laws, if it is nonterrorist activity, we investigate it, that is, most of the activities. If it is directly related to a known international terrorism organization, that is the FBI's responsibility. However, even in those instances, quite often there's collateral investigations. We work together on those.

The FBI has jurisdiction on firearms laws concerning thefts of firearms from Government jurisdiction, military posts, this type of thing.

The FBI has primary responsibility if it is a violation involving known terrorist organizations.

The Customs Service has primary jurisdiction if it is an organization illegally exporting weapons, and other jurisdictions are ours. However, in most of our cases, international cases, it is a joint

**CONTINUED**

**1 OF 2**



investigation with the Customs Service. In many, many of the FBI investigations, these are collateral investigations.

Mr. NELLIS. Just generally, Mr. Dickerson, what are the sources of the weapons which you look at after one of these international terrorism investigations? Where do they come from, mostly? Are they stolen? Are they imported?

Mr. DICKERSON. One of the principal—

Mr. CONYERS. The gentleman's time has expired.

Mr. DICKERSON. I think I will ask Mr. Keathley to respond to this. It has been in the Miami area where there has been considerable traffic. Much of the source of these weapons is from dealers, from authorized licensed dealers in that area.

Mr. KEATHLEY. The majority of the weapons, especially going out through Miami into South American communities, do originate with legitimate dealers. Ninety-nine percent of the dealers are honest businessmen, and are being provided false identification, paid in cash, and they are unwilling dupes. In many instances they have brought to our attention, because of the number of guns ordered, that they felt something was going on but the majority of the guns do come from legitimate dealers.

Mr. NELLIS. Thank you, Mr. Chairman.

Mr. CONYERS. Does Mr. Gudger desire additional time?

Mr. GUDGER. No, Mr. Chairman. Thank you.

Mr. CONYERS. Mr. Ashbrook?

Mr. ASHBROOK. Let's get back to these 500 guns you've seized. Is it fair to say just about as soon as an innocent person—I say innocent because they are individuals who spent their money buying these advertised guns thinking they are legal, that as soon as they receive these guns, someone from the BATF arrives to seize them?

Mr. DICKERSON. Most of the weapons, including the 500 we have seized, were seized in one seizure in Florida. They had no serial numbers. They were not registered weapons. They were purely illegal weapons which were being distributed in illegal channels. They were seized in a group; one seizure of some 350, I believe. There was another seizure of 100.

Mr. ASHBROOK. How many individuals were involved?

Mr. DICKERSON. We took action after I found two things: That there were many murders being committed by these weapons, they were being used extensively by the underworld and people trafficking in narcotics. We took action to cut off the one which was the situation where we authorized the manufacturer to destroy those guns.

We found out on review he did not comply with our instructions for destruction. So those kits which he had distributed were, in effect, title II weapons under the Gun Act requiring registration.

We then did go around the country to the extent that we could find out the persons who had purchased those, since they were illegally in their possession, we did not seize them; we gave them the opportunity of voluntarily surrendering the weapons to us. Not many people chose to do that.

Mr. ASHBROOK. That doesn't exactly square with what you put in your letter of November 15, 1979, does it?

Mr. DICKERSON. I do not have the letter in front of me, Mr. Ashbrook.

Mr. ASHBROOK. I will make sure you get a copy of it, and also the fact sheet.

This letter is signed by G.R. Dickerson—I assume that is you—and refers to cut-up MAC 10 machineguns. This supplier was told by your agency how to deactivate these machineguns so that they could be sold legally. That does not seem to square with what you are saying.

The letter says ATF has taken the position that these cut-up guns are readily convertible. It also cites the law regarding any combination of parts from which a machinegun can be assembled. You have the copy of your BATF circular. It says the MAC-10 kit consisting of the cut-up gun and the parts necessary to restore it are "illegal to possess whether assembled or unassembled," unless registered.

I am kind of interested in this. No wonder there is so much confusion out there. Have you published these requirements in the Federal Register? Is this something that only the recipient of this letter is supposed to know? Is this something that everybody who reads this advertisement I have here is supposed to know?

[Document referred to follows:]

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
Washington, D.C., November 15, 1979.

DEAR ———: This refers to our letter of May 2, 1979, in which you were provided instructions for the destruction of M10 and M11 submachinegun receivers.

We have recently encountered a number of M10 submachineguns that have been welded together from receivers which we cut in accordance with our previous letter. Since the purpose of destruction is to prevent the future use of the item as a firearm, it is our opinion that the method of destruction outlined in our referenced letter is not sufficient to destroy the subject receivers. Therefore, we can no longer authorize the destruction of these receivers by the following means:

1. Removal of the magazine housing from the receiver body.
2. Removal of the trigger guard and feed ramp from the receiver body.
3. Cutting the receiver into four separate pieces at the following locations: (a) through the magazine opening; (b) through the safety opening; and (c) through the receiver pin retaining hole. These cuts should be made with a cutting torch in such a way that a band of metal, at least one-eighth of an inch in width, is destroyed.

Receivers cut by the preceding method are considered to be readily convertible to a functional condition and are therefore classified as firearms as the term is defined in Section 921(a)(3) of Title I of the Gun Control Act of 1968 (GCA). If you plan any further sales of these cut receivers, they must be sold in accordance with the provisions of the GCA and the applicable regulations as contained in Part 178, Title 27, Code of Federal Regulations (CFR).

Further, the term machinegun, as defined in Section 5845(b), Title 26, U.S.C. (National Firearms Act), includes any combination of parts from which a machinegun can be assembled if such parts are in the possession, or under the control, of a person. A cut receiver, as described above, combined with all of the component parts for the M10 or M11 submachinegun, constitutes a machinegun and a firearm subject to the provisions of the National Firearms Act (NFA) and the implementing regulations in Title 27, CFR, Part 179. These firearms must be registered and transferred in accordance with the provisions of the NFA. Unregistered NFA firearms are contraband and are subject to seizure and forfeiture.

Should you desire to continue the sale of destroyed M10 or M11 submachinegun receiver, we will be happy to provide additional instructions for more complete destruction of the receivers.

We regret any inconvenience this action may cause. If we can be of any further assistance, please contact us.

Sincerely yours,

G. R. DICKERSON, Director.

## ATF FACTS

Recently there have been numerous violent crimes committed involving the MAC 10 machinegun. Many of these weapons were acquired in the form of unassembled kits. These kits are comprised of the lower receiver to the fully automatic MAC 10, which has been cut into pieces with a torch, along with all the component parts to complete the assembly of the weapon.

The above described weapon has been classified by ATF as a firearm subject to the provisions of Title II of the Gun Control Act of 1968. These weapons, unless registered, are illegal to possess whether assembled or unassembled. A large number of private citizens have inadvertently placed themselves in violation of the law by acquiring these kits. It is the intention of ATF to offer the following options to all those persons:

1. Abandon the weapon(s) to ATF.
2. Donate the weapon(s) to a museum which is part of a government entity.
3. Transfer the weapon(s) to a local or State law enforcement agency willing to register them with ATF.

If you have any questions regarding this notice, please contact your local office of the Bureau of Alcohol, Tobacco and Firearms.

Mr. ASHBROOK. Again I am kind of interested in this. In view of all the efforts you say you are taking, this area seems to be very lax. If I were a person out in Ohio, and I purchased this kit after reading the advertisement, I would not know what the law is right now. Do you think BATF has done a good job in this MAC-10 area?

Mr. DICKERSON. I think as far as doing a good job, I think any time you take an administrative action that doesn't work out and you have to change that action and some people innocently get caught, I couldn't say that is a good job. I think it is an unfortunate situation.

On the other hand, the facts remain that there is a serious criminal problem with these weapons; when I talk about the 9 murders in Miami, out of 60, that was only 9 in which they threw the weapon down. It killed somebody there. I know it was used. These were nine reconstructed weapons. They were welded back from these kits. We had instances of this in other parts of the country.

While the action was unfortunate to the extent that persons had purchased this unaware of the fact that it was illegal, I felt that the severity of the criminal problem merited taking that action.

Mr. ASHBROOK. These are the kinds of things I think you legitimately ought to be doing and not some of the other things that show an overkill on your part.

This is an area that makes a person suspicious, although I am suspicious anyway when it comes to many government operations.

Let me ask you this, although it is probably way out of place. Does BATF in any way act as a front for or cooperate with or collude with Shotgun News, or Shooters' Equipment Companion, the company that placed these ads in the paper?

Is your agency consulting with them, cooperating with them, using them as a cover, or in any way making it possible for these guns to get out to the public?

Mr. DICKERSON. No, sir.

Mr. ASHBROOK. In no way?

Mr. DICKERSON. No. I am concerned about those ads. I'm concerned about the M-2 series. I'm concerned about the fact that, you know, machineguns have gotten out. I'm not saying a person can't have machineguns. There's a legal way to do it. Pay your 200 bucks.

I've had several meetings with my staff in trying to deal with this. We are in no way involved with those.

I might say someone who wants to run an ad might call us and ask for our advice.

Mr. ASHBROOK. I do not mean that.

Mr. DICKERSON. Certainly it is not my intent. I would like to move to deal with these things, but I think our law has weaknesses in it now which makes it difficult for me to deal in that situation because of the construction of the law.

Mr. ASHBROOK. Thank you, Mr. Chairman.

I have a few more questions when we come around again.

Mr. CONYERS. Mr. Volkmer?

Mr. VOLKMER. Mr. Dickerson, previously you mentioned a library. Can you tell me about that library, what is in that library?

Mr. DICKERSON. Yes, sir. We have a so-called gun library or reference library which contains some 4,000 or 5,000 various weapons. It is used extensively by ourselves and the FBI as a reference library.

Mr. VOLKMER. Where were those weapons acquired from?

Mr. DICKERSON. Most of the weapons have been acquired from weapons seized by ATF.

Mr. VOLKMER. Confiscation from people?

Mr. DICKERSON. Confiscation from people, yes.

Mr. VOLKMER. Are they illegal weapons as such?

Mr. DICKERSON. You mean title II machineguns? Some of them may be that; but no, they are the complete range of weapons. They may be supporting weapons. They may be all types. What we attempt to do is have in our reference file one type of each weapon so if some question comes up about that, we can use it for reference purposes.

Mr. VOLKMER. Do you have any 410's in there?

Mr. DICKERSON. I am sure we do have 410's, yes, sir.

Mr. VOLKMER. I was just handed a note by my staff concerning Mr. Wampler, that by the way, two of those four weapons are 410 shotguns, new 410 shotguns. I can't see how those can be illegal. Can you tell me?

Mr. DICKERSON. I promise, Mr. Volkmer, I am going to look into it. I will tell you.

Mr. VOLKMER. Is there something in the present law in the 1968 act that permits the Bureau of Alcohol, Tobacco and Firearms to have custody of illegal weapons?

Mr. DICKERSON. The act does permit custody of weapons by law enforcement agencies.

Let me refer to my counsel since he would be more knowledgeable on this subject.

Mr. VOLKMER. You told me you had how many thousands? Some are illegal?

Mr. DICKERSON. Some 4,000 weapons.

Mr. DESSLER. Section 5872 of title 26 does allow for the disposal of forfeited firearms, and the law specifically authorizes for retention of them for official use of the Treasury Department.

Mr. VOLKMER. Officially used to be able to identify future ones of the same type?

Mr. DESSLER. I would say that would be official use, yes, sir, and for training purposes.

Mr. VOLKMER. Someday, to be honest with you, I am going to come and look at them.

The next question relates to the fact that you use heavy plastic bags for confiscated weapons?

Mr. KEATHLEY. Yes, sir.

Mr. VOLKMER. If the owner of those weapons has cases in which the weapons are enclosed, or boxes in which the weapons are enclosed, what is wrong with leaving them in there when you confiscate them? Can somebody answer that for me? Why do you take them out and throw them in a sack?

Mr. ASHBROOK. If my colleague would yield, I would like to remark that in any other area this would be called insensitivity.

Mr. VOLKMER. I want to know why you cannot confiscate the case at the same time if the owner says leave it in the case?

Mr. DICKERSON. Let me tell you what has been told to me. Our authority goes only to the confiscation of the weapon, which is the illegal article itself and doesn't cover the case. Nevertheless, I think that is a very technical—

Mr. VOLKMER. Wait a minute.

Mr. DICKERSON. I certainly have no problem with reviewing that.

Mr. VOLKMER. Would you please review that? I can see where you are only supposed to confiscate the weapon itself.

If the owner says, "I will give you a written consent," the agency could easily say, "Look, we can't take that case, we can take the weapons. We can't take the case. If you give us a written consent to it, we will leave it in the case for you so it doesn't get damaged."

Mr. DICKERSON. Certainly it seems to me we could do that. I remember from my Customs experience we had a term called the ordinary wrappings of imported articles. I think we can take a look at this.

Mr. VOLKMER. Thank you, Mr. Chairman.

Mr. CONYERS. You are welcome. Mr. Ashbrook?

Mr. ASHBROOK. In testimony which we will not be able to get to today—perhaps we can take it at a later hearing when we get around to that—instances can be shown where BATF agents have called upon purchasers of MAC-10 kits before they even received them. Now, can you tell me how that would happen?

Mr. DICKERSON. When we became concerned about the kits and ruled that they were title II weapons, we—

Mr. ASHBROOK. In view of all these materials that I just put in the record, I wouldn't know that that is what you did.

Mr. DICKERSON. We obtained mailing lists, who they had been sent to, and went out and contacted those people.

Mr. ASHBROOK. From whom did you get those lists?

Mr. DICKERSON. I believe we obtained them from the Universal Parcel—United Parcel Service.

Mr. ASHBROOK. By what authority did you do that? Is that legal?

Mr. DICKERSON. Bud, why don't you answer that?

Mr. KEATHLEY. The list was provided to a grand jury in Miami. The other State's attorney did give us the list.

Mr. ASHBROOK. That is fine. When somebody is doing something illegal, I am the last person who wants to get technical. I am

interested in some of these tactics, particularly when I see these ads running. It looks like you have issued contradictory information, letters and advice.

If I were a less believing person, I would suspect that that is a good way to make your statistics look high. You can say you seized 500 machineguns, when really, if you had used any ingenuity in the beginning, most of these people would never have bought the weapons in the first place.

Mr. KEATHLEY. I can't understand how we contacted first.

Mr. ASHBROOK. You do not understand how you could?

Mr. KEATHLEY. Only because of delay in shipping.

Mr. ASHBROOK. I think you got them in the mail. It is interesting you called them before they received the kits.

Mr. KEATHLEY. It is interesting.

Mr. ASHBROOK. The other thing I am interested in is this: I notice Mr. Fields in his testimony later today is going to refer to 146 pages of transcripts taken from five conversations between BATF undercover agents and a Mr. Hayes.

I have copies of court orders and a certified statement in my possession. These indicate that at no time has the U.S. district court and the U.S. attorney's office, or counsel for the defendant, released copies of the transcripts of tape recordings mentioned by Mr. Fields to any individual who is not a party or counsel for a party in case No. 78-112.

This raises a question that I want to ask Mr. Fields about later. Either he is violating the court order by releasing them; he has gotten them from you, which could be a violation of the Privacy Act; he has engaged in some conspiracy to steal them; or he stole them himself. I will ask him about that later.

I also notice that materials released under the Freedom of Information Act reflect certain phone calls. Sam Fields apparently called a Ms. Milton in your office at least 40 times. Did she in any way have anything to do with the *Hayes* case?

Mr. HIGGINS. Incidentally, Ms. Milton does not work for the director; she is in the Treasury Department.

Mr. ASHBROOK. We have had that runaround before.

Mr. HIGGINS. I just want to make that clear.

Mr. DICKERSON. Let me answer your general question.

The record of the tapes was obtained from us under the Freedom of Information Act. The specific basis for release—let me again go to counsel.

Mr. ASHBROOK. Were the BATF tapes in the *Hayes* case given out under the Freedom of Information Act?

Mr. DICKERSON. Yes, sir; not the tapes, the transcripts.

Mr. ASHBROOK. Even though they were supposedly sealed by the district court judge?

Mr. DICKERSON. I'm not aware of that.

Mr. DESSLER. We were not aware any records were sealed by the district court. Our understanding is the transcripts of the tapes were introduced in evidence. Portions of the tapes were excluded which contained some derogatory information. In general, the transcripts of the tape were admitted into evidence in that case.

Mr. ASHBROOK. I find this most interesting, because a year ago when we had all this controversy with Treasury and Rex Davis on

all of the back-door regulations they were trying to implement, any time I asked for information I could not get it. Somebody who is against the private ownership of firearms in this country seems to get a little better cooperation from your agency. That makes this particular Member of Congress wonder a little bit.

You say that material was released under the Freedom of Information Act?

Mr. DESSLER. That is correct.

Mr. ASHBROOK. That answers that question.

I would close by saying, Mr. Chairman, that I hope at some future time we will have the opportunity we did not have today of bringing witnesses in specifically to testify, under oath, if you wish, as to their alleged grievances against BATF, Mr. Dickerson, or anyone in his office.

As Mr. Volkmer said earlier, there are certainly enough abuses or alleged abuses that have been brought to our attention that it is hard for me to believe that they are solely attributable to paranoids claiming that BATF is doing a lot of things when they are not. I would like to think a Government agency would operate appropriately.

Mr. VOLKMER. Would the gentleman yield?

Mr. ASHBROOK. Yes. I would be glad to yield.

Mr. CONYERS. The gentleman's time has expired.

Mr. VOLKMER. I ask for 1 minute.

There was a proposal at that time to bring in a whole new computer to put all this information on. Have you acquired that computer?

Mr. DICKERSON. No, sir.

Mr. VOLKMER. Do you intend to acquire that computer?

Mr. DICKERSON. No, sir.

Mr. VOLKMER. Do you have any money in any budget proposal before the Congress at this time for that computer?

Mr. ASHBROOK. I will make a note of that.

Mr. DICKERSON. For the purposes of those regulations, no, sir. We are trying to computerize some of our internal operations, but nothing in line with what was proposed by Mr. Davis at that time.

Mr. VOLKMER. I would like to close, Mr. Chairman, by just saying that I find a lot more cooperation from Mr. Dickerson than I found from Mr. Davis.

I appreciate the efforts that you are making. Thank you.

Mr. DICKERSON. Thank you.

Mr. CONYERS. As the members of the subcommittee have indicated, we have a lot more work to do in this area. We will be asking you to stay in close contact with the committee for any further appearances that will be required.

Mr. DICKERSON. Mr. Conyers, we stand ready to help you in any way we can.

Mr. CONYERS. Thank you very much. That will be all.

Our next witness is Mr. Edmund Perret, president, chairman of the board of directors of the National Coalition To Ban Handguns.

Mr. Perret formerly worked on the Hill. He's a legislative representative for the American Psychiatric Association. He has also worked in the Department of the Interior.

We welcome you before the committee and incorporate your entire prepared remarks and ask you to identify by name and title those who have accompanied you here today.

**TESTIMONY OF EDMUND J. PERRET II, PRESIDENT, CHAIRMAN OF THE BOARD OF DIRECTORS, NATIONAL COALITION TO BAN HANDGUNS, ACCOMPANIED BY SAMUEL FIELDS, FIELD DIRECTOR, AND MARK TULLER, COUNSEL**

Mr. PERRET. Thank you, Mr. Chairman, and distinguished members of the committee.

With me today is Mr. Samuel Fields, the NCBH field director, and Mr. Mark Tuller of the law firm of Arnold & Porter.

I want to thank you, Mr. Chairman, and members of the committee for holding this hearing and for the opportunity to share with you our concerns on the law enforcement activities of the Bureau of Alcohol, Tobacco and Firearms.

The NCBH is a unique coalition of national organizations which joined together in 1974 to combat the growing handgun problem confronting the United States. Participating organizations include legal, medical, religious and educational associations as well as citizen public interest groups which collectively constitute more than 10 million Americans.

The goal of the National Coalition To Ban Handguns is the orderly elimination of all handguns from American society. We seek to ban handguns from importation, manufacture, sale, transfer, ownership, possession, and use by the general public with reasonable exceptions for military, the police, security office, and pistol groups where guns would be kept on the club's premises under secure conditions.

Indeed, we are seriously concerned about allegations that BATF's enforcement efforts have been overzealous in some cases, leading to civil rights abuses.

After a detailed consideration of the subject, we have concluded that claims against the BATF for overzealous prosecution of the law are not well-founded. Simply put, we have concluded that in several celebrated cases in which BATF has been accused of overstepping proper enforcement of the law, it in fact had a prima facie basis for its investigation and prosecution.

Our member organizations have long histories of defending the civil rights of all citizens. We did not, therefore, take the charges against the BATF lightly and launched our own investigation of such allegations. We dealt at arm's length with BATF and examined materials available to any member of the public under the Freedom of Information Act.

At this time, Mr. Chairman, I would like to introduce Mr. Fields of our staff who will discuss the thrust of our statement today. Mr. Sam Fields has been directly responsible for and integrally involved in our investigation of this issue over the past 2 years, and is, in our view, best qualified to state the findings of the coalition's research.

Mr. CONYERS. Welcome before the committee, Mr. Fields. You may proceed.

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



Although, as just stated, BATF acted reasonably in these specific instances, we nonetheless believe that BATF has generally been derelict, rather than overzealous, in its duty to enforce the law. In short, BATF has improperly licensed thousands of Federal Firearms License (FFL's) without applying reasonable standards consistent with the 1968 Gun Control Act. This has led to an army of FFL's who are not bona fide businessmen conducting a responsible business in compliance with Federal, State, and local law.

The result has been, among other things, the undermining of State and local efforts to monitor the flow of firearms in their respective jurisdictions. The magnitude of this problem was recently brought home in a page 1 story in the New York Times. We would like to submit that article which details how "car-trunk" FFL's facilitate the introduction of criminal firearms into New York City.

Our organization has petitioned the Bureau——

Mr. CONYERS. Can I ask the witness to suspend? We are being called to the floor for a recorded vote. We will resume the hearings as soon as that vote is over.

The subcommittee stands in recess.

[Recess.]

Mr. CONYERS. The subcommittee will come to order. We apologize to our witnesses. We had two recorded votes almost successively on the floor. I would like to go off the record for a brief period.

[Discussion off the record.]

Mr. CONYERS. We invite you to continue your testimony, Mr. Fields.

Mr. FIELDS. Thank you very much.

Our organization, along with private citizens and State and local officials, has petitioned BATF to correct this massive violation. We would also like to submit for the record a copy of our petition, and the survey on which it is based. The survey details the extent to which BATF issues licenses to dealers who are not bona fide businessmen.

Now I would like to discuss the civil rights allegations.

With respect to civil rights allegations, time limited our ability to analyze each and every case. We therefore decided to look at two of the more celebrated cases of FFL's who allegedly have been prosecuted by BATF without basis—Willie and Paul Hayes of Valencia County, N. Mex. and Richard Boulton of Montgomery County, Md. Both cases have been raised this afternoon in this hearing.

For purposes of the congressional oversight, the question is simple. Was BATF acting responsibly when it decided to prosecute in the Hayes case? We believe BATF did act reasonably in deciding to prosecute, based on the evidence that its investigation had compiled. BATF's prosecution was not successful, in part because of a successful suppression motion by the defense which led the court to exclude BATF's most important evidence.

The evidence that was not admitted into the criminal trial was a tape of conversations between the Hayes' and BATF undercover agents. The trial judge excluded the evidence because the original recording had been transferred to a new reel of tape, thus breaking the chain of evidence. Neither our organization nor this subcommittee, I am sure, wishes to second-guess the judicial ruling leading

to the suppression of evidence and the ultimate acquittal of the Hayes'. The BATF and the Hayes' had their day in court, the defendants were acquitted, and the case is closed. We have no desire to reopen it.

However, in a congressional evaluation of BATF's prosecution policies, where the conduct of the prosecutor rather than the defendant is at issue, it is crucial to look at the results of BATF's investigation. Only this way can Congress satisfy itself on the central issue here—are BATF agents ignoring what appear to be serious cases of criminal firearms dealing, and concentrating on defenseless dealers in an effort to bolster their own conviction records?

Mr. ASHBROOK. At this point, I would like to raise a point of order.

I talked to Mr. Dessler during the recess and called to his attention what I thought was an erroneous statement made by him. This witness in effect has repudiated what Mr. Dessler said. When I asked about the Freedom of Information Act matter, Mr. Dessler thought that the transcripts had been introduced in evidence and, therefore, thought it was appropriate to release them under the Freedom of Information Act. You have correctly stated the trial judge excluded the evidence, although I believe that you did not cite all of the reasons. It is my understanding that the tape was totally garbled and was not coherent.

Mr. CONYERS. Could I say to my colleague why don't we let this testimony continue and we will recognize you on your own time.

Mr. ASHBROOK. My point is that this witness' testimony is based on what would appear to be an invasion of the privacy of litigants in a case where the court would not permit the introduction of the tapes into evidence and where BATF may have improperly under the law given it to Mr. Fields. If you want to introduce this evidence in the subcommittee's record, fine, but I think at this point it ought to be stated that this may be a violation of the law.

Mr. CONYERS. I am afraid I do not share my colleague's view, but I will record his objection.

Mr. ASHBROOK. All right. Please continue.

