

# GUN CONTROL AND CONSTITUTIONAL RIGHTS

## HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

CONSTITUTIONAL OVERSIGHT OF A REGULATORY AGENCY—  
THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DE-  
PARTMENT OF THE TREASURY—ON THE ENFORCEMENT OF  
THE GUN CONTROL ACT OF 1968

SEPTEMBER 15, 1980

Serial No. 96-83

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(II)

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## GUN CONTROL AND CONSTITUTIONAL RIGHTS

MONDAY, SEPTEMBER 15, 1980

U.S. SENATE,  
SUBCOMMITTEE ON THE CONSTITUTION  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 2:15 p.m., in room 1318, Dirksen Senate Office Building, Hon. Birch Bayh (chairman of the subcommittee) presiding.

Present: Senators Bayh and Heflin.

Also present: Mary K. Jolly, staff director and counsel; Barbara Dobynnes, staff assistant; Helen Lyles, professional staff member; Tom Parry, chief minority counsel to Senator Hatch; Stephen Markman, minority counsel to Senator Hatch; Eric Hultman, minority counsel to Senator Thurmond; Arthur Briskman, counsel to Senator Heflin and Richard W. Velde, minority counsel to Senator Dole; Chip Wood, minority counsel to Senator Simpson.

### OPENING STATEMENT OF HON. BIRCH BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA, AND CHAIRMAN, SUBCOM- MITTEE ON THE CONSTITUTION

Senator BAYH. We will ask our committee to come to order.

We are going to have a vote here sometime before too long. We can go ahead and get started.

Permit me just to make a brief statement to put this whole hearing in the proper perspective.

I hope and believe that the witnesses and the information we are going to receive here this afternoon will be part of an informative and constructive oversight hearing regarding the enforcement of the Gun Control Act of 1968 by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

I happen to believe that the Congress and the country would be better served if we spent more time overseeing what we have on the books instead of passing so many new laws. This subcommittee of the Judiciary has that oversight responsibility. The subcommittee on the Constitution has jurisdiction over constitutional and civil rights matters and is especially concerned about the enforcement policies of BATF relating to the Federal gun law.

I have long advocated and worked for more effective legislation at the national, State and local levels to reduce serious and violent firearms crimes and assist our law enforcement officials in carrying out

their duties, while at the same time not placing any undue or unnecessary Federal restrictions or burdens on law-abiding citizens who may or may not be firearms enthusiasts, owners, dealers, collectors or licensees.

This hearing has been called to explore the numerous complaints we have received from citizens who have written me over the past significant period of time detailing what they view are constitutional and civil rights abuses by BATF in enforcing the Gun Control Act. We were also contacted by the National Rifle Association who additionally detailed the numerous letters and telephone calls they had received from citizens—both those who owned weapons and those who did not own weapons—who charged BATF again with violating their constitutional and civil rights.

This committee in turn contacted BATF and the Treasury Department about our concerns last year and they in turn supplied a detailed response to our inquiries, which I request be made a part of the hearing record.

However, the complaints have, unfortunately, continued. I believe it is appropriate to publicly air these concerns so that both sides may be able to present their views before this body, and the committee and the Congress itself and indeed the country generally can have a better idea of what has and hasn't happened.

As you know, this is not a court of law. This is a legislative committee. We participate in formulating Federal laws. But it is the agencies that must implement and enforce our laws, keeping in mind the intent of Congress. When our intent is not carried out, we will be the first to suggest that changes should take place.

We realize that all law enforcement officials have a difficult job when they are constantly confronted with serious and violent criminals in their daily lives. In turn, their own lives are daily in jeopardy. We need only to look at the statistics of those law enforcement officers killed in the line of duty to recognize that they have given much to their country and at great expense to themselves and their families.

However, as the chairman of the Subcommittee on the Constitution, my expectation is that the Bureau of Alcohol, Tobacco and Firearms conducts its operations with a great deal of sensitivity to constitutional and civil rights principles. Certainly that is the major responsibility of any agency of our Government. There is no principle more basic to the fulfillment of the lofty ideals on which our Nation was founded than the protection of the rights of individual citizens.

This afternoon the subcommittee will be particularly interested in alleged abuses of the law's enforcement provisions in terms of search and seizure, warrant procedures, privacy rights, and allegations of entrapment on the part of BATF.

Our distinguished Assistant Secretary Richard J. Davis of the Treasury Department will testify as to overall policies and procedures of the Department in enforcing the Gun Control Act. We will then have citizen witnesses, including Mr. Robert Best from South Bend, Ind.; Mr. David Jewell from Boulder, Colo.; and Mr. Robert Wampler from Mechanicsville, Va., who will testify as to their experiences as a result of the enforcement of the act. Then we will have Mr. Michael Beard, executive director of the National Coalition to Ban Handguns,

and Mr. Neal Knox, executive director of the National Rifle Association, and David Hardy, consultant to the NRA, who will testify on their views as to how BATF enforces the Gun Control Act.

Unfortunately, too much of our time spent in the protection of individual rights has, of necessity, been devoted to defeating those proposals that would erode our rights. While we have succeeded in resisting some of these assaults on constitutional and civil rights, it is clear to me that continued vigilance is the order of the day; or, as the third President of the United States said a long time ago, and it is true today, that continued vigilance is indeed the price of freedom.

[The responses to inquiries from BATF and the Treasury Department follow:]

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
SUBCOMMITTEE ON THE CONSTITUTION,  
Washington, D.C., October 15, 1979.

Hon. G. R. DICKERSON,  
Director, Bureau of Alcohol, Tobacco, and Firearms,  
Department of the Treasury, Washington, D.C.

DEAR DIRECTOR DICKERSON: As the former Chairman of the Subcommittee to Investigate Juvenile Delinquency, with oversight responsibilities for the Federal Gun Control Act, I held hearings to help assure that our federal gun control laws are being properly implemented and enforced. As the current Chairman of the Subcommittee on the Constitution it is my responsibility to assure that all of our citizens are given fair and impartial treatment in the enforcement of these laws.

Recently, it was brought to my attention that a potentially serious problem exists with regard to the enforcement of Title II of the Gun Control Act of 1968, the National Firearms Act (26 U.S.C. 5801-5872).

I have received copies of internal memoranda prepared by the Bureau regarding the lack of accuracy of the National Firearms Act registration system. These memoranda were obtained in the course of a civil forfeiture proceeding between the National Rifle Association and the government involving firearms confiscated from the NRA museum, and brought to my attention by the NRA.

As you will see, the memoranda states that the registration system was so inaccurate that those directly responsible for administering it were concerned that innocent persons might be convicted as a result of the deficiencies. As you know, in every case brought under the National Firearms Act the government introduces a certificate stating that a thorough search of the registration system files has not uncovered the firearm in question being registered to the defendant.

Since the credibility of the certification is only as valid as the registration system, any problems with the system would, as the memoranda recognize, compromise the certification. That would appear to place a major element of all prosecutions for possession under Title II in jeopardy, and casts doubt upon whether reasonable doubt could ever be overcome as to whether the firearm had been registered.

This situation is of serious concern to me in that the memoranda appear to be materials that should have been released to any defendant being prosecuted under Title II, under the *Brady v. Maryland* doctrine. However, I understand you actively resisted such a release in the NRA case, to the point of entering a claim of executive privilege.

I would appreciate your advising me as to the accuracy of the Title II registration files at this time. In the event that the deficiencies cited in the 1975 memoranda did exist, I would like any information you may have as to whether any person has been prosecuted, or any property forfeited, as a result of an incorrect certification for the Title II files from 1975 to the present.

In addition, I would be interested in the Bureau's explanation for your attempt to claim "executive privilege" to prevent release of these memoranda.

Your attention and response to this request will surely be of benefit to my colleagues and I on the Judiciary Committee.

Sincerely,

BIRCH BAYH, Chairman.

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS,  
Washington, D.C., November 16, 1979.

Hon. BIRCH BAYH,  
U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: This refers to your letter of October 15, 1979, inquiring about the accuracy of the National Firearms Registration and Transfer Record which is maintained under the National Firearms Act. You also seek an explanation for ATF's claim of executive privilege in a pending forfeiture case involving the National Rifle Association with respect to internal memoranda concerning the NFA record system.

Attorney General Civiletti has received a similar letter dated October 25, 1979, from Senator James A. McClure. The Department of Justice is now gathering information and researching the legal issues raised by Senator McClure. When the Justice Department completes its study, we will be in a position to fully respond to the questions posed in your letter.

You can be assured that we are working closely with the Justice Department to prepare a responsive reply to your letter.

Sincerely yours,

G. R. DICKERSON, *Director.*

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS,  
Washington, D.C., January 9, 1980.

Hon. BIRCH BAYH,  
U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: This is in further reference to your letter of October 15, 1979, inquiring about the accuracy of the National Firearms Registration and Transfer Record which is maintained under the National Firearms Act (NFA). You also seek an explanation for ATF's claim of executive privilege in a pending forfeiture case involving the National Rifle Association with respect to internal memoranda concerning the NFA record system.

By letter dated November 16, 1979, you were advised that Attorney General Civiletti had had received a similar letter from Senator James A. McClure. The Department of Justice has completed its review of the various 1975 Internal Bureau memoranda concerning the National Firearms Registration and Transfer Record and was unable to agree with Senator McClure that a serious problem exists or existed regarding the integrity or accuracy of NFA certifications. In addition, the Department determined that the documents were not material the Government is required to release under the doctrine of *Brady v. Maryland*, 373 U.S. 93 (1963).

The criticisms of the registration system raised by the 1975 internal memoranda relate primarily to the existence of misfilings, excess paper in the file, the inability to accumulate rapidly statistical data, inconvenient access to records due to limitations in the filing equipment, and the "charge out" procedure for removing index cards from the file.

Immediately after, and in response to those 1975 criticisms, various changes were made in the ATF records and recordkeeping procedures. Those individuals in charge of the records were given authorization to obtain equipment to change the filing system from Diebold machines, with limited access, to file cabinets with individual folders for each registered possessor of a firearm. In addition, the record system was reorganized and purified through several means. Misfilings were corrected and excess paper unrelated to registration status was eliminated.

As you may know, the National Firearms Registration and Transfer Record consists of two separate filing systems. In the first instance, each registered possessor of a firearm has a separate individual file folder within which is a copy of the original registration form for each and every firearm in their possession. These folders are maintained alphabetically by name of registered possessor. Secondly, an index card is prepared, indexing each weapon by serial number. This file is the index-card file; it provides both a back-up and a cross-check for the alphabetical file. Both components are examined in searches for evidentiary purposes and only in the event that a firearm has been registered but both files are missing can an erroneous certification be made.

Sworn testimony by ATF personnel taken in connection with the forfeiture case of *United States v. Seven Miscellaneous Firearms*, Civil Action 78-1338 (D.D.C.) revealed that no one has ever produced a registration form or testified that he had registered a particular weapon after ATF had certified to a court that the person was not the registered possessor of a particular weapon. In this regard it should be noted that ATF presently makes 2,000 certifications a year for use in court proceedings. Significantly, 26 U.S.C. § 5841(e) requires persons possessing registered firearms to retain proof of such registration.

You also questioned the Bureau's claim of "executive privilege" in the above case. During the discovery stages of the litigation, we refused to produce certain documents demanded by the National Rifle Association because we believed that the documents were not relevant and that the requested materials were protected from public disclosure by the deliberative-process privilege which is embodied in the general concept of executive privilege. This decision was made with the full concurrence of the U.S. Attorney's Office and the Department of Justice.

It is clear that one form of executive privilege protects the pre-decisional thought processes of the executive from public disclosure. Various passages of the documents at issue reflected advisory opinions, recommendations, deliberations, and options which comprised part of the process by which Bureau decisions and policies were formulated and were, therefore, within the deliberative process privilege. However, for the reasons explained below, ATF voluntarily waived its claim of executive privilege.

The claim of privilege was withdrawn for the following reasons. First, all of the documents were over four years old, thus somewhat lessening the possibility that their release could cause immediate harm to the agency's deliberative processes. Secondly, many of the criticisms discussed in the documents have been corrected by action taken since 1975. Thirdly, and importantly, the complete evidence adduced in the case revealed that the opinions, speculations, and conclusions found in these documents, when put in proper context and perspective, were overstatements which neither impugn the integrity of the records system nor affect the ability of the Bureau to accurately certify to the registration status of a National Firearms Act weapon.

We trust that this has been responsive to your inquiry. If we can be of further assistance in any way, please let us know.

Sincerely yours,

G. R. DICKERSON, *Director.*

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
SUBCOMMITTEE ON THE CONSTITUTION,  
Washington, D.C., June 2, 1980.

Hon. G. R. DICKERSON,  
*Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury,*  
Washington, D.C.

DEAR DIRECTOR DICKERSON: As Chairman of the Senate Judiciary Subcommittee on the Constitution, I have become increasingly concerned about reports in the press and testimony from Senate and House hearings regarding alleged constitutional violations by the Bureau of Alcohol, Tobacco and Firearms with regard to implementation and enforcement of the Gun Control Act of 1968. As you know, I no longer have oversight responsibilities for the Gun Control Act, however, my concern at this time is whether law-abiding citizens are being deprived of their constitutional and civil rights by agents and/or informants of the Bureau.

In particular, I would like you to address, in detail, the following allegations, so that I may have the benefit of your response to what appear to be serious accusations:

1. It is alleged that BATF agents and informants have engaged in physical abuse, or threats thereof, under color of law.

A. In 1971 Kenyon Ballew was shot by BATF agents who entered his home with a battering ram. It is charged that (1) a search warrant may have been obtained by fraudulent means; (2) that agents assigned to the case were undertrained or untrained; and (3) that the raid was justified on the grounds that possession of an empty practice grenade shell, together with possession of black powder, constituted possession of a "destructive device" although this may not be the case under the Gun Control Act.



B. In the case of Frank Chismar it is alleged that BATF agents forced his vehicle off the road and beat Mr. Chismar and one of his passengers to the point where they required hospitalization. Mr. Chismar also alleged that one agent placed a loaded gun to his head and threatened to kill him, prior to the agent's discovery that they had the wrong vehicle and the wrong people.

C. It is alleged that a large group of BATF agents raided the San Jose Antique and Gun Show, informing several hundred persons that they would not be permitted to leave the building, and that each exhibitor would be arrested unless they signed a receipt for a packet of educational papers. Subsequently several hundred exhibitors and viewers were imprisoned for a period of time, allegedly without legal cause or warrant.

D. In the 1975 case of David Baxter it is alleged that a BATF informant told him that BATF agents were mobsters who would kill him and his family in an effort to coerce him into obtaining guns illegally.

As Chairman of this Subcommittee it would of course be of great concern to me that serious misconduct charges such as these amounting to allegations of illegal searches, arrests, assaults and extortion may have been committed by BATF agents or informants acting under color of law, but allegedly without legal or constitutional authority. If any of these charges have been substantiated, has BATF taken disciplinary action against the agents or informants involved? If so, what action has been taken?

2. It is alleged that BATF agents have engaged in illegal searches and seizures, exceeding the scope of statute and of warrant. That agents sought warrants authorizing seizure of all firearms "intended to be used" in violation of law. Then employed such warrants to seize all firearms and ammunition owned by a possible defendant, whether or not there was reason to believe it was intended to be so used. In some cases (Paul Hays, District of New Mexico, 1977 and Richard Boulton, District of Maryland, 1977) I am told firearms have been withheld for years despite the failure to file any criminal charges and that the weapons were withheld despite acquittal or the refusal of a grand jury to indict. I am further informed that BATF has confiscated antiques, not subject to the Gun Control Act of 1968 and valuable collector's pieces without due process of law or compensation. In addition, I have learned that in a ruling in *Captain v. BATF*, Southern District of New York, the judge stated that BATF's standard order relating to conduct of searches and seizures raised Fourth Amendment questions and should be redrafted to eliminate questionable search techniques. Has BATF rewritten the standards to comply with the judges' ruling? If so, please provide the prior standard and current standard.

3. I have received reports that the Bureau has engaged in entrapment focusing upon "dealing without a license" charges against firearm collectors and "straw man" charges against licensed firearm dealers. More recently it is alleged that the Bureau may be involved in entrapment by inviting a collector who is also a licensed dealer to sell a few guns from his personal collection, without recording them as is required of his business inventory. The Bureau then arrests the collector on the claim that a dealer must record all sales, including those of his personal collection, although efforts may not be made to inform dealers, collectors or the public of this policy.

4. I have been informed that the Bureau has sought to obtain pre-trial publicity, which is allegedly calculated to induce jury prejudice against the defendant and prevent a fair trial. That Bureau representatives label defendants in both the press and television as illegal gun traders, possessors of illegal firearms or the type of persons who would sell guns to anyone.

Has the Bureau, officially or unofficially, stressed that a strong public relations campaign could have a beneficial impact upon courts and juries? The effect of this position by the Bureau, if accurate, both in denying a defendant a fair trial and in damaging the good name of persons presumed to be innocent, until proven guilty in the courts, is obvious.

This is a rather lengthy list of allegations, but one which I believe necessitates a full discussion of the practices and policies of the Bureau. I look forward to an expeditious response.

Sincerely,

BIRCH BAYH, *Chairman.*

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
Washington, D.C., July 17, 1980.

Hon. BIRCH BAYH,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR BAYH: This letter has been prepared in response to your inquiry of June 2, 1980, regarding alleged abuses by the Bureau of Alcohol, Tobacco and Firearms (ATF) in the enforcement of the Gun Control Act of 1968.

The first section of your letter cites four specific cases in which agents are alleged to have abused their authority. We would like to briefly respond to those allegations.

On June 7, 1971, ATF agents and local police officers executed a Federal search warrant on the residence of Kenyon F. Ballew in Silver Spring, Maryland, after receiving information from two independent informants that Mr. Ballew was in possession of hand grenades. The agents forced entry after the occupants failed to open the door. Upon entering the residence, the agents and officers were confronted by Mr. Ballew who was armed with a revolver which he pointed in their direction. Mr. Ballew was wounded by a local officer as a result of this confrontation. Hand grenade shells and their component parts were found in the residence.

Mr. Ballew filed a civil action against ATF under the Federal Tort Claims Act. The United States District Court and the Fourth Circuit Court of Appeals rejected Mr. Ballew's suit and found the actions of the agents to have been reasonable and appropriate. The search warrant and its supporting affidavit were closely scrutinized by the courts and found to be proper. The grenade shells and their component parts were also held to be "destructive devices" by the court. In rejecting Mr. Ballew's claim, the District Court ruled that the injuries he received were "caused by his own contributory negligence," rather than the result of misconduct by the agents and officers.

Your letter further cites allegations that the agents were untrained or undertrained. This allegation has also been raised in the past and is based on the presence of a special agent-trainee at the scene. This agent accompanied other agents for the purpose of gaining some experience. He remained outside of the residence and did not participate in the confrontation with Mr. Ballew. One of the case agents had been an ATF agent for only one year, but had a year of prior Federal law enforcement experience as well as 3 years of service at the State level. The remaining three agents had a minimum of 5 years experience with ATF, and all four had been fully trained.

Your letter also refers to the case of Frank Chismar who is alleged to have been beaten and hospitalized after being stopped by ATF agents in New York City. The incident occurred when Mr. Chismar and two other persons were stopped by ATF agents and local officers because the agents believed that they were responsible for the armed robbery of an undercover special agent during an illegal firearms transaction. After being stopped in his vehicle, Mr. Chismar refused to exit the vehicle and resisted the agents' efforts to remove him. Mr. Chismar sustained minor abrasions on his face and was taken to a hospital where he was treated and released. The agents did not determine that Mr. Chismar and his companions were not responsible for the robbery until after the confrontation had taken place. This incident was investigated by the ATF Office of Internal Affairs, the Civil Rights Division of the United States Department of Justice, and the Westchester County District Attorney's Office. None of these agencies found any basis for criminal action against the agents involved. ATF has rejected Mr. Chismar's claim under the Federal Tort Claims Act. Contrary to the allegation cited in your letter, neither Mr. Chismar nor his passenger required hospitalization beyond superficial emergency room treatment.

In 1978, ATF and the Santa Clara County Sheriff's office concluded that a joint effort was needed to deal with the unregulated sale of firearms at the San Jose Gun Show. This decision was based on the increasingly frequent recovery of firearms from criminals and terrorists which had been purchased at this show. Firearms purchases were documented by members or supporters of



the Symbionese Liberation Army (SLA), the Black Liberation Army, the Weather Underground, Chinese youth gangs, and others. For example, three of the four machineguns recovered from the SLA following their dramatic 1974 shootout in Los Angeles were sold at the San Jose Gun Show. The weapon used by Sarah Jane Moore in her attempt to assassinate President Ford in San Francisco in 1975 was acquired at a gun show by the unlicensed firearms dealer who ultimately sold it to Ms. Moore.

After consulting with Federal and State prosecutors, ATF and the Sheriff's Office decided that a public information effort would be the most appropriate approach. On June 3, 1978, joint ATF/Santa Clara County Sheriff's Office teams went to the show where they met with the manager. A sheriff's deputy announced the purpose of the visit, and the show was temporarily closed to the public to avoid unnecessary confusion. The exhibitors were never told that they could not leave. Each firearms exhibitor was furnished an informational packet explaining the Federal and State firearms laws and requested to acknowledge its receipt. No action was taken against those who refused. Sheriff's deputies did tell exhibitors that they were subject to arrest under State law if they refused to identify themselves. The terms also answered any questions posed by each exhibitor. No arrests were made, no property was confiscated, and all law enforcement personnel departed after approximately 75 minutes.

In 1975, ATF received information that Mr. Baxter was making illegal firearms sales to nonresidents and not recording the sales in his business records. This information came from an informant who was another licensed firearms dealer. On February 24, 1975 the informant introduced an ATF undercover agent to Mr. Baxter. The agent identified himself as a resident of Massachusetts interested in purchasing firearms in New Hampshire because of the strict firearms laws in Massachusetts. Mr. Baxter readily agreed to provide the agent with firearms without any record of purchase. He then delivered seven handguns to the agent without completion of the requisite firearms records. The weapons were older weapons which were apparently purchased secondhand by Mr. Baxter and never recorded in his Federal firearms records. During the initial undercover meeting, Mr. Baxter promised to try and locate additional weapons for the undercover agent, including stolen weapons. The agent returned to Mr. Baxter's store on two subsequent occasions but bought no other weapons because Mr. Baxter stated that he had been unable to acquire any additional weapons which were not recorded in his records. Mr. Baxter did offer to sell the agent a new firearm after he removed the serial number so that it could not be traced back to him. The agent dissuaded Mr. Baxter from doing this.

In August 1975, a second undercover agent went to Mr. Baxter's shop and identified himself as a Massachusetts resident interested in buying firearms. Mr. Baxter told this agent that all of the firearms in his shop were recorded in his records so that he couldn't sell any to him. Mr. Baxter added "if one of us gets caught, we all get caught and that will spoil a good thing." In November 1975, a compliance inspection of Mr. Baxter's gun shop found five firearms which were not recorded in his firearms records as required by law.

Mr. Baxter was indicted for violation of the Federal firearms laws and was acquitted following a jury trial. Mr. Baxter's defense at trial was that he had been coerced into committing the violation by the informant who told him that the agent was a "mobster." The informant testified and denied the allegation. At no time did the agent assert that he was anything but a Massachusetts resident. His appearance and demeanor were in no way suggestive of being a "mobster," and Mr. Baxter demonstrated no reluctance to deal with the agent at any time. Furthermore, there is no evidence that Mr. Baxter ever reported his fears to any law enforcement agency. His conversations with the second agent in August 1975, demonstrated his continued willingness to violate the firearms laws while the recovery of unrecorded firearms on his business premises 9 months after the sale to the undercover agent strongly suggests his ability to do so.

Your letter cites two cases in which firearms were not returned despite acquittal or failure to bring charges. The first case involves Paul Hayes who was charged with the sale of firearms to nonresidents and falsification of his firearms records in the District of New Mexico. Mr. Hayes was acquitted following a jury trial. ATF elected to take no action against Mr. Hayes' firearms license following an administrative hearing. ATF did authorize the United States Attorney to initiate forfeiture proceedings against the firearms, but this request was made prior to Mr. Hayes' acquittal. The decision to proceed with forfeiture of the fire-

arms was made by the United States Attorney's Office. That action is still pending at this time.

The second case involves Richard Boulton, a licensed firearms dealer, who was convicted in the District of Maryland for falsification of his firearms records in connection with his sale of firearms at gun shows. Mr. Boulton's conviction is presently under appeal. ATF and the United States Attorney's Office are negotiating with Mr. Boulton's attorney to dispose of some of the seized firearms with Mr. Boulton receiving the benefit derived therefrom.

In connection with the issue of improper searches, your letter also mentions the decision of *David Caplan v. Bureau of Alcohol, Tobacco, and Firearms*. This action resulted from a Freedom of Information Act request in which Caplan requested the entire copy of the ATF training manual entitled "Raids and Searches," which was used in training new ATF special agents in the issuance and execution of search warrants. The trial judge and the Second Circuit Court of Appeals upheld ATF's decision to refuse disclosure of portions of this manual on the grounds that they discussed investigative techniques whose disclosure could pose a threat to the safety of the agents. The constitutionality of the techniques discussed in the manual was not an issue before the court. The question arose from a footnote in trial Judge Whitman Knapp's decision that his in camera review of the manual raised "grave doubts" as to the constitutionality of some of the techniques contained therein.

Subsequent to Judge Knapp's decision, 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 in the publication.

Section three of your letter questions ATF's possible entrapment of licensed and unlicensed firearms dealers. To document the willful participation of licensed firearms dealers in illegal third party sales, ATF has used an investigative technique referred to as the "straw man" purchase in which a prohibited person attempts to purchase a firearm from a licensed dealer, advises him of his prohibited status, and then, with the dealer's knowledge, purchases the weapon through a third party purchaser. To be criminally liable, the firearms dealer must affirmatively participate and usually initiates the use of the "straw man" purchaser in order to consummate the delivery of a firearm to a prohibited purchaser. This technique has resulted in several convictions and has been sustained on appeal. For your review, we have enclosed a copy of the recent Fifth Circuit Court decision in *United States v. Brooks* in which this issue was discussed in some detail.

This section of your letter also inquires about charges brought against licensed firearms dealers who sell firearms from their personal collections without recording them in their records.

This allegation was raised in a petition filed by Richard Boulton to set aside his conviction in the District of Maryland. Due to the pending nature of that matter, we cannot comment further beyond stating that ATF did not request Mr. Boulton to sell firearms from his personal firearms collection without recording them in his required records. In fact, our investigation established that Mr. Boulton did not conduct a genuine firearms business at his licensed premises but rather used his license to acquire firearms for sale at gun shows. The allegation stems from a letter to Senator S. I. Hayakawa in which ATF's position on this matter was incorrectly stated. That letter has been retracted by this office. ATF's position is that the personal firearms sold by a licensed firearms dealer must be recorded in his business records. This position has been upheld in the courts in *United States v. Scherer*, 523 F. 2d 371 (7th Cir. 1975), and *United States v. Currier*, No. 79-1242 (1st Cir. March 25, 1980).

The final section of your letter refers to allegations that the Bureau has sought to obtain pre-trial publicity to induce jury prejudice against defendants and to prevent fair trials. This allegation is apparently a reference to a statement in the introductory part of former ATF Order 1200-2 "Public Affairs Guidelines," which has been quoted out of context.

This order, as well as other orders relating to the release of information to the media, strictly regulate the information which may be discussed and conforms to the same restrictions imposed on other Federal agencies. ATF has not engaged in a program of inducing public or juror prejudice against a defendant. Such a practice would be counterproductive and undermine our system of justice. It has never been, nor is it now, our policy to seek to influence jurors through

prejudicial pretrial publicity. The order has been revised to remove any questionable material as well as to reflect organizational changes in our office of Public Affairs. We have enclosed a copy of both the present and former orders for your review.

We believe that this letter has been fully responsive to your inquiry. ATF welcomes the opportunity to constructively discuss its performance with interested public officials and to seek improvement in our performance wherever possible. The ATF Senate Oversight Committee hearings referred to in your letter resulted in operational and procedural changes which benefited both ATF and the public.

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 feel free to call upon us at any time.

Sincerely yours,

G. R. DICKERSON, *Director*.

Enclosures.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE, v. FRED K. BROOKS,  
DEFENDANT-APPELLANT, No. 79-5050

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

February 11, 1980

Defendant, a firearms dealer, was convicted before the United States District Court for the Middle District of Florida, at Orlando, John A. Reed, Jr., J., of selling firearms to a person he knew or should have known to be a nonresident, and of falsifying records of the transactions, and he appealed. The Court of Appeals, Alvin B. Rubin, Circuit Judge, held, inter alia, that the trial court's charge "For purposes of these Instructions, the purchaser of a firearms is the person who actually pays for the firearm and to whom the licensed firearms dealer knowingly transfers possession and control of the firearm" fully covered the real issue raised in the case, viz, whether defendant was entrapped; and even if it did not, the evidence of guilt was overwhelming.

Affirmed.

#### 1. Weapons

Phrase "sell or deliver," within statute making it unlawful for a firearms dealer to sell or deliver any firearm to any person whom the licensee knows or has reasonable cause to believe does not reside in the state, has a well-settled, common-law meaning, and thus conveys sufficiently definite warning as to the prescribed conduct when measured by common understanding and practices. 18 U.S.C.A. § 922(b)(3), (m).

#### 2. Weapons

Statute making it unlawful for a firearms dealer to "sell or deliver \* \* \* any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the State" is sufficiently clear with respect to the requisite mental state of the seller; it need not spell out the means that a dealer may employ to negate any inference that he either knows or has reason to know that the person is a nonresident. 18 U.S.C. A. § 922(b)(3).

#### 3. Weapons

In prosecution of a firearms dealer for selling firearms to a person he knew or should have known to be a nonresident, it is the government's burden to prove beyond a reasonable doubt the state of mind that is an essential element of the case. 18 U.S.C.A. § 922(b)(3).

#### 4. Weapons

Statute prohibiting a firearms dealer from selling firearms to a person he knew or should have known to be a nonresident was not unconstitutionally void as applied to defendant, where he was not charged with selling to a resident knowing or having reason to know that the resident was acting as an agent for a nonresident or would retransfer the gun to the nonresident, but was, instead, charged with selling to the nonresident, a person he knew to be such, and the jury was instructed on this, i.e., in terms of a sham transaction with the resident. 18 U.S.C.A. § 922(b)(3), (m).

#### 5. Weapons

Statutory exception for "the transportation, shipment, receipt, or importation of any firearm or ammunition \* \* \* sold or shipped to \* \* \* the United States or any department or agency thereof" does not exempt any sale or delivery of firearms; it expressly covers only the "transportation, shipment, receipt, or importation" of firearms for the use of the United States. 18 U.S.C.A. § 925(a)(1).

#### 6. Weapons

If, under the Treasury Department's firearms regulation book which purports to exempt sales of firearms to police officers, such a sale is exempt from the strictures of statute prohibiting a dealer from selling to nonresidents, the seller must have knowledge that the buyer is a police officer and must secure a signed statement from an official of the agency for which the buyer works stating that the firearm is to be used in the buyer's official duties. 18 U.S.C.A. § 922(b)(3), (m).

#### 7. Criminal law

A defendant may not simultaneously plead entrapment and deny committing the act on which the prosecution is predicated.

#### 8. Weapons

Firearms statute is violated by a sham sale made to a resident when a transaction is really with a nonresident, and it is for the jury to decide, on all the relevant evidence and with proper instructions, whether such a charade occurred or whether there was a bona fide sale to a resident. 18 U.S.C.A. § 922(b)(3), (m).

#### 9. Criminal law

It is not necessary for the judge to charge the jury on issues not presented by the facts.

#### 10. Criminal law

In reviewing the adequacy of an instruction, the appellate court must view the charge in its entirety.

#### 11. Weapons

In prosecution of dealer for selling firearms to a person he knew or should have known to be a nonresident, and for falsifying records of the transaction, the trial court's charge "For purposes of these instructions, the purchaser of a firearm is the person who actually pays for the firearm and to whom the licensed firearms dealer knowingly transfers possession and control of his firearm" fully covered the real issue raised in the case, viz., whether defendant was entrapped; and even if it did not, the evidence of guilt was overwhelming. 18 U.S.C.A. § 922(b)(3), (m).

Ed Leinster, Orlando, Fla., for defendant-appellant.

Mark L. Horowitz, Asst. U.S. Atty., Orlando, Fla., for plaintiff-appellee.

Appeal from the United States District Court for the Middle District of Florida. Before GODBOLD, GEE and RUBIN, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

A dealer charged with selling firearms to a person he knew or should have known to be a nonresident in violation of 18 U.S.C. § 922(b)(3) and with falsifying records of the transactions in violation of 18 U.S.C. § 922(m) seeks reversal of his conviction. Finding the attacks on the constitutionality of the charge and the validity of the indictment to be without merit, we consider alleged error in the jury instructions. We hold that, while the charge might have been more complete, it was sufficient to put the real issues to the jury and that, in addition, if it was incorrect, the error was harmless in the light of the evidence and the issues at the trial, and, therefore, we affirm the conviction.

A licensed dealer is forbidden to sell a firearm to a person who the licensee knows or has reasonable cause to believe does not reside in the state in which the licensee's place of business is located. 18 U.S.C. § 922(b)(3). Brooks, a pawn shop operator who was also a licensed firearms dealer doing business in Florida, was convicted on two counts charging him with selling firearms to Robert Chamberland, a person who he knew or should have known was not a resident of that state. He was also convicted on two counts charging that in connection with the same two sales he knowingly made false entries in his records in violation of 18 U.S.C. § 922(m) by showing Michael J. Craw as the transferee to whom the firearms had been sold and delivered.<sup>1</sup>

<sup>1</sup> Counts one and three charged sales to Chamberland on November 15, 1977, of two different pistols. Brooks was also charged in six counts with violation of the statute on other occasions. He was found not guilty of those charges.

The government introduced evidence that on November 12, 1975, Chamberland, a Greyhound bus driver who lived in Massachusetts and who worked as an agent or informer for the Bureau of Alcohol, Tobacco and Firearms, went to Brooks' store, asked to see a Bayard pistol and said he wanted to buy it. Brooks requested a driver's license, Chamberland handed him a Massachusetts license and Brooks stated he could not accept it. Chamberland testified that Brooks suggested he get a friend who had a Florida's driver's license, Chamberland testified that he said his tour guide had a Florida license, and that Brooks replied, "Fine. Bring him in and you can get the pistol." Chamberland asked Brooks to hold the pistol for him saying he would be back in three or four days to buy it.

Three days later Chamberland returned with Craw, a resident of Florida, who was, unknown to Brooks, an ATF agent. He introduced Craw to Brooks as a tour guide with the bus company. Chamberland selected a second pistol and said he wanted to buy both this and the Bayard pistol. After Craw produced a Florida driver's license, the necessary forms were completed, with Brooks' assistance, naming Craw as transferee of the firearms. Chamberland counted out the money for the two pistols and paid it to Brooks who gave him change. Brooks made out a receipt naming Craw as purchaser, and put it with the two pistols in a brown paper bag and handed the bag to Chamberland. Craw did not ask to see any firearms, handle any firearms or negotiate any prices. Brooks testified, and all the evidence supports, that he required a Florida driver's license in each of the sales as evidence that the sale was made to a Florida resident.

The gist of the government's case is that the purported sales to Craw and the entries made on the records showing Craw as transferee were sham transactions; the sales were in fact made to Chamberland who was known to Brooks to be a non-resident. The defense set forth in opening argument was that Brooks was a victim of entrapment. After the government had put in its evidence on direct, Brooks' counsel renewed an earlier motion to dismiss the indictment on the ground that the statute was unconstitutionally vague. After this was overruled, Brooks took the stand and testified that he thought the only purpose of the gun control law was to make it possible to trace the gun to the dealer who sold it. Brooks also testified that he did not always make sure that the person who produced a driver's license took physical possession of the gun or that the Florida resident actually paid for the gun, that some people buy guns as gifts for someone else and that it's not uncommon for one person to pay for another person's gun.

After both sides had rested, Brooks' counsel requested that the judge give the same charge concerning identification of the real purchaser of a firearm that another judge had given in the previously tried case of *United States v. Scannapieco*, 611 F.2d 619 (5th Cir. 1979) decided by us this date. The trial judge refused, but gave an abbreviated charge set forth below. In the charge conference, Brooks' counsel said, however, after discussing the evidence, "That's really my entire defense, is that it's entrapment. You have no predisposition to commit the crime when you don't even realize there is a crime being committed." He requested an entrapment charge, saying, "Obviously I've got nothing to argue without the entrapment charge." The closing argument was not transcribed, so we do not have before us what was actually said to the jury.

Brooks asks us to hold that § 922(b)(3) is unconstitutional (and therefore § 922(n) is unconstitutional as well), because it does not give a dealer fair notice that his contemplated conduct is forbidden by the statute. See *United States v. Harriss*, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954). His argument seems to be that, as applied to him, the statute makes a dealer responsible if an individual produces information that purports to identify him as a resident and forms are completed showing that person as the transferee unless the dealer insures that the person is the "ultimate recipient" of the gun, and that it does not give fair notice of this application.

[1] The statute makes it unlawful for a dealer to "sell or deliver \* \* \* any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the State \* \* \*". Because the phrases "sell or deliver" have a well settled common law meaning, *Connally v. General Const. Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926), they convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *Jordan v. DeGeorge*, 341 U.S. 223, 231-32, 71 S.Ct. 703, 708, 95, L.Ed. 886, 892 (1951).

[2, 3] The statute is equally clear with respect to the requisite mental state of the seller; it reaches only one who "knows or has reasonable cause to believe

[that the purchaser] does not reside in the state." The law need not spell out the means that a dealer may employ to negate any inference that he either knows or has reason to know that the person is a nonresident. Indeed, disproof is unnecessary. It is the burden of the government to prove beyond reasonable doubt the state of mind that is an essential element of the case.

[4] Nor is the statute unconstitutionally void as applied to Brooks. He was not charged with selling to Craw knowing or having reason to know that Craw was acting as agent for Chamberland or would retransfer the gun to Chamberland. He was charged with selling to Chamberland, a person he knew to be a non-resident, and the jury was instructed on this, i.e., in terms of a sham transaction with Craw. The consequence of a bona fide sale to A, who is acting as agent for B, an unrevealed principal, or who intends to later give or sell the gun to C, a nonresident, is not presented by this case.

[5, 6] Brooks next asserts that the sales were exempt under a statutory exception for "the transportation, shipment, receipt, or importation of any firearms or ammunition \* \* \* sold or shipped to \* \* \* the United States or any department or agency thereof \* \* \*". 18 U.S.C. § 925(a)(1). This subsection does not exempt any sale or delivery of firearms; it expressly covers only the "transportation, shipment, receipt, or importation" of firearms "for the use of the United States." No greater reliance can be placed on Subsection 45 of the Firearms Regulation Book, published by the Treasury Department, which purports to exempt sales of firearms to police officers. If such a sale is indeed exempt, the seller must have knowledge that the buyer is a police officer and must secure a signed statement from an official of the agency for which the buyer works stating that the firearm is to be used in the buyer's official duties. Brooks did not meet these requirements.

We turn now to the alleged error in the jury charges. The key issue in the case as framed to the court was whether Brooks was entrapped. Counsel raised as a secondary issue whether Brooks knowingly sold the guns to Chamberland, who had negotiated for them and to whom they were delivered, or whether he thought he was making the sale to Craw who produced the Florida driver's license, was shown on the records of the transferee and who, Brooks contended, was the real purchaser buying the guns for a friend.

[7] No error is alleged concerning the entrapment defense. In view of this it is doubtful that we should even consider the alternative defense. For there is, as we have recently said, "a veritable legion of opinion in this Circuit" that a defendant may not simultaneously plead entrapment and deny committing the acts on which the prosecution is predicated. *United States v. Greenfield*, 554 F.2d 179, 181 (5 Cir. 1977), cert. denied 439 U.S. 860, 99 S.Ct. 178, 58 L.Ed.2d 168 (1978), and cases cited therein. The rationale for the rule is based on the inherent inconsistency of saying at the same time, "I didn't do it," and "the government tricked or seduced me into doing it." The continued cogency of this position has been debated, see *United States v. Demma*, 523 F.2d 981 (9th Cir. 1975) (en banc), and *United States v. Greenfield*, supra, but as a panel we are bound by the law of the circuit.

Nonetheless, in view of the fact that review of this decision might be sought, we discuss the validity of the appeal as related to the remaining issues.

The trial court charged over objection:

For purposes of these instructions, the purchaser of a firearm is the person who actually pays for the firearm and to whom the licensed firearm dealer knowingly transfers possession and control of the firearm.

The court also instructed the jury on the meaning of the word "knowingly" and on entrapment. Obviously, the instruction concerning who is the purchaser of a firearm effected both the sale and false entry counts. However, neither in his stated defense nor in his testimony did Brooks deny the substance of any of the testimony of Chamberland and Craw. Instead he asserted his notion of the purpose of the law, to facilitate gun tracing and his claim that it was not unusual for one person to buy a firearm for someone else. To him the person who produced a resident license was ipso facto the buyer.

There was no substantial dispute in the evidence about the facts leading up to the delivery of the guns. Although Brooks testified that he didn't remember some details and his version of others was slightly different from that given by Chamberland and Craw, all of the testimony is substantially the same; Chamberland negotiated for the weapons, paid for them, received possession of them and presented himself as the person who desired to purchase them. Under other circumstances whether, when two people were present, the sale was made to one or the other might depend upon a number of surrounding circumstances and not only upon who put the cash on the counter or picked up the bag containing the guns.



The instruction given in *United States v. Scannapieco*, 611 F.2d 619 (5th Cir. 1979) was obviously more complete in this respect. However, in the present case Brooks' defense was not that Craw was the real buyer nor that he believed Craw to be the real buyer. He contends that he was entrapped, and, alternatively that he had no intention to violate the law because he did what was customary and what was, in his opinion, permissible. Apparently accepting this defense as to the other transactions for which Brooks was indicted, the jury acquitted him of the charges based on them.

[8] Both sides overstate the issues that are central in considering whether the instruction was erroneous. The government urges that, unless the instruction as given is approved, dealers may make sham sales with impunity. Brooks urges that affirmance will require every dealer to determine in every sale to a resident transferee that the transferee does not intend to re-transfer the firearm to a nonresident. The quick answer to both arguments is that the statute is violated by a sham sale made to a resident when the transaction is really with a nonresident, and it is for the jury to decide, on all the relevant evidence and with proper instructions, whether such a charade occurred or whether there was a bona fide sale to a resident.

[9-11] However in the present case only a few issues were disputed. It is not necessary for the judge to charge the jury on issues not presented by the facts, *United States v. Malatesta*, 583 F.2d 748, 759 (5th Cir. 1978), rehearing en banc, 590 F.2d 1379, cert. denied, 440 U.S. 962, 99 S.Ct. 1508, 59 L. Ed.2d 777 (1979); *United States v. Boswell*, 565 F.2d 1338, 1343 (5th Cir.), cert. denied, 439 U.S. 819, 99 S.Ct. 81, 58 L.Ed.2d 110 (1978). Moreover, in reviewing the adequacy of an instruction, the appellate court must view the charge in its entirety. *Cupp v. Naughton*, 414 U.S. 141, 146-47, 94 S.Ct. 396, 400, 38 L.Ed.2d 368 (1973); *United States v. Green*, 433 F.2d 946 (5th Cir. 1970). The instruction here covered fully the real issue raised in the case. Even if it did not, the evidence as to the Chamberland-Craw charge was overwhelming. See *United States v. Vines*, 580 F.2d 850 (5th Cir.), cert. denied, 439 U.S. 991, 99 S.Ct. 591, 58 L.Ed.2d 665 (1978); *Washington v. Maggio*, 540 F.2d 1256 (5th Cir. 1976).

For the reasons, the conviction is AFFIRMED.

## BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

### SUBJECT: PUBLIC AFFAIRS GUIDELINES

Order: ATF 0 1200.2A, February 15, 1980

#### 1. Purpose

This order revises the General guidelines and procedures to be followed in implementing the Bureau's public affairs program.

#### 2. Scope

The provisions of this order apply to Headquarters and field.

#### 3. Cancellation

ATF 0 1200.2, dated 11/11/74, is canceled.

#### 4. Discussion

a. An effective public affairs program has two key elements essential to Bureau activities. One of those is to act in an advisory capacity to the Director and other Bureau management officials concerning the impact of Bureau programs and actions. The second element is to inform the public of its rights and responsibilities under the Federal laws which the Bureau administers and enforces. It is a means of identifying the jurisdictional responsibility of ATF and describing the areas in which ATF can be of assistance to Federal, State and local law enforcement organizations. It provides appropriate release of information about Bureau actions and programs.

b. The public affairs program is designed to supplement and support the Bureau's operational functions. Its objective is to secure the timely release of appro-

prate information to the public through the use of all types of communication. The key to any successful public affairs program is the transmission of information to the proper level as soon as possible, and, for it to be effective, all Bureau personnel must be sensitive to the public affairs impact of their activities.

### 5. Public Affairs Role

a. *Primary Role.*—A primary role of the Office of Public Affairs is to advise the Director and his staff concerning the effect and impact of policy decisions and actions by Bureau personnel. This advisory role extends to ATF field operations. The office also is the focal point for dealing with media and public inquiries and as such informs the public of initiatives, programs, policies, activities and other matters involving the Bureau.

b. *Scope.*—The responsibilities of the Office of Public Affairs include internal and external activities.

(1) *External.*—The office maintains contacts with the media and is the focal point for responding to all inquiries concerning Bureau activities. All public affairs campaigns are coordinated through the office. The Public Affairs Office is responsible in general for the broad scope of public affairs activities including, but not limited to, the use of films, video and written materials; dealing with the media; public affairs campaigns, educational or otherwise; providing news releases and magazine stories concerning Bureau activities; coordinating contacts in the public affairs areas; responding to public inquiries; providing support to field offices, particularly in dealing with the media; and coordinating the approval of written documents, speeches, manuscripts and other material intended for public consumption, but not originating in the Public Affairs Office.

(2) *Internal.*—The office is responsible for internal public affairs activities including, but not limited to, the issuance of in-house Bureau publications, brochures where applicable, and providing support to field offices.

### 6. Media Inquiries

The release of information to the news media relating to criminal and civil proceedings is governed by the general guidelines of the Department of Justice. These guidelines say in part:

"While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public that information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgement by those responsible for administering the law and by representatives of the press and other media. At no time shall personnel of the Department (of Justice) furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement of information, which may reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial."

In responding to media inquiries regarding searches, seizures and arrests, all designated Bureau personnel should provide information of the type listed below, if such disclosure is not prohibited either by law or the United States district court. Many United States district judges and United States attorneys have standing orders or guidelines concerning the release of information to the public on pending cases, and Bureau personnel are expected to familiarize themselves with such orders or guidelines. Regulatory Enforcement personnel will not disclose information about pending and open investigations or inspections. If media inquiries are made in such cases, information furnished should be limited to an acknowledgment that the matter is the subject of an inspection or investigation, as the case may be. However, this acknowledgment must be approved by the appropriate supervisor. Sometimes, a supervisor may not wish to acknowledge that an investigation is underway. Then, the phrase "no comment" is appropriate.

Additional details on the handling of news media requests are contained in "Public Comments by Department of Justice Employees Regarding Investigations, Indictments, and Arrests".

#### 7. Information Which May Be Released to News Media Concerning Criminal Cases

a. *General Information.*—The defendant's name, age, address, employment, marital status, and similar background information may be released. If the defendant is a minor, no information will be released other than to acknowledge that the subject is a minor.

b. *Charge.*—The substance or text of the charge, such as a complaint, indictment or information filed may be released.

c. *Penalties.*—Penalties provided by law for successful prosecution of such a charge may be released.

d. *Investigating Agency.*—The identity of investigating or arresting agencies, and the length or scope of the investigation may be released.

e. *Arrest.*—The circumstances immediately surrounding an arrest, including the time, location, possession and use of weapons and complete description of items seized may be released.

f. *Offer in Compromise, Revocation or Suspension.*—In the case of an offer in compromise, revocation of license or suspension of operations, the name of the person or firm subjected to such action, the facts surrounding the action as contained in the abstract on the case and details of all allegations to which the person or firm has admitted may be released.

#### 8. Information Not Released to the Public

Under NO CIRCUMSTANCES will Bureau personnel release the following information to the public:

a. *Record.*—Defendant's prior criminal record.

b. *Character.*—Observations about a defendant's character.

c. *Statement.*—Statements, admissions, confessions or alibis attributed to a defendant, or the refusal or failure of the accused to make a statement.

d. *Investigative Procedures.*—References to investigative procedures, such as fingerprints, polygraph examinations, ballistics tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

e. *Witnesses.*—Statements concerning the identity, credibility, or testimony of prospective witnesses.

f. *Evidence.*—Statements concerning evidence or argument in a case, whether or not it is anticipated that such evidence or argument will be used at trial.

g. *Opinions.*—Any opinion, such as the guilt or innocence of the accused, or the possibility of a plea of guilty to the charge, or the possibility of a plea to a lesser crime.

h. *Court System.*—Any statements concerning the effectiveness, or lack of same, of the courts, judges, prosecutors, etc.

#### 9. Civil Actions

The guidelines listed above will also apply to civil proceedings with the Government involving Bureau personnel.

#### 10. Coordination With Other Agencies

Generally, any release should be coordinated with the office of the United States attorney or State or local prosecutors, as well as other agencies participating in the case, in accordance with that office's guidelines, in order to achieve uniformity and improve working relationships. However, the release of information is not dependent upon the other agency's approval and circumstances may dictate that it be made without such approval or coordination.

#### 11. Responsibilities

a. *Special Agents, Inspectors, Officers in Charge.*

(1) Bureau personnel filling these positions will be sensors of public reaction to Bureau objectives, policy, programs and accomplishments, as directed.

(2) Inspectors located at posts of duty away from area offices will have minimal public affairs responsibilities. Generally, an inspector so located will forward all local public and media inquiries, requests for speakers and exhibits, other related inquiries and sensitive matters to his/her area supervisor. On occasion, an inspector may be requested by his/her area supervisor to disseminate pre-

pared information to the public through the media or exhibits. As a result, these officials should maintain contacts with the media in their areas.

b. *Resident Agents in Charge, Group Supervisors, Area Supervisors.*

(1) Bureau personnel filling these positions will, under the direction of their immediate supervisor, respond to local public and media inquiries, receive requests for speakers and exhibits, report necessary information for the Bureau to maintain a responsive, factual public affairs effort and, generally, be viewed locally as the spokesperson for the Bureau.

(2) Coordination of speakers and exhibits will require the resident agent in charge, group supervisor, or area supervisor to be responsive to requests, under the direction of the special agent in charge or regional regulatory administrator, so that they may take advantage of materials provided by the Bureau and there will be a distinct uniformity in response.

(3) The resident agent in charge, group supervisor or area supervisor may be requested to disseminate information prepared at a higher level of supervision to the public through the news media. As a result, these officials should maintain contacts with the media in their areas.

(4) The Bureau will be served best if speakers and those who man exhibits are local agents or inspectors. Accordingly, field personnel frequently will be provided prepared speeches, news releases and exhibits, reflecting Bureau policy and activities.

c. *Special Agents in Charge and Regional Regulatory Administrators, and Regional Directors of Investigations.*

(1) Bureau personnel in these positions are responsible for developing and maintaining an effective public affairs program for their geographic areas of responsibility. To provide the required public affairs support and to increase communication between the field and the Office of Public Affairs in Headquarters, each special agent in charge, regional regulatory administrator and regional director of investigations will designate a staff person to coordinate public affairs within the limits of the geographical area assigned to that office. However, the special agent in charge, the regional regulatory administrator and regional director for investigations will ensure that he/she is fully apprised by his/her designate representative of all matters having public impact and that he/she approves of all action taken by his/her appointed representative. The special agent in charge or the regional director of investigations and the regional regulatory administrator are responsible for notifying the Office of Public Affairs, by direct communication, of all pending field activities that are newsworthy in nature and/or may have the potential of becoming a sensitive issue. Such direct notification to the Office of Public Affairs will be in addition to any other required communication with Headquarters that may be required by the Assistant Director (Criminal Enforcement) and the Assistant Director (Regulatory Enforcement). Field activities that require Headquarters notification will be reported to the Office of Public Affairs as soon as they are brought to the attention of the special agent in charge, the regional director of investigations or the regional regulatory administrator, so that the Office of Public Affairs has sufficient time to assess the impact of the activity being reported and advise the reporting official of the public affairs action to be taken.

(2) The public affairs program will include writing news releases, clearing news releases, answering media inquiries, disseminating prepared information, media inquiries, determining programs necessary for regional or Headquarters public affairs, arranging news conferences and reporting all sensitive enforcement actions. It will also include the coordinating of speaking engagements and placing of Bureau exhibits, as the occasion requires, throughout respective areas of responsibility. All field public affairs activities, including the writing of speeches, news releases, or providing exhibits with local appeal, will be closely coordinated and cleared with the Office of Public Affairs.

(3) When it is necessary to present the Bureau in total, as opposed to specializing in criminal or regulatory enforcement, the special agent in charge and the chief, field operations, will be expected to make any presentations a joint effort, calling upon the Office of Public Affairs for equipment and/or advice if necessary.

(4) Special agents in charge and chiefs, field operations, will submit as quickly as possible to the Office of Public Affairs two copies of all newsclips,



magazines and trade journal articles relating to the Bureau activities which appear in publications originating in their geographical area of jurisdiction. These should be "original" clips as opposed to Thermo Fax or photo copies, and will be mailed directly to the Office of Public Affairs.

(5) Because there is a continuing need for photographs for use with newspaper and magazine articles, the district and field operations offices will furnish appropriate, current photographs (including motion pictures where taken) and negatives which relate to significant activities (raids, arrests, seizures, etc.) to the Office of Public Affairs. All photographs are to be accompanied with an explanation of where, what and when. It is recommended that these photographs be "action" oriented as opposed to the evidence-type photographs needed for case work.

(6) The special agent in charge will coordinate all media events through the regional director of investigations as necessary. All contact by Criminal Enforcement field personnel with the Office of Public Affairs will be coordinated through the RDI.

### 12. Information Defined

There are two categories of information created by Bureau activities which generate most public affairs inquiries and responses.

a. *Operational Information.*—The first is informational or operational matters which may create public reaction and therefore deserve consideration from the public affairs viewpoint. It is important that all necessary steps be taken to ensure that the Office of Public Affairs is informed ON A TIMELY BASIS of every major event and work in which the Bureau is involved. This will include, but is not limited to, new or unusual investigatory or regulatory techniques, distinct changes in operational approaches, and proposed field actions which may cause public reaction.

b. *Sensitive Information.*—The second is information of a sensitive nature, and while ATF O 3210.7A, Investigative Priorities, Procedures, and Techniques, gives a complete explanation of sensitive situations, it is generally a case, investigation or involvement, which, if it becomes known, would be of considerable public interest subjecting Bureau officials or those of the Department of the Treasury to premature inquiries. While most sensitive incidents stem from Criminal Enforcement work, these instructions are equally applicable for Regulatory Enforcement, and should be followed. It is important that sensitive situations be reported immediately by telephone, day or night, to the Office of Public Affairs.

### 13. Newsworthiness and procedures for release

#### a. General Criteria For Decisions.

(1) *Possible Releases.*—Each arrest, seizure, indictment, and sentencing, in addition to offers in compromise, suspension, revocation or recall of products, and major changes to Bureau policy and decisions as they relate to possible release as a news item.

(2) *Criteria for Release.*—In those instances where an investigation or inspection has been made, the following is basically the type of information needed on which to base a decision:

- (a) Name, age (where applicable) and address of person or firm subject to investigation or inspection.
- (b) Location and time of arrest.
- (c) Nature of violation (refill, possession of untaxed whiskey, etc.).
- (d) Property seized.
- (e) Other participating agencies.
- (f) Judicial status.
- (g) If sensitive, why.
- (h) Background of investigation or inspection (time involved, men involved, undercover work, scope of violation, etc.).

#### b. Notification.

(1) *Advance Notice.*—It is extremely important that special agents and inspectors notify supervisors before the release of information to the news media, as far in advance as possible, as to an expected action. When the Office of Public Affairs has advance notice, it is better able to recommend what should be contained in a release, at whatever level, and which release technique should be

used. For example, in some cases where the significance of the Bureau action deserves the best release of information possible, it may be well to arrange news conferences, set up interviews, and provide displays of such items as seized weapons, all of which take time. Where there is a desire to have a press release on trial results, advance knowledge on the identity of the defendants, the contents of the indictment and similar information is vital in order that the release can be prepared for delivery to the news media the moment the court reaches its decision.

(2) *Interagency Cooperation.*—It is the responsibility of the special agent or inspector initiating the action subject to release to determine if the United States attorney or other prosecutor or cooperating agency intends to make a separate release on the case, wants to make a joint release, or wants to let ATF handle the release alone.

(3) *Notification of Headquarters Personnel.*—Once the information has been reported by the special agent it will be the responsibility of the special agent in charge to forward that information to the regional director of investigations. As appropriate, the RDI will be responsible for forwarding information to the Office of Public Affairs. Information from Regulatory field personnel should be routed through the chief, field operations, to the regional regulatory administrator who will notify the Office of Public Affairs.

(4) *Release Process.*—Once notified, the Assistant to the Director (Public Affairs) will brief the Director, if the situation warrants. If a determination is made that the release will be nationwide, the originating field office will be asked to gather the necessary information. For Criminal Enforcement, the appropriate RDI will be the contact point between field offices and the Assistant Director (Criminal Enforcement).

(5) *Timely Notification.*—It shall be the responsibility of the appropriate Headquarters directorate to ensure that the Office of Public Affairs is notified in a timely manner of newsworthy events in their areas, and, that adequate information for release to media is provided the Office of Public Affairs.

(6) *Afterhours Contacts.*—After office hours, contact with Public Affairs personnel can be made through the Communications Center.

#### c. Long-Range Information Programs.

(1) *Types.*—Although much of public affairs work will concern the timely release of spot news, the value of long-range information programs cannot be overlooked. These will include radio-TV spot announcements for a specific part of the Bureau's mission, as well as exhibits, magazine articles and motion pictures designed to inform the public about the Bureau and its work.

(2) *Staff Suggestions.*—It is hoped that the Bureau can capitalize on the manpower resources of all of its employees to the benefit of its public affairs program. When field personnel conceive new information programs or add to existing programs, they should submit these concepts to the Office of Public Affairs for review and evaluation. If the suggestions are in accord with the public affairs program at a local level, the local offices will be so advised and assistance will be given in implementing the program for that locality.

(3) *Acceptance of Suggestions.*—If the new concept is considered worthy of use throughout the region or on a national basis, action on the program will be held in abeyance until it is decided to make the program regional in concept or approval is given for a nationwide program. If the program is local or regional the Office of Public Affairs will stand ready to advise and assist. If the program is nationwide, Headquarters will coordinate all of the activity so that all field offices are acting in concert.

#### d. Reporters and Photographers.

(1) *Presence.*—Reporters and/or photographers arriving at the scene of a crime after a raid and/or arrest should be afforded every courtesy and permitted to cover the story as long as such coverage does not interfere with the officers in the performance of their duties or present a dangerous situation to the members of the press or bystanders. However, ATF personnel should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody.

(2) *Criminal Cases.*—Any special requests by news media to accompany agents during their work should be channelled through the special agent in charge and the appropriate regional director of investigations. All such requests will be forwarded to the Director through the Office of Public Affairs.

## 14. Reporting Requirements

The special agent in charge and regional regulatory administrator will also submit a brief resume of speeches and seminars conducted by personnel under their supervision as an attachment to the monthly PPP report. The resume will include the following: (a) name of group, (b) number of persons in attendance, (c) topic(s) discussed, (d) other pertinent information, such as sensitive inquiries made during a question and answer period.

G. R. DICKERSON, Director.

## BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

## PUBLIC AFFAIRS GUIDELINES

Order: ATF O 1200.2, November 11, 1974

## FOREWORD

1. *Purpose.* This order provides the general guidelines and procedures to be followed in implementing the Bureau's Public Affairs Program.

2. *Scope.* The provisions of this order apply to Headquarters and field.

3. *Discussion.*

a. An effective public affairs program is essential to Bureau activities. It is a vehicle for informing the public of its rights and responsibilities under the Federal laws which the Bureau administers and enforces. It is a means of identifying the jurisdictional responsibility of ATF and describing the areas in which ATF can be of assistance to Federal, State and local law enforcement organizations. It is a method of overcoming the criminal defense for lack of knowledge of the law, and has a favorable impact on the attitudes of the Court, jurors and prosecutors. It provides, through the appropriate release of information on successful raids, arrests and prosecutions, a positive deterrent effect on those who are inclined to commit similar violations of the law. It gives the opportunity to offset unfavorable publicity. And most important of all, it serves to establish and enhance the image and identity of the Bureau with all levels of our society.

b. The Public Affairs program is designed to supplement and support the Bureau's operational functions. Its objective is to secure the timely release of appropriate information to the public through the use of all types of communication. The key to any successful public affairs program is the transmission of information to the proper level as soon as possible, and in order for it to be effective, all Bureau personnel at all levels of operation must become sensitive to the public affairs impact of their activities.

REX D. DAVIS, Director.

## CHAPTER A. POLICY

## 1. Media Inquiries

In handling media inquiries regarding raids, searches, seizures and arrests, all designated Bureau personnel should provide information of the type listed below, if such disclosure is not prohibited either by law or the United States District Court. Many United States District Judges have standing orders or guidelines concerning the release of information to the public on pending cases, and Bureau personnel will be expected to familiarize themselves with such orders or guidelines. Regulatory enforcement personnel will not disclose the substance of information about current investigations or inspections about which a decision has not been made at an appropriate higher level. If inquiries are made by the press or other media in such cases, information furnished should be limited to an acknowledgment that the matter is the subject of an inspection or investigation, as the case may be.

## 2. Information which may be released to news media

a. *General information.*—The defendant's names, age, address, employment, marital status, and similar background information. In the event the defendant is a minor, no information will be released other than that the person does fall within that age category.

b. *Charge.*—The substance or text of the charge, such as a complaint, indictment or information filed.

c. *Penalties.*—Penalties provided by law for successful prosecution of such a charge.

d. *Investigating agency.*—The identity of investigating or arresting agencies, and the length or scope of the investigation.

e. *Arrest.*—The circumstances immediately surrounding an arrest, including the time, location, possession and use of weapons and complete description of items seized.

f. *Offer-In-Compromise.*—In the case of an offer in compromise, the name of the person or firm making the offer, the amount of the offer, and the facts surrounding the offer as contained on the abstract on the case filed in the Regional Director's office.

## 3. Information not released to the public.

Under no circumstances will Bureau personnel release the following information to the public.

a. *Record.*—Defendant's prior criminal record.

b. *Character.*—Observations about a defendant's character.

c. *Statement.*—Statements, admissions, confessions or alibis attributed to a defendant, or the refusal or failure of the accused to make a statement.

d. *Investigative Procedures.*—References to investigative procedures, such as fingerprints, polygraph examinations, ballistics tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

e. *Witnesses.*—Statements concerning the identity, credibility, or testimony of prospective witnesses.

f. *Evidence.*—Statements concerning evidence or argument in a case, whether or not it is anticipated that such evidence or argument will be used at trial.

g. *Opinions.*—Any opinion, such as an opinion of the accused's guilt, or the possibility of a plea of guilty to the charge, or the possibility of a plea to a lesser crime.

h. *Court System.*—Any statements concerning the effectiveness, or lack of same, of the Courts, judges, prosecutors, etc.

## 4. Coordination

a. *Other Agencies.*—Any release to the media should be coordinated with the office of the United States Attorney or State or local prosecutors, as well as other agencies participating in the case, in order to achieve uniformity and improve working relationships.

b. *Civil Actions.*—The guidelines listed above will also apply to civil proceedings with the government involving Bureau personnel.

5-10 reserved.

## CHAPTER B. RESPONSIBILITIES

## 11. Special agents, inspectors, area supervisors, special agents in charge and chiefs of field operations

a. *Special Agents, Inspectors, Resident Inspectors, Officers-in-Charge.*

(1) Bureau personnel filling these positions will be sensors of public reaction to Bureau activities, as well as disseminators of Bureau objectives, policy, programs and accomplishments, as directed.

(2) Inspectors located at Posts of Duty away from Area Offices will have minimal public affairs responsibilities. Generally, an Inspector so located will forward all local public and media inquiries, requests for speakers and exhibits, other related inquiries and sensitive matters to his Area Supervisor. On occasion, an Inspector may be requested by his Area Supervisor to disseminate prepared information to the public through the media or exhibits. This will require the Inspector to cultivate and maintain media contracts.

b. *Resident Agents in Charge, Group Supervisors, Area Supervisors.*

(1) Bureau personnel filling these positions will, under the direction of their immediate supervisor, respond to local public and media inquiries, will receive requests for speakers and exhibits, will report upward necessary information for the Bureau to maintain a vigorous, responsive public affairs effort and, generally, will be viewed locally as the spokesman for the Bureau.

(2) Coordination of speakers and exhibits will require the Resident Agent in Charge, Group Supervisor or Area Supervisor to be responsive to requests,

under the Special Agent in Charge or Chief, Field Operations direction, so that they may take advantage of materials provided by the Bureau and there will be a distinct uniformity in response.

(3) On occasion, the Resident Agent in Charge, Group Supervisor or Area Supervisor will be requested to disseminate information prepared at a higher level of supervision to the public through the news media. As a result, they should cultivate and maintain news media contacts.

(4) The Bureau will be served best if speakers and those who man exhibits are local agents or inspectors. Accordingly, field personnel will frequently be provided prepared speeches, news releases and exhibits, reflecting Bureau policy and activity. If, however, Resident Agents in Charge, Group Supervisors or Area Supervisors want to write news releases or speeches, they will seek approval, through channels, from the Regional Public Affairs Officer who will not only approve the requested action, but the material as well.

*c. Special Agents in Charge and Chiefs, Field Operations.*

(1) Bureau personnel who fill these positions will be responsible for developing and maintaining an effective public affairs program for their geographic area of responsibility. To provide the required public affairs support and to increase communication between the field and the Regional Public Affairs Officer, each Special Agent in Charge and Chief, Field Operations will designate someone on his staff to coordinate public affairs within the limits of the geographical area assigned to that office. In those Criminal Enforcement offices having an Assistant Special Agent in Charge, this position would be the logical location for this responsibility. For Regulatory Enforcement, the Area Supervisor could assume these duties. However, the Special Agent in Charge and the Chief, Field Operations will ensure that he is fully apprised of all matters having public impact and that he approves of all action taken by his appointed representative.

(2) The public affairs program will include writing news releases, clearing news releases, answering media inquiries, coordinating with the U.S. Attorney on the release of information to the public (where needed), disseminating hand-out information, determining programs necessary for regional or national public affairs, arranging news conferences and reporting upward all sensitive enforcement actions. It will also include the coordinating of speaking engagements and placing of Bureau exhibits, as the occasion requires, throughout his area of responsibility. All public affairs activities will be closely coordinated with the Regional Public Affairs Officer and the writing of speeches more suitable for his area or providing exhibits with local appeal will be cleared with the Regional Public Affairs Officer.

(3) Where the speaking engagement or placing of exhibits is such that it is necessary to present the Bureau in total, as opposed to specializing in criminal or regulatory enforcement, the Special Agent in Charge and the Chief, Field Operations, will be expected to make such presentation a joint effort.

(4) Special Agents in Charge and Chiefs, Field Operations, will be required to submit as quickly as possible to the Regional Director, Attention: Regional Public Affairs Officer, two copies of all newsclips, magazines and trade journal articles relating to the Bureau activities which appear in publications originating in their geographical area of jurisdiction. Where possible, these should be "original" clips as opposed to Thermo-fax or Xerox copies. Upon review of these media articles, the Public Affairs Officer will forward to the Headquarters Public Affairs office those items which he feels should be included in the Headquarters news clips publication.

(5) Because there is an ever-continuing need for photographs for use with newspaper and magazine articles, the district and field operations offices will furnish appropriate, current photographs (including motion picture where taken) and negatives which relate to significant activities (raids, arrests, seizures, etc.) to the Regional Public Affairs Officer. All photographs are to be accompanied by an explanation of where, what and when. It is recommended that these photographs be "action" oriented as opposed to the evidence-type photographs needed for case report work. The Regional Public Affairs Officer will forward a set of these photographs to the Assistant to the Director (Public Affairs) for Headquarters use.

*12. Regional Public Affairs Officer*

*a. Duties.*—The Regional Public Affairs Officer will serve the Regional Director, in accord with Bureau policy, giving advice and counsel regarding criminal

or regulatory enforcement programs and actions as they relate to public affairs. He will be the public affairs representative for the Region, providing all media relations and public contact capability.

*b. Awareness.*—For the Regional Public Affairs Officer to operate effectively, it is imperative that he be kept timely advised of operational changes and possible sensitive situations that could result in inquiries from the media. Accordingly, a copy of all TWX messages relating to significant and sensitive matters received by the Regional Director will be routed to the Regional Public Affairs Officer without delay.

*c. Supervision.*—Additionally, he will oversee all public affairs activity throughout the Region, providing materials for field personnel use. In all public affairs activities, relating primarily to his own region, he will conceive and implement necessary programs, assuring conformity to Bureau policy. He will provide all services requiring public affairs judgment . . . writing speeches, news releases, magazine articles, and exhibit copy, reviewing any written public affairs advice and counsel provided by field personnel, and arranging news conferences and assisting field personnel in arranging news conferences.

*d. Training.*—The Regional Public Affairs Officer will be responsible for alerting the Regional Director to those training opportunities, such as seminars conducted at area universities, which will assist Bureau personnel in carrying out assigned collateral public affairs responsibilities. He will with the approval of the Regional Director, request the Regional Administrative Officer to take whatever steps are necessary in the selection and assignment of Bureau personnel to such training schools.

*e. Field Visits.*—To gain maximum professional exposure for the Bureau, its legislative authority, its mission and its personnel, the Regional Public Affairs Officer will continually survey the public affairs activity in field offices within the Region. Such field visits will determine the extent of media contacts, response to inquiries, suitability of field personnel assigned to perform public affairs duties, capability of field officer public affairs equipment problems beginning with the release of information within the public domain, etc. During such visits, the Regional Public Affairs Officer should also cultivate the creative, constructive ideas of field personnel necessary to maintain a vigorous public affairs effort. The results at such field visits will be reported to the Regional Director with a copy to the Assistant to the Director (Public Affairs).