Mr. FIELDS. The material we studied is 146 pages of transcripts, taken from five conversations between BATF undercover agents and Mr. and Mrs. Hayes in April 1978. The transcripts were made by BATF, in preparation for trial, and we cannot vouch for the accuracy of the transcription. During the course of those conversations the Hayes are reported as discussing past, present and future plans for activities that strongly appear to be violations of Federal laws enforced by BATF. Those apparent violations include, but are not limited to: Selling unrecorded firearms, buying and selling stolen weapons, altering official firearms dealers' records, possessing illegal weapons, making illegal sales and purchases of restricted weapons, obliterating serial numbers and selling to persons in prohibited categories. From a prosecutor's standpoint, it is significant that not one of those apparent violations seems to have been committed out of ignorance of the law. To the contrary, the tape recorded conversations appear to demonstrate that the Hayes' literally bragged about their ability to violate the law.



The tapes are quoted exactly in my written testimony, but for purposes of oral testimony I am paraphrasing.

In an April 19, 1978, conversation, an agent offers to buy 12 guns and inquires as to how to avoid the reporting rules on multiple sales.

HAYES. You just make out the registration, see, and then just put it where it will not be so obvious.

AGENT. Talking about leaving off the dates, right?

HAYES. That is what I am telling you, that is what we do, we just put them in a little at a time so it will not be so obvious.

Later Hayes described how she had had this similar type of ongoing relationship with a confederate by the name of Sam Davidson:

You remember that kid was here, he buys at least two guns a week. He buys two guns a week almost every week of his life and sells them to the Wetbacks, he [Davidson] takes them out and sells them and he brings us the money. He does not have anything, does not have anything invested except his time, so we have to finance them. Actually we are financing them. He is using our money, bank money.

Later on that same day Mr. Paul Hayes produced a miniature shotgun.

HAYES. Did you see that .410 gauge pistol?

AGENT. No, I never have.

HAYES. Well, I will show you one because you will never see another one, they are against the Federal law. That is a wicked rascal. That is why they are outlawed here.

AGENT. Those pistols are against the law, are they not?

Mr. HAYES. Yes, the Federal law.

On April 11, Mr. Hayes apparently discussed with BATF undercover agent Jack Barnett how he handled stolen merchandise. The agents asked about hot guns, quote, unquote:

What is the deal on another kind of gun, like, well, something like this. Somebody brings you in something you thought was hot, what would you do with it, just keep it?

WILLIE HAYES. We would put it in the rec. We would'nt put it in the Federal book, we just sell it without showing it.

Somebody we know was interested in a gun like that, well, we would tell them, we always tell them that maybe it is pretty hot.

On April 5th, Willie Hayes apparently bragged about dealing in unrecorded handguns, as well as a willingness to obliterate serial numbers to attempt to render the weapons untraceable.

AGENT. Boy, that is a little bugger.

HAYES. Is that not a cute little thing.

AGENT. I never seen one that little.

HAYES. I meant to tell you, and I forget it, that it is not registered. Ha, Ha.

AGENT. Not registered?

HAYES. Not registered. See, we do not have to account for it.

AGENT. Oh.

HAYES. So.

AGENT. What's this thing that is on it must be a pretty old one, 62224. I guess that might mean something. What is that, a serial number?

HAYES. And if you want it removed, remove it.

So it goes throughout those transcripts. According to our analysis at no less than 33 places the Hayes' discuss what appear to be violations of Federal criminal law. We conclude that BATF was justified in deciding to investigate and prosecute in the *Hayes* case.

Now I would like to turn to the *Boulin* case, also discussed this morning.

The case of Richard Boulin offers a perspective that illustrates the study we will be summarizing shortly—a Federal firearms licensee who was not conducting a bona fide business. Mr. Boulin attempted to manipulate the firearms licensing laws to attain an illegal end.

The *Boulin* case, a cause celebre in the December 1979 Washingtonian magazine, involved the unlawful use of a Federal firearm dealers' license to launder guns in such a manner as to avoid reporting sales on the appropriate Federal form, and to avoid the 7-day Maryland State Police check. The Maryland statute was enacted to prevent an immediate transfer to the purchaser. Again, we have studied transcripts of tape recordings as prepared by BATF.

The present BATF licensing procedure allowed issuance of a dealer's license to a man who would not accept the legal obligations imposed on licensed dealers. In his own tape recorded words: "It's hard to stay straight. It is hard because you can't make a living."

The Boulin scam was simple. He acquired guns as a licensed dealer and then transferred them to himself as a private individual. Acting as a private individual, Boulin then resold the guns to certain trusted buyers. By this trick he sold handguns without any Federal paperwork or Maryland State Police clearance. Clearly, he knew he was stepping over the line. In discussing gun shows, he told to the informant:

I want to get rid of my stuff too because I am worried if I keep doing these shows BATF is going to come waltzing in one of these days.

Later in the same conversation, he explained to the informant his scam:

I gave you my personal guns, you know what I mean, they are still going to have to prove that they was, you know, guns that have been in my business, which they have not been.

Boulin was, of course, wrong on two counts—the guns were from his business, and it was proven by BATF. He was convicted.

Boulin's defense to laundering guns was that they were weapons from his private collection and that he in fact was going to let his license lapse and get out of the business. His proof—his dealer's bound book showed a zero inventory.

The tapes reveal a significantly different picture. Early in his first meeting with the BATF informant Boulin gave no such indication. To the contrary, he described a continuing relationship with a distributor:

I have a standing agreement they ship one Python or Colt. Something every month automatically because I buy a lot of stuff from him.

Later in the same meeting Boulin described his willingness to go to Sales & Service Ltd. of Silver Spring—a firearms wholesaler—and use his dealers' license to make a discount purchase which he would then sell to the informant.

In fact, Boulin seemed to be willing to wear both his dealer's and collector's hats depending on which was most convenient. In an October 16, 1977, phone conversation he discussed whether sales should be on or off paper, meaning whether they would be through his private collection or through his business:

Well I will go ahead with these two Lugers, I probably got an Army 45 I am thinking of moving. I have got a Colt six-inch nickel. We are talking about the same situation we were talking about. You know what I am talking about.

INFORMANT. On or off.

BOULIN. Off.

Again referring to whether it would be on or off paper. Example reported or unreported.

Other information emerged in the course of our investigation of the case. According to the Washingtonian article Boulin was told by the strawman that he, the strawman, intended to resell the guns to farmers in Maryland. In fact the strawman's cover story was resale to mercenaries in the White Rhodesian Army. During the course of conversation Mr. Boulin is reported as proclaiming that he "hated niggers" and that as a Montgomery County policeman his favorite assignment was "the D.C. line, you know right here in Montgomery County, in fact, I locked them up." When it came to abuse of police power the transcripts seem to indicate that Mr. Boulin was an experienced hand.

Furthermore, the license business premises—9112 Pennsylvania Avenue, Prince Georges County, Md.—was in actuality his father's insulation business. His father later stated that he had no knowledge of a firearms business being conducted on the premises.

Richard Boulin was convicted for improperly dealing in firearms. There can be no doubt that he never should have been licensed in the first place and that lax licensing procedures led Mr. Boulin down a path that ultimately required from him a level of legal compliance that he was neither prepared nor willing to abide by.

As we stated at the outset, BATF's lax dealer licensing procedures have encouraged fly-by-night dealers, hurt legitimate dealers, and helped create problems for law enforcement officials across the country. Our study details the degree.

Our study was conducted to determine the proportion of federally licensed firearms dealers that are bona fide businesses operating in compliance with Federal, State, and local law.

All 136 holders of Federal firearms dealers' licenses in the New Haven, Conn. metropolitan area were selected as subjects. All 136 were studied on the basis of public information obtained from the Bureau of Alcohol, Tobacco and Firearms (BATF), as well as Connecticut State and local officials. Additionally, nonobtrusive interviews—in which the interviewer requested information as a potential buyer—were conducted with the 108 licensees that were reachable by telephone.

Overall, more than three-fourths—77.2 percent—of licensees were in direct violation of at least one Federal, State, or local law or regulation. Nearly one-half—48.5 percent—were in violation of two or more firearms, tax, or zoning requirements.

A common violation involved the sale of handguns in violation of State and local licensing laws. Nearly two-thirds—63.6 percent—of the dealers holding themselves out as sellers of handguns did not possess valid State or local licenses. This is a violation of State firearms licensing laws as well as a violation of Federal law.

In addition, over two-thirds—69.1 percent—of all licensees did not appear to be bona fide businesses. It is unlawful to obtain a license without intending to conduct a bona fide business. Yet only 8.5 percent of the licensees listed their telephone in the Yellow

Pages; 48.7 percent of the licensees required to do so did not maintain regular business hours; nearly half of those reached answered their telephone with a nonbusiness response. Over one-fifth of all the licensees—22.1 percent—admitted outright to not conducting a regular business; a further one-fifth—18.3 percent—of the ostensible businesses could not be contacted by any reasonable means. Of the licensees who professed actively to use their licenses, 39 out of 81—45 percent—could not reasonably be considered bona fide commercial enterprises.

We conclude that at least two-thirds of the licensees studied are not entitled to their licenses.

I would like to conclude my comments with a personal note on the *Hayes* and *Boulin* cases. The names are Alfrod, Alexander, Carpenter, and MacMonagle. Who are they? They are the BATF agents who diligently and correctly pursued their duty as law enforcement officers. I can do more than imagine what it must be like to have their names and deeds mislabeled and dragged before the public in a McCarthyite manner, hit-and-run accusations with the accused getting no chance to respond.

I can do more than imagine because my own father devoted 20 years of his life to law enforcement. He was cursed, spat upon, assaulted and shot at by the worse dregs of society. But add to this an unwarranted assault on integrity, and you reap the decimation of departmental morale. Between homicide, assault, theft and robbery, this Nation suffered over a half-million dollar incidence of criminal firearms misuse last year. The BATF is our first line of defense. It is in the interest of the American people for accusations of abuse to be first thought out, responsible and ultimately accurate, not the partisan political pot shots we have been hearing up to now. Fair play and responsible law enforcement demand nothing less.

I thank you.

Mr. CONYERS. I thank you for your testimony. Did the third person at the witness table wish to be heard?

Mr. TULLER. I have no comments, Mr. Chairman.

Mr. CONYERS. What is your name?

Mr. TULLER. May name is Mark Tuller of the law firm of Arnold & Porter.

Mr. CONYERS. Well, we first of all think that it is very important that we have before the subcommittee a balanced view, and I think that that is what we have attempted in this hearing. Obviously, we will have to conduct more investigations, that will lead to more hearings, but I think we have started an important method in terms of determining where the accuracy lies in many of the emotional exchanges that frequently accompany this subject, so I am very grateful to you for having worked as diligently as you have. You are obviously a nonprofit organization, requiring the work of volunteers and people concerned with social questions, and I think for that the subcommittee is indebted to you.

Mr. FIELDS. Thank you.

Mr. CONYERS. Let me ask you this question. I think we have raised here a fundamental issue as to the effectiveness and philosophy of BATF. They are characterized as overzealous. I think that is the standard word in one respect, and here, they are character-

ized as falling far short of the mark of an agency doing its policing responsibilities in a very sensitive area, the handling of guns. I think that we can with the investigative tools of the committee come to a determination in that regard.

Are there other dimensions of this question of handguns, their proliferation, use and control, that strike you as important issues that ought to be considered?

Mr. FIELDS. Well, I think there are quite a few of them. I would like to make one point about something you said. I would like to dichotomize between the top officers and the man who is on the line and getting shot at. We have heard of numbers that have been killed, assaulted, et cetera, and what we consider to be lax enforcement about the issuance of licenses that is coming down from Washington. This problem is not a new problem. As early as 1975, Assistant Secretary McDonald said in his own words that only 30 percent of the licensees are bona fide businessmen. We do not understand why then or why the agency now allows that policy to continue. We are convinced that the intent, word, and in fact, the regulations of the 1968 Gun Control Act do not allow people to have Federal firearms dealers' licenses that are not bona fide businesses in compliance with Federal, State and local law. The present situation makes it virtually impossible for the agent in the field to monitor the people in his area. Ten or fifteen agents to monitor 3,000 or 4,000 licensees. The task is Herculean, basically impossible, and needlessly so because they should not be licensed in the first place.

Mr. CONYERS. Are there other dimensions of this problem that you would like to make any observations on before we relieve you from your duties at the table?

Mr. FIELDS. Well, I have nothing specific but I would be glad to answer any question any members of the committee might have that might lead me to something.

Mr. CONYERS. I yield now to Mr. Ashbrook for any questions.

Mr. ASHBROOK. First, let me make an observation. I assume when you say that "we have before the subcommittee a balanced view," you are referring to future hearings, not today's?

Mr. CONYERS. Are you referring to the chairman?

Mr. ASHBROOK. You seemed to be saying that we have had a balanced presentation today. I believe that we need future hearings to achieve a balanced view, since today we have only heard from BATF and three witnesses who are against the private ownership of handguns. The only balance has come from approximately 8 minutes of testimony from two of our colleagues. So, I assume that the balance to which you refer will come in future hearings. Is that a correct observation?

Mr. CONYERS. I do not like to correct my ranking—

Mr. ASHBROOK. I get corrected all the time. I do not mind.

Mr. CONYERS. We are not through with the hearings.

Mr. ASHBROOK. OK.

Mr. CONYERS. There are other witnesses yet to come.

Mr. ASHBROOK. That is what I was hoping for.

Mr. Chairman, since Mr. Fields brought up the *Hayes* case, I would like to take this opportunity to say that I think Mr. Dessler, the counsel for the BATF, made an absolutely false statement here

today. I want to state that for the record, so we will find out who is right and who is wrong. It is my understanding that none of the transcripts were introduced in the court. That is a little bit different from what Mr. Fields said. It is my understanding the tapes were of such poor quality and were so garbled that neither the judge, the jury, nor the court reporters could really make out what was being said or who was saying it. The judge, therefore, held that the tapes, and, moreover, the transcripts, which were only a secretary's claim of what the tapes said, were totally unreliable.

Again, this is a concern I have about BATF and their idea of law enforcement. It would be my understanding, in that situation, which Mr. Dessler confirmed in my question to him, that if the transcripts were admitted into evidence, we could release it under the Freedom of Information Act. If they were not admitted into evidence at the trial, I do not think BATF could legally release them to you. The Freedom of Information Act is subject to an exception, which bars release of information that constitutes a clearly unwarranted invasion of personal privacy.

I just want the record to reflect that.

Mr. Fields, I know in your testimony you said you did not want to reopen the *Hayes* case. Nevertheless, you did so, so let us reopen yours. You have advocated vigorous prosecution by the BATF. You are the luckiest guy in the world. If they had vigorously prosecuted you in your case, you probably would have been indicted.

Mr. FIELDS. I have no idea what you are referring to.

Mr. ASHBROOK. Let us go through it, then.

Let me state what I understand to be the facts, based on what the Attorney General has stated.

Mr. CONYERS. Are you referring to a case?

Mr. ASHBROOK. Yes, sir.

Mr. CONYERS. A case involving the witness?

Mr. ASHBROOK. Yes. He has not been prosecuted, but there have been serious allegations of illegal actions. I just want to know—

Mr. CONYERS. You propose in a subcommittee hearing on oversight of BATF to interrogate a witness?

Mr. ASHBROOK. BATF was involved.

Mr. CONYERS. Let me finish. You propose to interrogate a witness about some of his conduct?

Mr. ASHBROOK. Absolutely. Specifically, I want to discuss his own personal conduct as it relates to BATF.

Mr. CONYERS. Well, I think that is quite out of order.

Mr. ASHBROOK. I do not think so at all.

Mr. CONYERS. It is quite inappropriate.

Mr. ASHBROOK. If he wants to testify on BATF and the way they enforce the Gun Control Act, why should we not look at the way the BATF acted in his case. Please tell me how that is improper.

Mr. CONYERS. His case is not before this subcommittee and I do not—

Mr. ASHBROOK. Mr. Hayes and Mr. Boulin were not before the subcommittee. By virtue of his testimony, Mr. Fields brought them before it.

Mr. CONYERS. I think you are quite incorrect. It was brought before the subcommittee by BATF and it was not introduced originally by the witnesses before us now.

Mr. ASHBROOK. I do not recall——

Mr. CONYERS. At any rate, this would be highly unusual, I think, to——

Mr. ASHBROOK. I do not think it would be at all unusual.

Mr. CONYERS. Maybe that is your style or your technique, but it certainly is not of this subcommittee——

Mr. ASHBROOK. It is Mr. Fields' technique.

Mr. CONYERS. Or this Chair. I think I should say this unequivocally, that questions about anything personally involving a witness, even related to BATF, would seem to me to be highly unusual unless you would like to bring him as a witness before the committee for whatever purposes and that he agreed as a witness to come here to talk about the oversight of BATF and then be subject to an investigation that you have conducted about him.

Mr. ASHBROOK. It is not an investigation. I am interested in his personal observation on the way BATF handled his own case, and the Attorney General's statement on his own involvement. What is wrong with that? It is all a matter of public record. Mr. Fields introduced into the record material that makes one wonder how he acquired it. I do not know why it bothers you that I ask him questions about his own involvement.

Mr. CONYERS. I did not understand this hearing to be an investigation of the witnesses who themselves come before it to testify.

Mr. ASHBROOK. This is an oversight hearing on BATF. Mr. Fields has been involved with BATF. I want to ask these questions as part of our oversight function. I do not see anything unusual or improper about that.

Mr. CONYERS. I know you have asserted that before.

Mr. ASHBROOK. Are you going to say I cannot ask these questions?

Mr. CONYERS. Yes.

Mr. ASHBROOK. Under what authority? Are you going to adjourn the meeting?

Mr. CONYERS. No.

Mr. ASHBROOK. I do not believe you can prevent me from asking those questions and I will proceed to ask them.

Mr. CONYERS. I am ruling the questions out of order, if I can say to my colleague.

Mr. ASHBROOK. I do not believe you can do that, I will say to my colleague.

Mr. CONYERS. I have ruled them out of order as the subcommittee chairman. I think this is so entirely inappropriate that I have ruled that line of questioning out with all deference in trying to understand this as fairly as I can.

Mr. ASHBROOK. You have not even heard my question yet, so how can you know it is improper?

Mr. CONYERS. Well, I would say to my colleague that if he would want to take this off the record and is seriously concerned about pursuing it, he can do it, but if he feels that this ruling is fair——

Mr. ASHBROOK. Which I do not.

Mr. CONYERS. Or that he would like to bring this witness back in a different capacity for these questions, but I do not think this witness should be subject to the surprise of being personally involved.

Mr. ASHBROOK. Come on. Surprise? How could he possibly be surprised by this?

Mr. CONYERS. I think this is an incredible attempt on the part of a subcommittee going far afield and, as I said, I think this line of questioning is very unfortunate, and I regret that I have to rule that line of questioning out of order.

Mr. ASHBROOK. Then there would be no need for me continuing here. I will go over and make the statements on the floor. We know what kind of subcommittee this is from this point on.

I would like to appeal this ruling to the full Judiciary Committee. I think you are totally wrong, and totally out of place. Mr. Fields has gone out of his way to talk about people who have been found innocent, with evidence that he obtained in a manner that is unknown to me. You do not want me to talk about things about which he has personal knowledge.

Mr. CONYERS. Let us bring it in but in a more orderly procedure.

Mr. ASHBROOK. I do not need to participate in this hearing, if you are going to rule me out of order. I will take this up with the full Judiciary Committee. Thank you.

Mr. CONYERS. The subcommittee at this point does not have a quorum and we will be forced to discontinue the hearings. The subcommittee stands adjourned.

[Whereupon, at 5:45 p.m., the subcommittee was adjourned, to reconvene upon the call of the Chair.]

## ADDITIONAL MATERIAL

### TESTIMONY OF HON. MIKE SYNAR

Mr. Chairman, the Gun Control Act of 1968 is an anomaly among Federal laws. Under the Act, an innocent, honest citizen can inadvertently place himself in felonious violation and face prosecution, even though he neither "intended" to violate the law, nor did so "knowingly" or "willfully." It is no underestimate, nor is it an understatement, to say that literally thousands of honest, decent citizens are now convicted felons because of the Act. And crime has not been reduced. Violent crime in this country—with hundreds of millions of dollars diverted from crime control to gun control, and from studying methods of crime control to studying methods of gun control—has skyrocketed an 80 percent increase since the Gun Control Act and the Crime Control and Safe Streets Act of 1968 were passed.

Under GCA 1968, crime has not been controlled; criminal access to guns has not been prevented; and our streets have not been made safe. In fact, polls show an increase in citizens' fearing to walk in their own neighborhoods since 1968 comparable to the increase in the murder rate since 1968.

The Gun Control Act of 1968 has served only as a mandate to the Bureau of Alcohol, Tobacco and Firearms, to inconvenience, to harass, to prosecute, and to persecute the honest gun owner, gun collector, and gun dealer. For too many years, these violations of the civil rights of gun owners have been dismissed as law enforcement anomalies. In reality, these excesses of police power are widespread and enhanced by the misdirected provisions of the 1968 gun law. We have not yet answered the problem of increased crime.

I call upon this Subcommittee to seriously consider the many problems which have been demonstrated in congressional hearings on the BATF and its enforcement of the Gun Control Act of 1968, and to reform that Act to accord with the goals enunciated in 1968: "(It) is not the purpose of this (Act) to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this (Act) is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this (Act)."

BATF's propensity to issue regulations must cease lest our citizens continue to be caught up in a juggernaut of unclear and oftentimes conflicting marching orders. What's legal today may be illegal tomorrow. Acts of criminality manifested by the GCA 1968 are *malum prohibitum* in nature. Each is a "wrong" because it is prohibited by law, not because the action involves harm to citizens. Should an individual inadvertently violate one of these regulations, he finds himself facing substantial penalties; he or she becomes a "felon," for violating purely technical and arbitrary recordkeeping and reporting requirements. Yet these regulations have no bearing and no impact on violent crime.

Why should we continue to infringe on the fundamental rights guaranteed to law-abiding citizens with legal restrictions totally unrelated to criminal violence or the abuse of firearms? For example, the Gun Control Act of 1968 denies an individual living in one state the ability to transfer a firearm to an individual in another state, even though both are law-abiding and may in fact be related. If an uncle of mine, living outside of Oklahoma, wishes to give me a gun, he cannot do so. If he dies, and my aunt decides he would have wanted me to have that firearm, she cannot just deliver it to me. Such transactions must by law go through federally licensed firearms dealers who, again, risk paperwork errors with the resultant threat of prosecution on every transfer. The bulk of the American public—ignorant of such gun laws and regulations—may thus find themselves inadvertently subject to criminal prosecution for such acts as transfers, loans, and gifts. Yet what does this provision have to do with violent crime? Clearly, nothing.



Why should we allow an agency, by its regulations, to violate the spirit of the laws and the clearly expressed intent of Congress?

When Congress attempted to lessen the paperwork burdens on blackpowder shooters, BATF made those burdens greater—by regulation. Although Congress intended no registration—which meant no centralization or computerization of purchase records or reporting of multiple sales—BATF has been centralizing the records of thousands of dealers it drives out of business annually and required reporting of multiple handgun sales—by regulation. And, in 1978, BATF also attempted to require quarterly reports of all firearm sales—by regulation. None of these regulations issued by BATF is aimed at the criminal who misuses firearms or deliberately aids violent felons. Obviously, these are make-work schemes, designed as a justification for the continued existence and expansion of this bureaucracy.

As currently enforced, with its iniquitous patchwork provisions, GCA 1968 has served as the blueprint from which the BATF can ride herd over an entire class of citizens who have never committed a crime nor had any intention of committing a crime. In its application, that law has fostered widespread civil liberties abuses of honest citizens. It has achieved nothing in the way of curbing crime or criminal misuse of firearms. It has inconvenienced only the law abiding, discouraging the ownership and use of firearms by honest citizens, imposing unnecessary regulations on 60 million American gun owners, and doing nothing to inconvenience a quarter-million gun-wielding violent criminal.

I don't believe that we can turn the nightmare created by GCA 1968 into a crime-controlling dream overnight. But we can—very simply and clearly—reform the onerous provisions of the Federal gun law with the Volkmer-McClure bill. I firmly believe the enactment of just part of that modest reform package could change the aim of that law 180 degrees, from targeting the honest citizen to pointing BATF efforts at the professional criminal and at his aides and abettors. We must make it clear that the law addresses itself at those with mens rea, a criminal mind. We must amend this misunderstood, misapplied, and offensive law so that it is redirected against those with criminal intent, motive, will, and knowledge. Decriminalize ignorance and honest mistakes, and I believe the worst abuses under GCA 1968 will be corrected.

This is a reasonable approach to a very sensitive, emotional problem. By accepting these adjustments to the Gun Control Act of 1968, we will focus the attention and intention back on those who misuse guns and not on law-abiding citizens.

#### STATEMENT OF HON. STEPHEN J. SOLARZ

Mr. Chairman, I would like to thank you for this opportunity to participate in the Subcommittee on Crime's hearing on gun control legislation.

First of all, Mr. Chairman, I would like to commend you and the members of your subcommittee for holding hearings on this vitally important issue. I would like to use my time before your subcommittee to emphasize the urgent need for meaningful national gun control legislation and to urge the enactment of the Rodino-Kennedy Handgun Crime Control Act of 1979 (H.R. 7148). As a cosponsor, I believe this legislation carefully balances the need to regulate and curtail the proliferation of handguns, while protecting law abiding citizens' right to own a handgun.

The proliferation of handguns is one of our most pressing national problems. Two and a half million handguns are manufactured in the United States every year—that is, a handgun is sold every 13 seconds. At the current rate of production and sales, over 100 million handguns will be in civilian hands by the year 2000.

Unfortunately, due to the lack of adequate controls many of these handguns will end up in the hands of criminals who will use them as weapons. Since 1965 nearly 87,000 Americans have been murdered with handguns. In 1977, handgun murders accounted for 48 percent of all murders. During the Vietnam War, more Americans were killed at home by handguns than the total number of American soldiers who were killed in combat in Indochina.