*f. Contact With Headquarters.*—The Regional Public Affairs Officer will be familiar with Bureau needs and policy, will be responsible for gathering timely information from field personnel on (a) sensitive cases, (b) matters of national scope and (c) any adverse public reaction of significant or general nature, and will, with the approval of the Regional Director, report this information directly to the office of the Assistant to the Director (Public Affairs) for the sake of timeliness. In some instances, it will be necessary for the Regional Public Affairs Officer to respond to public affairs requests, notify Headquarters and then inform the Regional Director of actions taken. In routine matters, all public affairs contacts will be made through appropriate organizational channels.

13-19 reserved.

CHAPTER C. INFORMATION DEFINED

*20. General.*

While every facet of the Bureau's work is of Public Affairs interest and value, there are two categories of information created by Bureau activities which generate the bulk of the Public Affairs inquiries and responses.

*21. Operational Information.*

The first is informational or operational matters which may create public reaction and therefore deserves consideration from the public affairs viewpoint. It is important that the Regional Director take all necessary steps to insure that the Regional Public Affairs Officer is well informed—ON A TIMELY BASIS—of every major piece of work in which the Bureau is involved. This will include, but is not limited to, new or unusual investigatory or regulatory techniques, distinct changes in operational approaches, and proposed field actions which may, while considered "safe" operationally, raise some doubt from the public affairs aspect.

## 22. Sensitive information.

The second is information of a sensitive nature, and while Chapter 3200 of the Criminal Enforcement Manual gives a complete explanation of sensitive situations, it is generally a case, investigation or involvement, which, if it became known, would be of considerable public interest, subjecting Bureau officials or those of the Department of the Treasury to inquiries or criticisms from the mass media or members of Congress. While the bulk of sensitive incidents stem from Criminal Enforcement work, these instructions are equally applicable for regulatory enforcement and should be followed. It is important that sensitive situations be reported immediately by telephone, day or night. The purpose of this is to keep the Regional Director and Bureau Headquarters advised of situations that may result in adverse publicity, and also so that the Director and his staff can have knowledge of an incident if and when they receive inquiries about same.

23-29 reserved.

## CHAPTER D. NEWSWORTHINESS AND PROCEDURES FOR RELEASE

### 30. General criteria for decisions

a. *Possible Releases.*—Each arrest, seizure, indictment and sentencing, in addition to offers-in-compromise and major changes in Bureau policy and decisions as they relate to the regulated industries, must be considered for its possible release as a news item by the Director of the Bureau. The majority of these will not warrant a Headquarters release but each must be evaluated by the originating office in that light. In all cases, to create an effective public information program in support of Bureau activities, the information must be reported timely and with as much depth as possible. Then, and only then, will it be possible to determine the appropriate handling of release information—whether it is to be released locally, regionally or nationally.

b. *Criteria for Release.*—In those instances where an investigation or inspection has been made, the following is basically the type of information needed on which to base a decision:

- (1) Name, age (where applicable) and address of person or firm subject to investigation or inspection.
- (2) Location and time of arrest.
- (3) Nature of violation (refill, possession of untaxed whiskey, etc.).
- (4) Property seized.
- (5) Other participating agencies.
- (6) Judicial status.
- (7) If sensitive, why.
- (8) Background of investigation or inspection (time involved, men involved, undercover work, scope of violation, etc.).

### 31. Notification

a. *Advance Notice.*—It is extremely important that special agents and inspectors notify those concerned with making decisions as to the release of the information to the news media as far in advance as possible as to the action to be taken. When the Public Affairs office has advance notice, it is better able to recommend what should be contained in the release, at whatever level, and which release technique should be used. For example, in some cases where the significance of the Bureau action deserves the best release of information possible, it may be well to arrange news conferences, set up interviews, and provide displays of such items as seized weapons, all of which take time. Where there is a desire to have a press release on trial results, advance knowledge on the identity of the defendants, the contents of the indictment and similar information is vital in order that the release can be prepared for delivery to the news media the moment the court reaches its decision.

b. *Inter-agency Cooperation.*—It will be the responsibility of the special agent or inspector initiating the action subject to release to determine if the United States Attorney or other prosecutor or cooperating agency intends to make a separate release on the case, wants to make a joint release, or is content to let ATF handle the release alone.

c. *Notification of Regional and Headquarters Personnel.*—Once the information has been reported by the special agent or inspector, it will be the responsibility of the Special Agent in Charge or Chief, Field Operations, to forward that information to the Regional Director and/or the Regional Public Affairs Officer under procedures established by the Regional Director. It shall be the responsibility of the Regional Director to consider the information from the standpoint of whether it should be released locally, regionally, or nationally, to make a judgment on the sensitivity of the action, and determine whether or not the Office of the Assistant to the Director (Public Affairs) should be notified. If there is any doubt as to the latter, it should be resolved in favor of Headquarters notification.

d. *Release Process.*—Once notified, the Assistant to the Director (Public Affairs) will make similar judgments and brief the Director and his staff. Once the determination has been made that the release will be nationwide, the originating Regional office will be asked to gather the necessary information, the release will be prepared in Headquarters in conjunction with the Regional office, and all Regional offices will be asked to assist in the distribution of the release.

e. *After Hours Contacts.*—After office hours, contact with the Assistant to the Director, W. H. McConnell, can be made at 703-451-8331, or 8041 or 8042 or the Public Information Officer, Howard Criswell, at 703-451-3205. In the event that neither of these individuals can be reached, the call should be directed to the Deputy Director, W. R. Thompson at 703-430-6659 or the Director, Rex D. Davis at 703-768-0512.

### 32. Long-range information programs

a. *Types.*—Although a large percentage of the Public Affairs work will have to do with the timely release of spot news, the value of long-range information programs cannot be overlooked. These will include radio-TV spot announcements for a specific part of the Bureau's mission, along with exhibits, magazine articles and motion pictures designed to inform the public about the Bureau and its works.

b. *Staff Suggestions.*—It is hoped that the Bureau can capitalize on the manpower resources of all of its employees to the benefit of its Public Affairs program. When field personnel conceive new information programs or add sophistication to existing programs, they should submit these concepts to the Regional Director for review and evaluation. If the Regional Director and his staff feel that the suggestions are in line with the Public Affairs program at a local level, they will advise the local offices and assist them in implementing the program for that locality.

c. *Acceptance of Suggestions.*—If, however, the new concept is considered worthy of use throughout the Region, the Regional Director will forward the concept to the Assistant to the Director (Public Affairs) where it will be evaluated for possible implementation nationwide. The Regional Director will be asked to hold all action on the program in abeyance until either it is decided to make the program regional in concept or approval is given for a nationwide program. If the program is regional, Headquarters will stand ready to advise and assist. If the program is nationwide, the Headquarters will coordinate all of the activity so that the seven regions are acting in concert.

### 33. REPORTERS AND PHOTOGRAPHERS

a. *Presence on raids.*—ATF's present policy with regard to reporters and/or photographers accompanying special agents on a raid is that it is permitted but only when the reporter and/or photographer are doing a feature story and permission has been given by the Director. It is not intended that such decisions will be expanded to include the police reporter who wants to go on every raid as part of his covering law enforcement activities. Insofar as other non-enforcement personnel are concerned, the same guidelines will apply, with the person justifying to the satisfaction of the Director his reason for making the request.

b. *Requests.*—Requests of this type should be forwarded to the Assistant to the Director (Public Affairs) who will process the request through Headquarters.

c. *Conditions.*—The reporter and/or photographer making the request must be willing to abide by the following conditions:



(1) The reporter and/or photographer must sign a release in which it is stated that he will not hold the government responsible for any injuries incurred by the reporter and/or photographer during travel in a government car to the premises to be raided, while at the raid premises, or during travel in a government car from the raid premises.

(2) The reporter and/or photographer will abide by the decisions of the special agent in charge of the raid as they relate to (a) positioning of the reporter and/or photographer during the raid and crime scene search, (b) persons to be photographed and/or interviewed during and after the raid while at the raid site, and (c) areas which may be photographed at the raid site.

(3) The reporter and/or photographer will not be allowed to accompany the special agents on the actual raid, and cannot enter the violation site until after the raid has been completed and the area secure by the agents.

d. *Cooperation with Reporters.*—The special agent in charge of the raid should make every effort to place the reporter and/or photographer in a position where he can see and hear what is going on without endangering his life or jeopardizing the successful completion of the raid and prosecution of the case. It is often possible in a raid on an illicit distillery in a rural setting to place the reporter where he can watch and photograph the raid without being in the "line of action". A raid on a house or apartment building is usually such that the reporter will have to wait in a nearby automobile. Each raid will pose its own problems, and the decision to permit a reporter to go on a raid is based on those problems as outlined by the special agent responsible for the raid in his request to the Director.

e. *Later Coverage.*—Reporters and/or photographers arriving at the scene of a crime after the time of the raid and/or arrest should be afforded every courtesy and permitted to cover the story as long as such coverage does not interfere with the officers in the performance of their duties or present a dangerous situation to the members of the press or bystanders.

34-39 Reserved.

Senator BAYH. Mr. Davis, you are our first witness here this afternoon. We appreciate your taking the time to let us have a better idea of the enforcement problems as viewed from the Treasury Department's perspective.

#### TESTIMONY OF RICHARD J. DAVIS, ASSISTANT SECRETARY FOR ENFORCEMENT AND OPERATIONS, DEPARTMENT OF THE TREASURY

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

With your permission, I would like to submit for the record my prepared statement, which includes a series of attachments which are testimony previously given by Director Dickerson of BATF, and then summarize points made in the statement and attachments.

Senator BAYH. That will be fine.

Mr. DAVIS. Mr. Chairman, I would really like to divide my presentation into two parts. Part 1 will be a brief and general discussion about some of the perspectives that I have and the Treasury Department has about the nature of the criminal investigative process. Part 2 will be how one reacts to that perspective in terms of generating procedures, policies and approaches to make certain that our laws are enforced both well and fairly.

Part 1, again, relates to the nature of the criminal investigative process. First, as somebody who has spent 5 years being a prosecutor, one thing I learned early on was that it is by its nature a conflict-oriented process. It involves somebody accusing somebody of a wrong. It involves somebody investigating somebody for that wrong. It involves somebody prosecuting. It involves somebody judging.

In all these situations, it is not surprising to find that those who are the investigators or the prosecutors and those who are the individual or individuals being investigated or prosecuted do not normally share warm and happy personal relationships. It is the kind of a process that inevitably involves some hard work. It involves techniques that many citizens in their daily lives would just as soon not have anything to do with. It involves, for example, the use of informants. It involves, for example, the use of undercover investigations. This is not just firearms laws. This is law enforcement in general.

In such an atmosphere, an atmosphere of trying to divine who may have violated the law and who should be prosecuted, there are inevitably going to be a series of things. One, there is going to inevitably be accusations of malfeasance, abuse, misconduct. Two, I think any law enforcement official who says that in their agency there never is a wrongly conducted case is being naive, because I think it is this kind of process which does produce at times some cases, some incidents, which all would agree are not appropriate. But third, and equally as important, this is the kind of process that produces wrongful accusations, that produces accusations of wrongful conduct and misconduct which are not warranted and not appropriate upon a fair examination of the facts.

Having said this about the criminal justice system and about its nature, I don't want to leave the impression that one just accepts the inevitability of a tough job and tough problems. I think that that is exactly the wrong approach.

The right approach is to recognize that these problems do exist and to do a series of things. First, one must develop a very strong and effective internal affairs component in any law enforcement agency.

Second, one must develop clear policies, particularly in controversial areas, so that the agents and supervisors in the field will know what is expected of them and what is not desired of them.

And third, you need to articulate program goals and objectives so that the people who are carrying out the responsibilities in the field will know what their goals are and what their objectives are.

The Treasury Department and the Bureau of Alcohol, Tobacco and Firearms over the last 3½ years have taken numerous steps to move to implement each of these types of policies. I would like to go through them.

First, in the area of internal affairs, the Treasury Department, not under the compulsion of statute, created a Treasury-wide Inspector General. That Inspector General's responsibility was to investigate particular cases involving high Bureau officials or Department officials and, two, to provide oversight and direction to the internal affairs operations of the various bureaus, to upgrade each of them to do a better job.

Second, approximately 1½ years ago or 2 years ago Director Dickerson, with the Department's approval, reorganized his internal affairs capability, both to expand it, to get more people out in the field where many of the problems were, in order to have the capability to do two things; one, to investigate and identify where some misconduct may have occurred. That is one function of internal affairs. And two, to investigate and determine that wrongful conduct did not take place.



I think over time it is important that an internal affairs operation develop so that it has a credibility, so that its judgments can be accepted when it comes out on either side of a question. I think that the Treasury Department and the Bureau have taken the first steps toward reaching that result.

Second, as I said, you need a series of good, clear policies. Over the last number of years, the last few years, numerous policy changes have been made. In some cases these were not changes but putting down on a piece of paper a clear policy so people will know.

Amongst the examples are going to an approach which would limit unannounced inspections of licensed firearms dealers to exceptional circumstances; to giving priority to regulatory as opposed to criminal enforcement at gun shows wherever possible; to issue new guidelines and an industry circular relating to so-called straw man investigative techniques; and put in new Bureau policy which requires approval for many of these cases at a high level; putting in new guidelines for the handling and ultimate disposition of firearms that are seized by the Bureau; putting in more stringent standards as to those cases in which administrative action is sought following the failure of criminal prosecution; developing guidelines to limit the number of firearms seized to those clearly involved in the violation of law.

These are some of the kinds of policy changes that have been made. Many of them are reflected in the series of documents, copies of which have been made available to the committee. These include internal Bureau orders and they also include various Bureau policy statements.

You also need in this context the ability to monitor that policy. The Bureau implemented a regional reorganization about 18 months ago to provide closer supervision at the field level to see that policies articulated were being followed.

In the area of developing good and clear policies, one also has to listen to criticisms and try and explore what options may be available which could reduce those criticisms while at the same time fulfilling the underlying purpose of the law.

In a series of areas, ATF has recently sought public comment on changes which were suggested as a result of some of these criticisms. For example, one of these related to the problems which existed at gun shows. In order to deal with that problem, ATF issued a so-called advance notice of proposed rulemaking, soliciting comments as to whether it was thought to be a good idea to allow licensed dealers to engage in sales at gun shows. The feeling was that this would reduce the desire or the need for people to, I won't use the word cheat, which is a bad word, but to move around the edges of the law in terms of operations, some operations at gun shows.

The Bureau has also, in reaction to questions about whether the standard definition that has been used by the courts to determine who was engaged in the business of selling firearms could be more specific, put out an advance notice to solicit comments as to whether or not it was possible to come up with more precise definitions so that people who are interested in selling guns will know more clearly where the rules begin and where they end.

These proposals have been put out for comment as to whether it would be appropriate to have regulatory proceedings in these areas. We are reviewing them now.

Finally, the Bureau also put out a major statement which has been submitted to the committee which attempts to articulate its firearms program and is firearms policy, so again members of the organization will have at their fingertips a clear statement of what the Bureau does and does not do, what it wants and does not want.

Mr. Chairman, enforcement of the law, as you noted in your opening statement, is a difficult job. In many areas it produces controversy. Unfortunately, I think, as we both know, it is particularly true where firearms are concerned. Nonetheless, the problem remains to enforce the law to meet its underlying objective, to limit the criminal acquisition and criminal misuse of firearms. In doing so we think it is our obligation to be firm; that is, to enforce the law. But we also believe it is our obligation to be fair, to minimize to the extent possible incidents of misconduct, and to enforce the law in a sensible and a sound manner.

We have attempted over the last 3 years to do that by developing new policies, by targeting our efforts in a better and more constructive way to meet the problem of criminal violence in America. We think that we have improved our success. A lot of the specifics are included in the detailed attachments that were submitted with my statement. I would be happy to answer any questions you might have.

Senator BAYH. Mr. Davis, as I mentioned in my opening statement, the public is indebted to our law enforcement officials for the sacrifice they make in protecting our communities, families; and, unfortunately, many make a sacrifice because of their willingness to lay it on the line. However, long ago it was decided that the law enforcement official had a special responsibility. Just as they were protecting society from the criminal elements that would harm them, this protection had to be handled in a way that conformed to the rights of the individuals, both those who needed protecting and innocent people who might be assumed to be dangerous to society.

I don't think it is necessary to give you the constitutional treatise on these rights. The monolog is to lay a foundation for the questioning.

Does your Bureau of Alcohol, Tobacco and Firearms provide training to those agents out in the field that have the ultimate responsibility for enforcing the law? It is all well and good to have a statement here by the No. 2 man in Treasury who is head of the Bureau of Alcohol, Tobacco and Firearms. It is another thing if the principles enunciated here are actually followed in the field.

What steps are taken to see that that is actually the case, that the pronouncement of support of the constitutional procedures here is actually practiced out in the precincts?

Mr. DAVIS. I think there are a variety of steps that have been taken. One, I think you referred to is training. ATF agents train at the Federal Law Enforcement Training Center at Glynco, Ga. One of the key aspects of that curriculum is to provide instruction to all law enforcement personnel—whether they be ATF agents, IRS agents, Secret Service, border patrol, et cetera, in both what the law allows and what it does not allow. So training is No. 1.

Two, you need good, as I say, clear policies. I can't say that the Bureau has always articulated its policies in as clean a manner as would have been desirable. I think in the last 2 or 3 years there have

been a series of changes in policies, in the handbooks, in instructions, that go down through the system to the field agents to give them guidance on these issues.

I think, three, it is a question of supervision. It is a question of having good people out in the field who are able to supervise and monitor. And there are two changes that we made to try to do that. No. 1, the creation of the regional directors of investigation. It takes very senior people, people who are both experienced and well versed in policies. We have placed the RDT's in the field with oversight responsibility over a series of staff offices for purposes of both coordinating investigations and monitoring the implementation of policies.

And last, a change that was made was to decentralize the internal affairs division. In 1977 all internal affairs staff were stationed in Washington and when there was a problem they would be sent to a specific area. However, by stationing some of those people out in the field they are closer to any potential problem, and they can react more expeditiously.

Another step which I undertook on behalf of BATF and all the Treasury law enforcement agencies was to request the Department of Justice to refer to the respective agencies any situations where a judge found or indicated that agents had somehow committed some impropriety. I do not have information about how that system is working, but we did work with Justice to get that system planned and in place.

So those are some of the steps that have been taken.

I think that it is having a positive effect and it will continue to have an effect in terms of reducing to the extent possible incidents where problems develop in the course of cases.

Senator BAYH. I would like to get some general response here about a number of questions about kinds of weapons used and trend. If you have no objection, I think they can be answered for the record.

Mr. DAVIS. I think that would be fine. We would be happy to do that.

[The information subsequently submitted follows:]

On July 7, 1980, ATF published the results of its 1979 firearms trace study. This project, which is submitted for the record, is a compilation and evaluation of traces of crime guns seized in eighteen major metropolitan areas during the period January 1-September 30, 1979. Figures 1-5 are particularly important, and are reproduced here.

# 1979 FIREARMS TRACE PROJECT

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## STRATEGIC INTELLIGENCE

### SPECIAL REPORT

Prepared by: Jerry Walters  
Intelligence Operations Specialist

Assisted by: Signe Scarbrough  
Intelligence Aide

## I.

INTRODUCTION

In November of 1978, as part of the Fiscal Year 1979 Zero Base Budget Objectives (ZBBO) program, the Bureau of Alcohol, Tobacco and Firearms implemented a major firearms-crime enforcement effort identified as the FY-1979 Firearms Trace Project. That study endeavored to obtain a national picture of the source and flow of crime guns on the basis of trace data collected in major metropolitan areas.

Several cities were at that time involved in independent ATF firearms trace projects under procedures originally established during the earlier Projects CUE (Concentrated Urban Enforcement) and I (Identification). For the purpose of implementing the 1979 national study, other cities were added within existing resource capabilities to bring the total number of areas selected for continued study to eighteen. Included were the greater metropolitan areas of:

ATLANTA	MIAMI
BOSTON	NEW ORLEANS
CHICAGO	NEW YORK
CINCINNATI	PHILADELPHIA
CLEVELAND	ROCHESTER
DALLAS	SAINT LOUIS
DENVER	SAN FRANCISCO
DETROIT	SANTA ANA
KANSAS CITY	WASHINGTON, D.C.

For the duration of the FY-1979 study, ATF field offices in those selected areas actively solicited gun traces from local police departments and other enforcement agencies. Also included were traces originated by local ATF posts of duty. Again for reasons of resource availability, traces initiated solely for project purposes were limited to those associated with the major crime categories of MURDER, ASSAULT, ROBBERY, and NARCOTICS VIOLATIONS. Upon receipt by the ATF National Firearms Tracing Center, information contained in all project-area trace requests was extracted for automated data processing (ADP) input and compilation.

The data collection and input phase of the study extended from January 1, 1979, through project termination at the end of the fiscal year on September 30, 1979. Normal operational traces as well as project traces were included in the final ADP compilations. The resulting data printouts thus identified firearms of all types as well as all categories of acquisition information. When the ADP raw-data printout tabulations for each metropolitan area became available in late December, copies were forwarded to Special Agents in Charge of the respective ATF district offices for review and potential enforcement application.

The voluminous data contained in those printouts has been manually reduced to the selected tabular presentations contained in Figures 1 through 77. The tables emphasize

the four major crime categories originally specified, and include only handguns, vice long guns, as the overwhelmingly predominant component in national firearms crime. For each of the eighteen metropolitan areas involved, traced handguns are categorized by type, age, source location, and associated crime. The data is additionally cross-tabulated by city for comparison purposes.

## II.

FINDINGS

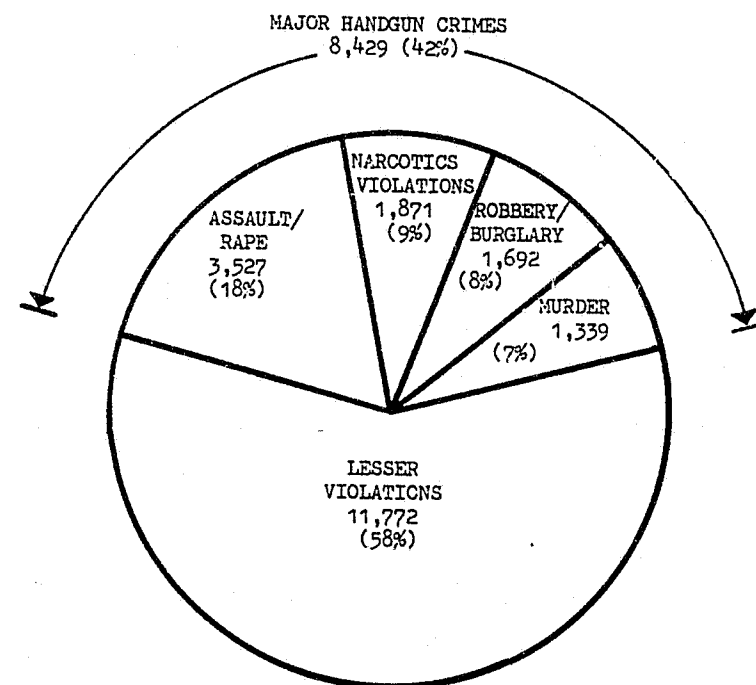
During the nine-month study period, participating law enforcement agencies in the selected eighteen greater metropolitan areas requested tracing action for a combined total of 20,201 recovered handguns (i.e., handguns recovered incidental to a criminal investigation, or recovered and traced for other law enforcement purposes). Of that total, 14,429 (or 71%) were successfully traced to the level of the first retail seller.

The following tables graphically categorize the traced guns by type, age, source location, and associated crime. Composite tables portraying the 18-city totals are presented first (Figures 1 through 5), followed by separate categorized tables (Figures 6 through 77) for each of the metropolitan areas represented. Note that each source table includes data only for those traces initiated by the principal law enforcement agency within a given city. For all other tables, the data represent all participating agencies within each greater metropolitan area.

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Figure 1. CRIMES ASSOCIATED WITH TRACED HANDGUNS,<sup>1</sup>COMPOSITE FOR  
EIGHTEEN SELECTED GREATER METROPOLITAN AREAS<sup>2</sup>

January 1 - September 30, 1979



TOTAL TRACES: 20,201 (100%)

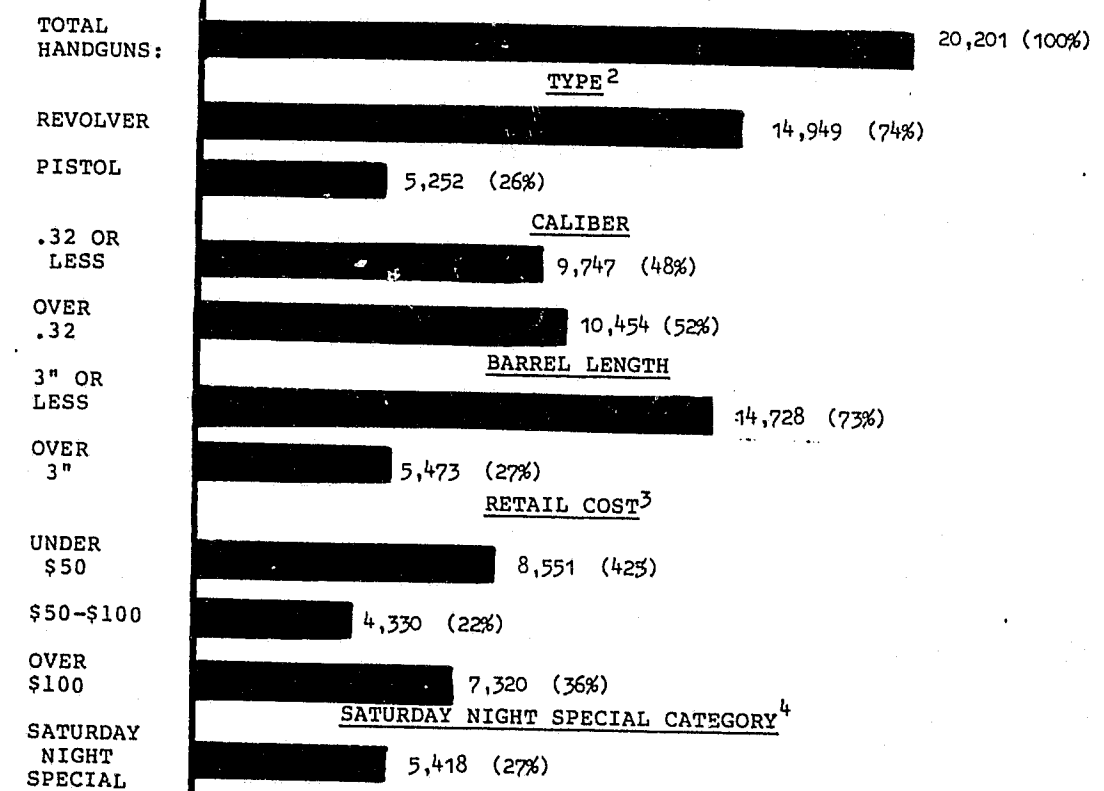
<sup>1</sup>Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by a participating law enforcement agency.

<sup>2</sup>Atlanta, Boston, Chicago, Cincinnati, Cleveland, Dallas, Denver, Detroit, Kansas City MO, Miami, New Orleans, New York, Philadelphia, Rochester NY, Saint Louis, San Francisco, Santa Ana CA, and Washington DC.

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Figure 2. TRACED HANDGUN TYPES AND CHARACTERISTICS,COMPOSITE FOR  
EIGHTEEN SELECTED GREATER METROPOLITAN AREAS<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup>Atlanta, Boston, Chicago, Cincinnati, Cleveland, Dallas, Denver, Detroit, Kansas City MO, Miami, New Orleans, New York, Philadelphia, Rochester NY, Saint Louis, San Francisco, Santa Ana CA and Washington DC.

<sup>2</sup>For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup>Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

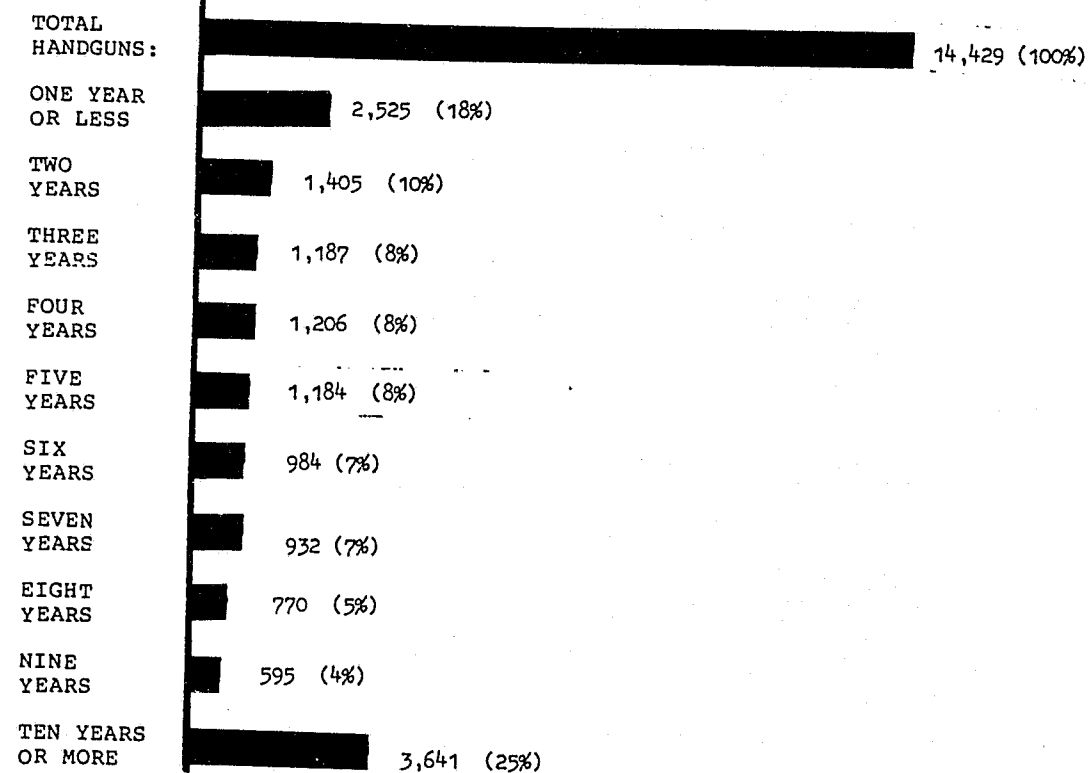
<sup>4</sup>For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.



Figure 3. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNS  
TRACEABLE TO FIRST RETAIL SALE,

COMPOSITE FOR  
EIGHTEEN SELECTED GREATER METROPOLITAN AREAS<sup>2</sup>

January 1 - September 30, 1979



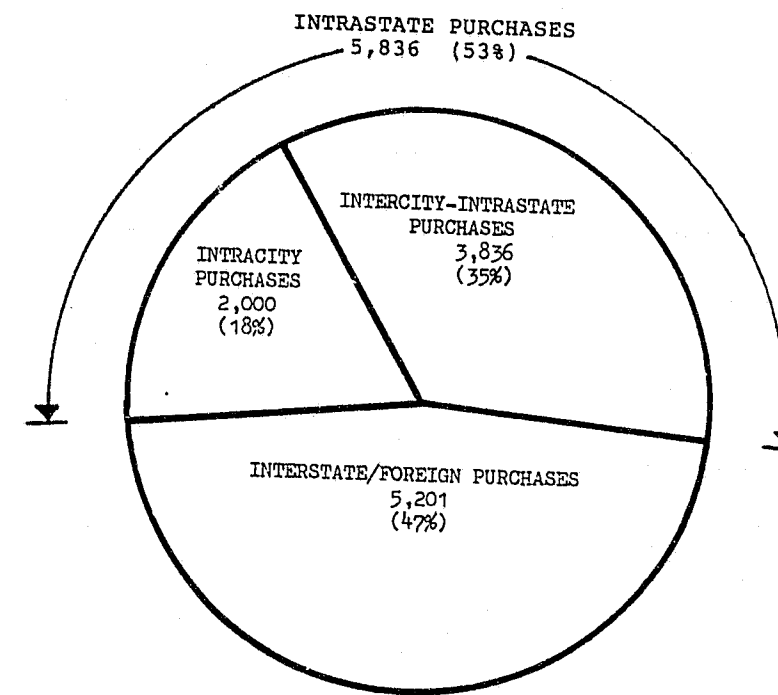
<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Atlanta, Boston, Chicago, Cincinnati, Cleveland, Dallas, Denver, Detroit, Kansas City MO, Miami, New Orleans, New York, Philadelphia, Rochester NY, Saint Louis, San Francisco, Santa Ana CA and Washington DC.

Figure 4. SOURCES<sup>1</sup> OF RECOVERED HANDGUNS  
TRACED TO FIRST RETAIL SALE,

COMPOSITE FOR  
EIGHTEEN SELECTED MUNICIPAL POLICE AGENCIES<sup>2</sup>

January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 11,037 (100%)

<sup>1</sup> For the purpose of this statistical compilation, SOURCE was defined as the location where each traced handgun was first sold at retail.

<sup>2</sup> Data includes only traced handguns recovered within their respective jurisdictions by Atlanta P.D., Boston P.D., Chicago P.D., Cincinnati P.D., Cleveland P.D., Dallas P.D., Denver P.D., Detroit P.D., Kansas City KS P.D., Miami P.D., New Orleans P.D., New York County NY District Attorney (Project Manhattan agency consortium) Philadelphia P.D., Rochester NY P.D., Saint Louis P.D., San Francisco P.D., Santa Ana CA P.D., and Washington DC Metropolitan Police.

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Figure 5. PRINCIPAL INTERSTATE SOURCES OF RECOVERED HANDGUNS  
TRACEABLE TO FIRST RETAIL SALE,

COMPOSITE FOR  
EIGHTEEN SELECTED MUNICIPAL POLICE AGENCIES<sup>1</sup>

January 1 - September 30, 1979

<u>RANK</u>	<u>SOURCE STATE</u>	<u>NUMBER OF TRACED HANDGUNS</u>	<u>PERCENTAGE</u>
1	MISSISSIPPI <sup>2</sup>	711	6.4%
2	FLORIDA	363	3.3%
3	TEXAS	310	2.8%
4	ARKANSAS	281	2.5%
5	NEW YORK	271	2.5%
6	GEORGIA	242	2.2%
7	OHIO	231	2.1%
8	INDIANA	224	2.0%
9	KENTUCKY	213	1.9%
10	CALIFORNIA	198	1.8%
11	VIRGINIA	194	1.8%
12	SOUTH CAROLINA	164	1.5%
13	LOUISIANA	164	1.5%
14	ALABAMA	157	1.4%
15	ILLINOIS	154	1.4%
16	TENNESSEE	133	1.2%
ALL REMAINING STATES (less than 1% each):		1,048	9.5%
FOREIGN/OTHER:		143	1.3%
TOTAL INTERSTATE:		5,201	47.1%
TOTAL INTRASTATE:		5,836	52.9%
OVERALL TOTAL:		11,037	100%

<sup>1</sup>Data includes only handguns traced to a first retail sale outside the state of recovery by Atlanta P.D., Boston P.D., Chicago P.D., Cincinnati P.D., Cleveland P.D., Dallas P.D., Denver P.D., Detroit P.D., Kansas City KS P.D., Miami P.D., New Orleans P.D., New York County NY District Attorney (Project Manhattan agency consortium), Philadelphia P.D., Rochester NY P.D., Saint Louis P.D., San Francisco P.D., Santa Ana CA P.D., or Washington DC Metropolitan Police. 5,385, or 49%, of the 11,037 total traces were initiated by the Chicago Police Department.

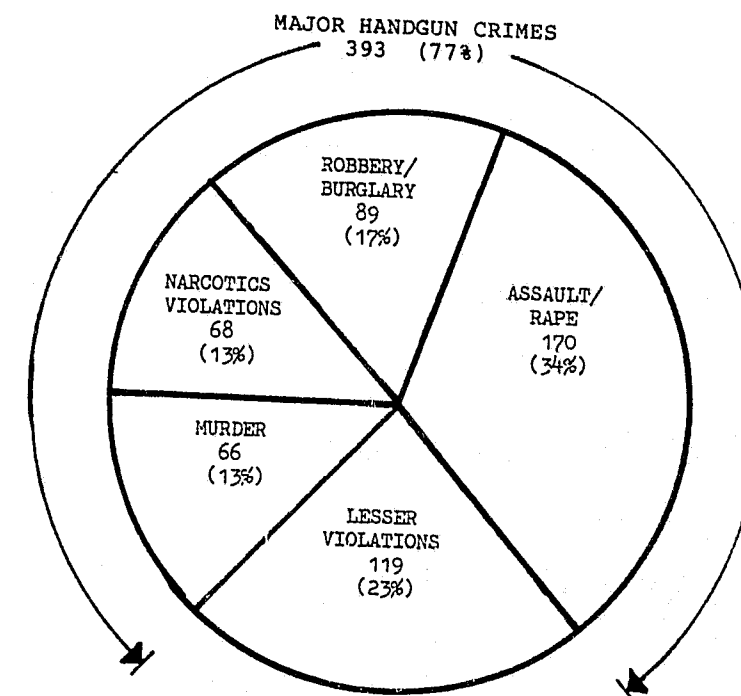
<sup>2</sup>Of the 5,652 handguns traced by participating agencies other than the Chicago Police Department, only 139, or 2.5%, originated in Mississippi.

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Figure 6. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER ATLANTA, GEORGIA\*

January 1 - September 30, 1979

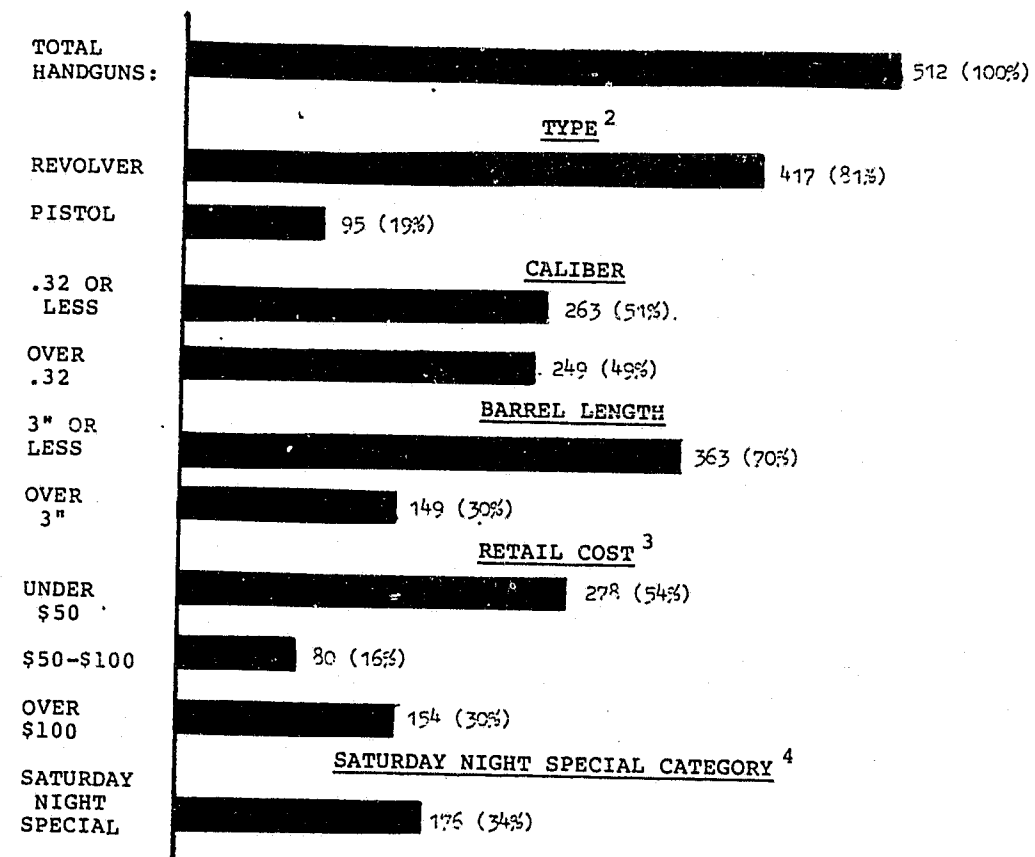


TOTAL TRACES: 512 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Atlanta Police Department or the De Kalb County Police Department.

Figure 7. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER ATLANTA, GEORGIA<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes only handguns traced by the Atlanta Police Department or the De Kalb County Police Department.

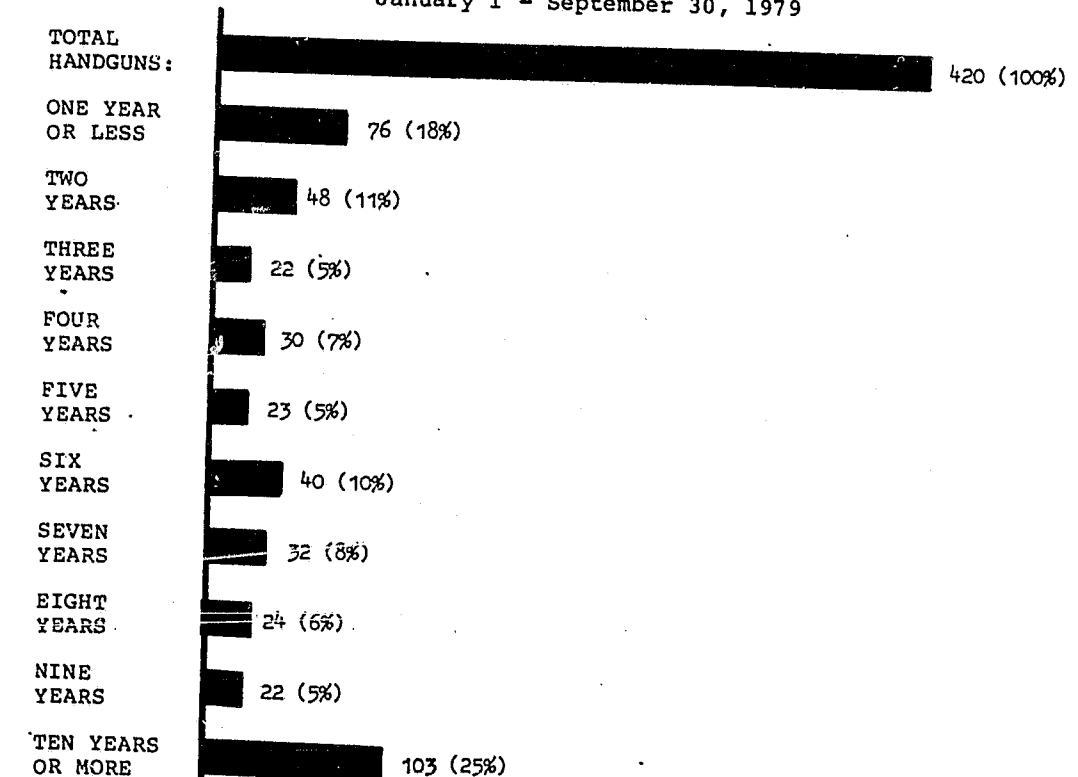
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 8.. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER ATLANTA, GEORGIA<sup>2</sup>

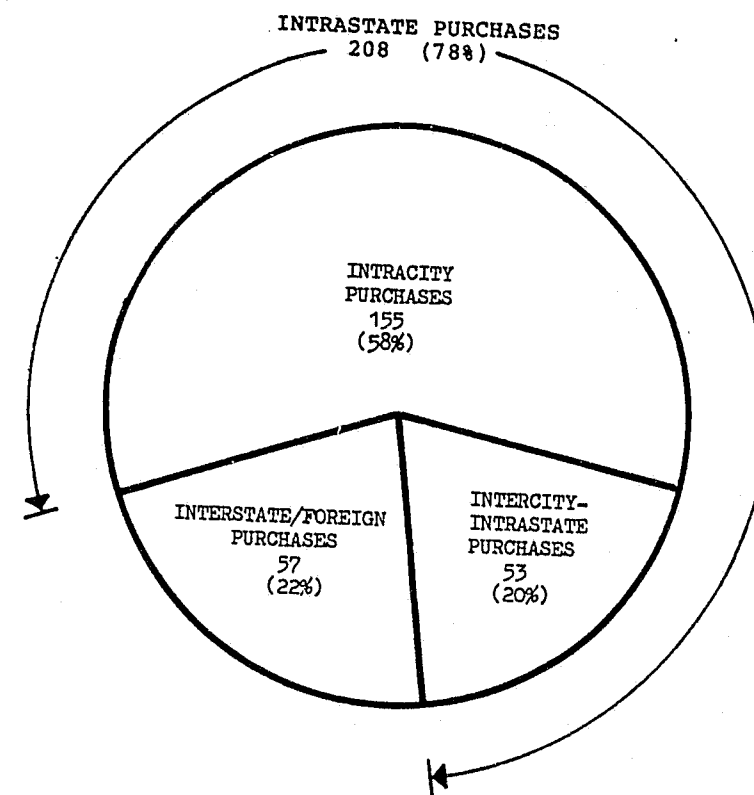
January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes only handguns traced by the Atlanta Police Department or the De Kalb County Police Department.

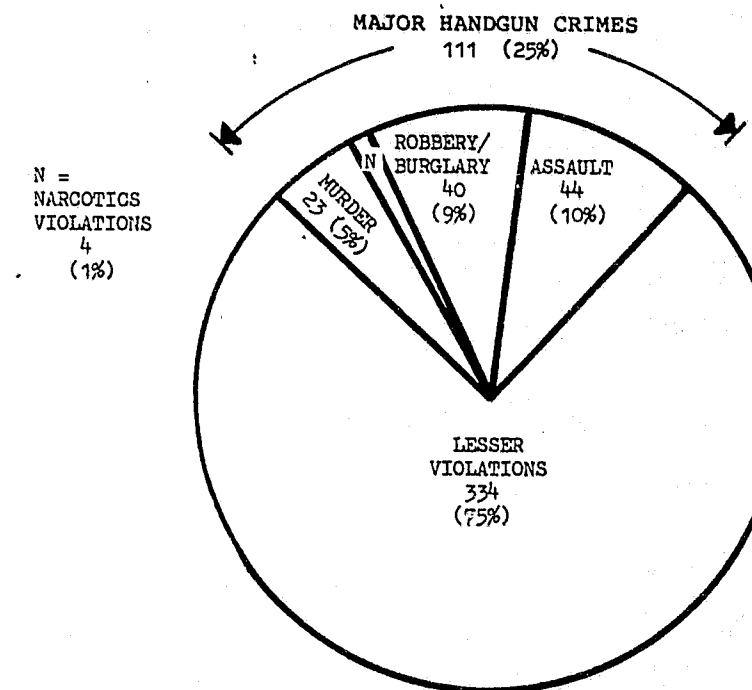
Figure 9. SOURCES OF TRACED HANDGUNS RECOVERED BY  
ATLANTA, GEORGIA, POLICE DEPARTMENT\*  
 January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 265 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Atlanta Police Department was first sold at retail.

Figure 10. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER BOSTON, MASSACHUSETTS\*  
 January 1 - September 30, 1979



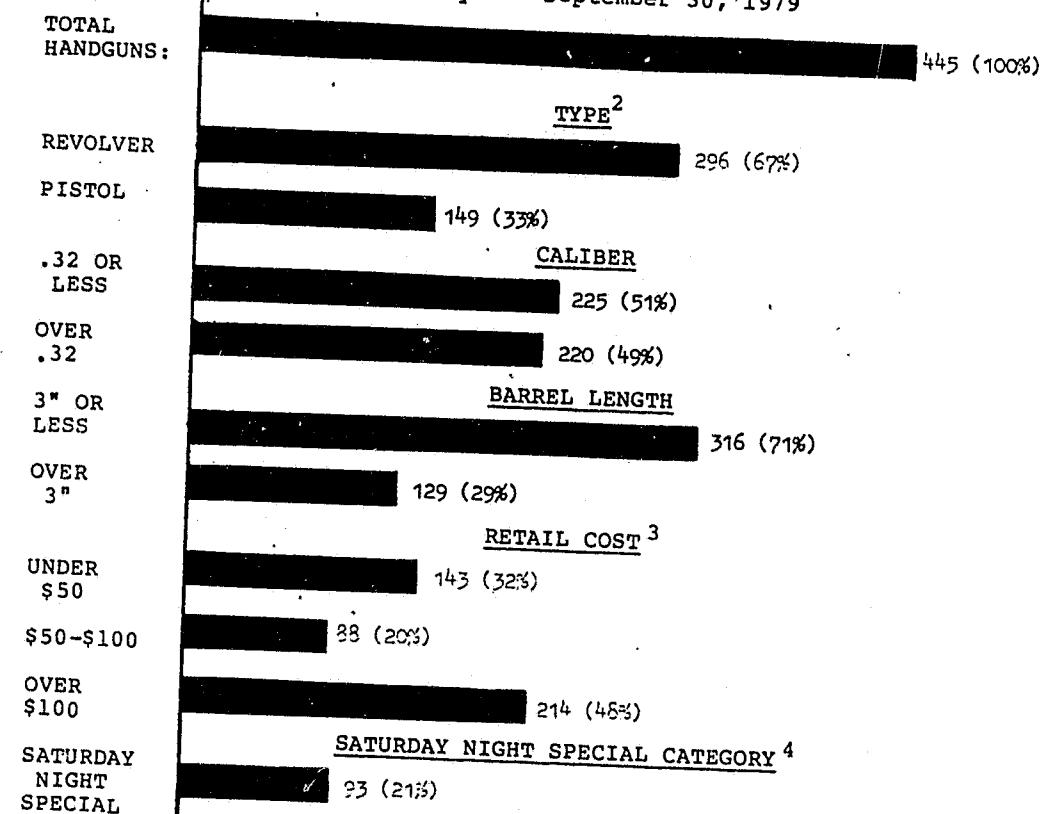
TOTAL TRACES: 445 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Boston Police Department, the Boston ATF office, the sheriffs' offices of Suffolk, Middlesex, Norfolk, Essex and Bristol counties, and 124 other Massachusetts municipal police departments.



Figure 11. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER BOSTON, MASSACHUSETTS<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Boston Police Department, the Boston ATF office, the sheriffs' offices of Suffolk, Middlesex, Norfolk, Essex and Bristol counties, and 124 other Massachusetts municipal police departments.

<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

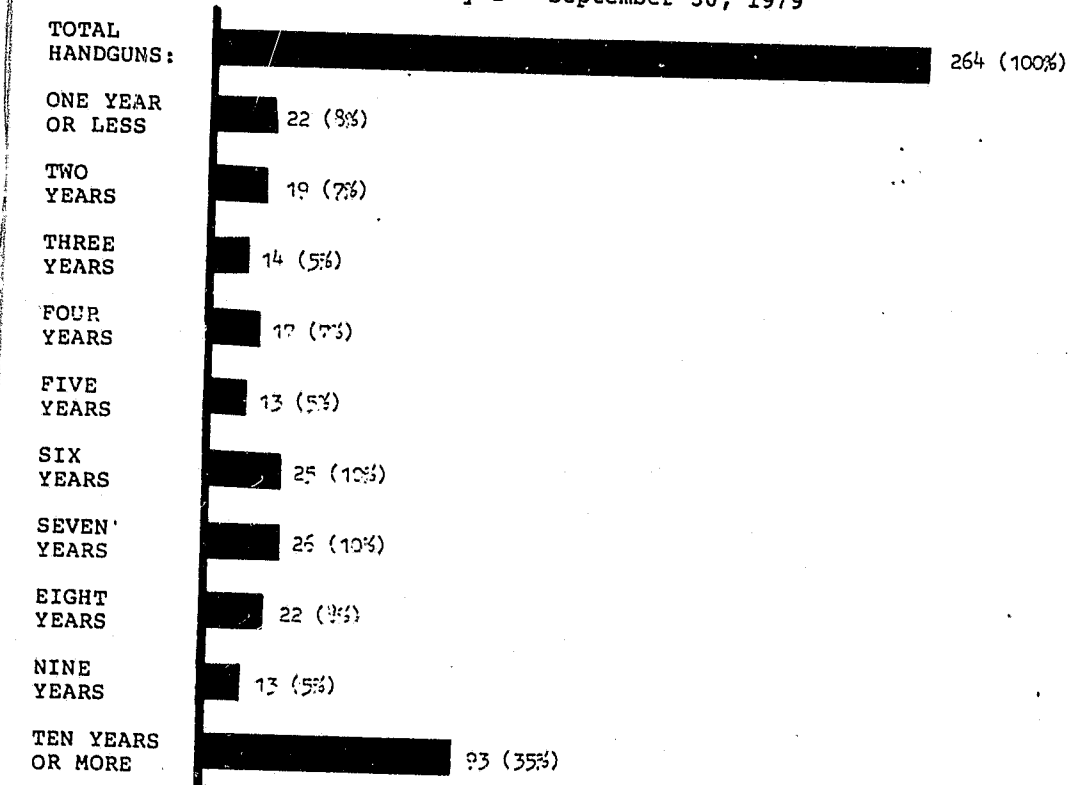
<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 12. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNS

TRACEABLE TO FIRST RETAIL SALE,

GREATER BOSTON, MASSACHUSETTS<sup>2</sup>

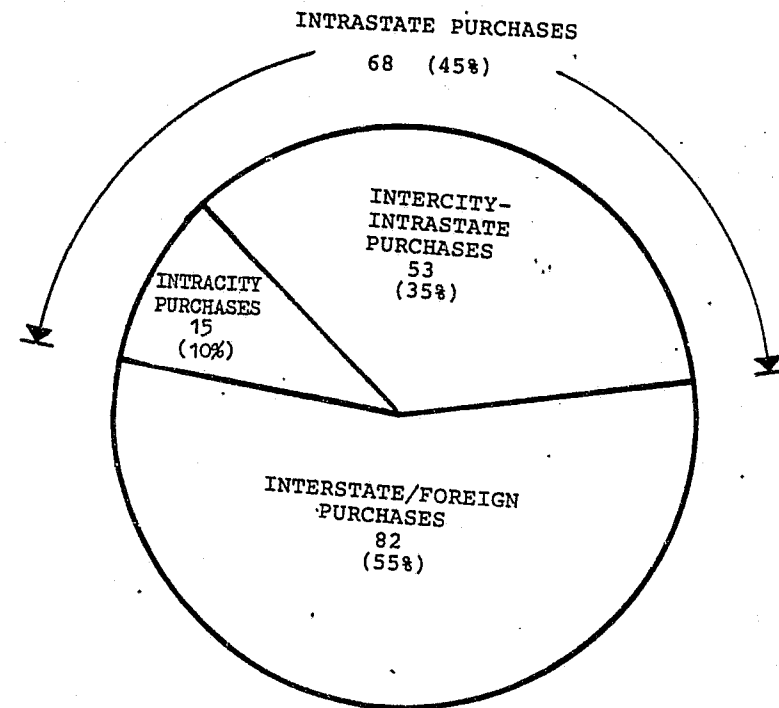
January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes handguns traced by the Boston Police Department, the Boston ATF office, the sheriff's offices of Suffolk, Middlesex, Norfolk, Essex and Bristol counties, and 124 other Massachusetts municipal police departments.

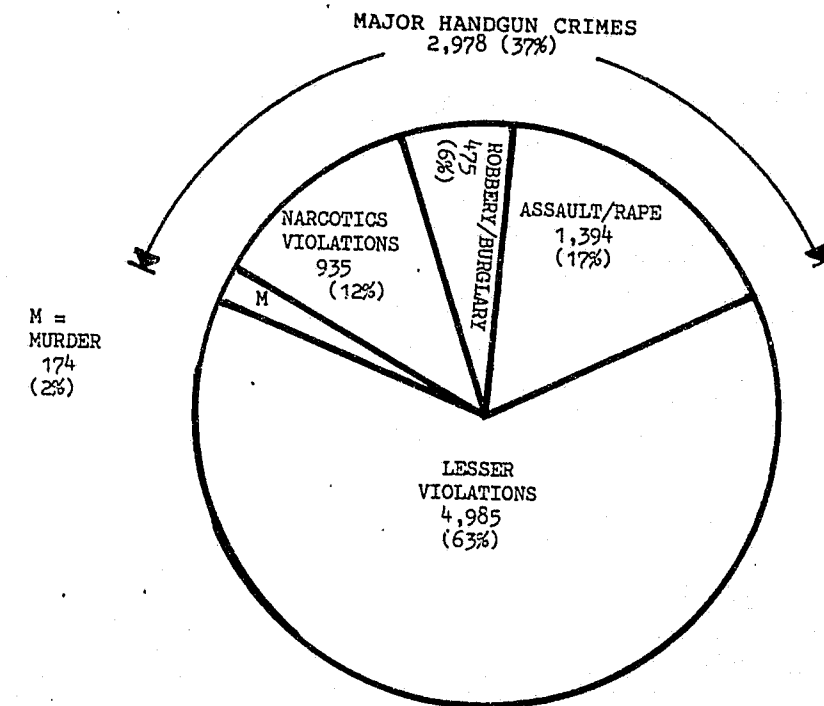
Figure 13. SOURCES OF TRACED HANDGUNS RECOVERED BY  
BOSTON, MASSACHUSETTS, POLICE DEPARTMENT\*  
January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 150 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Boston Police Department was first sold at retail.

Figure 14. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER CHICAGO, ILLINOIS\*  
January 1 - September 30, 1979

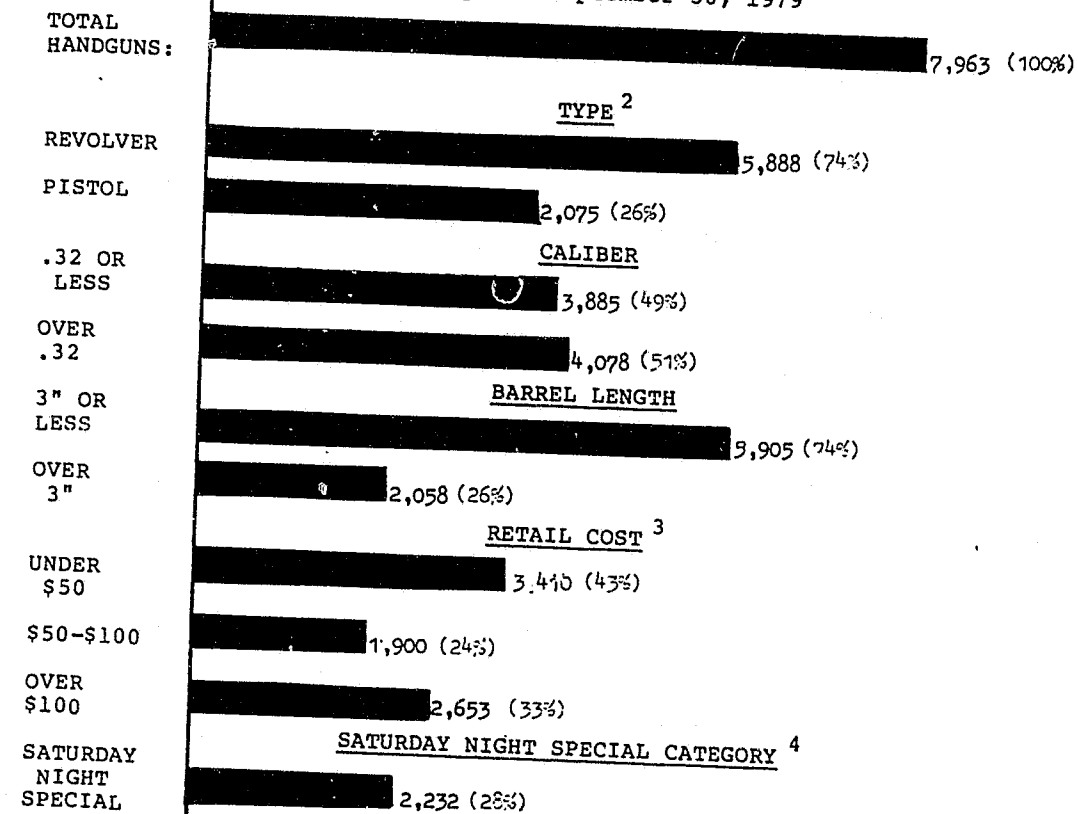


TOTAL TRACES: 7,963 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Chicago Police Department or one of forty-eight other selected Illinois municipal police departments, sheriffs' offices and ATF offices.

Figure 15. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER CHICAGO, ILLINOIS<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Chicago Police Department and forty-eight other Illinois municipal police departments, sheriffs' offices and ATF offices.

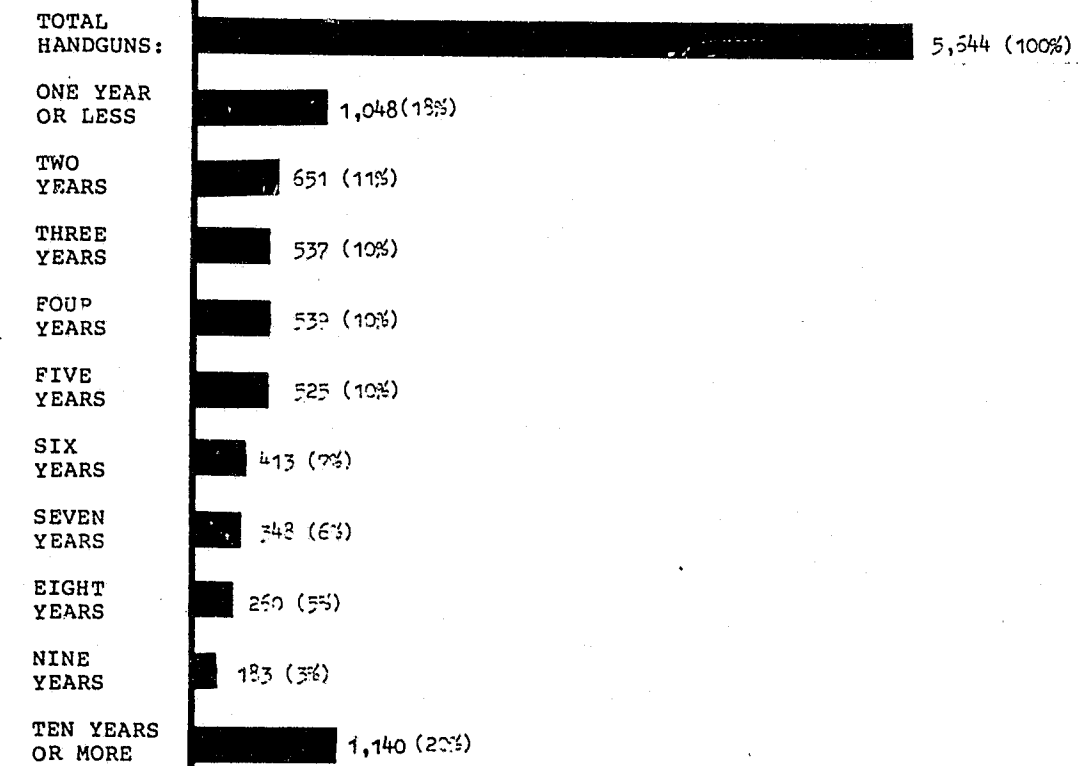
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 16. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER CHICAGO, ILLINOIS<sup>2</sup>

January 1 - September 30, 1979



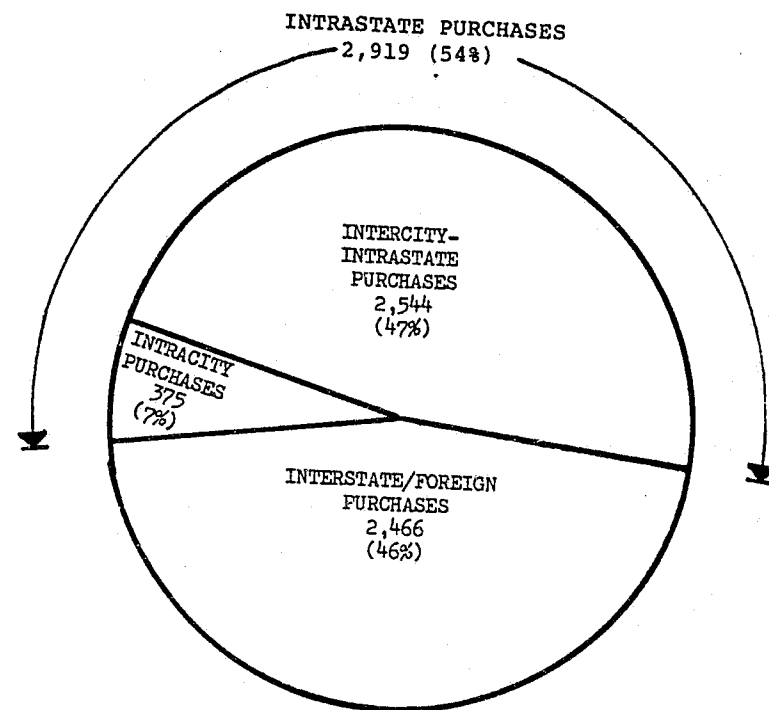
<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes handguns traced by the Chicago Police Department and forty-eight other Illinois municipal police departments, sheriffs' offices and ATF offices.

Figure 17. SOURCES OF TRACED HANDGUNS RECOVERED BY

CHICAGO, ILLINOIS, POLICE DEPARTMENT\*

January 1 - September 30, 1979



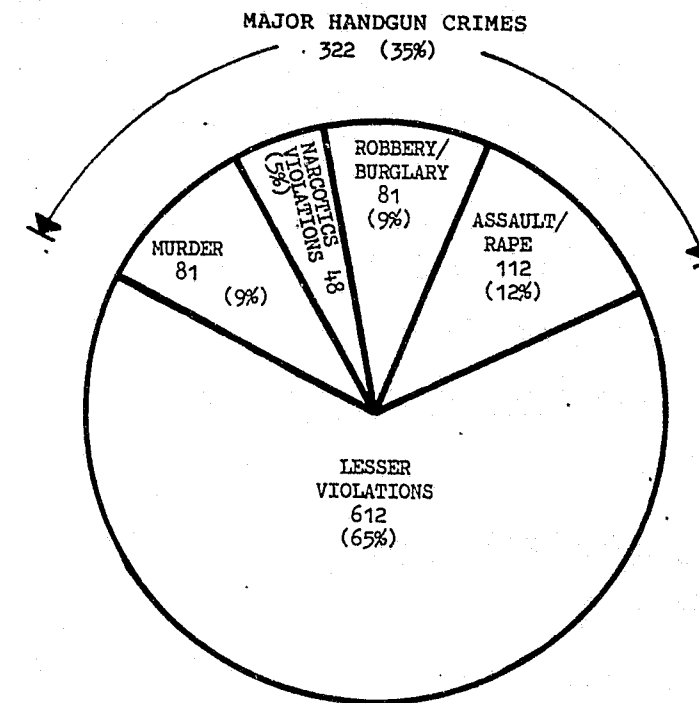
TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 5,385 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Chicago Police Department was first sold at retail.

Figure 18. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER CINCINNATI, OHIO\*

January 1 - September 30, 1979



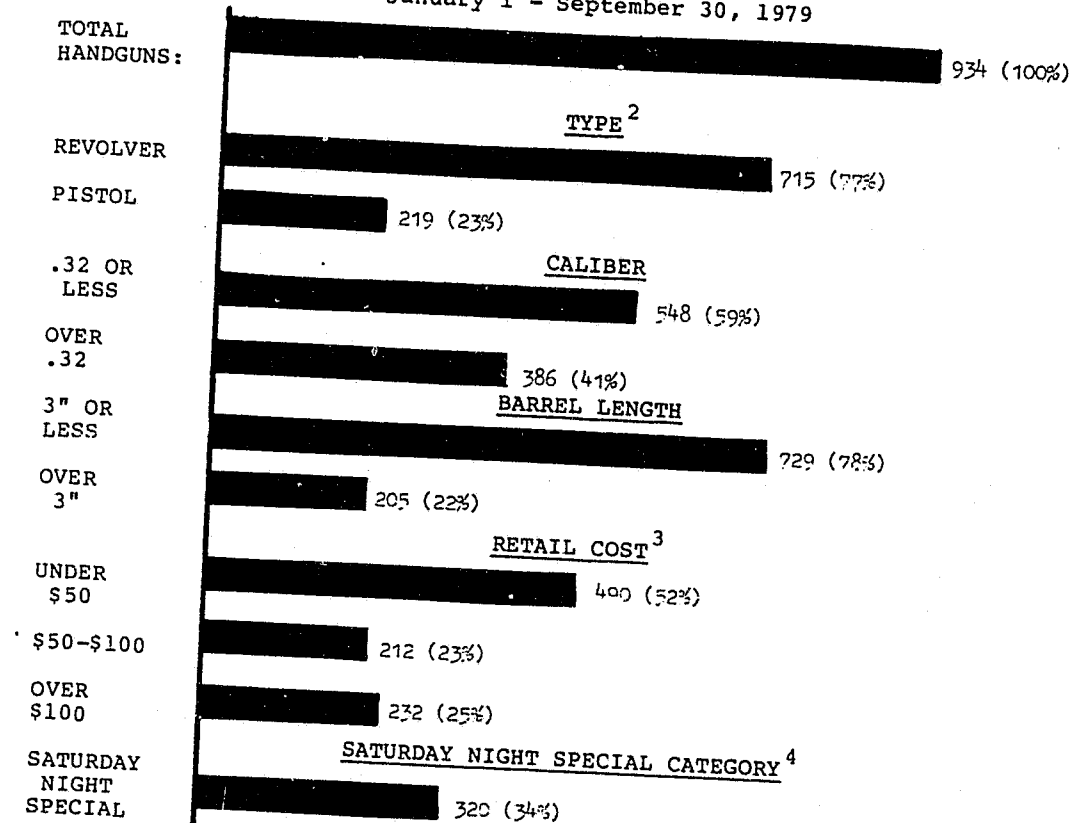
TOTAL TRACES: 934 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the police departments of Cincinnati, Columbus or Middletown; the Cincinnati or Columbus ATF office; or the Covington, Kentucky, Police Department.



Figure 19. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER CINCINNATI, OHIO<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the police departments of Cincinnati, Columbus and Middletown, the Cincinnati and Columbus ATF offices, and the Covington, Kentucky, Police Department.

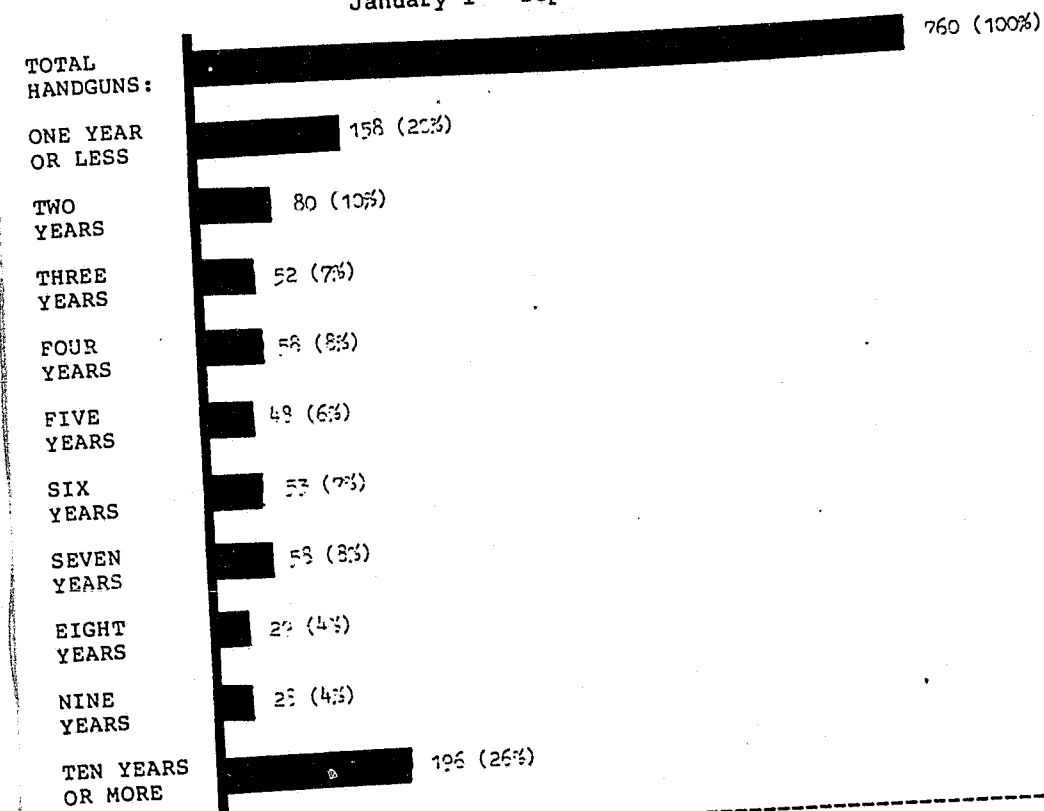
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 20. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER CINCINNATI, OHIO<sup>2</sup>

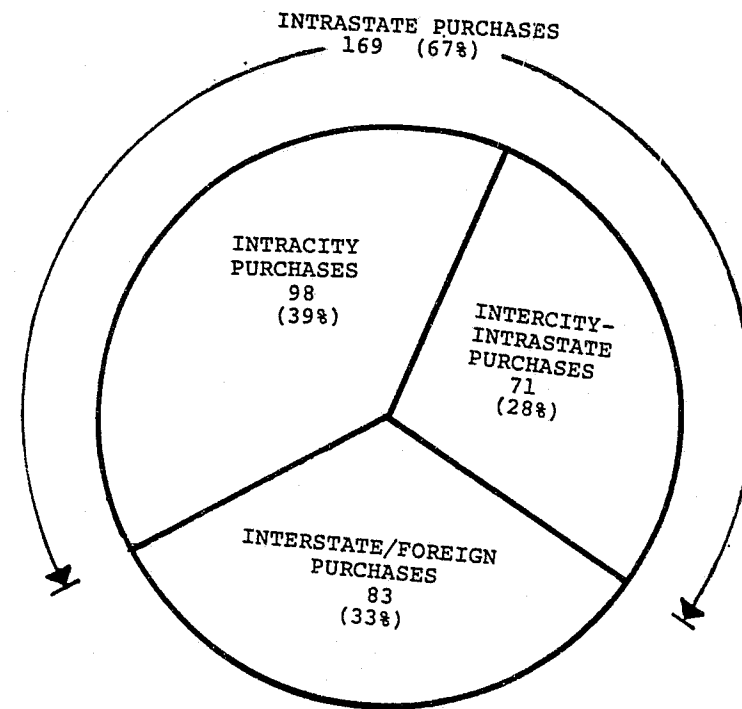
January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes handguns traced by the police departments of Cincinnati, Columbus and Middletown, the Cincinnati and Columbus ATF offices, and the Covington, Kentucky, Police Department.

Figure 21. SOURCES OF TRACED HANDGUNS RECOVERED BY  
CINCINNATI, OHIO, POLICE DEPARTMENT\*  
January 1 - September 30, 1979

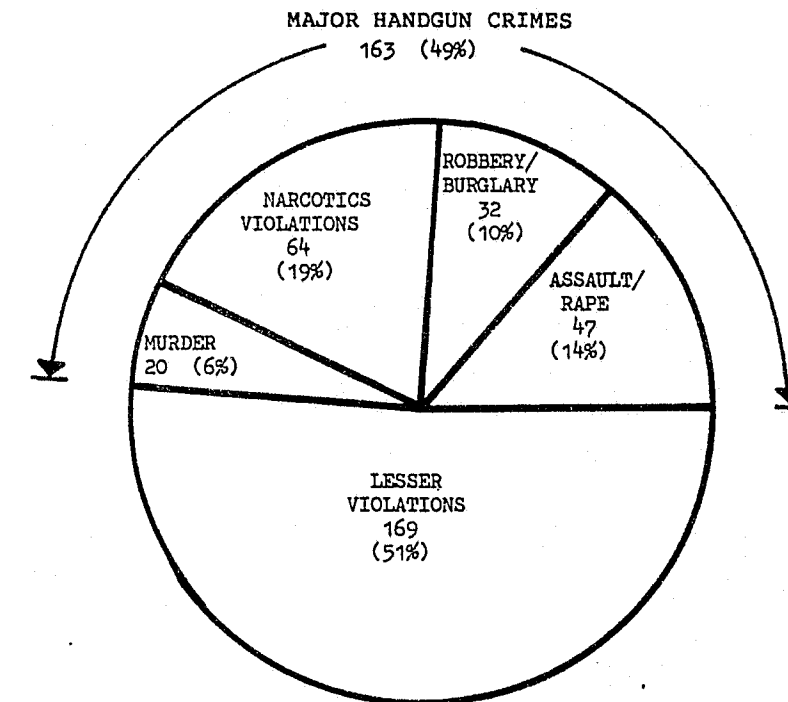


TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 252 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Cincinnati Police Department was first sold at retail.

Figure 22. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER CLEVELAND, OHIO\*

January 1 - September 30, 1979

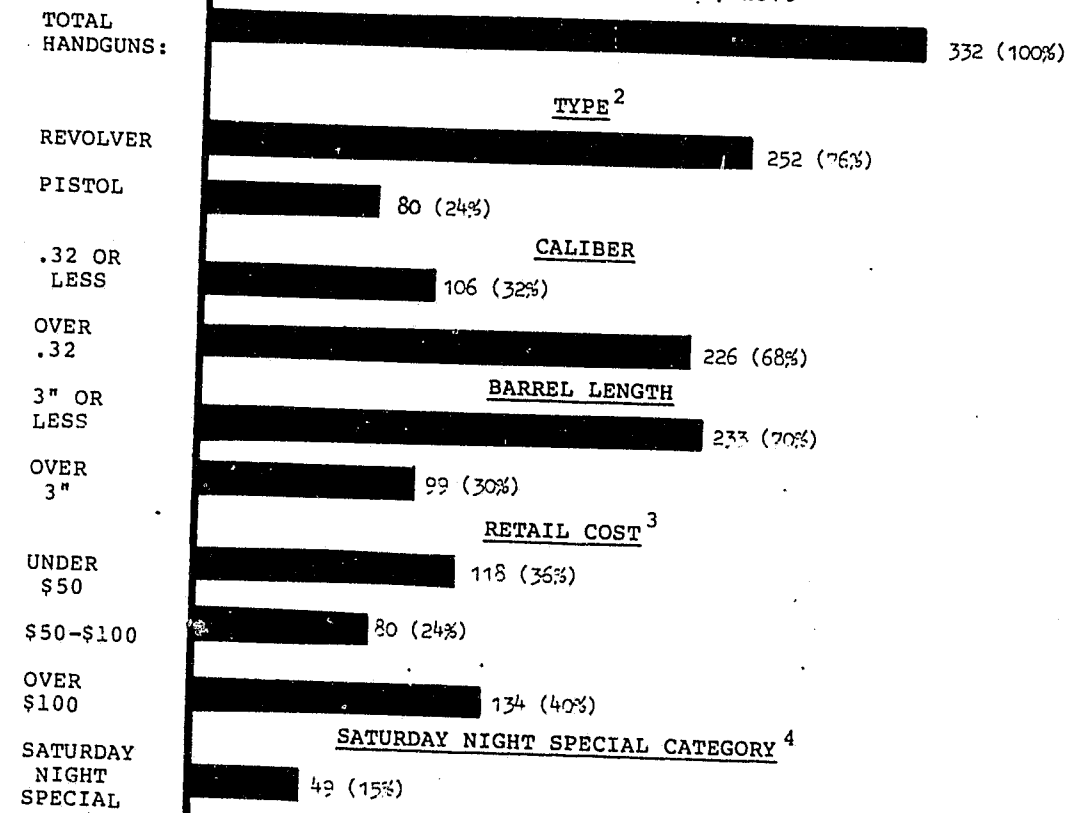


TOTAL TRACES: 332 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Cleveland Police Department, the State Highway Patrol at Medina, or one of thirty-five other selected Ohio municipal police departments and sheriffs' offices.

Figure 23. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER CLEVELAND, OHIO<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Cleveland Police Department, the State Highway Patrol at Medina, and thirty-five other Ohio municipal police departments and sheriffs' offices.

<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

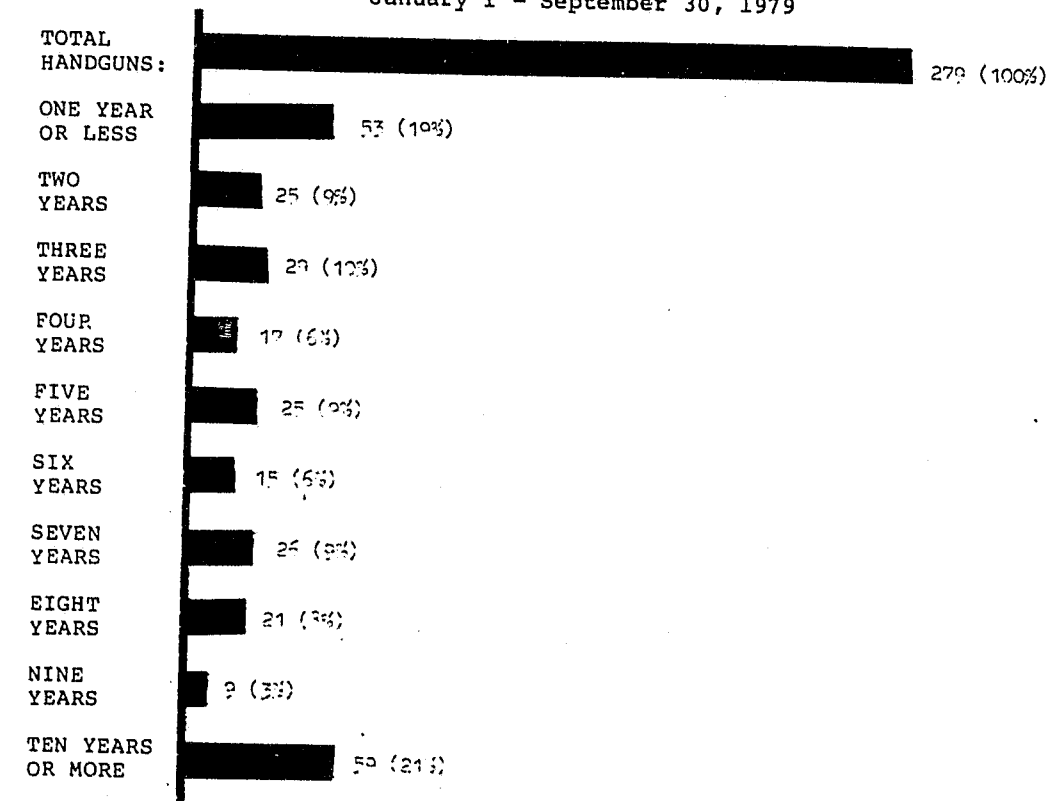
<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 24. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNS

TRACEABLE TO FIRST RETAIL SALE,

GREATER CLEVELAND, OHIO<sup>2</sup>

January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

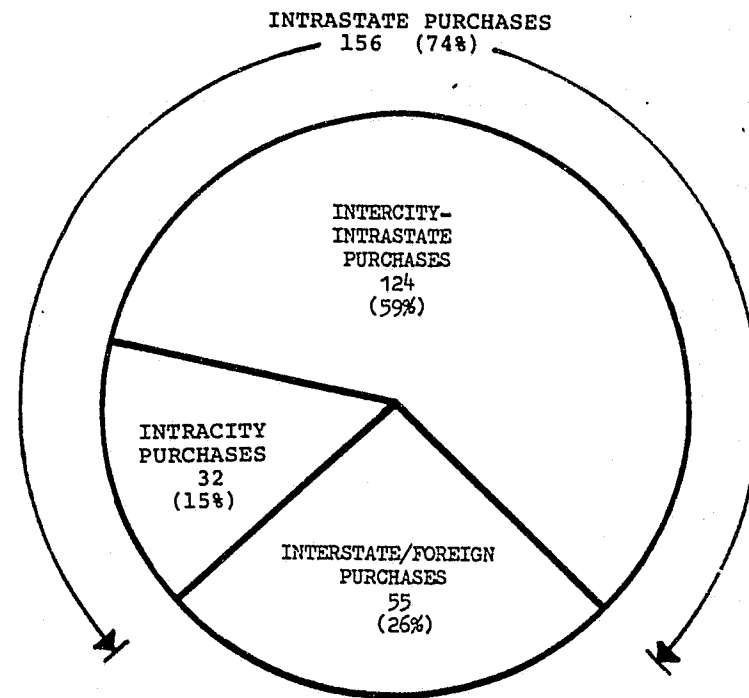
<sup>2</sup> Data includes handguns traced by the Cleveland Police Department, the State Highway Patrol at Medina, and thirty-five other Ohio municipal police departments and sheriffs' offices.

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Figure 25. SOURCES OF TRACED HANDGUNS RECOVERED BY

CLEVELAND, OHIO, POLICE DEPARTMENT\*

January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 211 (100%)

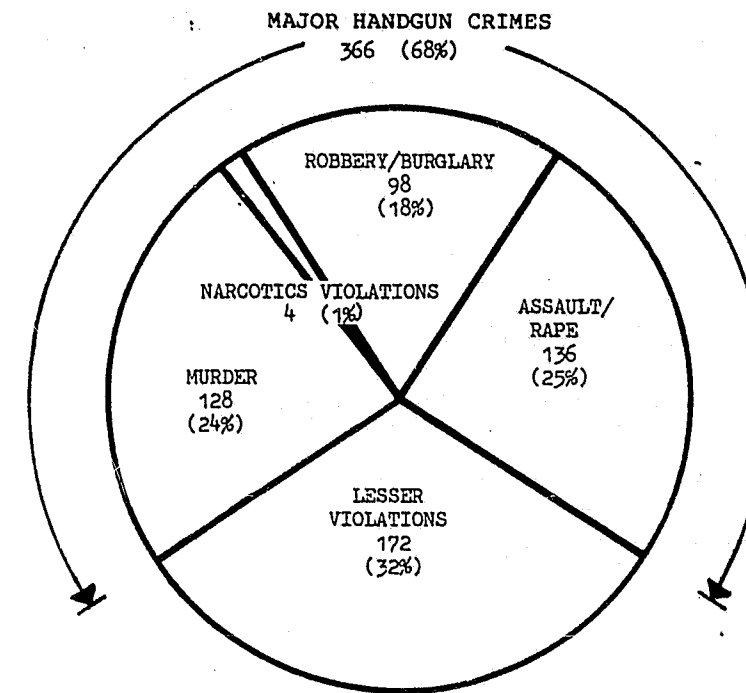
\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Cleveland Police Department was first sold at retail.

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Figure 26. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER DALLAS, TEXAS\*

January 1 - September 30, 1979



TOTAL TRACES: 538 (100%)

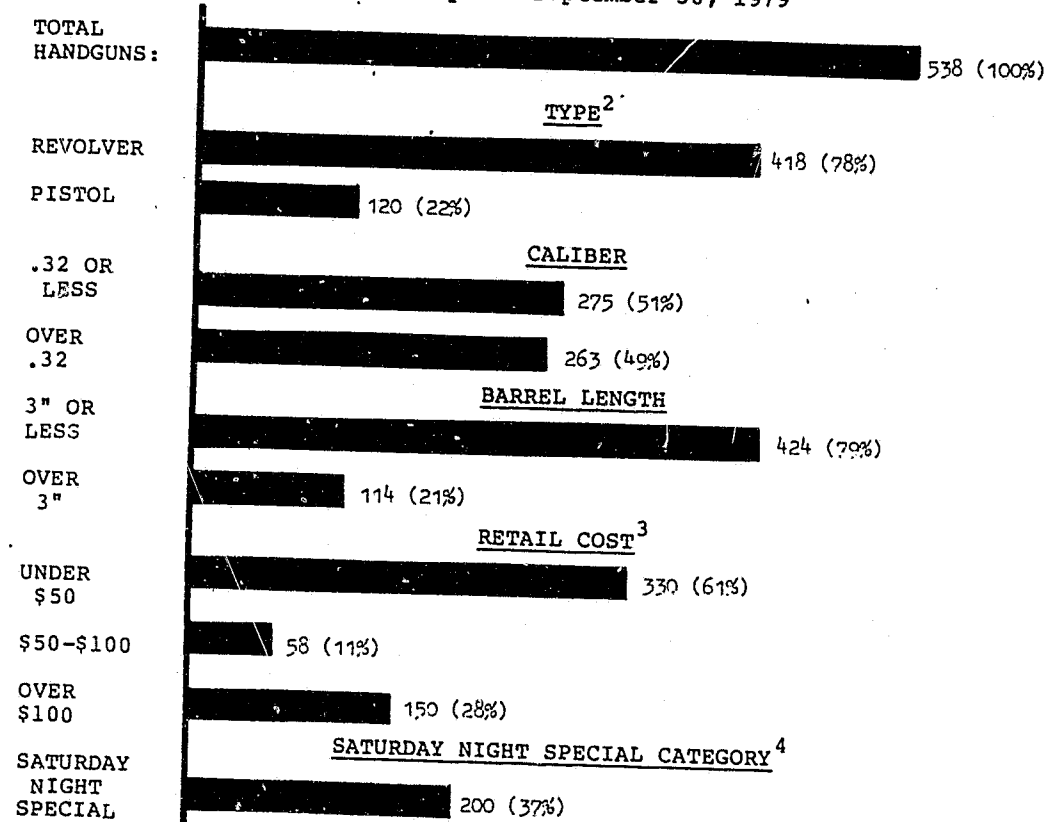
\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Dallas ATF office or the municipal police department of Dallas, Fort Worth, Arlington, Grand Prairie, Irvine, Mesquite, Richardson or Denton.



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Figure 27. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER DALLAS, TEXAS<sup>1</sup>

January 1 - September 30, 1979

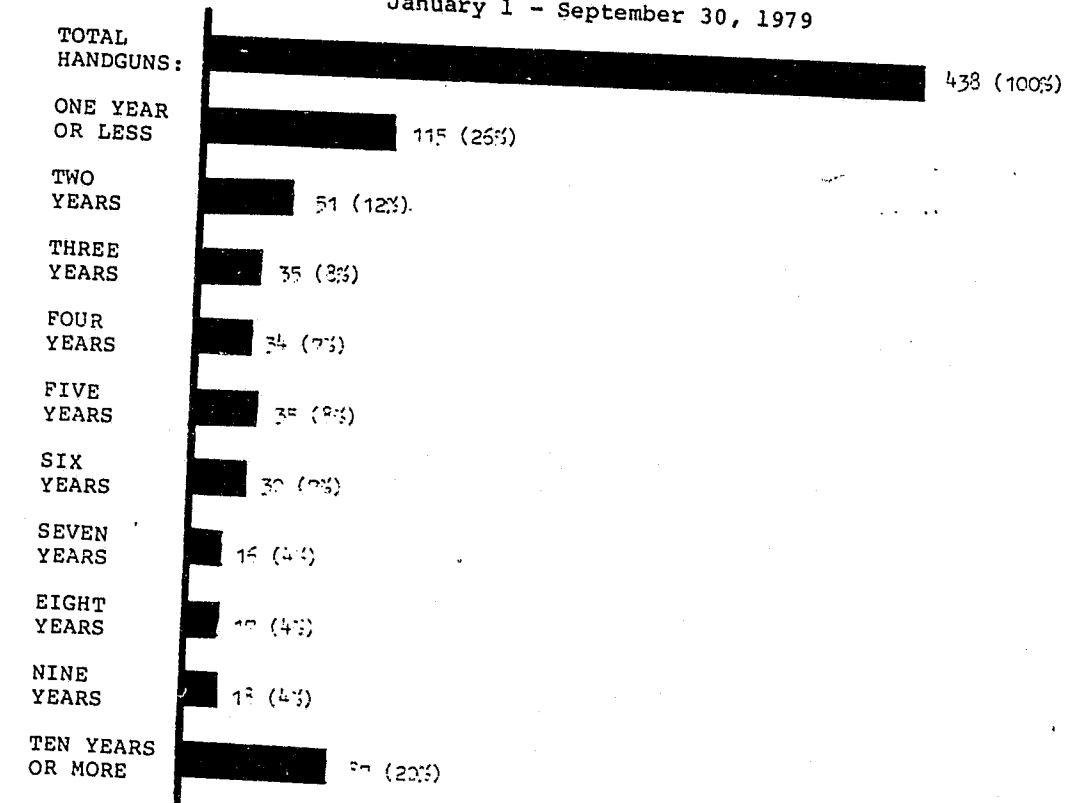


- <sup>1</sup> Data includes handguns traced by the Dallas ATF office and the municipal police departments of Dallas, Fort Worth, Arlington, Grand Prairie, Irvine, Mesquite, Richardson and Denton.
- <sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.
- <sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.
- <sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

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Figure 28. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER DALLAS, TEXAS<sup>2</sup>

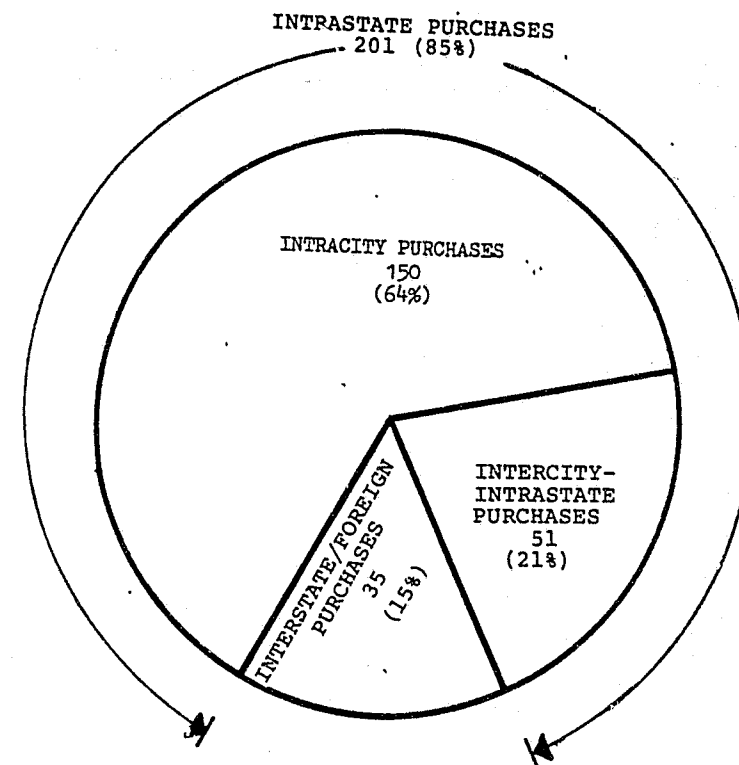
January 1 - September 30, 1979



- <sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.
- <sup>2</sup> Data includes handguns traced by the Dallas ATF office and the municipal police departments of Dallas, Fort Worth, Arlington, Grand Prairie, Irvine, Mesquite, Richardson and Denton.

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Figure 29. SOURCES OF TRACED HANDGUNS RECOVERED BY  
DALLAS, TEXAS, POLICE DEPARTMENT\*  
January 1 - September 30, 1979

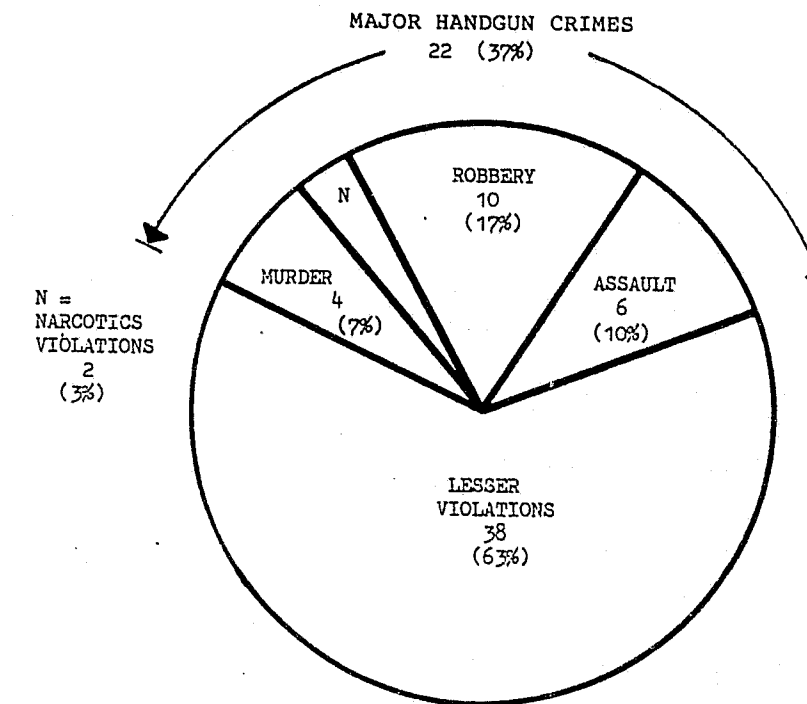


TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 236 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Dallas Police Department was first sold at retail.

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Figure 30. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER DENVER, COLORADO\*  
January 1 - September 30, 1979

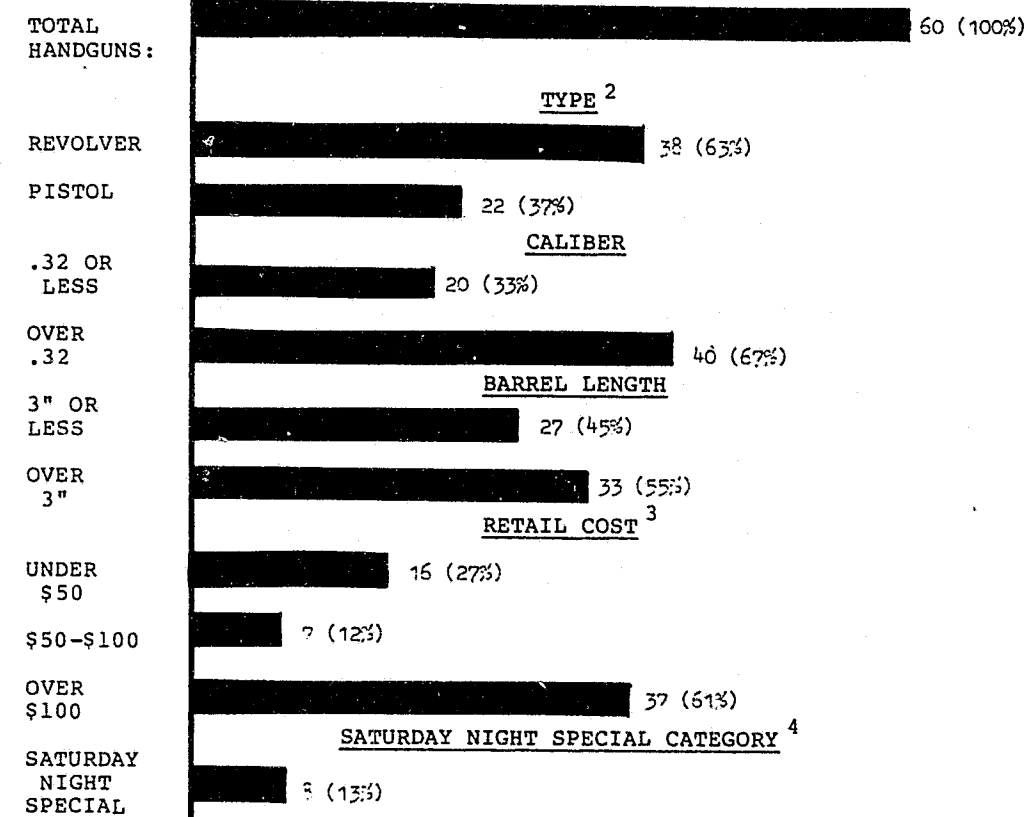


TOTAL TRACES: 60 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Denver ATF office, the municipal police department of Denver, Arvada, Aurora, Boulder, Brighton or Colorado Springs, or the Department of Public Safety at Lakewood.

Figure 31. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER DENVER, COLORADO<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Denver ATF office, the municipal police departments of Denver, Arvada, Aurora, Boulder, Brighton and Colorado Springs, and the Department of Public Safety at Lakewood.

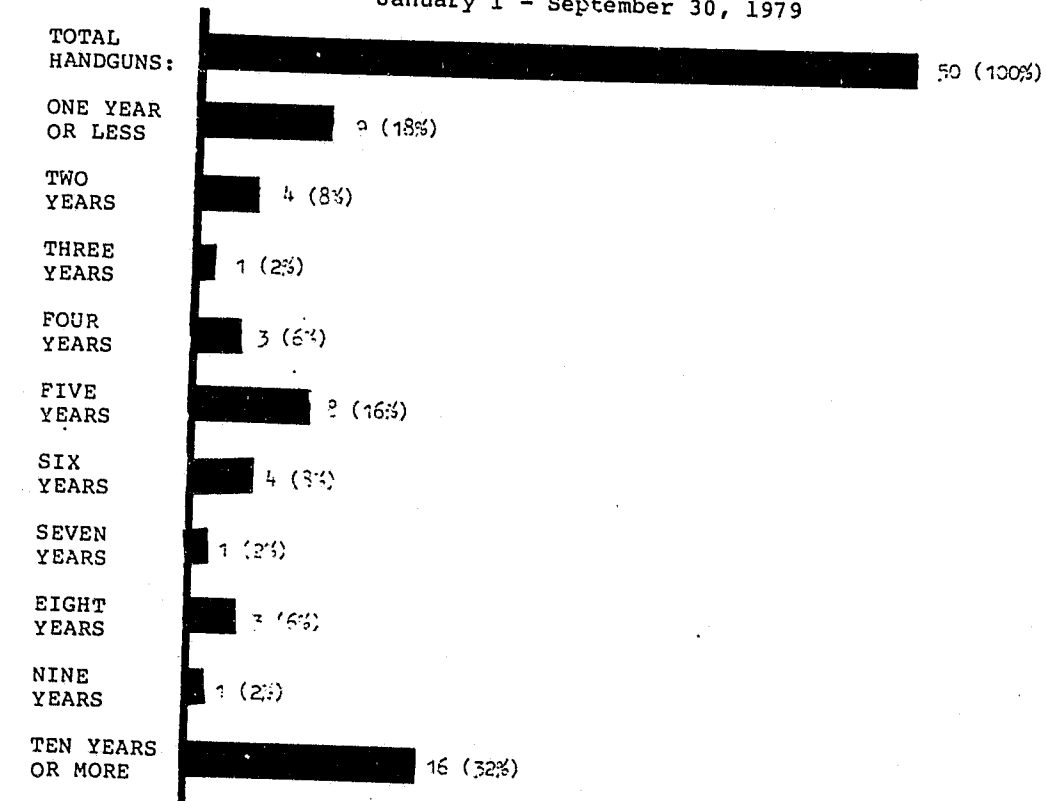
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 32. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER DENVER, COLORADO<sup>2</sup>

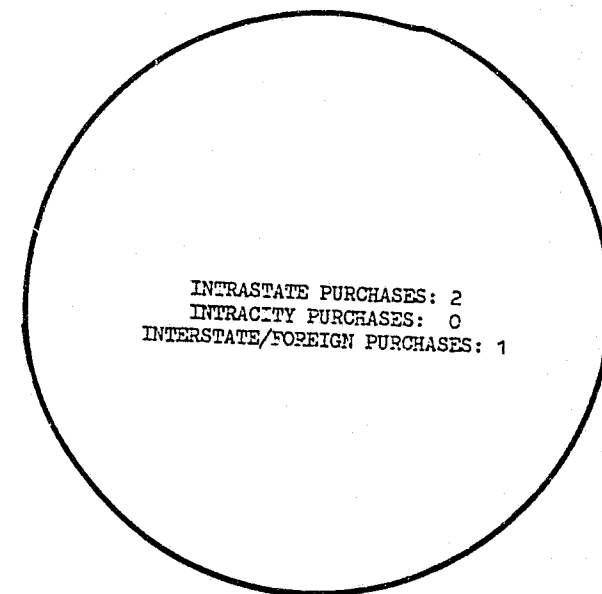
January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes handguns traced by the Denver ATF office, the municipal police departments of Denver, Arvada, Aurora, Boulder, Brighton and Colorado Springs, and the Department of Public Safety at Lakewood.

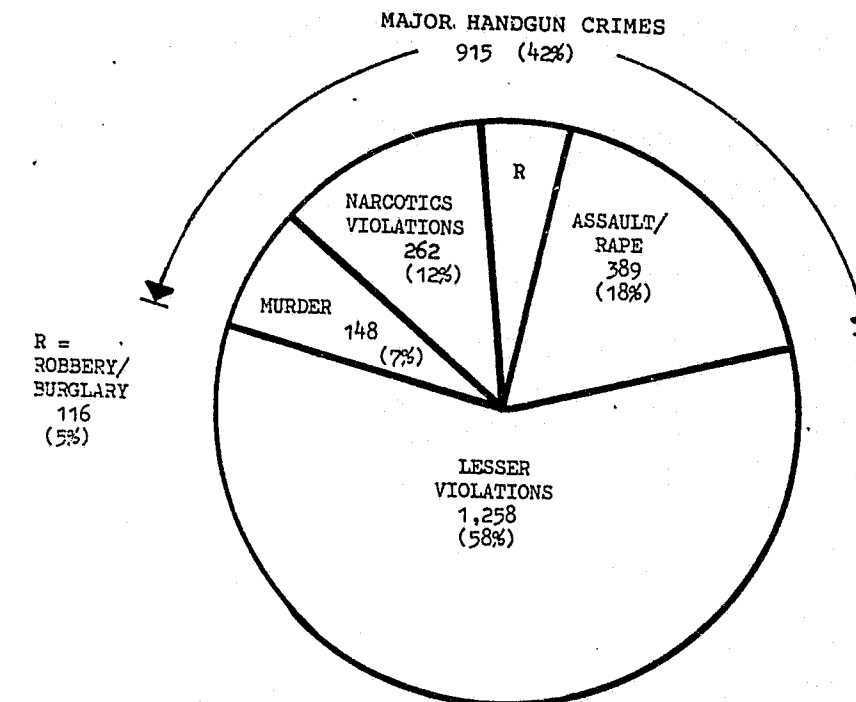
Figure 33. SOURCES OF TRACED HANDGUNS RECOVERED BY  
DENVER, COLORADO, POLICE DEPARTMENT\*  
 January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 3 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Denver Police Department was first sold at retail. Trace volume was too low for statistically significant percentage display.

Figure 34. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER DETROIT, MICHIGAN\*  
 January 1 - September 30, 1979



TOTAL TRACES: 2,173 (100%)

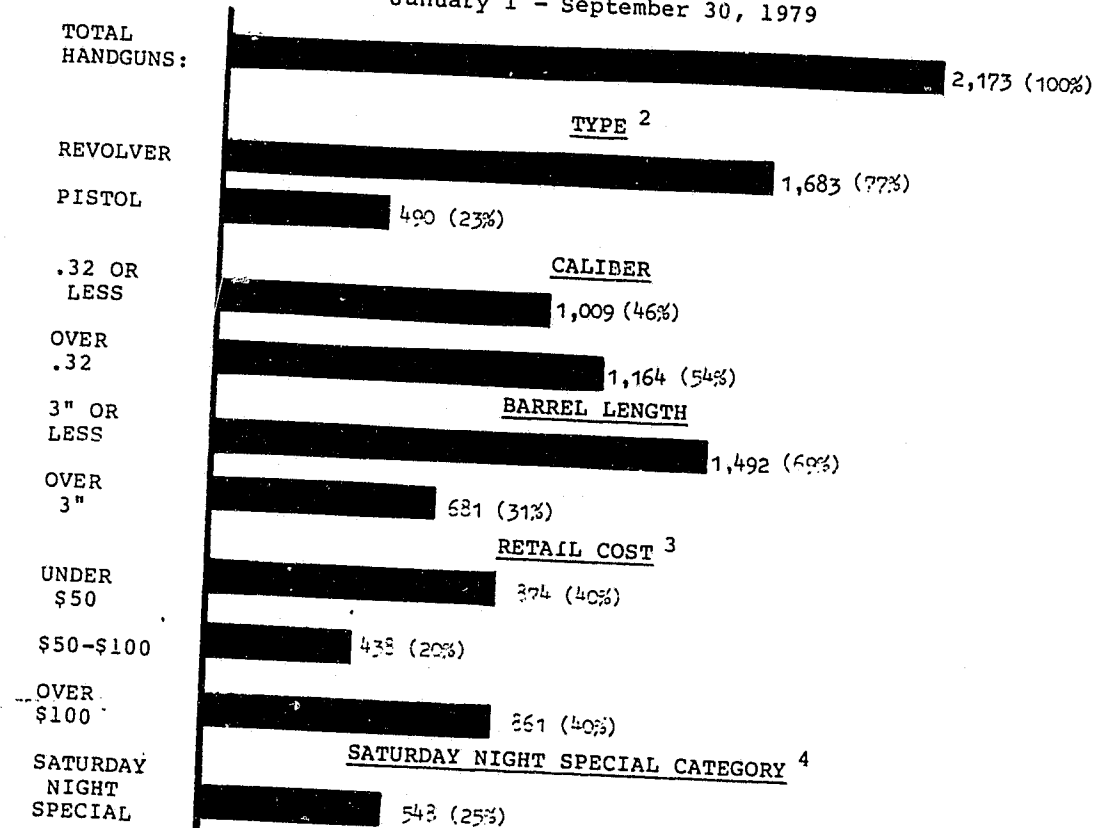
\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Detroit Police Department or the Detroit ATF district office.



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Figure 35. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER DETROIT, MICHIGAN<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes only handguns traced by the Detroit Police Department and the Detroit ATF district office.

<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

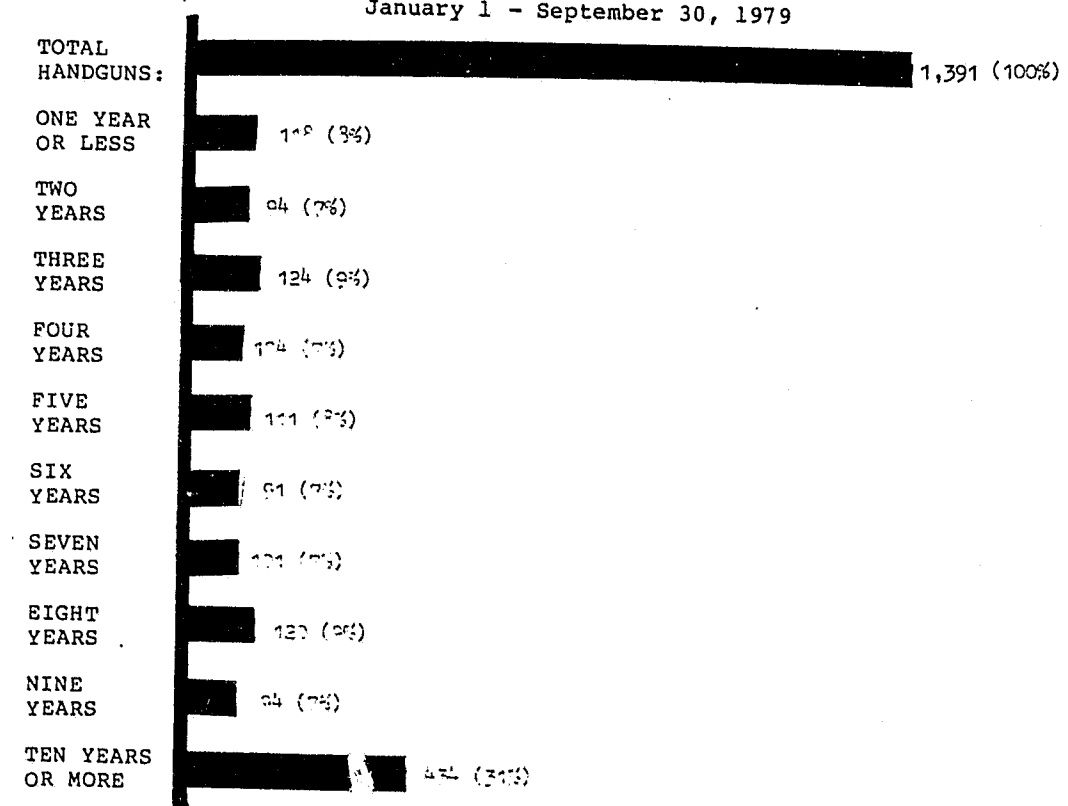
<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

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Figure 36. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER DETROIT, MICHIGAN<sup>2</sup>

January 1 - September 30, 1979



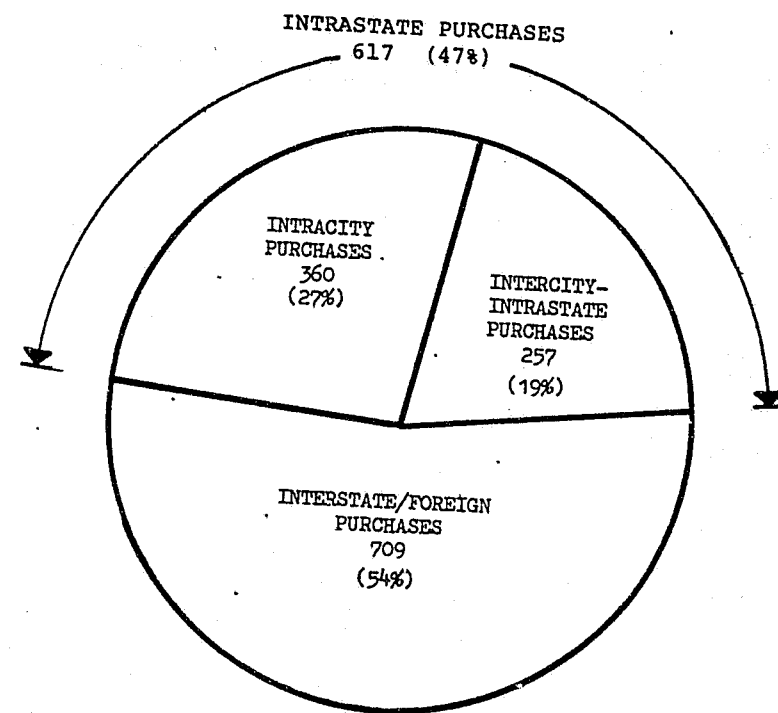
<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes only handguns traced by the Detroit Police Department and the Detroit ATF district office.

Figure 37. SOURCES OF TRACED HANDGUNS RECOVERED BY

DETROIT, MICHIGAN, POLICE DEPARTMENT\*

January 1 - September 30, 1979



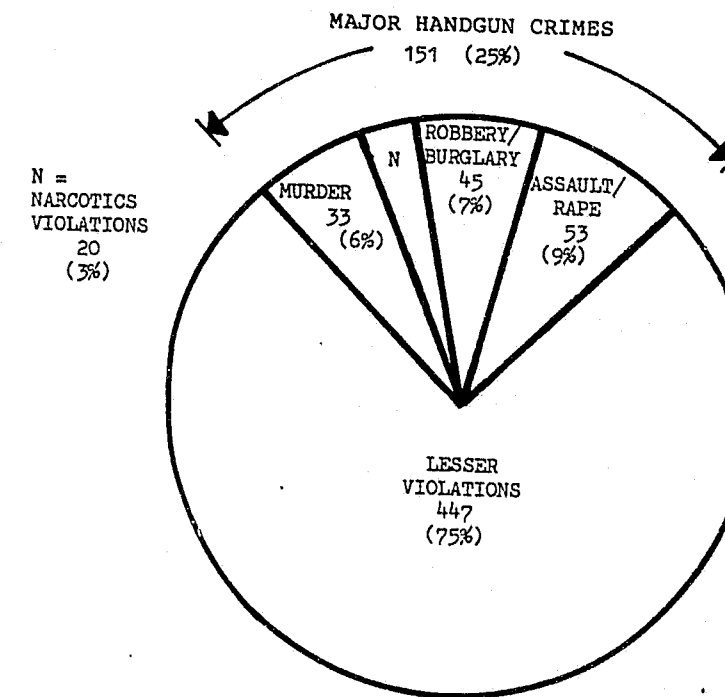
TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 1,326 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Detroit Police Department was first sold at retail.

Figure 38. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER KANSAS CITY, MISSOURI\*

January 1 - September 30, 1979

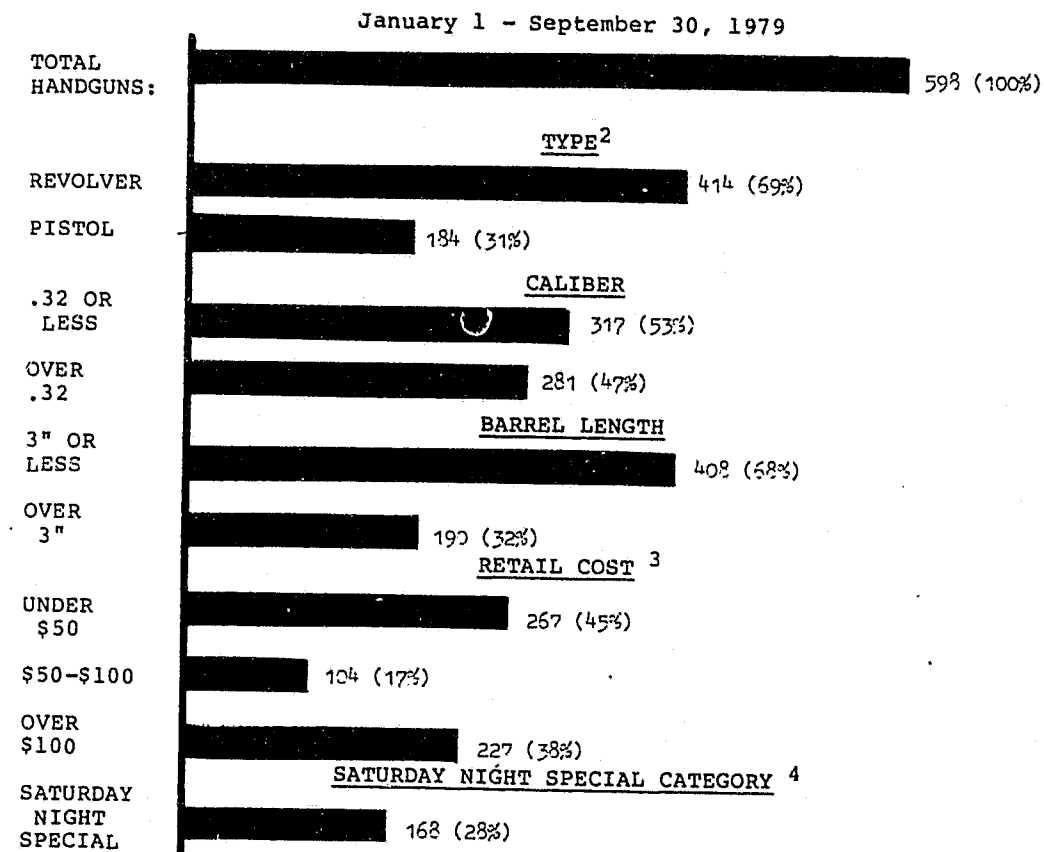


TOTAL TRACES: 598 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Kansas City, Missouri, ATF office; the Kansas City, Kansas, Police Department; the Iowa sheriff's office of Black Hawk, Linn or Polk county; the Iowa municipal police department of Des Moines, Cedar Rapids, Waterloo or Mason City; or the Omaha, Nebraska, Police Department.

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Figure 39. TRACED HANDGUN TYPES AND CHARACTERISTICS,  
GREATER KANSAS CITY, MISSOURI<sup>1</sup>



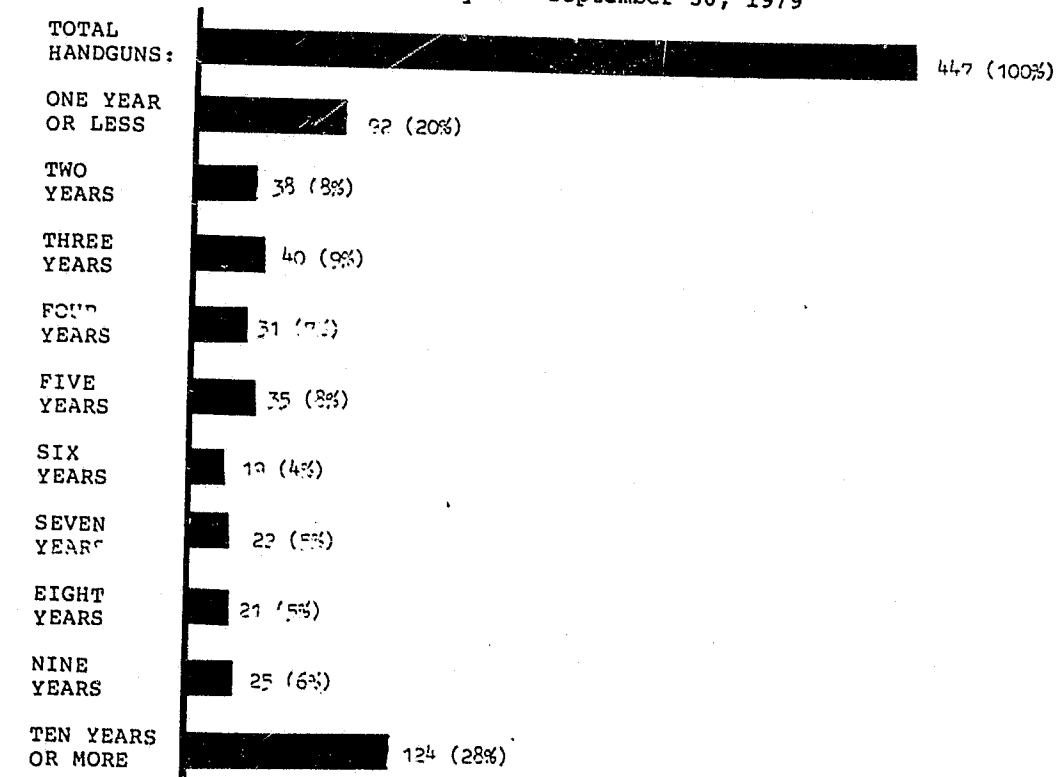
- <sup>1</sup> Data includes handguns traced by the Kansas City, Missouri, ATF office; the Kansas City, Kansas, Police Department; the Iowa sheriffs' offices of Black Hawk, Linn and Polk counties; the Iowa municipal police departments of Des Moines, Cedar Rapids, Waterloo and Mason City; and the Omaha, Nebraska, Police Department.
- <sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.
- <sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.
- <sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

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Figure 40. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNS  
TRACEABLE TO FIRST RETAIL SALE,

GREATER KANSAS CITY, MISSOURI<sup>2</sup>

January 1 - September 30, 1979



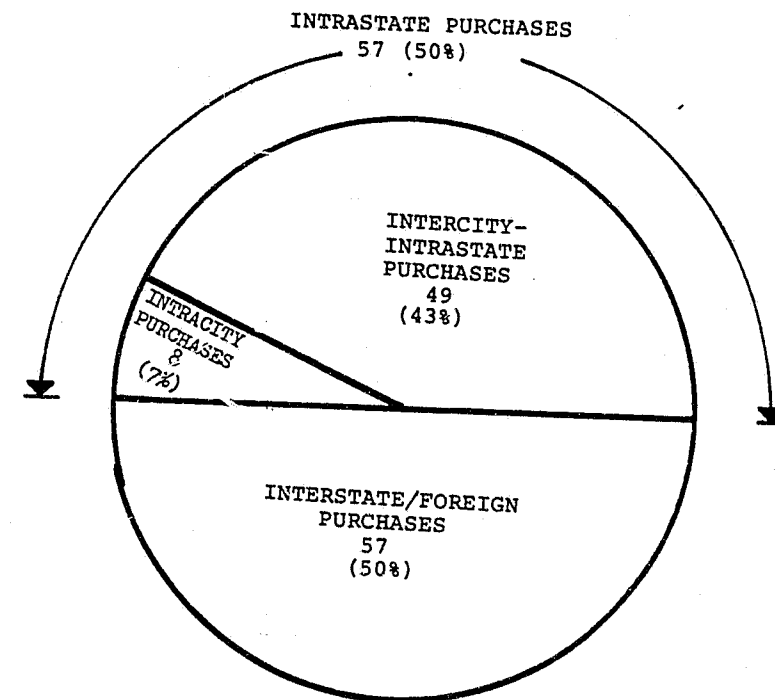
- <sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.
- <sup>2</sup> Data includes handguns traced by the Kansas City, Missouri, ATF office; the Kansas City, Kansas, Police Department; the Iowa sheriffs' offices of Black Hawk, Linn and Polk counties; the Iowa municipal police departments of Des Moines, Cedar Rapids, Waterloo and Mason City; and the Omaha, Nebraska, Police Department.

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Figure 41. SOURCES OF TRACED HANDGUNS RECOVERED BY

KANSAS CITY, KANSAS, POLICE DEPARTMENT\*

January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 114 (100%)

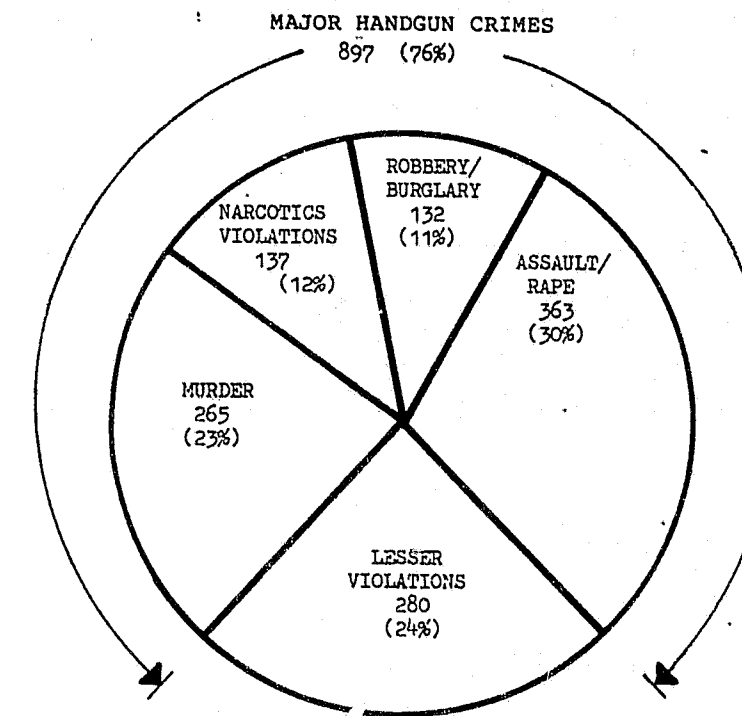
\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Kansas City, Kansas, Police Department was first sold at retail. Data for handguns recovered within the jurisdiction of the Kansas City, Missouri, Police Department is not separately available, as those traces were not differentiated from traces initiated by the Kansas City, Missouri, ATF district office.

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Figure 42. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER MIAMI, FLORIDA\*

January 1 - September 30, 1979



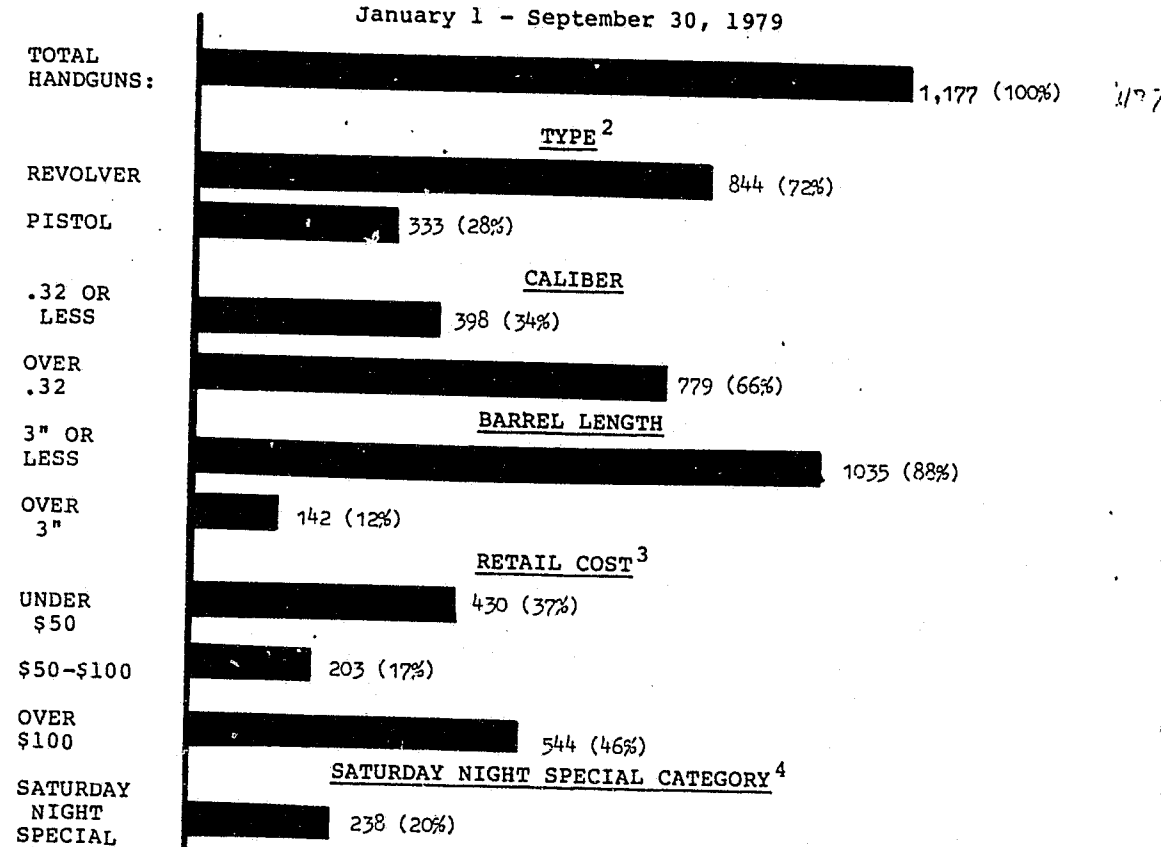
TOTAL TRACES: 1,177 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Miami ATF office, the municipal police department of Miami, Miami Beach, North Miami Beach, Coral Gables or Hialeah, or the Dade County Public Safety Department.

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Figure 43. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER MIAMI, FLORIDA<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Miami ATF district office, the municipal police departments of Miami, Miami Beach, North Miami Beach, Coral Gables and Hialeah, and the Dade County Public Safety Department.

<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

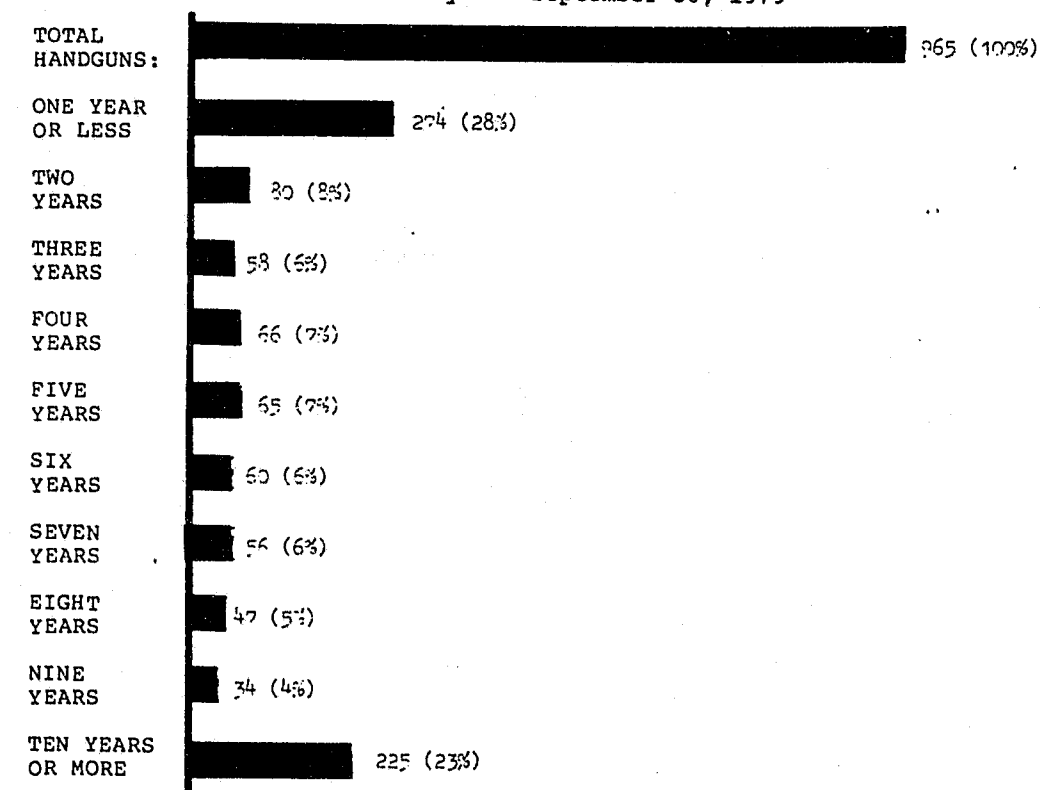
<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

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Figure 44. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER MIAMI, FLORIDA<sup>2</sup>

January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes handguns traced by the Miami ATF district office; the municipal police departments of Miami, Miami Beach, North Miami Beach, Coral Gables and Hialeah; and the Dade County Public Safety Department.

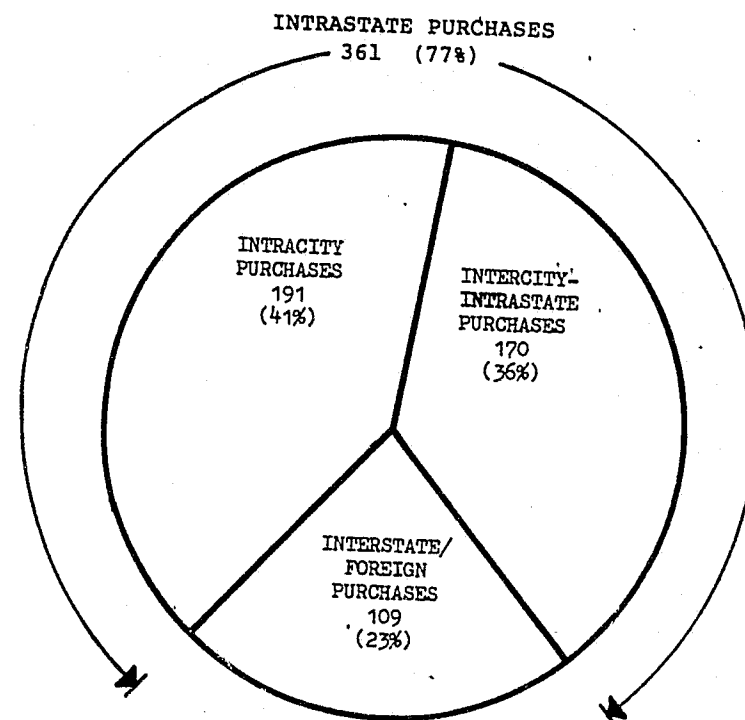


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Figure 45. SOURCES OF TRACED HANDGUNS RECOVERED BY

MIAMI, FLORIDA, POLICE DEPARTMENT\*

January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 470 (100%)

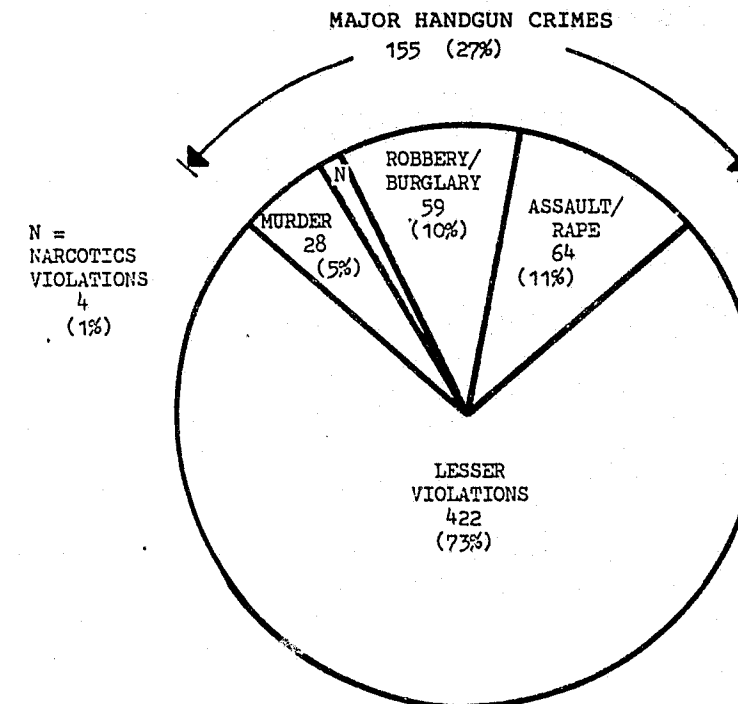
\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Miami, Florida, Police Department was first sold at retail.

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Figure 46. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER NEW ORLEANS, LOUISIANA\*

January 1 - September 30, 1979

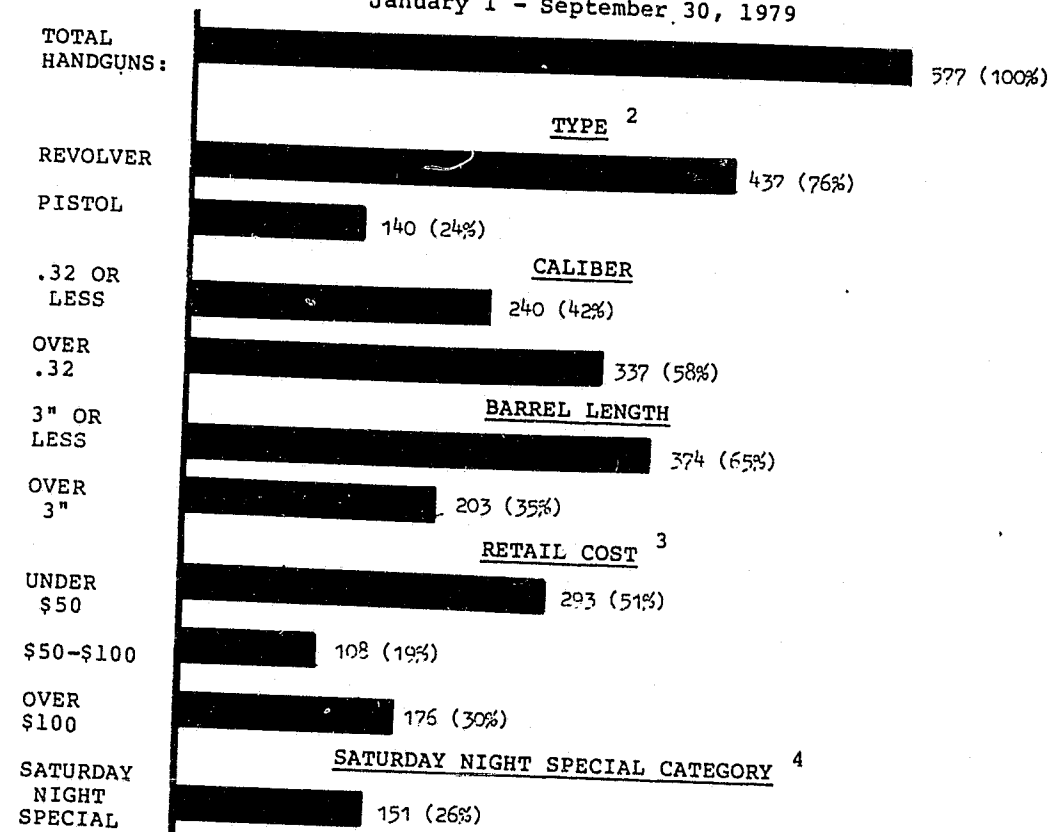


TOTAL TRACES: 577 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the New Orleans Police Department or the New Orleans ATF district office.

Figure 47. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER NEW ORLEANS, LOUISIANA<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes only handguns traced by the New Orleans Police Department and the New Orleans ATF district office.