Crime is a growing concern of all Americans. As the Representative of the 13th district of Brooklyn, New York, I am particularly aware of the limited effectiveness of state gun control laws and the desires of my constituents for a tougher federal gun control law. Recently, I attended a funeral in my district for two police officers who were shot to death by handguns. Unfortunately, this type of vivid testimony to the seriousness of the handgun crisis is not uncommon. In the last two years, 12 New York City police officers have been killed and 39 officers were wounded as a result of handguns.

Even though New York City has the toughest gun control law in the nation 250,000 crimes were committed with handguns there in 1979. Over 90 percent of the handguns used in New York City come from outside the state where handgun

control laws are not as stringent. Obviously, stricter gun control laws on the State level will accomplish little when it is so easy to bring handguns in from other States.

I am convinced that Congress must take the initiative and immediately work toward a comprehensive national gun control law in order to reduce the amount of handgun violence that is evident in our society. We know that:

Easily concealable handguns are used in a substantial percentage of the criminal offenses committed with handguns and such guns have no sporting purpose and constitute a serious threat to general law enforcement, to the public safety, and to the integrity of State and local firearms control laws;

That legitimate purposes for handgun ownership will not be impeded by the regulation of illegal traffic in handguns to ensure that commerce in handguns is responsible and accountable;

That public opinion polls have consistently indicated that a substantial majority of the American public as well as a substantial majority of American handgun owners favor the introduction of more effective handgun controls and;

That the innocent victims of handgun crime have been forgotten and ignored and should be compensated for the harm they suffer as a result of handgun violence.

Why then has the Congress not enacted tougher gun control legislation? The fact is that although hundreds of bills have been introduced in Congress over the past 12 years, none have been able to bring together the two opposing interests: those who advocate a total ban on handguns and those who oppose any legislation abridging the right to own a handgun.

The Handgun Crime Control Act of 1979, which I support, is a balanced approach to this national problem. H.R. 7148 would ban so-called Saturday Night Specials and other easily concealed handguns, impose strict gun registration and sale requirements, require mandatory sentencing of persons caught with an illegal handgun and compensate the victims of handgun violence.

I want to assure anyone with a legitimate right to own a handgun that this legislation introduced by Chairman Rodino and Senator Kennedy will not interfere with a citizen's legitimate right to own a handgun. Its sole purpose is to reduce the number of illegal handguns on the streets and to take these weapons out of the hands of criminals and thereby assist our local law enforcement agencies to improve public safety.

The legislation does not ban all civilian possession of handguns, nor does it stop the hunter or sportsman from enjoying his recreation because the act does not apply to long guns. The act does not call for a government-run, centralized registration system. In addition, the proposed measure is not retroactive, that is, current handgun owners will not have to take any action as long as they retain possession of their handguns.

The last time Congress addressed the issue of handgun control was twelve years ago when it enacted the Gun Control Act of 1968. Unfortunately that act failed to regulate the sale of "Saturday Night Special" parts. As a result it is now relatively easy for would-be criminals to import the parts and domestically assemble their weapons. The Rodino-Kennedy bill would close this loop-hole by banning the importation of "Saturday Night Special" parts, and create a new definition of "Saturday Night Specials" based on a handgun's degree of concealability and its potential criminal, not sporting use.

The legislation I cosponsor imposes stricter, though simpler guidelines for regulating the primary transfer of a handgun from a licensed dealer to an individual and also bars transfers of weapons between two private individuals.

If enacted, the Rodino-Kennedy bill would require that individuals purchase a handgun from a licensed dealer and satisfy local, state, and federal law enforcement authorities that they have no criminal record, no history of mental illness or drug addiction, that they are at least 21 years of age, and have valid identification.

To prevent the transfer of a handgun from a private individual to another individual who does not satisfy these qualifications, the bill prohibits secondary transfers unless the exchange was done through a licensed handgun dealer.

An aim of H.R. 7148, which I strongly support, is the requirement that our handgun industry be held accountable and responsible for the weapons they produce.

Licensed handgun manufacturers and handgun dealers would be required to maintain records by serial number of all handguns produced, imported, received, sold, transferred, maintained in inventory, even if destroyed, lost, or stolen. These business-like record keeping procedures are required for the registering of all automobiles, and make it relatively easy to trace a stolen vehicle. Since handguns are more potentially dangerous than automobiles, the use of these serial numbers

should aid law enforcement efforts to track down criminals, and to return confiscated handguns to their proper legal owners.

Studies have consistently shown that stolen handguns constitute a major source of weapons for criminals and this legislation mandates that commercial handgun licensees immediately report any loss or theft of handguns to the police. Prompt reporting of stolen weapons, and the ability to easily trace guns should decrease the number and attractiveness of stolen firearms to would be criminals.

Pawn brokers, who have a notorious history of abuse, would be prohibited from dealing in handguns. Black market gun operations are another major source of weapons for criminals. To curtail black market efforts to get around isolated state gun control laws, the Handgun Crime Control Act of 1979 would prohibit handgun dealers from transferring more than 3 handguns per year to any one person without special approval from the Office of the Attorney General.

If an individual has a legitimate purpose to carry a concealed handgun on the street, they will not be affected by H.R. 7148, since its major purpose is to cut down the number of illegal handguns on the streets.

As a nation, we are captive to the fear of crime and violence, but our senior citizens are particularly threatened. As the Representative of a district which has more senior citizens than any other except Florida, I am very aware of my constituent's concern that they cannot walk the streets safely.

The act I have cosponsored would encourage States to adopt a license-to-carry law modeled after the law in Massachusetts which imposes a mandatory prison sentence for carrying a handgun outside one's home or place of business without a legitimate purpose.

Owners of handguns would also be required to immediately report any loss or theft of their handguns and the legislation would prohibit the loaning or renting of handguns to anyone except for temporary use on their premises or in their presence.

I strongly believe that the provisions of any handgun control bill would be useless unless they provide for stiff penalties and mandatory imprisonment for those who carry a gun without a license or use a gun during the commission of a crime. H.R. 7148 would require that States impose a mandatory six months sentence on persons found guilty of carrying a handgun outside of their home or place of business without a valid state license-to-carry.

It seems to me that the members of a society who own handguns must be held responsible for the use and disposition of these weapons just as under local law we hold the owners of an automobile to be liable for its use. H.R. 7148 would impose a severe fine on a handgun owner who failed to report the loss or theft of their handgun which is later used in the commission of a felony. (A lesser fine would be imposed if the handgun was not used for criminal activity.) In addition, individuals would be civilly liable to victims if they negligently sold or transferred a handgun in violation of a provision of this Act, and the handgun was subsequently used against the victim.

To develop a greater concentration and focus on handgun crime, Title II of the Rodino-Kennedy bill transfers all aspects of administration and enforcement of federal gun control legislation (except tax collection) from the Treasury Department to the Justice Department, since this is clearly a law enforcement issue.

Another major aspect of the gun control legislation that I cosponsor is crime victim compensation. In the past we have been extremely negligent in our concern and care for the innocent victims of violent crimes. An essential provision of H.R. 7148 would authorize federal grants for approved state programs which would provide compensation for the victims of handgun crime and their families. States, like New York, have operated these programs out of concern for the serious impact violent crimes have on the economic, physical, and mental well-being of their citizens.

Finally, I would like to say it is now time for Congress to finally enact meaningful national gun control legislation. My constituents in New York want action to be taken immediately. Every responsible public opinion poll of handgun owners indicates that they too are willing to accept common sense controls on handguns. A recent ABC News-Louis Harris poll showed that 78 percent of those polled favored federal laws requiring that all handguns be registered by Federal authorities and 76 favor the federal control of the sale of handguns.

As a member of the Congress, I have consistently supported legislation which would reduce the senseless violence caused by the proliferation of handguns in the United States. It seems to me that the Handgun Crime Control Act of 1979 is a reasonable, responsible, and comprehensive gun control measure that will not entirely wipe out the current epidemic of handguns, but it would surely be a boost to

our nation's law enforcement agencies and their efforts to decrease violence and improve the security of our citizens.

Handguns Kill! Every 60 minutes another American is shot to death by a handgun. Mr. Chairman, I applaud you and your subcommittee's efforts to initiate hearings on this issue. I urge that we put political considerations aside and immediately work together with Chairman Rodino and the other members of the Judiciary Committee to enact meaningful, viable, and desperately needed national handgun control legislation. This is an area where we cannot afford to let another year go by, for every hour we delay literally means another life can be lost.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., July 2, 1980.

Hon. JOHN CONYERS, Jr.,  
Chairman, Subcommittee on Crime,  
House Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: I recently requested the Bureau of Alcohol, Tobacco and Firearms to respond to an article which appeared in Reason magazine accusing them of being an "American Gestapo."

I feel the BATF's response effectively refutes the allegations of abuse set forth in the article.

Considering that the Subcommittee on Crime is currently holding oversight hearings on firearms enforcement efforts of the Bureau of Alcohol, Tobacco and Firearms, I request that the attached letter from G. R. Dickerson, Director of the BATF, as well as the article from Reason magazine, be included in the official hearing record.

It is my view that the information contained in Mr. Dickerson's letter negates much of the misinformation which has been circulated with respect to the enforcement procedures utilized by the Bureau. At any rate, this material should be taken into consideration along with other information received during the hearings on this subject.

Sincerely yours,

ROBERT MCCLORY, Member of Congress.

Enclosures.

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
Washington, D.C., June 24, 1980.

Hon. ROBERT MCCLORY,  
House of Representatives,  
Washington, D.C.

DEAR MR. MCCLORY: This letter has been prepared in response to your recent inquiry regarding an article which appeared in the April 1980 issue of Reason magazine. This article alleges misconduct by the Bureau of Alcohol, Tobacco and Firearms (ATF) in the enforcement of the Federal firearms statutes. The article, which is entitled "American Gestapo: How the BATF is riding roughshod over civil liberties" was prepared by John D. Lewis, Jr., Public Affairs Director of the Second Amendment Foundation. ATF welcomes this opportunity to respond to the allegations in this article.

The article begins by describing four separate incidents in which ATF agents are alleged to have abused their authority. We would like to respond by providing you with an accurate account of each incident:

On June 7, 1971, ATF agents executed a Federal search warrant on the apartment of Kenyon F. Ballew, in Silver Spring, Maryland. The search warrant was obtained after two independent informants advised the local police and ATF that Ballew was in possession of unregistered hand grenades. In executing these search warrants, the agents were accompanied by uniformed as well as plain-clothes police officers. After announcing their identity and purpose at the door, the agents were required to force entry when the occupant failed to admit them. Upon entering the apartment, the agents were confronted by Kenyon Ballew who had armed himself with a revolver which he was pointing in the direction of the agents and officers. Ballew was wounded by a local officer. During the subsequent search of the apartment, agents recovered three disassembled grenades along with the ingredients for making these grenades fully operable. The grenades were later found by the United States District Court to be "destructive devices" within the definition of the Gun Control Act (GCA). Mr. Ballew later filed a claim against the United States under the Federal Tort Claims Act, but the suit was dismissed by the trial court which

ruled that Mr. Ballew's injuries were "caused by his own contributory negligence." The trial court held that the actions of the officers and agents were reasonable and found the issuance and execution of the search warrant to be proper. The District Court decision was affirmed by the Fourth Circuit Court of Appeals.

The article also cites an incident at the San Jose, California, Gun Show on June 3, 1978, and describes the firearms displayed there as being "antique and choice firearms—not the kind used by criminals." The action taken at the San Jose Gun Show resulted from a continuing pattern of incidents in which firearms used by violent criminals were determined to have been purchased at the San Jose Gun Show. For example, three of the four fully automatic weapons recovered from members of the Symbionese Liberation Army in Los Angeles, in May 1974, were determined to have been purchased at the San Jose Gun Show, and the sellers were unable to identify the purchasers. There were also several incidents in which firearms were recovered from members of other terrorist groups and were later shown to be purchased at the San Jose Gun Show. At least two weapons used in Chinese gang murders in San Francisco were also sold at the San Jose Gun Show. The weapon used by Sarah Jane Moore in the attempted assassination of President Ford in San Francisco in 1975 had been purchased from its original owner at the San Jose Gun Show.

In order to interdict this flow of firearms to violent criminals, ATF, the Santa Clara County Sheriff's Office, the United States Attorney, and the Santa Clara County District Attorney's Office agreed that the best possible course of action was to advise the participants of their potentially illegal conduct. On June 3, 1978, teams of ATF agents and Santa Clara County deputies went to the San Jose Gun Show where they interviewed persons who were displaying firearms. These exhibitors were furnished an informational packet outlining the Federal and State firearms laws. Participants were asked to acknowledge receipt of the packages by signing a form. In the event the participant refused to sign, no further action was taken. No arrests were made, and the interview teams exited the premises after approximately 75 minutes. The public was not allowed to enter the hall until the departure of the interview teams. This was done to avoid unnecessary confusion. While we are precluded from going into further detail, due to pending civil litigation in this matter, we feel it is important to note that this action in San Jose was a planned and coordinated activity for the sole purpose of addressing what had become a major unregulated source of crime guns by soliciting the cooperation of honest gun enthusiasts while also informing the participants at the gun show of their potential liabilities.

The next case cited in the article asserts that ATF agents confiscated the firearms collection of Patrick Mulcahey, Columbia, South Carolina. It is further alleged that ATF has refused to return the firearms collection to Mr. Mulcahey. Mr. Mulcahey had been the subject of a previous investigation in 1974 after local police officers executed a search warrant and recovered approximately \$60,000 worth of stolen firearms and explosives. Mr. Mulcahey, a licensed firearms dealer at that time, later abandoned his Federal firearms license as part of a plea bargain agreement in which felony charges were dismissed against him. In 1976, ATF received information that Mr. Mulcahey was again active in the sale of stolen firearms. An undercover agent purchased three firearms and a quantity of ammunition over a two-week period during which Mr. Mulcahey offered numerous firearms for sale. A Federal search warrant was executed on his residence resulting in the recovery of 106 firearms valued at approximately \$6,500 rather than the \$15,000 claimed in the article. The seizure included 21 firearms which had previously been reported stolen to various local police departments. Mr. Mulcahey was subsequently tried for dealing in firearms without a license and acquitted in Federal court. A forfeiture action against the firearms is still pending in the United States District Court.

The next investigation discussed in the article involves Mr. and Mrs. Elmer Turngren, Kirkland, Washington. ATF agents are alleged to have conducted a "paramilitary style operation" in which they sealed off a four square block area, ransacked the Turngren's home and stood over them with automatic rifles. The article incorrectly identifies ATF agents as participating in what was essentially an operation conducted by the King County, Washington, Police Department. That agency obtained a State search warrant for the Turngren's residence after receiving information from a reliable informant that a machinegun, hand grenades, and a pipe bomb were located there. The local officers requested ATF assistance in the search, and one agent later came to the residence for the purpose of identifying suspected illegal firearms and explosives. No ATF agents participated in the entry or search of the residence. Nor were they involved in the initial phases of the investigation beyond providing expertise in the identification of suspect materials.

The article continues by alleging that ATF has compiled arrest and seizure statistics using questionable and outright illegal tactics during the investigation "not of criminals or even would-be-criminals, but of law-abiding citizens." Later in the article, this argument is again repeated with an even more serious allegation that ATF has disregarded serious crime in order to pursue investigations against law-abiding citizens. To substantiate this argument, the article cites statistics of investigations conducted by the ATF, Washington District Office, under Operation CUE (Concentrated Urban Enforcement) between February 1976 and June 30, 1977. The article alleges that ATF conducted only 58 investigations involving stolen firearms out of 1,603 investigations conducted during that time period, and claims that "it is shocking that less than 4 percent of BATF's Washington investigations zeroed in on firearms theft." The fact of the matter is that firearms thefts are primarily within the jurisdiction of local law enforcement agencies. ATF derives jurisdiction in this area under the Gun Control Act only when the stolen firearms are transported or received in interstate commerce. Accordingly, very few firearms thefts are investigated by ATF. In fact, 83.1 percent of the suspects recommended for prosecution by the Washington District Office under Operation CUE had prior criminal records which is a direct contradiction to the article's assertion that ATF conducted investigations of law abiding citizens rather than criminals. We would also like to point out that in fiscal year 1979, over 55 percent of the persons arrested by ATF for firearms violations had prior criminal records.

The article further asserts that ATF has selected law-abiding citizens for investigation based on the fact that they did not represent a physical danger to investigating agents. The article specifically states that "evidence does indicate that in some cases individuals were picked out for criminal investigation on the basis of the ease and safety with which they may be arrested or because of some special grudge." Nothing could be further from the truth. A total of 200 ATF special agents have died in the line of duty during our enforcement history. A total of 79 ATF special agents have been assaulted during the last three calendar years including three agents who were shot during an undercover firearms investigation in Florida in July 1979. The suspect in that shooting was later charged with the 1975 murder of a Colorado couple based on evidence recovered during the ATF investigation. Other Federal and State agencies have continually complimented our agents on their willingness to undertake hazardous undercover assignments. This hardly suggests that agents are selecting suspects for investigation based on considerations of their personal safety.

The article also alleges that the Bureau "creates crime" by entrapping licensed dealers through undercover investigation. With regard to ATF's undercover investigations of firearms dealers' transactions, we would emphasize that it is not the practice of ATF to conduct an undercover investigation of a firearms licensee unless there is reason to believe that the licensee has previously made unlawful sales. If the firearms licensee is reluctant to deal with the undercover agent, ATF immediately terminates its investigation.

The article cites the case of *Sorrel v. United States* which was decided in 1932 and is a landmark decision in this area. However, the case of *United States v. Russell*, which was decided by the Supreme Court in 1973, is the standard used by the Federal courts in deciding the issue of entrapment. The *Russell* case basically states that the Government can defeat the defense of entrapment by showing that the defendant was predisposed to commit the crime. Regardless of the definition used, entrapment is a defense which requires that either the trial judge or the jury believe that the defendant was induced to commit the crime by the actions of the Government.

The article cites an investigative technique known as the "strawman" purchase as an example of entrapment by Bureau agents through which they induce unsuspecting firearms dealers to violate the law. The article does not accurately reflect the typical scenario of a "strawman" purchase. In a typical straw purchase situation, the firearms dealer is approached by a person who is a prohibited purchaser either because of a prior felony conviction, non-residency, or other factor. The dealer is advised of the person's disability under the GCA and the dealer then suggests to the purchaser that he obtain a second person to sign for the weapon and disguise the real transaction. To be successful this technique requires an affirmative participation by the firearms dealer who knowingly delivers the weapon to a prohibited person while simultaneously falsifying his firearms records to conceal the identity of the true recipient. For example, the firearm used by David Berkowitz, also known as "Son of Sam," in the murder of several persons in New York was purchased from a licensed dealer in Texas by a Texas resident acting on Berkowitz' behalf.



In conducting past straw purchaser investigations, ATF agents and informants merely duplicated the purchase conditions which already existed at licensed firearms dealerships throughout the country. The purpose in employing this technique was to document the illegal and willful sale of firearms to prohibited persons rather than to entrap firearms dealers into violation of the law. Firearms dealers who were charged with criminal violations using this technique were willing to break the law, readily suggested the use of a straw purchaser, and made the deliveries to the prohibited person.

In August 1979, ATF distributed Industry Circular No. 79-10 to all licensed firearms dealers for the purpose of identifying straw purchase situations and advising dealers of their potential liability for engaging in such sales. A copy of that circular is enclosed for your review.

At the same time, ATF instituted internal policies to monitor investigations of licensed firearms dealers so as to preclude prosecutions which were purely "technical" in nature. Approval to conduct investigations of licensed firearms dealers must be granted by the Director or the Deputy Director regardless of the investigative method employed. To date, approval has been granted to conduct only one straw purchase investigation and this resulted in the arrest and conviction of an arms smuggler who was attempting to take firearms into Mexico.

The article also alleges a form of entrapment entitled "implied dealership" which the author claims is being used against collectors. We cannot emphasize strongly enough that the legitimate firearms collector is not now and has never been the focus of ATF's law enforcement efforts. On the other hand, the Bureau is concerned that certain persons who are engaged in the business of dealing in firearms hide behind the term "collector" in order to avoid the licensing and recordkeeping requirements of the GCA.

Although the term "engaged in business" is not defined by statute, the courts have had no difficulty in interpreting the term. However, because of concern expressed by the public, ATF published an advance notice of proposed rulemaking on December 19, 1979, requesting public comment on the feasibility of defining the term more precisely by regulation. Due to the number of responses received, we extended the period for public comment by one month. A copy of this advance notice is also enclosed for your information. Following a review of the responses, we will determine whether such a definition should be adopted.

The article next alleges that ATF is attempting to reduce the number of Federal firearms licensees to approximately 30,000 in order to make them more manageable. ATF has never attempted to reduce the number of licensed dealers. In fact the number of licensees has expanded by more than 10 percent within the past year.

The next allegation contained in this article is that ATF has engaged in the improper seizure and forfeiture of private property belonging to law-abiding citizens. The article cites the case of a "collector" whose firearms were seized following a 14-month investigation in 1976. The article alleges that this person was prosecuted after he attempted to sue for the return of his firearms. Due to the fact that the "collector" is not identified in the article it is impossible to definitively respond to this allegation.

The Gun Control Act provides that any firearm or ammunition involved in, used, or intended to be used in a violation of the Act or any other Federal criminal law is subject to seizure and forfeiture. The forfeiture of property, including firearms, is a civil, rather than a criminal proceeding. Accordingly, the sufficiency of proof needed to sustain the forfeiture of firearms is considerably different and is less severe than that required to obtain a criminal conviction based on the same set of circumstances. It is for this reason that a defendant may be acquitted on criminal charges and yet lose a forfeiture proceeding. Criminal investigations can likewise be disposed of through forfeiture of the property without ever bringing criminal proceedings.

Individuals from whom firearms have been seized have the right to petition both ATF and the district court for return of their property. The Government must be able to demonstrate that there is sufficient evidence to sustain the forfeiture of the property.

We would point out that the Bureau has recently instituted a policy to return seized firearms to individuals or dealers who are acquitted of a criminal offense except where the return of the firearm would be prohibited by law, contrary to the public interest, or contrary to directions from the court.

The article charges that approximately one-third of the forfeited firearms are obtained for "official use" and cites specifically the acquisition of firearms for the ATF firearms reference library. It also questions the need for the firearms reference library to include expensive weapons such as deer rifles, antiques, and shotguns. The ATF firearms reference library consists of approximately 4,000 firearms. The

library attempts to obtain samples of all types of firearms in their many variations for law enforcement reference and training purposes. The reference library is frequently utilized by FBI and ATF firearms experts for ballistics examinations. Other uses include training, scientific examinations, classification of firearms, as well as research by the firearms public. ATF has never seized firearms for the purpose of supplementing the inventory of the reference library. In fact, in most cases the library is not even advised of the identity of seized firearms until after the completion of all criminal and forfeiture proceedings.

The article further alleges that ATF is engaged in improper use of newspaper publicity to convict defendants without a trial. The article cites the San Jose Gun Show incident which was discussed previously in this letter. The article also mentions the execution of a Federal search warrant at Jensen Custom Ammunition, a large firearms dealer in Tucson, Arizona, in which it claims that ATF and Customs agents armed with automatic weapons, frisked employees and customers and seized some firearms and records. No ATF agents participated in the execution of that Federal search warrant.

The article cites the introductory section of ATF Order 1200.4 "Public Affairs Guidelines" to assert that ATF is attempting to influence jurors and public officials through prejudicial pretrial publicity. ATF orders, as well as all other related instructions and orders in this area, clearly restrict the information which can be released to the media and general public in connection with any criminal prosecution, and further require that such releases should be coordinated with the United States Attorney or local prosecutor prior to release. By selectively editing out most of the introductory section of the order, the article has clearly slanted its meaning and intention. This order has been revised to remove any questionable material.

The article also discusses a lawsuit brought under the Freedom of Information Act, *David Caplan v. Bureau of Alcohol, Tobacco and Firearms*, in which Caplan sought to compel ATF to release in its entirety a training manual entitled "Raids, and Searches." United States District Court Judge Whitman Knapp sustained ATF's refusal to release certain portions of the training manual on the basis that they contained a description of investigative techniques which would adversely affect enforcement operations if released. The Second Circuit Court of Appeals sustained the Government's refusal to release certain portions of the manual. In a footnote to his decision, Judge Knapp stated that he had "grave doubts" with respect to the constitutionality of some of the techniques discussed in the manual. Accordingly, the Bureau conducted a thorough review of the "Raids and Searches" publication. We found no reason for Judge Knapp's doubts as to the constitutionality of the guidelines outlined in the manual. There were, however, certain minor changes made to the publication.

The article also criticizes the Bureau's use of informants. The use of informants is a standard investigative technique utilized by all law enforcement agencies. The courts and public officials have long recognized that informants are necessary in order to effect the arrest and prosecution of criminal violators. Common sense dictates that the informant may frequently have to be a person with a serious criminal background in order to gain entry to, and establish rapport with, serious and dangerous offenders. Informants are regularly paid rewards and other compensation for their services and this practice is not unique to ATF. The article cites the case of *United States v. Brown*, in which Judge Whitman Knapp dismissed the charges against Mr. Brown because "BATF used an informer who was a wholly immoral individual" and then "provided him with economic motive to produce arrests while failing to take steps to ensure the informant's reliability." The article fails to mention that the defendant, Charles F. Brown, a convicted felon with an extensive arrest history, was charged with possession of five pipe bombs. Judge Knapp dismissed the charges against the defendant after a jury was unable to reach a verdict in the case. This dismissal was taken at Judge Knapp's discretion and was appealed to the Second Circuit Court of Appeals which concluded that the court "abused its discretion" in dismissing the charges. Accordingly, the judgment of the district court was reversed and the indictment was reinstated. The case was returned for retrial and the defendant was subsequently convicted of the violation before another Federal judge.

If you, or any member of your staff, would care to discuss the contents of this letter or any other matter relating to the Bureau's activities, please do not hesitate to call upon us.

Sincerely yours,

G. R. DICKERSON, *Director*.

Enclosures.



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY  
Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C. 20226  
Number 79-10 Date: 07 AUG 1979

## CLARIFICATION OF "STRAW MAN TRANSACTIONS"

### All Federal Firearms Licensees

The term "Straw Man Transactions" may be familiar to you. If not, we believe it would be helpful to you to explain what "Straw Man Transactions" are and offer some guidance concerning this type of transaction.

"Straw Man Transactions" are of two basic types, each of which involves a "third party" sale. In the first type, the dealer may have reason to believe that the person who executes the Form 4473 is being used as a conduit to make an illegal sale to a person prohibited by the Gun Control Act from purchasing a firearm. For instance, a dealer may be approached by a potential purchaser who, when asked to identify himself, produces out-of-State identification or identifies himself as a felon. When the dealer informs the individual that he cannot sell to him because he is an out-of-State resident or a felon, the individual produces a friend who is eligible to purchase. The friend ("Straw Man") is then used as the purchaser of record when it is obvious that the actual recipient is a prohibited person.

The second type of "Straw Man Transaction" is similar to the first. However, in this instance, it is the dealer himself who suggests to the potential purchaser that a third party be used to effect the sale and such a sale is completed.

The Gun Control Act of 1968 does not necessarily prohibit a dealer from making a sale to a person who is actually purchasing the firearm for another person. It makes no difference that the dealer knows that the purchaser will later transfer the firearm to another person, so long as the ultimate recipient is not prohibited from receiving or possessing a firearm. A dealer may lawfully sell a firearm to a parent or guardian who is purchasing it for a minor child. The minor's subsequent receipt or possession of the firearm would not violate Federal law, even though the law does prohibit a dealer's direct sale to the underaged person.

What the Act forbids is the sale or delivery of a firearm to a person the licensee knows or has reason to believe is a person to whom a firearm may not be sold (e.g. a nonresident or a felon) or to a person the licensee knows will transfer the firearm to a person prohibited from receiving or possessing it.

A firearms licensee runs the risk of violating the law when he becomes involved in a transaction where it is apparent that the purchaser of record is merely being used to disguise the actual sale to another person, who could not personally make the purchase or is prohibited from receiving or possessing a firearm.

Where the dealer knowingly utilizes this technique to sell a firearm to a prohibited person, both he and the "third person" or "Straw Man" are placed in a position of unlawfully aiding the prohibited person's own violation.

We realize that this circular is quite general in tone. The best advice we can give is that the dealer should be sure to have Form 4473 completed by the person to whom the dealer is actually selling the firearm, and if the dealer has any reason to believe the firearm is being acquired for a prohibited person, he should avoid the transaction.

If you need further advice, do not hesitate to contact the Bureau of Alcohol, Tobacco and Firearms at the Office of the local Special Agent in Charge, or the Regional Regulatory Administrator.

*G. R. DeWorm*  
Director



# AMERICAN GESTAPO: HOW THE BATF IS RIDING ROUGHSHOD OVER CIVIL LIBERTIES.

(By John D. Lewis, Jr.)

SILVER SPRING, Md., June 1971.—Four government agents in plain clothes broke down the back door of the apartment of Ken Ballew, who was in the bathtub at the time. Ballew armed himself with a pistol and prepared to defend himself. He was shot by the agents and suffered permanent brain damage and paralysis as a result.

SAN JOSE, CALIF., June 1978.—Twenty armed government agents raided a collector's show, for two hours allowing no one to leave. The agents photographed exhibitors and bystanders and forced everyone present to sign "warning forms."

CHARLESTON, S.C., January 20, 1977.—Agents entered the home of Patrick Mulcahey and confiscated all his collectors' items, valued at \$15,000. Included were a gift from his grandfather when he was 11, the first item he purchased for his collection when he was 15, and an engraved piece worth more than \$1,000.

KIRKLAND, WASH., October 1978.—In a paramilitary-style operation, government agents invaded the neighborhood of Mr. and Mrs. Elmer Tungren. A four-block area was sealed off, the neighborhood evacuated, and the Tungren home surrounded. Some of the agents ransacked their home, while others stood over the Tungrens with automatic rifles.

Hardened criminals? Not quite. Armed? Well, it's true that the government agents were after firearms—but consider what kind, and the circumstances. The firearms of Ken Ballew, who assumed the intruders were criminals and so armed himself, were found to be properly registered and owned legally. The San Jose raid was at a gun collectors' show, where enthusiasts display and trade antique and choice firearms—not the kind used by criminals. Patrick Mulcahey was charged by the government with illegal possession of firearms but was acquitted in court. (Yet the government still has not returned his collection, appropriated without compensation.) The agents found a few rifles and a .22-caliber target pistol in the Tungrens' home—all properly registered. Yet those agents had come in "like a bunch of storm troopers," as Mr. Tungren described it afterwards to the press.

And the agents involved? They belong to the federal government's Bureau of Alcohol, Tobacco, and Firearms. A part of the Internal Revenue Service, BATF has existed in various forms for many years. After passage of the Gun Control Act of 1968, the IRS's Alcohol and Tobacco Division was given, along with bureau status, responsibility for enforcing firearms laws.

Some of the Bureau of Alcohol, Tobacco, and Firearms' zealous pursuit of gun owners can no doubt be laid at the feet of gun-control sentiments in the United States. Many people appear willing to put aside constitutional protection of the citizen's right to bear arms because of worry about crime statistics showing that some 50 percent of homicides are committed with handguns.

But consider 1976, for example. In that year, according to FBI Uniform Crime Reports, 9,202 illegal homicides (49 percent of the total) were committed with handguns. Yet, of the estimated 40 million in private hands, 9,202 is only .023 percent. And gun-control advocates who put that estimate even higher, sometimes as high as 100 million, should note that the percentage of homicides committed with handguns is then even lower. Moreover, BATF itself has repeatedly pointed to cheap handguns—valued under \$50, caliber .32 or less, barrel 3 inches or less—as the weapon most often used by criminals. So why is it pursuing gun collectors and dealers, rather than individuals who have used firearms in a criminal manner?

A good part of the explanation may well be that the Bureau has been placed in a very awkward position by a decline in moonshining. With sugar prices escalating rapidly since 1972, illegal brewing has fallen off dramatically. In 1972 BATF raided nearly 3,000 stills; by 1978 the number had fallen to a mere 381. Clearly, the public—and Congress—would not find its alcohol-controlling functions very important any more. But if BATF could build up an impressive arrest record in the area of firearms. . . And it looks like that is exactly what this government agency proceeded to do during the 1970s, often using questionable and outright illegal tactics, often to carry out lengthy investigations, appropriate the property, and make highly publicized numbers of arrests—not of criminals or even would-be criminals, but of law-abiding citizens.

## CREATING CRIME

Entrapment is but one of the methods used by the Bureau in these operations. TV cop shows have made this technique familiar to millions of Americans. Kojak's right-hand officer hits the streets as a lonely man in search of the attention of a

street-walker or as a desperate junkie after a fix; man/junkie meets prostitute/pusher and suggests transaction; the nod is given and a police badge quickly produced, followed by handcuffs; and so a law-breaker is caught in the act.

Entrapment is in fact a centuries-old law-enforcement tactic and is also used to trip up criminals involved in the exchange of stolen property, con artist schemes, and so on. In theory, it is a useful means of cornering people who are already engaging in or intending to engage in criminal activity. In practice, it treads a thin line between offering the opportunity for a person to commit a crime and actually encouraging him to do so.

Over the years, various forms of entrapment have been held legal by the courts. But the crucial test, the Supreme Court has declared, is the object of the ruse. "The first duties of the officers of the law are to prevent, not to punish, crime," said the Court in the case of *Sorrells v. The United States* in 1932. "It is not their duty to incite crime. . . . Decoys may be used to entrap criminals, and to present opportunity to one intending to commit crime. But decoys are not permissible to ensnare the innocent and the law-abiding into the commission of a crime."

Yet a look at the record of the Bureau of Alcohol, Tobacco, and Firearms leads to the inescapable conclusion that it is making an art out of just such entrapment of innocent and law-abiding citizens. It was handed the opportunity to do so by the Gun Control Act of 1968, which is the major piece of control legislation on the books and is rife with vague language. It is left to the Bureau to come up with regulations to implement the intent of Congress. In doing so, BATF has exploited the very vagueness of the Gun Control Act. It is clear that the Bureau has purposely created and perpetuated ambiguities, allowing for citizens to be misled into violations of the law. And that's where entrapment, of both licensed dealers and private citizens, enters the picture.

In entrapment of dealers, BATF makes use of a scheme known as a "straw-man sale." This sale hinges upon the fact that dealers may not sell to certain "prohibited persons"—nonresidents of their state, persons under a certain age, felons, and some others. At the same time, it is common for one individual legally to buy for another who might himself be prohibited from purchase. An adult, for example, purchases for a juvenile, or an out-of-state dealer makes a purchase so that a resident of his state may then purchase from him.

BATF has often recognized the legality of such transactions. In its publication *Gun Control Questions and Answers*, the Bureau presents a dialogue for guidance on these matters:

(34) Can a licensed dealer send or sell a gun to anyone?

No, except for rifles and shotguns in contiguous State sales, a licensee may not make direct sales to a non-resident. What the dealer can do is ship the firearm to a licensed dealer of the purchaser's choice whose business is in the purchaser's state of residence. The individual could then pick up the firearms after completing form 4473 [the federal registration form].

(54) Since persons under 18 years of age cannot buy long guns or ammunition from dealers, how can they obtain them?

A parent or guardian may purchase firearms and ammunition for a juvenile. [Gun Control Act] age restrictions are intended only to prevent juveniles from acting without their parents' or guardians' knowledge.

These are the Bureau's only public statements on this subject. BATF has avoided ever stating conditions under which such purchases may make the dealer subject to a felony prosecution.

The straw-man case, however, makes it clear that just such transfers may indeed bring one face-to-face with the law. In this form of entrapment an agent or informant who is a prohibited person approaches a dealer to buy a firearm. The agent then produces out-of-state identification or indicates that he cannot sign the registration form (which contains a statement that he is not a prohibited person). The dealer invariably refuses to sell.

The "prohibited person" then suggests that perhaps someone else (usually a local relative or friend) could purchase the gun for him. If the dealer takes the bait, he will respond that he can sell to a local person, provided that person can produce valid local identification and can legally fill out the purchase forms.

The "prohibited person" then returns with a second agent, the "straw man." The straw man produces the required identification and signs the appropriate forms. The "prohibited person," however, is the one who comes up with the money; at the end of the transaction, the straw man steps back and the "prohibited person" quickly steps in to pick up the firearm. And that's it for the dealer, who is arrested by BATF agents for selling to a prohibited person.

(It is possible to sidestep the trap. In two reported cases, the dealer refused to go through with the transaction unless the money was offered by the straw man;

likewise, he handed the firearm to the straw man, in one case having to snatch it from the hands of the quickly grabbing "prohibited person." Although the Bureau nevertheless arrested both dealers, it prosecuted without success.)

When BATF goes after dealers engaging in straw-man sales, is it merely implementing the Gun Control Act? To permit wide open sales of this type, under any conditions, would allow for extensive evasion of the act. Even so, if the intent of the law is to prohibit the transfer of firearms to certain persons, why should enforcement be aimed at the dealer, who nominally sells to the straw man, rather than the straw man himself, who makes the transfer to the "prohibited person"? In at least one case where a straw-man sale occurred—without BATF inducement—the Bureau prosecuted the woman who served as the straw man and did not bring charges against the dealer.

If BATF believes that a straw-man sale constitutes violation of the law, it could easily prevent most future violations by simply informing dealers that it is a violation. This has obviously not been its intent. It is far easier to build up its status with Congress by creating felons of those who are disinclined to crime than by taking the time and risk to seek out real criminals.

Dealers are not the only ones to have been caught in the Bureau's entrapment snare. A second scheme, equally dependent on BATF's calculated ambiguities, involves the "implied dealership". It is used exclusively against those who do not hold federal firearms licenses.

The law requires that a license be obtained by anyone "engaged in the business" of dealing in firearms. The statute, however, does not define dealing, and BATF regulations make no attempt to do so, except to say that persons who sell but "four to six" guns a year—mostly collectors—do not need a license. In fact, such persons are actively discouraged from obtaining licenses. Yet, when nondealers sell weapons, fully complying with the standards set out by the Bureau, they are in danger of being arrested for dealing without a license.

Entrapment proceeds in this way: One or two agents approach a collector at a gun show and make a purchase. The same happens at the next gun show, and so on, until the "implied dealer" has made four to six sales. At this point, the collector is booked on felony charges of dealing without a license. Legal defense costs can run as high as \$20,000 (with the person's gun collection usually having been seized by BATF). If convicted of a felony, the collector loses all right to possess any firearms in the United States.

And the conviction is not difficult for BATF to come up with. In spite of its public position that sales of "four to six" guns a year do not require a license, in court it has consistently been successful with an argument that conviction may be based on very few sales by a private individual, for no financial profit. The Bureau thus appears to interpret "dealing" in any way that seems likely to ensure the most arrests and then, on the opposite interpretation, the most convictions. It has uniformly failed to inform collectors or anyone else of its position, leaving its actual policy on dealing beyond the ascertainment of citizens interested in obeying the law.

Why this two-handed BATF campaign to prosecute those selling only a few firearms a year, while at the same time insisting that one must make a significant quantity of sales per year to qualify for a license? It not only serves to make people more vulnerable to charges of dealing without a license; it also cuts down on the workload of the Bureau in regulating licensees, leaving it free to pursue more impressive tasks.

Bureau officials have made no secret of their policies toward the small businessmen who make up the majority of the nation's gun dealerships. Speaking to a police convention in Buffalo, New York, in 1979, former BATF director Rex Davis told the group that he planned to "tighten BATF's regulation of licensed firearms dealers," effectively reducing their number "from the present 159,000 to about 30,000. . . . The reduction will make their regulation more manageable for BATF's outnumbered forces." The implication is clear: since it is difficult for BATF to regulate these businesses as relentlessly as it wishes to, it has undertaken to drive large numbers of them out of business. Is that the intent of Congress?

#### DISREGARD FOR PROPERTY

Entrapment of the law-abiding, however, is only one appalling feature of BATF's new campaign against gun owners. Its behavior during and after trial is curious for a supposedly law-enforcing agency of the government.

The Bureau confiscates many firearms. According to a BATF press release, total confiscations for the years 1976-78 numbered 25,936. The value of the nearly 9,000 firearms confiscated in 1978 is conservatively estimated at \$1.05 million. And the odds of citizen getting his guns back are not good, even in the case of an acquittal.

In a few reported cases, firearms have been seized but no arrest made. One gun collector provided documentation of a chilling scenario:

BATF's move against him, as documented from the prosecution's files, began with a 14-month investigation commencing in early 1976.

Firearms were seized—without arrest or indictment—in March 1977.

Nearly a year passed as the Bureau made offers to forgo prosecution if the collector would permit BATF to keep his weapons (apparently a common BATF position).

On January 20, 1978, the collector sued for return of his collection.

On February 1, 1978, less than two weeks after filing suit, the collector was indicted and was subsequently convicted.

Gun collections are often the product of years of devoted effort, valued in tens of thousands of dollars. In virtually all cases, government confiscation represents a major loss to the collector.

In a number of cases, there is clear evidence of what can only appear to be vindictiveness in the treatment of firearms in the Bureau's custody, both at the time of arrest and later. Gus Cargyle is but one example. A collector in Corpus Christi, Texas, he had firearms valued at \$55,000 confiscated by BATF agents. According to the local newspaper, the Corpus Christi Caller, agents deliberately dropped the guns on the concrete floor and stacked them outside "like cordwood." Cargyle successfully sued for return of the weapons (no charges were ever filed) but discovered upon their return that they had been stored in a damp warehouse and allowed to rust during the Bureau's custody.

Not only does BATF seize weapons without making any arrest; it also continues to withhold collections even after acquittal of the defendant. As a tax agency, BATF argues, it is entitled to retain seized weapons (and the vehicles from which they were confiscated, if applicable) to compensate the government for lost revenue. But in an implied dealership entrapment, the only lost revenue is the license fee—\$10—which in many cases would have been paid to the government if the government had allowed the implied dealer to obtain a license in the first place.

In fact, many of the firearms confiscated by the Bureau—about one-third, according to records obtained under the Freedom of Information Act—are not kept because of any "lost revenue" but are appropriated, without compensation, "for official use" or for the "reference collection" at BATF national headquarters. One firearm so retained was an Ingram M-10 submachinegun with silencer. The Ingram with silencer is familiar to moviegoers as the weapon used by the contract killer in "Three Days of the Condor," and the Bureau's listing of it as "desired for official use by this office" is surely ironic. Other weapons retained for official use include derringers, antiques, and deer-hunting rifles, weapons that would seem to be of little use to a law-enforcement agency.

#### DISREGARD FOR CRIME

Since the Bureau of Alcohol, Tobacco and Firearms is a law-enforcement agency, one might expect that the guns it is taking out of circulation would be the types most often used in crime. But this is not the case at all.

Freedom of Information requests for BATF data yielded an 18-inch-high stack of Reports of Property Subject to Judiciary Forfeiture. The record shows that rifles and shotguns are confiscated more often than handguns—nearly 60 percent long arms, compared to 40 percent handguns. Guns that are used rather rarely in street crime, such as a \$10,000 silver-inlaid shotgun, were not only confiscated but "retained for official use," according to the property reports. "Saturday Night Specials"—the ubiquitous weapon of crime, according to the Bureau—account for only four percent of the confiscated guns listed in the reports. Compare all these facts to a December 1973 BATF press release claiming that small, concealable handguns accounted for 71 percent of the crime in four major U.S. cities, and it becomes clear that if BATF is making any attempt to curtail the use of firearms in crimes, it is failing dismally.

Other BATF data make it highly questionable whether the Bureau is even expending much effort in that direction. Its own published breakdown of prosecutions by city show that in Washington, D.C., for example, the Bureau conducted 1,603 investigations during the period reported, and only 206 of them dealt with felon in possession of firearms, only 58 with stolen firearms, and only 20 with use of firearms in commission of a felony. Since numerous studies have shown that 25 percent of the handguns used in crime are stolen, it is shocking that less than four percent of BATF's Washington investigations zeroed in on firearms theft.

The situation has moved some police officers to speak up, noting that in their experience BATF has shown not only neglect but a distinct lack of interest in pursuing those actually committing firearms crimes. A. H. Pickles, chief of police of

Leavenworth, Kansas, reports that "on a few occasions I did call [BATF] on cases that were serious violations of federal law. One was a criminal who completely forged a federal form to purchase a pistol, and the other was a case of an illegal alien who bought a pistol with which she shot her male companion. . . . There was never any action taken against these real criminals by [BATF]." Chief Pickles issued an order to his department that they would henceforth not participate in any joint operation with BATF unless no other federal agency could provide assistance.

Of course, catching thieves and murderers is far more dangerous and difficult than entrapping citizens who are likely to abide by clearly stated laws and, believing themselves to be law-abiding, are unlikely to resist confiscation or arrest with violence. Evidence does indicate that in some cases individuals are picked out for criminal investigation on the basis of the ease and safety with which they may be arrested or because of some special grudge.

One Illinois dealer who regularly spoke out publicly against BATF was pursued by the Bureau for years. Attempting to build a case through the use of informants and entrapment, BATF had amassed a file, obtained under Freedom of Information, in excess of 5,500 pages. The dealer's attorney related that there had been eleven separate attempts to entrap the dealer. One BATF agent had kept a notebook detailing these attempts, and the attorney estimated that the agent had spent over 1,000 hours in his efforts against the dealer.

Yet for several years Bureau administrators had been appearing before Congress complaining that they have neither the funds nor the manpower to do an adequate job of enforcing federal gun law. It is especially ironic that they emphasize not having the resources to begin to move against gun thefts.

The point of the investigations it does specialize in—and the resultant seizures and arrests—seems clear: to generate enough publicity to impress Congress and the public with the Bureau's enforcement record. Accordingly, BATF has developed an extensive press relations program, which includes using the press to increase its conviction rate.

In his introduction to the BATF manual Public Affairs Guidelines, former Director Rex Davis noted that an "effective public affairs program . . . has a favorable impact on the attitudes of the court, jurors and prosecutors" (emphasis added). What goes under the name of press relations might therefore be more accurately characterized as indirect jury tampering. "Trial by press" is a popular method for those defendants against whom the Bureau has a weak case.

The press is also used to create "newsworthy material." The strategy is to generate interest by escalating the most mundane record-keeping and administrative inspections into full-scale raids.

In July 1974, for example, a number of BATF and customs agents surrounded Jensen Custom Ammunition, a large-scale gun dealer in Tucson, Arizona. Agents entered the store, leaving one agent, armed with an automatic weapon, to maintain order in the parking lot. Employees were frisked, and all customers had to show identification before they were allowed to leave. Administrative records and a few guns were taken. No charges were ever filed.

An operation in June 1978, for the mundane purpose of handing out information on federal firearms laws at a gun show in San Jose, California, became notorious after agents made what amounted to a mass arrest of all attendees. The result is a \$2.1 million lawsuit, which the Bureau has unsuccessfully attempted to settle out of court. Although its "educational" activity could have been quietly accomplished by two agents before the show was even open to the public, BATF insisted upon escalating it into a paramilitary operation, apparently for the benefit of the press.

#### CIVIL RIGHTS ABUSES

Even if BATF's raids never resulted in tragedies—and the case of Ken Ballew, paralyzed by BATF agents, confirms that tragedies do occur—it should be obvious that there is considerable danger to the public inherent in such operations. The Bureau has given us enough examples of what is known in law enforcement as a strike-force mentality to suggest either a general policy or an attitude among individual agents favoring overutilization of force and misdirection of resources. An examination of BATF publications, obtained through Freedom of Information requests and lawsuits, indicates that policy is as much to blame as any excesses on the part of individuals.

Quite revealing, for example, is a Bureau manual entitled "Raids and Searches." In spite of hearings in federal courts, this manual is only available in a censored form.

David Caplan, a New York attorney long active in opposing gun control, filed suit in the Southern District of New York, asking Judge Whitman Knapp to compel BATF to release portions of the manual withheld when Caplan obtained it under

the Freedom of Information Act. Judge Knapp chose the middle of the road, ruling that certain portions would have to be disclosed but others could remain secret. While the court agreed with the Bureau's arguments that disclosure of some sections could hinder investigations or enable violators to avoid detection, it expressed reservations about some of the information it had discovered during its inspection of the manual.

"Some withheld sections describe enforcement techniques which are of dubious legality under the Fourth Amendment," Knapp wrote. "Although we do not decide whether any techniques are unconstitutional, we do note our grave doubts with respect to some of them."

Armed with the knowledge that the censored sections would probably show that many of BATF's civil rights abuses are matters of official policy, Caplan turned to a higher court. In October 1978 the appeals court affirmed Judge Knapp's ruling, arguing that Caplan had "no standing to question the constitutionality of any of the regulations simply because he is writing a book on the subject. . . . Our jurisdiction is constitutionally limited to 'cases and controversies' and there is none presented here which would permit a review in the abstract of the constitutionality of procedures described in the BATF manual."

Despite the apparent impossibility of seeing an intact copy of "Raids and Searches," the portions that have been released reveal a mentality that is hardly appropriate to the administrative regulation of law-abiding citizens. On the contrary, the term raid is defined as "the sudden appearance by officers for the purpose of arresting law violators and seizing contraband." These are obviously not the situations the Bureau has been focusing on, and the courts have declined to let the public see how it handles such cases when they do arise.

Another questionable BATF technique has been criticized by the courts. The use of informants is a legally vague area of which the Bureau has taken liberal advantage. But in the words of one judge, informants are often "totally lacking in scruples of any kind." Given the slightest reason to do so, they have no compunction about lying to judge and jury.

More importantly, BATF often presents them with a motive to lie: payment for their information only if it results in arrest or conviction. While the American Bar Association holds it unethical for an attorney to acquiesce in such contingency-witness payments because they encourage frame-ups and are a substantial inducement to perjury, this is what BATF resorts to in an attempt to boost its conviction rate.

In one instance in 1978, a New York judge threw the case of *United States v. Brown* out of court because of BATF practices: "BATF used an informer who was a wholly immoral individual; BATF provided him with an economic motive for producing arrests; BATF failed to take steps to insure the reliability of the informant's version of the events." Concluded the judge, "We believe that the criminal defendant is needlessly exposed to unacceptable risk of a serious miscarriage of justice and this trial should not be permitted to continue." In another case, the court noted that such contingency fees are "essentially revolting to an ordered society."

BATF's use of informants—not unusual in law enforcement—is particularly disturbing when considered against the background of its record concerning the selection of individuals for criminal investigation or prosecution. The evidence indicates that BATF does not focus its arsenal of law-enforcement tactics on those who have used firearms in violation of other citizens' rights or those who have obtained firearms in violation of others' rights. Instead, the objects of the Bureau's dubious practices are more often citizens whose only "crime" has been a failure to be wary of BATF and its deliberately misleading regulations.