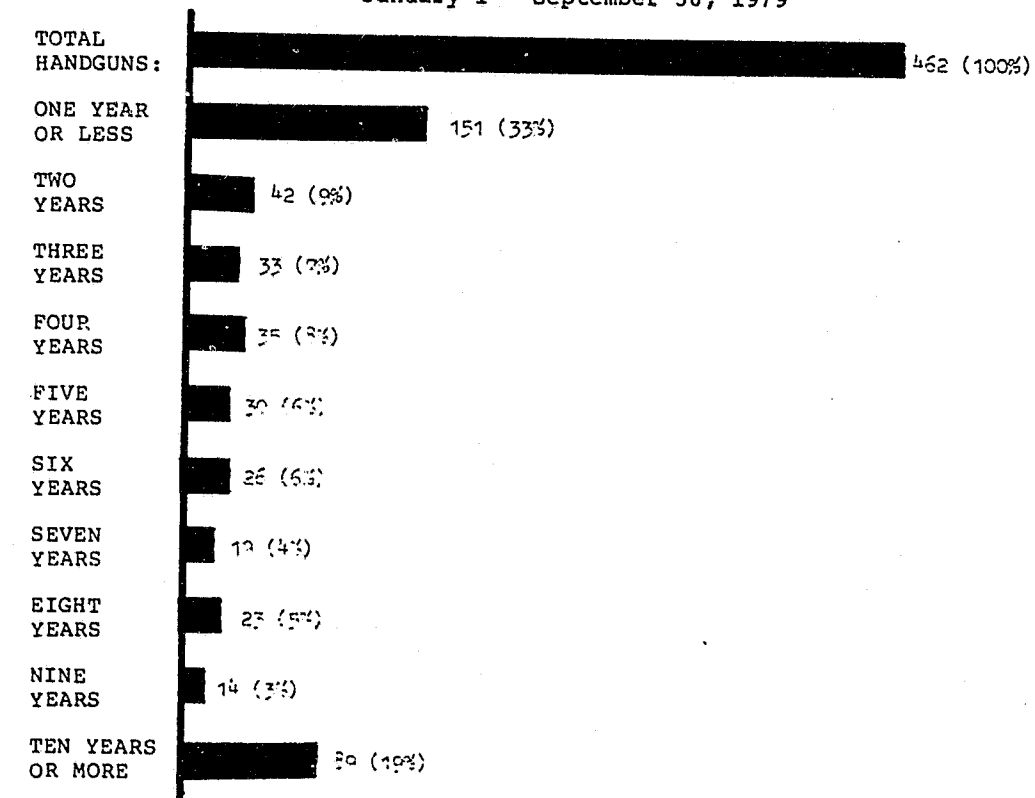
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 48. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER NEW ORLEANS, LOUISIANA<sup>2</sup>

January 1 - September 30, 1979

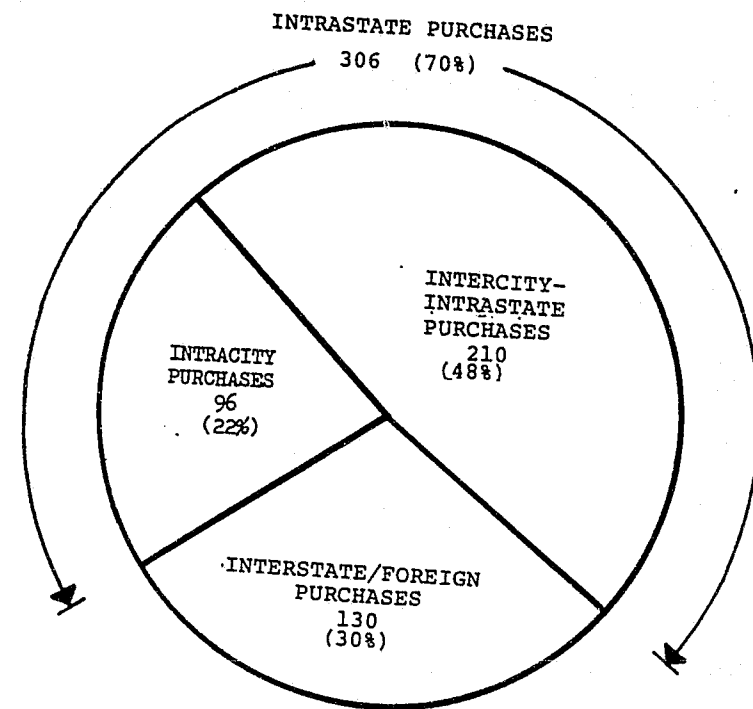


<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes only handguns traced by the New Orleans Police Department and the New Orleans ATF district office.

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Figure 49. SOURCES OF TRACED HANDGUNS RECOVERED BY  
NEW ORLEANS, LOUISIANA, POLICE DEPARTMENT\*  
January 1 - September 30, 1979

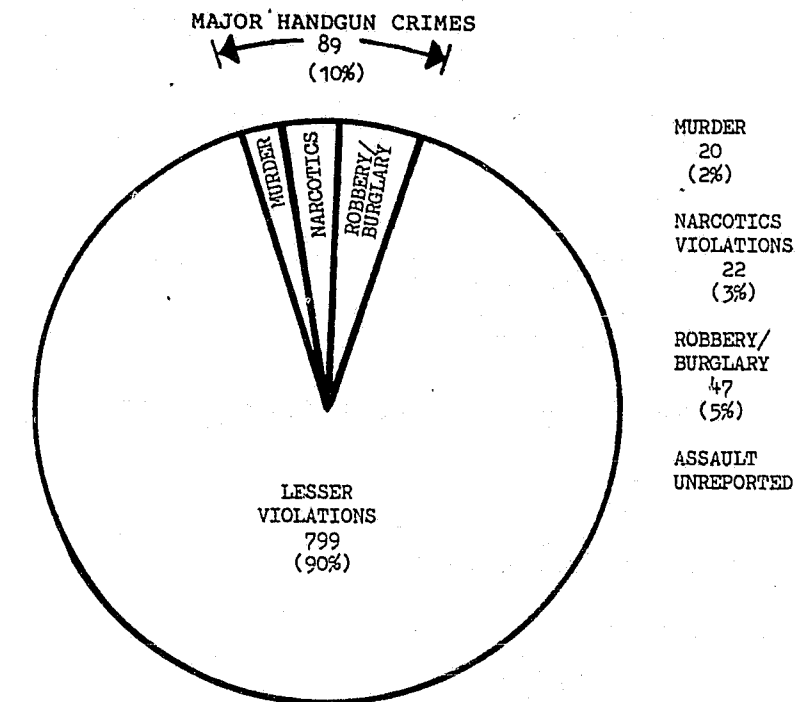


TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 436 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the New Orleans, Louisiana, Police Department was first sold at retail.

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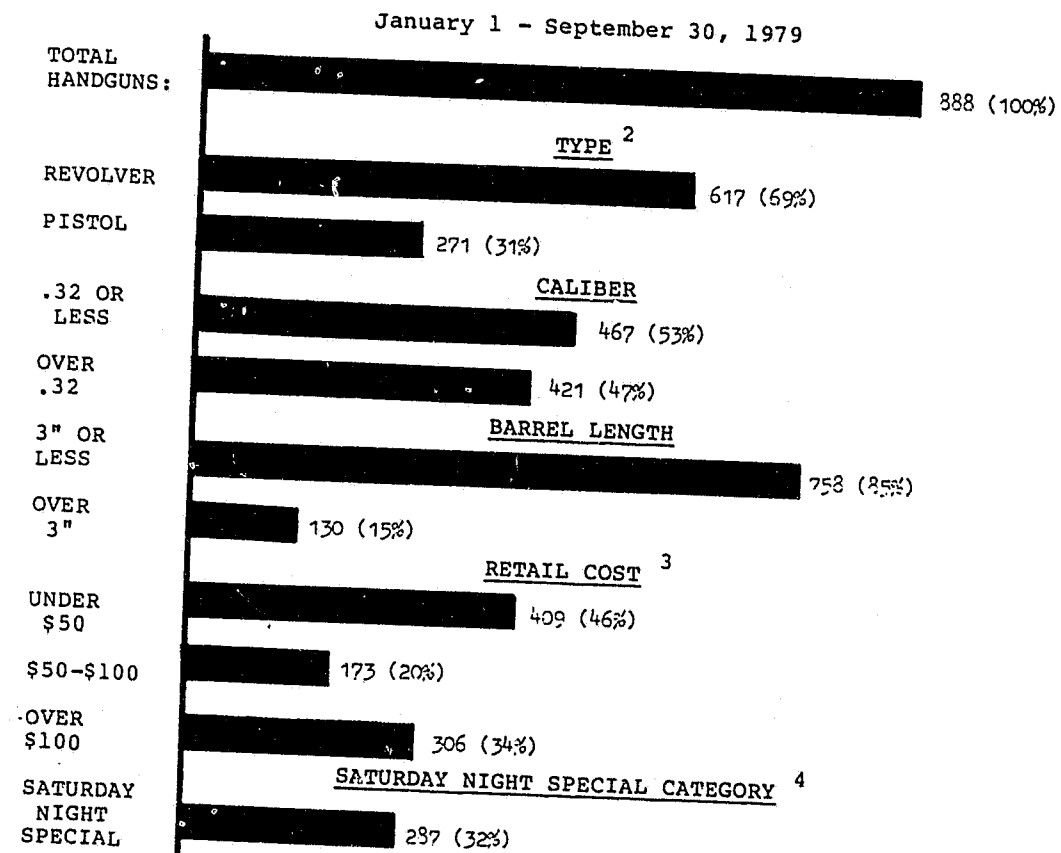
Figure 50. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER MANHATTAN, NEW YORK CITY, NEW YORK\*  
January 1 - September 30, 1979



TOTAL TRACES: 888 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the New York County District Attorney's Office on behalf of the "Project Manhattan" law enforcement agency consortium.

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Figure 51. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER MANHATTAN, NEW YORK CITY, NEW YORK<sup>1</sup>

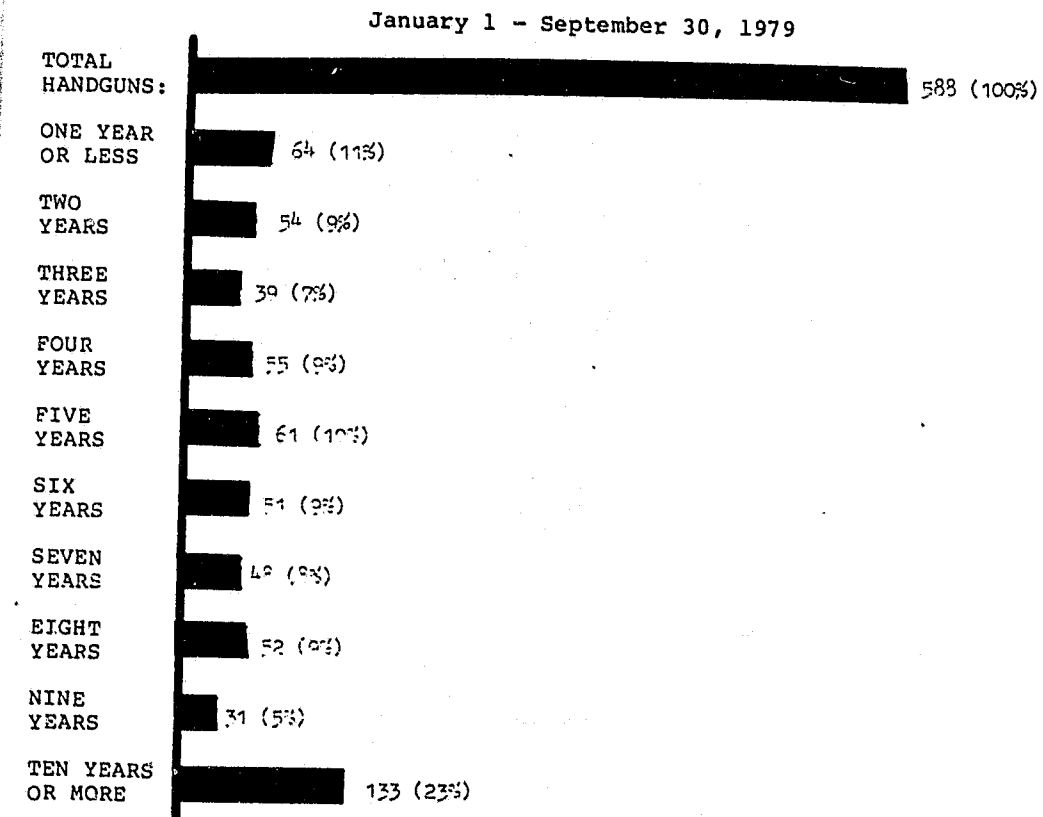
<sup>1</sup> Data includes only handguns traced by the District Attorney's Office, New York County, on behalf of the "Project Manhattan" law enforcement agency consortium.

<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

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Figure 52. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER MANHATTAN, NEW YORK CITY, NEW YORK<sup>2</sup>

<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes only handguns traced by the District Attorney's Office, New York County, on behalf of the "Project Manhattan" law enforcement agency consortium.

**CONTINUED**

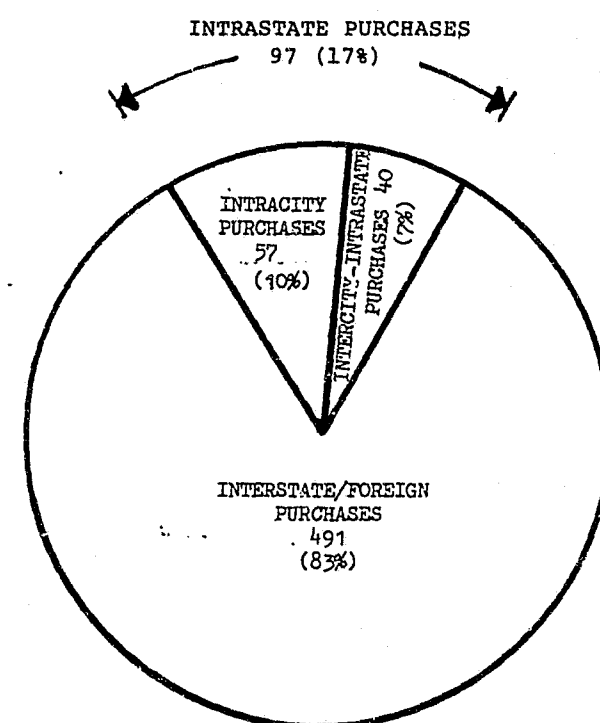
**1 OF 8**

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Figure 53. SOURCES OF TRACED HANDGUNS RECOVERED BY

NEW YORK COUNTY, NEW YORK, DISTRICT ATTORNEY\*

January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 588 (100%)

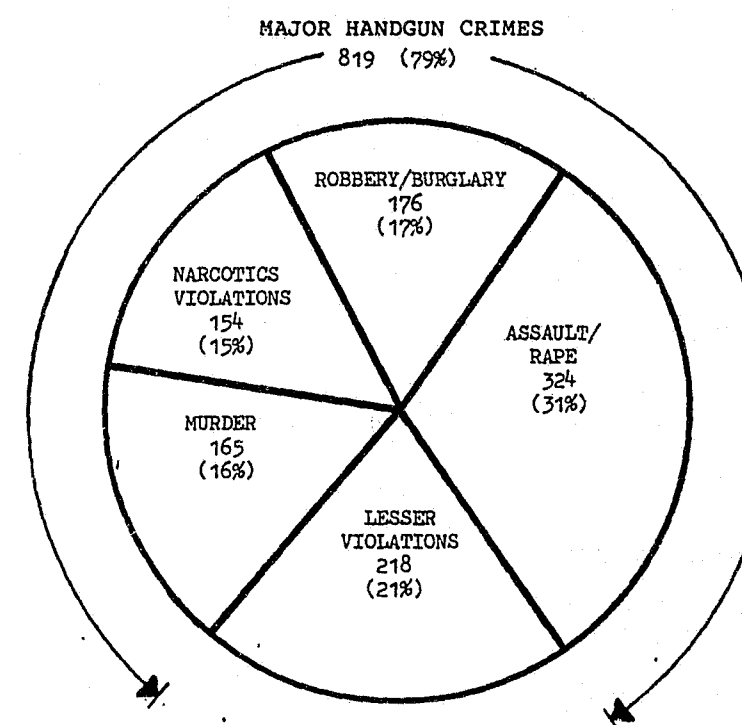
\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the New York County District Attorney (on behalf of the Project Manhattan law enforcement agency consortium) was first sold at retail.

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Figure 54. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER PHILADELPHIA, PENNSYLVANIA\*

January 1 - September 30, 1979



TOTAL TRACES: 1,037 (100%)

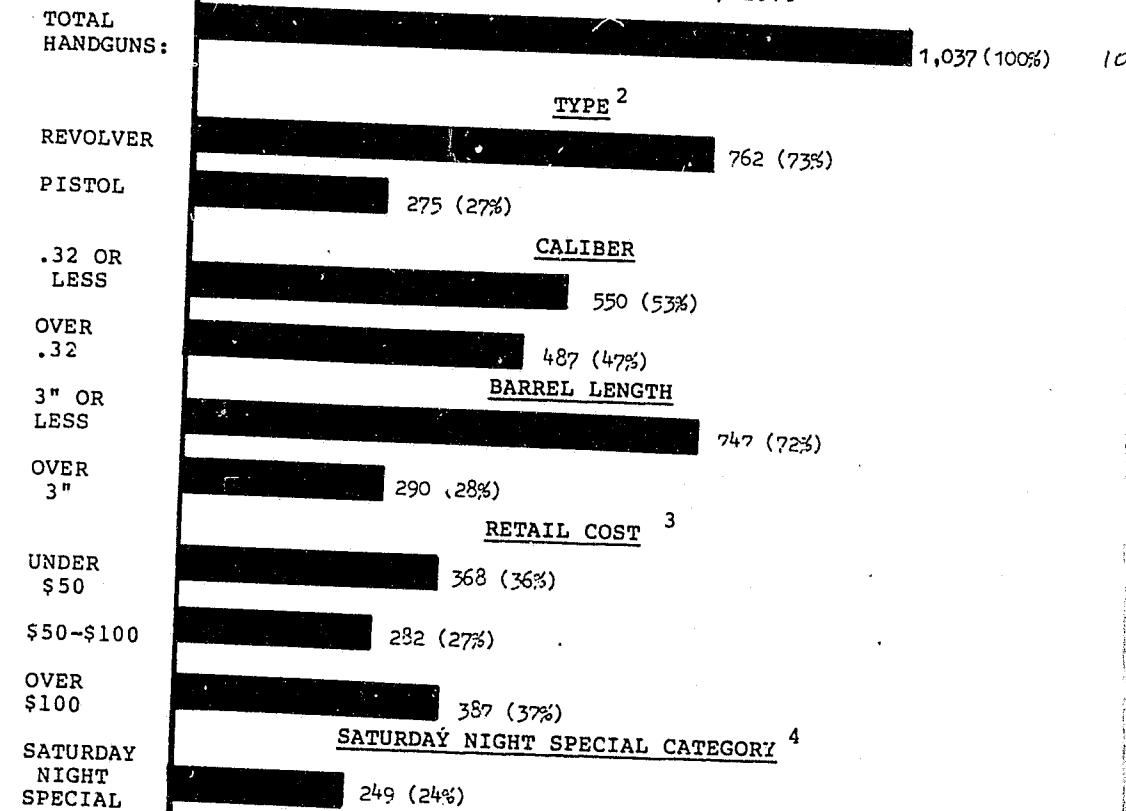
\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Philadelphia Police Department or the County Detective Bureau of Allegheny, Bucks County, Chester, Delaware, Erie, Lehigh, Luzerne, Montgomery or York county.



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Figure 55. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER PHILADELPHIA, PENNSYLVANIA<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Philadelphia Police Department and the County Detective Bureaus of Allegheny, Bucks County, Chester, Delaware, Erie, Lehigh, Luzerne, Montgomery and York counties.

<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

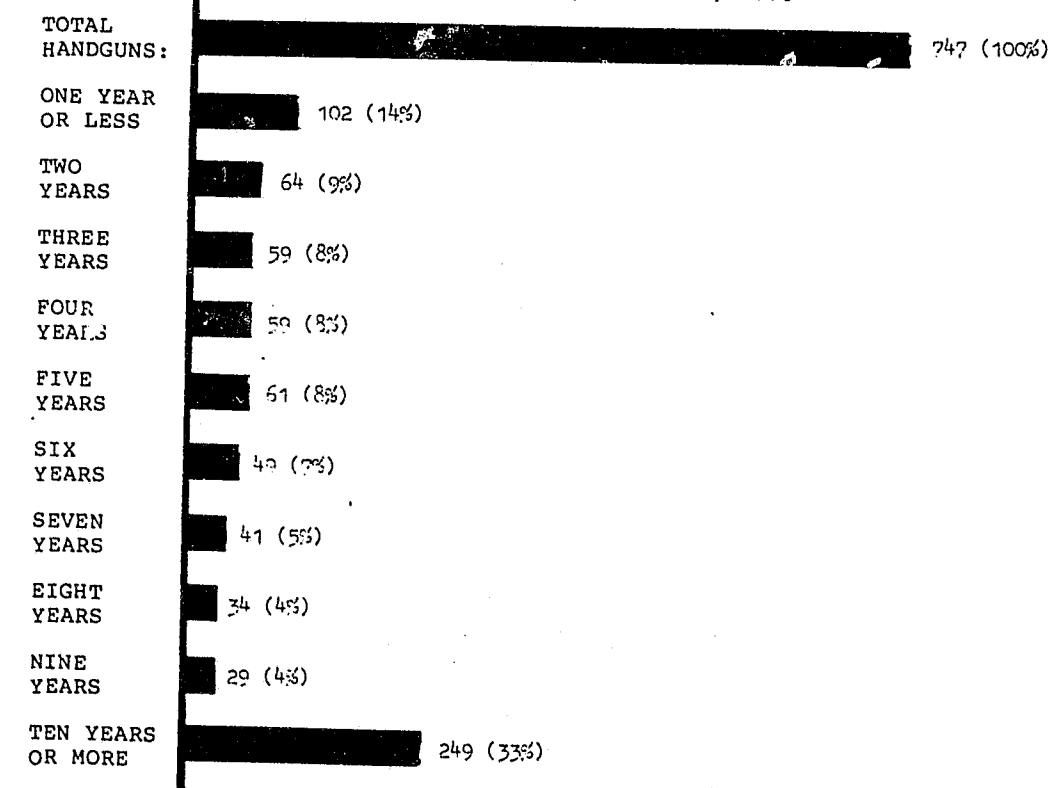
<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

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Figure 56. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER PHILADELPHIA, PENNSYLVANIA<sup>2</sup>

January 1 - September 30, 1979

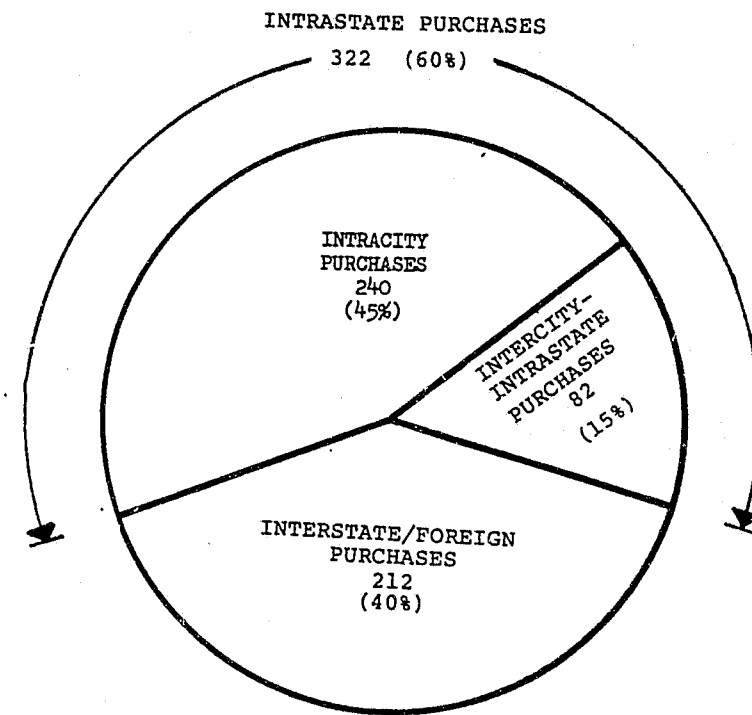


<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes only handguns traced by the Philadelphia Police Department and the County Detective Bureaus of Allegheny, Bucks County, Chester, Delaware, Erie, Lehigh, Luzerne, Montgomery and York counties.

Figure 57. SOURCES OF TRACED HANDGUNS RECOVERED BY  
PHILADELPHIA, PENNSYLVANIA, POLICE DEPARTMENT\*

January 1 - September 30, 1979

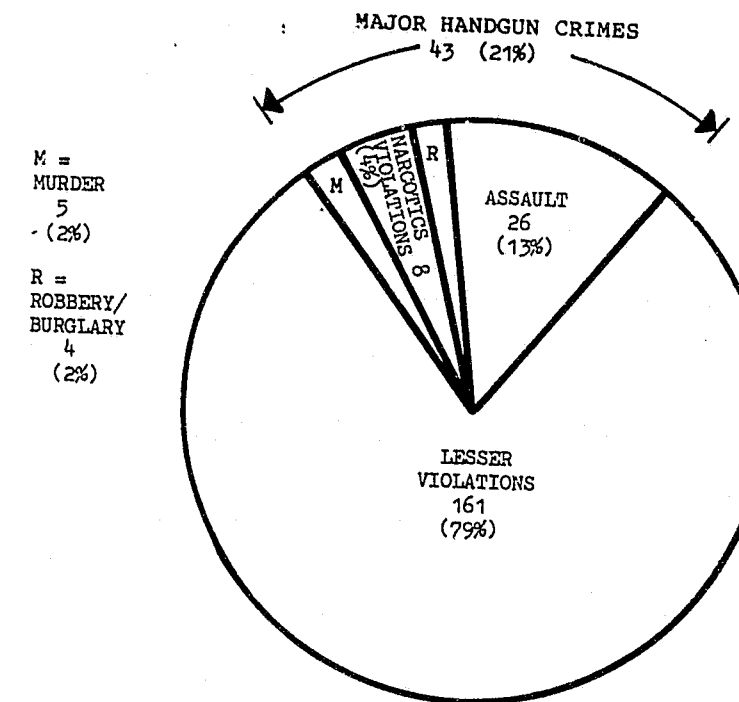


TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 534 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Philadelphia, Pennsylvania, Police Department was first sold at retail.

Figure 58. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER ROCHESTER, NEW YORK\*

January 1 - September 30, 1979

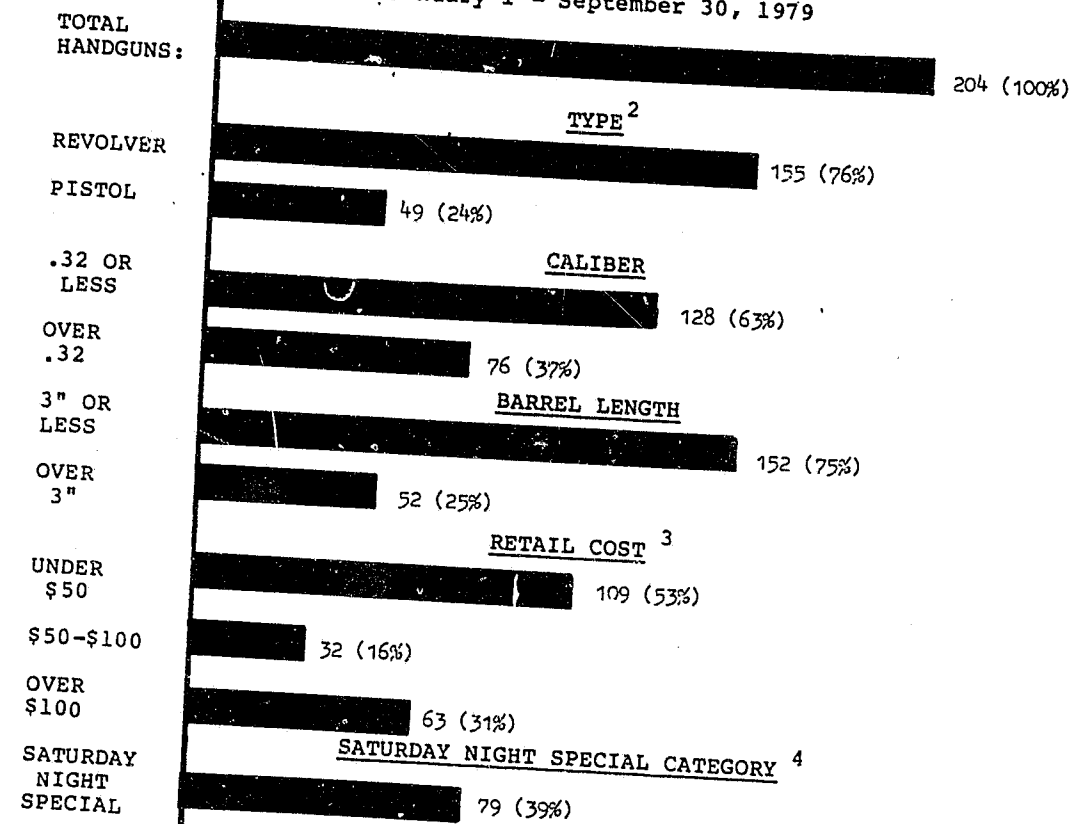


TOTAL TRACES: 204 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Rochester Police Department.

Figure 59. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER ROCHESTER, NEW YORK<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup>Data includes only handguns traced by the Rochester Police Department.

<sup>2</sup>For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup>Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

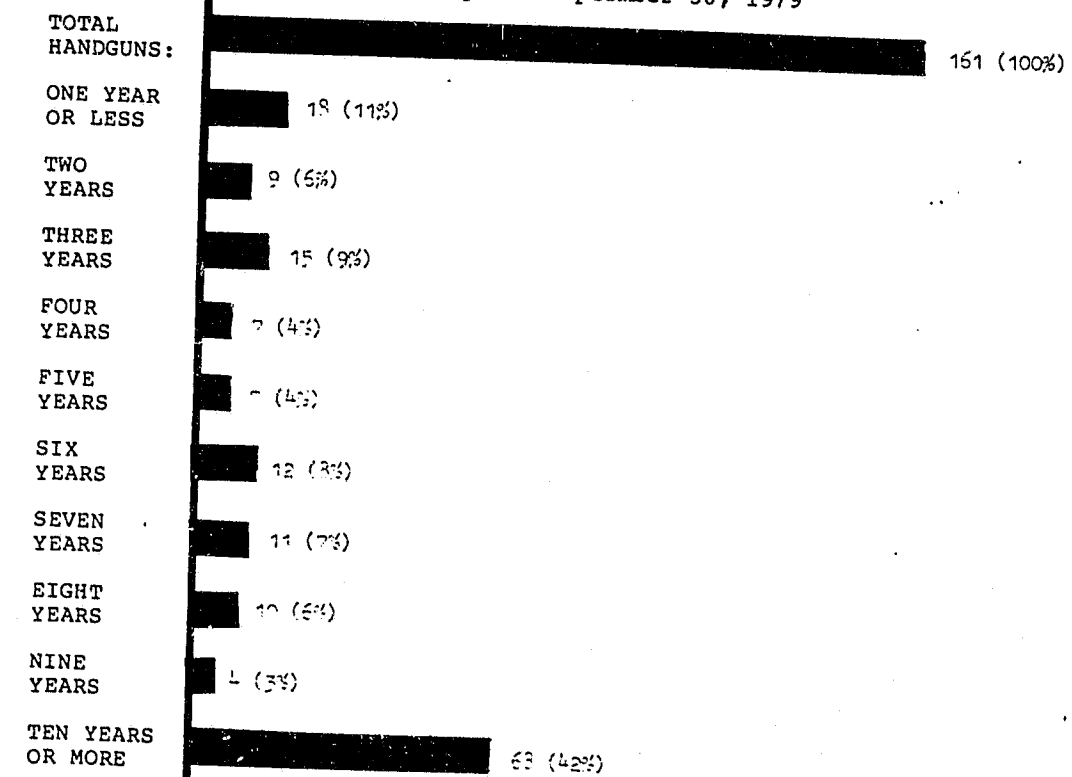
<sup>4</sup>For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 60. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNS

TRACEABLE TO FIRST RETAIL SALE,

GREATER ROCHESTER, NEW YORK<sup>2</sup>

January 1 - September 30, 1979



<sup>1</sup>"Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

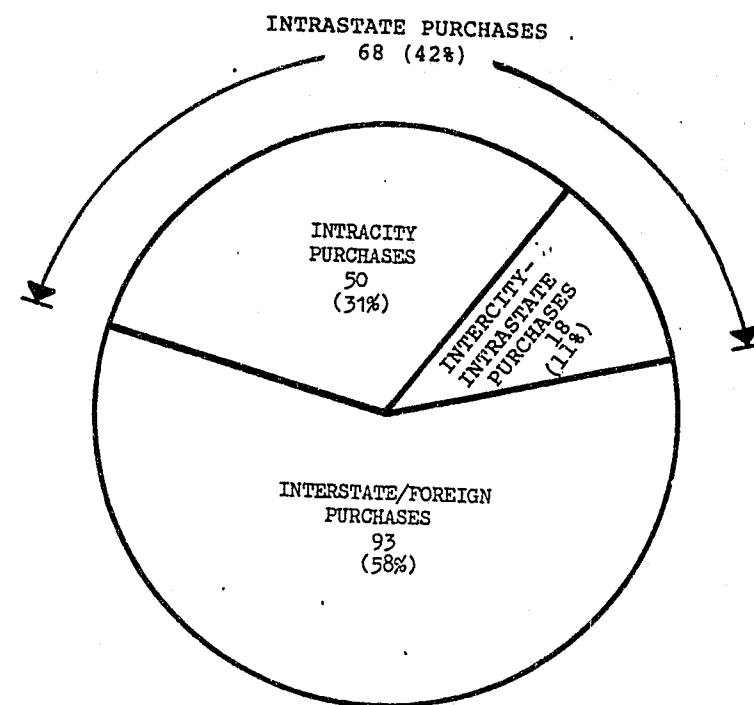
<sup>2</sup>Data includes only handguns traced by the Rochester Police Department.

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Figure 61. SOURCES OF TRACED HANDGUNS RECOVERED BY

ROCHESTER, NEW YORK, POLICE DEPARTMENT\*

January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 161 (100%)

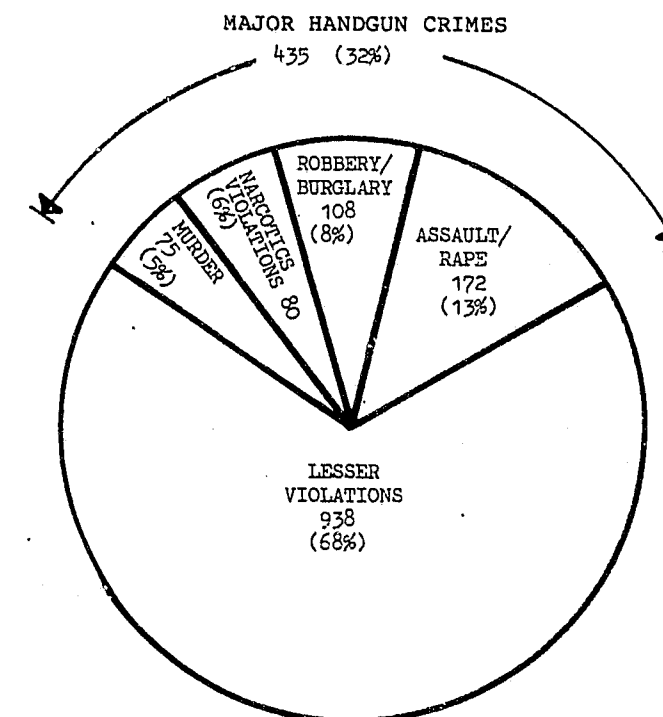
\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Rochester, New York, Police Department was first sold at retail.

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Figure 62. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER SAINT LOUIS, MISSOURI\*

January 1 - September 30, 1979

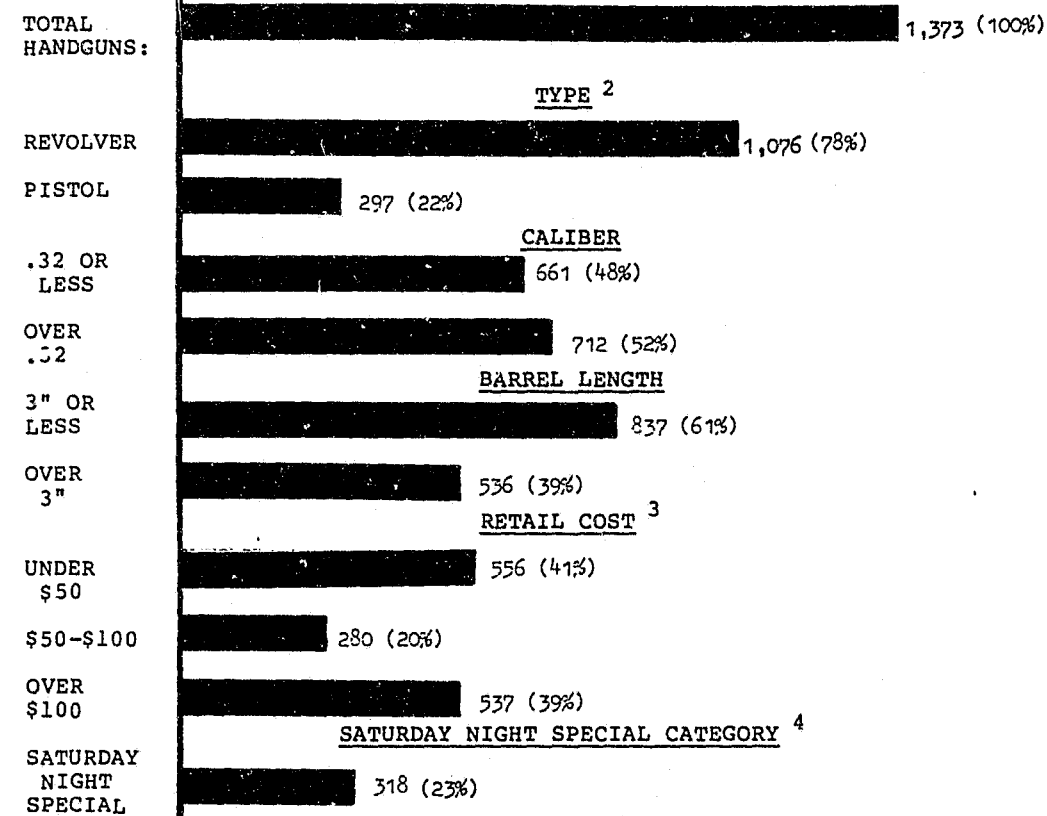


TOTAL TRACES: 1,373 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Saint Louis Police Department, the Saint Louis ATF district office, the Saint Louis County Police Department, or the East St. Louis, Illinois, Police Department.

Figure 63. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER SAINT LOUIS, MISSOURI<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Saint Louis Police Department, the Saint Louis ATF district office, the Saint Louis County Police Department, and the East Saint Louis, Illinois, Police Department.

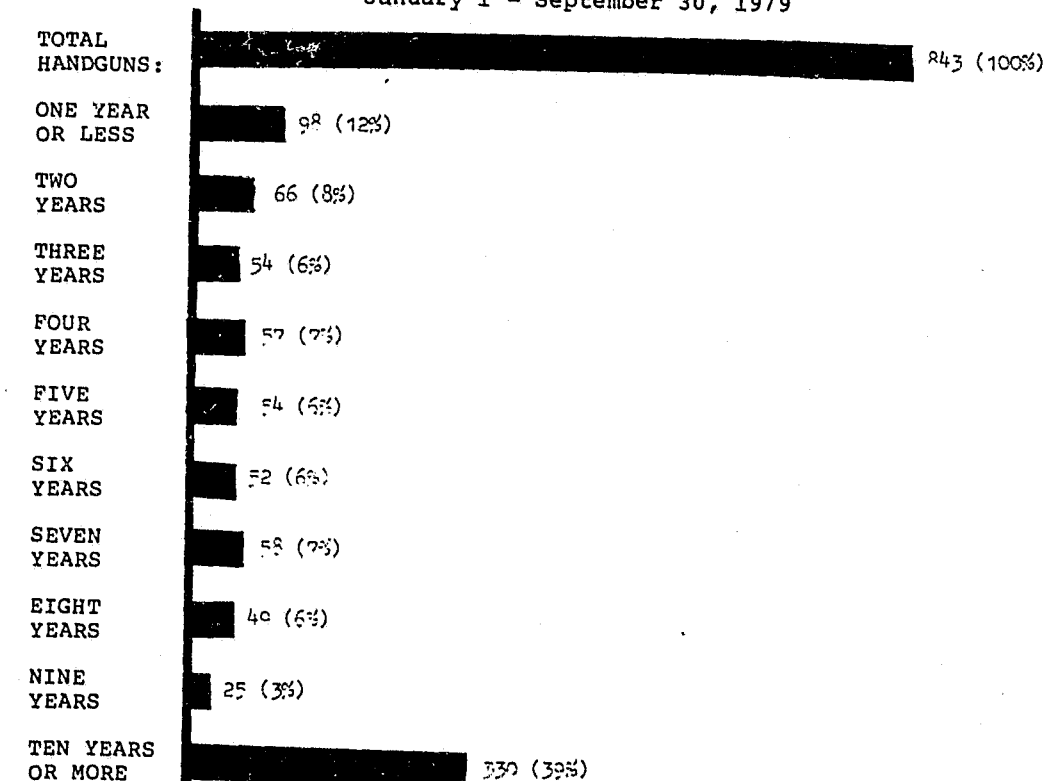
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 64. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER SAINT LOUIS, MISSOURI<sup>2</sup>

January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

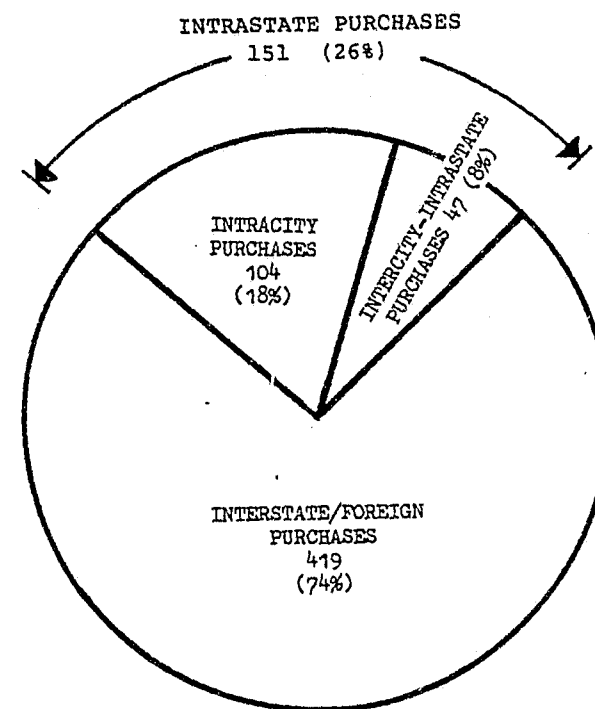
<sup>2</sup> Data includes handguns traced by the Saint Louis Police Department, the Saint Louis ATF district office, the Saint Louis County Police Department, and the East Saint Louis, Illinois, Police Department.

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Figure 65. SOURCES OF TRACED HANDGUNS RECOVERED BY

SAINT LOUIS, MISSOURI, POLICE DEPARTMENT\*

January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 570 (100%)

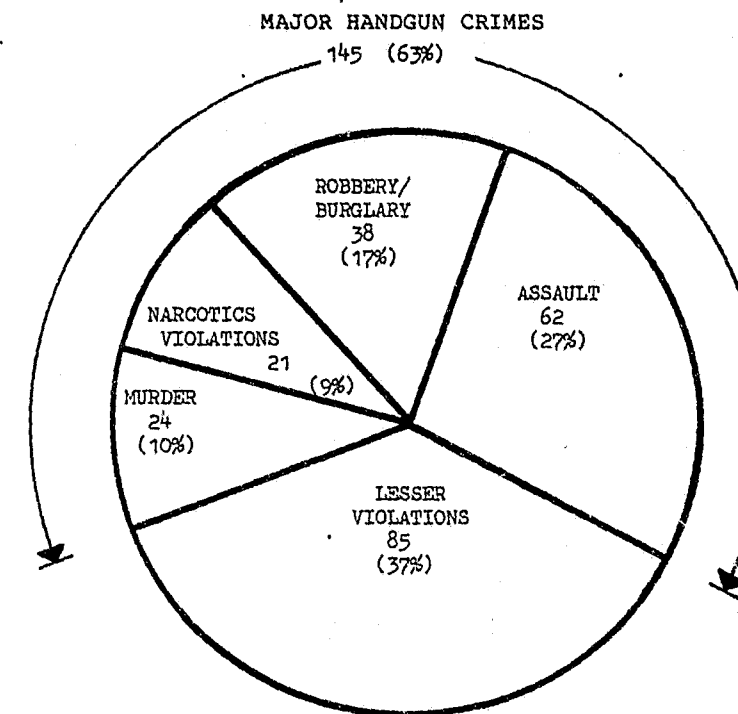
\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Saint Louis, Missouri, Police Department was first sold at retail.

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Figure 66. CRIMES ASSOCIATED WITH TRACED HANDGUNS,

GREATER SAN FRANCISCO, CALIFORNIA\*

January 1 - September 30, 1979



TOTAL TRACES: 230 (100%)

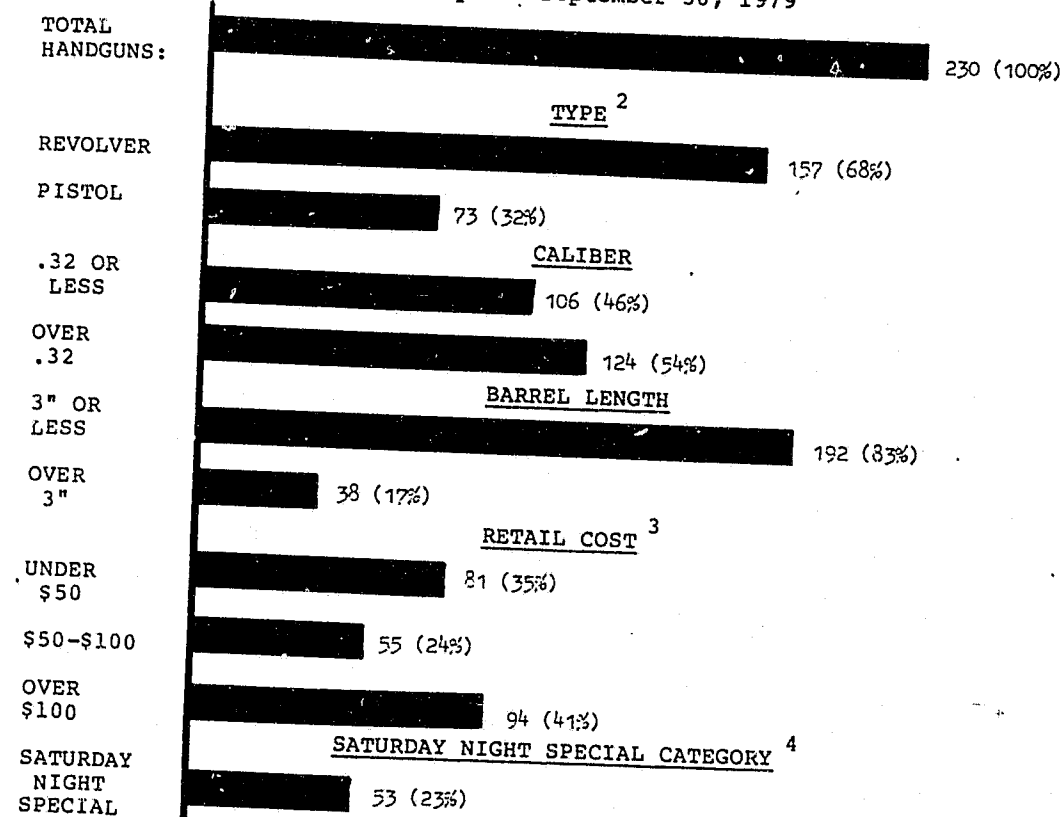
\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the San Francisco Police Department.



Figure 67. TRACED HANDGUN TYPES AND CHARACTERISTICS,

GREATER SAN FRANCISCO, CALIFORNIA<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes only handguns traced by the San Francisco Police Department.

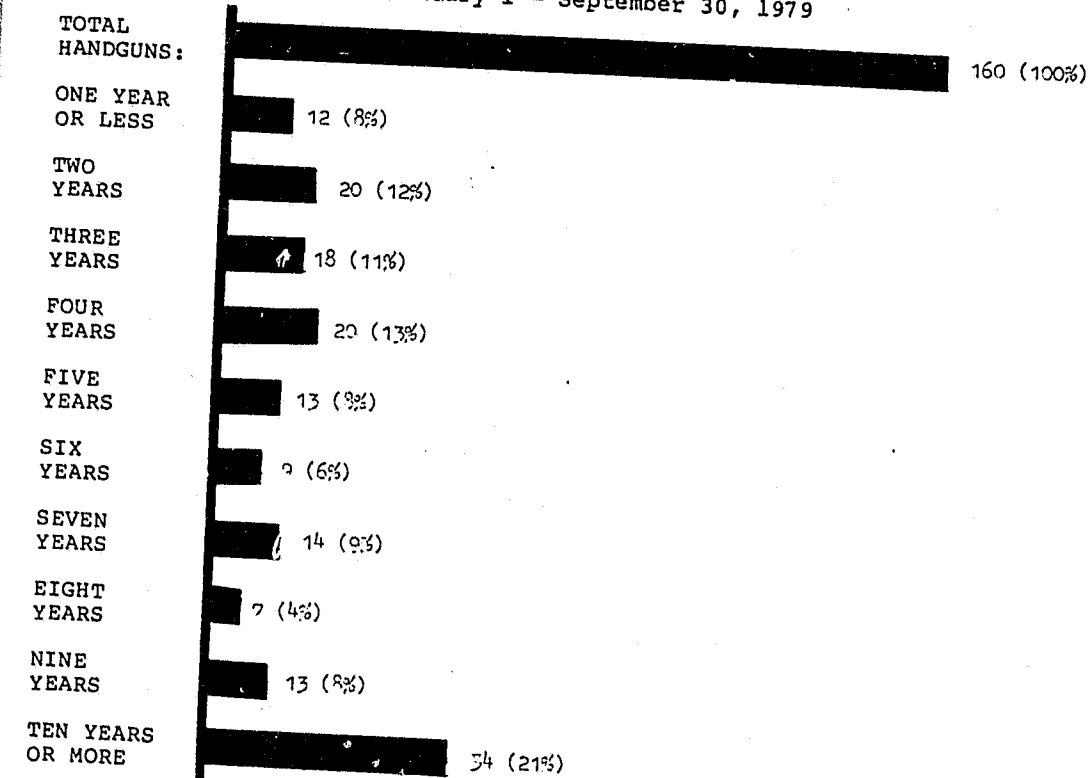
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 68. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNS  
TRACEABLE TO FIRST RETAIL SALE,GREATER SAN FRANCISCO, CALIFORNIA<sup>2</sup>

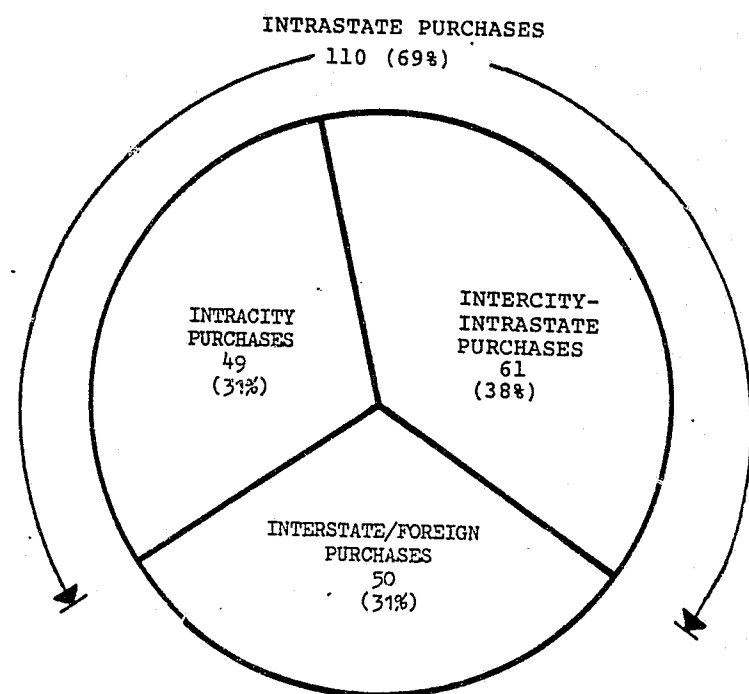
January 1 - September 30, 1979



<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes only handguns traced by the San Francisco Police Department.

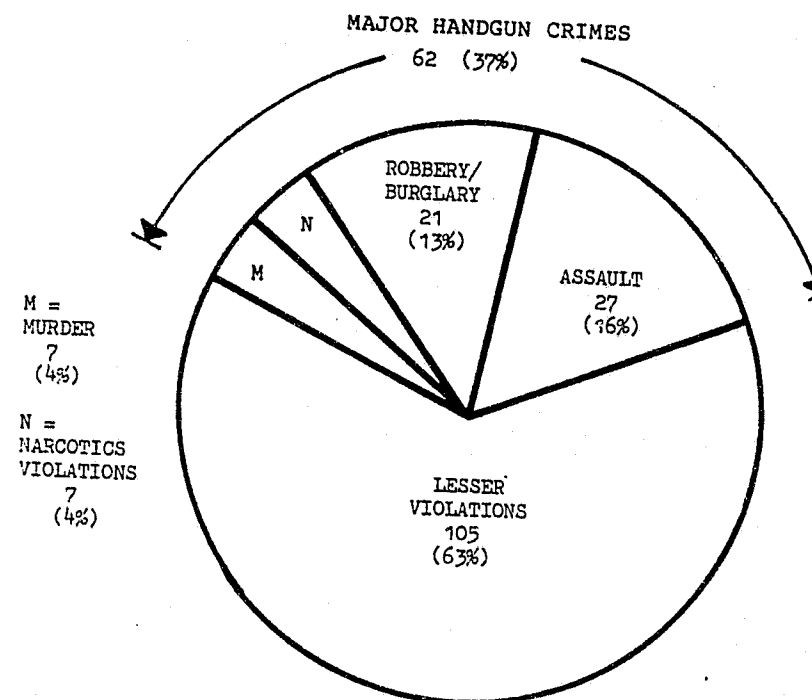
Figure 69. SOURCES OF TRACED HANDGUNS RECOVERED BY  
SAN FRANCISCO, CALIFORNIA, POLICE DEPARTMENT\*  
 January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 160 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the San Francisco, California, Police Department was first sold at retail.

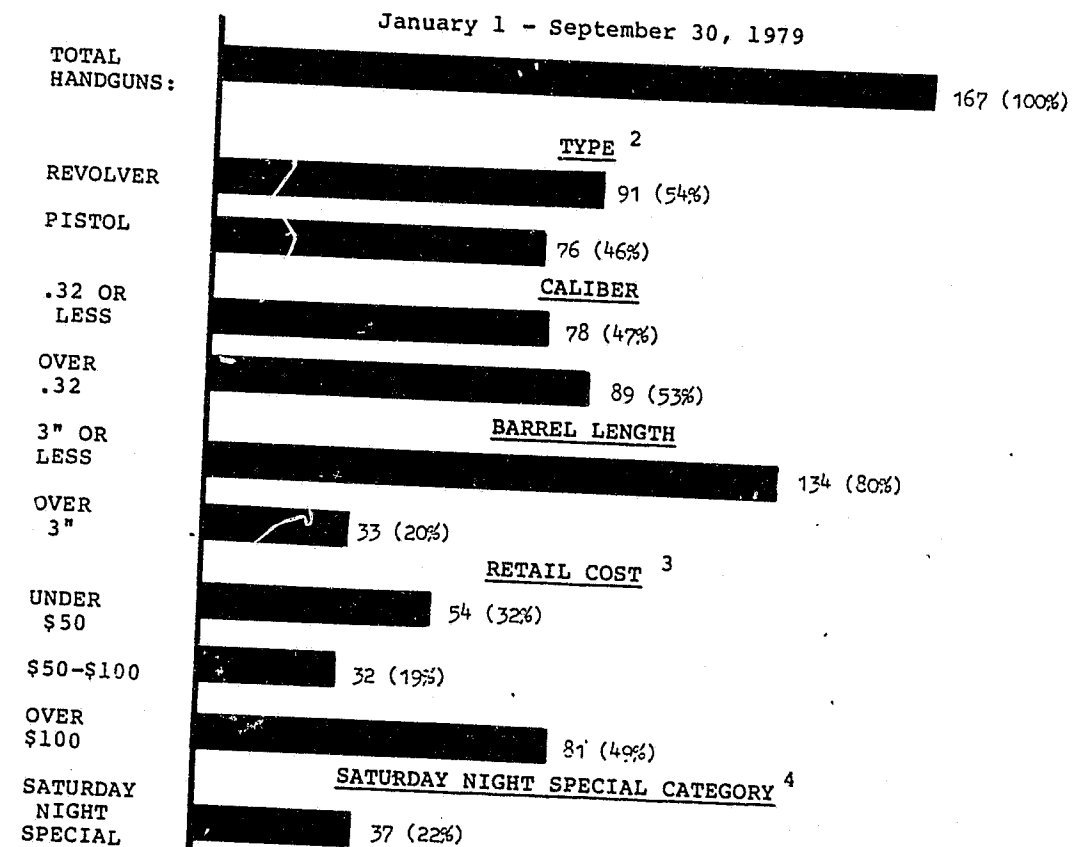
Figure 70. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER SANTA ANA, CALIFORNIA\*  
 January 1 - September 30, 1979



TOTAL TRACES: 167 (100%)

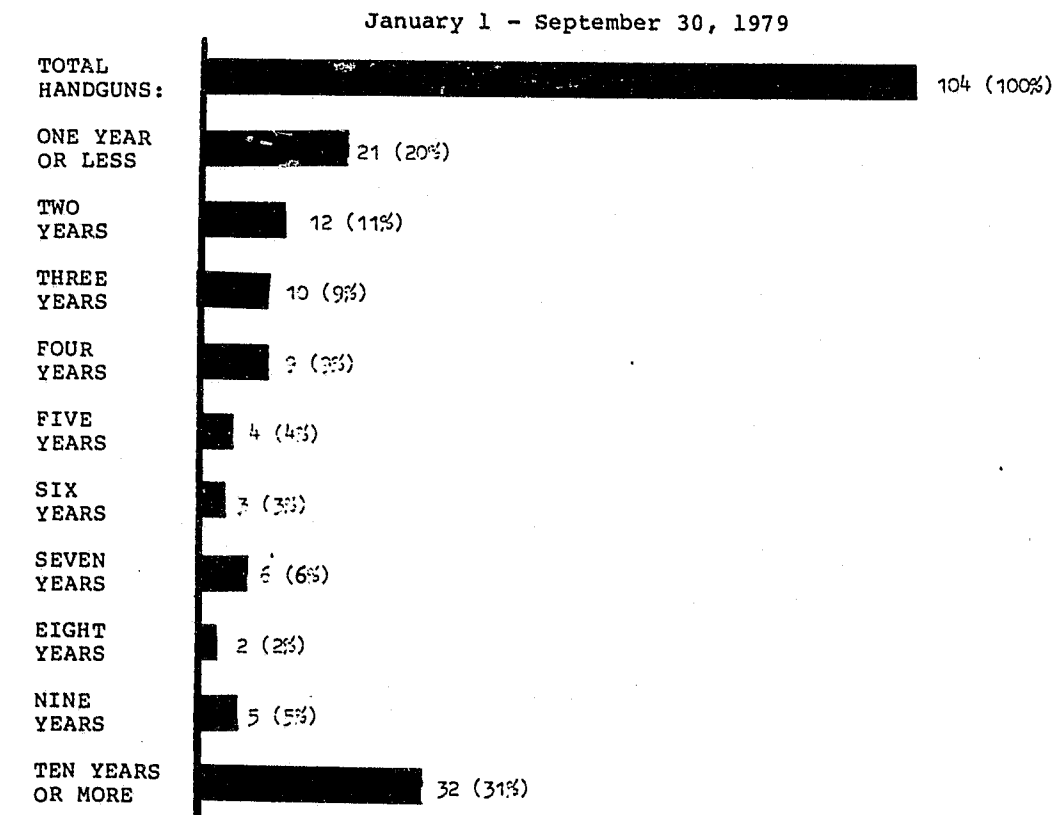
\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Santa Ana Police Department, the Orange County Sheriff's Office at Santa Ana, the Santa Ana ATF office, or the municipal police department of Anaheim, Costa Mesa, Fullerton, Garden Grove, Huntington Beach, Newport Beach or Orange.

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Figure 71. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER SANTA ANA, CALIFORNIA<sup>1</sup>

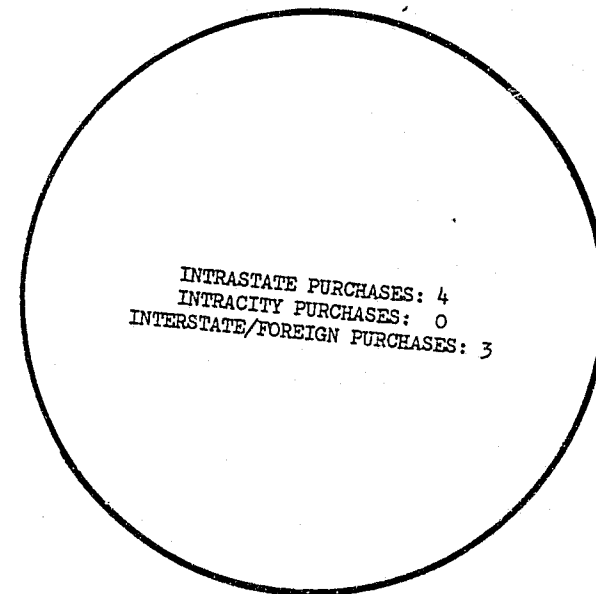
- 1 Data includes handguns traced by the Santa Ana Police Department, the Orange County Sheriff's Office at Santa Ana, the Santa Ana ATF office, and the municipal police departments of Anaheim, Costa Mesa, Fullerton, Garden Grove, Huntington Beach, Newport Beach and Orange.
- 2 For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.
- 3 Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.
- 4 For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

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Figure 72. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER SANTA ANA, CALIFORNIA<sup>2</sup>

- 1 "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.
- 2 Data includes handguns traced by the Santa Ana Police Department, the Orange County Sheriff's Office at Santa Ana, the Santa Ana ATF office, and the municipal police departments of Anaheim, Costa Mesa, Fullerton, Garden Grove, Huntington Beach, Newport Beach and Orange.

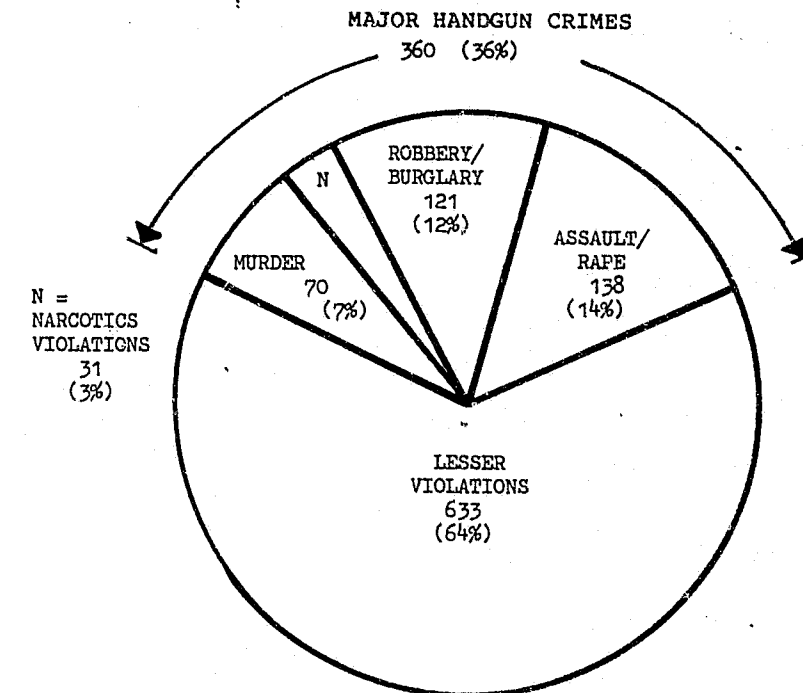
Figure 73. SOURCES OF TRACED HANDGUNS RECOVERED BY  
SANTA ANA, CALIFORNIA, POLICE DEPARTMENT\*  
January 1 - September 30, 1979



TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 7 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Santa Ana, California, Police Department was first sold at retail. Trace volume was too low for statistically significant percentage display.

Figure 74. CRIMES ASSOCIATED WITH TRACED HANDGUNS,  
GREATER WASHINGTON, D.C.\*  
January 1 - September 30, 1979

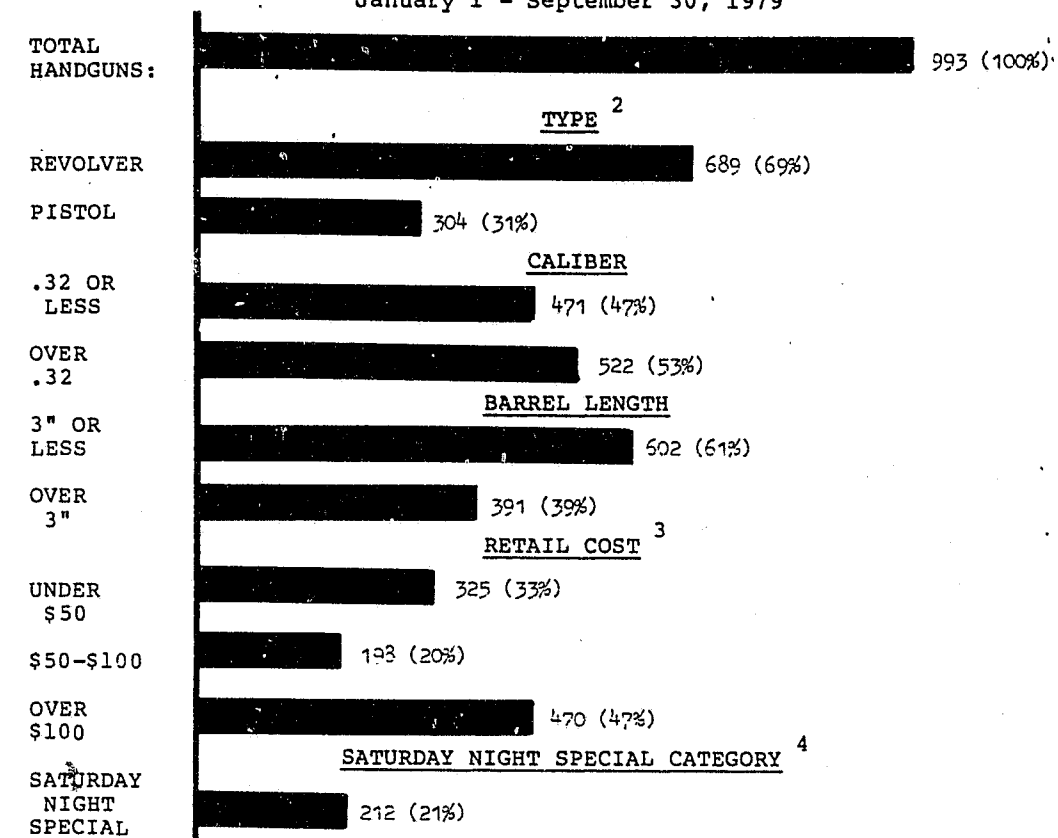


TOTAL TRACES: 993 (100%)

\*Crimes indicated are those principally associated with each investigation or action under which a recovered handgun was traced by the Metropolitan Police, Washington, D.C.; the ATF district office at Falls Church, Virginia; or one of 64 other local, state and federal law enforcement agencies in Washington and suburban Maryland and Virginia.

Figure 75. TRACED HANDGUN TYPES AND CHARACTERISTICS,GREATER WASHINGTON, D.C.<sup>1</sup>

January 1 - September 30, 1979



<sup>1</sup> Data includes handguns traced by the Metropolitan Police, Washington, D.C.; the ATF district office at Falls Church, Virginia; and 64 other local, state and federal law enforcement agencies in Washington and suburban Maryland or Virginia.

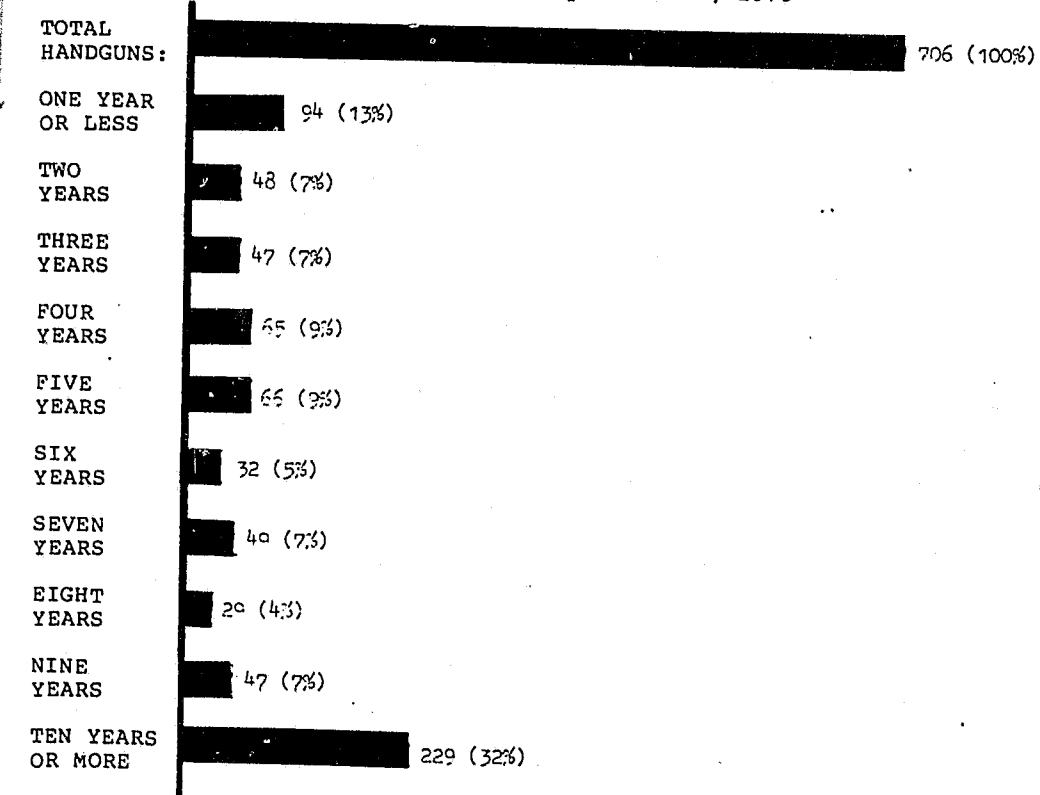
<sup>2</sup> For the purpose of this study, all handguns with a rotating cylinder were categorized as revolvers, and all others as pistols.