To broaden Judge Knapp's comment about BATF's manual on raids, grave doubt should be expressed toward all facets of the Bureau and its activities. The history of BATF since the demise of its liquor enforcement functions has been a classic tale of bureaucracy in search of a job. Piling up arrests could only help at budget time. The victims of this legal fallout became statistics, proudly paraded before congressional appropriations committees.

The unethical and unconstitutional activities of the Bureau are not the aberrations of individuals, overzealous agents. The evidence is that they are a clearly laid out matter of BATF policy. But as one of its victims said to the press—after BATF agents had descended on his neighborhood and home "like a bunch of storm troopers"—"We don't need this in our country."



## STATEMENT OF HON. J. KENNETH ROBINSON OF VIRGINIA

As a cosponsor of H.R. 5225, the Federal Firearms Law Reform Act, I believe passage of this measure is necessary to address the issue of more effective "gun control."

The Federal Firearms Law Reform Act is designed to direct the federal effort against those who use or traffic in firearms for criminal purposes, while better protecting the rights of law abiding citizens who own guns, including collectors, dealers and individuals keeping firearms or protection of life and property.

Another effort embodied in this measure would help to cut down on extensive paperwork of the current laws and deter harassing of gun owners by the Bureau of Alcohol, Tobacco and Firearms.

Mr. Robert Wampler, a resident of Mechanicsville, Virginia, in the congressional district which I am privileged to represent, is a living example of an American citizen suffering from the type of harassment by the BATF that this bill aims to correct.

Mr. Wampler is a pharmacist who is well regarded in his community for his civic work. He has collected firearms for a number of years, and by 1972 had won his first gun show.

This is his account:

In 1976, he sold 3 guns to persons at gun shows that he now believes were BATF agents. He made it clear that he wanted to trade instead of sell; however, as they had nothing to trade he sold the guns to them. He has never advertised, and has collected purely as a hobby. At one time in the mid-60's, he had a federal firearms license, but turned it in on a BATF agent's suggestion because he believed that his small volume did not necessitate it.

On November 17, 1976, agents from the Bureau of Alcohol, Tobacco, and Firearms raided his home with a search warrant authorizing seizure of three specific firearms "and other firearms, fruits and instrumentalities including but not limited to all memoranda" and records. They then proceeded to seize his entire collection of 70 firearms. He has a complete inventory of his firearms and it is obvious that many of the firearms are pre-1898: an 1882 Smith & Wesson, 19 rimfire revolvers from the 1860-1880 period, many engraved, and an 1870 knife-pistol. The remainder are modern collector's items.

Mr. Wampler's attorney has been negotiating for the return of his collection; however, three years after the seizure, the BATF still has not returned all his guns nor prosecuted him.

In February of 1979, Mr. Wampler received assurances from the U.S. Attorney that he had declined to prosecute him, and that his collection would be returned. An agreement was reached with the BATF after many agonizing months of repeated pressures on Mr. Wampler to "voluntarily" give up his entire collection, then one-half, then one-fourth, then ten, etc. At his last communication from the BATF (May 14, 1979) they made an offer to return all but four of the guns. Under this pressure, and on the advice of his attorney, he finally agreed to give up two new .410 shotguns, a World War II Mauser pistol, and an oddity known as a knife pistol.

Very few of the knife pistols were made (mostly in the late 1800's), and since they were never specifically mentioned in any firearms regulations, Mr. Wampler was told that they were considered illegal under "any other firearms" language in the regulations. Subsequent to the return of his collection—minus these four pieces—on June 1, 1979, a case concerning a knife pistol was adjudicated in a federal appeals court in Denver, Colorado.

The judge ruled this curio harmless, unique, and completely legal. Mr. Wampler mailed a letter to the BATF office immediately after he picked up his collection and asked that those pieces given up in order to expedite the return of the major part of his collection be retained for a reasonable period of time, rather than being destroyed, as he intended to pursue actions that would either result in their return or allow him to understand the reasons for their forfeiture.

At this time Mr. Wampler has heard nothing further from the BATF since the May 1979 correspondence, and does not know what has become of his four missing pieces or if there is any reason as to why they cannot be returned.

This concludes the account of Mr. Wampler's experience with the BATF, as related to me.

It is my belief that legislation along the lines of H.R. 5225 must be passed in order to alter permanently the practices and procedures of the BATF in such situations, and to confine its firearms activities to the suppression of trafficking and possession directly related to the commission or abetting of crimes.

HANDGUN CONTROL, INC.,  
Washington, D.C., July 2, 1980.

Hon. JOHN CONYERS, Jr.,  
Chairman, House Judiciary Committee on Crime,  
Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am submitting the enclosed statement for the official record in connection with the hearings on the firearms enforcement efforts of the Bureau of Alcohol, Tobacco and Firearms. I trust you will make this statement available to the members of the subcommittee.

Handgun Control, Inc. would welcome the opportunity to testify on other aspects of the Kennedy-Rodino Handgun Crime Control Bill when the Crime Subcommittee holds hearings on the handgun control issue.

Sincerely,

N. T. "PETE" SHIELDS, *Chairman.*

STATEMENT TO THE HOUSE JUDICIARY SUBCOMMITTEE ON CRIME CONCERNING  
OVERSIGHT OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. Chairman, Handgun Control, Inc. believes there is a need for a new organizational structure to provide improved performance, coordination, and evaluation of firearms control functions at the federal level. For that reason, we are supporting the Kennedy-Rodino Handgun Crime Control Bill (S. 1936 and H.R. 5823), legislation which would establish a Federal Firearms Safety and Abuse Administration within the Department of Justice. The Firearms Safety and Abuse Control Administration would assume those responsibilities for firearms control now performed by the Bureau of Alcohol, Tobacco, and Firearms of the Department of Treasury.

The need for such a reorganization is great. As President Carter pointed out in June 1977, there are at least 41 separate federal agencies involved in police and investigative activities. The Department of Treasury is responsible for matters of taxation and should not be responsible for law enforcement matters. That is more properly a function of the Department of Justice. Abuse of handguns is a law enforcement problem and should be handled by the government agency responsible for law enforcement in our country.

Senators Jacob Javits and Charles Percy proposed a reorganization of the federal government's enforcement of firearms laws in 1975. Speaking of his reorganization plan, Senator Javits said:

"The Alcohol, Tobacco, and Firearms Bureau of the Treasury Department has been overburdened and overextended in its efforts to curtail the tidal wave of illicit handguns. In addition to the enforcement of federal gun laws, the organization must enforce Federal alcohol and tobacco laws as well. \* \* \*

"Most importantly, it cannot adequately supervise the 156,000 federal licensed gun dealers and assist State and local law enforcement agencies in the tracing of weapons used by dangerous offenders. \* \* \*

"Law enforcement officials have stated that we now have no intergovernmental system for developing regional and national statistics on handguns which have been used in the commission of crimes and that timely tracing is now extremely difficult if not impossible. \* \* \*

"It is of the utmost importance that we modernize, reorganize, and upgrade the Federal capability in this field and develop an interrelated system of information verification and handgun identification running from manufacturer to dealer to first owner and to private resales of handguns."

Handgun Control, Inc. agrees with Senator Javits about the need for reorganization of the federal government's effort to control handguns. We believe that the Kennedy-Rodino Handgun Crime Control Bill is the best way to accomplish this goal, and we urge its passage and its support by the President, this committee, and the Congress.

## STATEMENT OF PROF. DON B. KATES, JR.

## PERSONAL BACKGROUND

Unlike some others who may criticize the Bureau of Alcohol, Tobacco and Firearms (BATF), my background is one of liberal political action. In the early 1960's I was a civil rights workers in North and South Carolina and a law clerk to William Kuntzler and Arthur Kinoy in their New York-based civil rights practice. Thereafter, I was a consultant to the House Judiciary Committee, drafting legislative alternatives to the Administration's more conservative civil rights legislative proposals. In that capacity, for instance, I redrafted the language of the Voting Rights

Act of 1965 to make murder and other violence against voting rights workers a federal crime.

For ten years after that I was with OEO Legal Services for the Poor, principally, California Rural Legal Assistance, specializing in constitutional litigation in the areas of voting rights, welfare law and police misconduct. I handled the first case won by the Legal Services Program in the U.S. Supreme Court (*DAMICO v. California*, 389 U.S. 460) and several other cases there, as well as the case establishing the right of Spanish literates to vote in California notwithstanding illiteracy in English. (*Castro v. California*, 2 C. 3d 223.) In 1970, I received the Reginald Heber Smith Award as the outstanding legal services lawyer in the United States.

For the last three years I have been teaching constitutional law, criminal law, and criminal procedure at St. Louis University. I am now resuming my largely constitutional law practice in San Francisco. I am the author of articles on constitutional law, criminal procedure and related topics that have appeared in the *California*, *Northwestern*, and *USC Law Reviews*, and in *Harpers*, *American Heritage*, and the *Journal of Negro History*. I also testified before a Senate Committee, at the suggestion of the ACLU, last year in hearings on proposals to broaden the scope of the federal Civil Rights Acts, particularly with reference to facilitating litigation against police misconduct.

#### GENERAL OBSERVATIONS

If I may offer a final personal note, it is that I am also the editor of *Restricting Handguns: The Liberal Skeptics Speak Out*. This book is a collection of essays by liberal academic and political figures who have come to oppose the banning of handguns. Despite editorial disagreements with this position, the *New York Times*, *Los Angeles Times*, *Politics Today*, and a number of other liberal publications have been kind enough to favorably review the book. I raise the book in this context because one of its central concerns is that to severely restrict handgun ownership will inevitably involve arbitrary, irrational and unfair discriminations, elitist privileges for a special few and means of enforcement that are repugnant in a free society.<sup>1</sup>

And this concern seems strongly validated both by much of our present federal gun legislation and by the way it has been enforced, as the testimony in these hearings will show. These hearings also provide the advocates of anti-gun laws a signal opportunity—an opportunity to defuse civil libertarian concerns by responding with positive legislative initiatives to the legitimate grievance which exist. For, surely, if these grievances can be ameliorated in the context of the present legislation it will be evidence that civil libertarian concerns about their inevitability are ill-taken. Unfortunately, the response of the anti-gun lobbying organizations has been to attempt to sweep under the carpet (or actually to endorse) these abuses in a manner which can only reinforce civil libertarian opposition to more gun laws.

This kind of response is in itself particularly ominous. For at the bottom of the civil libertarian concerns about handgun prohibition is something almost unique to the gun issue: The fact that many people who would in other areas be most alert to abuses are so totally hostile to gun owners and gun ownership as to accept virtually any exercise of governmental power against them. Their attitude all too frequently is that guns are evil, gun owners are evil, and whatever misconduct the government engages in, enforcing gun laws, the gun owners have brought on themselves by owning guns. The extent of their emotionalism on the issue—and the quality of their arguments—may be illustrated by hypothesizing a proposal that the Fifth and Fourteenth Amendments be amended to make it illegal for blacks to own guns. I am afraid that a considerable number of them would find even so odious a discrimination as this acceptable as a “first step” toward the utopia in which everyone would be disarmed except for police and the military; and they might remark that, far from being discriminatory, such legislation would confer on blacks the powerful benefit of freedom from gun ownership.

This example is not an absurd distortion of their thinking. Rather it is merely the logical extension of the positions taken both publicly and privately by the most zealous anti-gun advocates. One of the foremost articles purporting to prove that banning guns would reduce homicide involves the explicit statistical assumption

<sup>1</sup> It must be emphasized that this is a concern not just the liberal authors represented in my book, but of a growing number of other liberals and academic figures, many of whom would be delighted to outlaw guns if they thought it could be fairly and effectively accomplished. See, e.g. former ACLU Executive Director Aryeh Neier's “Crime and Punishment: A Radical Solution” at 71, Professor Donald Lunde's “Murder and Madness” at 28-9, Professor Leroy Clark's “Gun Control: An Agenda for Research” (private paper prepared for the Ford Foundation, 1975) and Professor Gary Kleck's “Capital Punishment, Gun Ownership and Homicide”, 84 *American Journal of Sociology* 882, 908 (1979).

that all blacks are part of a “subculture of violence” and that no whites are. (Seitz, “Firearms, Homicides and Gun Control Effectiveness”, 6 *Law and Society Review* 595, 604—605 1972). The fact that an article of this quality—based on an explicit statistical appraisal so preposterous—was deemed publishable by a scholarly journal is monument to the uncritical credulity with which many liberals and academicians greet everything which confirms their loathing of handguns and firearms in general. It is worth noting that most of the handgun restrictions urged by the zealous anti-gun organizations originated in late 19th and early 20th century state legislatures which sought thereby to disarm blacks and the foreign born whom they regarded as congenitally criminal. (See generally, Kates “Toward a History of Handgun Prohibition” in *Restricting Handguns*, supra at 12-22 and references there cited.)

This also happens to reflect the way gun laws are enforced in practice, as is documented in my book. Although blacks have a lower than average level of handgun ownership, they uniformly compose the bulk of citizens arrested and imprisoned under firearm laws. Under the recent Massachusetts law requiring all unlicensed gun carriers to serve a year in jail—notwithstanding lack of criminal record or intent—only 33 percent of defendants charged are white. In Chicago, where illegal search is the standard gun law enforcement tool, 85 percent of gun law defendants are black. (BATF has used similar criteria in deciding which gun dealers should be “referred to criminal enforcement” for harassment and entrapment. BATF order NA-0-5300.1, issued as part of “Project CUE”, instructed agents that among “suggested items to look for” in examining a gun dealer's records are “abnormal amount of purchases by certain groups, i.e., minorities, nationalities, etc.” With regard to “referrals to criminal enforcement,” agents were told “the following is a list of types of referrals contemplated”. Listed were not only matters suggesting illicit sales, but “Trends in purchasing firearms/nationality groups.”

To return to our present federal gun laws, many of these involve classifications fully as irrational. For instance, 18 U.S.C. 922(h) lumps with violent felons—whom everyone agrees should be barred from gun ownership—anti-war activists who have been convicted of draft resistance, corporate executives convicted of anti-trust violations, bankers convicted of income tax evasion and anyone who is a “user of, or addicted to the use of, marijuana.” 18 U.S.C. 1202 (a)(4) adds to the list of those forbidden to buy guns anyone who has renounced U.S. citizenship. Topping them all is 18 U.S.C. 1202(b) which prohibits gun purchases by anyone who is employed by someone who has been convicted of any kind of felony, etc. In other words, if General Motors is convicted of anti-trust violations, none of its thousands of employees can buy a hunting rifle; and, if the head of the local savings and loan has been convicted of an income-tax violation, it can't arm any of its security guards.

It is disturbing to see anti-gun lobbyists supporting classifications like these which are arbitrary to the point of complete irrationality. Fully as disturbing is their refusal to acknowledge—much less support legislative curbs on—civil liberties violations by the BATF. Among the most flagrant civil liberties violations are:

1. The use of informers who are not only confirmed criminals (of a type whose testimony is considered per se unreliable by the Supreme Court<sup>2</sup>) but who are paid only if the defendant is convicted. Such a fee arrangement is tantamount to subornation of perjury; if a lawyer tried to hire a witness on this basis he would be subject to discipline. (ABA Disciplinary Rule 7-109 C). Although repeatedly condemned by the courts, BATF goes right ahead with such witness arrangements anyway. Some eighteen years ago, the Fifth Circuit U.S. Court of Appeals reversed a conviction obtained by BATF's predecessor agency, commenting that:

“Without some justification or explanation, we cannot sanction a contingent fee arrangement to produce evidence against particular named defendants as to crime not yet committed. Such an arrangement might tend to a ‘frame up’ or to cause an informer to induce or persuade innocent persons to commit crimes which they had no previous intention to commit. The opportunities for abuse are too obvious to require elaboration.” *Williamson v. U.S.*, 311 F. 2d 441 (5th Cir. 1962).

One member of the court went farther, condemning the agency's tactics as “essentially revolting to an ordered society,” and “more than civilized sensibilities can stand.” BATF has continued with these or similar arrangements. In *U.S. v. Brown*, 24 *Criminal Law Reporter* 2285 (S.D.N.Y. Oct. 29, 1978), the Southern District of New York described another BATF informant:

“He testified that he was working as a paid informer and that he received \$500 for his role in these events. He had done similar work for BATF in the past and had received pay in the amounts depending on the agency's estimate of the work's importance. He also testified that he hoped his work for BATF would, through the

<sup>2</sup> See *Spinelli v. United States*, 393 US 410 (1969) and cases there cited.



intercession of the agents, help him obtain leniency on pending charges in New Jersey. He also admitted to a variety of previous convictions. His testimony and his demeanor on the stand convinced us that he is an absolutely amoral individual without scruples of any kind."

2. The manufacture of publicity, for instance by press releases after arrest for purported crimes or even by inviting reporters to attend BATF raids on gun shows and gun shops. Although the purpose of this publicity has apparently been to promote the agency's public image and funding (itself a dubious objective of agency action), the effect has been to risk prejudicial pre-trial publicity in the rare instance that one of these arrests actually results in trial. More often than not the charges never come to trial, but the innocent arrestee has been irreparably smeared nevertheless. For, of course, BATF issues no press releases when its charges are dropped for lack of evidence.

3. Irregularities in the confiscation of firearms: One of the most pernicious is seizure of the entire stock of a gun store or collector, even though only one or two arms are involved in a suspected violation. This is comparable to arresting a book store owner under an anti-obscenity law and then confiscating all his other books without any reason to even suspect that they are obscene. This irregularity is complicated by BATF's policy of refusing to return confiscated arms even though no charges have been filed, or the charges have been dismissed by the courts or the defendant acquitted. Victims who have not been charged have been told that they will be if they try to get their guns back; and victims who have filed civil suits have indeed had retaliatory criminal charges filed against them. This is a patent violation of federal constitutional rights. (*MacDonald v. Musick*, 425 F.2d 373 (9th Cir. 1970).) Other acts of retaliation include deliberately damaging collectors' items when confiscating or returning them. Of course some of this damage may result simply from accidental incompetence of handling of the arms. But this in itself is inexcusable in an agency which pretends to expertise in matters concerning guns. Further aggravating factors are that these confiscated weapons sometimes end up in BATF's museum and, frequently, in the personal collections of BATF agents.

By no means have I cited all, or even necessarily the most heinous types, of BATF's civil liberties violations. The whole range of violations have been particularized, with detailed examples, in Senator DeConcini's recent hearings and I am sure will be in this Committee's present hearings as well. But the violations that I have named are all either derived from BATF's official regulations or are so widely practiced by BATF offices as to suggest official sanction or condonation.

For BATF has the strongest incentive known to bureaucracy for encouraging or condoning any activity which will increase the apparent need for its services: BATF's funding is at stake. With the rise in sugar prices over the last decade, the need for federal enforcement against illegal liquor manufacture has dropped alarmingly. So the agency has had to transfer most of its enforcement agents into the firearms field—and to generate an apparent need for far greater funding in that area.

But with this shift came an embarrassing difficulty. Most of the federal gun laws are mere technical statutes prescribing, for instance, the circumstances under which firearms can be transferred, the kinds of records needed, etc. And most violations are committed by ordinary law-abiding citizens (dealers or collectors) who just did not understand the laws' requirements. Which is why, until the bottom dropped out of the liquor enforcement market, BATF's policy was simply to correct people who made innocent recordkeeping or other errors. That policy accorded with Congress' objectives—that the laws be obeyed—but, of course, it did not provide the basis for massive increases in BATF's funding. Nor was it possible to redirect BATF's enforcement of gun laws against real criminals with dramatic enough results to justify transferring enforcement agents from liquor rather than just cutting BATF's budget. Certainly there are many armed robbers, etc., who are violating federal law by possessing firearms although they have a felony conviction record. But a limited jurisdiction federal agency like BATF is not in a position to deal with these types any more than the FBI can act as the first line of defense against kidnapping or bank robberies. When real criminals are caught violating federal gun laws it is almost always by local police who are arresting them on state felony charges like burglary, rape, or robbery. Not only is BATF rarely involved in such captures, but it has established a policy against federal prosecution of such criminals—a policy which state officials have repeatedly protested in vain. But such prosecutions are useless from BATF's standpoint; since BATF can't take credit for the arrest, a prosecution doesn't highlight the need to maintain or increase the BATF budget.

Instead BATF has followed a policy of prosecutions which is as counterproductive in law enforcement as it is repugnant to civil liberties. At this point it is necessary to reiterate a series of points that are so elementary that they seem to drop below

the consciousness of law enforcement agencies: Congress passes laws so that they will be obeyed—not so that people can be punished for disobeying them. A successful prosecution marks not the success of the law, but its failure; prosecution is justified only because other citizens may be deterred from violations. If the primary reason for law violation is not defiance, but simple lack of understanding of a law's complexities, the most efficient course for the law enforcement agency is to clarify and explain the law to those subject to it.

Unfortunately BATF has operated under a diametrically opposite principle: That the purpose of laws is not to control public conduct, but to justify the budgeting of law enforcement agencies. Thus BATF follows policies which (at best) mystify the law so that innocent people will violate it and (at worst) actively trick them into doing so—all with the object of producing a dramatic record of arrests and convictions, rather than obedience to the law. For instance, collectors are denied dealers licenses on the basis that they only trade or sell a few guns each year—and then, on the same basis, are arrested for dealing in guns without a Federal Firearms License. Innocent citizens are misinformed about what the laws require and then arrested for violating them. I could go on and on particularizing abuses. But I have been asked by the Committee's counsel not to go into a detailed exemplification. As my testimony is already long, I shall leave that to other witnesses. But I would like to close with a series of recommendations for legislation change:

First, as suggested earlier, 18 U.S.C. 1202(b) should be repealed. In general, the law should be amended to prohibit gun ownership only by those classes of people whose record suggest a high likelihood of misuse, as well as minors.

Second, the penalty provisions of the federal laws involving recordkeeping and other technical or malum prohibitum violations should be amended to allow less serious violations to be charged as misdemeanors rather than felonies. For any crime, as to which imprisonment or a fine over \$500 may be imposed, proof that the violation was knowing and willful should be required. And the fact that the defendant was misled into violating the law by official actions should be made in an affirmative defense. (See generally, *Commonwealth v. Kocvvara*, 155 A. 2d 825 (Penn. 1959), *Cox v. Louisiana*, 379 US 559 1965, *Raley v. Ohio*, 360 US 423 (1959).)

Third, Congress should create a special temporary Civilian Review Board funded to investigate misconduct by BATF personnel. This Board should be fully empowered, whenever it deems appropriate to: (1) hold all necessary hearings and impose administrative discipline on BATF personnel, subject to review under the Civil Service Act; and (2) undertake criminal prosecutions for violations of constitutional rights by BATF personnel, pursuant to the Federal Civil Rights Act, 18 U.S.C. 241-242.

Fourth, BATF's budget should be very severely cut back in light of the very reduced actual need for its law enforcement activities. And much of the budget related to enforcing federal gun laws should be earmarked for informational services rather than law enforcement of the more traditional variety. BATF searches of dealers or of their premises should be restricted as are searches of ordinary homes and offices.

Finally, unless there is articulable reason to believe that a suspect otherwise is likely to try to avoid trial, or to commit violent crimes—(a) BATF agents should not be able to take suspects into custody, but only give them citations to appear; and (b) even such citations shall not be given except upon a warrant issued by a neutral magistrate. I recognize that these last restrictions would not be necessary or appropriate as to a reputable general jurisdiction law enforcement agency enforcing substantial criminal laws against dangerous criminals. But none of these factors apply to BATF. It is a rogue agency which has demonstrated that it cannot be trusted with broad discretion, but must have its powers narrowly circumscribed. By and large, the legislation it enforces is purely technical and BATF has proven unwilling to enforce it, or incapable of enforcing it, against dangerous criminals. Rather, the overwhelming majority of people with whom BATF will deal will be ordinary citizens who will obey a citation to appear and as to whom physical arrest is both oppressive and a waste of enforcement time and resources.

Thank you for your kind consideration of my testimony and suggestions.

PETITION TO THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS REQUESTING REMEDIAL ACTION UNDER TITLE I OF THE GUN CONTROL ACT TO RESTRICT ISSUANCE OF FEDERAL FIREARMS DEALERS' LICENSES TO BONA FIDE BUSINESSMEN WHO ARE CONDUCTING A RESPONSIBLE, LAW-ABIDING BUSINESS BY PUBLIC OFFICIALS FROM THE STATE OF CONNECTICUT, CONNECTICUT COMMITTEE FOR HANDGUN CONTROL, THE NATIONAL COALITION TO BAN HANDGUNS, AND INTERESTED PRIVATE CITIZENS

*"The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence." (Title I, Gun Control Act of 1968.)*

#### INTRODUCTION

The signatory public officials from the State of Connecticut, the Connecticut Committee for Handgun Control, the National Coalition To Ban Handguns, and interested private citizens hereby petition the Bureau of Alcohol, Tobacco and Firearms (BATF) to take appropriate remedial action under Title I of the 1968 Gun Control Act, 18 U.S.C. 921 et seq., to restrict the issuance of federal firearms dealers' licenses to bona fide businessmen who are conducting a responsible, law-abiding business.

For many years both before and after enactment of the 1968 Act, BATF has recognized that up to 70% of all federal firearms licensees are fraudulent, illegal dealers who have procured their licenses for nonbusiness reasons, in order to avoid the restrictions placed on nonlicensees. Recently, a comprehensive study has again confirmed this fact. The study (attached) demonstrates that over two-thirds of all federal licensees are not bona fide businessmen and that almost 80 percent are acting in violation of local, state, and federal laws. These fraudulent and illegal federal licensees—numbering perhaps over 100,000—are not entitled to their licenses.