<sup>3</sup> Dollar amount categories established under earlier firearms trace studies were not adjusted for inflation.

<sup>4</sup> For the purpose of this statistical compilation, a "Saturday night special" was defined as a handgun with a barrel length of 3 inches or less, a caliber of .32 or less, and an initial cost factor of \$50 or less.

Figure 76. STREET AGE<sup>1</sup> OF RECOVERED HANDGUNSTRACEABLE TO FIRST RETAIL SALE,GREATER WASHINGTON, D.C.<sup>2</sup>

January 1 - September 30, 1979

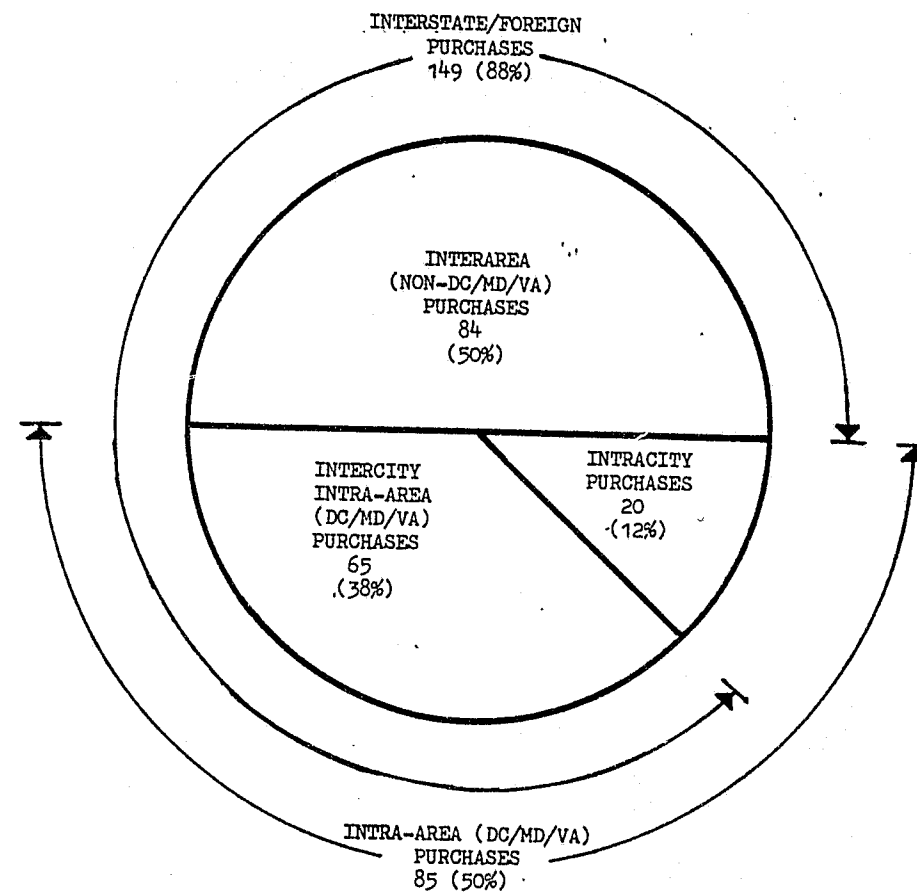


<sup>1</sup> "Street age" was defined for the purpose of this compilation as the time period from initial retail sale until recovery by a law enforcement agency.

<sup>2</sup> Data includes handguns traced by the Metropolitan Police, Washington, D.C.; the ATF district office at Falls Church, Virginia; and 64 other local, state and federal law enforcement agencies in Washington and suburban Maryland or Virginia.

Figure 77. SOURCES OF TRACED HANDGUNS RECOVERED BYMETROPOLITAN POLICE, WASHINGTON, D.C.\*

January 1 - September 30, 1979

TOTAL HANDGUNS TRACEABLE TO FIRST RETAIL SALE: 169 (100%)

\*For the purpose of this statistical compilation, SOURCE was defined as the location where each handgun traced by the Metropolitan Police, Washington, D.C., was first sold at retail.

## III.

CONCLUSIONS

The statistical tabulations presented in Figures 1 through 77 were compiled for the purpose of generally illustrating some characteristic components of firearms crime. Neither the components selected nor the geographic areas involved are exhaustively definitive of the criminal misuse of firearms in the United States. Additionally, the selectivity involved in establishing project parameters was not intended to be representative of a random sampling technique.

Firearms trace actions generate massive and varied quantities of statistical data. As in any such case, a plausible argument can be made for either side of a given question through selectively extracting, emphasizing or comparing isolated factors. For example, in some cities the proportion of the gun traces associated with major crimes, vice lesser crimes, is very high. To one observer, that circumstance might indicate that the police in such cities are properly concerned with major crime enforcement, rather than lesser or regulatory violations. Another observer might, on the other hand, reason that if major crimes predominate, then the police in such cities might be less effective in preventing the actual occurrence of major crime. Were all related



circumstances and factors known and considered, neither inference might prove correct.

For all of the foregoing reasons, no attempt will be made in this preliminary report to infer causative factors underlying the trends suggested by these limited data tabulations. Narrative restatement of the graph indications will likewise be left to a future analytical assessment. The Bureau of Alcohol, Tobacco and Firearms has embarked upon implementation of a comprehensive automated Firearms Traffic Analysis System (FTAS), and has in 1980 extended the selective area trace-project effort to some thirty additional geographic regions. Completion of the latter effort will permit a general data assessment, and attainment of a functioning FTAS capability will eventually provide for extensive analysis on the basis of ongoing operational data rather than solicited or selectively generated traces.

## IV.

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Senator BAYH. I am particularly concerned because many of the complaints that have reached the committee involve circumstances where a person, place of business, or home was invaded—maybe it is not strong from a legal perspective; in my home I am not too sure I would think it was too strong—in an effort to possess firearms. These firearms were possessed, confiscated, and some never returned.

Can you give us an idea about what general conditions have to exist before someone out in the field undertakes to initiate a case on someone suspected of violating the Gun Control Act? What conditions would exist before there would be a knock on the door and agents would move in? Give us some background on just what you are looking for.

Mr. DAVIS. I think that, as your question indicates, there are two steps. One is what do you need to start an investigation? That is one. And two, what do you need to take some official action, such as a search, or an arrest?

I think that cases in terms of information, of what it takes to start a case, of where you get it, that is a big variety. We get a lot of information from local police officers, sheriffs, detectives, State police officers. We certainly get some from informants. You get some from people who have been convicted of a crime and want to tell you something to hopefully reduce their own punishment. So those are the sources.

In terms of what quality of information we have, what kinds of cases we are looking for, I think we have tried to move gradually and over the past 3 years to looking for more substantial cases.

Now I want to give an example to show what is unrealistic. That is to compare a gun case with a narcotics case. In a narcotics case, you could look for someone who sells 50 kilos of heroin. I think you would find while there are people who repeatedly sell guns to criminals and people who sell guns illegally, but you are not going to find very many, if any, of the equivalent of the person who is dealing in 50 kilos of heroin. So we are not necessarily saying that is what we are looking for, but we are trying to find people who regularly, in a repeated fashion, sell guns illegally. And particularly when I say illegally, because illegally by this kind of statute covers a broad range of activities, obviously the No. 1 priority is where they are selling them to a prohibited person—where they are selling them to somebody who is a convicted felon, who is mentally ill, who is somebody who meets one of those statutory prohibitions. So if anybody is illegally selling guns in that category, that is an important priority.

From there what you are trying to do in terms of the quality of information before you start the case is you are looking for indications that in starting a particular investigation, it can lead you toward again people—not only talking about dealers, because many of those people are not necessarily licensed dealers, but who are selling guns contrary to the Gun Control Act. That is where we get information and the good cases we are looking for.

In saying that, however, I want to put in one caution. I always wished that it was possible to have a crystal ball when we started an investigation to know in fact who will turn out to be guilty and who will turn out to be innocent. We don't have such a crystal ball.

We have to rely on information. And certainly some investigations are started and it is determined we don't have enough evidence to proceed. In that case the person may have been inconvenienced if they have become aware of the investigation. But the important thing is when we learned we didn't have enough information, we stopped. But again, we don't always know ahead of time who is going to turn out to be actually guilty and who is going to turn out to be actually innocent.

In terms of executing a search warrant or an arrest warrant, that brings in more than the Bureau of Alcohol and Firearms. For search warrants you have to go to a magistrate through the U.S. attorney in virtually every district. They have to review it. What you are looking at is whether you have probable cause to believe a crime was committed and believe there is evidence that a particular place should be searched. Similarly for arrest warrants, in most situations, you must go through a U.S. attorney in most districts. Of course, there are some occasions where arrests can take place in some circumstances without a warrant. But you are looking at a case at that point which has matured in terms of the level of proof and the Justice Department has been brought in and generally has a magistrate who has approved that warrant.

Senator BAYH. From what you said, one of the things that is a high priority factor is sales to prohibited classes—felons, mentally ill, minors. I assume the number of weapons that are involved would also be a factor.

Mr. DAVIS. Yes. The number of weapons would also be a factor. But as I intended to indicate, if we spend all of our time looking for people who sell 5,000 guns at one shot, we are not going to be making many cases or be going to the nature of the illegal firearms traffic which really doesn't often involve those kinds of traffickers. We are also looking for potential terrorists or people being sold guns for that purpose.

Senator BAYH. Maybe the number of people that sell 5,000 at a shot is rare, but I would assume that the Bureau would make a distinction between a person who sells 1 and who may sell 10 a month out of the back end of their car in the garage.

Mr. DAVIS. I certainly agree that we do make distinctions, and that it is important, between the person who sells one and the person who sells regularly. And again, the nature of the illegal sale is also important. The closer you get to somebody who regularly is selling to criminals, the more important the case is.

Senator BAYH. Is knowledge of the illegal nature of the sale a part of the crime?

Mr. DAVIS. I would like to, in terms of responding to that, confess that my recollection of the law of knowledge and what is required to have the knowing violation of the gun control law is not as precise as it should be. I would like to submit that for the record, a complete statement of what the state of the required knowledge is.

Certainly in most criminal cases you don't have to know specific terms of the law that one is accused of violating, but to be more precise on that, I would like to submit that for the record.

Senator BAYH. Intent is certainly a major part of most felonies.

Mr. DAVIS. I am only trying to draw a distinction between the fact certainly you have to willfully violate the statute, willfully and knowingly. But precisely how that is defined by statute and in the case law I would like to supply the committee with that for the record.

[The information subsequently furnished follows:]

The courts have held that when a person is dealing with dangerous or deterious devices or products such as firearms, the probability of regulation is so great that anyone who is aware that he is dealing in firearms must be presumed to be aware of the law. *United States v. Ruisi*, 460 F.2d 153, 156-157, (2nd Cir. 1972), cert. denied, 409 U.S. 914 (1972); *United States v. Huffman*, 518 F.2d 80, 81 (4th Cir. 1975), cert. denied, 423 U.S. 864 (1975).

In a prosecution for engaging in the business of dealing in firearms without a license, the courts have stated that there is no constitutional requirement that scienter be established as an element of the offense. Further, Congress cannot be presumed from silence to have intended to make scienter an element of the crime of engaging in the business of dealing in firearms without a license. *United States v. Ruisi*, supra at 156; *United States v. Powell*, 513 F.2d 1249, 1250 (8th Cir. 1975), cert. denied, 423 U.S. 853 (1975). The Gun Control Act does not require that the Government establish in a prosecution that a person charged with unlicensed dealing in firearms knew the law. Further, ignorance of the law is no defense in a prosecution for unlicensed dealing in firearms.

However, the Bureau's enforcement emphasis is on those individuals whose unlicensed dealing in firearms significantly contributes to serious crime. Generally, cases would be brought against those individuals who knowingly are sources of crime guns and major violators of the law.

Senator BAYH. Pattern and practice is also important?

Mr. DAVIS. It certainly is important in selected cases.

Senator BAYH. At what stage would a knock on the door come?

Mr. DAVIS. The knock on the door would come—

Senator BAYH. And the gun be confiscated.

Mr. DAVIS. At that point probably two things exist. One, there is probable cause to believe that there has been a crime, that there is evidence of a crime in the place that is going to be searched. And two, the judgment is made that it is a proper time to terminate the investigation, in the sense that you may have probable cause, but still may want to continue the investigation for a whole variety of reasons, since there may be other persons involved and you want to defer action. But there should be at least probable cause.

Senator BAYH. Is the type of weapon a factor to be considered? Is it considered more serious if you are selling .50-caliber machineguns or if you are selling .22 rifles? Is it more serious if you are selling .45's, or if you are selling antique weapons?

Mr. DAVIS. I think certainly in terms of the degree of our interest, the type of weapon is important, very important. That is not to say that there will never be a case involving .22 rifles or a series of .22 rifles that are sold in violation of the Gun Control Act. We do have the statute. But our goal is to target our resources toward more important cases.

Certainly we are spending a lot of effort now in one particular category, the MAC 10 machinegun, which is sort of a hand-held machinegun which has shown up in a great number of violent crimes, particularly in Florida. So that kind of weapon gets a very high priority.

You also want to look in terms of who is using that weapon in the sense we work very closely with the Drug Enforcement Administra-

tion where illegally acquired and illegally held weapons are used in drug deals by heroin dealers.

Senator BAYH. In the final analysis, I suppose the agent has the discretion out there to go to the court and get a warrant? Do you ever confiscate guns without a warrant or a subpoena?

Mr. DAVIS. Well, there is in the law a concept of exigent circumstances in which there could be a case where a warrant would not be required lawfully. I think that is going to be relatively rare.

In terms of the judgment of the agent, it is not necessarily just the judgment of a single agent. If it is a judgment of that agent, most often it is reviewed by a supervisor in charge of the area.

Senator BAYH. Is that always the case?

Mr. DAVIS. I could not say it is always the case. I would say that in virtually all cases the practice would be that the individual agent would have discussed his case with the supervisor, whether it be a group supervisor or not. It may depend on the nature of the case, the size of the office, a whole variety of factors. But that would be routine, unless something develops in sort of these exigent circumstances area where something happens in front of the agent or, if that is the case, if something drastic is going to happen if he doesn't act immediately.

Senator BAYH. Has there ever been any example of agents exceeding their authority, of using poor judgment, bad discretion?

Mr. DAVIS. I am confident that in both the Bureau of Alcohol, Tobacco and Firearms and in every other law enforcement agency—Federal, State, and local—there have been circumstances where agents have exercised poor judgment. Particularly as I sit here in the Department, as opposed to there, in the agency, I feel that sometimes. It is always easier for me to sit here and for them to be there. But I think I would be naive in misleading you and everybody else to say we never have an agent in our agencies who doesn't exercise poor judgment.

Senator BAYH. What is the normal response of the Bureau? What is the worst kind of punishment that has been meted out? Do you have any specific examples of that happening, an agent who used improper discretion?

Mr. DAVIS. First of all, I would like to draw a distinction between an agent who exercises poor judgment and does something unwise, who spends too much time working on a case that isn't sufficiently high priority, as opposed to an agent who commits an affirmative wrong in terms of excessive use of force or excessive use of his authority. There have been cases where agents have been disciplined. I do not know of cases where agents have been discharged, for example, for violating somebody's constitutional rights. But I would be happy to supply that for the record.

Senator BAYH. Why don't you supply that for the record, what disciplinary proceedings have been undertaken.

Mr. DAVIS. I would be happy to.

[The information furnished follows:]

#### CIVIL RIGHTS ALLEGATIONS

The investigative files in the Office of Internal Affairs disclose 12 investigations predicated upon allegations relating to civil and Constitutional rights violations by ATF agents. Eight of those investigations did not substantiate such allegations. The results of the other four investigations are as follows:

In 1973, an agent was indicated, along with law enforcement officers from other agencies, resulting from an investigation by the FBI. The charges were subsequently dismissed.

In 1974, an ATF internal investigation disclosed an undetected unapproved monitored telephone conversation. One agent was given a written reprimand, and two other agents received periods of suspensions from duty and reprimands.

In 1977, one agent was suspended from duty pending the outcome of such charges and upon entering a nolo contendere plea, the agent resigned. The other agent involved was given immunity and resigned.

In 1977, the results of an ATF internal investigation were referred to the Civil Rights Division of the Justice Department. After an official in the Civil Rights Division advised that administrative action should be taken in lieu of charges and upon entering a nolo contendere plea, the agent resigned. The other agent involved had retired during the interim.

It should be pointed out that allegations of civil rights violations fall within the jurisdictional purview of the Justice Department's Civil Rights Division, and investigations could be conducted by the Justice Department without notification to or knowledge of ATF.

Senator BAYH. Senator Hatch has some questions that he wanted to ask you, too, that I will submit for the record.

[The information furnished follows:]

#### QUESTIONS SUBMITTED BY SEN. ORRIN G. HATCH WITH RESPONSES BY BATF

*Question:* Mr. Davis, While I have no doubt that you would disagree with the accuracy of the perception, would you not agree that there seems to be a fairly widespread perception among members of Congress that the Bureau, in enforcing the Gun Control Act of 1968, has engaged in some fairly loose practices? Some might even describe them as being in violation of basic individual civil liberties. There is no other way, in my opinion, to explain the fact that there are nearly 60 co-sponsors of the McClure-Volkmer bill to amend this Act. Not everybody on this list can be considered a hard-core supporter of the National Rifle Association and its legislative positions. How do you account for this perception?

The criticism has been made of the Bureau that it has focused excessive attention on technical violations of the Gun Control Act, such as the failure to purchase a proper license, rather than on those aspects of the Act with which there can be little disagreement, such as sales to known felons. How would you respond to this charge?

*Answer:* The Bureau of Alcohol, Tobacco and Firearms is assigned responsibility for enforcing the Gun Control Act of 1968. I believe that the most substantive response to these questions would be contained in a statement which was presented by G. R. Dickerson, Director of ATF, to the House of Representatives Judiciary Subcommittee on Crime last July. The statement contains a detailed discussion of the policies and operations of the Bureau, and addresses many of the public perceptions of its mission and performance.

*Question:* Suppose that I was a gun collector, but that on rare occasions, I sold guns in my collection to other individuals in response to their offers of purchase. Suppose, further, that I was concerned that I not be in violation of the Gun Control Act by failing to obtain a dealer's license and that I came up to you and said, "Mr. Davis, am I 'engaged in the business' of selling guns? Do I have to get a license to continue doing what I am doing? How often do I have to sell a gun before I am covered?" What would you tell this man?

*Answer:* The problem of the definition of a "dealer" is a difficult one since the term is not specified in the statutes.

Because of the concern shown by the gun owning public regarding the phrase "engaging in the business," the Bureau of Alcohol, Tobacco and Firearms (ATF) published an advance notice of proposed rulemaking, ATF Notice No. 331, in the Federal Register on December 12, 1979. It seeks comments from the public and industry on how the phrase should be defined.

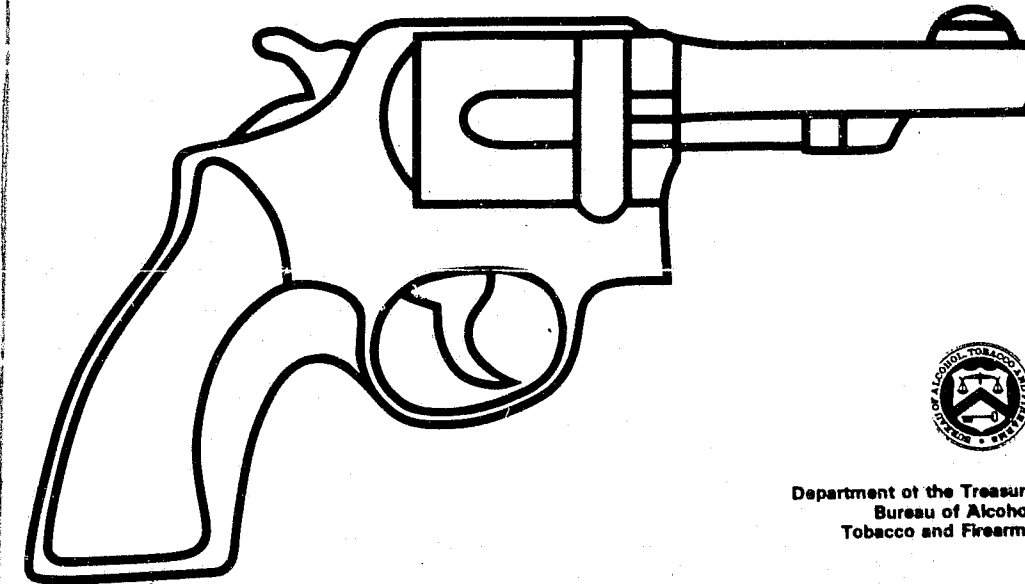
During the next 4 months, ATF received 844 responses regarding this proposal. Only 427 comments were received from nearly 178,000 licensed firearms dealers, manufacturers, and importers. ATF is planning to announce another 90 day comment period in the near future because of the small response to our first notice.

These comments will assist us in determining whether or not to add a definition of the phrase "engaging in the business" to the regulations in 27 C.F.R., Part 178.

*Question:* Suppose that this man happened to be a licensed gun dealer, but that the guns in question that he was selling were part of a private collection. Perhaps, further, it was a private collection that he, in fact, displayed in one corner of his gun store. Would that person have to keep records on sales from his private collection?

*Answer:* Yes. A licensed firearms dealer is required to maintain records of the acquisition and disposition of personal firearms. Licensees are notified of this requirement through ATF Publication 5300.15, a copy of which is attached. This publication is routinely forwarded to new licensees and has been distributed to all licensees. The courts also have held that licensees are required to record dispositions of personal firearms. *United States v. Scherer*, 523 F.2d 371 (7th Cir. 1975); *United States v. Currier*, 621 F.2d 7 (1st Cir. 1980).

# Federal Firearms Licensee Information



Department of the Treasury  
Bureau of Alcohol,  
Tobacco and Firearms

ATF P 5300.15 (4/80)





THE FOLLOWING INFORMATION RELATES TO DEALING IN FIREARMS AND AMMUNITION. THERE IS ALSO A SECTION RELATING TO THE COLLECTION OF CURIOS AND RELIC FIREARMS AND AMMUNITION. THE APPROPRIATE REFERENCES ARE TITLE 27, CODE OF FEDERAL REGULATIONS, PART 178.

THESE ARE GENERAL GUIDELINES INTENDED FOR QUICK REFERENCE AND DO NOT COVER ALL SITUATIONS THAT YOU, AS A LICENSEE, MAY ENCOUNTER. CONSULT THE LAW AND REGULATIONS OR CONTACT ATF FOR MORE DETAILED INFORMATION. TOLL-FREE NUMBERS FOR ATF REGIONAL OFFICES ARE LISTED ELSEWHERE IN THIS PUBLICATION.

FEDERAL FIREARMS LICENSEES MUST ALSO COMPLY WITH ALL STATE OR LOCAL LAWS THAT APPLY TO THEIR BUSINESS OPERATIONS.

#### Your License

1. It is in effect until the expiration date shown on the license (178.49).
2. It covers operations only at the location shown on the license (178.50).
3. You should examine your license carefully to make sure the information shown is correct.
4. If you find an error, send the license back to your regional regulatory administrator for correction (178.48).
5. You must keep your license (ATF Form 8 Part I) posted and ready for inspection by ATF officers.
6. Use the copy of the license (Part II) to make purchases. You may make copies, but each copy must have your original signature (178.94, 178.95).

#### Renewal of Your License

1. ATF will send a renewal application to you about 60 days before the expiration date shown on your license.
2. If you have not received your renewal application 30 days before the license expiration date, and you want to stay in business, please notify the ATF regional office serving your State.
3. If you want to renew your license, you must complete and send the application, with the fee attached, to your Internal Revenue Service Center before the license expiration date. If you file before the license expiration date, you may operate until you receive your new license.

#### Records You Must Keep

##### Firearms

1. Keep a separate permanent "bound book" record of all firearms received and disposed of. This includes firearms received in pawn, curios and relics, and firearms received for overnight (or longer) repair. A bound book should either be permanently bound or an orderly arrangement of loose-leaf pages. It must be maintained on the business premises.

- a. Firearms are to be logged in when received and logged out as they are disposed of (178.125(e)). This publication contains sample bound book entries showing some types of firearms transactions, including both acquisitions and dispositions.
- b. Keep these records permanently.
2. Prepare ATF Form 4473, Firearms Transaction Record, covering the transfer of each firearm to a nonlicensed person. Because Form 4473 is the most important record that you will keep, you should read the instructions carefully and complete each form fully.
  - a. These completed Forms 4473 must also be kept permanently, in addition to the permanent record described above.
  - b. Forms 4473 may be kept alphabetically (by name of purchaser), chronologically (by date of disposition), or numerically (by transaction serial number) (178.124).
  - c. Use yellow Form 4473 (Part I) for over-the-counter sales; use green Form 4473 (Part II) for either contiguous (bordering) State sales or non-over-the-counter sales (178.124).

#### Acquisition of Ammunition and Components

3. Keep a separate record of all ammunition and components received.
  - a. Invoices filed in an orderly manner are acceptable, if they are kept separate from other commercial records.
  - b. Keep these records for 2 years.

#### Disposition of Ammunition

4. You do not have to keep a record of the disposition of shotgun ammunition, ammunition used only in rifles, or component parts of these types of ammunition.
5. You must, however, keep a separate, permanent record of the disposition of handgun ammunition or ammunition that is interchangeable between handguns and rifles, such as .22 caliber, and components thereof (178.125(c)). This publication contains sample bound book entries showing several ammunition transactions.
  - a. Invoices may not be used for this permanent record.
  - b. Keep these records for 2 years.
6. Sales or other dispositions of ammunition from a licensee to another licensee are to be recorded and maintained in the manner set forth for importers in 178.122(b).

#### Transfers Between Licensees

1. Generally, licensees may freely buy and sell firearms and ammunition among themselves.
  - a. Licensees do not have to prepare Forms 4473 on transfers to other licensees.
  - b. Transactions between licensees must be recorded in the bound book record.
  - c. The licensee to receive the firearms or ammunition shall furnish a copy of his license (ATF Form 8 Part II, or copy) to the licensee selling or otherwise disposing of the firearms or ammunition, prior to making the transaction (178.94, 178.95).
  - d. Licensees may ship interstate to other licensees.
  - e. As a firearms dealer, you may take orders for firearms and ammunition at any location, but THE ORDER MUST BE FILLED ONLY AT YOUR LICENSED PREMISES.
2. Your particular license may limit your activity. (See heading for LICENSED COLLECTORS in this publication.)

#### Know Your Customer

1. Identify the buyer before delivering any firearm or ammunition (178.124, 178.125). A social security card, alien registration card or military identification alone do not contain sufficient information to identify a firearms purchaser. However, a firearms purchaser may be identified by a combination of documents which together establish all of the required information: name, residence address, date of birth or age, and signature. In the case of ammunition sales, only the purchaser's name and age or date of birth need to be verified. Therefore, while the social security card (which contains only a signature) would be unacceptable by itself, the alien registration card or military identification does contain the necessary information to verify the identity of an ammunition purchaser.

#### Age Requirements

2. Under Federal law, the minimum age for purchasers of firearms and ammunition may be either 18 or 21 years, depending on the item being purchased.
  - a. You may not sell a handgun or handgun ammunition to persons under 21 years of age.
  - b. You may not sell shotguns or rifles, or shotgun and rifle ammunition to persons under 18 years of age.
  - c. You may sell ammunition that is interchangeable between rifles and handguns to a purchaser who is at least 18 years of age if you are satisfied that he or she will use the ammunition in a rifle (178.99). Regardless of less restrictive State and local age requirements for firearms and ammunition purchasers, licensees must adhere to the above Federal minimum age provisions.

#### Residency Requirements for Nonlicensee Sales

1. If you sell or deliver a handgun to a nonlicensed person, that person must be a resident of, and located in, the State in which your licensed premises is located (178.99).
2. If you sell or deliver a rifle or shotgun to a nonlicensed person, that person must be:
  - a. a resident of the State in which your business premises is located; or
  - b. a resident of a contiguous (bordering) State, if:
    - (1) the buyer's State has enacted legislation allowing such sale or delivery;
    - (2) the sale conforms to legal requirements in both States;
    - (3) the appropriate law enforcement officer in the buyer's home State has been notified as required; and
    - (4) the waiting period requirement has been satisfied (178.96-178.99).

#### Prohibited Sales

1. In addition to the requirements shown above, you may not lawfully sell or dispose of any firearm or ammunition to certain types of persons; e.g., convicted felons. See ATF F 4473, questions 8a through 8h.

2. If any of your customers would violate any State law or local ordinance that applies at the place where you sell or deliver, by purchasing or possessing any firearm or ammunition, then, under Federal law, you may not lawfully sell or deliver any firearms or ammunition to that customer (Federal law, (922)(b)(2)).

#### Lost or Stolen Firearms

If firearms are lost or stolen, you should immediately contact your local law enforcement authorities.

#### Report Multiple Handgun Sales

1. The delivery of more than one handgun to the same individual (nonlicensee) within 5 consecutive business days must be reported to ATF on ATF F 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers (178.126a).
2. The original of Form 3310.4 must be mailed to the ATF Criminal Enforcement office for your area at the end of the business day that the sale occurs.

#### Licensed Collectors

1. You may buy curios and relics from any source (178.50).
2. You may dispose of curios and relics to another licensee anywhere or to nonlicensed residents in your State (178.50).
3. You must maintain the same records as other licensees.
4. Your collector's license entitles you to conduct transactions in curios and relics only. A licensed collector has the same status as a nonlicensee in any transactions involving firearms and ammunition other than curios and relics.

#### Change of Address

You must notify your regional regulatory administrator at least 10 days before moving your firearms or ammunition business to a new address (178.52).

#### Sale of Business or Going Out of Business

1. Within 30 days after you sell or discontinue your firearms or ammunition business, you must give written notice of this change in status to your regional regulatory administrator (178.57).
2. If you sell or discontinue your firearms or ammunition business and are succeeded by a new licensee, your firearms dealer records should be marked to show this fact and shall be delivered to the successor (178.127).
3. You must deliver all of your firearms records to your ATF regional regulatory administrator within 30 days of going completely out of the firearms or ammunition business (178.127).

#### Questions

If you should have any questions regarding Federal laws or regulations and are unable to locate the answers, please contact your nearest ATF field office or your ATF regional office (see toll-free numbers list).



### Sales of Firearms to Law Enforcement Officers

Section 925(a)(1) of the Gun Control Act exempts law enforcement agencies from the transportation, shipment, receipt, or importation controls of the Act when firearms are to be used for the official business of the agency.

If a law enforcement officer is issued a certification letter on the agency's letterhead signed by a person in authority within his agency stating that the officer will use the firearms in performance of his official duties, then that officer specified in the certification may purchase a firearm from you regardless of the State in which he resides or in which the agency is located. The seller is not required to prepare a Form 4473 covering such a sale; however, the transaction must be entered in the permanent record. The certification letter from the officer must be kept in your files.

The Bureau considers the following as persons having authority to make certifications that the law enforcement officer purchasing the firearms will use the firearms in performance of his official duties.

1. In a city or county police department, the director of public safety or the chief or commissioner of police.
2. In a sheriff's office, the sheriff.
3. In a State police or highway patrol department, the superintendent or the supervisor in charge of the office to which the State officer or employee is assigned.
4. In Federal law enforcement offices, the supervisor in charge of the office to which the Federal officer or employee is assigned.

The Bureau would also recognize someone signing on behalf of a person of authority provided there is a proper delegation of authority and overall responsibility has not changed in any way.

A sample of the following form (ATF F 5300.2) for reproduction by a commercial printer can be obtained from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Va. 22206. Hand-ruled paper with the same column arrangement, same column headings, and the same language notations as this sample may also be used.

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS						MUST BE RETAINED FOR 2 YEARS AFTER DATE OF LAST ENTRY ON PAGE	
AMMUNITION DISPOSITION RECORD						IDENTIFICATION (If purchaser is personally known to you place a P in column 10. Otherwise, you must check identification.)	
DATE	MANUFACTURER	22 CALIBER RIFLES	OTHER PISTOL AND REVOLVERS	PURCHASER'S NAME	PURCHASER'S ADDRESS	AGE	Other (Name)
12/1/79	Winchester	✓		Spencer Galling	400 West Lay Drive Richards, Illinois	41/31	B-100-0011-1010
12/2	Remington		.25 3	Merlin Stevens	58 Saver St. Bullard, Illinois	41/4	✓
12/3	Winchester		.30-30 5	Guedes Refomado	44 Sharps Blvd. Creedmore, Illinois	41/4	C-410-1000-0005
12/4	Smith and Wesson		.30 4	Maynard Trounds	95 Frebody St. Borchardt, Illinois	41/4	D-003-3000-0101

For this entry, Mr. Trounds is 18 years old and the ammunition is intended for use in a rifle (175.12(c)).

### TOLL-FREE NUMBERS

#### CENTRAL REGION

IN, KY, MI, OH, WV  
OH ONLY: 800-582-1880  
ALL OTHER: 800-543-1932

#### MID-ATLANTIC REGION

DE, DC, MD, NJ, PA, VA  
PA ONLY: 800-462-0434  
ALL OTHER: 800-523-0677

#### SOUTHEAST REGION

AL, FL, GA, MS, NC, SC, TN  
GA ONLY: 800-282-8878  
ALL OTHER: 800-241-3701

#### NORTH-ATLANTIC REGION

CT, ME, MA, NH, NY, RI, VT  
NY ONLY: 800-442-8275  
ALL OTHER: 800-223-2162

#### WESTERN REGION

AK, AZ, CA, HI, ID, MT, NV, OR, UT, WA  
CA ONLY: 800-792-9811  
ALL OTHER: 800-227-3072

#### MIDWEST REGION

IL, IA, KS, MN, MO, NE, ND, SD, WI  
IL ONLY: 800-572-3178  
ALL OTHER: 800-621-3211

#### SOUTHWEST REGION

AR, CO, LA, NM, OK, TX, WY  
TX ONLY: 800-442-7251  
ALL OTHER: 800-527-9380

FIREARMS ACQUISITION AND DISPOSITION RECORD

DESCRIPTION OF FIREARM					RECEIPT		DISPOSITION		
MANUFACTURER and/or IMPORTER	MODEL	SERIAL NUMBER	TYPE OF ACTION	CALIBER OR GAUGE	DATE	FROM WHOM RECEIVED (Name and Address or Name and License Number)	DATE	NAME	ADDRESS OR LICENSE NUMBER (if Licensee) OR FORM 4473 SERIAL NO. (if non-Licensee) [File Numerically]
1) Ithaca	1021004	66071386	Pump	20	8/2/75	John's Fine Guns Inc. FFL # 42-987	11/29/76	James House	Form 4473 # 2
2) Smith & Wesson	10	M60512	Revolver	.38	1/4/75	Swap Shop FFL # 86-3498	3)		
3) Western Field	10504	691467	Pump	20	8/4/75	John's Fine Guns Inc. FFL # 42-987	3) 11/2/76	Jim Michaels	Form 4473 # 6P
4) Winchester	94	382906	Lever	.30-30	11/4/75	AL Greenleaf Har 728 Forrest Hill Oak, Ill. 60455	4) 9/1/76	Bill Bounce	Form 4473 # 50
5) Remington	870	4932	Pump	16	6/4/76	Tom Problem 605 E. Columbia Pine Bluff, Ill. 60657	5) 6/20/76	Fix it or Melt it Inc.	FFL # 46-3988
6) Remington	540X	312698V	Single	.22	7/2/76	Joan Realafor FFL # 96-3487	6) 7/14/76	Brian Smith	Form 4473 # 35
7) Browning	1200	38679	Auto	.45	8/24/76	John Doe 691 Pine St. Eureka, Ill. 60055	7) 7/1/77	John Doe	Form 4473 # 86
8) Western Field	10504	691467	Pump	20	1/24/76	Jim Michaels 129 Columbia Springfield, Ill. 62769	8) 12/2/76	Stolen - Reported to	Police on 12/2/76
9) Smith & Wesson	34-1	M60562	Auto	.22	12/1/76	Brian Smith (owner) 811 Wilder Cambridge, Ill. 60721	9) 12/12/76	Jake Jones, Metro Police	305 Wilkins Blvd. Atchison, Kansas 66829 See Certification letter instead of F4473
10) Remington	870	4932	Pump	16	12/2/76	Fix it or Melt it Inc. FFL # 46-3988	10) 12/2/76	Tom Problem	605 East Columbia Pine Bluff, Ill. 60657

Explanation of Acquisitions

- Line
- Shows purchase of a firearm from a licensed dealer. You have the option of showing either the name and address or the name and license number of the licensee from whom the firearm was received. In order for the store owner, Brian Smith, to obtain this firearm, he had to submit a current copy of his F-I-I to John's Fine Guns (178 94). When Brian received the firearm, he entered it into this book immediately. (For variation, see 178 125(f).)
  - Purchase of firearm from an unlicensed person.
  - Gun is brought in for repair. If firearm can be fixed and returned to owner on same business day, no entry need be made. However, if firearm cannot be returned that day, it must be entered as an acquisition even though it is not a purchase. Gunsmithing transactions such as this may be recorded in a separate bound book.
  - John Doe has brought in a gun for sale on consignment. Make entry on date of receipt.
  - Michaels originally purchased the gun on 11. 2. 76 (line 1). He does not like it and returns it on 11. 24. 76. The firearm must be

- reentered showing date of receipt and from whom received (It was received from Michaels on 11. 24. 76.) The original entry on line 3 remains unchanged.
- Brian Smith, owner of the licensed business, has a personal firearm he wants to sell. Enter firearm in book and show acquisition date as the date it was put up for sale.
  - Firearm sent to Fix It or Melt It Inc. for repair on 6. 20. 76 is returned to Smith's shop and reentered on 12. 2. 76.

Hand-ruled paper with the same column arrangement, same column headings, and the same language notations as the illustration above, may be used.

Line numbers are given for illustration purposes only.

Explanation of Dispositions

- Line
- Sale to an unlicensed person. The buyer's name is inserted directly across from the firearm purchased. Brian's Sport Shop files Form 4473 numerically (see 178 124(b)) for options) and lists the form number in place of the address. Number "2" is the serial number of the Form 4473 that Mr. House filled out.
  - This firearm has not been traded, sold, loaned, stolen or transferred out. It should be on hand and available for inspection. Bounce borrows a gun. It is not a sale but it is a disposition. Form 4473 must be filled out. (See 178 97 for loans and rentals by clubs.) When Bounce returns the gun, it must be shown as an acquisition.
  - Brian is unable to fix the firearm brought in by Mr. Problem and sends it to a gunsmith for repair. Gunsmiths must be licensed and Brian's Sport Shop must obtain a current certified copy of Fix It or Melt It Inc. license prior to delivery of the firearm.
  - Brian Smith, owner of the store, takes a firearm from inventory for his own personal firearm. Since this will be a personal firearm, Smith must fill out Form 4473 for himself. When this

- happens, it must be either removed from the business premises, or, if kept on the business premises, must be identified as not being part of his business inventory. (Such as by a tag reading "NOT FOR SALE.")
- Gun brought in by John Doe for sale on consignment was not sold. Form 4473 must be filled out by John Doe when the gun is returned to him.
  - The firearm is stolen. Show disposition of firearm as "stolen" and show date the theft was reported to the local authorities. If the police case number is available, please report it here.
  - Firearms were sold to out-of-State policeman for official use, as evidenced by certification letter. See instructions on sale to law enforcement officers.
  - Mr. Problem gets his repaired gun back. He does not need to fill out Form 4473. The gun was returned to the same person who brought the gun in for repair. If someone picked the gun up for Mr. Problem a Form 4473 would then have to be filled out by that person (178 124(a)).

*Question:* Let us pursue the so-called "straw-man" entrapment issue. If I sell a firearm to an individual knowing that he in turn will sell it to a prohibited party, am I in violation of the Gun Control Act? What if I simply believe that he will sell it to a prohibited party? What is the law in this area? How have gun dealers been apprised by the Bureau of their precise responsibilities in this area?

*Answer:* The Gun Control Act prohibits a licensed dealer's sale or delivery of a firearm to a person who the licensee knows, or has reason to believe, is a person prohibited from receiving firearms. Licensees have been notified of this prohibition by Industry Circular No. 79-10, a copy of which is attached. This circular advises licensees to have the required firearms transaction form completed by the individual to whom the firearm is actually being sold. Further, the document states that if the dealer has any reason to believe the firearm is being acquired for a prohibited person, such a transaction should be avoided.



# 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.

-2-

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. E. DeLoach*  
Director

Department of the Treasury  
Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C. 20226

Official Business  
Penalty for Private Use, \$300

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Straw Purchase ----- Generally one person can buy a firearm for another person. The licensee violates the law only where he sells or delivers a firearm to a prohibited person and uses a straw purchaser to conceal the real transaction. Also, where he actually sells to a legal purchaser, knowing the firearm is to be delivered to a prohibited person, he may be aiding and abetting the prohibited person's own violation. Recent Brooks case, Fifth Cir., recognized that the statute, 922(d), conveys to dealers sufficient warning that a straw purchase may violate the law.

**Question:** What are the obligations of the Bureau under the Gun Control Act with respect to publishing rules and regulations and administrative procedures in the Federal Register? What are its obligations with respect to convening public hearings on these rules and regulations and procedures? Do you believe that the Bureau has complied fully with its obligations under the statute?

**Answer:** The Gun Control Act provides that—The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. . . . The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations. 18 U.S.C. § 926.

The courts have held that statutes which merely authorize rulemaking after "opportunity for hearing" do not trigger the formal rulemaking procedures or requirements of the Administrative Procedures Act (APA) such as, "trial-type" hearings. The position of the Bureau is that regulations relating to the Gun Control Act may be promulgated through informal rulemaking procedures under which the APA requires an agency to give interested persons an opportunity to participate in rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

The regulations adopted pursuant to the Gun Control Act by the Bureau have been adopted in accordance with APA requirements. The Bureau exercised its option to hold public hearing before the original regulations under the Gun Control Act were adopted. However, public hearings have not been held when subsequent revisions of these regulations were made.

**Question:** What, in your opinion, are the scienter or mens rea requirements of the Gun Control Act? Must an individual covered by the Act in some respect knowingly commit a violation of the Act? If he is reckless in his failure to abide, will this suffice? Or is there absolute liability in some respects? What is the state of the law in this area? What are the mental requirements for a violation of the Act? Would you have any suggestions for change in this area?

**Answer:** With respect to the violation of engaging in the business of dealing in firearms without a license, there is no constitutional requirement that scienter be established as an element of the offense. Congress cannot be presumed from silence on this issue to have intended to make scienter an element of that offense. *United States v. Ruisi*, 460 F.2d 153, 156 (2d Cir. 1972), *cert. denied*, 409 U.S. 914 (1972); *United States v. Powell*, 513 F.2d 1249, 1250 (8th Cir. 1975), *cert. denied*, 423 U.S. 853 (1975). The courts have held that the Act does not require that the Government establish in a prosecution that a person charged with unlicensed dealing knew the law. They have specifically found that Congress did not make ignorance of the law a defense in a prosecution for unlicensed dealing in firearms. *Ruisi, supra*. The rationale given for this determination is that where dangerous or deleterious devices or products such as firearms are involved, the probability of regulation is so great that anyone who is aware that he is dealing with firearms must be presumed to be aware of the law. *Ruisi, supra*, at 156-157; *United States v. Hoffman*, 518 F.2d 80, 81 (4th Cir. 1975), *cert. denied*, 423 U.S. 864 (1975).

With respect to the offense of knowingly making a false statement in connection with the purchase of a firearm, a knowledge element must be established. That is, it must be established that the individual knew he was making a false statement. However, it is not an element of this offense that the individual knew his making a false statement violated the Act. With respect to the offense of failing to keep required records, it must be shown that the licensee failed to keep records he knew he was required by law to keep.

**Question:** Every offense under the Gun Control Act is a felony. Do you feel that this is appropriate? Would you feel that the grading for some of the lesser violations of the Act could be reduced, perhaps, to a misdemeanor? Which would these violations be?

**Answer:** It is difficult to focus on any offense under the Gun Control Act which under all circumstances should be reduced to a misdemeanor. Although it may appear that a felony prosecution for a recordkeeping violation is severe, the circumstances which compelled prosecution may be very serious. For example, a licensee could be selling firearms to known felons and then falsifying his required records to conceal the identity of the purchaser.

It should be emphasized that the Bureau does not recommend prosecution of a licensee who merely committed clerical errors in recordkeeping, although such errors would technically violate the Act. This policy is reflected by the Bureau's

Firearms Program which focuses on investigations of serious crimes which require a Federal response.

**Question:** Am I correct in my understanding that BATF made a total of 840 arrests for firearms violations during the last fiscal year? Would you have any breakdown on the nature of these arrests? Would you have any idea as to how many eventually led to conviction? How many agents does BATF have that are primarily devoted to enforcing the firearms laws? How many arrests (or convictions) would that be during the last year per BATF agent?

**Answer:** In our fiscal year 1981 Budget proposal we reported a total of 840 arrests for firearms violations. Due to the time lag in our statistical reporting systems we can now report that the total number of firearms arrests for fiscal year 1979 is 921. Unfortunately, our statistical reporting system is not capable of identifying the specific violations charged in these arrests. During this same time frame 1,123 defendants plead guilty or were convicted of Gun Control Act violations. These convictions reported in fiscal year relate to arrests which occurred during previous years as well as some which actually took place in the early months of fiscal year 1979.

In fiscal year 1979, ATF special agents reported the expenditure of 189,030 man-days in firearms criminal investigations (not included are Relief from Disability investigations, dealer compliance investigations, and other non-criminal firearms work). This time expenditure indicates that approximately 727 agent man-years were devoted to criminal firearms investigations. These figures show an average of 1.27 firearms arrests per agent man-year.

STATEMENT OF G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON CRIME, JULY 2, 1980

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;

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) has allowed such weapons and devices to fall into the hands of lawless persons, including armed groups who would supplant law 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.

An example of this success is 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) -----	1,460
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 Millton, 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 Demetrio, 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, N.J., 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, Fla., 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, N.Y., at the time of purchase and had a prior criminal record, but no convictions. A com-



plaint was filed with the U.S. Magistrate in Miami, Fla., 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, N.Y.

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 U.S. 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 U.S. 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, N.Y. A third party, recently released from prison after being convicted for 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 four machine guns and four 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 arrests. 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 1 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 over 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 Hugheston, W. Va., and sentenced to serve 5 years. In 1975, he was again arrested, convicted for possession of 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 1 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 U.S. Court 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 26, 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, four have been determined to have been stolen, three from a house burglary, and one 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 machinegun, 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 Las Cruces, N. Mex., 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 U.S. Attorney's 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 insure 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 insure 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 sales 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 1973 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 insure the establishment and pursuit of mutual

priorities. The overall acceptance of ATF cases by U.S. attorneys was over 86 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.

Senator BAYH. There are a few more questions I would like to ask you, if you don't mind. I have to leave for a Senate vote now. I will be back in about 5 or 10 minutes. I am sorry to have to ask you to wait.

[Brief recess.]

Senator BAYH. I would like to ask that the statements by Senator Thurmond, Senator Hatch, and Senator Dole be put in the record at this time.

[The statements follow:]

#### STATEMENT OF SENATOR STROM THURMOND OF SOUTH CAROLINA

Mr. Chairman: I join with the Chairman in welcoming our witnesses today who will point out various problems with the enforcement of the 1968 Gun Control Act.

I have had constituents of mine from South Carolina detail their personal difficulties with the Bureau of Alcohol, Tobacco and Firearms. Several have been injured financially, as well as having their reputations in the community affected by regulatory actions of the BATF.

Mr. Chairman, I do not intend to be judge and jury on this matter in this hearing today. I will review the testimony carefully and any recommendations that the subcommittee may make with regard to this problem.

#### STATEMENT OF SENATOR ORRIN G. HATCH OF UTAH

Mr. Chairman, I wish to extend my appreciation to you for convening today's oversight hearing on the subject of BATF's enforcement of the Gun Control Act of 1968. It is a subject that is of great interest to tens of millions of Americans who exercise their second amendment rights to "keep and bear arms". In my State of Utah alone, there were more than 600,000 citizens who participated in the most recent deer-hunting season, or approximately half of the State's total population.

A number of serious allegations have been made with respect to BATF's enforcement of this act, not all of them coming from individuals who are themselves users of firearms. My office has received an increasing amount of correspondence in recent years from individuals who suggest that the Bureau has been less than faithful to basic precepts of individual civil liberties. Included among these charges have been accusations of abusive search and seizure procedures, vindictive prosecutions, reliance upon agent entrapment, and pre-occupation with technical violations of the Gun Control Act at the expense of more serious, substantive violations.

The purpose of this hearing, as I see it, is, first to inquire into the accuracy of these and other allegations, and, second, to determine how best to prevent their future occurrence. I am personally convinced that it is not BATF that is entirely to blame for this situation. I am familiar enough with the Gun Control Act to know that there are provisions in the act itself that are vague and ambiguous; there are provisions in the act that encourage criminal prosecutions for minor, regulatory violations; there are provisions in the act that impose excessive penalties for such violations; and there are provisions in the act that are essen-

tially unrelated to the sort of abuse of firearms that each of us, regardless of our feelings on the larger question of "gun control", wish to see ended. It is Congress, as well as BATF, that deserves to share blame for whatever abuses have occurred in this area.

Mr. Chairman, it is an excellent group of witnesses that will appear before our subcommittee today. I am confident that it will prove to be an extremely enlightening hearing on this subject. I look forward to working with you, whether during this Congress or the next, in correcting whatever violations of the Gun Control Act are demonstrated to have occurred.

#### STATEMENT OF ROBERT A. DOLE OF KANSAS

Mr. Chairman: Today the subcommittee conducts a hearing into demonstrated abuses by the Bureau of Alcohol, Tobacco, and Firearms in the enforcement and administration of the Gun Control Act of 1968. Testimony will be received from administration officials and others concerning these abuses by BATF agents. Already three hearings have been held by other congressional subcommittees, although this is the first to be held this Congress by the Senate Judiciary Committee, which has oversight responsibilities over the Gun Control Act.

The Senator from Kansas has been pleased to join with Senator McClure of Idaho in sponsoring remedial legislation to correct some of the more obvious defects of the '68 act, including definitional ambiguities in such key terms as "dealer," "collector," and "engaging in the business of." This vagueness has allowed overzealous Federal agents to apply conflicting and arbitrary standards in their enforcement activities, to the detriment of thousands of individual collectors, dealers, and other law-abiding citizens who have run into "technical" difficulties under the Gun Control Act, only to find themselves subjected to Federal felony charges. In too many cases, this has meant public embarrassment, needless legal defense expenses, impaired credit ratings, and much mental pain and suffering.

At the same time, referrals from other enforcement authorities to the BATF of possible gun violations by persons with long criminal records go unanswered.

It is encouraging to learn of the recent statements by the new Director of the BATF, Mr. Dickerson, to the effect that efforts are being made to eliminate abuses while at the same time re-order priorities to concentrate more on hard-core criminal activities involving interstate use of firearms or possession by convicted felons, yet, complaints of abuses are still heard.

Earlier this year the Senate Judiciary Committee reported S. 1722, the comprehensive Federal criminal code reform bill to the Senate. This bill is still awaiting action by the Senate. The committee-reported bill contains provisions authored by the Senator from Kansas, which have the effect on down-grading certain administrative and bookkeeping violations of the Gun Control Act from felonies to misdemeanors. This was meant only to be stop-gap, remedial action to cure some of the more glaring deficiencies of the act, pending the comprehensive revisions of the McClure bill, working with Senator McClure, I have drafted a Senate floor amendment to S. 1722 that would take the substance of the McClure bill and incorporate it into the code. Some modification of the McClure bill is necessary to conform it to the overall sentencing structure of the code reform bill.

In addition, I have included provisions reinstating interstate mail-order provisions similar to those in the '68 act which apply to intrastate mail sales and which would put imported firearms on the same basis as domestically produced guns.

Although this amendment has not yet been introduced, it will be the subject of negotiations in the near future to see if it can be considered as a major amendment to S. 1722 on the Senate floor.

The fate of the entire code reform effort could well rest on the agreement, or lack thereof, reached on this amendment.

Senator BAYH. Mr. Davis, tell me what a strawman is in the area in which your agents operate.

Mr. DAVIS. The strawman technique or the strawman's sale involves a situation where an intermediary purchases a gun for somebody who it would be illegal to be the purchaser of that gun. This poses the problems of illegality, and this is described in an industry circular that was distributed in the fall of 1979 to clarify it for dealers. Where the prob-

lem comes up is in the following example: Where somebody walks in to a gun dealer and it turns out in the conversation that the person is either a convicted felon or is from out of State or for some other reason it would be illegal for the dealer to sell directly to him.

There are two patterns that could be followed. One is where the dealer could suggest that, "I can't sell you the gun, but I will sell it to Fred here and he will give it to you," and that Fred is the strawman. Or the individual being told he couldn't purchase the gun could produce his own strawman.

As I said, these transactions were described in a memorandum that actually was put out on August 7, 1979, to all dealers clarifying the strawman transactions.

Senator BAYH. Here again I would like to see every illegal act stopped. I think anybody who recognizes the purpose of and enjoys the legal use of a firearm would like to see every illegal use of a firearm stopped. We only have limited resources to pursue illegal transactions of firearms, illegal uses of firearms.

I am concerned, and I would assume that Treasury would be concerned, about the fact that most of the resources, most of the agents, were concentrating their efforts on major problems. Now do I understand the strawman to be such that this is the kind of police technique that is used on occasion?

Mr. DAVIS. I think that the violation is not a police technique. ATF has, however, investigated potential strawman purchasers. Where the controversy and the discussion has been is in those cases where there is discussion with a dealer and the dealer would suggest, "Why don't you bring in a friend?" or that comes up in the conversation, "Because I can't sell it to you," and then ATF would bring in an undercover agent to be the friend. In other words, the fact the strawman purchases were being made was done in the course of an undercover investigation.

Senator BAYH. Do we have agents that go into stores offering themselves as prospective purchasers that want to buy firearms, but they are from out of State, to try to get the dealers to sell them firearms which is contrary to the law?

Mr. DAVIS. I think there are a couple of situations.

Senator BAYH. Just a couple?

Mr. DAVIS. No; a couple of categories of situations, because certainly that type of investigation goes on. And I would like to draw a distinction, a distinction which applies not only here but obviously applies in the use of undercover techniques in a variety of areas.

First, why did that agent go in there? A variety of possibilities exist. A local police officer comes to them and says, "This person, through the strawman technique, we have information, has been repeatedly selling in the border States, to perhaps illegal aliens." Or perhaps the information concerns convicted felons or perhaps out of State purchasers.

I think in terms of degree of seriousness again the convicted felon in my view is the most important. But in other words, somebody, whether it be a law enforcement agent or informant, says, "This person does it all the time." Then that information is evaluated and a decision is made to start an investigation.

I should say in the last 1½ years under Director Dickerson the use of this investigative technique has been substantially reduced and controlled. But that is one situation which, depending on the facts, could be a permissible kind of activity, depending upon the reliability and the strength of the information, particularly if you have somebody who routinely, through the strawman technique, is selling guns to convicted felons.

The second category, however, would be when somebody just walks in cold, no prior information, and essentially tests the dealer in one way or another. I think that is inappropriate for the agency. Has that happened? It probably has in some occasions.

I do not think that is consistent with current policy. I think that current policy recognizes that this is a technique that should be used but used only in appropriate cases and sparingly when other investigative techniques will not be as effective.

Senator BAYH. It has been a long time since I studied entrapment, but what do your lawyers tell you? If you have an agent that goes in and actively participates in a commission of an illegal sale, a felony, and he is an agent of the law enforcement branch that is actually part of the illegal act, have you been able to prosecute that without having it thrown out of court because of entrapment provisions of our laws?

Mr. DAVIS. The technique has been upheld as lawful. In individual cases it is going to be a question of what the facts showed, because the issue in a trial frequently will come down to predisposition. Again, this isn't just true of the gun area. When I was a prosecutor, this used to be a very common pattern in IRS bribery investigations, where somebody would offer a bribe to a Revenue agent, where you would be investigating an accountant. Again, it was the same situation.

As a legal matter, it was important to prove that there was a predisposition to commit the crime. Again, however, I think Director Dickerson has put in a lot of controls in this technique as it relates to licensed dealers to try and make certain that the problems that might have existed do not repeat themselves.

Senator BAYH. Do you have questions, Senator Heflin?

Senator HEFLIN. No.

Senator BAYH. I appreciate the distinguished colleague from Alabama being with us.

Senator HEFLIN. I just want to listen.

Senator BAYH. There are a number of questions here that I think we can answer for the record.

Mr. DAVIS. I would be happy to, Senator.

Senator BAYH. I would like to have an analysis of just how the resources are spent, if you can. Give us a breakdown of how many agent hours, how many dollars are spent, and what the results are. That is what we are after. If we can stop a hundred illegal weapons from being sold, that is better than spending more time stopping a half dozen.

Let me ask you this, Mr. Davis: We have had some complaints about the fact that a business or a home—and many of these folks have been collectors, have had 70, 80 weapons of different kinds—

that the weapons would be taken away from them. In the final analysis they would not be prosecuted, but the weapons would not be returned.

Can you give us the legal basis for that or the moral basis? If you have someone who commits a crime, all well and good, you ought to prosecute them. If they haven't, why take away a gun collection?

Mr. DAVIS. The legal issue is, of course, there is a different standard of proof between civil and criminal. I should say in the firearms policies that have been developed over the last several years to try and deal with various problems—and again, to try to get clearer views—one of the major changes has been to try to modify the approach to seizures, to avoid the massive seizure of weapons and to narrow seizures to those weapons more directly involved in the commission of crime.

That new policy has been put into effect for some time now.

Senator BAYH. Is the policy generally if the weapons are confiscated in the process of proceeding against a person, either civilly or criminally, and if the decision is made not to prosecute, is the policy to return the weapons or just keep them weapons?

Mr. DAVIS. I think that the policy that now exists—

Senator BAYH. Maybe you can find out the answer to that. But it seems to me if you have somebody with the goods, if they committed a crime and you confiscated the weapons, that is one thing. But you ought to prosecute them then. If they haven't committed a crime and you don't proceed, then to keep the weapons it seems to me is not due process.

Mr. DAVIS. No. I think there are two situations. One, obviously the first goal is to prosecute. Second, that you don't just keep the guns willy-nilly. You would have to proceed through judicial action if you were going to be able to keep the weapons.

I know that there have been some policy changes in that area. I would be happy to supply them for the record, because I know that last April a new policy statement trying to deal with this general area was put into effect. I will supply a little more detail for the record, Senator.

Senator BAYH. I would like to have clarification of what that policy is.

[The information supplied follows:]

ATF policy, as contained in Bureau Notice ATF-N-1850.15, issued 4/15/80, states in part: "Firearms taken into custody by the Bureau from individuals or dealers, who are not prosecuted or subsequently found guilty of a criminal offense, will be returned except in unusual circumstances . . ."

The entire Bureau Notice is provided for the record.

OFFICIAL USE ONLY

Department  
of the Treasury



Bureau of  
Alcohol, Tobacco  
and Firearms

NOTICE

ATF N 1850.15

4/15/80

EXPIRES: 4/15/81

Subject: FIREARMS TAKEN INTO BUREAU CUSTODY

1. **PURPOSE.** This notice sets forth the seizure policy concerning firearms taken into Bureau custody as a result of Criminal Enforcement investigations involving licensed firearms dealers, unlicensed firearms dealers, or prohibited persons. Appropriate portions of ATF O 1850.3B, Property Taken Into Bureau Custody, will be revised accordingly during the next semiannual review.
2. **SCOPE.** This notice applies to all ATF personnel.
3. **BACKGROUND.** The Gun Control Act of 1968 provides for both criminal and civil penalties for violations of its provisions. The authority to seize and forfeit firearms and ammunition involved in, used or intended to be used in, violation of its provisions is found in 18 U.S.C., § 924(d) and 26 U.S.C., § 5872(a).
4. **DISCUSSION.** Firearms found in violation of the Gun Control Act of 1968 are subject to seizure and forfeiture to the Government. Such violations and seizures may involve licensed firearms dealers, unlicensed firearms dealers, or prohibited persons. However, the Bureau will exercise discretion as to the firearms it will seize.
5. **POLICY.** The Bureau's discretionary seizure policy is directed at the following three specific areas of concern:
  - a. **Licensed Firearms Dealers.** Only those firearms needed as evidence, contraband firearms, or firearms carried during the commission of a felony will be seized. Firearms discovered on a licensee's business premises, which are not recorded in the dealer's records, will not be seized if the dealer agrees to take immediate steps to record those firearms in the records (unless the firearms have previously been specifically offered for illicit sale to a special agent or individual acting on behalf of the Government). Regulatory Enforcement will be notified of the circumstances involved in all investigations of licensed dealers.
  - b. **Unlicensed Firearms Dealers.** Only those firearms specifically offered for sale by the unlicensed dealer, contraband firearms, or firearms carried during the commission of a felony will be seized.
  - c. **Prohibited Persons.** All firearms found to be in the possession or control of a prohibited person under the Act, are subject to seizure.

Distribution: S 0000.3  
S 3000.2

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OPI: Program Development  
and Planning Division



ATF N 1850.15  
4/15/80

## OFFICIAL USE ONLY

However, special agents should exercise discretion in determining the need to detain, retain, or seize for forfeiture. Lack of criminal intent, nature of previous conviction, and length of time since last conviction may be considerations. If determined appropriate, individuals may be allowed to divest themselves of firearms while applying for relief of disabilities.

6. OTHER EVIDENCE. Nothing contained in this notice precludes special agents from taking into custody, or documenting other evidence relative to violations of the law (i.e., ATF F 4473, Firearms Transaction Record; business receipts, firearms disposition records; contraband).
7. CONTROLS. Exceptions to the above seizure policy must have the prior approval of the Assistant Director (Criminal Enforcement). This authority has been delegated to the Chief, Investigations Division.
8. FIREARMS DISPOSITION GUIDELINES. Firearms taken into custody by the Bureau from individuals or dealers, who are not prosecuted or subsequently found not guilty of a criminal offense, will be returned except in unusual circumstances (i.e., the return would be prohibited by law, contrary to the public interest, or contrary to directions from the court). In order to effectuate this policy, the signing of the declaration of forfeiture, with respect to administratively advertised firearms, should not be accomplished until final disposition of the criminal case. Authority for the Bureau to maintain custody in those circumstances is vested in the Assistant Director (Criminal Enforcement), and approval must be obtained from his delegate, Chief, Investigations Division.
9. EFFECTIVE DATE. The provisions of this notice are effective with respect to seizures occurring on and after April 15, 1980.

G. R. [Signature]  
Director

Senator BAYH. Is it possible to give us a report about the actions of the Bureau since the new policy? Have indeed the people out in the field followed the new policy? Has this new policy been put into the Federal Register?

Mr. DAVIS. The new policy is a Bureau directive which has been submitted to the committee and was previously submitted to other congressional committees. It was put into effect on April 15 of this year in terms of trying to restrict and put new guidelines as to what guns would be seized and also to try to deal with another complaint; that is, that guns sometimes were not handled as well as they should have been when they were in Bureau custody. New procedures have been put in to insure proper treatment.

Senator BAYH. I appreciate the fact that the new policies have been made available to the committees, but the people that end up getting arrested and having their weapons taken away are members of the public. Has this been made a matter of public record in the Federal Register?

Mr. DAVIS. This is not a regulation. It is an internal guideline. It has been testified about. I do see it here that—I am trying to look for it to check my recollection—that the policy is, in the case you described, except in unusual circumstances, not to retain and seek forfeiture of weapons where there has not been a successful criminal prosecution.

But it has been discussed publicly. It is an internal guideline. In terms of your reference, quite properly, to the question of whether we have followed policies, I think that is an important issue. I know you are going to be hearing other witnesses today, and I think amongst the issues that are important, as you hear those witnesses, is to look at when the events took place and whether we made policy changes since that time which have dealt with that problem.

I think you will find in many cases that we have made policy changes over the last several years that have dealt with a number of these problems.

I agree that it is important that we, however, continue our efforts to make sure that they are followed in the field.

Senator BAYH. I hope you will. I meant what I said about the oversight process. I think both the overseer and the one they are overseeing can benefit. And we are not just trying to pick on someone but are trying to find out what is actually going on.

By our insisting you look, you are probably going to find out some things that are happening out there that you are not aware of. And the next time we have oversight, and I intend to have the committee continue oversight, we can have a different conclusion if there are some of these abuses going on, and then the process will thus operate better for everyone involved.

Senator BAYH. I will be back here just as quickly as I can. We might ask our citizen panel of Mr. Best, Mr. Jewell, and Mr. Wampler if they would sort of take over the table here, and I will be back as quickly as I can get here.

Mr. DAVIS. Thank you, Senator.

Senator BAYH. Thank you, Mr. Davis.  
[Brief recess.]

[The prepared statement and additional materials submitted by Mr. Davis follow:]

PREPARED STATEMENT OF HON. RICHARD J. DAVIS

Mr. Chairman and members of the Subcommittee, I am appearing here today to discuss with you various aspects of the operations of the Bureau of Alcohol, Tobacco and Firearms. As the Assistant Secretary for Enforcement and Operations, I have oversight and general supervisory responsibility for five Treasury entities which have enforcement responsibilities. They are the U.S. Customs Service; the U.S. Secret Service; the Office of Foreign Assets Control; the Federal Law Enforcement Training Center and the Bureau of Alcohol, Tobacco and Firearms. I also am responsible for coordinating law enforcement policy for the Treasury Department.

As part of my responsibilities, I am necessarily concerned with the agency priority setting process, methods and practices of operations and, of course, allegations of misconduct and abuse. I wish to discuss very broadly certain policies of the Treasury Department which are relevant to these hearings and how the Bureau of Alcohol, Tobacco and Firearms has sought to implement these policies.

In discussing the activities of law enforcement agencies, it is useful initially to articulate several underlying premises. First, criminal, and frequently regulatory, investigations are by their nature conflict-oriented. As a consequence, it is not unusual for such inquiries to produce negative reaction from the subjects of investigation. This is often the case regardless of guilt or innocence. The relationship of investigator or prosecutor and possible violator is simply not the kind of relationship which creates good feeling among the parties involved.

Second, the rigorous enforcement of violations of the criminal laws, which is often a necessary ingredient to the effective accomplishment of an agency's mission, can sometimes lead to instances of abuse or misconduct on the part of the investigator. Any law enforcement official who says that in their agency there will never be a case in which an agent does something that is inappropriate is being naive. At the same time criminal investigations, by their nature, can produce false allegations of misconduct or other wrongdoing from the subject of an investigation.

Third, when an investigation is commenced, it is not always known whether the person being investigated is actually guilty. It is the function of the investigation and, where indictment follows, of the trial ultimately to determine whether someone is guilty of a criminal violation.

The existence of these premises which define the real world in which an agency operates does not mean that instances of possible misconduct or unwise action should be accepted as inevitable. To the contrary, it is vital that those managing enforcement agencies aggressively act to minimize their occurrence. To do so, among other things, it is important that internal affairs capabilities be improved; that clear policies, particularly in areas of controversy, be developed; that program goals be articulated; and that management systems be developed adequately to monitor agency performance. Treasury and BATF have taken actions in all these areas during this Administration. The steps taken are described in statements submitted by Director Dickerson in connection with other recent hearings. They are attached for your reference. I will summarize what has been done.

Two principal actions have been taken to enhance internal affairs capabilities. First, though not required to do so by statute, Treasury created an Inspector General to provide oversight for and leadership of all internal affairs operations in the Department. Second, last year I approved Director Dickerson's major reorganization of the bureau's Office of Internal Affairs which should make it substantially more effective. In addition, in order to make certain that we are aware of individual incidents of misconduct or patterns which may need special attention, I formally asked the Justice Department to notify the relevant Treasury law enforcement agency whenever a motion to suppress is granted on account of the actions of one of its agents or when a court finds that an agent committed illegal or otherwise improper acts.

Numerous changes in policy have also been made by BATF to provide clearer rules for its personnel and to improve its internal management. These include:

Reorganization of the Office of Criminal Enforcement on October 1, 1979, into a regional structure so as to provide closer supervision over enforcement operations.

Unannounced inspections of licensed firearms dealers have been limited to exceptional circumstances.

Priority was given to regulatory as opposed to criminal enforcement at gun shows wherever possible.

A comprehensive national firearms policy has been developed. ATF resources are now targeted against substantial and/or repeated suppliers of criminal guns and other major federal violators.

The use of the "straw man" investigative technique has been limited. Guidelines have been promulgated concerning the handling and ultimate disposition of firearms seized by the Bureau.

Stringent standards have been set for cases in which administrative action is sought following failure of criminal prosecution.

Guidelines have been developed to limit the number of firearms seized to those clearly involved in the violation.

BATF is also seeking to determine whether regulatory and other policy changes are appropriate. For example, public comment has been sought on the desirability of allowing firearms licensees to sell at gun shows; on whether a more precise definition of "engaged in the business" can be developed; and on whether BATF should use suspension of licenses as an alternative to revocation or non-renewal. All of these regulatory projects were commenced in response to criticisms about the manner in which BATF was enforcing the law. In addition, BATF is currently exploring the possibility of removing those weapons which have a high degree of collector appeal from the classification as destructive devices.