Despite repeated recognition of this scandalous state of affairs, BATF has taken no action at all to curb the massive fraud and violation of law. In the 1968 Gun Control Act, Congress gave BATF the clear mandate and the clear authority to purge fraudulent and illegal dealers from the lists of federal licensees. Yet the number of fraudulent and illegal federal licensees has not diminished. BATF, in countenancing this wholesale violation of law, is rendering the Gun Control Act a nullity, and undermining state and local attempts to regulate firearms sales.

For these reasons, we respectfully request BATF to begin carrying out the clear congressional mandate. Immediate action is required, including the following:

Pursuant to 18 U.S.C. 923, BATF should substantially revise its federal dealer application form (ATF Form 7) and renewal form (ATF Form 8). The revised forms should require potential licensees to supply tangible evidence, and to swear under penalties of perjury, that they have complied with state and local firearms licensing laws, zoning codes, state and local tax requirements, and other threshold requirements for conducting a bona fide business. Further, BATF should require applicants to demonstrate the bona fide commercial nature of their business by submitting certified financial statements, evidence of continuing commercial intent, and other evidence.

Pursuant to 18 U.S.C. 923, BATF should issue no federal license to any person who will not conduct a bona fide commercial business that is responsible and law-abiding.

Pursuant to 18 U.S.C. 923 and 922(b), BATF should issue no federal license to any dealer who will operate in violation of federal, state, and local laws regulating the business of dealing in firearms, particularly state firearms licensing laws.

BATF should promulgate regulations under 18 U.S.C. 924 to establish minimum standards of bona fide businesslike conduct for potential federal dealer licensees. These standards should preclude issuance of a federal dealer license to any person who does not possess the attributes of a bona fide commercial enterprise, including commercial premises, suitable financial stability, normal commercial business hours, and bona fide commercial intent.

BATF should rescind its standing orders, ATF Order 5300.3, not to investigate dealer license applicants, and issue orders directing agents to undertake necessary minimal analysis and investigation of applicants to carry out the licensing function properly.

The time for BATF's action has long since come and gone. We accordingly request action within 45 days.

#### THE STUDY

The study submitted with this petition demonstrates BATF's startling lack of control over the federal licensing process.

The study was a comprehensive analysis of all federal firearms dealer licensees in the New Haven, Connecticut metropolitan area. It was carried out according to careful survey techniques, under the auspices of Dr. Robert P. Abelson, Ph.D., a professor of Psychology at Yale University and former Chairman of the University's Psychology Department. Professor Abelson, who has been a fellow of the American Statistical Association, is affiliated with the public opinion firm of Cambridge Survey Research and has for many years been a statistical consultant to NBC Election News.

The survey showed that, incredibly, over three-quarters (77.3 percent) of the licensees were in direct violation of at least one federal, state, or local law or regulation. We are referring not to obscure statutes, but rather to commonly understood tax, zoning and firearms laws. Although Congress intended the federal licensing program to assist state and local firearms control efforts, many federal licensees completely ignored state and local handgun licensing laws. Nearly two-thirds (63.6 percent) of the dealers holding themselves out as sellers of handguns did not possess valid state or local licenses.

Additionally, over two-thirds (69.1 percent) of the licensees could not be called bona fide businesses under any reasonable standard. Well over a fifth of the licensees (22.1 percent) actually admitted to not conducting a regular business. A further 18.1 percent of the ostensible businesses could not be contacted by any reasonable means.

Only 8.5 percent of the supposed businesses listed their telephone in the Yellow Pages; nearly half required by their license to maintain regular business hours failed to do so; nearly half of those reached answered their telephone with a "nonbusiness" response; most of the so-called businesses were in residences not zoned for commercial use and not open to the public.

The study has confirmed the massive violation of law that BATF has fostered and perpetuated. With well over 150,000 federal dealers' licenses presently outstanding, it is reasonable to assume that over 100,000 licenses have been issued to fraudulent and illegal dealers who are not bona fide businessmen and are not complying with state and local laws.

#### THE CONGRESSIONAL MANDATE

We believe that BATF has itself acted illegally in licensing such a huge pool of illegal dealers. Eliminating the large numbers of fraudulent licensees that previously existed under the old Federal Firearms Act was one of the major purposes behind the passage of the 1968 Gun Control Act. Treasury Department officials repeatedly urged Congress to amend the 1938 federal licensing statute for just this reason. Thus, in 1964, the Secretary of the Treasury testified:

"Under the existing law, anyone other than a felon can, upon the mere allegation that he is a dealer and payment of a nominal fee of \$1.00 demand and obtain a license. Some 50,000 or 60,000 people have done this, some of them merely to put themselves in a position to obtain personal guns at wholesale."

"Our best estimate, Senator Fong, is that out of the approximately, I think this is a fairly accurate figure for 1964, 99,544 licensees, it is our estimate that less than a half of the licensed dealers are actually engaged in the business as dealers and that more than half are persons who are using the simple device of becoming a licensee for their own personal nonbusiness purposes." Federal Firearms Act, Hearings Before the Senate Subcomm. To Investigate Juvenile Delinquency of the Senate Judiciary Comm., 89th Cong. 1st Sess. 31, 33, pursuant to S. Res. 52 (May 19, 1965) (statement of Henry H. Fowler, Secretary of the Treasury).

In response to pleas such as this, the House and Senate determined to correct licensing abuses. The legislative history of Title I of the 1968 Gun Control Act explicitly states Congress intention to remedy the problem of fraudulent licensees:

"The title would prescribe meaningful licensing standards and denial hearing procedures designed to assure that licenses would be issued only to responsible, law-abiding persons actually engaged in or intending to engage in business as importers, manufacturers, or dealers in firearms." Comm. Rep. No. 1501, 90th Cong., 2d Sess. 29 (Sept. 6, 1968), to accompany S. 3633 ("Gun Control Act of 1968") (emphasis supplied).

As passed, the Gun Control Act gives BATF ample authority to issue licenses only to responsible, law-abiding, bona fide businessmen. See, e.g., 18 U.S.C. 923, 926.

#### THE PRESENT PROBLEM

It is clear that Congress identified the dealer licensing problem, and properly armed BATF to deal with it. Congress expected, as it does with all its statutes, that BATF would act in accord with the laws it passes.

It is now equally clear, on the basis of the recently completed study and BATF's own admission, that BATF has allowed a massive violation of law by continuing to license huge numbers of fraudulent and illegal dealers. Even without the study, it is not necessary to look any further than the testimony of Treasury's own officials. On April 23, 1975, David R. MacDonald, Treasury Assistant Secretary for Enforcement, testified that "less than 30 percent [of federal firearms dealers] actually conduct a bona fide business."

Why has BATF permitted this sorry record to continue? Looking at the history of BATF's licensing activities and its orders to its personnel, we are forced to conclude that BATF has adopted—perhaps intentionally—a policy of nonenforcement of the licensing provisions of the Gun Control Act. Keeping in mind that the study (which was conducted only on the basis of public records and telephone calls) was able to detect an illegitimacy rate of at least 77.3 percent, it is fair to describe BATF's licensing enforcement efforts as inconsequential. According to BATF's own figures, between 1969 and 1978 the agency issued 1,521,664 firearms licenses and found grounds to deny barely three-fourths of 1 percent and to revoke an infinitesimal 0.007 percent.

FIREARMS LICENSES ISSUED, DENIED AND REVOKED

Fiscal year	Licenses issued	Percent	Licenses denied	Percent	Licenses revoked	Percent	Total action	Total percent
1969.....	77,573	97.85	1,705	2.15	0	0	79,278	100
1970.....	138,865	98.22	2,512	1.78	8	.006	141,385	100
1971.....	144,548	99.29	1,032	.71	7	.005	145,587	100
1972.....	147,026	98.84	1,683	1.13	42	.03	148,751	100
1973.....	148,600	98.88	1,669	1.11	12	.008	150,281	100
1974.....	156,443	99.01	1,540	.97	17	.011	158,281	100
1975.....	161,927	99.74	423	.26	7	.004	162,357	100
1976.....	165,697	99.71	470	.28	6	.004	166,173	100
Transition quarter.....	40,803	99.58	172	.42	1	.002	40,976	100
1977.....	173,484	99.75	423	.24	10	.006	173,917	100
1978.....	166,698	99.81	319	.19	0	0	167,017	100
Total.....	1,521,664	99.21	11,948	.78	110	.007	1,533,722	100

One can only guess as to why this agency has embarked upon a course of nonenforcement. One field agent, however (who prefers to remain anonymous), stated that in the early 1970s his efforts for proper enforcement were rebuked by political higher-ups. He cited pressure from the gun lobby on Treasury warning him to "cool it."

IMPACT OF NONENFORCEMENT

What then has been the result of this policy of illegal nonenforcement? We will discuss but a few areas.

*Undermining state and local laws.*—It is necessary to go no further than the first sentence of Title I of the Gun Control Act of 1968 to pinpoint a major impact of BATF's nonfeasance: "The Congress hereby declares that the purpose of this title is to provide support to Federal, State and local law enforcement officials in their fight against crime and violence. . . ." It is shocking to learn that the federal government has been undermining state and local efforts to control the sale of handguns. Although BATF is required to prevent its licensed dealers from violating state and local law (see 18 U.S.C. 922(b)(2)), we are outraged to learn that as many as 63.6 percent of Connecticut's handgun sellers are violating state and local law behind a curtain provided by BATF, a curtain that serves to do nothing but encumber local law enforcement and by implication endanger our states, cities and towns.

*Dollar cost.*—Obviously, in issuing hundreds of thousands of bogus licenses, BATF is wasting money. By its own estimates, simply processing the papers for each federal dealer (without undertaking any real investigation) costs BATF an amount that is ten or fifteen times the statutorily set \$10 license fee for dealers. On the basis of 1,533,722 licenses issued and renewed between 1969 and 1978, BATF has easily spent over a hundred million dollars approving licenses for people to commit illegal acts. And, of course, lack of enforcement by BATF only serves to induce more and more illegals to obtain the license. The survey personnel were often encouraged by federal licensees to get a license for themselves.

*Manpower waste.*—As of November 29, 1979, there were 171,935 federal licensees. Even though BATF does not actively investigate licensees, we are certain that BATF personnel waste many hours pushing papers in connection with the over 100,000 licensees who are illegally in possession of a license. The dollar and manpower waste associated with maintaining such a huge pool of illegal licensees suggests to us that BATF is more concerned with aggrandizing its budget and staff, ostensibly to monitor a large number of licensees, than it is with actively restricting licenses to bona fide businesses.

*Legitimate business undermined.*—While it was not the purpose of the Gun control Act to guarantee a profit for people engaged in the gun business, it is clear that BATF's nonenforcement of the law has been working to harm legitimate businessmen who are earnestly attempting to comply with the law. The maintenance of a proper place of business necessarily carries with it a considerable amount of overhead, rental cost, business licenses, employee salaries, and the like. BATF's files contain complaints from honest, bona fide firearms businesses over the impact on their trade from illegitimate sales by bogus licensees. For example:

"We think it would be nice if firearms licenses were issued to 'legitimate' businessmen, not 'basement' operators trying only to supplement their income. Businessmen such as myself have expenses, i.e., overhead costs that 'basement' operators don't have." —TALLY HO SPORTS, Waterloo, N.Y.

"The way I see it, is that there are too many persons with a FFL that do not have a place of business that is open to the public. They just buy or sell out of their house or car, and this is unfair to us who have to have inventory, employees, insurance, records, etc." —JOHN'S GUN SHOP, Custer, S.Dak.

"We have many basement FFL dealers who buy at dealers cost level and sell at a profit of \$5.00 and doesn't pay taxes, rent and normal overhead and cuts the store FFL dealer who is honest out of a possible sale." —WESTERN AUTO STORE, Woodstock, Va.

*Civil rights abuses.*—It hardly comes as news to Treasury officials that civil rights abuses are being attributed to BATF. Hearings last summer as well as those planned for this spring have cast few halos on BATF. Without, however, going into the validity of the charges, we might suggest that much of the confusion and dispute evolves from the nonenforcement of dealer licensing provisions. Individuals who are not bona fide businessmen are enmeshing themselves in dealer requirements that they are not interested in, willing to, or capable of maintaining.

*Harm to public at large.*—Finally, of course, the nonenforcement of the Gun Control Act affects the interests of the public at large, who are deprived of benefits of increased control over commerce in lethal weapons.

CONCLUSION

The undersigned public officials and citizens accordingly request BATF to undertake within 45 days the specific remedial steps we have proposed.  
[The attached letters represent the other supporting people.]



State of Connecticut  
GENERAL ASSEMBLY  
STATE CAPITOL  
HARTFORD, CONNECTICUT 06115

April 16, 1980

Mr. G. R. Dickerson, Director  
Bureau of Alcohol, Tobacco, & Firearms  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20226

Dear Mr. Dickerson,

We endorse the petition to your agency requesting remedial action under the 1968 Gun Control Act to restrict the issuance of federal firearms licenses to responsible businesses that are conducting a bona fide commercial enterprise in compliance with federal, state, and local law.

Sincerely,

*Michael S. Kraskowski*  
Michael S. Kraskowski  
State Representative  
Wallingford

*Thomas F. Wall*  
Thomas F. Wall  
State Representative  
New Haven

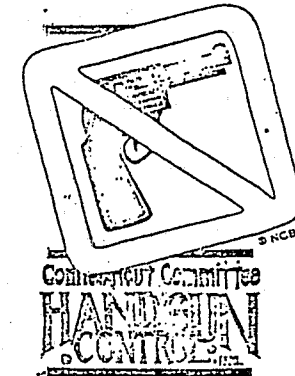
*Irving R. Stolberg*  
Irving R. Stolberg  
State Representative  
New Haven

*Ronald A. Snoko*  
Ronald A. Snoko  
State Representative  
Hamden

*Joseph Carbone*  
Joseph Carbone  
State Representative  
New Haven

*William R. Dyson*  
William R. Dyson  
State Representative  
New Haven

*Geil Orcutt*  
Geil Orcutt  
State Representative  
New Haven



Box 4410 Y.S. • New Haven, CT 06520 • 203-436-1480

April 16, 1980

Mr. G. R. Dickerson, Director  
Bureau of Alcohol, Tobacco, and Firearms  
1200 Pennsylvania Ave., N. W.  
Washington, D. C. 20226

Dear Mr. Dickerson:

The Board of Directors of the Connecticut Committee for Handgun Control, Inc. has unanimously endorsed the petition to your agency requesting remedial action under the 1968 Gun Control Act to restrict the issuance of federal firearms licenses to responsible businesses that are conducting a bona fide commercial enterprise in compliance with federal, state, and local law.

Sincerely,

Connecticut Committee for Handgun  
Control, Inc.

By: *Joanna Dember*  
Joanna Dember, Secretary



April 16, 1980

Mr. G. R. Dickerson, Director  
Bureau of Alcohol, Tobacco, and Firearms  
1200 Pennsylvania Ave., N. W.  
Washington, D. C. 20226

Dear Mr. Dickerson:

We endorse the petition to your agency requesting remedial action under the 1968 Gun Control Act to restrict the issuance of federal firearms licenses to responsible businesses that are conducting a bona fide commercial enterprise in compliance with federal, state, and local law.

Sincerely,

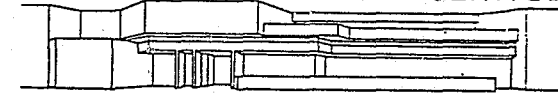
*Mary Camilli*  
Mary Camilli  
287 Cedarwood Lane  
Newington, CT 06111

*Ruth Goodrich*  
Ruth Goodrich  
77 Greystone Ave  
Bristol, CT 06010

*Robert Teitelman*  
Robert Teitelman  
500 Ellsworth Ave.  
New Haven, CT 06511

*Judy Yost*  
Judy Yost  
121 S. Main St.  
East Granby, CT 06026

## DEPARTMENT OF POLICE SERVICE



NEW HAVEN CONN 06519

BIAGIO DILIETO, MAYOR - EDWARD MORRONE, CHIEF OF POLICE

May 9, 1980

Sam Fields, Field Director  
National Coalition to Ban Handguns  
100 Maryland Ave. N.E.  
Washington, D.C. 20002

Dear Mr. Fields:

I endorse the petition to your agency requesting remedial action under the 1968 Gun Control Act to restrict the issuance of federal licenses to responsible businesses that are conducting a bona fide commercial enterprise in compliance with federal, state, and local law.

Sincerely,

*Edward Morrone*

EDWARD MORRONE  
Chief of Police

EM/stm



ROBERT A. JOHNSON  
MAYOR

OFFICE OF THE MAYOR  
CITY OF WEST HAVEN  
CONNECTICUT

April 22, 1980

Mr. G. R. Dickerson, Director  
Bureau of Alcohol, Tobacco & Firearms  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20226

Dear Mr. Dickerson:

I endorse the petition to your agency requesting remedial action under the 1968 Gun Control Act to restrict the issuance of federal firearms dealers licenses to responsible businesses that are conducting a bona fide commercial enterprise in compliance with federal, state, and local law.

Sincerely,

*Robert A. Johnson*  
Robert A. Johnson  
Mayor

RAJ/dmm

CITY OF WEST HAVEN  
DEPARTMENT OF POLICE SERVICE  
WEST HAVEN, CONNECTICUT 06516



ADDRESS ALL COMMUNICATIONS TO  
SALVATORE MALINCONICO  
CHIEF OF POLICE



ROBERT A. JOHNSON  
MAYOR

May 7, 1980

Mr. G. R. Dickerson, Director  
Bureau of Alcohol, Tobacco and Firearms  
1200 Pennsylvania Ave., N.W.  
Washington D. C. 20226

Dear Mr. Dickerson:

I endorse the petition to your agency requesting remedial action under the 1968 Gun Control Act to restrict the issuance of federal firearms licenses to responsible businesses that are conducting a bona fide commercial enterprise in compliance with federal, state, and local law.

Sincerely,

*Salvatore Malinconico*

Salvatore Malinconico  
Chief of Police

SM:jdm

COMPLIANCE OF FEDERAL FIREARMS LICENSEES WITH FEDERAL, STATE, AND LOCAL LAWS AND STANDARD BUSINESS PRACTICES

"Basically I have guns because I like them and keep them as a hobby. I've got a federal dealer's license and I can probably get one for you."—FEDERAL FIREARMS LICENSEE.

I. EXECUTIVE SUMMARY

A study was conducted to determine the proportion of federally licensed firearms dealers that are bona fide businesses operating in compliance with federal, state and local law.

The one hundred thirty-six holders of federal firearms dealers' licenses in the New Haven, Connecticut metropolitan area were selected as subjects. All 136 were studied on the basis of public information obtained from the Bureau of Alcohol, Tobacco and Firearms (BATF), as well as Connecticut state and local officials. Additionally, nonobtrusive interviews (in which the interviewer requested information as a potential buyer) were conducted with the 108 licensees that were reachable by telephone.

Overall, more than three-fourths (77.2 percent) of licensees were in direct violation of at least one federal, state, or local law or regulation. Nearly one-half (48.5 percent) were in violation of two or more firearms, tax, or zoning requirements.

A common violation involved the sale of handguns in violation of state and local licensing laws. Nearly two-thirds (63.6 percent) of the dealers holding themselves out as sellers of handguns did not possess valid state or local licenses. (A violation of state firearms licensing laws is also a violation of federal law.)

In addition, over two-thirds (69.1 percent) of all licensees did not appear to be bona fide businesses. It is unlawful to obtain a license without intending to conduct a bona fide business. Yet only 8.5 percent of the licensees listed their telephone in the Yellow Pages; 48.7 percent of the licensees required to do so did not maintain regular business hours; nearly half of those reached answered their telephone with a "nonbusiness" response. Over one-fifth of all the licensees (22.1 percent) admitted outright to not conducting a regular business; a further one-fifth (18.3 percent) of the ostensible businesses could not be contacted by any reasonable means. Of the licensees who professed actively to use their licenses, 39 out of 81 (45 percent) could not reasonably be considered bona fide commercial enterprises.

The study concluded that at least two-thirds of the licensees studied are not entitled to their licenses.

II. PURPOSE

The purpose of the study was to determine the proportion of federally licensed firearms dealers conducting bona fide businesses in compliance with federal, state and local firearms licensing laws and other laws that regulate the business of dealing in firearms.

The proposition being tested was stated generally by David R. MacDonald, Assistant Secretary of Treasury, for Enforcement, who testified on April 23, 1975, that "less than 30 percent [of federal firearms dealers] actually conduct a *bona fide* business."—<sup>1</sup> MacDonald characterized the remaining 70 percent as "nominal" licensees, who obtained licenses for personal use or use by friends.

Accordingly, the study attempted to analyze all the licensees in a particular area, to determine the number holding a license in apparent violation of federal, state and local laws. The particular violations studied included:

Obtaining a federal firearms dealer's license without conducting a bona fide business;

Selling handguns in violation of state and local licensing laws;

Operating in violation of state tax requirements;

Operating in violation of local zoning requirements.<sup>2</sup>

III. FACTUAL BACKGROUND

The history of federal involvement in the conduct of firearms dealers goes back to the National Firearms Act (NFA) of 1934.<sup>3</sup> As part of a program to control so-called gangster weapons—submachine guns—a licensing system was established for all dealers in such weapons.

<sup>1</sup> Handgun Crime Control: Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., at 52 (statement of David R. MacDonald) (April 23, 1975).

<sup>2</sup> Legal counsel concerning the requirements of applicable law was provided by S. Mark Tuller, Esq., of the law firm of Arnold & Porter, Washington, D.C.

<sup>3</sup> National Firearms Act, 48 Stat. 1236 (1934), as subsequently amended.

Four years later, in 1938, the Federal Firearms Act expanded the licensing system to include all interstate commercial transactions.<sup>4</sup> Annual license fee was set at \$25.00 for manufacturers and \$1.00 for dealers. Dealers were required to keep records of transactions and were prohibited from making sales to persons in certain categories including felons, persons under indictment, fugitives, and out-of-state buyers from jurisdictions where such purchases required a license. Enforcement for the law was placed in the hands of the Secretary of the Treasury who assigned the responsibility to the Internal Revenue Service.<sup>5</sup>

The effectiveness of the 1938 Act in policing the commercial aspects of the firearms industry was questionable: "[T]he modest cost of a dealer's license and the fact that dealers could freely receive firearms in interstate commerce created strong incentives for private parties to receive dealer licenses. . . . (over 100,000 in the mid-1960's) and made any serious effort to monitor dealer compliance . . . an enormous undertaking."<sup>6</sup>

Following a dramatic rise in violent crime and the assassinations of President John F. Kennedy, Rev. Dr. Martin Luther King, and Senator Robert F. Kennedy, the Congress passed and President Lyndon B. Johnson signed into law the Gun Control Act of 1968.<sup>7</sup>

Among the areas that were meant to be tightened was the requirement for dealer licensing:

"License fees increased from one dollar to ten dollars per year and minimum requirements for dealers were set. Persons applying for a dealer's license sent their applications and fees to the district director of the Treasury Department's newly formed Bureau of Alcohol, Tobacco and Firearms. After depositing the fee, the district director forwarded the application to the Regional Regulatory Administrator (RRA) of the Bureau. Title 27 of the Code of Federal Regulations mandates that the administrator approve the firearms application if the applicant:

- "Is twenty-one years or older;
  - "Is not prohibited from dealing in firearms under the provisions of the Gun Control Act of 1968;
  - "Has not willfully failed to disclose any required information or made false statements on the application;
  - "Has legal premises from which to conduct business; and
  - "Is not a person ineligible to buy or possess firearms.
- "The RRA must approve or deny the application within 45 days after receiving it."<sup>8</sup>

Under the present law, the 1968 Gun Control Act, persons conducting commercial firearms activities must obtain an appropriate license.<sup>9</sup> By far the most common license issued is the firearms dealers license (type 01).

LICENSES NEEDED TO CONDUCT COMMERCIAL FIREARMS ACTIVITIES

Type and license	Annual fee	Number of licenses as of Nov. 29, 1979 <sup>1</sup>
01 Dealer in firearms other than destructive devices or ammunition for firearms other than destructive devices .....	\$10	154,117
02 Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices .....	10	3,394
03 Collector of curios and relics .....	10	4,986
06 Manufacturer of ammunition for firearms other than destructive devices .....	10	8,048
07 Manufacturer of firearms other than destructive devices .....	50	457
08 Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices .....	50	428
09 Dealer in destructive devices or ammunition for destructive devices .....	1,000	5
10 Manufacturer of destructive devices or ammunition for destructive devices .....	1,000	32
11 Importer of destructive devices or ammunition for destructive devices .....	1,000	12
Total .....		171,935

<sup>1</sup> Personal communication with Karen Brumbaugh, Disclosure Specialist, Bureau of Alcohol, Tobacco and Firearms, Feb. 12, 1980.

<sup>4</sup> Federal Firearms Act, 52 Stat. 1250 (1938), repealed by Public Law 90-351, sec. 906, 82 Stat. 234 (1968).

<sup>5</sup> Federal Firearms Act, sec. 7, 52 Stat. at 1252 (1938); T.D. 4834, 1938-2 Cum. Bull. 465, 467.

<sup>6</sup> Zimring, "Firearms and Federal Law: The Gun Control Act of 1968," 1973 J. Legal Stud. 133, 140-41 (1973) (footnote omitted).