Enforcement of the law is a difficult job. In many areas, it produces controversy. Unfortunately, this is particularly true where firearms are concerned. Nonetheless, our policy and our goal remains to enforce the law so as to meet its underlying objective—to limit the criminal acquisition and misuse of firearms. In doing so, we will be firm but we will also seek to be fair, to minimize to the extent possible incidents of misconduct and to enforce the law in a sensible and sound manner.

This completes my testimony. If you have any questions, I will be happy to respond to them.

STATEMENT OF G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON CRIME JULY 2, 1980

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.

Your committee endeavors to strike a fair balance in establishing the law in this area. ATF also strives to maintain a fair balance in enforcement. I am not here this afternoon 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 enforce the laws which you pass, in a manner which reflects the intent of Congress. 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 also recognize the legitimate uses of firearms and the need to protect citizens from crime and violence. At the Federal level, the primary statute is the Gun Control Act of 1968.

ATF has made a significant and successful contribution to law enforcement through programs designed to make criminal acquisition of firearms a difficult act.

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.

Under title one 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.

With the assistance of dealers 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, and 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. 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. A breakdown of this information is contained in the statement which I submitted for the record. Gun tracing evidence often assists in the solution of murders, armed robberies and other violent crimes.

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 have provided you with the details of recent cases which were made possible through the efforts of the firearms tracing center.

#### ENFORCEMENT OF GCA TITLE II

Mr. Chairman, a second provision of the gun control act 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. There were 6,443 convictions of persons trafficking in or illegally in possession of these weapons during the same period.

One current problem involves the MAC-10 machine gun, which has become a favorite weapon of narcotics traffickers because of its small size and high fire power. This fully automatic weapon, which fires 20 rounds per second, has definitely been identified in nine of sixty 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 weapons, and other law enforcement agencies have seized approximately 500 more. We are acting to cut off illegal sources of 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. Again, several cases which illustrate ATF's activities in this area have been supplied to the subcommittee.

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 and quite often effectively supports local action against dangerous and violent criminals.

#### 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. Since guns and explosives are the tools of crime and violence, ATF works closely with the FBI, Drug Enforcement Administration, and Customs Service—using gun laws to apprehend major criminals.

#### 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. 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.

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 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, 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. In fiscal year 1979, 12 licenses were revoked, 93 renewals were denied, and 234 warning letters were issued.

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.

#### 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. I also wish to submit for the record a copy of our current firearms program which outlines our strategy in detail.

They are:

*The supply sector*, which represents the universe of firearms in the United States.

*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 and flea markets, 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.

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 have developed a comprehensive strategy for carrying out our firearms enforcement and regulatory responsibilities. I have discussed our strategy in some detail in my prepared statement. Basically, we attempt to concentrate our efforts on major sources of guns for criminal use.

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 by interdicting the inter-jurisdictional flow of firearms destined for the criminal element.

There is one area which does not lend itself to law enforcement or regulatory efforts. The area of residential thefts is beyond the scope of the GCA—but over 200,000 guns are stolen in residential burglaries each year and many end up in criminal hands.

Recognizing thefts as a major source of crime guns, one part of our strategy is to develop a firearms security and public awareness program.

We will encourage firearms owners and dealers to protect their firearms, record the serial numbers, and report thefts promptly to local police. We also are working with dealers through toll-free information phones, a news letter, and seminars to obtain better voluntary compliance and awareness of their responsibilities.

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. While we will have fewer cases by concentrating on major problem areas, I believe we will better achieve our objective of reducing the criminal use of guns.

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, because of criticism by the NRA that our regulations were deliberately vague, 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. We are currently evaluating the comments which we have received.

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 a warning letter is revocation of the dealers license. Revocation is a very serious penalty. We are seeking advice on the wisdom of us also having recourse to suspension for those cases not serious enough to warrant revocation, but falling in a middle ground between warning and revocation.

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 provide more direct oversight and control over those components in the field.

To reassure both the public and the Congress concerning questions related to certain types of undercover investigations, only I or my deputy can authorize the use of the straw man investigative technique, or approve the investigation of licensed dealers or gun shows.

This will ensure 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 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 special protective bags into which all seized firearms will be immediately sealed. We have also taken steps, when authorized by law, to ensure prompt return of seized firearms in those cases where the defendant is acquitted of criminal charges. We have also issued instructions to restrict seizure of weapons only to those which are directly related to a criminal offense.

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.

I believe that these changes demonstrate the willingness of ATF to respond to changing situations and to the concerns of the Congress.

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.

Mr. Chairman, I wish to conclude my testimony by addressing several issues which you have certainly heard many times. Since I became director of this

agency in February of 1979, I have appeared numerous times before both the House of Representatives and the Senate to respond to allegations of impropriety which have been lodged against ATF. I believe that any enforcement agency must be able to meet the test of serious scrutiny for its actions.

While the Congress certainly has the right to conduct continuing oversight over any Federal agency, and I welcome the opportunity to explain the job we do, I find myself being asked to address the same issues and circumstances which are inevitably raised by opponents of gun control at each hearing. The cases I refer to have been exhaustively investigated by congressional committees, our own internal affairs division, and in some instances by Federal or local prosecutors. I am not aware of any case in which it has been substantiated that there was a violation of civil liberties on the part of an ATF employee. I admit that in some instances the severity of the alleged violation may, in the eyes of some, not warrant criminal prosecution.

In one instance a well organized pro-gun group even circulated a "fact sheet" to members of Congress alleging numerous cases of ATF abuse. I directed that each of those allegations be investigated and answered with our response on a case by case basis. I wish to submit these documents for the record and to point out some of the cases which were presented to the Congress as ATF abuses. (See fact sheet summary.)

We often hear that ATF makes a practice of harassing licensed dealers in an attempt to drive them out of business. I would point out to the Committee that in the period July 1, 1979 through April 30, 1980, ATF opened 8,739 firearms investigations. Mr. Chairman, of this number, only 162 involved licensed dealers, a statistic which scarcely supports allegations of harassment against licensees.

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

Over 89 percent of the cases which we present to United States attorneys are accepted for prosecution, possibly the highest acceptance rate of any Federal law enforcement agency.

I would also say for the record that, tragically, since 1968, 23 special agents have died in line of duty.

Finally, Mr. Chairman, in an area which I know concerns you personally, ATF has occasionally been accused of violating the civil rights of American citizens. I would again state to you that there has never been an instance in which an employee of ATF has been prosecuted successfully for such an offense. I would not tolerate such behavior in my agency.

In conclusion, I wish to commit to you that 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, on our findings. I would also not object to investigation of such allegations by the FBI, GAO, or other responsible body. I have made this same commitment to the Senate, and of those allegations which they submitted to us not one was substantiated.

Mr. Chairman, I thank you for giving me the opportunity to present my testimony this afternoon. My colleagues and I are available to you at this time to answer any questions which you or the committee might have.

STATEMENT OF G. R. DICKERSON, DIRECTOR, DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, FOR PRESENTATION TO THE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, GENERAL GOVERNMENT OF THE SENATE APPROPRIATIONS COMMITTEE

I am genuinely pleased to have this opportunity to again address this committee on the subject of ATF's efforts to control the criminal misuse of firearms. During my appearance before you last July, several areas of controversy and concern were raised by various witnesses and by the committee. We had an opportunity to discuss those allegations both from the viewpoint of the witnesses and from ATF's position. While we were not able to answer every question at the time of the hearing, we subsequently responded to the Committee in writing with complete and, hopefully, comprehensive answers.

I assured the Committee of my desire to resolve any area of concern which ATF legally could address, and established in writing what I believed those areas were in a lengthy letter to you. I will review with you once again those actions



which were promised at that time, and will inform you fully as to positive steps and commitments undertaken by ATF since that time.

I feel strongly, and I hope you will agree, that we have acted in good faith on all fronts. In several areas ATF, upon close examination of an issue, has gone beyond its initial commitment to you and has taken additional steps to assure even handed application of the laws and regulations which we enforce. I am grateful for the open attitude of this Committee and for your willingness to discuss enforcement of the Gun Control Act in a constructive atmosphere.

The emotionalism surrounding the general issue of gun control often unfortunately tends to result in an indictment of the agency responsible for gun law enforcement. As an agency, ATF has no position on the merits of increased or decreased gun control. We strive, and will continue to strive, for impartial enforcement which is directed toward the criminal misuse of firearms. True improvement in the policies and operations of ATF will increase our ability to prevent the criminal misuse of weapons. That is an objective to which all parties can subscribe.

I wish now to review with you the individual areas contained in my letter. I will discuss each one and report on our current position for each.

#### NATIONAL FIREARMS POLICY

The first item we agreed to review was development of a comprehensive national firearms policy. The task force I referred to in my letter consisted of ATF field and management personnel from all parts of the country. Their mission was to develop a policy statement which would be consistent both with the letter and spirit of Federal law while directing ATF resources to those areas having greatest impact upon the criminal misuse of firearms.

In order to increase the effectiveness of the firearms program and in response to the legitimate concerns expressed at the hearings last July, we have also reviewed and modified our firearms program, strategy, and policy. At this time I wish to submit to you the new statement of the ATF firearms program which I believe will insure an effective firearms enforcement and regulatory effort which protects the legitimate uses of firearms.

#### REORGANIZATION OF OFFICE OF INTERNAL AFFAIRS

The second commitment dealt with reorganization of the Office of Inspection to insure prompt and professional handling of allegations of wrongdoing or abuse by ATF employees. This reorganization, which had been started prior to my appearance before you last July, has now been completed. The Office of Internal Affairs has been completely reorganized, both organizationally and philosophically. In an organizational sense, we have decentralized the former Inspection activity to include four Regional Inspector offices in New York, Atlanta, Chicago and San Francisco with an additional post of duty in Dallas.

We have revamped the Headquarters structure to separate, and thereby better assure, the functional integrity of internal investigations, internal audits and operational reviews. We have installed new leadership and have recruited experienced internal affairs personnel from other agencies to complement the existing staff.

Philosophically, the Office of Internal Affairs is moving from a purely reactive organization, responding to integrity breeches after the fact of their occurrence, to a proactive investigative entity with priority emphasis being placed on the pre-identification and foreclosure of potential integrity hazards. To that end, the Office of Internal Affairs is also developing a series of integrity awareness presentations and messages designed to sensitize Bureau employees to their responsibility to maintain the highest standards of official conduct.

#### REORGANIZATION OF OFFICE OF CRIMINAL ENFORCEMENT

My third commitment dealt with reorganization of the office of Criminal Enforcement of ATF. This reorganization has also been completed. The Office of Criminal Enforcement was reorganized, effective October 1, 1979, into a regional structure. The new structure is intended to provide closer supervision over the Criminal Enforcement operations of the Bureau's district offices. Four Regional Directors (Investigations) were selected through the merit promotion process, and offices opened in New York, Atlanta, Chicago, and San Francisco. All have line authority under the Assistant Director, Criminal Enforcement.

#### "STRAW MAN" INVESTIGATIVE TECHNIQUE

My fourth commitment dealt with utilization of the "straw man" investigative technique during investigations of licensed firearms dealers. As I stated during my last appearance before you, this technique has been upheld by the courts as legal and proper, but is employed by ATF only with my personal approval or the approval of my deputy. Since my last appearance, the Court of Appeals for the Fifth Circuit affirmed the conviction of a firearms dealer who used a "straw man" to make illegal firearms sales. I have attached a copy of the opinion to my statement. Since a major criticism of this technique was that many dealers did not understand the legal ramifications of dealing with third parties in the sale of firearms to otherwise prohibited persons, ATF distributed to every Federal firearms licensee an industry circular explaining what is and what is not permissible under the law. I wish to submit a copy of that document at this time.

I might add that since last July I have authorized only one "straw man" investigation, a case which involved gun smuggling along the Mexican border. I would be happy to meet privately with the Committee to discuss the circumstances surrounding that ongoing investigation.

#### SALES AT GUN SHOWS

My fifth commitment dealt with sales of firearms at gun shows by Federally licensed individuals. Currently, licensed dealers are permitted to sell firearms only at the place of business specified on their license. A licensed dealer may attend gun shows for the purpose of displaying his wares and taking orders for firearms, but must return to his place of business to actually consummate the sale.

After considerable legal consultation and regulatory review, a draft advance notice of proposed rulemaking soliciting comments as to whether we can and should propose a rule to allow licensed dealers to make sales at gun shows located in their home states has been approved by the Treasury Department. I have just received authorization to publish this advance notice. I wish to submit a copy of the notice at this time. Of primary concern to ATF is that proper recordkeeping be insured so that we can more successfully trace firearms used in crime.

I would again state to this committee that extreme care must be used in this regard since gun shows have repeatedly proved to be a preferred source of weapons for the criminal element. This is primarily because recordkeeping is often nonexistent by many of the persons making sales. It is documented that the Symbionese Liberation Army, the Black Panthers, the Hells Angels motor cycle gangs, and individuals such as Sara Jane Moore all obtained crime guns at various gun shows.

#### DEFINITION OF DESTRUCTIVE DEVICES

Our sixth commitment to the subcommittee involved the definition of destructive devices under the National Firearms Act. While this category includes weapons of extraordinary destructive potential, such as rocket launchers, hand grenades and mines, and certain explosive and incendiary devices which would serve only criminal purposes, it also includes other large bore weapons which are not so likely to be used in crime. While most weapons classified as destructive devices have little or no utility to the hunter or sportsman, some of them are sought by collectors. A delicate trade-off between a weapon or device's potential misuse and its legitimate value as a collectors item can be explored. To the extent that the public safety will not be threatened, an examination will be made of the classification of certain of these devices with a view toward liberalizing their removal from this restricted category of weaponry. We are exploring the possibility of removing those weapons which have collector appeal and are not likely to be used as weapons. In addition, we will continue to permit the removal of those weapons which are altered so that they no longer meet the destructive device definition.

I wish to submit the findings of our task force at this time.

#### HANDLING OF SEIZED FIREARMS

My seventh commitment to the committee dealt with handling of seized firearms and discretion in determining which firearms of a dealer should be seized. An extensive study of the Bureau's procedures which apply to taking property into

Federal custody was completed in December. The applicable Bureau order was modified on December 3, 1979 to better assure proper handling of seized firearms. In addition, the Bureau has engaged in a contract to purchase heavy gauge plastic bags into which all seized firearms will be sealed. We are presently procuring both the bags and sealing devices which will be issued to every post of duty. I have a sample here for your inspection.

Guidelines concerning which items should be seized during an investigation have been issued. Generally speaking, agents are instructed to seize only those firearms which are clearly involved in the violation. In addition, instructions designed to insure prompt return of seized firearms in those cases where a defendant may be found not guilty have also been issued. Our policy is to return such property unless instructed otherwise by the court, unless the individual is a prohibited person, the weapon is contraband, or where the return of the firearm would be contrary to public safety. I wish to submit a copy of the approved order at this time.

#### "ENGAGING IN THE BUSINESS"

My eighth commitment deals specifically with an issue which was discussed at some length during my last appearance, the definition of "engaging in the business" as a dealer in firearms. During my appearance last July there was extensive criticism concerning the absence of a regulatory definition of the term, as well as the interpretation of the term by the Federal courts. Various witnesses found the term or existing definition of the term to be too vague to be applied in all situations. As my letter indicated, the Bureau developed an advance notice of proposed rulemaking inviting comments from the public on how this term should be defined. The notice was drafted in the weeks following the hearing and was formally published on December 19, 1979. The comment period, which was extended 30 days and, in fact, closes today, resulted in 931 comments being received. The Bureau is presently engaged in evaluating these comments.

It is interesting to note that some critics of ATF, who insisted that the Bureau was remiss in not previously defining the term, are now criticizing the Bureau for attempting to define the term. They have stated publicly that responsibility for a definition of "engaging in the business" rests exclusively with the United States Congress. It is interesting that they would criticize ATF for not defining the term and then, when the Bureau acts on a Senate request which was based on their testimony, criticize the fruits of their own labors. I asked counsel to review the legality and propriety of the Bureau engaging in this effort. Their response was that we are clearly within our proper boundaries in so doing.

#### CRIMINAL VS CIVIL ACTION

My ninth commitment dealt with developing guidelines with regard to ATF taking civil action against an individual or a licensee after dismissal or acquittal of criminal charges. This, again, is an interesting situation. Last July you heard testimony from a Mr. Phillips, a Federally licensed dealer doing business in Parksley, Virginia. In the discussion which followed Mr. Phillip's testimony both you, Mr. Chairman, and Senator McClure were extremely critical of what had been presented as a typical ATF operation. An exhaustive search of our files has indicated that, in fiscal year 1979, ATF brought administrative charges against a dealer who had been acquitted of criminal charges on only two occasions. The Phillips case was one of them. In both cases an administrative decision was reached in favor of reissuing the license.

In any event, I have recently signed directives to the field which set stringent standards for cases in which administrative actions might be brought following failure of criminal prosecution. I wish to submit a copy of the directive at this time.

I wish to point out two additional facts. First, the number of dealers investigated by ATF has been significantly reduced in the past year. In fiscal year 1978 there were 671 investigations; in fiscal year 1979 there were only 257; and in fiscal year 1980 we are projecting a further reduction to 106 licensed dealer investigations. We are attempting to concentrate upon only the most significant sources of weapons to the criminal community. At the same time any licensee who flagrantly violates the law cannot expect or receive immunity from investigation and, if warranted, prosecution.

There has been considerable criticism of ATF for conducting routine compliance inspections of licensed dealers, with allegations that these inspections were conducted in order to find insignificant recordkeeping violations and to put dealers out of business. This is not true. In fiscal year 1979, ATF inspectors conducted 14,744 compliance investigations of existing licensees of which 4,159 were found to be in violation. As a result of these investigations, 217 renewal or original applications were denied and 12 were revoked through the administrative hearing process. In addition, 234 admonitory letters were issued to licensees found to be in serious violation of the law and regulations.

I believe that the record speaks for itself. ATF would prefer to help a dealer correct technical deficiencies rather than to take criminal or administrative action against him. Only in the most severe cases do we act against the dealers license.

Nor do we conduct "raids" to examine a dealers records. ATF policy for the past two years has, in most instances, been to telephone the dealer in advance to make an appointment to inspect his records. We do, of course, reserve the right to occasionally make unannounced inspections, but our policy is to create the least amount of disruption possible to the business involved.

Under current regulations, in the event a dealer must be acted against, ATF has no recourse other than a warning or the extremely severe action of license revocation or denial. We are contemplating amending the regulations to permit suspension of a dealer for those cases in which the violations involved, while serious, might not justify the drastic action of revocation. This action would result in even a lesser number of revocations.

#### ATF PUBLICITY GUIDELINES

My tenth and final commitment dealt with ATF publicity guidelines which dictated the extent to which information could be released following any ATF criminal operation. The former guidelines were criticized as appearing to sanction prejudicial pre-trial publicity. Our Public Affairs guidelines were reissued on February 15, 1980 and the questioned policies have been amended. I would reemphasize to the committee that ATF is, and always has been, subject to the guidelines put forth by the Attorney General. Those guidelines require that "public out-of-court comments regarding investigations, indictments, arrests, and ongoing litigation, should be minimal, consistent with the Department of Justice responsibility of keeping the public informed." I wish to submit a copy of the new guidelines at this time.

Mr. Chairman, as I indicated to you personally following the July hearings, ATF is seriously committed to providing professional and effective law enforcement for the benefit of the American public. I believe that the actions which I have just outlined for you will go far toward assuring that any action taken by ATF will be able to stand the honest scrutiny of the public and the Congress. No agency of government, and certainly no law enforcement agency, could ever come before this committee and claim perfection in all aspects of its operations and policies. I will again commit, however, to my intent to strive toward that goal. These hearings have had a positive and lasting impact on the agency and should assist us toward that end.

Mr. Chairman, last July I stated to you that I was determined to see that the Gun Control Act was brought to bear forcefully upon the criminal element in this country in order to curtail the criminal misuse of firearms. I would like to take this opportunity to review for the committee several recent cases made by ATF which I believe illustrate this commitment.

In January, 1980, ATF agents in the Washington, D.C., area initiated an investigation based on the recovery of a firearm in New York City which had been purchased from a licensed firearms dealer in this area. The investigation eventually documented the use of fictitious identification to illegally purchase firearms for delivery to an identified narcotics trafficker in New York City.

As a result of this investigation the narcotics trafficker was arrested and charged with violation of the Gun Control Act.

In a second case, a firearm was traced which had been used to murder one New York City police officer and wound a second. The weapon was traced to Florida where it was determined that it had been purchased by a New York resident using fraudulent identification. Six other weapons were purchased at the same time, taken to New York and sold. The defendant was arrested for

violations of the Gun Control Act on August 27, 1979 and was subsequently indicted. At the time of his arrest the defendant had been charged with burglary in Nassau County, New York. He was subsequently convicted of burglary and also entered a plea of guilty to the firearms violations and was sentenced to 3 years in prison on the firearms charge.

ATF has also used the Gun Control Act to impact on international criminals. For example, in September 1978 Colombian authorities arrested three terrorists after they attempted to kidnap the former Colombian Ambassador to France. Weapons used during that kidnap attempt were identified to us and were traced to a resident of Miami as part of a purchase of 100 such weapons. A routine compliance inspection at the store where they had been purchased had already detected that sale as well as suspicious multiple sales of over 300 firearms. An individual was identified who had conspired with the firearms dealer in the illegal diversion of firearms through the falsification of records. The owner of the gun shop was arrested pursuant to a Federal arrest warrant on August 27, 1979 and was indicted on 15 counts of violation of the Gun Control Act. In February, 1980, he pled guilty to 2-counts pursuant to a plea bargain agreement, was sentenced to serve 10 years in prison and was fined \$10,000 by the judge who characterized his behavior as "disgusting." The judge, in passing sentence, cited the delivery of firearms for use by terrorists as a most serious offense.

We are particularly satisfied with our ability to assist the Drug Enforcement Administration in arresting major narcotics traffickers on charges of violating the Gun Control Act. For example, on March 26, 1980, ATF special agents executed a Federal Search Warrant on the residence of a Class 1 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 were 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, four have been determined to have been stolen, three from a house burglary, and one 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 large quantities of firearms at gun shows throughout the South Florida area. The suspect had been observed in possession of some 100 to 150 handguns at gun shows and claimed to be disposing of from 40 to 50 guns per show for 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 30 handguns, 4 long guns and 2 prohibited weapons.

Working with local officers, ATF assisted in the identification of the suspect's source of supply for stolen firearms, who was subsequently prosecuted in State court. A total of six stolen firearms were purchased or seized during the investigation. Firearms were also recovered in connection with narcotics arrests in adjoining States which were traced to the defendant and are believed to have been sold at gun shows. In May, 1979, 4 additional suspects were arrested by local officers when found in possession of a machine gun, fragmentation grenades, and 4 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. In June, 1979, 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 before the Federal courts.

With regard to our impact on organized crime, in April 1978, ATF and DEA initiated an 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 4 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 arrests. On May 25, 1979 the principal suspect was sentenced to 26 years in prison on 21 counts of violation of the Federal firearms and narcotics laws. His associates received commensurate sentences.

Mr. Chairman, while I am deeply concerned about allegations of past improprieties on the part of ATF, I am equally concerned that cases such as these which I have just described should also be brought to the attention of the committee. I hope that you will all be assured that this agency intends to bring the Gun Control Act to bear on criminals such as these who make such a violent impact on our society. I believe that the resources of ATF are being focused deliberately and forcefully upon such criminals.

I will be happy to respond to any questions which you might have.

#### DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

[27 CFR Part 178]

[Notice No. —]

#### SALES OF FIREARMS BY LICENSEES AT ORGANIZED GUN SHOWS

Agency: Bureau of Alcohol, Tobacco and Firearms (ATF).

Action: Advance notice of proposed rulemaking.

Summary: ATF is considering amending regulations in 27 CFR Part 178 to allow sales of firearms by licensees at organized gun shows. Licenses are now issued only for the premises where an applicant regularly intends to engage in the business to be covered by the license. ATF wishes to gather information by inviting comments from the public and industry on the desirability and feasibility of allowing sales of firearms at organized gun shows.

Dates: Comments must be received on or before (90 days from the date of publication in the Federal Register).

Address: Send comments to: Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Attn.: Chief, Regulations and Procedures Division).

For further information contact: James A. Hunt, Research and Regulations Branch, 202-566-7626, or Phil Titus, Special Operations Branch, 202-566-7591.

Supplementary information: The Bureau has taken a position since enactment of the Gun Control Act of 1968 that firearms licenses are not issued to engage in the business at gun shows. This policy is reflected in Revenue Ruling 69-59 which stated the opinion that the law contemplates licensing of premises where the applicant regularly intends to engage in the business to be covered by the license rather than temporary locations.

ATF is considering a change in gun show policy and a change in regulations to allow Federal firearms licensees to sell firearms at organized gun shows held in the same State as the licensee's premises. However, before issuing proposed regulations, we ask that interested persons submit pertinent comments, opinions, or other data so we can determine:

1. Is there sufficient interest by firearms licensees in making sales at organized gun shows to warrant issuing proposed regulations?
2. If regulations provided for sales of firearms at gun shows by licensees, what, if any, would be the impact on firearms commerce, organizations which sponsor gun shows, State and local laws and ordinances, and local law enforcement?
3. Would allowing licensees to make sales of firearms at gun shows reduce or increase opportunities for criminals obtaining firearms?
4. If licensees are allowed to sell firearms at gun shows, what licensing procedures would be recommended (a separate license, an extension of the dealer's license, or some other method)?
5. Are there other considerations which should be taken into account before proposing regulations to allow licensees to sell firearms at gun shows?

## DISCLOSURE OF COMMENTS

Comments on this notice may be inspected in the ATF Reading Room, Office of Public Affairs, Room 4408, Benjamin Franklin Post Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., during normal business hours.

## DRAFTING INFORMATION

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

## AUTHORITY

This advance notice of proposed rulemaking is issued under the authority of 18 U.S.C. 926, as amended (82 Stat. 1226).

(Signed) G. R. DICKERSON,  
*Director.*

(Approved) RICHARD J. DAVIS,  
*Assistant Secretary*  
(Enforcement and Operations).

Billing Code 4810-31.

## DESTRUCTIVE DEVICES

Testimony at the July 1979 Oversight Hearings was critical of ATF's policy and practices regarding the classification and seizure of destructive devices. Our letter to you of September 7, 1979, stated in relation to destructive devices:

"—We have also reviewed the requirements in regard to the seizure of destructive devices, machineguns, cannons, etc. Not all unregistered National Firearms Act weapons must be forfeited to the government and disposed of pursuant to law. Under the NFA, certain firearms can be removed from the Act if the Director of ATF determines that the firearm is not likely to be used as a weapon or that it may be altered in such a way that it no longer meets the definition of "firearm." Weapons falling into these two categories may be lawfully retained by the owners and may not be subject to seizure. You may also be aware that ATF has, in the case of weapons that cannot be altered or otherwise removed from the Act, permitted the donation of unregistered weapons to governmental entities such as Federal, State, or local museums in lieu of abandonment or seizure. For those remaining items that cannot be handled in the manner described above, we plan to explore other alternatives. We will keep you advised of our progress in this matter."

As a result of this commitment, a special task force was established with representatives of the Offices of Regulatory Enforcement, Criminal, Enforcement, Chief Counsel, and the Director's staff. This task force had as its purpose to:

"... examine the existing definition of destructive devices as stated in Title 26, U.S.C. Chapter 53 S 5845 (F) (Gun Control Act) in order to identify possible problem areas. When identified, these problems will be analyzed to provide viable options and alternatives which will be proposed."

The task force reviewed Bureau policy and procedure as well as the body of reports of judicial proceedings related to destructive devices. The task force separated destructive devices into two major categories for its review: firearms type destructive devices and explosive/incendiary type destructive devices. The latter type of device presents particular problems of definition since materials are available in almost every household which could be used to construct a destructive device.

The task force recommended that there be no change in the current definition of a destructive device as it applied to explosive/incendiary type devices. The task force did recommend the following related to explosive/incendiary devices:

"Existing ATF Criminal Enforcement orders and other avenues of internal communications should be utilized to reemphasize the necessity of providing evidence that the "combination of parts" was *designed* and/or *intended* for use as a destructive device and no recommendation for criminal prosecution shall be made unless the evidence clearly reflects such *design* and/or *intent*."

The intent of this recommendation is to stress once again that one must prove design and intent for prosecution. Redefining an explosive or incendiary device through statutory change would have an adverse impact on enforcement efforts.

After a thorough review, the task force made several recommendations concerning firearms type destructive devices. The recommendations are:

"1. Establish and implement procedures for determining classes of destructive devices not likely to be used as weapons in order to remove them from the purview of the National Firearms Act (NFA).

(a) The Firearms Technology Branch will be responsible for identifying these classes of firearms and presenting appropriate technical data to the Firearms Classification Panel for a determination to be made as to whether or not the classes of destructive devices should be removed from the purview of the NFA.

(1) Such removal from the NFA would not exclude them from Title I of the Gun Control Act of 1968 (GCA).

(2) The criteria for consideration for removal from the purview of NFA would be (1) the age of the weapon, (2) whether or not it is currently in use, (3) the mobility of the weapon, (4) the value of the weapon, (5) the availability of ammunition, (6) authenticity of the weapon, and (7) any other factors bearing on the likelihood of that class of destructive device being used as a weapon.

(3) Ammunition for such classes of destructive device would not be considered for removal from the Act since, in most instances, these projectiles are in and of themselves destructive devices. In those instances where the ammunition for these destructive devices is not in and of itself, a destructive device, the propellant charges, usually smokeless powder, comes within the purview of Title 18, U.S.C., Chapter 40, s 841, the Explosive Control Act.

2. Continue the consideration of applications on a case by case basis for destructive devices not exempted on a class basis.

(a) Include in existing ATF Orders procedures for advising concerned individuals that this alternative to have the destructive device exempted from the Act is available if it can be established that it is not likely to be used as a weapon."

These recommendations will be implemented as stated by the task force. The recommendations more clearly define ATF authorities and the process through which those authorities will be utilized. The result will have no adverse enforcement impact but will better serve law abiding citizens in possession of destructive devices which are not likely to be utilized as a weapon.



Department  
of the Treasury



Bureau of  
Alcohol, Tobacco  
and Firearms

## ORDER

ATF O 5300.

16 APR 1980

Subject: FIREARMS ADMINISTRATIVE ACTIONS AND CRIMINAL ACTIONS

1. **PURPOSE.** This order establishes general guidelines that form the basis of the Bureau's firearms policy regarding administrative actions and criminal actions taken against Federal firearms licensees. This order presents the framework in which the Bureau's administrative and criminal sanctions will be used to achieve goals consistent with the intent of the firearms laws and regulations. For the purposes of this order, an administrative action is any formal internal license proceeding.
2. **SCOPE.** All Regulatory Enforcement and Criminal Enforcement personnel.
3. **BACKGROUND.**
  - a. The Gun Control Act of 1968 (18 U.S.C., Chapter 44), provides both criminal and civil penalties for violations of its provisions. The criminal penalties for violations of the act are contained in 18 U.S.C. 924. The act also provides for administrative actions to deny the renewal of a license or revoke any license issued under the act. (18 U.S.C. 923)
  - b. If a licensee is indicted for a crime punishable by imprisonment for a term exceeding 1 year he may continue operations pursuant to 18 U.S.C. 925(b) (provided he files a timely renewal application) until any conviction pursuant to the indictment becomes final.
  - c. Under the applicable regulations, the regional regulatory administrator may issue a notice of denial to any applicant who he has reason to believe is not eligible to receive a license (27 CFR 178.71). In addition, 27 CFR 178.73 provides that whenever the regional regulatory administrator has reason to believe that a licensee has violated any provisions of the act or its implementing regulations, he may issue a notice of contemplated revocation of the license.

Distribution: S 5000.2  
S 3000.2

OPI: Regulations  
and  
Procedures  
Division

4. **CRIMINAL PROSECUTIVE CRITERIA.** Criminal prosecutions of firearms licensees should focus on those areas of primary Federal interest (see ATF O 3210.7A, Investigative Priorities, Procedures, and Techniques, exhibit 1) which reflect Bureau policy to pursue only the more serious criminal violations. Areas of primary Federal interest include, but are not limited to, illegal firearms trafficking, illegal shipment, transportation or receipt of stolen firearms, and theft of firearms from interstate commerce. When a case which originates in Regulatory Enforcement appears to meet the criteria for criminal prosecution, a referral will be made to criminal enforcement as outlined in paragraph 11.
5. **LICENSING ACTION.** When a criminal case is not contemplated an administrative case should be considered when violations of Federal firearms laws are of a willful nature. Things to consider:
  - a. Licensee's past history.
  - b. Licensee's attitude towards corrective measures.
  - c. Available evidence to prove willfulness of violations.
  - d. Type of violations (i.e., recordkeeping violations; sales to prohibited persons).
  - e. Frequency of violations.
6. **LICENSING ACTIONS WHILE LICENSEE IS UNDER INDICTMENT.** In no case should a license be issued regarding a pending renewal application where the licensee is under indictment for a crime punishable by imprisonment for a term exceeding 1 year. Letters of authorization will be issued to those renewal applicants who are seeking renewal of their license during the term of such indictment.
7. **LICENSING ACTIONS PRIOR TO CRIMINAL INDICTMENT.** As a general rule, administrative actions will no longer be initiated while a licensee is under criminal enforcement investigation. In these cases, administrative actions may be initiated only after a criminal course of action has been rejected. In those instances where a criminal case report has been referred to the United States attorney for prosecution, a renewal license will only be issued after consultation with the U.S. attorney. In addition, a new license will not be issued to those licensees who are prohibited by law from shipping or receiving firearms (18 U.S.C. 922(g) and (h)).

8. REVIEW BOARD ESTABLISHED. A review board is hereby established to recommend whether licensing actions are necessary in the following instances:

- a. U.S. attorney declines prosecution. The U.S. attorney may decline criminal prosecution and return the matter to the Bureau for administrative action. The decision not to prosecute may be made for a number of reasons, including the availability of prosecutorial and judicial resources. A decision must be made whether to proceed administratively in light of the reasons offered by the U.S. attorney's office for their declination.
- b. Acquittal of a licensee. A license proceeding after a criminal acquittal has been the focus of much of the criticism directed at ATF by persons who argue that such action is tantamount to double punishment.
- c. No indictment returned by grand jury.

9. REVIEW BOARD MEMBERS AND RESPONSIBILITIES.

- a. In each region the review board will consist of the Regional Operations Officer in the Office of the Regional Director of Investigations, the Chief, Analyst in the Office of Regulatory Enforcement, and an attorney in the Office of Regional Counsel who has not been involved in the case. The review board will be responsible for the following activities:

- (1) To recommend a course of action (i.e., revocation) to the regional regulatory administrator. The review board members do not necessarily have to present a common recommendation. Decisions to take or not to take a licensing action should be based on the following guidelines. These guidelines are general and are not intended to be all-inclusive.

- (a) The seriousness of the alleged violations.
- (b) The strength of the Bureau's case.
- (c) The recommendation of the U.S. attorney, if any.

- (2) To maintain a file on each case that is reviewed. The file will contain, or reference a file that

does contain, all background information, recommendations, and records of any actions taken during and after each case that is reviewed. The firearms and explosives coordinator will be responsible for keeping the file current.

- b. Regarding those cases as outlined in paragraph 8, if the regional regulatory administrator decides to proceed with an administrative action, send a 1 page summary of the case to Bureau Headquarters (R:T:S).

10. LICENSE REVOCATION VS. APPLICATION DENIAL.

- a. When an administrative action is justified, and no criminal course of action is contemplated a notice of contemplated revocation will be issued. A denial action will be taken in lieu of revocation only when such denial action would be within 2 months of renewal time. In this case, issue a notice of denial when the application for renewal is received.
- b. For any administrative action, send a copy of all notices, including contemplated notices to deny applications or revoke licenses to Bureau Headquarters (R:T:S). See ATF O 5300.2A, Technical Services Procedures - Firearms and Explosives, paragraph 54c.

11. REFERRALS.

- a. Referrals between Criminal Enforcement and Regulatory Enforcement will be made on the new ATF F 5000.21, Referral of Information. In the case of a referral by an inspector, the area supervisor will be the approving official. In the case of referral by a special agent, the RAC or SAC will be the approving official. Attach any pertinent information to the referral form.
- b. Inspections that originate in Regulatory Enforcement will be referred to Criminal Enforcement if there is reason to believe that the violations found meet the criteria for criminal prosecution. (See paragraph 4.) Other examples of items to be referred to Criminal Enforcement are:

- (1) False statements on applications.
- (2) Any act or threat of violence.

- (3) Willful operations without a license.
- (4) Access denial to licensed premises.
- c. Investigations that originate in Criminal Enforcement will be referred to Regulatory Enforcement for possible administrative action if the prosecutive criteria is not met. This would also hold true where the ATF prosecutive criteria is met but prosecution has either been declined by the U.S. attorney or a grand jury has failed to return an indictment.
- d. For each referral, send a copy of the referral form to the appropriate CFO or SAC.

*A.R. Peterson*  
Director



## DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco  
and Firearms

Notice No. 331

To all firearms licensees and others concerned:

Bureau of Alcohol, Tobacco and  
Firearms

27 CFR Part 178

(Notice No. 331)

Definition of the Phrase "Engaged in  
the Business"AGENCY: Bureau of Alcohol, Tobacco  
and Firearms (ATF).ACTION: Advance notice of proposed  
rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering amending the regulations in 27 CFR Part 178 to include a definition of the phrase "engaged in the business" when referring to a dealer of firearms or ammunition. Persons engaged in the business of dealing in firearms or ammunition are required to have Federal firearms licenses. ATF wishes to gather information by inviting comments from the public and industry on how the phrase "engaged in the business" should be defined. ATF also desires public comment on the feasibility and desirability of defining the phrase.

**DATE:** Comments must be received on or before March 16, 1980. *APR 17, 1980*

**ADDRESS:** Comments must be submitted in duplicate to Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Attn: Chief, Regulations and Procedures Division).

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Minton, Research and Regulations Branch, 202-566-7828.

**SUPPLEMENTARY INFORMATION:****Background**

Title I of the Gun Control Act of 1968 established procedures for the licensing of persons who intended to engage in the business of dealing in firearms or ammunition. Specifically, it is unlawful for anyone except a licensed dealer to

engage in the business of dealing in firearms or ammunition (18 U.S.C.

922(a)(1) and 923(a)). The term "dealer" is defined in 18 U.S.C. 921(a)(11) and 27 CFR 178.11 to mean, among others, any person engaged in the business of selling firearms or ammunition at wholesale or retail. The law does not prohibit an unlicensed person from disposing of personal firearms as long as he or she is not engaging in the business of dealing in firearms.

The definition of the phrase "engaged in the business" is not defined in the law or the regulations. In fact, the courts have stated that the phrase does not seem susceptible to a rigid definition but turns on the facts and circumstances of each case. The phrase clearly connotes an element of continual or habitual practice. It implies an activity involving more than occasional participation or more than a single act. On the other hand, a single firearms transaction, under certain circumstances, has been held to be engaging in the business of dealing in firearms. For example, a person who makes a single sale and represents that he is ready, willing and able to procure firearms for future sales has been held to be engaging in the business.<sup>1</sup> Some United States courts of appeals have defined the term as that which occupies the time, attention and labor of men for the purpose of livelihood or profit.<sup>2</sup>

On the other hand, certain courts of appeals have taken the position that expectations of profit are not determinative of whether one is engaged in the business of selling firearms.<sup>3</sup> In lieu of a profit motive, they have looked to factors such as the continuing or repeated nature of the sales or representations made to prospective buyers as sufficient to prove engagement in the business.<sup>4</sup> In another case<sup>5</sup> the court stated that persons are engaged in the business of dealing in firearms if they have guns on hand or are ready and able to procure them for the purpose of selling some or all of them to such persons as they might from time to time decide to accept as customers.

For a comprehensive discussion of how the term has been interpreted by the courts, see 32 A.L.R. Fed. 946 (1977).

**Public Participation**

ATF is studying the problem associated with the issue of "engaged in the business." While courts have continually found that the current situation is adequate for enforcement purposes, if possible, we would like to develop a workable, commonly understood definition of the phrase. At the same time we recognize that an analysis of the comments may indicate that a regulatory definition is not possible or not desirable. Therefore, we ask that interested persons submit pertinent comments, opinions, or data on the issue. We specifically request information from the public and the industry on the feasibility and the desirability of defining the phrase. We also request comments on how the phrase "engaged in the business" should be defined.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for further ATF action. Copies of this notice and of the comments will be available for public inspection during normal business hours at the following location:

Public Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

**Drafting Information**

The principal author of this document is Thomas Minton, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

**Authority**

This advance notice of proposed rulemaking is issued under the authority of 18 U.S.C. 926, as amended (82 Stat. 1226).

Department  
of the Treasury



Bureau of  
Alcohol, Tobacco  
and Firearms

# ORDER

ATF O 1200.2A

2/15/80

Subject: PUBLIC AFFAIRS GUIDELINES

1. PURPOSE. This order revises the general guidelines and procedures to be followed in implementing the Bureau's public affairs program.
2. SCOPE. The provisions of this order apply to Headquarters and field.
3. CANCELLATION. ATF O 1200.2, dated 11/11/74, is canceled.

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### 4. DISCUSSION.

- a. An effective public affairs program has two key elements essential to Bureau activities. One of those is to act in an advisory capacity to the Director and other Bureau management officials concerning the impact of Bureau programs and actions. The second element is to inform the public of its rights and responsibilities under the Federal laws which the Bureau administers and enforces. It is a means of identifying the jurisdictional responsibility of ATF and describing the areas in which ATF can be of assistance to Federal, State and local law enforcement organizations. It provides appropriate release of information about Bureau actions and programs.

Distribution: S 0000.3

OPI: Public  
Affairs

- b. The public affairs program is designed to supplement and support the Bureau's operational functions. Its objective is to secure the timely release of appropriate information to the public through the use of all types of communication. The key to any successful public affairs program is the transmission of information to the proper level as soon as possible, and, for it to be effective, all Bureau personnel must be sensitive to the public affairs impact of their activities.

### 5. PUBLIC AFFAIRS ROLE.

- a. Primary Role. A primary role of the Office of Public Affairs is to advise the Director and his staff concerning the effect and impact of policy decisions and actions by Bureau personnel. This advisory role extends to ATF field operations. The office also is the focal point for dealing with media and public inquiries and as such informs the public of initiatives, programs, policies, activities and other matters involving the Bureau.
- b. Scope. The responsibilities of the Office of Public Affairs include internal and external activities.
  - (1) External. The office maintains contacts with the media and is the focal point for responding to all inquiries concerning Bureau activities. All public affairs campaigns are coordinated through the office. The Public Affairs Office is responsible in general for the broad scope of public affairs activities including, but not limited to, the use of films, video and written materials; dealing with the media; public affairs campaigns, educational or otherwise; providing news releases and magazine stories concerning Bureau activities; coordinating contacts in the public affairs areas; responding to public inquiries; providing support to field offices, particularly in dealing with the media; and coordinating the approval of written documents, speeches, manuscripts and other material intended for public consumption, but not originating in the Public Affairs Office.
  - (2) Internal. The office is responsible for internal public affairs activities including, but not limited to, the issuance of in-house Bureau publications, brochures where applicable, and providing support to field offices.



6. MEDIA INQUIRIES. The release of information to the news media relating to criminal and civil proceedings is governed by the general guidelines of the Department of Justice. These guidelines say in part:

"While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public that information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgement by those responsible for administering the law and by representatives of the press and other media. At no time shall personnel of the Department (of Justice) furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement of information, which may reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial."

In responding to media inquiries regarding searches, seizures and arrests, all designated Bureau personnel should provide information of the type listed below, if such disclosure is not prohibited either by law or the United States district court. Many United States district judges and United States attorneys have standing orders or guidelines concerning the release of information to the public on pending cases, and Bureau personnel are expected to familiarize themselves with such orders or guidelines. Regulatory Enforcement personnel will not disclose information about pending and open investigations or inspections. If media inquiries are made in such cases, information furnished should be limited to an acknowledgment that the matter is the subject of an inspection or investigation, as the case may be. However, this acknowledgment must be approved by the appropriate supervisor. Sometimes, a supervisor may not wish to acknowledge that an investigation is underway. Then, the phrase "no comment" is appropriate.

Additional details on the handling of news media requests are contained in "Public Comments by Department of Justice Employees Regarding Investigations, Indictments, and Arrests".

7. INFORMATION WHICH MAY BE RELEASED TO NEWS MEDIA CONCERNING CRIMINAL CASES

- a. General Information. The defendant's name, age, address, employment, marital status, and similar background information may be released. If the defendant is a minor, no information will be released other than to acknowledge that the subject is a minor.
- b. Charge. The substance or text of the charge, such as a complaint, indictment or information filed may be released.
- c. Penalties. Penalties provided by law for successful prosecution of such a charge may be released.
- d. Investigating Agency. The identity of investigating or arresting agencies, and the length or scope of the investigation may be released.
- e. Arrest. The circumstances immediately surrounding an arrest, including the time, location, possession and use of weapons and complete description of items seized may be released.
- f. Offer in Compromise, Revocation or Suspension. In the case of an offer in compromise, revocation of license or suspension of operations, the name of the person or firm subjected to such action, the facts surrounding the action as contained in the abstract on the case and details of all allegations to which the person or firm has admitted may be released.

8. INFORMATION NOT RELEASED TO THE PUBLIC. Under NO CIRCUMSTANCES will Bureau personnel release the following information to the public:

- a. Record. Defendant's prior criminal record.
- b. Character. Observations about a defendant's character.
- c. Statement. Statements, admissions, confessions or alibis attributed to a defendant, or the refusal or failure of the accused to make a statement.
- d. Investigative Procedures. References to investigative procedures, such as fingerprints, polygraph examinations, ballistics tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.
- e. Witnesses. Statements concerning the identity, credibility, or testimony of prospective witnesses.

- f. Evidence. Statements concerning evidence or argument in a case, whether or not it is anticipated that such evidence or argument will be used at trial.
- g. Opinions. Any opinion, such as the guilt or innocence of the accused, or the possibility of a plea of guilty to the charge, or the possibility of a plea to a lesser crime.
- h. Court System. Any statements concerning the effectiveness, or lack of same, of the courts, judges, prosecutors, etc.
- 9. CIVIL ACTIONS. The guidelines listed above will also apply to civil proceedings with the Government involving Bureau personnel.
- 10. COORDINATION WITH OTHER AGENCIES. Generally, any release should be coordinated with the office of the United States attorney or State or local prosecutors, as well as other agencies participating in the case, in accordance with that office's guidelines, in order to achieve uniformity and improve working relationships. However, the release of information is not dependent upon the other agency's approval and circumstances may dictate that it be made without such approval or coordination.
- 11. RESPONSIBILITIES
  - a. Special Agents, Inspectors, Officers in Charge.
    - (1) Bureau personnel filling these positions will be sensors of public reaction to Bureau objectives, policy, programs and accomplishments, as directed.
    - (2) Inspectors located at posts of duty away from area offices will have minimal public affairs responsibilities. Generally, an inspector so located will forward all local public and media inquiries, requests for speakers and exhibits, other related inquiries and sensitive matters to his/her area supervisor. On occasion, an inspector may be requested by his/her area supervisor to disseminate prepared information to the public through the media or exhibits. As a result, these officials should maintain contacts with the media in their areas.
  - b. Resident Agents in Charge, Group Supervisors, Area Supervisors.
    - (1) Bureau personnel filling these positions will, under the direction of their immediate supervisor, respond to local public and media inquiries, receive requests for speakers and exhibits, report necessary information for the Bureau

- to maintain a responsive, factual public affairs effort and, generally, be viewed locally as the spokesperson for the Bureau.
- (2) Coordination of speakers and exhibits will require the resident agent in charge, group supervisor, or area supervisor to be responsive to requests, under the direction of the special agent in charge or regional regulatory administrator, so that they may take advantage of materials provided by the Bureau and there will be a distinct uniformity in response.
- (3) The resident agent in charge, group supervisor or area supervisor may be requested to disseminate information prepared at a higher level of supervision to the public through the news media. As a result, these officials should maintain contacts with the media in their areas.
- (4) The Bureau will be served best if speakers and those who man exhibits are local agents or inspectors. Accordingly, field personnel frequently will be provided prepared speeches, news releases and exhibits, reflecting Bureau policy and activities.
- c. Special Agents in Charge and Regional Regulatory Administrators, and Regional Directors of Investigations.
  - (1) Bureau personnel in these positions are responsible for developing and maintaining an effective public affairs program for their geographic areas of responsibility. To provide the required public affairs support and to increase communication between the field and the Office of Public Affairs in Headquarters, each special agent in charge, regional regulatory administrator and regional director of investigations will designate a staff person to coordinate public affairs within the limits of the geographical area assigned to that office. However, the special agent in charge, the regional regulatory administrator and regional director for investigations will ensure that he/she is fully apprised by his/her designated representative of all matters having public impact and that he/she approves of all action taken by his/her appointed representative. The special agent in charge or the regional director of investigations and the regional regulatory administrator are responsible for notifying the Office of Public Affairs, by direct communication, of all pending field activities that are newsworthy in nature and/or may have the potential of becoming a sensitive issue. Such direct notification to the Office of Public Affairs will be in addition to any

other required communication with Headquarters that may be required by the Assistant Director (Criminal Enforcement) and the Assistant Director (Regulatory Enforcement). Field activities that require Headquarters notification will be reported to the Office of Public Affairs as soon as they are brought to the attention of the special agent in charge, the regional director of investigations or the regional regulatory administrator, so that the Office of Public Affairs has sufficient time to assess the impact of the activity being reported and advise the reporting official of the public affairs action to be taken.

- (2) The public affairs program will include writing news releases, clearing news releases, answering media inquiries, disseminating prepared information, media inquiries, determining programs necessary for regional or Headquarters public affairs, arranging news conferences and reporting all sensitive enforcement actions. It will also include the coordinating of speaking engagements and placing of Bureau exhibits, as the occasion requires, throughout respective areas of responsibility. All field public affairs activities, including the writing of speeches, news releases, or providing exhibits with local appeal, will be closely coordinated and cleared with the Office of Public Affairs.
- (3) When it is necessary to present the Bureau in total, as opposed to specializing in criminal or regulatory enforcement, the special agent in charge and the chief, field operations, will be expected to make any presentations a joint effort, calling upon the Office of Public Affairs for equipment and/or advice if necessary.
- (4) Special agents in charge and chiefs, field operations, will submit as quickly as possible to the Office of Public Affairs two copies of all newsclips, magazines and trade journal articles relating to the Bureau activities which appear in publications originating in their geographical area of jurisdiction. These should be "original" clips as opposed to Thermo Fax or photo copies, and will be mailed directly to the Office of Public Affairs.
- (5) Because there is a continuing need for photographs for use with newspaper and magazine articles, the district and field operations offices will furnish appropriate, current photographs (including motion pictures where taken) and negatives which relate to significant activities (raids, arrests, seizures, etc.) to the Office

of Public Affairs. All photographs are to be accompanied with an explanation of where, what and when. It is recommended that these photographs be "action" oriented as opposed to the evidence-type photographs needed for case work.

- (6) The special agent in charge will coordinate all media events through the regional director of investigations as necessary. All contact by Criminal Enforcement field personnel with the Office of Public Affairs will be coordinated through the RDI.
12. INFORMATION DEFINED. There are two categories of information created by Bureau activities which generate most public affairs inquiries and responses.
  - a. Operational Information. The first is informational or operational matters which may create public reaction and therefore deserve consideration from the public affairs viewpoint. It is important that all necessary steps be taken to ensure that the Office of Public Affairs is informed ON A TIMELY BASIS of every major event and work in which the Bureau is involved. This will include, but is not limited to, new or unusual investigatory or regulatory techniques, distinct changes in operational approaches, and proposed field actions which may cause public reaction.
  - b. Sensitive Information. The second is information of a sensitive nature, and while ATF O 3210.7A, Investigative Priorities, Procedures, and Techniques, gives a complete explanation of sensitive situations, it is generally a case, investigation or involvement, which, if it becomes known, would be of considerable public interest subjecting Bureau officials or those of the Department of the Treasury to premature inquiries. While most sensitive incidents stem from Criminal Enforcement work, these instructions are equally applicable for Regulatory Enforcement, and should be followed. It is important that sensitive situations be reported immediately by telephone, day or night, to the Office of Public Affairs.
13. NEWSWORTHINESS AND PROCEDURES FOR RELEASE.
  - a. General Criteria For Decisions.
    - (1) Possible Releases. Each arrest, seizure, indictment, and sentencing, in addition to offers in compromise, suspension, revocation or recall of products, and major changes to Bureau policy and decisions as they relate to possible release as a news item.

- (2) Criteria for Release. In those instances where an investigation or inspection has been made, the following is basically the type of information needed on which to base a decision:

- (a) Name, age (where applicable) and address of person or firm subject to investigation or inspection.
- (b) Location and time of arrest.
- (c) Nature of violation (refill, possession of untaxed whiskey, etc.).
- (d) Property seized.
- (e) Other participating agencies.
- (f) Judicial status.
- (g) If sensitive, why.
- (h) Background of investigation or inspection (time involved, men involved, undercover work, scope of violation, etc.).

b. Notification.

- (1) Advance Notice. It is extremely important that special agents and inspectors notify supervisors before the release of information to the news media, as far in advance as possible, as to an expected action. When the Office of Public Affairs has advance notice, it is better able to recommend what should be contained in a release, at whatever level, and which release technique should be used. For example, in some cases where the significance of the Bureau action deserves the best release of information possible, it may be well to arrange news conferences, set up interviews, and provide displays of such items as seized weapons, all of which take time. Where there is a desire to have a press release on trial results, advance knowledge on the identity of the defendants, the contents of the indictment and similar information is vital in order that the release can be prepared for delivery to the news media the moment the court reaches its decision.
- (2) Interagency Cooperation. It is the responsibility of the special agent or inspector initiating the action subject to release to determine if the United States attorney or other prosecutor or cooperating agency intends to make a

separate release on the case, wants to make a joint release, or wants to let ATF handle the release alone.

- (3) Notification of Headquarters Personnel. Once the information has been reported by the special agent it will be the responsibility of the special agent in charge to forward that information to the regional director of investigations. As appropriate, the RDI will be responsible for forwarding information to the Office of Public Affairs. Information from Regulatory field personnel should be routed through the chief, field operations, to the regional regulatory administrator who will notify the Office of Public Affairs.

- (4) Release Process. Once notified, the Assistant to the Director (Public Affairs) will brief the Director, if the situation warrants. If a determination is made that the release will be nationwide, the originating field office will be asked to gather the necessary information. For Criminal Enforcement, the appropriate RDI will be the contact point between field offices and the Assistant Director (Criminal Enforcement).

- (5) Timely Notification. It shall be the responsibility of the appropriate Headquarters directorate to ensure that the Office of Public Affairs is notified in a timely manner of newsworthy events in their areas, and, that adequate information for release to media is provided the Office of Public Affairs.

- (6) Afterhours Contacts: After office hours, contact with Public Affairs personnel can be made through the Communications Center.

c. Long-Range Information Programs.

- (1) Types. Although much of public affairs work will concern the timely release of spot news, the value of long-range information programs cannot be overlooked. These will include radio-TV spot announcements for a specific part of the Bureau's mission, as well as exhibits, magazine articles and motion pictures designed to inform the public about the Bureau and its work.

- (2) Staff Suggestions. It is hoped that the Bureau can capitalize on the manpower resources of all of its employees to the benefit of its public affairs program. When field personnel conceive new information programs or add to existing programs, they should submit these concepts to the Office of Public Affairs for review and

evaluation. If the suggestions are in accord with the public affairs program at a local level, the local offices will be so advised and assistance will be given in implementing the program for that locality.

- (3) Acceptance of Suggestions. If the new concept is considered worthy of use throughout the region or on a national basis, action on the program will be held in abeyance until it is decided to make the program regional in concept or approval is given for a nationwide program. If the program is local or regional, the Office of Public Affairs will stand ready to advise and assist. If the program is nationwide, Headquarters will coordinate all of the activity so that all field offices are acting in concert.

d. Reporters and Photographers.

- (1) Presence. Reporters and/or photographers arriving at the scene of a crime after a raid and/or arrest should be afforded every courtesy and permitted to cover the story as long as such coverage does not interfere with the officers in the performance of their duties or present a dangerous situation to the members of the press or bystanders. However, ATF personnel should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody.
- (2) Criminal Cases. Any special requests by news media to accompany agents during their work should be channelled through the special agent in charge and the appropriate regional director of investigations. All such requests will be forwarded to the Director through the Office of Public Affairs.

14. REPORTING REQUIREMENTS. The special agent in charge and regional regulatory administrator will also submit a brief resume of speeches and seminars conducted by personnel under their supervision as an attachment to the monthly PPP report. The resume will include the following: (a) name of group, (b) number of persons in attendance, (c) topic(s) discussed, (d) other pertinent information, such as sensitive inquiries made during a question and answer period.

*A. R. DeLoach*  
Director

**CONTINUED**

**12 OF 8**



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO  
AND FIREARMS

FIREARMS  
PROGRAM



APRIL 1980



## FIREARMS PROGRAM

April 10, 1980

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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 ATF 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

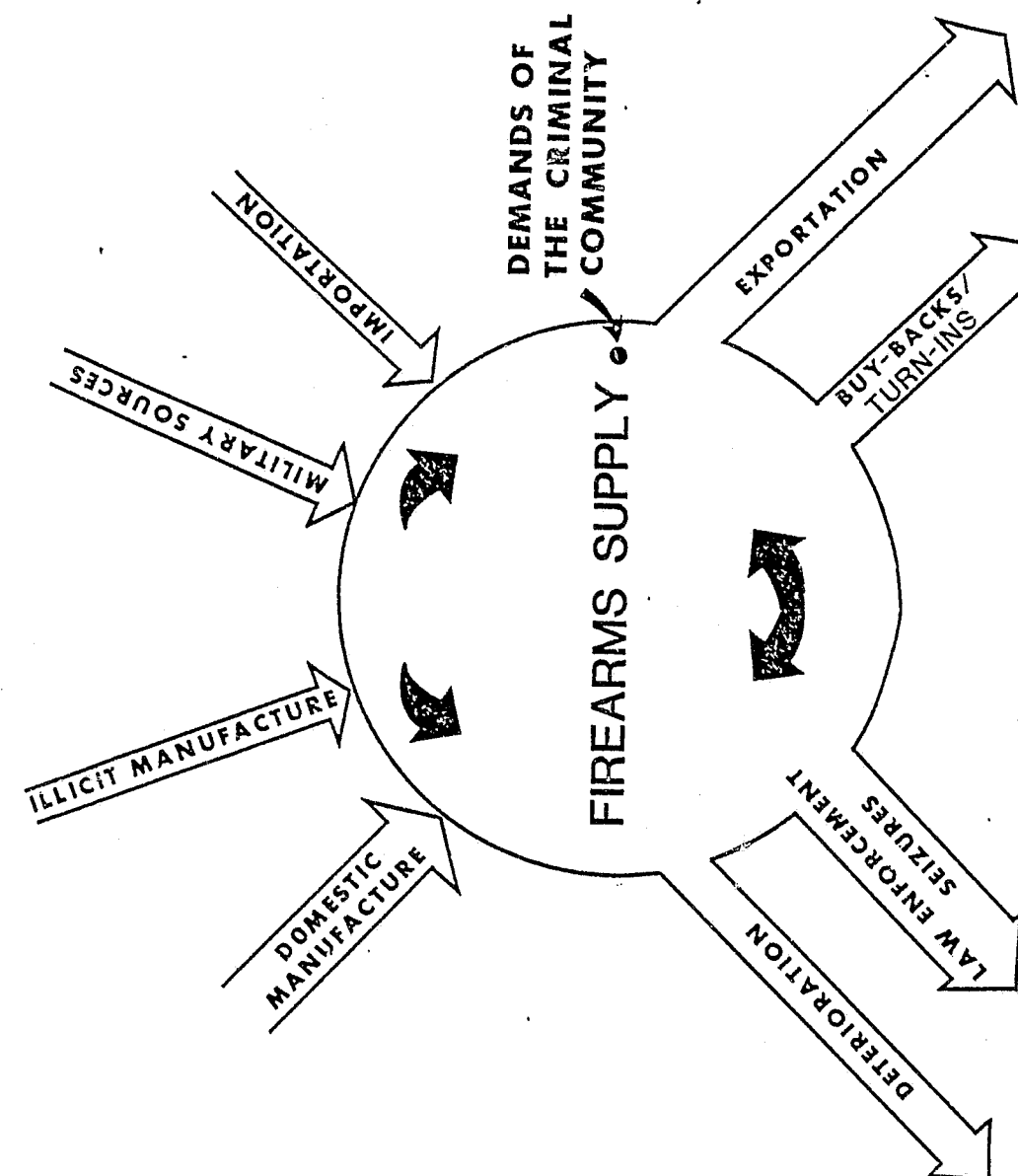


Figure 1



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.

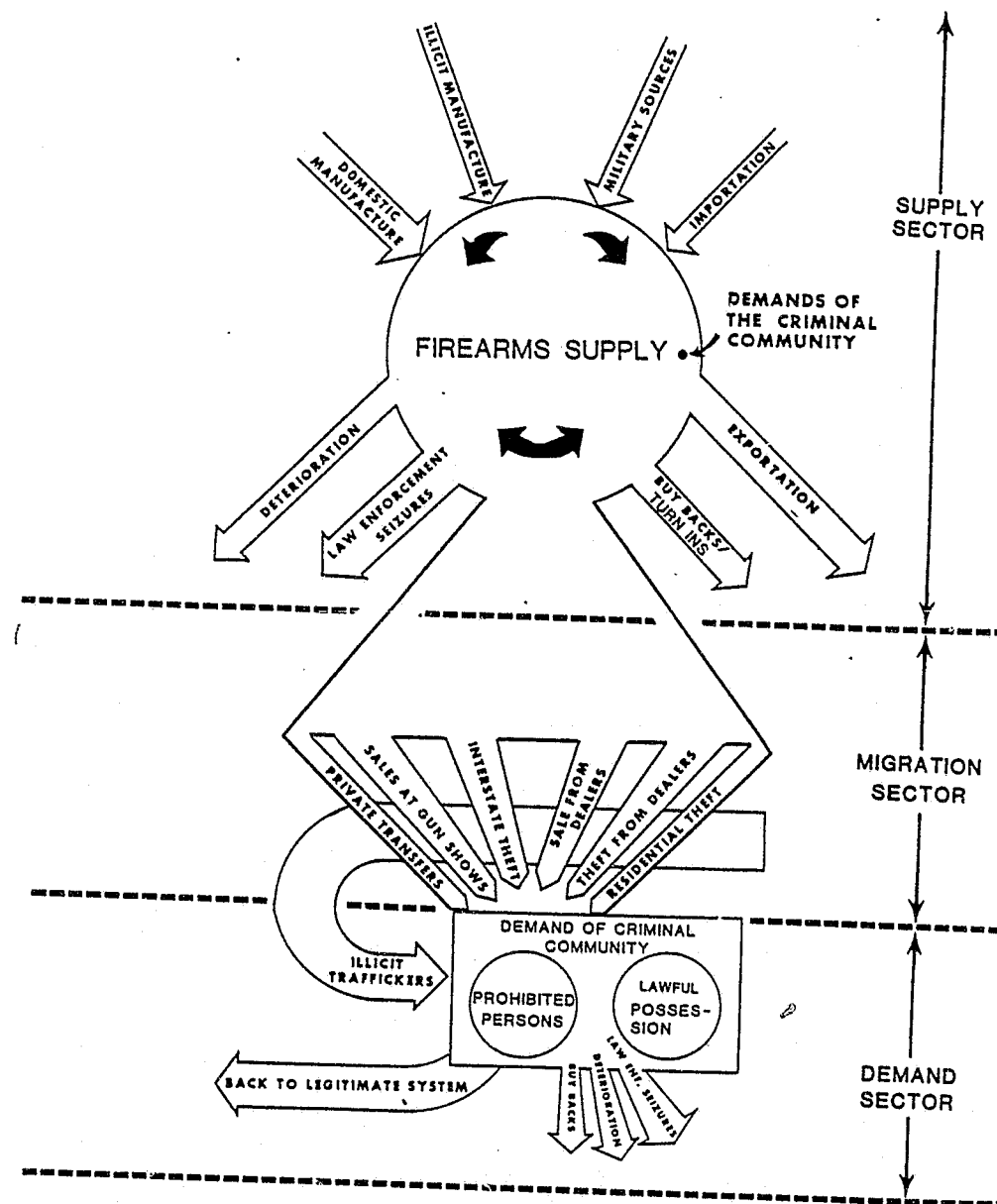


Figure 2

### 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.

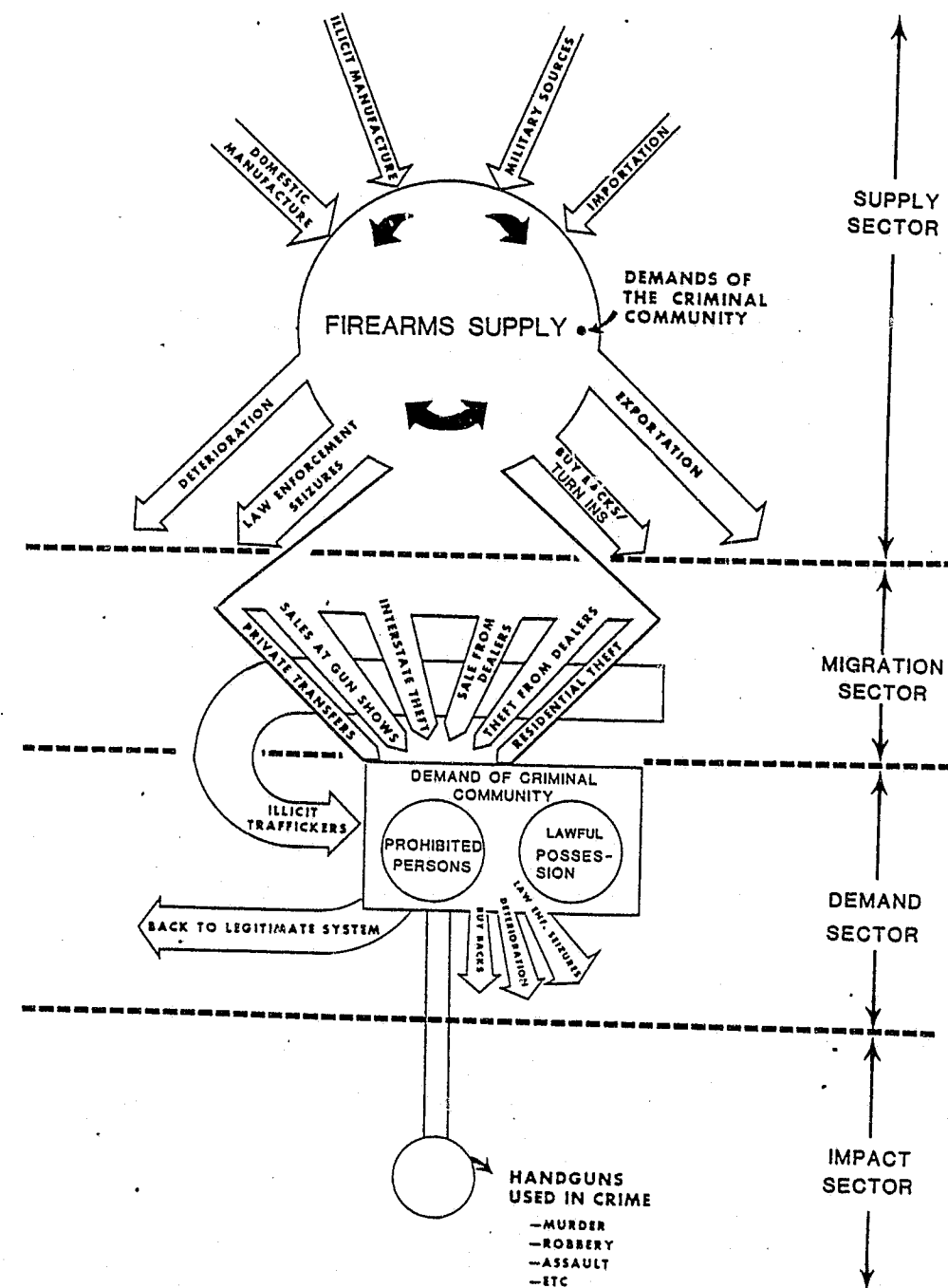


Figure 3

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.

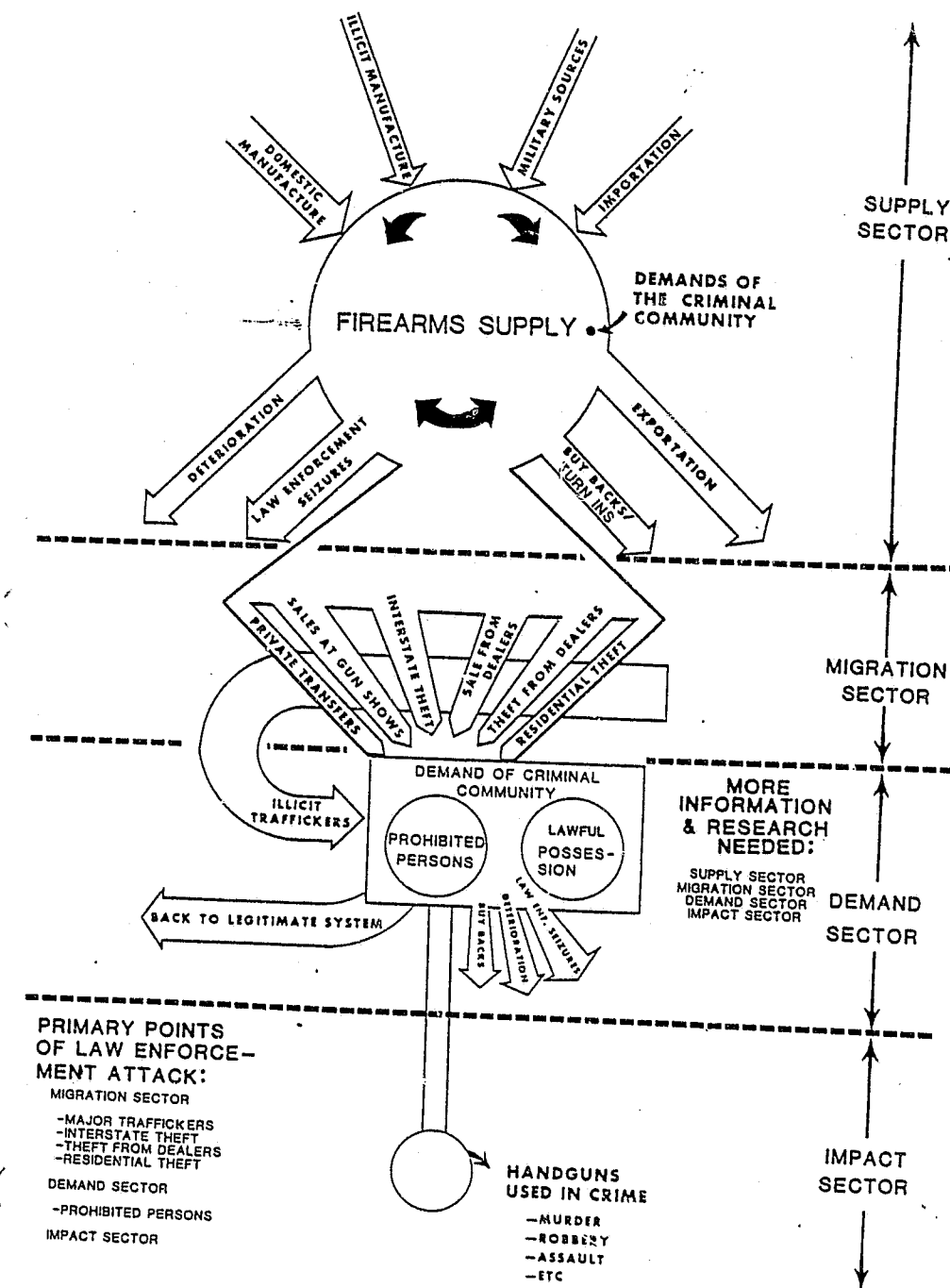


Figure 4

### 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 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.

# ADDITIONAL QUESTIONS AND RESPONSES SUBSEQUENTLY SUBMITTED BY BATF

**Question.** Would you provide the committee with an analysis of ATF resource use and its results?

**Answer.** ATF's total proposed budget for fiscal year 1981 is \$144,944,000. Although this includes administrative, laboratory, training, and other costs, it is divided by function into Regulatory (\$48,842,000), and Criminal Enforcement (\$96,000,000) functions. The latest available statistics for manpower utilization are for the period October 1, 1979 through July 31, 1980. The man-years applied to criminal investigations for that period are approximately as follows:

	Percent		Percent
Firearms -----	63.3	Tobacco -----	4.5
Explosives -----	29.2	Alcohol -----	3.0

For that period, October 1, 1979 through July 31, 1980, these actions have resulted in the following cases recommended for Federal prosecution:

	Percent		Percent
Firearms -----	639	Tobacco -----	34
Explosives -----	215	Alcohol -----	17

The foregoing statistics represent only those efforts that lend themselves to numerical tabulation. There is no tabulation available for such activities as public education, prevention, and assisting other agencies, although these activities have substantial impact on deterring violations.

**Question.** What are the grounds for initiating an investigation, and what are the safeguards to prevent unwarranted arrests, searches, and seizures?

**Answer.** The foregoing actually constitutes two questions and will be answered accordingly. It is important to keep in mind the distinction between an inquiry or investigation and an arrest or seizure.

An initial inquiry into a person's activities can, in fact, be precipitated by almost any allegation of illegal activity. This could come from the general public, other enforcement agencies, an informant, or the press. As with all law enforcement agencies, ATF has a legal and ethical mandate to respond to such allegations by examining them. Such an inquiry might be limited to checking out records or verifying an address. In many cases very limited inquiries will suffice to discredit the information. If the inquiry indicates some reasonable possibility that the allegation is true or if agents locate such information through independent action, i.e.; observation or records examination, a formal investigation would be opened. In this case the agent writes an opening report giving the basis for initiating the investigation and the suspected violations. This report is reviewed by the immediate supervisor and forwarded to the district office and Headquarters for examination. Managers at any one of these levels can raise questions regarding the investigation or direct its termination.

Before an investigation proceeds to an arrest or seizure, there are a number of steps normally taken. In the rare case where an agent observes a serious violation early in the investigation, he/she may make an arrest or seizure immediately. This might happen for example, if an informant contacted an agent with information that a suspect had unregistered machineguns to sell and the agent made an undercover buy immediately. In that case, the prisoner would be taken before a U.S. Magistrate as soon as possible and a complaint would be filed. From a practical perspective, the U.S. Attorney would also become involved immediately and either he or the U.S. Magistrate could initiate the release of the prisoner if either did not believe cause existed for the arrest.

The foregoing circumstances are the exception. In most cases, an arrest or search warrant has been obtained before any arrest or seizure takes place. In a sizable number of cases, an indictment has been returned by the grand jury before any such action. In all cases where an indictment is obtained and in virtually all cases where a warrant is issued, the U.S. Attorney has examined the case and approved the agency's action. Either a grand jury or a U.S. Magistrate have also examined the evidence and have found probable cause of a violation. Two things should be considered here: First, these procedures are the same for all Federal enforcement agencies, not just ATF. They represent

what is without doubt the most complex set of guarantees of individual rights in existence in any criminal justice system in the world. Second, the U.S. Attorney not only examines cases for legality but also for jury appeal, magnitude, and seriousness of offense. Cases are subject to being declined for prosecution for any number of deficiencies and even for such things as the presence of a concurrent State statute or lack of resources to prosecute the case.

For the first 10 months of fiscal year 1980, of the 10,149 criminal investigations closed, 5,279 were closed by agents, as having no prosecutive merit; and 798 at the direction of the supervisor. These represent investigations in which ATF did not take criminal action. In addition, 1,039 were referred to other agencies or ATF assisted other agencies in prosecution. Eighty-three cases resulted in seizure without prosecution and criminal case reports were written on 1,702 persons.

**Question.** What steps are taken to see that the pronouncement of support of constitutional procedures here is actually practiced out in the precincts?

**Answer.** A number of steps are taken to translate the Bureau's policies and positions into actual fact. We should point out to begin with that it is highly counter productive to pursue policies which are contrary to statute and case law. The Bureau's mission is to enforce those statutes within its jurisdiction in a fair, impartial, and legal manner. In order to ensure that agents are conforming to the Bureau's policies and the constitutional mandates of the courts, we have undertaken the following steps:

Each agent is thoroughly schooled in the constitutional aspects of his job. Each new Bureau agent attends a 7 week course of instruction at the Criminal Investigator School (CIS), located at the Federal Law Enforcement Training Center in Glynco, Georgia. All Treasury agents whether they are from ATF, the Secret Service, Customs, or IRS, as well as other Federal law enforcement agencies, must attend this basic course of instruction. The CIS curriculum includes 91 hours on such subjects as the laws of search and seizure, arrests, admissibility of statements, rules of evidence, and other legal issues. Following the completion of CIS, ATF agents attend a specialized school for ATF agents only. While attending New Agent Training (NAT), agents receive extensive instruction on the provisions and regulations of the Gun Control Act as well as training in undercover operations with a strong emphasis placed on avoiding entrapment.

In addition to their training, all special agents are on formal probation during their first year of employment and may be dismissed without cause during that time.

We recognize that good training can be potentially negated by poor supervision. In the past 8 years, the Bureau has taken a number of steps to increase and improve each level of supervision. In 1972 the Bureau became a functional entity independent of the Internal Revenue Service. As a result of that reorganization, the area supervisor concept was abandoned and supervisors were assigned to each field office thus extending direct supervision to the post of duty level. The special agent in charge and assistant special agent in charge positions were created to replace the single field manager at the district office level. In 1977, ATF went through an individual reorganization which resulted in a substantial increase in Criminal Enforcement staffing at the Headquarters level. As a result of that staffing change, all investigative reports are reviewed and evaluated by Headquarters personnel within each functional area. This span was further extended with the creation of the position of Regional Director of Investigations in 1979.

The actions of the individual agent are now supervised directly or indirectly by a first line supervisor, a field manager, and a regional manager, as well as Headquarters personnel. This has resulted in a much tighter span of control over operations. In addition, ATF has expanded the role and authority of the individual supervisor and had made it incumbent upon the supervisor to directly control all field operations within his post of duty.

In addition to better supervision and expanded scope of control, the Bureau further supplemented management control of field operations through the reorganization of its Office of Internal Affairs in 1979. Pursuant to that reorganization, the Office of Internal Affairs now has a proactive rather than a reactive mission so that it actively reviews and seeks out potential misconduct rather than waiting for incidents to occur. More importantly, Internal Affairs personnel are now assigned to each regional office rather than being centralized in Head-

quarters so that inspectors are in closer contact with field managers and better able to evaluate enforcement programs and problems.

The most important element which has been undertaken to ensure compliance with constitutional issues is a clear statement of ATF's policy and programs in firearms enforcement as well as other functional areas. Field managers have all been provided with copies of both the Firearms program publication and specific steps which are to be undertaken to implement that program.

Managers are being held accountable for the implementation of the program in their areas.

Copies of the Firearms program publication have been added as an exhibit to a recently revised Bureau order describing the Bureau's Firearms program. The objectives and strategy of that program have also been written into the order so that all field agents will be fully aware of what the Bureau's Firearms enforcement policies are.

*Question.* What have been the actions of the Bureau since the enactment of the new Firearms policy? Are the people in the field following the new policy? Has this policy been put into the Federal Register?

*Answer.* The new Bureau firearms program was designed to effect a better enforcement balance so that agents are no longer focusing totally on sources of crime guns but are now actively pursuing investigations of major criminals who are in violation of the Gun Control Act. The purpose of the new policy is to achieve a balanced enforcement program where the Bureau can focus its regulatory and enforcement resources on major sources of firearms to the criminal element while also identifying and apprehending those major criminals whose illegal activities adversely impact on the community at large.

We should note for the record that ATF and all other Federal enforcement agencies shifted their investigative priorities in 1977 to conform to Department of Justice guidelines which sought to focus investigative effort in areas where there was a primary Federal interest. In setting Bureau priorities to conform to those guidelines, investigative emphasis was placed on cases which were multiple defendant and multijurisdictional in scope. The Bureau found that this strategy created an enforcement vacuum as it de-emphasized the investigation and prosecution of the single defendant for possession of firearms. This posed severe problems in those areas where State firearms statutes were limited in scope.

In connection with the implementation of the new policy, all of our special agents in charge and regional directors have prepared crime impact assessment statements outlining the specific crime problems encountered within their geographic areas of responsibility. They have also been required to prepare strategies identifying the most effective manner in which they can address those crime problems. A system, using the analysis of resource expenditures, through which we will be able to measure each office's effectiveness in implementing its strategies is being devised.

Due to a lag in statistical reporting, we are unable to provide the committee at this time with specific statistics showing direct changes as a result of this strategy.

The new firearms policy has not been placed in the Federal Register. It is an internal document which has been disseminated to field agents and managers so that they will clearly understand what the Bureau's policy is in the area of Firearms Enforcement and specifically in such areas as regulation of the industry, seizure of firearms, and other matters.

*Question.* Mr. David Hardy, representing the NRA, has recounted an incident involving the seizure of a Federal firearms licensee's inventory of firearms. He has indicated that ATF offered to return the seized firearms in exchange for release from civil liability for any civil rights violations ATF agents may have committed in seizing these weapons. Mr. Hardy charges that this amounts to extortion. How do you explain this action?

*Answer.* The release to which Mr. Hardy refers is known as a hold harmless agreement. A hold harmless agreement is a contract in which one party agrees to hold the other without responsibility for damage or other liability arising out of the transaction involved. In the instance referred to above, the Assistant United States Attorney determined that such an agreement should be secured in order to protect the interests of the United States. Such a decision is discretionary in each United States Attorney's Office.

*Question.* Isn't it a violation of an individual's due process rights to proceed with a forfeiture of his firearms when no guilt of a criminal violation of the Gun Control Act has been established against him?

*Answer.* A forfeiture proceeding under the Gun Control Act is civil in nature as distinguished from a criminal prosecution. As you are aware, the measure of proof required of the Government in a forfeiture action is merely a preponderance of the evidence establishing that the individual used or intended to use the firearms in violation of the Act. Acquittal of a criminal charge under the Act does not bar forfeiture of a firearm used or intended to be used in violation of the Act since the acquittal only establishes that the Government's proof was not sufficient to overcome all reasonable doubt of the guilt of the accused.

Moreover, a forfeiture action is accompanied by its own due process protections. In an administrative forfeiture an individual must be given notice and opportunity to respond and, once the forfeiture is accomplished, may petition for remission or mitigation of the forfeiture. An individual has 30 days to file a claim and cost bond and compel a judicial forfeiture of the seized firearms. In district court, an individual is free to pursue any relevant legal theory to contest the forfeiture.

Finally, it is the Bureau's policy that firearms seized from individuals who are not prosecuted or subsequently found not guilty of a criminal offense will be returned except in unusual circumstances, *i.e.*, where the return would be prohibited by law, contrary to the public interest, or contrary to directions from a court. A copy of ATF Notice 1850.15, which sets forth this policy, is attached.

DEPARTMENT OF TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
April 15, 1980.

#### FIREARMS TAKEN INTO BUREAU CUSTODY

1. *Purpose.*—This notice sets forth the seizure policy concerning firearms taken into Bureau custody as a result of Criminal Enforcement investigations involving licensed firearms dealers, unlicensed firearms dealers, or prohibited persons. Appropriate portions of ATF 0 1850.3B, Property Taken Into Bureau Custody, will be revised accordingly during the next semiannual review.

2. *Scope.*—This notice applies to all ATF personnel.

3. *Background.*—The Gun Control Act of 1968 provides for both criminal and civil penalties for violations of its provisions. The authority to seize and forfeit firearms and ammunition involved in, used for intended to be used in, violation of its provisions is found in 18 U.S.C. § 924(d) and 26 U.S.C. § 5872(a).

4. *Discussion.*—Firearms found in violation of the Gun Control Act of 1968 are subject to seizure and forfeiture to the Government. Such violations and seizures may involve licensed firearms dealers, unlicensed firearms dealers, or prohibited persons. However, the Bureau will exercise discretion as to the firearms it will seize.

5. *Policy.*—The Bureau's discretionary seizure policy is directed at the following three specific areas of concern:

a. *Licensed firearms dealers.*—Only those firearms needed as evidence, contraband firearms, or firearms carried during the commission of a felony will be seized. Firearms discovered on a licensee's business premises, which are not recorded in the dealer's records, will not be seized if the dealer agrees to take immediate steps to record those firearms in the records (unless the firearms have previously been specifically offered for illicit sale to a special agent or individual acting on behalf of the Government). Regulatory Enforcement will be notified of the circumstances involved in all investigations of licensed dealers.

b. *Unlicensed firearms dealers.*—Only those firearms specifically offered for sale by the unlicensed dealer, contraband firearms, or firearms carried during the commission of a felony will be seized.

c. *Prohibited persons.*—All firearms found to be in the possession or control of a prohibited person under the Act, are subject to seizure.

However, special agents should exercise discretion in determining the need to detain, retain, or seize for forfeiture. Lack of criminal intent, nature of previous conviction, and length of time since last conviction may be considerations. If determined appropriate, individuals may be allowed to divest themselves of firearms while applying for relief of disabilities.

6. *Other evidence.*—Nothing contained in this notice precludes special agents from taking into custody, or documenting other evidence relative to violations of the law (i.e., ATF F 4473, Firearms Transaction Record; business receipts, firearms disposition records; contraband).

7. *Controls.*—Exceptions to the above seizure policy must have the prior approval of the Assistant Director (Criminal Enforcement). This authority has been delegated to the Chief, Investigations Division.

8. *Firearms disposition guidelines.*—Firearms taken into custody by the Bureau from individuals or dealers, who are not prosecuted or subsequently found not guilty of a criminal offense will be returned except in unusual circumstances (i.e., the return would be prohibited by law, contrary to the public interest, or contrary to direction from the court). In order to effectuate this policy, the signing of the declaration of forfeiture, with respect to administratively advertised firearms, should not be accomplished until final disposition of the criminal case. Authority for the Bureau to maintain custody in those circumstances is vested in the Assistant Director (Criminal Enforcement), and approval must be obtained from his delegate, Chief, Investigations Division.

9. *Effective date.*—The provisions of this notice are effective with respect to seizures occurring on and after April 15, 1980.

G. R. DICKERSON, *Director.*

[STANDARDS AND PROCEDURES FOR FILING A FIREARMS LICENSE WITH THE BATF]

Statement: ATF has improperly licensed firearms licensees without applying reasonable standards consistent with the G.C.A.

Response: The Bureau issues firearms licenses only to those individuals or business entities that fully qualify under the provisions of the Gun Control Act of 1968. The GCA of 1968 establishes specific criteria for the issuance of firearms licenses to U.S. citizens. Title 18 U.S.C. Sec. 923 states in part:

"... (c) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license.

(d) (1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922 (g) and (h) of this chapter;

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application; and

(E) the applicant has in a State (i) 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, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time.

(2) The Secretary must approve or deny an application for a license within the forty-five-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee...."

These criteria were used by the Bureau to design application forms and develop internal procedures governing the processing of firearms applications.

ORIGINAL APPLICATION

The application forms (both original and renewal) have been designed to provide Bureau personnel sufficient information to establish the eligibility of applicants for firearms licenses. In addition internal procedures have been established which require Bureau personnel to verify the accuracy of the information on the application. Particular emphasis is placed on assuring that the provisions of section 18 U.S.C. Section 923 are realized. These internal procedures require, upon receipt of an original application, the Bureau to act on that application within a period of 45 days. The application is checked for completeness and correctness and an FBI name check is initiated. Original applicants for manufacturers of firearms, class 7, importers, class 8, dealers, manufacturers and importers of destructive devices, classes 9, 10 and 11, respectively, are inspected due to the nature of the proposed business. In addition, applicants believed not qualified to receive a license (i.e. possible criminal record, under age) are inspected. The inspection report (if applicable), the application, the FBI report, and any other related documents are examined to determine if the applicant is qualified for the requested license. A copy of ATF Form 7, Application For License, is attached.

RENEWAL APPLICATION

As you know, firearms licenses are issued for a period of one year, at which time a renewal application must be submitted. This renewal application, AFT Form 8 (5310.11) Part III, (See attached) has been designed to assure that continued operations are conducted only by qualified individuals. Applicants are required to answer the following eleven questions and certify that those answers are correct:

1. Are you actively engaged in the firearms or ammunition business (or collecting activity) authorized by this license?

2. Are you presently under indictment or information in any court for a crime punishable by imprisonment for a term exceeding 1 year?

(If yes, attach an explanatory statement showing the date of the indictment or information and the court in which it is pending. "Information" means a formal accusation of a crime made by a prosecuting attorney as distinguished from an indictment presented by a grand jury.)

3. Have you ever been convicted of a crime punishable by imprisonment for a term exceeding 1 year?

4. Are you presently appealing a conviction of a crime punishable by imprisonment for a term exceeding 1 year?

(If yes, attach an explanatory statement showing date of conviction, court in which convicted and court in which appeal is pending)

NOTE: For questions 2, 3, and 4, the actual sentence given by the judge does not matter. You must answer yes if the judge could have given a sentence of imprisonment for more than 1 year. Also, a yes answer is required (1) if you received probation, (2) if the conviction was discharged or set aside, (3) if the conviction was dismissed under an expungement or rehabilitation statute, or (4) if the conviction was appealed.

5. Are you a fugitive from justice?

6. Are you an unlawful user of, or addicted to marihuana or any depressant, stimulant or narcotic drug?

7. Have you ever been adjudicated mentally defective, mentally incompetent or been committed to a mental institution?

8. Have you been discharged from the Armed Forces under dishonorable conditions?

9. Are you an alien illegally or unlawfully in the United States?

10. Have you ever renounced your United States citizenship?

11. Has there been a change of the ownership or control of the firearms business?

If the applicant indicates that he/she is not actively engaged in the authorized activity, the Bureau issues a renewed license, if the applicant meets all other requirements; and notifies the appropriate field office by marking parts V and VI of the renewed license with the word "inactive".

If the applicant indicates that he/she is under indictment or appealing conviction of a crime punishable by imprisonment for a term exceeding 1 year, the Bureau sends the applicant a letter informing him/her that he/she may continue



operations until the conviction is final; and, that if convicted, he/she must file an application for relief from disabilities within 30 days after the date on which the conviction becomes final, in order to continue operations. (See 27 CFR 178.143 and 178.144(f)).

If the applicant gives a "yes" answer to any of the questions relating to a disability under 18 U.S.C. Chapter 44, the accuracy of that answer is verified by telephone contact. If the correct answer is "yes", a notice of denial is issued. In addition the applicant is required to submit an application on ATF F 7 (5310.12) if the applicant indicates a change in ownership or control.

Area supervisors receiving a license copy indicating a licensee is not actively engaged in business conduct compliance inspections during the license year if possible. The primary purpose of the compliance inspection is to determine if the licensee is actively engaged in business.

#### OUT OF BUSINESS

When licenses are not renewed the following procedures are followed:

*ADP prepared.*—A letter to Request Firearms Transaction Records—Discontinued Business, ATF F 5300.3A, is prepared in triplicate and forwarded by Headquarters to the regional office on a monthly basis for each licensee appearing on an ADP 30-day "Notice" list.

If information is received prior to receipt of ATF F 5300.3A that a licensee has submitted or properly disposed of his discontinued business records, the licensee is deleted from the master file using ATF F 5310.3, Licensee Master List—Deleted Licenses.

Upon receiving the ADP-prepared ATF F 5300.3A, regional personnel sign and date the forms. The original and one copy is mailed to the licensee and the second copy is filed in the suspense file. "Address Correction Requested" is marked or stamped on all envelopes.

*Manually prepared.*—If applicable, a Letter to Request Firearms Transaction Records—Discontinued Business, is prepared and mailed. A copy of the request for transaction records is filed in the suspense file.

*Followup procedures for firearms records.*—These procedures are to be initiated if no response has been received within 30 days after sending the first letter request or after the Post Office returns first letter request as undeliverable.

A second request on ATF F 5300.3 or ATF 5300.3A is sent to a responsible person listed on ATF F 7 (5310.12) whose address is different from the address of the licensee. The letter and envelope is addressed with the name of the licensee and to the care of the responsible person. The responsible person is preferably a manager, owner, partner or corporate officer. A copy of the request is filed in the suspense file for a 30-day period pending response from the responsible person.

Contact is attempted by phone to the licensee and, if necessary, two responsible persons listed on ATF F 7 (5310.12) (manager, owner, partner or corporate officer). At least two telephone attempts are made for each of the two responsible persons and the licensee. The necessity for proper disposition of the records is explained. When records are not available or have been transferred to a business successor, the licensee or responsible person is requested to state the disposition of records on ATF F 5300.3 or submit a letter with this information. The attempts to contact by phone and a summary of conversation(s) are recorded and placed in a suspense file with the licensee's folder for further reference. ATF F 5000.4, Memorandum Record of Conversation, is used for these purposes. If a person cannot be reached during normal working hours at a residence, an attempt is made to obtain the telephone number where the person can be reached.

Either the phone contact or letter request may be used first, and if unsuccessful, the other follow-up procedure is then initiated.

If the follow-up is unsuccessful an inspection is initiated to get records from licensees. Actions taken to obtain records are summarized on ATF F 5700.14.

If all actions are unsuccessful the license record file is annotated to show that the licensee could not be located to obtain firearms records or their disposition.

An ATF 1324.5, Out-of-Business Firearms Dealer's Reference Card, is prepared in duplicate and forwarded to the Firearms Records Repository. The Repository forwards a copy to the Firearms Tracing Center.

When the file is closed, the appropriate area supervisor or SAC is notified of the licensees out of business status.

No concerted effort is made to use the followup procedures for collectors of curios and relics and licensees discontinuing business in ammunition or gun-smith activities only. When no further action is pending, the files are closed.

When the disposition of firearms records is a transfer to a business successor, or when the records are not available because of destruction by fire or other reason, an ATF F 1324.5 is prepared in duplicate and forwarded to The Firearms Records Repository. The Repository forwards a copy to the Firearms Tracing Center. ATF F 1324.5 are not prepared for licensees who did not engage in the firearms business or who dealt in ammunition only.

When the file is closed, the appropriate area supervisor or SAC is notified of the business status of our licensees.

#### ABANDONED RENEWAL APPLICATIONS

If the applicant fails to resubmit the corrected part or new application forms within 30 days following the date of notification, the application is considered abandoned. ATF F 5310.6 is prepared and sent to the applicant. A photocopy stamped "abandoned-Refund Fee (amount)" is forwarded to the IRSC so that a refund can be made to the applicant.

The procedures discussed up to this point have been established, based on the G.C.A. requirements, to assure that all applicants are qualified to receive or upon renewal, to continue to hold a license under the G.C.A. of 1968.

However, the Department has recognized the fact that many licensees are not in the strictest sense bona fide commercial operations, the Department's position has been that new legislation is necessary if the issuance of licenses is to be effectively regulated. In 1975 then Assistant Secretary Macdonald called for Congress to enact new licensing standards which would give ATF more discretion in the denial of licenses, place the burden on the applicant to prove entitlement, and substantially raise the license fees. He argued that due to the "sheer magnitude of the number of licensees (156,000), it is impossible for ATF to monitor each licensee and it is becoming increasingly difficult to maintain a meaningful and effective compliance program based upon even random or periodic inspections." *Handgun Crime Control Hearings, supra.*

An examination of the statutory basis under which ATF issues Federal firearms dealers' licenses and the history of Federal firearm licensing standards shed light on why Treasury has considered this to be a legislative rather than an administrative problem. Prior to the Gun Control Act, Federal licenses were governed by the Federal Firearms Act of 1938. Under this law any person desiring a license as a firearms dealer in order to transport, ship, or receive firearms in interstate commerce was required to pay a fee of \$1 per year. The Act contained no other standards for the issuance of a license and, in essence, permitted licensees to trade in firearms even for nonbusiness purposes.

The Federal Firearms Act was repealed by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, which enacted Chapter 44 of Title 18, U.S.C. In enacting Chapter 44, Congress made certain specific findings and declarations, one of which addressed licensing. Congress found "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 had led to licenses being issued to persons not reasonably entitled thereto, thus distorting the purposes of the licensing system." 82 Stat. 226 (1968), Pub. L. No. 90-351, § 901(a) (9).

The legislative history of Title IV stated that this finding was fully supported by investigations of the Committee on the Judiciary and by the evidence presented by Federal, State, and local law enforcement officials. *S. Rep. No. 1097*, 90th Cong., 2d Sess. 110 (1968). Therefore, Title IV provided that any application submitted for a firearms license would be disapproved if, among other reasons, the applicant was under 21 years of age or the applicant did not have, or did not intend to have or to maintain, business premises for the conduct of the firearms business. Moreover, Title IV provided that a license application would be denied if the applicant, by reason of his business experience, financial standing, or trade connections, was not likely to commence business operations during the term of the annual license applied for or to maintain operations in compliance with law. The above language is identical to that found in the Federal Alcohol Administration Act, Title 27, United States Code. This title, which the Bureau of Alcohol, Tobacco and Firearms is also charged with enforcing, establishes the minimum

criteria applicants in the distilled spirits and wine industries must meet in order to obtain a basic permit. 27 U.S.C. 204(a) (2) (B).

Prior to the enective date of Chapter 44 as enacted by Title IV, Congress enacted Title I of the Gun Control Act of 1968 which amended Chapter 44 to strengthen its provisions. As introduced, H.R. 17735 included the identical standards for the issuance of a license cited in Title IV. *However, the FAA language was later struck from the bill by House Amendment No. 16.* The present standards of 18 U.S.C. § 923 replaced the FAA Act standards, and provide as follows:

"(a) No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. . . .

"(d) (1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

"(A) the applicant is twenty-one years of age or over;

"(B) the applicant . . . is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (h) of this chapter;

"(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

"(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application; . . .

"(E) the applicant has in a State (i) 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, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time.

"(2) The Secretary must approve or deny an application for a license within the forty-five day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

"(e) the Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. . . ."

The House Committee Report (*H.R. Rep. No. 1577*, 90th Cong., 2d Sess. 5 (1968)) explained that this change was made to revise and make more objective the qualifying standards for a license. Moreover, the Senate Report reiterated that the existing licensing system under the Federal Firearms Act provided neither adequate license fees nor proper standards for the denial of licenses and that this had led to licenses being issued to persons not reasonably entitled thereto, thus distorting the purposes of the licensing system. *S. Rep. No. 1501*, 90th Cong., 2d Sess. 29 (1968). The Senate Report described the new standards as follows:

"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 in business as importers, manufacturers or dealers in firearms or ammunition. License fees . . . would tend to discourage license applications by persons who do not intend to engage in the business for which the license is sought.

"The record is clear on the need for the provisions of this title which set forth specific standards and increased license fees to obtain Federal licenses to engage in business as a manufacturer, dealer, or importer in firearms or ammunition.

"The absence of specific standards from the Federal law and the minimal fees in the law have resulted in abuse which violates the intent of present Federal firearms controls."

Thus, while the history indicates on the one hand that the present standards were intended to limit the issuance of licenses to bona fide businesses, it is clear that by repealing the stricter and more discretionary FAA Act standards (27 U.S.C. § 204(a) (2) (B)) enacted in Title IV, Congress wished to limit the Secretary's scope of inquiry into license applications. Further, the standards orig-

inally contained in Title IV provided for an inquiry into whether the applicant had sufficient business experience, trade connections, and financial resources; thus, indicating that Congress intended licenses only be issued to bona fide *commercial* businesses. These factors relating to the full fledged commercial nature of an applicant's intention were not incorporated into the existing provisions of section 923. This fact clearly indicates that Congress intended for licenses to be issued regardless of the scale or scope of the applicant's dealing activities.

#### THE PETITION

Other elements of the testimony presented to the committee, specifically the petition entered into the record by Michael Beard, Executive Director of the National Coalition to Ban Handguns, contain interpretive opinions that are in dispute. The principal element of the petition is that ATF should limit the issuance of Federal firearms licenses to bona fide *commercial* operations which are conducted from commercial premises in compliance with all State and local laws affecting businesses, *e.g.*, zoning, sales tax, and licensing laws. The petitioners believe that ATF currently possesses sufficient statutory authority to impose the additional licensing criteria by regulations.

They cite as authority sections 922(b), 923, and 926. Section 922(b) is cited in connection with our supposed authority to condition licenses upon compliance with State and local firearms laws, particularly State and local firearms licensing laws. This reliance on section 922(b) is manifestly misplaced. Section 922(b) (2) is the only paragraph which is even arguably applicable. The provision merely makes it a violation of Federal law for any licensee to sell or deliver a firearm to any person if the licensee knows or has reasonable cause to believe that the purchase or possession of the firearm by the buyer would be in violation of State law or a local ordinance. This section clearly does not require general compliance with *all* State and local firearms laws. It certainly cannot be interpreted as requiring dealers to obtain the necessary State or local firearms licenses.

Similarly, the licensing standards of section 923 contain no requirement that an applicant must comply with State and local laws. Section 923(d) (1) (C) requires only compliance with the provisions of Title I of the Gun Control Act, and regulations issued thereunder. Accordingly, we cannot agree with the petitioners' legal premise that ATF could deny an application for a license under Sections 922(b) and 923, where the applicant was not in compliance with all State and local firearms laws, or failed to obtain the requisite State or local license.

The petitioners believe we could remedy this, however, by simply requiring such compliance in new licensing standard regulations. These new regulations according to the petitioners should also require the applicant to establish the commercial nature of this business by providing evidence that the business would be conducted from commercial premises which would be open to the general public during normal business hours, and evidence that he was the requisite financial resources with which to conduct a commercial operation.

Section 926 provides that the Secretary is authorized to issue such regulations as he deems reasonably necessary to carry out the purposes of the Act. The petitioners would argue that since the legislative history indicates that Congress intended the licensing provisions of the Act to limit licenses to bona fide businesses, the standards which they propose are necessary to carry out the purpose of the Act. There is some merit to this line of reasoning and arguably ATF could for example find by regulation that an applicant does not have the requisite "premises" from which to conduct business if he fails to hold the necessary State license or if the conduct of business from his proposed premises would violate zoning laws. Notwithstanding, we feel that the history of the statutory licensing standards and past Treasury interpretations militates against such a position.

We find it difficult to maintain that Congress after setting forth very specific nondiscretionary standards for the issuance of licenses intended to authorize the Secretary to add new, discretionary standards through his rulemaking authority.

For example, in repealing the FAA Act standards of Title IV, Congress eliminated express authority for the Secretary to inquire into whether the applicant had sufficient financial resources to establish a business, and whether the operation of the business would be in violation of State law. Notwithstanding this fact the petitioners would have the Treasury reinstitute these criteria through new

licensing standards established under our rulemaking authority. Even if such regulations could pass muster in the Federal Courts, they would clearly fuel our critics who periodically accuse ATF of attempting to expand the law through regulatory action.

The problem would be compounded by the fact that such a position would reflect a radical departure from prior positions of the Department and the Bureau. As noted earlier, Assistant Secretary Macdonald has already characterized the problem as a statutory one and called for Congress to enact new standards. In addition, the Bureau has already addressed and taken positions on the relevancy of local zoning ordinances, regular business hours, and whether premises must be open to the public. Adopting the petitioners' requests would necessitate a reversal of these policies with far reaching impact.

The relevancy of local zoning ordinances, regular business hours, etc., surrounding applicants intending to deal from a private residence was first raised shortly after the Gun Control Act of 1968 became effective. At that time the various regions were apparently applying different standards under 27 C.F.R. § 178.11 relating to applicants dealing from a residence. This lack of consistency caused ATF Headquarters to issue standards for the regions to follow in these cases. By memorandum dated June 25, 1969, to the Assistant Regional Commissioner (ATF), Southwest Region, the Director advised that section 178.11 which provides that "a private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term [business premises]," was intended to provide a basis for denying a license to an applicant not engaged in a firearms business but who desires a license as a convenience in obtaining firearms.

The Director advised that the phrase "open to the public" was intended to be construed as meaning accessible to the clientele that the business is set up to serve. For example, under this standard if a licensee states that he sells wholesale only and investigations show that he is authentically engaged in that business, has the facilities to conduct such a business, and is accessible to customers he is established to serve, he is obviously qualified to be issued a license even though his business may be conducted from part of his residence and he is not open to all segments of the buying public.

Another factor which must be considered under the memorandum was whether a distinct portion of the residence is designated as "business premises," and whether it is of appropriate size and adequately equipped for the conduct of the business for which the license is sought. In the case of business hours, the memorandum stressed that the hours may be those which best suit the applicant or his customers, and they need not conform to the accepted 8-hour day. The hours must, however, be reasonably regular.

Finally, the memorandum advised that the failure to comply with local or State licensing laws cannot, of itself, be the basis for denial of a Federal firearms license. The inability to comply with these requirements should, however, be considered in making a determination of whether the applicant is a bona fide dealer and has the required "premises" from which to conduct business.

Warning that the memorandum should not be intended as condoning the issuance of licenses to applicants not engaged in, or intended to engage in the business for which they are seeking a license and do not have the requisite business premise from which to conduct such business, the Director summed up his position as follows:

Basically, determinations to be made are whether an applicant for a license is *authentically engaged in the business*, or intends to engage in the business within a reasonable period of time, for which he is seeking a license, and whether he has *business premises* from which to conduct such business. Once this has been established, the other qualifications for a license must be considered and applied in accordance with the particular facts and circumstances of each case. In this regard, "open to the public" is a more important criterion in considering an application for a license to sell firearms than is considering an application for a gunsmith's license. In those instances where there is some question about the business practices or the exact nature of the business of the applicant, a short letter should be sent to the applicant, requesting the needed information, rather than automatically issuing a notice of contemplated denial as a result of which the applicant is forced to request a hearing. More often than not, this will produce sufficient information upon which to make a decision.

Our files indicate that subsequent to this 1969 memorandum, a controversy arose because one region was denying applications where the person intended to conduct business out of his residence. Apparently, several city governments had requested that the region deny such licenses because local laws prohibited the operation of a firearms business from a dwelling within a residentially zoned area.

After a letter from Congressman Dingle inquiring about this policy, the Director in a memorandum dated June 8, 1972, advised the region that a local zoning ordinance, in and of itself, did not constitute a basis for denying a license, and instructed the region to discontinue the practice and to contact applicants whose applications were denied on the basis of zoning laws alone and offer them an opportunity to reapply.

*Question.* What are the obligations of the Bureau under the Gun Control Act with respect to publishing rules and regulations and administrative procedures in the *Federal Register*? What are its obligations with respect to convening public hearings on these rules and regulations and procedures? Do you believe that the Bureau has complied fully with its obligations under the statute?

*Answer.* Under the Gun Control Act, 18 U.S.C. § 926, the Secretary is required to give reasonable public notice and afford to interested parties an opportunity for a hearing prior to prescribing rules and regulations. This provision makes applicable the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. § 553. This section generally requires that all notices of proposed rulemaking be published in the *Federal Register*. After the publication of such a notice an agency is required to give persons an opportunity to participate in rule-making through submission of written data, views, or arguments with or without an opportunity for oral presentation. After consideration of the relevant matter presented the agency may adopt rules which also must be published in the *Federal Register*.

The courts have held that agencies promulgating regulations under these informal procedures are not required to hold public hearings and that the opportunity to present written comments is sufficient.

In promulgating regulations under the Gun Control Act the Bureau has fully complied with these rulemaking requirements of the Administrative Procedure Act.

The region was further instructed to inform city governments that although we could not deny applications based solely on zoning laws, the issuance of a license does not immunize dealers from violations of local laws. In this regard, the region was to offer to provide the city with a list of licensees within its borders so that the city could take the appropriate action.

In addition to these internal instructions relating to the standards for issuing licenses, ATF has published two pertinent rulings on this subject.

In ATF Rul. 73-13, 1973 ATF C.B. 92, ATF announced that because of the nature of operations conducted by a gunsmith, these licensees would not be required to have business premises open to the general public or have regular business hours. That same year ATF rules that a firearms expert and consultant could qualify for a dealer's license, and that because of the nature of this business the expert would not be required to have business premises open to the general public, or to have regular business hours. ATF Rul. 73-13, 1973 ATF C.B. 93.

The preceding discussion demonstrates that the Bureau has historically recognized the right of limited or specialized dealers to be licensed. Moreover, we have recognized that hours of operation and public access can be tailored to the type of clientele.

Finally, the petitioners request that ATF amend the dealer application forms to require applicants to supply evidence that they meet the commercial standards discussed above, and that we change our internal procedures to require minimal analysis and investigation of all dealer applications.

As has been indicated, the Act contains no provisions to address the commercial standards which the NCBH would have us apply to applicants. In addition, we have demonstrated that our internal procedures do require an analysis to be made on each application received. ATF has not and currently does not issue licenses to individuals without applying standards consistent with the intent of Congress as embodied in the GCA.



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
APPLICATION FOR LICENSE  
UNDER 18 U.S.C. Chapter 44, FIREARMS

**INSTRUCTION SHEET FOR ATF FORM 7**

(Detach this instruction sheet before submitting your application)

1. Please read carefully before preparing ATF Form 7. Issuance of your license under 18 U.S.C. Chapter 44 will be delayed if form submitted is incomplete or otherwise improperly prepared. This application should be submitted in sufficient time to reach the Internal Revenue Service Center at least 45 days in advance of the date that the license is required.
2. Submit an original and one copy of ATF Form 7 to the Director, Internal Revenue Service Center, at the address shown below for the State in which the applicant's business is to be conducted. (CAUTION: Submission of this application does NOT authorize the applicant to engage in any of the activities covered by the requested license. A license must be received before operations are commenced.)
3. Print with ball point pen or typewriter. If separate sheets are needed they must be:
  - a. Submitted in duplicate.
  - b. Identified with your name and address at the top of the page.
  - c. Referenced by the question number being expanded.
4. A license will not be issued to an applicant who intends to conduct his firearms business from a private residence unless his firearms business premises are accessible to the public, i.e., the clientele that the business is set up to serve. If a license is issued, ATF officers will have access to the firearms business premises during business hours and such access includes ingress to the non-public portion of the residence if necessary.
5. A license will not be issued to an applicant who does not intend to actually engage in the firearms activity covered by the license applied for.
6. License fees are to be paid at the time application is made. Make checks or money orders payable to the Internal Revenue Service. Insert your employer identification number or social security number on the check or money order. The actual fee is determined by the type license sought. (See item 12 on ATF Form 7 for correct fees.)
  - a. **Multiple License** — An applicant can apply for a multiple license by checking more than 1 category in item 12, provided that the fee for each activity is paid and the business is conducted at the same location.
  - b. **Multiple Locations** — A separate application and license fee is required for the business at each location.
7. **Responsible Persons** — As used in item 24, means:
  - a. In the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and buying and selling practices of the corporation, partnership, or association, insofar as such management, policies and buying and selling practices pertain to firearms or ammunition, and
  - b. In the case of a corporation, association, or similar organization, any person owning ten percent or more of the outstanding shares of stock issued by the applicant business, and
  - c. In the case of a corporation, association, or similar organization, the officers and directors thereof.
8. The certification in item 28 must be executed on the original and copy of ATF Form 7 by the owner, a partner, or in the case of a corporation, association, etc., by an officer duly authorized to sign for the applicant.
9. If you have any questions relating to this application, please contact the appropriate Bureau of Alcohol, Tobacco and Firearms office listed on the reverse.
10. The Regional Regulatory Administrator (ATF) in your geographical area will: (1) issue a license if your application is approved; (2) advise you in writing of the reasons for denial of application. Fees will be returned for application denied.

IF APPLICANT'S BUSINESS IS TO BE CONDUCTED IN:	MAIL TO: DIRECTOR INTERNAL REVENUE SERVICE CENTER
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, Virgin Islands, Puerto Rico	1040 Waverly Avenue Holmdel, N.J. 07733 *Use 00501 After 1-1-78
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia	310 Lowell Street Andover, Mass. 01812 *Use 03501 After 1-1-78
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee	11601 Roosevelt Boulevard Philadelphia, Pa. 19153 *Use 19255 After 1-1-78
Michigan, Ohio	4200 Buford Highway Chamblee, Georgia 30006 *Use 31101 After 1-1-78
	Cincinnati, Ohio 45296 *Use 45999 After 1-1-78

ATF Form 7 (5310.12) (11-77) PREVIOUS EDITIONS ARE OBSOLETE

IF APPLICANT'S BUSINESS IS TO BE CONDUCTED IN:	MAIL TO: DIRECTOR INTERNAL REVENUE SERVICE CENTER
Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, Texas	3651 S. Interregional Hwy. Austin, Texas 78740 *Use 73301 After 1-1-78
Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	1160 West 1200 South St. Ogden, Utah 84201
Illinois, Iowa, Missouri, Wisconsin	2306 E. Bannister Road Kansas City, Mo. 64170 *Use 64999 After 1-1-78
California, Hawaii	5045 East Butler Avenue Fresno, California 93705
Indiana, Kentucky, North Carolina, Tennessee, Virginia, West Virginia	3131 Democrat Road Memphis, Tennessee 38110 *Use 37501 After 1-1-78

DETACH INSTRUCTIONS BEFORE FILING

FOR QUESTIONS CONCERNING YOUR APPLICATION CONTACT YOUR REGIONAL REGULATORY ADMINISTRATOR AT THE ADDRESS SHOWN BELOW.

IF APPLICANT'S BUSINESS IS TO BE CONDUCTED IN:	CALL OR WRITE: REGIONAL REGULATORY ADMINISTRATOR ATTN: FIREARMS AND EXPLOSIVES LICENSING SECTION BUREAU OF ALCOHOL, TOBACCO & FIREARMS
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, Virgin Islands, Puerto Rico	P.O. Box 15 New York, New York 10008 PHONE: (212) 264-1733
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia	2 Penn Center Plaza Philadelphia, Pennsylvania 19102 PHONE: (215) 597-2238
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee	P.O. Box 2994 Atlanta, Georgia 30301 PHONE: (404) 455-2675
Ohio, Kentucky, Indiana, Michigan, West Virginia	550 Main Street Cincinnati, Ohio 45202 PHONE: (513) 684-3715
Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin	230 S. Dearborn Street Chicago, Illinois 60604 PHONE: (312) 353-3818
Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, Texas, Wyoming	Main Tower 1200 Main Street Dallas, Texas PHONE: (214) 749-2082
Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington	525 Market Street San Francisco, California 94105 PHONE: (415) 556-0687

**PRIVACY ACT INFORMATION**

The following information is provided pursuant to Section 3 of the Privacy Act of 1974 (5 U.S.C. § 552a(e)(3)):

1. **AUTHORITY:** Solicitation of this information is authorized pursuant to 18 U.S.C. § 923(a) of the Gun Control Act of 1968. Disclosure of this information is mandatory, if the applicant wishes to obtain a Federal firearms license.
2. **PURPOSE:** To determine the eligibility of the applicant to obtain a firearms license, to determine the ownership of the business, the type of firearms or ammunition to be dealt in, the type of business premises, the business hours, the business history and the identity of the responsible persons in the business.
3. **ROUTINE USES:** The information will be used by ATF to make determinations set forth in paragraph 2. In addition, information may be disclosed to other Federal, State, foreign and local law enforcement and regulatory agency personnel to verify information on the application and to aid in the performance of their duties with respect to the enforcement and regulation of firearms and/or ammunition where such disclosure is not prohibited by law. The information may further be disclosed to the Justice Department if it appears that the furnishing of false information may constitute a violation of Federal law. Finally, the information may be disclosed to members of the public in order to verify the information on the application when such disclosure is not prohibited by law.
4. **EFFECTS OF NOT SUPPLYING INFORMATION REQUESTED:** Failure to supply complete information will delay processing and may result in denial of the application.

The following information is provided pursuant to Section 7(b) of the Privacy Act of 1974:

Disclosure of the individual's social security number is voluntary. Under 18 U.S.C. § 923(a), ATF has the authority to solicit this information. The number may be used to verify the individual's identity.

ATF Form 7 (5310.12) (11-77)

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS <b>APPLICATION FOR LICENSE</b> UNDER 18 U.S.C. Chapter 44, FIREARMS		FOR INTERNAL REVENUE SERVICE CENTER USE ONLY																																	
1. NAME OF OWNER OR CORPORATION: <i>(If partnership, include name of each partner)</i>																																			
2. TRADE OR BUSINESS NAME, IF ANY	3. EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NO.																																		
4. NAME OF COUNTY IN WHICH BUSINESS IS LOCATED	5. BUSINESS ADDRESS <i>(RFD or street no., city, state, zip code)</i>																																		
6. BUSINESS LOCATION <i>(If no street address in item 5, show directions &amp; distance from nearest P.O. or city limits)</i>	7. TELEPHONE NUMBER <i>(Include Area Code)</i>																																		
	BUSINESS _____ RESIDENCE _____																																		
8. APPLICANT'S BUSINESS IS	9. APPLICANT'S BUSINESS IS LOCATED IN																																		
<input type="checkbox"/> INDIVIDUALLY OWNED <input type="checkbox"/> A CORPORATION <input type="checkbox"/> A PARTNERSHIP <input type="checkbox"/> OTHER <i>(Specify)</i> _____	<input type="checkbox"/> A COMMERCIAL BUILDING <input type="checkbox"/> A RESIDENCE <i>(See instruction 4)</i> <input type="checkbox"/> OTHER <i>(Specify)</i> _____																																		
10. IS ANY BUSINESS OTHER THAN THAT FOR WHICH THE LICENSE APPLICATION IS BEING MADE CONDUCTED ON THE BUSINESS PREMISES. <i>(If "Yes" give the general nature of that business)</i>	11. DATE APPLICANT DESIRES TO COMMENCE BUSINESS *REQUIRING A LICENSE																																		
<input type="checkbox"/> YES <input type="checkbox"/> NO																																			
12. APPLICATION IS MADE FOR A LICENSE UNDER 18 U.S.C. CHAPTER 44 AS A: <i>(Place and (X) in column (b) of the appropriate line. Submit the fee shown in column (c) with the application.)</i>																																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">TYPE OF LICENSE</th> <th style="width: 5%;">"X"</th> <th style="width: 15%;">FEE</th> </tr> <tr> <th>A</th> <th>B</th> <th>C</th> </tr> </thead> <tbody> <tr> <td>1. DEALER IN FIREARMS OTHER THAN DESTRUCTIVE DEVICES OR AMMUNITION FOR OTHER THAN DESTRUCTIVE DEVICES <i>(UNCLUDES: Rifles, Shotguns, Pistols, Revolvers, Ammunition only, Gunsmith activities and National Firearms Act (NFA) Weapons)</i></td> <td></td> <td>\$10</td> </tr> <tr> <td>2. PAWNBROKER DEALING IN FIREARMS OTHER THAN DESTRUCTIVE DEVICES OR AMMUNITION FOR FIREARMS OTHER THAN DESTRUCTIVE DEVICES</td> <td></td> <td>\$25</td> </tr> <tr> <td>3. COLLECTOR OF CURIOS AND RELICS <i>(Note: Omit items 14 and 15 if checked here and no other licenses are applied for.)</i></td> <td></td> <td>\$10</td> </tr> <tr> <td>6. MANUFACTURER OF AMMUNITION FOR FIREARMS OTHER THAN DESTRUCTIVE DEVICES</td> <td></td> <td>\$10</td> </tr> <tr> <td>7. MANUFACTURER OF FIREARMS OTHER THAN DESTRUCTIVE DEVICES</td> <td></td> <td>\$50</td> </tr> <tr> <td>8. IMPORTER OF FIREARMS OTHER THAN DESTRUCTIVE DEVICES OR AMMUNITION FOR FIREARMS OTHER THAN DESTRUCTIVE DEVICES *</td> <td></td> <td>\$50</td> </tr> <tr> <td>9. DEALER IN DESTRUCTIVE DEVICES OR AMMUNITION FOR DESTRUCTIVE DEVICES *</td> <td></td> <td>\$1000</td> </tr> <tr> <td>10. MANUFACTURER OF DESTRUCTIVE DEVICES OR AMMUNITION FOR DESTRUCTIVE DEVICES *</td> <td></td> <td>\$1000</td> </tr> <tr> <td>11. IMPORTER OF DESTRUCTIVE DEVICES OR AMMUNITION FOR DESTRUCTIVE DEVICES</td> <td></td> <td>\$1000</td> </tr> </tbody> </table>			TYPE OF LICENSE	"X"	FEE	A	B	C	1. DEALER IN FIREARMS OTHER THAN DESTRUCTIVE DEVICES OR AMMUNITION FOR OTHER THAN DESTRUCTIVE DEVICES <i>(UNCLUDES: Rifles, Shotguns, Pistols, Revolvers, Ammunition only, Gunsmith activities and National Firearms Act (NFA) Weapons)</i>		\$10	2. PAWNBROKER DEALING IN FIREARMS OTHER THAN DESTRUCTIVE DEVICES OR AMMUNITION FOR FIREARMS OTHER THAN DESTRUCTIVE DEVICES		\$25	3. COLLECTOR OF CURIOS AND RELICS <i>(Note: Omit items 14 and 15 if checked here and no other licenses are applied for.)</i>		\$10	6. MANUFACTURER OF AMMUNITION FOR FIREARMS OTHER THAN DESTRUCTIVE DEVICES		\$10	7. MANUFACTURER OF FIREARMS OTHER THAN DESTRUCTIVE DEVICES		\$50	8. IMPORTER OF FIREARMS OTHER THAN DESTRUCTIVE DEVICES OR AMMUNITION FOR FIREARMS OTHER THAN DESTRUCTIVE DEVICES *		\$50	9. DEALER IN DESTRUCTIVE DEVICES OR AMMUNITION FOR DESTRUCTIVE DEVICES *		\$1000	10. MANUFACTURER OF DESTRUCTIVE DEVICES OR AMMUNITION FOR DESTRUCTIVE DEVICES *		\$1000	11. IMPORTER OF DESTRUCTIVE DEVICES OR AMMUNITION FOR DESTRUCTIVE DEVICES		\$1000
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Note: Applicants intending to engage in businesses relating to NFA weapons (including destructive devices and ammunition for destructive devices) are required to pay a special (occupational) tax before commencing business (26 USC 5801).																																			
13. PAYMENT FOR THE LICENSE, MADE PAYABLE TO THE INTERNAL REVENUE SERVICE IS ATTACHED OR ENCLOSED IN THE FORM OF: <input type="checkbox"/> CHECK <input type="checkbox"/> MONEY ORDER <input type="checkbox"/> OTHER <i>(Specify)</i> _____ AMOUNT SUBMITTED \$ _____																																			
14. HOURS OF OPERATION APPLICANT'S BUSINESS																																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>TIME</th> <th>SUNDAY</th> <th>MONDAY</th> <th>TUESDAY</th> <th>WEDNESDAY</th> <th>THURSDAY</th> <th>FRIDAY</th> <th>SATURDAY</th> </tr> </thead> <tbody> <tr> <td>OPEN</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>CLOSE</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			TIME	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	OPEN								CLOSE																
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OPEN																																			
CLOSE																																			
15. ARE THE APPLICANT'S BUSINESS PREMISES OPEN TO THE GENERAL PUBLIC DURING THESE HOURS <input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If no, give explanation on separate sheet)</i>																																			
16. IS APPLICANT PRESENTLY ENGAGED IN A BUSINESS REQUIRING A FEDERAL FIREARMS LICENSE <i>(If yes, answer 17 to 21)</i>		17. APPROXIMATELY HOW MANY FIREARMS WERE SOLD BY APPLICANT DURING THE PRECEDING TWELVE MONTHS																																	
<input type="checkbox"/> YES <input type="checkbox"/> NO																																			
18. PRESENT LICENSE NUMBER		19. DATE FIREARM BUSINESS COMMENCED																																	
IF BUSINESS OBTAINED FROM SOMEONE ELSE GIVE																																			
20. NAME		21. LICENSE NUMBER																																	

22. DESCRIBE SPECIFIC ACTIVITY APPLICANT IS ENGAGED IN, OR INTENDS TO ENGAGE IN, WHICH WILL REQUIRE A FEDERAL FIREARMS LICENSE <i>(e.g., dealer in rifles, shotguns, revolvers and ammunition, dealer in ammunition only, gunsmith, dealer in machine guns, etc.)</i>				
23. IS STATE OF LOCAL LICENSE OR PERMIT REQUIRED FOR APPLICANT'S BUSINESS? <i>(If "yes", give numbers or if not obtained, date applied for.)</i>				
<input type="checkbox"/> YES <input type="checkbox"/> NO				
24. LIST BELOW THE INFORMATION REQUIRED FOR EACH INDIVIDUAL OWNER, PARTNER, AND OTHER RESPONSIBLE PERSONS <i>(See instruction 7)</i> IN THE APPLICANT BUSINESS. IF A FEMALE, LIST GIVEN NAMES AND MAIDEN, IF MARRIED, e.g., "MARY ALICE (SMITH) JONES," NOT "MRS. JOHN JONES." <i>(If additional space is needed use a separate sheet.)</i>				
FULL NAME	POSITION AND SOCIAL SECURITY NO.	HOME ADDRESS <i>(Include Zip Code)</i>	PLACE OF BIRTH	DATE OF BIRTH
25. HAS APPLICANT OR ANY PERSON LISTED ABOVE: <i>(If "Yes" place an (X) by the name and show the city and state at right)</i>				
A. HELD A FEDERAL FIREARMS LICENSE			YES	NO
B. BEEN DENIED A FEDERAL FIREARMS LICENSE				
C. BEEN AN OFFICER IN A CORPORATION HOLDING A FEDERAL FIREARMS LICENSE				
D. BEEN AN EMPLOYEE RESPONSIBLE FOR FIREARMS ACTIVITIES OF A FEDERAL FIREARMS LICENSE				
GIVE FULL DETAILS ON SEPARATE SHEET FOR ALL "Yes" ANSWERS IN ITEMS 26 & 27.				
				YES
				NO
26. IS APPLICANT OR ANY PERSON NAMED IN ITEM 24 ABOVE:				
A. CHARGED BY INFORMATION OR UNDER INDICTMENT IN ANY COURT FOR A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR				
B. A FUGITIVE FROM JUSTICE				
C. AN ALIEN WHO IS ILLEGALLY OR UNLAWFULLY IN THE UNITED STATES				
D. UNDER 21 YEARS OF AGE				
E. AN UNLAWFUL USER OF OR ADDICTED TO MARIJUANA OR ANY DEPRESSANT, STIMULANT OR NARCOTIC DRUG				
27. HAS APPLICANT OR ANY PERSON NAMED IN ITEM 24 EVER:				
A. BEEN CONVICTED IN ANY COURT OF A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR <i>(See 1 below)</i>				
B. BEEN DISCHARGED FROM THE ARMED FORCES UNDER DISHONORABLE CONDITIONS				
C. BEEN ADJUDICATED AS A MENTAL DEFECTIVE OR BEEN COMMITTED TO ANY MENTAL INSTITUTION				
D. RENOUNCED HIS CITIZENSHIP, HAVING BEEN A CITIZEN OF THE UNITED STATES				
28. CERTIFICATION: Under the penalties imposed by 18 U.S.C. 924, I declare that I have examined this application and the documents submitted in support thereof, and in the best of my knowledge and belief, they are true, correct and complete.				
SIGN HERE		TITLE		DATE
29. APPLICATION IS				
<input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED *				
<input type="checkbox"/> TERMINATED *				
* LICENSE FEE WILL BE REFUNDED BY INTERNAL REVENUE SERVICE				
SIGNATURE OF REGIONAL REGULATORY ADMINISTRATOR				DATE
1/(The actual sentence given by the judge does not matter - a "yes" answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required even if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)				

1. Name	
2. License Number	3. Expiration Date
5. Type of License 01 Dealer in firearms other than destructive devices or ammunition for other than destructive devices (Fee \$10) 02 Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices (Fee \$25) 03 Collector of curios and relics (Fee \$10) 06 Manufacturer of ammunition for firearms other than destructive devices. (Fee \$10) 07 Manufacturer of firearms other than destructive devices. (Fee \$50) 08 Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices. (Fee \$50) 09 Dealer in destructive devices or ammunition for destructive devices. (Fee \$1000) 10 Manufacturer of destructive devices or ammunition for destructive devices. (Fee \$1000) 11 Importer of destructive devices or ammunition for destructive devices. (Fee \$1000)	
4. Issued by Regional Regulatory Administrator, ATF, at (Address)	
6. Correct any errors in this space	

ATF Form 8 (5310.11) PART III (3-80) EDITION OF 6-79 MAY BE USED

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

RENEWAL OF FIREARMS LICENSE

If you want to renew your firearms license, you MUST do the following before the expiration date shown at the left:

1. Examine the front of this form. If there are errors, please cross out the wrong information and write the correct information in the lower left-hand corner.
2. FILL OUT THE BACK OF THIS FORM AND SIGN IT.
3. Make check or money order payable to Internal Revenue Service.
4. Mail the completed form and required fee (shown at the left) in the enclosed envelope.

WARNING: There are criminal penalties for continuing your firearms business without renewing your license.

The following questions apply to you and (if the licensee is a corporation, partnership or association) to any other person who has the power to direct the management and policies of your firearms business.

- |   |                          |
|---|--------------------------|
| Yes   | No                       |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 1. Are you actively engaged in the firearms or ammunition business (or collecting activity) authorized by this license?   |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 2. Are you presently under indictment or information in any court for a crime punishable by imprisonment for a term exceeding 1 year?<br>(If yes, attach an explanatory statement showing the date of the indictment or information and the court in which it is pending. "Information" means a formal accusation of a crime made by a prosecuting attorney as distinguished from an indictment presented by a grand jury.)   |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 3. Have you ever been convicted of a crime punishable by imprisonment for a term exceeding 1 year?  |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 4. Are you presently appealing a conviction of a crime punishable by imprisonment for a term exceeding 1 year?<br>(If yes, attach an explanatory statement showing date of conviction, court in which convicted and court in which appeal is pending)   |                          |
| NOTE: For questions 2, 3, and 4, the actual sentence given by the judge does not matter. You must answer yes if the judge could have given a sentence of imprisonment for more than 1 year. Also, a yes answer is required (1) if you received probation, (2) if the conviction was discharged or set aside, (3) if the conviction was dismissed under an expungement or rehabilitation statute, or (4) if the conviction was appealed. However, a crime punishable by imprisonment for a term exceeding 1 year does not include a conviction which has been set aside under the Federal Youth Corrections Act. |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 5. Are you a fugitive from justice?   |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 6. Are you an unlawful user of, or addicted to marijuana or any depressant, stimulant or narcotic drug?   |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 7. Have you ever been adjudicated mentally defective, mentally incompetent or been committed to a mental institution?   |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 8. Have you been discharged from the Armed Forces under dishonorable conditions?  |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 9. Are you an alien illegally or unlawfully in the United States?   |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 10. Have you ever renounced your United States citizenship?   |                          |
| <input type="checkbox"/>  | <input type="checkbox"/> |
| 11. Has there been a change of the ownership or control of the firearms business?   |                          |

Under the penalties imposed by 18 U.S.C. 924, I certify that the statements contained in this application are true and correct to the best of my knowledge and belief.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_  
(owner, partner or officer of a corporation)

1. Name	
2. License Number	3. Expiration Date
5. Type of License 01 Dealer in firearms other than destructive devices or ammunition for other than destructive devices. 02 Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices. 03 Collector of curios and relics. 06 Manufacturer of ammunition for firearms other than destructive devices. 07 Manufacturer of firearms other than destructive devices.	
08 Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices. 09 Dealer in destructive devices or ammunition for destructive devices. 10 Manufacturer of destructive devices or ammunition for destructive devices. 11 Importer of destructive devices or ammunition for destructive devices.	
4. Issued by Regional Regulatory Administrator, ATF at (Address)	
6. Signature of Regional Regulatory Administrator	

ATF Form 8 (5310.11) (5-80) PART I

EDITION of 5-78 MAY BE USED

## License (18 U.S.C. Chapter 44)

In accordance with the provisions of Title 1, Gun Control Act of 1968, and the regulations issued thereunder (27 CFR Part 178), you are licensed to engage in the business specified in Item 5 of the license, within the limitations of Chapter 44, Title 18, United States Code, and the regulations issued thereunder, until the expiration date specified in Item 3 of this license. See "WARNING" on back.



Department of the Treasury  
Bureau of Alcohol, Tobacco  
and Firearms

Please include your license number on all correspondence with the Bureau.

## WARNING

This license is not a permit to carry a concealed weapon nor does it confer the right or privilege to conduct business contrary to State law or any other law. Whenever a person who possesses a license under 18 U.S.C. Chapter 44 becomes a fugitive from justice; becomes addicted to marihuana or any depressant, stimulant, or narcotic drug; is adjudicated as a mental defective or is committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; renounces his citizenship or, except as provided in 18 U.S.C. 925 and Title VII of Public Law 90-351 (82 Stat. 197) (18 U.S.C. App.), is finally convicted of a crime punishable by imprisonment for a term exceeding one year, such person is prohibited from engaging in the business otherwise authorized by this license.

## NOTICE

Any changes in name, trade name, address, or control of this business must be reported PROMPTLY to the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms from whom this license was received. Failure to do so may result in administrative action against the licensee for failure to comply with applicable regulations. (27 CFR 178.52 - 178.54)

Any person who fails to make application for renewal of this license prior to expiration of this license is also prohibited from engaging in the business presently authorized. If a renewal application is not received 30 days before the expiration date, the licensee should contact his Regional Regulatory Administrator concerning renewal. (27 CFR 178.45)

This license is conditional upon compliance by you with the Clean Water Act.

1. Name	
2. License Number	3. Expiration Date
5. Type of License 01 Dealer in firearms other than destructive devices or ammunition for other than destructive devices. 02 Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices. 03 Collector of curios and relics. 06 Manufacturer of ammunition for firearms other than destructive devices. 07 Manufacturer of firearms other than destructive devices.	
08 Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices. 09 Dealer in destructive devices or ammunition for destructive devices. 10 Manufacturer of destructive devices or ammunition for destructive devices. 11 Importer of destructive devices or ammunition for destructive devices.	
4. Issued by Regional Regulatory Administrator, ATF at (Address)	
6. Signature of Regional Regulatory Administrator	

ATF Form 8 (5310.11) (5-80) PART II

## Copy of License (18 U.S.C. Chapter 44)

I certify that this is a true copy of a license issued to me to engage in the business specified in Item 5.

(Signature of Licensee)

## PURCHASING COPY

The licensee named herein may use this form, a reproduction thereof, or a reproduction of his license, to assist a transferor of firearms to verify the identity and the licensed status of the licensee as provided in 27 CFR Part 178.

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1. Name	
2. License Number	3. Expiration Date
5. Type of License 01 Dealer in firearms other than destructive devices or ammunition for other than destructive devices. 02 Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices. 03 Collector of curios and relics. 06 Manufacturer of ammunition for firearms other than destructive devices. 07 Manufacturer of firearms other than destructive devices.	
08 Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices. 09 Dealer in destructive devices or ammunition for destructive devices. 10 Manufacturer of destructive devices or ammunition for destructive devices. 11 Importer of destructive devices or ammunition for destructive devices.	
4. Issued by Regional Regulatory Administrator, ATF at (Address)	
6. Signature of Regional Regulatory Administrator	

ATF Form 8 (5310.11) (5-80) PART IV

## Record Copy of License (18 U.S.C. Chapter 44)

In accordance with the provisions of Title 1, Gun Control Act of 1968, and the regulations issued thereunder (27 CFR Part 178), you are licensed to engage in the business specified in Item 5 of the license, within the limitations of Chapter 44, Title 18, United States Code, and the regulations issued thereunder, until the expiration date specified in Item 3 of this license.



Department of the Treasury  
Bureau of Alcohol, Tobacco  
and Firearms

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1. Name	
2. License Number	3. Expiration Date
5. Type of License	
01 Dealer in firearms other than destructive devices or ammunition for other than destructive devices.	08 Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices.
02 Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices.	09 Dealer in destructive devices or ammunition for destructive devices.
03 Collector of curios and relics.	10 Manufacturer of destructive devices or ammunition for destructive devices.
06 Manufacturer of ammunition for firearms other than destructive devices.	11 Importer of destructive devices or ammunition for destructive devices.
07 Manufacturer of firearms other than destructive devices.	
4. Issued by Regional Regulatory Administrator, ATF at (Address)	
6. Signature of Regional Regulatory Administrator	

ATF Form 8 (5310.11) (5-80) PART V

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

## Record Copy of License (18 U.S.C. Chapter 44)

In accordance with the provisions of Title 1, Gun Control Act of 1968, and the regulations issued thereunder (27 CFR Part 178), you are licensed to engage in the business specified in Item 5 of the license, within the limitations of Chapter 44, Title 18, United States Code, and the regulations issued thereunder, until the expiration date specified in Item 3 of this license.



Department of the Treasury  
Bureau of Alcohol, Tobacco  
and Firearms

1. Name	
2. License Number	3. Expiration Date
5. Type of License	
01 Dealer in firearms other than destructive devices or ammunition for other than destructive devices.	08 Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices.
02 Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices.	09 Dealer in destructive devices or ammunition for destructive devices.
03 Collector of curios and relics.	10 Manufacturer of destructive devices or ammunition for destructive devices.
06 Manufacturer of ammunition for firearms other than destructive devices.	11 Importer of destructive devices or ammunition for destructive devices.
07 Manufacturer of firearms other than destructive devices.	
4. Issued by Regional Regulatory Administrator, ATF at (Address)	
6. Signature of Regional Regulatory Administrator	

ATF Form 8 (5310.11) (5-80) PART VI

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

## Record Copy of License (18 U.S.C. Chapter 44)

In accordance with the provisions of Title 1, Gun Control Act of 1968, and the regulations issued thereunder (27 CFR Part 178), you are licensed to engage in the business specified in Item 5 of the license, within the limitations of Chapter 44, Title 18, United States Code, and the regulations issued thereunder, until the expiration date specified in Item 3 of this license.



Department of the Treasury  
Bureau of Alcohol, Tobacco  
and Firearms

RECORD OF INSPECTION ASSIGNMENTS AND REPORTS			TELE. NO. & AREA CODE	HRS. OF OPN	SUN	MON	TUE	WED	THU	FRI	SAT
BUS.			OPEN								
RES.			CLOSE								
ASSIGNMENTS				REPORTS							
DATE	TYPE	INSPECTORS	DATE	TIME	VIOLATIONS, SUMMATIONS, REFERRALS, AND RECOMMENDATIONS						

1/ Total spent on the inspection, including report writing but excluding travel

Department  
of the Treasury



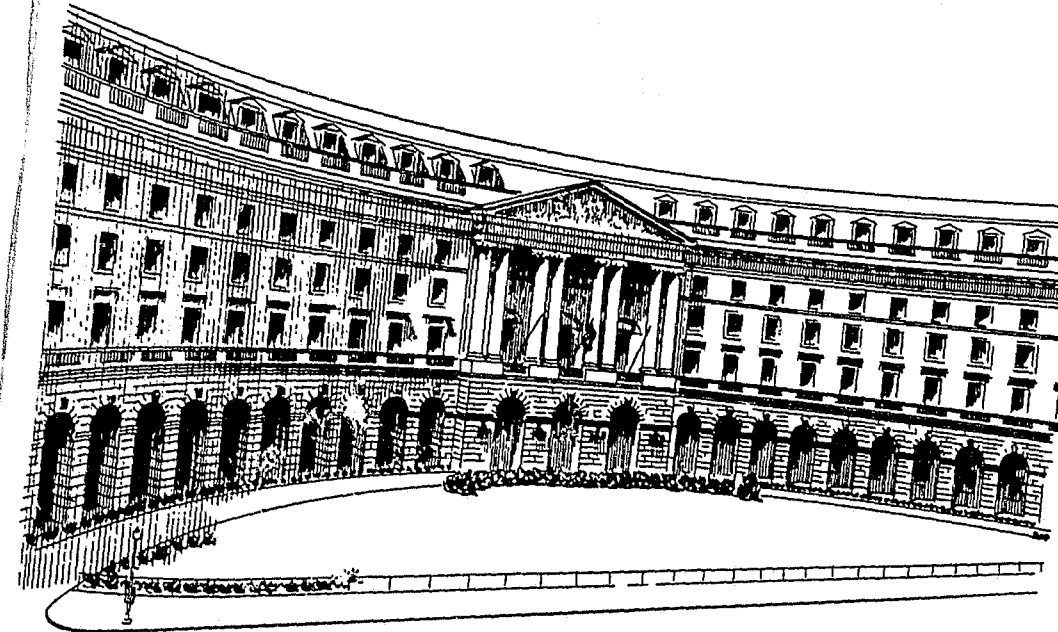
Bureau of  
Alcohol, Tobacco  
and Firearms

ORDER

ATF O 5300.2A

1/23/78  
(includes chgs 1 - 5)

TECHNICAL SERVICES PROCEDURES -  
FIREARMS AND EXPLOSIVES



Distribution: Headquarters (H-1; H-2; H-5)  
Field (F-1; F-2; F-3)  
Firearms and Explosives Licensing  
Section Personnel

OPI: Regulations  
and  
Procedures  
Division

ATF O 5300.2A  
1/23/78

# FOREWORD

1. PURPOSE. This order establishes techniques and procedures to be used by regional office firearms and explosives licensing sections in regulating firearms and explosives operations. The instructions contained herein apply equally to firearms and explosives unless otherwise specified.
2. SCOPE. The provisions of this order apply to Regulatory Enforcement regional office personnel.
3. CANCELLATION. This order cancels ATF O 5300.2, Technical Services Procedures - Firearms and Explosives, dated 8/27/76, and ATF N 5300.13, Procedures for Processing ATF F 5300.3A, dated 9/9/77.