<sup>7</sup> Public Law 90-618, 82 Stat. 1213 (1968).

<sup>8</sup> A. Garner and M. Clancy, "Firearm Statutes in the United States," United States Conference of Mayors (1979), restating requirements found in 27 CFR 178 et seq. and 18 U.S.C. 923.

<sup>9</sup> 18 U.S.C. 923(a) (1), (2) and (3); (b).

Since the passage of the 1968 Act numerous questions continue to be raised about the enforcement of commercial firearms licensing. On April 23, 1975, David R. MacDonald, Treasury Assistant Secretary for Enforcement, testified that "less than 30 percent [of federal firearms dealers] actually conduct a bona fide business. . . ." The remaining 70 percent were categorized as "nominal" who obtained licenses for personal use or use by friends.<sup>10</sup>

In the summer of 1978, a pilot project to investigate the claims of the Assistant Secretary was conducted in Chicago.<sup>11</sup> A total of 171 retail licensees were used in the pilot study; 79 were reached while 92 were unreachable. Of the 79 reached the interviewers were able to establish 28 firearms law violations and 14 zoning violations. On the basis of this preliminary survey it was decided to select a second site and conduct a more controlled and detailed study.

IV. METHODOLOGY: SAMPLE, CRITERIA TESTED, PROCEDURES

The study tested federally licensed firearms dealers (01 licensees) in the New Haven, Connecticut metropolitan area. Subjects were tested for compliance with nine criteria, each of which is either a direct statutory or regulatory requirement or has been relied upon in a legal or regulatory context as an indicium of bona fide business practice. Controlled nonobtrusive interviews were conducted and examination of public records was completed.

A. Sample used

A list of federal firearms license holders in the state of Connecticut was obtained from the Bureau of Alcohol, Tobacco and Firearms, in April 1979. The list was narrowed to all holders of 01 type licenses (dealers) within local calling range of New Haven, Connecticut. Nationally, dealers represent 89.9 percent of all licensees. Licensees located within the area of local telephone dialing from New Haven were selected to help preserve the nonobtrusive aspects of the interview. Under these criteria a sample of 136 was achieved, amounting to a 100 percent sample of area dealers.<sup>12</sup>

B. Criteria tested

Five "legal" criteria and four "business indicium" criteria were tested. Each legal criterion is a direct requirement of state, local or federal law, or all three. Each "business indicium" criterion is a commercial characteristic of bona fide firearms businesses, the absence of which tends to indicate the licensee is not conducting a bona fide business.

1. Legal

(a) *The licensee (if engaged in the sale of pistols or revolvers) does not possess an appropriate license under Connecticut law.*—The federal statute, 18 U.S.C. 922(b)(2), makes it a violation of federal law for a federally licensed dealer to sell firearms to any person in violation of applicable state law. See *Mayesh v. Schultz*, 58 F.R.D. 537 (S.D. Ill. 1973); *United States v. Decker*, 335 F. Supp. 1168, (W.D. Mo. 1970), aff'd, 446 F. 2d 146 (8th Cir. 1971). The principal state law in Connecticut is Conn. Gen. Stat. sections 29-27, 28, and 31 (see Appendix A), providing in essence that sale of pistols or revolvers must be subject to a permit issued by the local chief of police.

(b) *The licensee had discontinued operations without proper notice to BATF.*—Under 27 CFR 178.57, a licensee must give written notice of going out of business to the appropriate Assistant Regional Commissioner within 30 days after going out of business. Likewise, 27 CFR 178.127 requires licensees to deliver their firearms dealer records to the Regional Commissioner within 30 days after going out of business.

<sup>10</sup> Handgun Crime Control Hearings, supra, at 52.

<sup>11</sup> Headed by Steven Masters, Connecticut Committee for Handgun Control. Sample included all 01 and 02 licenses in Cook County, Ill.

<sup>12</sup> The original sample of 137 was narrowed to 136 when it was learned that one of the subjects had recently died.

(c) *The licensee is issued to a building not zoned for commercial use.*—A dealer maintaining a license for premises that are not commercially zoned under the local zoning ordinances is culpable either for violating local law or federal law. If the licensee is actually conducting a retail gun business from the licensed premises, local law prohibiting the commercial use of residential property is violated. Alternatively, if the licensee is not conducting a commercial business from the licensed premises, the federal requirement that licensed dealers must intend to engage in a bona fide business (18 U.S.C. 923) is violated.<sup>13</sup> In either event the licensee is in violation of law.

(d) *The licensee operates from a location not specified in the license.*—Under 27 CFR 178.52, all changes of address must be reported to the appropriate Assistant Regional Commissioner and approved for a new licensed premises to be obtained.

(e) *The licensee has failed to obtain a state sales tax license.*—Under Connecticut state law all businesses must obtain a state sales tax number and collect the appropriate revenue. 12 Conn. Gen. Stat. Ann. section 409(1)–(7). (See Appendix D.) As with violations of the zoning regulations, the failure of the licensee to possess such a license demonstrates either that the licensee is conducting a sales business in violation of state law, or, alternatively, that the licensee is maintaining a federal dealer's license without conducting a bona fide business.

## 2. Business indicia

(a) *The licensed premises do not have regular business hours.*—Under the federal statute, 18 U.S.C. 923(d)(1)(E), an applicant for a federal license must have "premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time." Lack of business premises and lack of intent to conduct business are evident from, among other things, lack of regular business hours. In *Bonham v. ATF Division*, Civil Action 3244–2 (M.D. Ala. April 2, 1971) (see Appendix B), an applicant purporting to have business hours only between 5:00 p.m. and 6:30 p.m. on Fridays was denied a federal license for failure to comply with the Act in this respect.

(b) *The licensed premises are not open to the general public.*—The statutory requirement of "business premises" of 18 U.S.C. 923(d)(1)(E) is elaborated by regulations appearing at 27 CFR 178.11, which define "business premises" as follows: "The property on which firearms or ammunition importing, manufacturing, or dealing business is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term." In the *Bonham* case above, the exclusive clientele of the licensee—close friends and family—was relied upon in conjunction with the residential zoning of the premises as indicative that the public was not admitted to the licensed premises. (See Appendix B).

(c) *The licensee does not advertise a business telephone number.*—If the subject stated that his primary or only occupation at the license address was firearms related, researchers checked to see if he was listed in the Yellow Pages under "Guns." Failure to use advertising is regarded by the BATF as indicative that no bona fide business is being conducted. See ATF Order 5300.3.

(d) *The licensee does not make a business phone response.*—The failure of a licensee to answer telephone calls with a business-like phrase, such as "Gun shop," was regarded as indicative of not conducting a bona fide business. See ATF Order 5300.3.

## C. Procedures

All information, whether interview or archival, was kept on data sheets (see Appendix E).

Researchers attempted to find telephone numbers for each of the dealers in the sample. They tried to find a telephone number listing under the business address given on the BATF list, looking both under the business name (if given on the BATF list) and under the licensee's name. They first looked in the Yellow Pages under "Guns." If not found, researchers looked in the White Pages. If still not found, they checked with Directory Assistance. Some phone numbers could not be found at the business address given on the ATF list, and it was so noted. The researchers then tried to find a phone number for these "Can't Finds" at a different

<sup>13</sup> In *Bonham v. AFT Division*, Civil Action 3244–2 (M.D. Ala. Apr. 2, 1971) (per F. M. Johnson, Jr.) (see Appendix B), the court relied upon the fact that the licensed premises were not zoned for commercial use and thus presumptively were not business premises open to the public, as required for license eligibility under 27 CFR 178.11. Additionally, Bureau of Alcohol, Tobacco and Firearms Order 5030.2A, p. 13, requires federal agents to report "possible violations of local zoning ordinances such as where businesses are being conducted in residential areas." (See Appendix C.)

address listed under the dealer's name or business name. If they could not find such an "Alternative Address," it was again so noted.

The source of the phone number (Yellow Pages; White Pages; Directory Assistance, Listed; Directory Assistance, Unlisted; or Couldn't Find) was noted, and the type of phone listing (Business or Home) was noted. Those people who had unlisted phone numbers that could not be found were subject to archival research alone.

Researchers began calling on the morning of Monday, April 30, 1979. They attempted to reach every dealer during daytime hours at least three times. At least one of these times was during the morning hours (between 9:00 a.m. and 11:30 a.m.) and at least one was during the afternoon hours (between 1:00 p.m. and 4:30 p.m.). At least one of these times was on a Monday or a Wednesday and at least one was on a Tuesday or a Thursday.

Some dealers were not reached during these three daytime attempts, and they were called at least three times during the evening hours (between 7:00 p.m. and 10:00 p.m.). All daytime phone calls and evening phone calls were made during weekdays—not during weekends. The time that the dealer was contacted was noted by the interviewer, and if no contact was ever made (after at least six attempts), it was so noted. An attempt was defined as successful if the federal dealer was spoken to by the interviewer. An attempt was defined as unsuccessful if the phone was unanswered after ringing at least 60 seconds or if the phone was answered and the interviewer was informed that the licensee was not present at that time. All phone call attempts were completed by Friday, May 11, 1979.

All researchers were supplied with a flow chart (see Appendix F) describing in detail what facts should be secured and what responses should be given to predictable questions that might be asked by licensees. (Type of weapon, reason for purchase, etc.). Standard responses to other questions were also supplied. (See Appendix G.)

When contact was made with the dealer, the interviewer asked the dealer if he would be willing to sell a gun to him (the interviewer), particularly a handgun. The interviewer then recorded whether the dealer sold guns, whether he sold handguns, whether he just did gunsmithing, whether he just did expert work or consulting, whether the dealer claimed to have nothing to do with guns, or whether the dealer claimed to be retired from the gun business. The interviewer then recorded whether the dealer was willing to sell to a specific group of customers (friends only, police only, distributors only, etc.). Responses were recorded on the response sheet.

After the phone calls were completed, researchers checked the zoning classifications where each dealer conducted business. They found the zoning classification of each licensed address and each "alternative address" (if they were able to find where the dealer had moved to). Once the zoning classification was known, researchers went through each town's zoning regulations to determine if a person could properly conduct a retail gun store or do gunsmithing in that particular zone. If the business was located in an improper zone, researchers sought to determine if that person had applied and received a zoning variance or exception. Local zoning officials were consulted to confirm information on permissible uses and variances. Zoning checks were made during late May 1979 and late August 1979.

After the phone calls were completed, researchers began to determine which dealers had obtained handgun dealers permits from their local police. Researchers contacted the police department in each town and obtained a list of people in town who had purchased Connecticut handgun dealers permits. Handgun permit checks were made during late May 1979 and late August 1979.

In August 1979, researchers sent in a request to BATF to obtain photocopies of the license applications of each of the dealers in the survey. Also sent to BATF was a list of names of those dealers who had indicated to callers that they had discontinued their business or had moved. BATF was asked if they had been so notified by the dealers, as required by regulation.<sup>14</sup> Researchers received this information in Washington, D.C., in September 1979.

In August 1979, a list of the dealers was sent to the Connecticut Sales Tax Office. Sales tax officials were asked which of the licensees had been issued Connecticut Sales Tax Permits. The final state report was delivered to researchers in January 1980.

## V. RESULTS

### A. Demographics

There were 136 licensees in the sample. Based on recent BATF printouts, 42 (30.8 percent) were corporations, and 94 (69.2 percent) were noncorporate licensees. Among the noncorporate licensees, 89 (94.6 percent) were single ownership and 5

<sup>14</sup> 27 CFR 178.57. See also 27 CFR 178.127.



(5.4 percent) were partnerships. Among all 100 noncorporate licensees, 96 (96 percent) were male and 4 (4 percent) were female.

According to license address the subjects conducted business in 16 different towns and cities:

TABLE I.—CITY OF LICENSE ADDRESS

City	Number of subjects	Percentage
Bethany.....	2	1.5
Branford.....	14	10.3
Cheshire.....	8	5.9
Devon.....	1	.7
East Haven.....	7	5.1
Hamden.....	15	11.0
Milford.....	14	10.3
New Haven.....	13	9.6
North Branford.....	2	1.5
North Haven.....	21	15.4
Northford.....	4	2.9
Orange.....	5	3.7
Stoney Creek.....	1	0.7
Wallingford.....	16	11.8
West Haven.....	12	8.8
Woodmont.....	1	0.7
Total.....	136	100.0

Eight of the licensees no longer conducted business at the license address and were located in different cities:

TABLE II.—CITY OF CHANGED ADDRESS

City	Number of subjects
Brookfield.....	1
Cheshire.....	1
Devon.....	1
Meriden.....	1
Milford.....	1
North Branford.....	2
Wallingford.....	1
Total.....	8

Surveyors were able to contact 111 licensees, all of whom indicated the type of activity they engaged in.

TABLE III.—LICENSEE SALES ACTIVITIES

Type of guns sold	Number of subjects	Percentage
At least handguns.....	44	32.4
Nonhandguns only.....	31	22.8
Spearguns only.....	1	.7
Gunsmithing only.....	5	3.7
Don't sell, retired.....	8	5.9
Don't sell at all.....	22	16.2
Not reached.....	3	2.2
Unlisted.....	15	11.0
Couldn't find.....	7	5.1
Total.....	136	100.0

The chart immediately above shows the distribution of license use. Only 81 licensees (59.6 percent) claimed to be actively using the license. Of the remainder, 30 licensees (22.1 percent) were either retired or claimed not to use the license at all. An additional 25 licensees (18.3 percent) were unreachable and therefore could not offer testament as to their activity.

Many of the licensees that limited their activity readily conceded as much. For example:

(1) "I have a federal license, but I haven't dealt guns in a long time."

(2) "I've got a FFL, I'm really just a collector."

Other licensees responded with a suspicious answer:

(3) "A gun? I don't sell guns. Who is this? What kind were you looking for? Why don't you call back in a few days."

#### B. Legal compliance

##### 1. Sale of handguns without local license

A total of 44 licensees held themselves out as willing to sell a handgun. Nearly two-thirds of these (63.6 percent) did not possess a local license.

TABLE IV.—LOCAL LICENSES (HANDGUN SELLERS)

	Number of subjects	Percentage
State/local license to sell handguns.....	16	36.4
No State/local license to sell handguns.....	28	63.6
Total handgun sellers.....	44	100.0

Individuals selling handguns without proper state licensing spoke freely about their business, apparently without any fear of the law:

(1) "Just come over and look at the catalog and you can pick one out."

(2) "There's no basic problem. I can get anything."

(3) "Uh, huh, all I've got right now is a Python . . . do you know where Tyler Place is?"

##### 2. Licensee discontinued business

The 30 licensees that professed to being out of business and the 25 licensees that could not be reached after all reasonable attempts were regarded as not intending to conduct a bona fide business for purposes of license eligibility. Among 29 of the 30 self-admitted nonbusinesses, none had complied with BATF requirements for notification and return of records. Data was unavailable on one subject.

TABLE V.—BATF NOTICE (DISCONTINUED BUSINESSES)

	Number of subjects	Percentage
Notified BATF.....	0	.0
Failed to notify BATF.....	29	100.0
Total discontinued.....	29	100.0

##### 3. Zoning, variance, and exceptions compliance

Most of the licenses (61.8 percent) were issued to noncommercial addresses.

TABLE VI.—ZONING COMPLIANCE (ALL LICENSEES)

	Number of subjects	Percentage
Zoning compliance .....	52	38.2
Zoning noncompliance .....	82	61.8
Total .....	136	100.0

Among the 81 licensees who indicated that they actively used the license, zoning, variance and exception compliance was slightly more than half.

TABLE VII.—ZONING COMPLIANCE ("ACTIVE" LICENSEES)

	Number of Subjects	Percentage
Zoning compliance .....	42	51.8
Noncompliance .....	39	48.2
Total .....	81	100.0

Research showed only two instances where licensees had applied for and received variances.

4. Licensee changed address

Of the 136 licensees, 30 (22.1 percent) had changed their license address. None had notified BATF pursuant to regulation.

TABLE VIII.—BATF NOTICE (CHANGED ADDRESS)

	Number of subjects	Percentage
Notified BATF .....	0	0
Failed to notify BATF .....	30	100.0
Total changed address .....	30	100.0

5. Connecticut sales tax permit

Of 81 active dealers the researchers were able to ascertain the state sales tax permit status of 73.

TABLE IX.—SALES TAX PERMIT ("ACTIVE" ADDRESS)

	Number of subjects	Percentage
Possessing required permit .....	59	80.0
Failing to possess required permit .....	14	20.0
Total in sample .....	73	100.0

The inability of state tax officials to determine the permit status of the remaining sample is a strong indication that few of them are in compliance.

6. Summary of major legal violations

Each of the 136 dealers was individually analyzed for compliance with the foregoing legal requirements. Of the total sample (136), only 31 (22.8 percent) were operating without a direct violation of federal, state or local law.

TABLE X.—MAJOR VIOLATIONS PER DEALER

	Number of major violations	Number of subjects	Percentage
Zero .....		31	22.8
One .....		39	28.7
Two .....		57	41.9
Three .....		9	6.6
Total .....		136	100.0

C. Business indicia

The purpose of the business indicia was to identify dealers who appeared not to be conducting a bona fide business, and who thus are ineligible for a license under the "intending to conduct business" standard of the statute. The survey revealed, however, that only 81 of the 136 licensees (59.6 percent) even claimed to be bona fide businesses. As indicated in Table III, the remainder either readily admitted to not being in business (22.1 percent) or could not be reached after all reasonable attempts (18.3 percent). Of the 81 self-proclaimed "active" licensees, the business indicia indicate that nearly half are not in fact engaged in a bona fide commercial enterprise using normal business practices.

1. Business hours

Of the 121 licensees who were required by their licenses to maintain particular business hours,<sup>15</sup> 59 licensees (48.7 percent) could not be reached at all, or were reached outside listed hours. Of the remaining 62 licensees, many could only be reached during normal business hours after numerous efforts. Of the 81 "active" licensees, only 42 (51.8 percent) could be reached during listed business hours.

2. Licensed premises open to the general public

Of the 81 licensees who claimed to be active dealers, 80 described their customers as follows:

TABLE XI.—RESTRICTION OF CLIENTELE ("ACTIVE" LICENSEES)

	Announced clientele	Number	Percentage
General public .....		64	80.0
Distributor only .....		4	5.0
Police only .....		4	5.0
Police and friends .....		2	2.5
Friends only .....		6	7.5
Total .....		<sup>1</sup> 80	100.0

<sup>1</sup> Data on speargun dealer not included.

The six (7.5 percent) dealers who sell only to "friends" appear to be conducting business in contravention of 27 CFR 178.11 (definition of "business premises" requires access "to the public"). Other restrictions of clientele may similarly indicate lack of public access.

Many licensees were surprised to receive calls for business.

(1) "How did you get my name?"

(2) "Where did you get my name?"

Others freely admitted to a restricted public:

(3) "I don't sell publicly. I just sell to people I know. How did you get my name?"

Although 64 of the active dealers (79.8 percent) claimed to serve the general public, almost half of these (31) were operating in residentially zoned buildings (their homes), making the likelihood of access by the "general public" highly doubtful. (See *Bonham* (Appendix B)). Of all active dealers, 42 (51.9 percent) did not allow access by the general public either by explicit restrictions of clientele or by effect of improper zoning.

<sup>15</sup> Certain licenses issued to "gunsmiths" and "expert consultants" did not state regular business hours to be maintained.

TABLE XII.—RESTRICTION OF CLIENTELE ("ACTIVE" LICENSEES) CROSS-TABULATED TO ZONING

	Number	Percentage
Properly zoned—"general public" .....	33	41.3
Properly zoned—acceptable restriction of clientele (wholesale or police only) .....	5	6.3
Improperly zoned—"general public" .....	31	38.8
Improperly zoned and/or improper restrictions on clientele (friends only) .....	11	13.6
Total .....	<sup>1</sup> 80	100.0

<sup>1</sup> Data not available for one active licensee.

### 3. Source of telephone number

Tables XIII through XV analyze the licensees' use of the telephone listing services provided by the telephone company. Only 8.5 percent of the so-called businesses appeared in the Yellow Pages.

TABLE XIII.—TELEPHONE LISTING (ALL LICENSEES)

	Number of subjects	Percentage
Yellow Pages ("Guns") .....	11	8.5
White Pages .....	83	64.3
Directory Assistance .....	13	10.1
Could not find or unlisted .....	22	17.1
Total .....	<sup>1</sup> 129	100.0

<sup>1</sup> Data not available on 7 licensees.

The licensees who claimed to be actively using their licenses did not make much greater use of commercial telephone listings.

TABLE XIV.—TELEPHONE LISTING ("ACTIVE" LICENSEES)

	Number of subjects	Percentage
Yellow Pages ("Guns") .....	11	14.3
White Pages .....	58	75.3
Directory Assistance .....	8	10.4
Total .....	<sup>1</sup> 72	100.0

<sup>1</sup> Data not available on 4 "active" licensees.

The most revealing data in this group are found below. These indicate the listing status of licensees who, by their own admission, deal in firearms only on their premises. Only 16.2 percent were listed in the Yellow Pages under "Guns." (All "active" licensees (Table XIV) might not reasonably be expected to be found in commercial firearms listings because firearms might be only one line of goods in a large retail operation such as a department store.)

TABLE XV.—TELEPHONE LISTING ("ACTIVE" LICENSEES HANDLING FIREARMS ONLY)

	Number of subjects	Percentage
Yellow Pages ("Guns") .....	6	16.2
White Pages .....	27	73.0
Directory Assistance .....	4	10.8
Total .....	37	100.0

### 4. Phone responses—residential or business

About half of all licensees did not identify themselves as businesses in answering the telephone.

TABLE XVI.—TELEPHONE RESPONSE (ALL LICENSEES)

	Number of subjects	Percentage
Residential response .....	50	48.5
Business response .....	53	51.5
Total .....	103	100.0

More revealingly, the self-described "active" licensees also offered predominantly residential telephone responses.

TABLE XVII.—TELEPHONE RESPONSE ("ACTIVE" LICENSEES)

	Number of subjects	Percentage
Residential response .....	39	52.0
Business response .....	36	48.0
Total .....	<sup>1</sup> 75	100.0

<sup>1</sup> Data not available on 6 "active" licensees.

Further cross-tabulating showed that so-called "active" dealers operating from residentially zoned premises nearly always gave nonbusiness responses.

TABLE XVIII.—TELEPHONE RESPONSE ("ACTIVE" LICENSEES IN RESIDENTIAL PREMISES)

Zone areas	Number of subjects	Percentage
Residential response .....	31	83.8
Business response .....	6	16.2
Total .....	37	100.0

### 5. Summary of bona fide business indicia

On each indicium related to the conduct of a bona fide business, the failure rate among the 81 licensees who professed to be actively using their licenses was approximately one-half.

TABLE XIX.—BUSINESS INDICIA SUMMARY ("ACTIVE" LICENSEES)

Indicium	Number "active" dealers failing (out of 81)	Percentage
Regular business hours (page 32) .....	31	38.3
Premises open to general public (table XII) .....	42	51.9
Business telephone listing (table XV) .....	27	33.3
Business telephone response (table XVII) .....	39	48.1

The failure rate for each of the four indicia averaged 44.1 percent, even with the conservative assumption that each licensee for which data were missing had passed. A so-called "active" licensee was regarded as a bona fide business if it passed more than any two of the four criteria. Under this assumption at least 39 of the 81 "active" licensees (48.2 percent) were not bona fide businesses.

On the basis of the entire sample of 136 licensees, 69.1 percent were apparently not conducting a bona fide business.

TABLE XX.—BONA FIDE BUSINESS (ALL LICENSEES)

	Number	Percent
Professed to not conducting business .....	30	22.1
Not reachable.....	25	18.3
"Active" licensees not conducting bona fide business.....	39	28.7
Total non-bona fide businesses.....	94	69.1
"Active" dealers conducting bona fide businesses.....	42	30.1
Total bona fide businesses .....	42	30.1
Total.....	136	100.0

APPENDICES

APPENDIX A

Connecticut

State Law

Conn. General Stats. Ann.

Sec. 29-27. "Pistol" and "revolver" defined. The term "pistol" and the term "revolver," as used in sections 29-28 to 29-38, inclusive, mean any firearm having a barrel less than twelve inches in length.

Sec. 29-28. Permit for selling or carrying pistols or revolvers. No person shall advertise, sell, deliver, or offer or expose for sale or delivery, or have in his possession with intent to sell or deliver, any pistol or revolver at retail without having a permit therefor issued as hereinafter provided. The chief of police or, where there is no chief of police, the warden of the borough or the first selectman of the town, as the case may be, may, upon the application of any person, issue a permit in such form as may be prescribed by the commissioner of state police for the sale at retail of pistols and revolvers within the jurisdiction of the authority issuing such permit.

made except in the room, store or place described in the permit for the sale of pistols and revolvers, and such permit or a copy thereof certified by the authority issuing the same shall be exposed to view within the room, store or place where pistols or revolvers are sold or offered or exposed for sale, and no sale or delivery of any pistol or revolver shall be made unless the purchaser or person to whom the same is to be delivered is personally known to the vendor of such pistol or revolver or the person making delivery thereof or unless the person making such purchase or to whom delivery thereof is to be made provides evidence of his identity.

\* \* \* \* \*

Sec. 29-31. Display of permit to sell.  
\* \* \* No sale of any pistol or revolver shall be



APPENDIX B  
IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED

APR 2 - 1971

R. C. BOYSON, CLERK  
by  
NEWLY CLERK

JOHN D. BONHAM,

Plaintiff,

vs.

ALCOHOL, TOBACCO AND FIREARMS  
DIVISION, INTERNAL REVENUE  
SERVICE, TREASURY DEPARTMENT  
OF THE UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 1244-N

ORDER

As authorized by 18 U.S.C. §923(f)(3), John D. Bonham brings this action to review the decision of the Secretary of Treasury denying Bonham the right to engage in business as a firearms dealer. The case is now submitted upon a motion for summary judgment filed by the defendant.

On June 9, 1970, John D. Bonham filed with the Treasury Department an application for a Federal firearms dealer's license. The trade name of the proposed business was "Bonham's-The Gun Man", and the business address was listed as 1359 Aviston Lane, Montgomery, Alabama 36111. The business was to be located in a residence, with the business hours between 5:00 p.m. and 6:30 p.m. on Friday and "any time by appointment". Plaintiff's application was denied for the reason that he did not have appropriate premises from which to conduct his business and that he was not engaged in, and did not intend to engage in, the business of selling firearms at wholesale or retail. Bonham requested a hearing to review this denial, and this hearing was conducted in October, 1970. The hearing officer concluded that the plaintiff was not engaged in, and did not intend within a reasonable time to engage in, the business of selling firearms, and did not have premises from which to conduct such a business. Based on the evidence presented at the hearing, the Assistant Regional Commissioner, Alcohol, Tobacco and Firearms, Southeast Region, reached the same conclusion on November 20, 1970, and denied Bonham's application.

Judicial review of such decisions is authorized by 18 U.S.C. §923(f)(3). This judicial review statute makes it clear that the Secretary's order may be set aside only if the Court determines that the Secretary of Treasury was

not "authorized" to reach his decision. It is necessary, therefore, that the administrative record be examined. This has been done in this case. This Court has concluded upon examination of the administrative record that the Secretary's decision is "authorized", meaning it is supported by substantial evidence and a judgment for defendant upon its motion for summary judgment should be entered. Daily Press, Inc. v. United Press International, 412 F.2d 126 (6th Cir. 1969), cert. denied 396 U.S. 990.

Accordingly, it is the ORDER, JUDGMENT and DECREE of this Court that defendant's motion for summary judgment be and the same is hereby granted. It is further ORDERED that plaintiff be and he is hereby denied any relief in this case.

It is further ORDERED that the costs incurred in this proceeding be and they are hereby taxed against John D. Bonham, for which execution may issue.

Done, this the 2nd day of April, 1971.

FRANK M. JOHNSON, JR.  
UNITED STATES DISTRICT JUDGE

RECEIVED

MAR 30 1971

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOHN D. BONHAM,  
Plaintiff

v.

CIVIL ACTION NO. 3244-N

ALCOHOL, TOBACCO and FIREARMS  
DIVISION, INTERNAL REVENUE SERVICE,  
TREASURY DEPARTMENT OF THE UNITED  
STATES OF AMERICA,  
Defendants

CLERK  
U. S. DISTRICT COURT  
MIDDLE DIST. OF ALA.  
MONTGOMERY, ALA.

BRIEF IN SUPPORT OF MOTION TO DISMISS,  
OR, IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

On March 12, 1971, the defendant filed a motion to dismiss, or, in the alternative, for summary judgment. By letter dated March 16, 1971, the Court has directed the submission of said motion "on the briefs of the parties...." Defendant tenders its brief in response to said letter.

STATEMENT OF THE CASE

On June 9, 1970, the petitioner filed with the Treasury Department an application for a Federal firearms dealer's license. (Government Exhibit 3) The trade name of the proposed business was "Bonham's - The Gun Man", and the business address was listed in item 4 of the application as 1389 Avalon Lane, Montgomery, Alabama 36111. Item 8 shows that the business would be located in a residence. Item 11A gives the hours of the business as between 5:00 p. m. and 6:30 p. m. on Friday, and "any time by appointment". On September 11, 1970, the petitioner was notified that this application had been denied because (1) he did not have premises from which to conduct the business, and (2) he was not engaged in, and did not within a reasonable time intend to engage in, the business of selling firearms or ammunition at wholesale or retail, or the business of repairing firearms, or making or fitting special barrels, stocks, or trigger mechanisms to firearms, and was not a pawn broker. On September 18, 1970, the applicant requested a hearing to review this license denial, and such hearing was held on October 21, 1970, in Montgomery, Alabama. Mr. Tilford Stevenson, Area Supervisor, Alcohol, Tobacco and Firearms, Internal Revenue Service, was designated by the Assistant Regional Commissioner, Alcohol, Tobacco and Firearms, to conduct this hearing.

ARGUMENT

Section 923(d)(1), Title 18, United States Code, provides that an application for a firearms dealer's license shall be approved if, among other considerations, the applicant has in a State, premises from which he conducts business subject to license under Chapter 44, Title 18, or from which he intends to conduct such business within a reasonable period of time. Section 178.11, Title 26, CFR, defines "business premises" as follows:

"The property on which firearms or ammunition importing, manufacturing, or dealing business is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term."

No part of the petitioner's residence is open to the public, and, under the regulations, he is clearly not entitled to a dealer's license. The evidence indicates the petitioner desires a license merely as a convenience in obtaining interstate and mail order shipments of firearms and ammunition. The room where this "business" is to be conducted is not at an appropriate location, and does not have suitable accessibility for the carrying on of such a business. Furthermore, the business premises are not to be open to the public regularly except for one and one-half hours per week; otherwise, they will be open only by appointment. There is no separate entrance to this room, and a customer can be admitted to it only by knocking on the door of the petitioner's residence. The petitioner neither had business premises nor will he be authentically engaged in the business of a firearms dealer.

The fact that the regulations contemplate a licensee will be "regularly" engaged in business is evidenced by 26 CFR 178.52 which provides in part:

"A licensee may during the term of his current license remove his business or activity to a new location at which he intends regularly to carry on such business or activity, without procuring a new license."

Revenue Ruling 69-59 pertaining to gun shows, reads in part:

"There are no provisions in the law for the issuance of temporary licenses to cover sales at gun shows and licenses will be issued only for premises where the applicant regularly intends to engage in the business to be covered by the licensee." (Internal Revenue Cumulative Bulletin: 1969-1, p. 360).

Section 923(f), Title 18, United States Code, provides that each licensed dealer shall maintain such records of the receipt, sale, or other disposition of firearms and ammunition as the Secretary may by regulations prescribe. That section further provides that the Secretary may enter during business hours the premises of any firearms dealer for the purpose of inspecting or examining such records. The issuance of licenses to part-time dealers would eliminate the element of surprise from unannounced record inspections and would undermine the inspection system.

The decision on denial of application for Firearms License, dated November 20, 1970, included in the administrative record further explains the reasonable basis warranting denial of plaintiff's application:

I have considered all the facts and circumstances presented by the government and by the applicant at the hearing, the proceedings of which were tape recorded. I find that the premises from which the applicant proposes to do business is his residence at 1389 Avalon Lane, Montgomery, Alabama, which is not open to the general public and is zoned solely for single-family dwelling with a prohibition against any type business use. I further find that the applicant does not qualify as a bona fide dealer as he seeks a license as a dealer in firearms other than destructive devices or ammunition for other than destructive devices for his own use and the use of his friends.

I conclude that the applicant does not have premises from which to conduct the business and the applicant is not engaged in the business as required by 18 U. S. C. 923(d)(1)(E), and therefore does not qualify for licensing.

IRS' construction of statutes committed to it for administration must, of course, be given effect unless "unreasonable and plainly inconsistent with the\*\*\*statutes\*\*\*and 'should not be overruled except for weighty reasons.'" Eingler v. Johnson, 394 U. S. 741, 758 (1969). Indeed the Supreme Court has noted in circumstances far less compelling than the instant litigation that "it [the agency's view] is entitled to weight as the attempt of an experienced agency to harmonize an obscure enactment with the basic structure of a program it administers." Rosado v. Wyman, 397 U. S. 397, 415 (1970).

#### CONCLUSION

For the foregoing reasons, defendant submits that the pending motion should be granted.

ORM 1937-A

ON ATTACHED VERSION OF FORM 1937

#### ALCOHOL, TOBACCO AND FIREARMS DIVISION

#### INTERNAL REVENUE SERVICE

UNITED STATES TREASURY DEPARTMENT

NOV 20 1970

CERTIFIED  
RETURN RECEIPT REQUESTED

IN RE: Application for Firearms License

John D. Bonham  
d/b/a Bonham's - The Gun Man  
1389 Avalon Lane  
Montgomery, Alabama 36111

#### DECISION ON DENIAL OF APPLICATION FOR FIREARMS LICENSE

Pursuant to request by and notification to applicant in accordance with Section 178.72, Title 26 CFR, and Section 923(f)(2), 18 U.S.C., a hearing to review the denial of application for firearms license in the captioned case was held before Hearing Officer Tilford Stevenson in Room 219, United States Post Office Building, 15 Lee Street, Montgomery, Alabama 36104, on October 21, 1970, at 9:17 a.m. Special Investigator Thomas R. Allison, Alcohol, Tobacco and Firearms Division, represented the government; the applicant John D. Bonham represented himself.

I have considered all the facts and circumstances presented by the government and by the applicant at the hearing, the proceedings of which were tape recorded. I find that the premises from which the applicant proposes to do business is his residence at 1389 Avalon Lane, Montgomery, Alabama, which is not open to the general public and is zoned solely for single-family dwelling with a prohibition against any type business use. I further find that the applicant does not qualify as a bona fide dealer as he seeks a license as a dealer in firearms other than destructive devices or ammunition for other than destructive devices for his own use and the use of his friends.

I conclude that the applicant does not have premises from which to conduct the business and the applicant is not engaged in the business as required by 18 U.S.C. 923(d)(1)(E), and therefore does not qualify for licensing.

FORM 1537-A

AN ATTACHED VERSION OF FORM 1537

Resignation on Denial of Application  
For Firearms License

Page 2

John D. Bonham d/b/a Bonham's - The Gun Man  
Montgomery, Alabama

The denial of the application for firearms license of which applicant  
was notified on September 11, 1970, shall stand.

Done this 20<sup>th</sup> day of November, 1970, at Atlanta, Georgia.

William N. Griffin  
Assistant Regional Commissioner  
(Alcohol, Tobacco and Firearms)

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
	ATEA	ATEA	ATEA	ATEA			
SUR-NAME	P-2	MC	JH				
DATE	11-19-70	11-17-	11-19-70	11-19-70			

DEPARTMENT OF THE TREASURY—INTERNAL REVENUE SERVICE

CORRESPONDENCE APPROVAL AND CLEARANCE

Form 1537-A (4-55)

Department  
of the Treasury



Bureau of  
Alcohol, Tobacco  
and Firearms

APPENDIX C

ORDER

ATF O 5030.2A

4/15/77

Subject: RELATED INSPECTION ACTIVITIES

1. PURPOSE. This order establishes the techniques and procedures to be used in some of the miscellaneous activities related to inspection work.
2. SCOPE. The provisions of this order apply to all Regulatory Enforcement personnel, Headquarters and field.
3. CANCELLATION.
  - a. ATF O 5030.2, Related Inspection Activities, dated 5/17/74, is canceled.
  - b. All existing procedures involving the method of making referrals to Criminal Enforcement or to other Federal, State or local agencies are canceled. This does not include the procedures established by ATF O 5700.2, Regulatory Enforcement Operational Reports.

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3. DISCUSSION. The techniques and procedures provided in this order apply to only the most common related inspection activities and are not meant to preclude the use of other techniques which may be of value.
  4. SAMPLES.
    - a. General. As a part of an inspection of a permittee's or a proprietor's operations, you are often required, or may find it

Distribution: Headquarters (H-1; H-2; H-5; H-7)  
Field (F-1; F-2; F-3; F-5)

OPI: Regulations  
and  
Procedures  
Division



you and the proprietor cannot agree on the corrective action he must take, cite the proprietor and include all details in your report.

b. Report of Violations.

(1) Use ATF F 5030.5, Report of Violations, to report all violations. Where the violation cannot be corrected before completion of your inspection, enter the corrective action to be taken and the proposed completion date in the space provided. Instruct proprietors to report the completed action to the area supervisor. Proprietors of DSP's where an officer in charge is assigned, should report completed action to the OIC. Where violations are corrected, so note ATF F 5030.5 and explain the details in your narrative report.

(2) When citing violations, be sure that conditions cited are simple statements of fact. Avoid using personal references and statements which appear prejudicial in nature.

(3) Prepare and distribute ATF F 5030.5 as follows:

(a) Prepare the form in triplicate.

(b) Request that the proprietor or responsible representative sign all copies of the form to acknowledge that he has received a copy.

(c) Sign all copies of the form.

(d) Give the original to the proprietor or responsible representative. Attach two copies to the inspection report. (The area supervisor or officer in charge will detach one copy for his files and one copy will remain attached to your report.)

(4) ATF F 5030.5 should not be issued to manufacturers of non-beverage products and to applicants.

10. REFERRAL OF VIOLATIONS. Inspectors who discover during the course of their duties criminal activity involving possible violations of Federal laws relating to alcohol, tobacco, or firearms, should report that activity directly to Criminal Enforcement. Possible violations of Federal, State, or local laws (non-Bureau jurisdiction) should be reported directly to the law enforcement or regulatory authority having jurisdiction. This includes any information that may result in a criminal investigation or administrative action by the receiving office. Inspectors may make referrals either by memorandum, letter, or verbally by personal or telephone contact.

a. Referrals to Criminal Enforcement. Make written referrals to Criminal Enforcement by memorandum. When you make verbal referrals to Criminal Enforcement, you must document the action by preparing ATF F 5700.18, Report and Record of Oral Referral to Criminal Enforcement, and you must include on that record a summary of the information that was referred to CE. For all types of referrals, include all information disclosed in connection with one assignment (ATF F 5700.14, Assignment and Report of Inspection) on one referral memorandum, or, for oral referrals, on one ATF F 5700.18. Forward originals of referral memorandums to CE. Attach to your report two copies of referral memorandums, or an original and two copies of any ATF F 5700.18. Your supervisor will detach one copy of either document for statistical and informational purposes and one copy will remain with the completed assignment report. Your area supervisor will forward the third copy of ATF F 5700.18 to the appropriate CE special agent in charge.

b. Referrals to Federal, State or Local Agencies. Make written referrals to other Federal, State or local agencies by letter. When you make verbal referrals to such agencies you should follow this action by preparing a confirmation letter addressed to the Federal, State or local agency office that received the verbal referral. Include in the confirmation letter, at a minimum, the name of the person to whom the referral was made, the date of the referral, your name (as referring officer) and a summary of all of the information relayed in the verbal referral. (Referral or confirmation letters may be prepared for the signature of either the inspector or the area supervisor.) Prepare referral and confirmation letters in triplicate. The original will be sent to the addressee, a copy will be retained by the area supervisor for statistical and informational purposes, and a copy will accompany the inspection report. Some examples of such referrals are:

(1) Reporting possible corporate irregularities to the Securities and Exchange Commission or similar State agencies. For example, an inspector might discover in an inspection that a corporation was not properly incorporated and authorized to issue stock as provided under State or Federal law.

(2) Reporting illegal aliens to the Immigration and Naturalization Service. An inspector may discover that a foreign born applicant might be an illegal alien when he or she is verifying an applicant's citizenship or residency status as shown on the individual's personal questionnaire.

(3) Reporting the possible improper classification of certain imported spirits to the U. S. Customs Service. This might be found by an inspector either at a DSP or at a wholesaler/-importer premises.

- (4) Reporting possible violations of the Switchblade Knife Act. This law prohibits the manufacture, or the introduction, transportation, or distribution in interstate commerce of switchblade knives or other concealed blades which open by the touch of a button, gravity, or inertia (such as by flicking the wrist). Inspectors might find in conducting firearms inspections that prospective or licensed dealers are in possession of switchblade knives. They should report this to the Federal agency having jurisdiction. The Customs Service has jurisdiction on possible importation violations, the FBI on possible interstate commerce violations, and the U. S. Postal Service on possible mail-related violations.
- (5) Reporting of possible violations of State or local explosive storage ordinances.
- (6) Reporting of possible violations of State or local firearms or explosives licensing ordinances.
- (7) Reporting possible violations of local zoning ordinances such as where businesses are being conducted in residential areas.
- (8) Reporting possible violations of State or local alcoholic beverage laws. For example, inspectors in conducting FAA Act investigations might discover certain activity which, although it is of no use to an FAA case, is possibly in violation of State or local law. Another example would be the referral of refill violations found at retailer premises.
- c. **Exceptions.** The following paragraphs describe the exceptions to this referral procedure:
- (1) Report emergency information regarding Presidential protection (threats against the President, Vice President, etc.) immediately and directly to the U. S. Secret Service, Intelligence Division, Washington, DC (202/634-5731). (Also, report information concerning counterfeiting or forgery, to the nearest U. S. Secret Service field office.) Prepare a confirmation letter as described in paragraph 10b.
  - (2) Report information involving sabotage, or threats to the lives and property of foreign officials and/or foreign guests immediately and directly to the nearest field office of the FBI. Prepare a confirmation letter as described in paragraph 10b.
  - (3) Report information involving a potential diversion of nuclear material immediately and directly to the nearest field office of the FBI. Prepare a confirmation letter as described in paragraph 10b.

## *Connecticut*

# GENERAL STATUTES ANNOTATED

### § 12-409. Permits

(1) **Permit required.** No person shall engage in or transact business as a seller within this state, unless a permit or permits have been issued to him as hereinafter prescribed.

(2) **Application for permit.** Every person desiring to engage in or conduct business as a seller within this state shall file with the commissioner an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business and such other information as the commissioner requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(3) **Permit fee.** At the time of making an application the applicant shall pay to the state tax commissioner a permit fee of one dollar for each permit.

(4) **Issuance and display of permit.** After compliance with subsections (1), (2) and (3) of this section by the applicant, the commissioner shall grant and issue to such applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at

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the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(5) **Reissuance of permit.** A seller whose permit has been suspended or revoked shall pay to the tax commissioner a fee of five dollars for the reissuance of a permit.

(6) **Revocation or suspension of permit.** Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any regulation of the commissioner relating to the sales tax prescribed and adopted under this chapter, the commissioner, upon hearing, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by registered or certified mail. The commissioner shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the regulations of the commissioner.

(7) **Unlawful acts.** Any person who violates any provision of this section shall be fined not more than fifty dollars for the first offense and not more than one hundred dollars for each subsequent offense. For the purpose of this subsection, the engaging in or conducting of a business as a seller in this state for each period of one week without a permit shall constitute a separate offense.

(1949 Rev., § 2093.)

APPENDIX E  
Name of licensee      Name of business      Address      Expiration date      License number

Phone no.: \_\_\_\_\_ Source: Yellow pages \_\_\_\_\_ Yes No  
(mark "unlisted" or "can't find" if appropriate)      White pages \_\_\_\_\_  
Directory assist. \_\_\_\_\_  
Can't find \_\_\_\_\_

Alternative phone no.: \_\_\_\_\_ Comment: \_\_\_\_\_

Calls:						Call Status	Caller's Initials
Assigned time	Week day	Month	Date	Time			
_____	_____	_____	_____	_____	_____	_____	_____
Comments: _____							
_____	_____	_____	_____	_____	_____	_____	_____
Comments: _____							
_____	_____	_____	_____	_____	_____	_____	_____
Comments: _____							
_____	_____	_____	_____	_____	_____	_____	_____
Comments: _____							
_____	_____	_____	_____	_____	_____	_____	_____
Comments: _____							
_____	_____	_____	_____	_____	_____	_____	_____
Comments: _____							

Other Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of licensee: \_\_\_\_\_

Name of interviewer: \_\_\_\_\_

Time and date of interview: \_\_\_\_\_

Responses:

Type of phone answer: Business answer \_\_\_\_\_ Private answer \_\_\_\_\_ Undetermined \_\_\_\_\_

Response: \_\_\_\_\_

Answer in response to your interest in purchasing a gun: \_\_\_\_\_

Sells only ammunition: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Sells only rifles: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Sells handguns: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Has nothing to do with guns or ammo: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Only sells to wholesalers: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Only sells to friends: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Only orders guns: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Doesn't sell over the phone: Yes \_\_\_\_\_ No \_\_\_\_\_ Undet. \_\_\_\_\_ Other \_\_\_\_\_

Response: \_\_\_\_\_

Address given as place where business will be conducted: \_\_\_\_\_

Comment (if necessary): \_\_\_\_\_

General comments: \_\_\_\_\_

\_\_\_\_\_

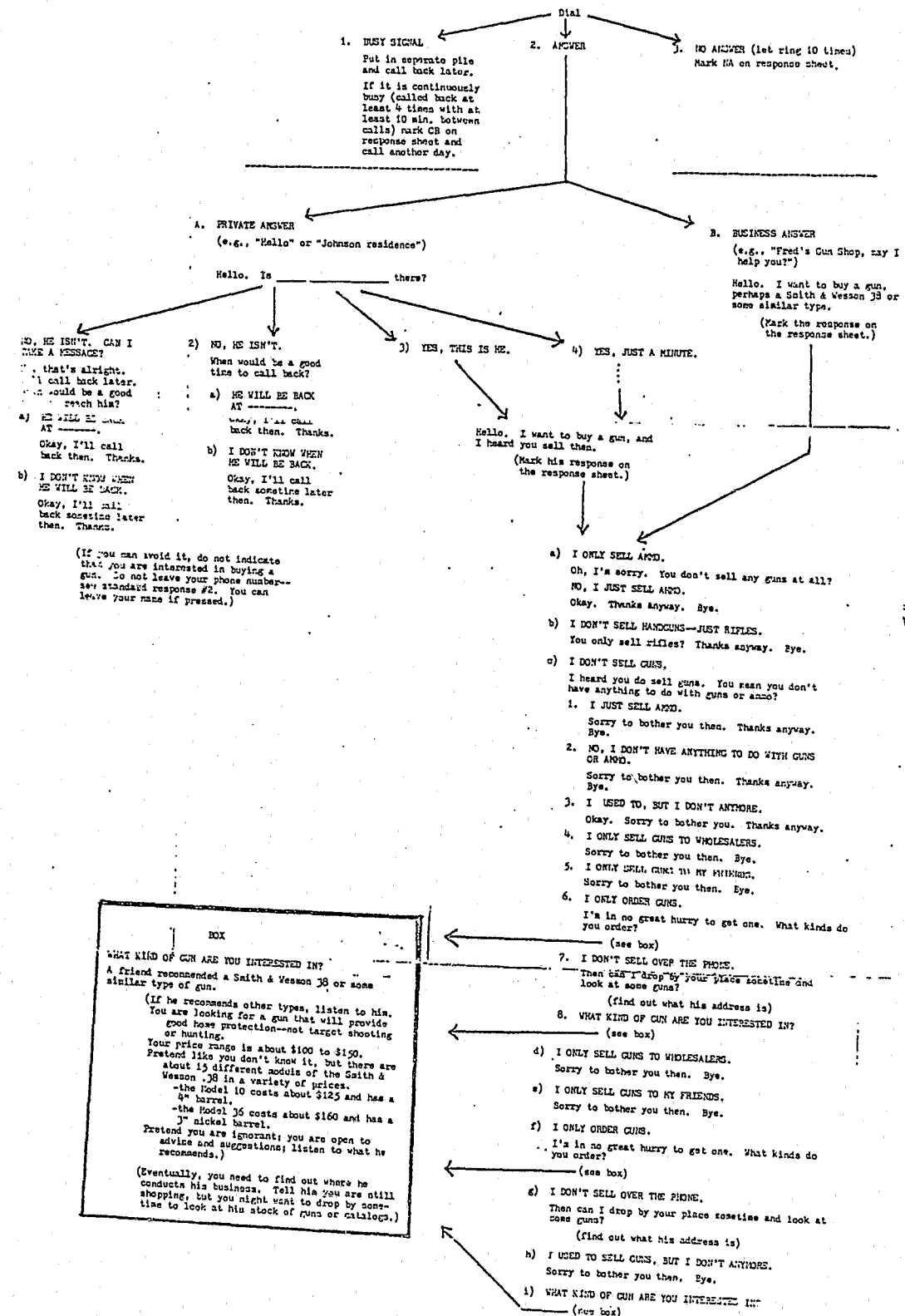
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPENDIX F





APPENDIX G

## STANDARD RESPONSES TO QUESTIONS THE DEALER MAY ASK

## 1. WHAT IS YOUR NAME?

----- (Give them your real name.)

## 2. WHAT IS YOUR PHONE NUMBER? ADDRESS?

I'm hard to reach right now. I'm moving into another apartment, so I'm staying with a friend right now.

(Do not give a phone number--you haven't got a new number yet, and your friend doesn't like people calling for you at his apartment. If pressed, tell him your new apartment is on Howe Street. You don't recall your friend's address--somewhere on Whalley Avenue.)

## 3. YOU'RE LIVING NEAR YALE; ARE YOU A STUDENT THERE?

No, I work at a grocery store.

(Tell the dealer that you are an assistant manager at Pagliaro's if you are pressed by him.)

## 4. WHY DO YOU NEED A GUN?

Just need it for protection. I live in a high crime area.

(You are about to move into an apartment on Howe Street near Chapel.)

## 5. WHY COME TO ME?

I thought I could get a better deal from a private dealer.

(They buy at wholesale prices and might sell guns at a lower cost than stores do, since they have a small overhead cost.)

## 6. ARE YOU 21 OR OLDER?

Yes, I'm 22.

(Dealers can't sell guns to people under 21.)

Note: The standard response to the question "How did you get my name?" was "Someone told me on the tennis court that you sell guns."

**END**