*Rex O. Davis*  
Director

ATF O 5300.2A  
1/23/78

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ATF O 5300.2A Chg 5  
1/28/80

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ATF O 5300.2A  
1/23/78

#### CHAPTER A. GENERAL

##### 1. RESPONSIBILITY.

- The regional regulatory administrator is responsible for implementing the provisions of this order. \*
- The firearms and explosives licensing section is responsible for processing firearms and explosives applications and licenses and for the other provisions of this order.
- The regional firearms and explosives coordinator will provide technical advice as may be necessary to implement these procedures.

##### 2. PROCESSING TIME LIMIT.

- General.** A properly executed application for a firearms or explosives license must be approved or denied within the 45-day period beginning on the date that the application is received by the Internal Revenue Service Center (IRSC). In the case of an incomplete or improperly executed application initially submitted, the 45-day period begins on the date a corrected or properly executed application or the missing data is received by ATF (e.g., by regional office or inspector in the field). An application is not properly executed only if the proper form is incomplete or improperly executed on its face (e.g., failure to fill an appropriate blank or absence of a signature). An application is properly executed if the document contains such information that a determination can be made on the application's face whether to approve or deny without resort to an investigation for clarification (see 27 CFR 178.47 and 181.49).

##### b. Firearms Renewal Application Not Acted on Within 45 Days.

- ATF Ruling 75-27 held that a transferor firearms licensee may continue to make firearms and ammunition shipments to a licensee who has timely applied for renewal of his license but has not had his application acted upon within 45 days after the expiration of his license. The transferor licensee shall, however, in cases where the 45-day period has passed, obtain appropriate evidence that the transferee's license renewal application is still pending in

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the office of the regional regulatory administrator. Such evidence should consist of a letter from the regional regulatory administrator to the transferee licensee stating that his application has been timely filed and that action thereon is currently pending.

- (2) On request, a letter may be provided to a licensee who has timely filed for renewal of his license but has not had his application acted on within 45 days after expiration of his license.

### 3. DEFINITIONS.

- a. Application. This is ATF F 7(5310.12), Application for License under 18 U.S.C. Chapter 44, Firearms, ATF F 4705(5400.13), Application for License under 18 U.S.C. Chapter 40, Explosives, or ATF F 4707(5400.16), Application for Permit under 18 U.S.C. Chapter 40, Explosives, unless otherwise specified. A renewal application may be one of these forms or part 3 of the license or permit.
- b. Application Folder. This is a file folder containing a pending original application and associated correspondence.
- c. License Folder. This is a file folder containing the original approved application, copies of licenses, renewal applications, inspection reports, variances and associated correspondence. The application folder becomes a license folder when a license is issued.
- d. License. This is ATF F 8(5310.11), License (18 U.S.C. Chapter 44, Firearms), ATF F 4706(5400.14), License (18 U.S.C. Chapter 40, Explosives), ATF F 4708 (5400.15), Permit (18 U.S.C. Chapter 40, Explosives), or ATF F 4709(5400.6), User-Limited Permit (18 U.S.C. Chapter 40, Explosives), unless otherwise specified. For purposes of this order, the terms "license" and "licensee" include the terms "permit" and "permittee," respectively, unless otherwise specified.

### 4. FILES. The following files pertaining to firearms and explosives will be maintained:

- a. License Register. Complete ATF F 5300.14, License or Permit Register, as a record of each license number issued, the person the license number was issued to, and the action taken with respect to the application.

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Maintain this file in a looseleaf binder or bound book. Issue license numbers numerically by Internal Revenue (IR) District for firearms and numerically by State for explosives.

### b. Master File Cross-Reference (MFCR) Card File.

- (1) Prepare ATF F 5020.23, Master File Cross-Reference, as necessary, for each applicant (other than DBA), partner, and (optionally) responsible person listed on the application.
- (2) File MFCR cards alphabetically in the license record (part 4) file or in a separate file. See ATF O 5310.3, Firearms Licensing Operations, for alphabetizing standards.
- (3) File in this file all reference cards prepared under previous procedures which are still available. Retain other master and cross-reference cards presently in existence.
- (4) This is a permanent file for all practical purposes. Remove MFCR cards from this file only when information is received that a person has died or that it has been 10 years since the license was terminated.
- (5) If desired, the MFCR cards for pending applications may be filed temporarily in the application folder or in any other manner convenient for the examiner, and transferred to the MFCR file when action on an application is completed.

### c. Active File.

- (1) File active license folders numerically by IR District for firearms and by State for explosives. A colored folder, tab or tape may be used to distinguish the IR District, State or those licensees under the jurisdiction of MESA. The expiration date or type of license will not be color coded except that explosives license folders may be color coded to readily distinguish them from firearms license folders.
- (2) Do not subdivide this file.

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d. Closed File.

- (1) File closed or inactive application and license folders alphabetically, regardless of the reason for closing the file. These folders may be subdivided by IR District (firearms) or State (explosives) or filed without regard to IR District or State. A separate file may be maintained for applications denied and licenses revoked.
- (2) Do not file firearms, ammunition or explosives transaction records or other business records in this file.
- (3) Retain closed folders in this file in the regional office for 2 years after closing, if space is available, and then dispose of according to the ATF Records Disposition Schedule. Prominently mark folder with month and year for destruction.

e. Variance File. Place in a separate file, by section of regulation, a copy of all variances granted by the regional regulatory administrator or by Headquarters. This is in addition to the copy of the variance filed in the license folder.

f. Pending File.

- (1) File in an alphabetical pending file all application and license folders which are awaiting further action.
- (2) This should be a CENTRAL file for ease of information retrieval and for ease of associating with incoming reports and forms.
- (3) Tub files may be used for work in process.

g. Suspense File.

- (1) File by due date copies of letters and forms which require response by a specific date.
- (2) Establish a central suspense file. A special suspense file may be maintained for particular types of correspondence. CHECK THESE FILES

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DAILY. These files are valuable only if used effectively to control work.

h. Correspondence File. File in chronological order a copy of outgoing letter correspondence to other ATF offices and to industry members. This is in addition to the copies of correspondence filed in the license folder. Form letters need not be placed in this file.

i. Renewal Application (Part 3) File.

- (1) File part 3 of the licenses alphabetically by month of expiration. Maintain separate files for firearms and explosives.
- (2) Flag part 3 if some action is needed before the renewal is mailed or if ATF F 7(5310.12), ATF F 4705(5400.13) or ATF F 4707(5400.16) should be mailed at renewal time rather than part 3.

j. License Record (Part 4) File.

- (1) File part 4 of the licenses alphabetically. Maintain separate files for firearms and explosives.
- (2) Flag part 4 if action is needed before a renewal is approved.
- (3) The current or last part 4 is retained permanently.

k. Out-of-Business Records (OBR) File. \*

(1) General. Because of the various sizes, shapes, and volume of such records, no filing standards are prescribed in this order.

(2) Records Transferred to Regional Office. When records are received from discontinued licensees, regardless of the reason for discontinuing business, handle as follows:

(a) Firearms Records.

- 1 Accept and ship the records according to the procedures established by ATF O 1324.4, Shipments to ATF Firearms Records Repository. \*

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- 2 Do not file any of these records in the license folder. If transaction records are stored in a license folder, they could be inadvertently destroyed.
  - 3 Annotate the license record (part 4) card as to location of the discontinued business records.
  - (b) Ammunition and Explosives Records.
    - 1 Records of ammunition and explosives acquisitions may be destroyed when received by the regional office.
    - 2 Retain records of sales or dispositions of ammunition for 2 years and explosives for 3 years after the date of the last entry in the records. Prominently mark the file as to date it may be destroyed.
  - (3) Records Transferred to a Successor. Annotate the license record (part 4) of the former licensee when information is received that a discontinued business licensee has transferred his records to the successor. Show "Records to (trade name and license number of receiving licensee)." Also, when firearms records are transferred to a successor, prepare ATF F 1324.5, Out-of-Business Firearms Dealer's Reference Card, as described by paragraph 36e.
  - (4) Searches for Out-of-Business Records. When requested to assist in searches for the location of discontinued business records, the licensing section should check the license record (part 4) file, MFCR file, other card files and the closed file as necessary.
  5. AUTOMATIC DATA PROCESSING (ADP). ADP systems and print-outs will be used whenever feasible to accomplish the procedures prescribed in this order. Many procedures are now programmed for ADP systems and other procedures will be programmed in the future. The procedures in this order may be modified to take maximum advantage of available ADP systems.
- 6-10. RESERVED

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## CHAPTER B. ORIGINAL APPLICATIONS

11. REQUEST FOR APPLICATION FORMS. On receipt of a request for application forms, send to the prospective applicant three copies of ATF F 7(5310.12), or four copies of ATF F 4705(5400.13) or ATF F 4707(5400.16), as applicable. Include a copy of the explosives regulations, if applicable, a copy of either the firearms or explosives question and answer booklet, as applicable, and any special instruction sheets for completing the application. If the application will be for a manufacturer's (except manufacturer-limited) license, include ATF F 4805(1740.2), Supplemental Information on Water Quality Consideration, and ATF F 4871(1740.1), Environmental Information, with the application forms. If a letter request is received, return the letter with the forms. A transmittal letter is optional. Do not maintain a file of requests for applications.
12. RECEIPT OF ORIGINAL APPLICATIONS.
  - a. From Applicants. DO NOT DATE STAMP. If received with remittance, and if properly prepared, send the forms and remittance to the appropriate IRSC without action by ATF. If received without a remittance, or if not properly prepared, return the application to the applicant with instructions for proper preparation and submission to IRSC. A marked copy of the instruction sheet for the application may be used for this purpose.
  - b. From IRSC.
    - (1) Date stamp in the regional mail room or firearms and explosives licensing section as determined by the region.
    - (2) Upon receipt in the licensing section, distribute the applications according to the workload assignment. The workload may be divided as desired by the regional office or as otherwise prescribed.
    - (3) Check the applicant's name(s) against the license record (part 4) and MFCR file to determine if he has previously been associated with a license. If so, note the association and attach it to the application.
    - (4) If an ATF F 7(5310.12), ATF F 4705(5400.13) or ATF F 4707(5400.16) is found to be a renewal application, associate it with the license folder.

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- (5) If the application is for an original license, enter the appropriate information into the license register and annotate the license number on the application. Prepare an application folder showing the license number on the folder. Also, the following information may be shown:

- (a) Business or trade name, or the individual name(s) if a trade name is not used.
- (b) The city and State of the address. If more than one store of the same name is in the same city, a street address or store number may be listed.

- (6) Forward the folder and application to the examiner responsible for that section of the licenses.

### 13. PROCESSING ORIGINAL APPLICATIONS.

- a. Check the application for completeness and correctness. Place a red checkmark beside incomplete or incorrect items in order to call them to the attention of the applicant or inspector.
- b. Prepare MFCR cards.
- c. Initiate FBI name check requests (see ATF O 1200.13A, Federal Bureau of Investigation (FBI) Name Checks). Place a copy of the request in a suspense file. Upon return of the FBI report, place the original in the application folder. Retain the copy in a suspense file to support the monthly report of FBI name checks. Inform the inspecting officer of any "hits" (i.e., responses indicating an arrest) so he may obtain details on local charges or convictions.
- \* d. FBI name checks will not be made on officers, directors, and persons owning 10 percent or more of the shares of major national corporations who are not directly involved in the firearms and explosives part of the business. This waiver does not extend to lower corporate levels such as regional, district, or store managers.
- e. If it is determined that the applicant is under disability, advise the applicant that his application cannot be granted and that he may withdraw the application. If the applicant does not withdraw

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the application, it should be processed for denial. The applicant may be advised of the procedures for applying for relief from disability, if eligible; however, do not solicit such an application.

- f. Charges and convictions outside the inspecting officer's geographical area will be resolved by telephone or direct correspondence with the arresting agency (preferable), or by a collateral inspection. If possible, use ATF F 5020.29, Form Letter-Request for Disposition of Criminal Charges, if the FBI report indicates an arrest but no disposition of the offense.
- g. If a field investigation is necessary (see subparagraphs 13h thru 13j below), initiate an inspection request using ATF F 5700.14, Assignment and Report of Inspection. A goal of 3 working days is established for initiating field inspections of new applications after receipt in the regional office. Some application forms will be renewals or corrections and need not be inspected.

\*

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- h. All storage facilities (including those located out of applicant's area or region) will be inspected prior to the issuance of an explosives license or permit. These inspections (including out of region requests) will be of the highest priority and every effort will be made to meet the 45-day requirement.
- i. All other phases of original explosives application inspections will be done to the extent personnel and budget limitations permit. Field inspection of manufacturer-limited and user-limited explosives applications may be waived by the regional regulatory administrator if no explosives storage facilities are to be used and if the application appears to be in order.
- j. All original firearms applications for manufacturers of firearms (class 07), importers (class 08) and dealers, manufacturers and importers of destructive devices or ammunition for destructive devices (classes 09, 10, and 11) will be inspected to the extent personnel and budget limitations permit. Field inspections of applications for other classes of firearms licenses will only be conducted if special instructions are issued to do so, or if necessary to sustain a denial, to resolve difficulties in processing the application or when good judgment indicates that a field inspection should be conducted.
- k. The inspection request should:
  - (1) List any special instructions or data which may assist the inspecting officer. A listing of items on the application to be corrected need not be shown. The inspector will examine the application and obtain necessary corrections.
  - (2) Show "Application" as type of inspection. No further explanation is needed as to the purpose of the inspection.
  - (3) Show the date that the completed report should be received in the regional office. This date should be not less than 5 days before the end of the 45-day limit for action on the application. If the due date is less than 15 days from the date of assignment, type or stamp "EXPEDITE" on the inspection request.

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- (4) When the application is for a manufacturer's (except manufacturer-limited) license, attach copies of ATF F 4805 (1740.2) and ATF F 4871 (1740.1) to the inspection request, if these forms have not already been completed. These forms will be processed and filed as part of the application and further distributed as provided in ATF H 1740.1A, Environmental Protection.
  - (5) Attach the original of the application to the inspection request. Send the request to the appropriate area supervisor or SAC. Do not attach blank inspection report forms since these are stocked in the field offices.
  - (6) Place a copy of the inspection request in a suspense folder under due date for return.
1. If the applicant is, or will be, under the jurisdiction of the Mine Safety and Health Administration (MSHA), follow the additional instructions in ATF O 5400.6, Explosives Application and Compliance Inspections by Mining Enforcement and Safety Administration. \*
14. USER-LIMITED PERMITS FOR CLASS "B" FIREWORKS.
- a. Assisting Applicants. When an applicant requests information relating to the purchase of class "B" fireworks for "display purposes," furnish copies of ATF F 4707 (5400.16) and advise him to follow the special instructions for a purchaser of class "B" fireworks.
  - b. Issuance of Permit.
    - (1) Process a completed ATF F 4707 (5400.16) for class "B" fireworks received direct from an applicant without waiting for receipt of the original and copy from the IRSC.
    - (2) Since personnel available to handle applications may vary considerably among regions, the regional regulatory administrator is responsible for determining the extent of field inspection, if



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any. The extent may range from a completed field inspection to a waiver of all inspection requirements. For example, if deemed necessary, a personal visit or telephone contact to discuss storage and safety requirements might be the only check made. Further, it will not be necessary to submit an FBI records check inquiry relative to the person(s) listed on the ATF F 4707(5400.16).

- (3) If the application is approved, issue the user-limited permit and hold the application in a suspense file until receipt of the original and copy from the IRSC. Forward a photocopy of the approved application to the permittee with the permit.
- (4) When the original and the copy are received, remove the third copy from the suspense file and file with the original in the application folder. File the application folder in the closed file. Forward the other copy of the application to the appropriate area supervisor or SAC for information only.

#### 15. CORRECTION OF APPLICATIONS.

##### a. Obtaining Corrections. The following means may be used to obtain corrections:

- (1) For apparently minor omissions, the examiner may contact the applicant by telephone to obtain the missing data. Minor omissions (or errors) are those that do not materially affect the eligibility or qualifications of the applicant. Such minor omissions might include missing or erroneous ZIP codes, county of location, hours of operation, present license number and so on. To make minor changes to the application, you should record the new information given you by the applicant on ATF F 5000.4, Memorandum Record of Conversation, (or a similar record) and attach this to the application. Do not make "pen and ink" changes on the application itself.
- (2) Major changes to the application are those that materially affect the qualifications or eligibility of the applicant. Examples are: omissions or errors relating to name of applicant, the applicant's business location/ address, information relating to responsible

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persons, information about the applicant's arrest history, certification/signature, etc. Such corrections must be made in writing by the applicant either on the original application form, or on a certified rider to the application. \*

- (3) If a field inspection is conducted, the inspecting officer will have the applicant correct the original of the application. The examiner will correct the remaining copy when the completed inspection report is received.
- (4) Obtain additional information and corrections by correspondence when the application is submitted by a firm's main office away from the business premises or when the application will not be inspected. Send the original and one copy of ATF F 5310.1, Form Letter to Return Application for Firearms or Explosives License, with the original of the application, to the applicant. Retain the copy of the application in the application folder and a copy of the request for correction in the suspense file.

##### b. Changes in Type of License Being Applied For.

- (1) When fee is the same, merely have application amended to show correct type of license desired.
- (2) When fee is more, have original application amended to show proper type. Make a photocopy of the original page 1 of the application which shows the Document Locator Number (DLN). Send the photocopy, marked "AMENDED" with the additional fee amount attached, to the IRSC. An alternate procedure is to have the applicant submit a new application.
- (3) When fee is less, process amended application for license. Use procedures established by the IRSC to effect refund of the overpayment to the applicant.

#### 16. PROCESSING AFTER RETURN OF INSPECTION REPORT.

- a. Associate inspection report with application folder in the pending file.

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- b. Examine the inspection report, application, FBI report, and related documents, to determine if the applicant is qualified for the requested license. Clear unresolved matters with the supervisor or with the field office before proceeding.
- c. If the applicant is qualified for the requested license, the examiner or other person designated by the regional regulatory administrator and delegated authority to sign the regional regulatory administrator's name will approve the application in the name of the regional regulatory administrator.

17. ABANDONED APPLICATION.

a. An application may be considered abandoned when an applicant:

- (1) Voluntarily requests that his application be withdrawn. This may be accomplished either by a letter from the applicant or by the applicant indicating on the application that he requests his application be withdrawn. The request for withdrawal should be dated and signed by the applicant.
- (2) Fails to correct and return his application within 30 days following the date of written notification that his application is deficient.
- (3) Fails to respond within 30 days to a certified letter (ATF F 5300.6, Letter to Request an Applicant to Contact ATF) advising the applicant that an ATF officer has unsuccessfully attempted to contact him and requesting the applicant to contact the appropriate ATF office to arrange for completion of the application inspection.

b. When the application is considered abandoned:

- (1) Check the "Terminated" block on both copies of the application (make photocopies if necessary).
- (2) Show "Abandoned - Withdrew Application," "Abandoned - Did Not Reply" or "Abandoned-Unable To Contact Applicant" as the reason; affix the regional regulatory administrator's facsimile signature, date, and initial the entry.

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- (3) Stamp one copy "License (or permit) fee will be refunded by the Internal Revenue Service Center where you filed this application." Forward the copy to the applicant.
- (4) Complete ATF F 5310.6, Form Letter-Firearms or Explosives License or Permit Application Considered Abandoned, and forward with the copy to the applicant, if applicable.
- (5) Photocopy the front of the application; stamp it "Abandoned - Refund Fee (amount)" and forward to the IRSC.
- (6) Mark MFCR card "Abandoned" and date.
- (7) File the original application or a photocopy in the application folder. File the folder in the closed file.

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# CHAPTER C. ISSUANCE OF LICENSES

## 21. COMPLETION OF LICENSE (EXCEPT USER-LIMITED PERMIT).

- a. Complete the license, ATF F 8 (5310.11), ATF F 4706 (5400.14), or ATF F 4708 (5400.15), as applicable, from information on the application.
- b. Prepare ADP documents in accordance with ATF O 5310.3, Firearms Licensing Operations, or ATF O 5400.5, Explosives Licensing Operations.
- c. Affix the regional regulatory administrator's facsimile signature (to parts 1 and 2 only if a rubber stamp is used).
- \* d. Stamp "Curios and Relics Only," in block 4 of ATF F 8 (5310.11) parts 1 and 2 when the license is being issued for type 03 activities (collector of curios and relics). The stamp should not cover the number of the type of license issued, which is typed in block 4.

## 22. DISTRIBUTION OF LICENSE (EXCEPT USER-LIMITED PERMIT).

- a. Parts 1 and 2. Mail to licensee with ATF P 5300.5, Your Guide to Firearms Regulation, and ATF P 5300.15, Federal Firearms Licensee Information, or ATF P 5400.7, Your Guide to Explosives Regulation-1976. Also send an initial supply of applicable transaction forms and ATF F 1600.8, Requisition for Firearms/Explosives Forms, if these have not been given to the applicant during the application inspection. Mail a copy of the approved application with explosives licenses.
- b. Parts 3 and 4. File in the renewal application (part 3) file and license record (part 4) file.
- c. Part 5. Forward to SAC or as the region desires.
- d. Part 6. Forward to area supervisor, with a copy of the application.

23. USER-LIMITED PERMIT. Complete ATF F 4709 (5400.6) in original and two copies. Mail the original to the permittee (with a copy of the approved application), file one copy in the license folder and the other copy in the license record (part 4) file. Prepare ADP documents in accordance with ATF O 5400.5.

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## 24. EXPIRATION DATES.

- a. Explosives Manufacturer-Limited and User-Limited. Issue a manufacturer-limited license to expire 30 calendar days from the date of issue counting the date the license was issued (e.g., a license issued on August 3, will expire on September 1). No expiration date is shown on a user-limited permit since it is valid only for a single purchase transaction.
- \* b. Other Licenses. Issue all other licenses to expire 1 year from the date of issue. Issue all original and renewal licenses to expire on the 1st day of the month.

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#### CHAPTER D. RENEWAL APPLICATIONS

##### 31. MAILING RENEWAL APPLICATIONS.

- a. Mail part 3 of the license to the licensees on the 1st day of the month immediately preceding the 60-day period prior to expiration of the license (e.g., renewals for licenses expiring in June will be mailed on April 1, or as soon thereafter as practicable).
- b. When it is deemed necessary for the licensee to file a new application for a license, rather than mailing part 3, the application forms accompanied by a requesting letter should be mailed 60 days before the license expires.
- c. Include the blue unfranked envelope preaddressed to the appropriate IRSC with each renewal application.

##### 32. RECEIPT OF RENEWAL APPLICATIONS.

###### a. From Applicants.

- \* (1) If a properly completed application with remittance is received by an ATF office before the license expiration date, date stamp and then forward to IRS.
- (2) Process any other renewal applications as for a new application (see paragraph 12). \*

###### b. From IRSC.

- (1) Date stamp in mail room or firearms and explosives licensing section as determined by the region.
- (2) Forward to the appropriate examiner for processing.

##### 33. PROCESSING RENEWAL APPLICATIONS.

- a. Compare with the ADP master file numeric printout and with the information in the license folder for correctness and possible changes.
- b. Review latest compliance inspection report.

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- c. If there are no changes and there is no apparent reason to deny, stamp the application "Approved," initial, assign a new expiration date, and issue the renewal license. A goal of 3 working days is established for processing renewal applications after receipt in the regional office.
- d. If an inspection is necessary, or additional information is needed, use the procedures for original applications (CHAPTER B). Do not issue a recall inspection to determine if previously reported violations have been corrected.
- e. Upon issuance of the renewal license, file the application in the license folder, and return the folder to the active file.
- f. Prepare necessary ADP master file input documents.
- g. Distribute copies of the renewal license as for original licenses.

##### 34. CORRECTION OF RENEWAL APPLICATIONS.

- \* a. Mail the original and one copy of ATF F 5310.1, Letter to Return Application for Firearms or Explosives Licenses and/or Permits, and the incomplete or improperly executed part 3 to the applicant. Retain a photocopy of part 3 and a copy of the form letter in a suspense file. \*
- b. On return of a properly prepared renewal application, process in the normal manner. If not returned within 30 days, consider the application abandoned.

##### 35. RENEWAL APPLICATIONS NOT TIMELY FILED.

- \* a. To be timely filed a renewal application must be date stamped received by an IRSC or ATF (see paragraph 32.a.), before the expiration date of the license.
- b. ALL RENEWAL APPLICATIONS NOT TIMELY FILED will be processed as an application for an original license subject to subparagraph d. below.
- c. If a late filed renewal application is a part 3, make a copy of the application. Request the licensee on ATF F 5310.1, to complete a new ATF F 7(5310.12), ATF F 4705 (5400.13) or ATF F 4707 (5400.16), as \*

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appropriate, and return the application directly to the regional office in the unfranked preaddressed envelope furnished. Include the renewal application (part 3) and application forms with the request on the ATF F 5310.1, check the box provided for extra instructions, and type in a statement warning the applicant that his renewal was not timely filed and that he must suspend operations until he has received a new license. \*

- d. Compare the new application with data in the license folder. REQUEST FIELD INSPECTION AND FBI RECORD CHECKS ONLY IF SIGNIFICANT NEW INFORMATION IS PRESENTED.

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Do not request inspection merely because the applicant files a new application on request of the regional regulatory administrator or because the applicant failed to timely file a renewal application.

- e. Issue a new license if no new information is presented or if inspection results show applicant is entitled to a license.
- (1) Reassign the old license number if applicant requests reassignment, or if administratively desirable.
  - (2) If a new number is assigned, make appropriate entry in the license register, and follow instructions in subparagraph f. below.
  - (3) Follow the procedures for issuance of licenses outlined in chapter C.
- f. Make necessary changes, if any, to the MFCR card, licensee register, and to license folder. Return the license folder to the active file.

### 36. LICENSES NOT RENEWED.

#### a. ADP-Prepared ATF F 5300.3A - Firearms.

- (1) ATF F 5300.3A, Letter to Request Firearms Transaction Records - Discontinued Business, will be prepared in triplicate and forwarded by Headquarters to the regional office on a monthly basis for each licensee appearing on the ADP 30-day "Notice" list. \*
- (2) If information is received prior to receipt of ATF F 5300.3A that a licensee has submitted or properly disposed of his discontinued business records, delete the licensee from the master file using ATF F 5310.3, Licensee Master List - Deleted Licenses.
- (3) Upon receipt of the ADP-prepared ATF F 5300.3A, sign and date the forms, mail the original and one copy to the licensee and file the second copy in the suspense file. Mark or stamp "Address Correction Requested" on all envelopes. \*

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- \* b. Manually Prepared ATF F 5300.3 - Firearms. If applicable, prepare and mail ATF F 5300.3, Letter to Request Firearms Transaction Records-Discontinued Business, or other letter to obtain the transaction records. File a copy of the request for transaction records in the suspense file. Mark or stamp "Address Correction Requested" on all envelopes.
- c. Followup Procedures for Firearms Records. These procedures will be initiated if no response has been received within 30 days after sending the first letter request or after Post Office returns first letter request as undeliverable.
- (1) Send a second request on ATF F 5300.3 or ATF F 5300.3A to a responsible person listed on ATF F 7 (5310.12) whose address is different from the address of the licensee. Address the letter and envelope with the name of the licensee and to the care of (c/o) the responsible person. Mark or stamp "Address Correction Requested" on the envelope. The responsible person should preferably be a manager, owner, partner or corporate officer. File a copy of the request in the suspense file for a 30-day period pending response from the responsible person.
  - (2) Try to contact by phone the licensee and if necessary, two responsible persons listed on ATF F 7 (5310.12) (manager, owner, partner or corporate officer). Make at least two telephone attempts for each of the two responsible persons and the licensee. Explain the necessity for proper disposition of the records. When records are not available or have been transferred to a business successor, request the licensee or responsible person to state the disposition of records on ATF F 5300.3 or a letter. The attempts to contact by phone and a summary of conversation(s) will be recorded and placed in the suspense file with the licensee's folder for further reference. ATF F 5000.4, Memorandum Record of Conversation, may be used for these purposes. If a person cannot be reached during normal working hours at a residence, try to obtain the telephone number where the person can be reached.

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- (3) Either the phone contact or letter request may be used first, and if unsuccessful, the other follow-up procedure will be initiated.
- (4) Initiate an inspection on ATF F 5700.14 to get records for licensees who meet the following criteria. Summarize actions taken to obtain records on ATF F 5700.14.
  - a Followup letter request and phone contacts are unsuccessful.
  - b Licensee is known to have firearms records of predecessor, or licensee is known to have engaged in firearms business. Examine licensee file to determine activity in firearms.
  - c Further attempts to contact the licensee or responsible persons would probably be successful. For example: further attempts would probably be successful for a licensee who has not answered phone calls and has not had letter requests returned as undeliverable or who has several responsible persons.
- (5) If the licensee or the responsible persons are not located by these procedures within 1 year after the expiration date of the license, the license folder may be closed. If an inspection was initiated to obtain records, the license folder may be closed even though the inspection was not conducted.
  - (a) Annotate the license record file (part 4) to show that the licensee could not be located to obtain firearms records or their disposition.
  - (b) Prepare ATF F 1324.5, Out-of-Business Firearms Dealer's Reference Card, in duplicate and forward to the Firearms Records Repository. The Repository will forward the copy to the Firearms Tracing Center and retain the original.
  - (c) When the file is closed, notify the appropriate area supervisor or SAC as required by the region.



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- #
- (6) Make no concerted effort to use the followup procedures for collectors of curios and relics and licensees discontinuing business in ammunition or gunsmith activities only. When no further action is pending, close the files.
  - d. Followup Procedures for Explosives Records. Make no concerted effort to obtain records from discontinued explosive licensees. When no further action is pending, close the files.
  - e. Receipt of Out-of-Business Records or Disposition of Records.
    - (1) When explosive, firearms or ammunition records are received, or when their disposition is documented, process as described in paragraph 4.
    - (2) When the disposition of firearms records is a transfer to a business successor, or when the records are not available because of destruction by fire or other reason, prepare ATF F 1324.5 in duplicate and forward to Firearms Records Repository. The Repository will forward the copy to the Firearms Tracing Center and retain the original. Do not prepare ATF F 1324.5 for licensees who did not engage in the firearms business or who dealt in ammunition only.
    - (3) When the file is closed, notify the appropriate area supervisor or SAC as required by the region.

### 37. ABANDONED RENEWAL APPLICATIONS.

- a. If the applicant fails to resubmit the corrected part 3 or new application forms within 30 days following the date of notification, the application will be considered abandoned. Prepare and send ATF F 5310.6 to the applicant. Forward a photocopy of the part 3, stamped "Abandoned-Refund Fee (amount)" to the IRSC so that refund will be made to the applicant.
- b. Follow the procedures for a discontinued business, and initiate appropriate actions as described in paragraph 36 to obtain any records.

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### CHAPTER E. SPECIAL PROCEDURES

#### 41. EXPLOSIVES STORAGE FACILITIES LOCATED IN SEVERAL AREAS AND/OR ANOTHER REGION.

- a. Within Region Multiple Storage or Out of Region Storage Area Locations.
  - (1) When an application for an explosives license is received indicating that the applicant will use storage facilities in either more than one area or in an area other than where the permit premises is located, have all storage facilities inspected.
  - (2) When an application for an explosives license or permit is received indicating that the applicant will use storage facilities located in another region, request the regional office in the region that the storage facilities are located in to conduct a collateral inspection of the storage facilities.
  - (3) Use ATF F 5700.14, Assignment and Report of Inspection, to request the inspection. Attach a photocopy of the application to the request. If an urgent requirement exists, the inspection may be requested and results transmitted by telephone or telecommunications, giving sufficient data to conduct the inspection or act on application.
  - (4) If an applicant is otherwise qualified and technical services has been informed that storage facilities meet requirements, he may be issued a license or permit prior to receipt of an actual inspection report. Send a photocopy of the license or permit (or denial) to any regional office where storage facilities are located.
  - (5) A photocopy of the license or permit will be sent to each area office containing storage facilities.
  - (6) Field offices will be responsible for conducting compliance inspections of all storage facilities located in their area. \*
  - (7) If a license or permit is subsequently revoked or not renewed, send this information also to the

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regional office in the region where the storage facilities are located.

b. Application Filed in Another Region.

- (1) When a request for an explosives inspection is received from another region, request (as set forth in (2) above) a field inspection and send a copy of the inspection report to requesting regional office.
- (2) Maintain files similar to other licensee files. Field offices will conduct compliance inspections of the storage facilities.
- (3) Send a copy of compliance inspection reports to the regional office that issued the license or permit.

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42. IMPORTATIONS.

- a. File copies of ATF F 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War, received from Headquarters in a separate file, alphabetically by month of expiration. Special folders may be prepared for major importers who have numerous import permits.
- b. When received, file ATF F 6A, Release and Receipt of Imported Firearms, Ammunition and Implements of War, in a separate file.
- c. Prepare ATF F 7570.6, Quarterly Report of Imported Firearms, from the ATF F 6A and forward to Headquarters (T:T:I). Maintain a file of these reports.
- d. Make a quarterly listing of "irregular" imports noted on ATF F 6A or determined from inspection reports and forward to Headquarters (T:T:I). Irregular imports may include Customs releases without ATF F 6A, items not listed on ATF F 6, more items than listed on ATF F 6, etc.

43. LICENSEE UNDER INVESTIGATION BY CRIMINAL ENFORCEMENT.  
When notified that a licensee is under investigation by Criminal Enforcement, flag the license folder and part 4 of the license until notified that the investigation has been terminated. The SAC and area supervisor will be consulted before taking final action to issue a renewal license or to approve an application from a licensee under investigation.

44. ADMONITORY LETTERS.

- a. An admonitory letter should be prepared for the regional regulatory administrator's signature and consideration and sent to the licensee when circumstances determine it is necessary. Do not use preprinted letters for these purposes.
- b. Be specific in this letter as to the violations disclosed and sections of law or regulations violated.
- c. The licensee should be advised that continued failure to fully comply with regulatory requirements may be basis for action against the license or against an application for renewal.

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- d. Mail admonitory letters to the licensee by certified mail, return receipt requested. Do not send copies of the laws and regulations. The inspecting officer will have determined during the inspection that the licensee has these.
- e. Recall inspections after issuance of an admonitory letter will be assigned by the area supervisor or SAC, if required. When recall inspection reports are received showing the same violations, a recommendation may be made to the regional regulatory administrator for the revocation of the license or denial of a pending renewal application.
- f. Refer violations that appear to be willful to Criminal Enforcement. A referral may be concurrent with license action or after final action has been taken.
- g. Send a copy of the admonitory letter to the appropriate area supervisor and SAC and file a copy in the license folder.
- h. In the case of a large chain store, such as Sears, Roebuck and Co., or Montgomery Ward, send a copy to the corporate or administrative headquarters of the organization, if the store has requested copies of reports of violations.

#### 45. DEMAND LETTERS.

- a. The purpose of a demand letter is to obtain information concerning the movement of firearms and/or ammunition which may be unlawful or which may be used unlawfully. Do not use a demand letter as a punitive measure or to effect correction of record violations.
- b. The issuance of a demand letter will normally be requested by a SAC. When a demand letter is requested, the licensing section will prepare the letter for the signature of the regional regulatory administrator.
- c. The letter should be specific as to what information is required, the periods and times such information is to be submitted, and the address to which the information is to be forwarded. The licensee may be required to submit all or part of the information required to be maintained (27 CFR 178.126). This

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information may be required to be submitted on ATF F 4483(5300.5), Report of Firearms Transaction, or by some other acceptable method (e.g., copies of commercial invoices, etc.).

- d. File a copy of each demand letter served on a licensee in the license folder and send a copy to the appropriate area supervisor and SAC. The area supervisor will not assign a compliance inspection for any licensee who is under demand without concurrence of the SAC.
- e. The licensing section will consult the area supervisor and the SAC before renewing any license for a licensee who is under demand.

#### 46. CHANGE IN LICENSES.

- a. General. When a licensee files a notice of change in address, name, trade name, or control, use the procedures outlined in ATF O 5310.3 or ATF O 5400.5 and the following procedures. Make no extraordinary effort to obtain the old license before issuing an amended license.
- b. Changes in Explosives Storage Facilities.
  - (1) Send an application for a change in construction, an addition to an explosives storage facility, or a change to a higher classification in the class of explosive materials to be stored in an explosive storage facility, to the appropriate field office for inspection.
  - (2) Process in accordance with 27 CFR 181.54 and 181.55.
  - (3) After processing, file the original ATF F 4705 (5400.13), ATF F 4707(5400.16) or letter application in the license folder.
- c. Change in Location Within the Region.
  - (1) Issue an amended license for the unexpired term of the license to reflect the new address. A new license number may be required.
  - (2) File the notice of change and part 3 of the old license in the license folder.

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- (3) Annotate the new part 5 "Amended-Change of Address" and forward it to the appropriate SAC.
  - (4) Annotate the new part 6 "Amended-Change of Address" and forward it to the area supervisor.
- d. Change in Location to Another Region.
- (1) Forward the notice of change, a photocopy of the license and the license folder to the gaining regional office.
  - (2) Annotate part 4 of the license "Relocated to \_\_\_\_\_ Region." Include the new address if known or when notified of the new address by the gaining regional office.
  - (3) Send photocopies of part 4, annotated "Relocated to \_\_\_\_\_ Region," to the area supervisor and SAC.
- e. Change in Location Into the Region.
- (1) If the notice of change and old license are filed with the gaining regional office, advise the losing regional office of the change of address and request that the license folder be forwarded.
  - (2) Assign a new license number and issue an amended license for the unexpired term of the license to reflect both the new number and new address.
  - (3) Distribute license copies as for any new license.
  - (4) Prepare MFCR cards as required.
- f. Change by Right of Succession.
- (1) After determining that the successor is entitled to carry on the business at the same address, issue an amended license for the unexpired term of the license to reflect the change.
  - (2) File the notice of change and part 3 of the old license in the license folder.
  - (3) If necessary, relabel license folder to reflect change.

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- (4) Annotate part 4 of the old license. Prepare new MFCR cards, if necessary.
  - (5) Annotate the new part 5 "Amended-Succession" and forward it to the SAC.
  - (6) Annotate the new part 6 "Amended-Succession" and forward it to the area supervisor.
  - (7) Annotate the new part 3 so that new application forms will be sent at renewal time rather than part 3.
- g. Change in Trade Name.
- (1) Issue an amended license for the unexpired term of the license to reflect the new trade name.
  - (2) File the notice of change and part 3 of the old license in the license folder.
  - (3) If necessary, relabel license folder to reflect change.
  - (4) Annotate part 4 of the old license.
  - (5) Annotate the new part 5 "Amended-Change in Trade Name" and forward it to the S/C. The former trade name may also be shown to assist the SAC in locating the previous license.
  - (6) Annotate the new part 6 "Amended-Change in Trade Name" and forward it to the area supervisor. The former trade name may also be shown to assist the area supervisor in locating the previous license.
- h. Change in Control (Corporation or Association).
- (1) File the notice of change in the license folder.
  - (2) Annotate part 3 so that new application forms will be sent at renewal time rather than part 3.
  - (3) A change in "responsible persons" may or may not constitute a change in control. If a change in "responsible persons" does not constitute a change of control, the regional regulatory administrator may, at his discretion, authorize part 3 to be mailed at renewal time in lieu of new application forms.

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47. CERTIFICATION OF RECORDS.

- a. The supervisor, firearms and explosives licensing section, is designated as the custodian of the records pertaining to firearms licenses and explosives licenses and permits.
- b. Use ATF F 5020.31, Regional Regulatory Administrator's Certification of Custodian of F and E Records, to authenticate the status of the supervisor as the custodian. Use ATF F 5020.32, Certification of Custodian of F and E Records, to certify as to the record or nonrecord of firearms licenses and explosives licenses and permits.
- c. Search files for all information relating to the request.
- d. Prepare certification and distribute as indicated in the request.
- e. File one copy of each completed ATF F 5020.31 and ATF F 5020.32 in the license folder in the active or closed file, as applicable, and one copy in a chronological file of certifications.

48. CERTIFIED COPIES OF LICENSE.

- a. On receipt of a request from a licensee for certified copies of his license, with the required fee of \$1 for each copy, reproduce copies of part 4, and mail to the licensee.
- b. Forward the fee to the ATF regional fiscal officer for disposition.

49. COMMON EXPIRATION DATE FOR FIREARMS LICENSEES.

- a. General. A common expiration date for licenses issued to a firearms licensee operating at multiple locations may be established in accordance with ATF Ruling 73-9. Advise a licensee requesting a common expiration date to follow the guidelines in subparagraphs b, c, d and e below, modified as necessary by the circumstances of the individual case.
- b. Application.
  - (1) The licensee should submit a letter application to the regional regulatory administrator, including:

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- (a) The desired common expiration date. This should be the 1st day of a month.
  - (b) A list of all licensed premises in the region covered by the application, including name, address, license number and current expiration date. Copies of the licenses will suffice for this data.
  - (c) The address where renewal applications should be mailed.
- (2) A separate letter application is required to be sent to the regional regulatory administrator in each region where the affected license premises are located. \*
  - (3) If the application is approved, the regional office will notify the licensee and forward to the licensee renewal application forms (part 3) FOR EACH LICENSED PREMISES COVERED BY THE APPLICATION WHICH EXPIRES ON OR BEFORE THE COMMON EXPIRATION DATE.
  - (4) The licensee should forward the completed renewal applications to the appropriate IRSC with renewal fee (\$10 per renewal application). Payment of the license fees for licensed premises in the same ATF region may be made by a single check to each appropriate IRSC.
  - (5) The licensee should forward the licenses for the remaining premises; i.e., THOSE EXPIRING AFTER THE COMMON EXPIRATION DATE, directly to the regional regulatory administrator for amendment. No remittance is required for amendment of the licenses. \*
  - (6) The regional office will issue an amended license for each licensed premises covered by the application on approval of either the renewal application or amendment. The normal expiration date on the license will be followed by the common expiration date in parenthesis.
  - (7) On receipt of an amended license, the licensee should forward the old license (and copies), if retained, to the regional regulatory administrator for cancellation. \*

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- (8) The regional office will mail renewal applications for all licenses in the region covered by the approved application to the licensee at the address requested approximately 60 days prior to the COMMON EXPIRATION DATE.

\* c. Annual Data Furnished to the Regional Regulatory Administrator. On an annual basis, the licensee should furnish the regional regulatory administrator of each region in which a firearms business is to be conducted with the following information:

- (1) A preprinted ATF F 7(5310.12) containing information which is common to all firearms dealer locations. Such forms may later be completed and used as original applications for new stores.
- (2) A "master list" of all "responsible persons" at the corporate level, with the names of those persons who actually buy and sell firearms and/or ammunition noted with an asterisk.
- (3) The above information should be attached to a letterhead statement containing the certification clause in ATF F 7(5310.12).

d. Original Applications For Additional Licensed Premises.

- \* (1) Approximately 3 months prior to a new store opening, the licensee should furnish the regional regulatory administrator of the appropriate region a completed and executed original of a preprinted ATF F 7(5310.12), showing the names of "responsible persons" at the local level and a copy of the "master list" as described above.
- (2) The licensee should advise the regional regulatory administrator of any changes that are made to the list of "responsible persons" on ATF F 7(5310.12).
- (3) The licensee should furnish the regional regulatory administrator with a complete description of stores that are to be opened.

e. Renewal of Licenses.

- (1) Renewal forms (ATF F 8(5310.11), part 3) may be executed with a facsimile signature, provided the

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forms are accompanied by a statement, actually signed by an authorized agent, declaring that the facsimile is a copy of the signature of the person authorized to sign such forms and that the facsimile was placed on the forms at such person's direction.

- (2) Payment of the license fees for licensed premises in the same ATF region may be made by a single check to each appropriate IRSC.

f. Regional Office Procedures.

- (1) On receipt of a properly executed letter, approve the application and follow the guidelines above.
- (2) On approval of the renewal applications, or amendments to the licenses, from a licensee who has requested a common expiration date, issue new licenses and make normal distribution of copies except as indicated below:
  - (a) Enter the normal 1-year expiration date on the license immediately followed by the common expiration date in parenthesis.
  - (b) At the top of the license type "Amended-Common Expiration Date."
  - (c) Bunch parts 3 and file according to the common expiration date.
  - (d) Flag parts 3 to ensure that the renewal applications are mailed (at renewal time for common expiration date) to the address requested on the letter application.
  - (e) Mail parts 1 and 2 directly to the premises indicated on each license, unless otherwise requested by the licensee.

50. DISHONORED CHECKS.

a. General.

- (1) Upon notice and request for information from the IRSC regarding a dishonored check, furnish the IRSC with the name and address of the applicant, the class of license or licenses for which applied and the date of the application.

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- \* (2) The IRSC will furnish the regional regulatory administrator the document locator number and name (and trade or business name, if available) from the check to identify the application.
- (3) If the license applied for has not been issued, hold the issuance of the license in abeyance until payment is received or, if payment is not received within 30 days, consider the application as abandoned.
- \* (4) The regional regulatory administrator will receive the second copy of Standard Form 1114, Bill for Collection, from the IRSC. The original and first copy of Standard form 1114 will be sent to the applicant by the IRSC. The regional regulatory administrator will receive the fourth copy of Standard form 1114 when payment is received, or after 30 days if payment is not received. The Standard form 1114 will bear a statement advising the applicant that, if he fails to make payment within 30 days from the date of the notice, his application for a license will be considered abandoned and any license which may have been issued pursuant thereto held to be void.

b. License Held in Abeyance.

- (1) If the fourth copy of Standard form 1114 received from the IRSC is marked "Paid," and if the application has been approved, issue the license.
- (2) If the fourth copy of Standard form 1114 is marked "Unpaid," consider the application as abandoned and so notify the applicant by letter. File the application folder in the closed file.

c. License Issued.

- (1) If the fourth copy of Standard form 1114 received is marked "Unpaid," and a license had been issued, such license should be held to be void ab initio (from the beginning). Notify the licensee that since he failed to make payment for the license fee in response to the bill for collection, he has failed to meet one of the conditions precedent for obtaining a valid license and that he should surrender the license issued to him. Also advise the licensee that any continuation of

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- the business under the invalid license, whether or not it is surrendered, could subject him to criminal penalties.
- (2) In the event a licensee, after receiving such letter, makes proper remittance, such fee should be accepted. The late payment should not in itself be considered a basis for initiating action, either toward criminal prosecution or against the license. Attach the payment received to the fourth copy of the Standard form 1114 and forward both to the IRSC Clearing and Deposit Unit, for deposit.
- (3) If the licensee continues to operate a business under an invalid license, whether or not it is surrendered, refer the matter to Criminal Enforcement and notify the area supervisor of the referral.
- (4) If a license has been issued, and payment is not received, annotate part 4, note "Void ab initio" and "License Surrendered" or "License Not Surrendered" (as applicable) on the form and file a photocopy in the license folder. Remove part 3 from the file, note as above and forward the form or a photocopy to the area supervisor and SAC concerned, to alert them of the invalid or surrendered license and to remove parts 5 and 6 from their active files. File the license folder in the closed file.

51. VARIANCE FROM REGULATIONS.

a. Alternate Records.

- (1) Examine requests for recordkeeping variances to determine if the alternate records are adequate for tracing or will present any administrative difficulties. \*
- (2) When requests are received without samples of the substitute records, ask the licensee to submit two copies of the proposed records.
- (3) When two copies of the proposed records are available, refer the request to the firearms and explosives coordinator with recommendation. He may refer the matter for inspection. When the request is returned, review the report and \*



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prepare approval or disapproval, as appropriate, for signature by the regional regulatory administrator.

- (4) When the request is approved or disapproved, return a copy to the applicant, file a copy in the variance file and file the original in the license folder. Prepare a cover letter to return the copy only when the request is disapproved, giving the reason(s) for the disapproval.

b. Requests for Variances Requiring Approval of the Director and Alternate Explosives Storage Facilities.

- (1) Requests for variances requiring approval of the Director and alternate explosives storage facilities will be forwarded to Headquarters (R:I:S). If time permits, a complete field inspection will be conducted prior to forwarding to Headquarters. A forwarding memorandum should be prepared for the regional regulatory administrator's signature setting forth his recommendations on the request and forwarded with the request.
- (2) If the application is approved, an approved copy will be returned to both the applicant and the regional office by Headquarters. The original will be retained by Headquarters.
- (3) If the application is disapproved, Headquarters will prepare and forward a letter to the applicant giving the reason(s) for the disapproval and send a copy to the regional office.
- (4) File a copy of the request and decision in the license folder and in the variance file.
- (5) Forward a copy of the request and decision to the appropriate area supervisor.

52. COMPLIANCE INSPECTION REPORTS.

a. General.

- (1) File inspection reports in the license folder after any necessary action (i.e., review, admonitory letter, revocation, etc.) has been

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completed. Do not assign recall inspections since this is a responsibility of the area supervisor or SAC.

- (2) Flag part 3 if some action is required before the renewal is mailed or if ATF F 7(5310.12), ATF F 4705(5400.13) or ATF F 4707(5400.16) should be mailed at renewal time rather than part 3.
- (3) Flag part 4 if any information is received in the report (or other source) that should be considered, or that may require action, prior to renewal of the license.
- (4) In the case of a large chain store, such as Sears, Roebuck and Co., or Montgomery Ward, furnish copies of ATF F 5030.5, Report of Violations, to the corporate or administrative headquarters of the organization, if requested by the store and this action has not been done by the field office.

b. Explosives Stored in Violation of Regulations.

- (1) When an inspection report is received recommending revocation or denial because an explosives licensee is unable or unwilling to comply with the explosives storage requirements, prepare for the regional regulatory administrator's signature a notice of revocation or denial (27 CFR 181.74). Where this noncompliance is willful or public interest requires immediate action, the notice should so state and set out the reasons therefor (27 CFR 181.71). Under these situations the licensee need not be afforded further opportunity to demonstrate or achieve compliance.
- (2) If, within the prescribed time for requesting a hearing, the licensee responds that the storage complies with requirements, request an immediate inspection to verify that it does. If the inspection affirms the licensee's statement, cancel the notice of contemplated action by means of a letter to that effect signed by the regional regulatory administrator. If the inspection shows the storage is still not in compliance with the regulations, take final action to revoke or deny.

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- (3) When a license is revoked or an application denied, the file should show the disposition of any explosives which were on hand. If it does not, initiate an inspection request to determine disposition of the explosives. If not properly disposed of, immediately refer the facts to Criminal Enforcement.

53. SIGNATURE AUTHORITY.

- a. A power of attorney to sign applications is not necessary provided the signer is identified in the application as a corporate officer, partner, sole proprietor, trustee, receiver in bankruptcy, guardian, administrator or executor.
- b. A power of attorney executed by the applicant or licensee (ATF F 1534(5000.8), Power of Attorney, or other appropriate document) is required for persons, other than those listed in subparagraph a. above, to represent an applicant or licensee in administrative conferences, hearings, to sign correspondence, and to receive or inspect confidential information relating to the applicant or licensee.

54. DENIAL AND REVOCATION PROCEDURES.

- a. The general procedures for denial of an application or revocation of a license are contained in 27 CFR 178.71-82 and 27 CFR 181.71-83. To avoid duplication, the procedures are not reproduced in this order.
- \* b. Maintain a copy of all correspondence relating to denial or revocation proceedings in a suspense file until the proceedings are completed and then file in the application or license folder in the active or closed file.
- c. When all action has been completed, send a copy of all notices, including contemplated notices, to deny application or revoke license to Headquarters (R:T:S). Do not send this information until the applicant or licensee has exhausted all appeals for hearings or judicial review. Note the outcome on the last notice sent to the licensee (examples: Revoked because licensee did not appeal by 5/15/79; RRA did not appeal decision of hearing examiner to grant license renewal).

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- d. If an application is denied, mark the applicable block "Disapproved" and affix the regional regulatory administrator's facsimile signature or follow regional delegation of signature authority. Make a photocopy of the first page of the application, stamp or type "Disapproved - Refund Fee (amount)" and forward to the IRSC. Advise the applicant that his license fee will be refunded. Use ATF F 5310.7, Form Letter - Returning Disapproved Firearms License Application, if applicable.
- e. If a license is revoked, the license fee is not refunded.
- f. If an application is denied or a license is revoked, mark part 4 and the MFCR card "Denied (date)" or "Revoked (date)," as appropriate. Place the application or license folder, with related correspondence, in the closed file. Notify the appropriate field office.

55-60. RESERVED.

Senator BAYH. Gentlemen, Mr. Best, Mr. Wampler, Mr. Jewell and Mr. Barnett, why don't we start, not from left to right or right to left but from Indiana to Colorado. Mr. Best, why don't you go first?

**TESTIMONY OF ROBERT BEST, SOUTH BEND, IND.; DAVID JEWELL, BOULDER, COLO.; ROBERT WAMPLER, MECHANICSVILLE, VA.; AND PAUL BARNETT**

Mr. BEST. Mr. Chairman, my name is Robert Best. I am from South Bend, Ind. I have lived there all my life. I have been a telephone man there for the last 28 years.

At the time of my arrest, I was president of the Northern Indiana Gun Collectors Association. I am the third district representative for the Indian Sportsman Council and a life member of the NRA.

Back in 1968 I had a Federal firearms license, and about 8 months after the act was passed a Federal agent came to my home to see what I did with this license. I am primarily a collector. He looked over the situation and he said, "I want you to let your license expire and do not renew it. You don't need a license for what you do." And I complied.

At the time of my arrest, Agent Bauer, one of the statements he made at that time was, "If you had had a Federal firearms license, this would have never happened."

We had a gun show in September put on by our local club, in September 1971. We had been in contact with Agent Bauer at this time and thought he was a friend of ours. We called him in for numerous consultations about what we can and we can't do.

Mr. Bauer was at the show at that time. I took him around, being president of the club. I took him around and introduced him to people. He came to my table and he looked at my table and on that table was a 30-30 Marlin, modern, a collector's piece, a Nazi marked PPK Walther, a pre-64 Winchester, which is also a collector's item, and then a little single-shot .410 shotgun.

He asked me at that time, he said, "Are these all the guns that you have for sale?" I said, "Yes, these were in my collection, I am tired of them. I would like to change my collection or trade them off." He said, "There is no problem." He said, "You can go right ahead and sell them to an Indiana resident. There is no problem whatsoever," I said, "Fine." Everything went fine.

Approximately a week later, 2 weeks later, I got a call from a friend of mine, who I thought was a friend of mine, Mr. Lock. He had a gas station and he had a small gun shop in his gas station. He said, "There is a fellow down here who wants to go deer hunting. I remember you talking about that 30-30 Marlin. Would you be interested in selling it?" I said, "Well, does he seem like a nice guy?" He said, "Yeah. Bring it on down and we will show it to him."

So I took the rifle down there. He was well dressed, this Mr. Holmes. He introduced him to me as Mr. Holmes. He was well dressed, a nice-looking guy. He said he had just gotten out of the service, always been interested in firearms, wanted to start collecting, and wanted to go deer hunting and needed a rifle. So he looked the rifle over very care-

fully. I asked if he was an Indiana resident. He said he was from a little town just south of South Bend, an Indiana resident.

I told him the price of the rifle. He said, "OK, fine. I think I will take it. Do you have anything else?" I said, "Well, I have this Walther PPK Nazi proof, a very good collector's item. I have a pre-64 Winchester and a .410 shotgun." He said, "Well, I might be interested in that Nazi proof PPK." I said, "OK. If you are, why, let me know."

A month went by and he called me, repeatedly, twice a week, maybe once a week, and wanted to know if I had been to any gun shows or picked anything else new up. I said no, I didn't have anything new. So he said, "Well, I would like to see that PPK."

OK, back down to the gas station again with the PPK. This time he looked it all over and said, "This is a good collector's item." I said, "It certainly is." I showed him all the Nazi proof marks on it. He said, "Do you have any cartridges?" I said, "No, I don't shoot them, I just collect them." He said, "OK, I think I will take this gun." I said, "Fine."

He asked me if I would go to the gun shows, and he said, "I am traveling all the time and I can't get loose." He asked if I would go to the gun shows and buy guns for him. Then it started sounding awful funny. I said, "Why don't you go yourself?" He said, "Hey, money is no object. I just came into some money. It is no object. I will give you any amount you need. Just go and buy guns for me." I said, "No, I don't think I will do that."

So another month went past. All of this went on between September 1971 and up until February of 1972, over a period of time. He called at least once a week or sometimes twice a week. Well, then he called one night and he said, "A friend of mine is in town with me and we are going deer hunting together, and I remembered you had that 30-30 Winchester." I said, "Well, that is a collector's item. You can take it deer hunting if you want to." He said, "Well, why don't you bring it down and we will look at it?"

So back down to the gas station again. He looked it over. He said, "Yeah, I think I will take it." I asked him, his name was Vichinsky, he said he was from Niles, Mich. I said, "Hey, I am sorry. I can't sell you the gun." That put him in a turmoil there for a minute. Then they went over and talked about it. Then they came back. Then Mr. Holmes said, "Well you can sell me the gun." I said, "Yes, I can. You are an Indiana resident. But let me tell you, if you sell this gun to Mr. Vichinsky, you could get in trouble." Three times I warned him about that. He said, "Well, that is OK. I will buy the gun."

Then he turned to Mr. Vichinsky and said, "I don't have the money. Mr. Vichinsky, can you loan it to me?" So Mr. Vichinsky said, "Sure." He gave him the money and then he in turn transferred the money to me.

So another week or so, 2 weeks, went past. This was about the early part of February then, or in February, about February 13, and I got a phone call at about 10:30 that night and it was Mr. Holmes. He said, "I am in town and I am just leaving town and I would like to pick up that little .410 we talked about." He didn't want it before, but now he wanted it. I said, "OK, fine. Do you want me to come down there

or what?" He said, "No, I will be over at your house." That was the first time he ever wanted to come to the house.

He came over, knocked on the door, and I let him in. I went to the garage to get the gun. He said, "Do you want me to go with you?" I said, "No, just stay right there," because at that time we had had a lot of robberies and I didn't care for people to know where by stuff was. So I went and got the shotgun and brought it back and handed it to him.

He was looking it over and there was another knock on the door. I opened the door and there was Federal Agent Bauer, and I opened and I said, "Russ"—I was on that good of terms with him—I said, "Russ, what are you doing here?" He opened the door and threw back his coat and exposed his revolver on the hip and came on in. He said, "You are under arrest." He took out his badge.

The other agent who was sitting on the chair had taken out his badge prior, with my back to him. Mr. Bauer walked into the house and saw I was studying a samurai sword. He picked it up, went to the far end of the house and put it behind the chair and said again, "You are under arrest. We have a Federal grand jury indictment against you. Up against the wall."

My children were there. This is about 11 at night. My kids were there. I am spreading along the wall while he is going over my pants and everything else. It was very upsetting.

Then he said, "You have the right to remain silent," and he said, "You know all that stuff. I said, 'Yeah.'" He said, "Now would you like to be booked here or would you like to go downtown?" I said, "Well, I have never been arrested before. I suppose here."

So they went out and got their cameras, their number plates and all of that business. They took my photograph, with the numbers, the side view, the typical criminal type thing. Then he got out the forms. I don't know what this was all about, but I answered every question he had. He had questions on there of how much did I make? Where did my wife work? How much did I owe on my house? How much did I owe on my car? What was my bank account? All stuff that had nothing to do with what they charged me with.

He had no warrant, so he asked me if he could see the rest of my stuff. I said, "Do you have a warrant?" Then he said, "No." Then I said, "Well, then it is not necessary." So he let it go. It seemed funny to me at the time, after all these months of preparation and a Federal grand jury indictment, that they would come without a warrant.

But after all the paperwork was done and the pictures were taken I asked Agent Bauer, "What is the procedure now?" He said, "Well, tomorrow morning you surrender yourself to the U.S. marshal at 9 or 10 a.m.," I think, "and he will take you down for booking and set bond for you."

Then Mr. Bauer. I said, "Well, do I need an attorney for this?" Mr. Bauer said, "No, no, you don't need an attorney." He said, "You just at the hearing plead guilty, and no problem. It is just a little thing. Just plead guilty to it."

So the next morning I went down and surrendered myself to the U.S. marshal, was handcuffed, taken from the post office down to across the street from the courthouse, which is a matter of approximately a block and a half, where a bond was posted at \$1,000, and I was released.

In the process of working on my case, this Mr. Lock who had made the original phone call wouldn't talk to me, wouldn't talk to my lawyer, and one statement he made while he was walking away from me was, he turned and said, "It was you or me," and that was all he ever said. I later found out from one of his employees that Mr. Bauer had found guns in his home that were not carried on his books. It was strictly an oversight by this Mr. Lock because I know the guy and he didn't realize he was doing wrong if he was. So I am sure the pressure was put on him to set someone up.

My attorney came to me at a period of time there and suggested that we could have this whole case dropped if only I had had a nicer car, which I did not have at the time. He said "Now I will never repeat this, but that is the situation," which I thought was strange.

Then later he came to me one more time and he said, "If you would be interested in setting up a few club members or a few of your friends, we can get this whole thing taken care of." I blew up over that and said no way would I do anything like that.

I had a trial date set for July 27 and 28 of 1972. Four days prior to my trial, on July 23, the U.S. attorney sent my attorney a letter and said they were dropping all charges and the whole thing was done with. The single-shot .410 shotgun which they confiscated was ordered back to me from the Cincinnati office, and the tag that was on the gun so stated. Apparently they thought in Cincinnati that the gun was confiscated illegally.

One note, that after my case was dropped, then I was really taking interest in what was going on around there as far as the ATF was concerned. There was a large Michigan gun theft that was transported across our State line and sold at a pornography shop. When I inquired about it with the local detective bureau, they were told by the ATF that they were not interested in that case, that that is a local issue, which I thought was very strange.

I can't think of anything else that I have missed.

Senator BAYH. Thank you very much. Why don't we just proceed with Mr. Wampler's statement and then Mr. Jewell's statement.

Mr. WAMPLER. First of all, I appreciate the opportunity to be here. As a matter of introduction, I am Bob Wampler from Richmond, Va. I am a pharmacist and hold a master's degree in the business. I have been with a major pharmaceutical company for 12 years and am presently a personnel manager for them.

I think it is a little bit ironic, that working in personnel which includes equal employment, ERISA, OSHA, and other intricate laws and being a pharmacist dealing with the complexity of drug laws, and as a hobby being a gun collector, that the only law that has ever ensnared me is the gun law.

I might add also I have been in the past very active in civic affairs, having held statewide office for the JayCees as well as the president of our local civic association.

I have enjoyed my hobby of collecting guns for approximately 20 years. It has added greatly to my appreciation for history and the craftsmanship and artistry of our forefathers.

In recent years I began to concentrate on quality rather than quantity, by trading up, sometimes trading several pieces of lesser value for one of greater value. My specialty has been engraved pieces. With



the exception of an occasional visit to my local dealer, my collection seldom left me time to discuss my hobby, except at gun shows, and I used to look forward to them for a change of pace and relaxation.

In the early 1960's I obtained a Federal firearms license, which I understood at that time was necessary to attend the shows and display items. In 1966, I received a surprise inspection of my collection and my books by a BATF agent. He actually complimented me on their completeness and he advised me that I really didn't need a Federal firearms license for the few transactions I had that particular year. There were approximately 25 transactions in my book. He said that the Federal firearms license was intended for those actually in business and obviously this was my collection.

He suggested that I turn it in. Several months later, close to the expiration date, he provided me with the details and address of how to close out the license. I sent it in as instructed, and almost immediately I received a form note telling me that my license had been extended 60 days due to a backlog of renewals. I ignored this since I assumed it was a form note. However, one year later I received a note asking why I hadn't renewed it. I responded with a note saying I had sent it in 1 year earlier. This was 1967 I guess, early 1967. I did not receive any other contact from the BATF concerning my collection until 6:45 a.m. on November 18, 1976, when I was awakened by pounding on my front door.

When I finally climbed out of bed, donned my bathrobe and went downstairs to answer the door, at the door I saw four men in trenchcoats on my porch, plus a State policeman in uniform. When I opened the door they announced they had a search warrant and walked in. A small, wallet-sized card was flashed in my face and my rights were read. They indicated that they had a search warrant that gave them the right to ransack my house. If I would show them where the guns were, they wouldn't tear up anything.

Even in my groggy state of mind I reasoned this was probably in my best interest. Having nothing to hide, I said, "I will show you where they are." I kept them in two separate places. The more expensive ones were locked in a file cabinet upstairs and the others downstairs. As we started downstairs, one of the persons started taking pictures of everything in sight.

As I opened one of the cases containing my collection, another agent noted several guns on a shelf across the room that belonged to my brother. He had asked me to keep them in my home due to some break-ins in his home. When I was asked if I could prove they were his, I said they were all the same make and separated from the others, but they could call him to verify this. They decided it was easier just to take them.

Eventually they took these and the others upstairs and laid them all out on my living room floor. During this time I had not been allowed to dress, and my wife, of course, was in complete shock. My most difficult task was trying to explain these actions later to my 4-year-old daughter who had been taught that policemen help people and arrest criminals.

The radio, TV, and a newspaper had major coverage that evening, that supplemented my public humiliation, even though no charges or

even specifics were mentioned. After they determined I wasn't going to offer resistance and prior to cataloging the pieces on my living room floor, they dismissed the State policeman. Apparently he was there only for appearance.

They asked me if I had sawed-off shotguns or machineguns hidden away. They seemed visibly disappointed when I said I didn't have any, and didn't own any. After more pictures, they separated my pellet guns and black powder pieces. My collection spans many years, even though I concentrated on pieces of the late 19th century.

As they set about cataloging them, one of the agents suggested I could keep the cases and they would just pile the guns altogether. I can't adequately express the thoughts that went through my mind at this suggestion of disregard for pieces I prized for their rarity, uniqueness, et cetera, and had spent 20 years collecting. I just couldn't get over the thought of piling them in the suitcase.

Just to give you an example, one of the pieces was relatively new. I had had it on order for over a year before receiving it. I had scheduled it with an engraver for over a year. It was also the last gun that he engraved before he died and was considered one of his best. To give you an example of the caliber of engraving it represented, the gun that this man completed just prior to mine is now owned by King Hussein of Jordan.

I eventually convinced them to leave the guns in the cases as I thought they were going to find that they had made a mistake and I hoped they were going to return them in the same good order.

When they completed one page of the list they asked if it looked OK. I said, "No, no reference was made to the engraving." I said, "A third party looking at this really wouldn't know these were collector's items at all." He didn't particularly want to do anything about it at that point. He said, "I will give you a typed copy with a full description later. We will send it to you." I never received it.

Before departing, I was advised that I had been under surveillance for about 18 months, and although the raiding party didn't know what the specifics were, they assured me that I should find a lawyer. I was told that things would be processed rapidly and it would be over in at least 90 days.

Of course, that evening I learned that I was part of a multistate raid. I think it was around eight States. Having never required the services of an attorney, believing that I had not done anything wrong, and also being somewhat naive, I am afraid, I did not seek an attorney for approximately 2 weeks. I still thought they were going to give them back.

By now the family's Thanksgiving spirit had been considerably dampened. They were a little frantic that I should do something since nothing was being done.

I eventually obtained a lawyer. He checked with the Federal prosecutor handling the case. He came back to me and said, "Well, the prosecutor really doesn't think much of this, but if you just voluntarily give up your gun collection, they won't press any charges." I couldn't understand his reasoning, and I told him so in no uncertain terms. He relayed this to the prosecutor and came back and said, "Well, if you don't give them up, they are going to indict you during the January grand jury." I refused and awaited my fate.



As you can imagine, the whole family experienced a rather subdued Christmas. January came and went. I watched the paper daily and listened for the phone as tension mounted. No indictment and no explanation. Another month or so went by and I was presented with a proposal to give up 50-some of my pieces and they would return my brother's and two or three of my prized pieces. Again I refused and waited for the indictment that was promised. Again, nothing happened, except for the suspense and more news about other raids.

Several more months elapsed and once again I was asked to give up 36 pieces of the original group seized, under the same threat of indictment. I must say I was feeling better. I felt as though they thought I was half guilty by now.

Still being unable to understand anything, I rejected the offer and waited for the indictment. Still no indictment. A full year was approaching. I asked for a meeting with the prosecutor since I felt like a face-to-face meeting might at least resolve the issue. I was not allowed to meet with him, although my attorney, his assistant, who actually did the groundwork, and myself went to his office in January 1978. They went in; I stayed in the lobby.

They stayed there for over an hour. They came out and said they had discussed everything and really couldn't find anything that they thought he could make a case on, but they believed, or he believed that one of the agents had mentioned to him that he remembered my making a statement that I would sell all of my collection and, therefore, that I would be a dealer without a license. They even said they had this on a tape, one of the many phone conversations I found out they recorded with me. I said I couldn't believe I had ever made such a statement and I asked my attorney to obtain a copy of the tape.

It was several months before a transcript was obtained and reviewed. There was no such statement. In fact, I had refused to discuss getting rid of any of my prized engraved pieces and pointed out this was my collection. I felt I was now exonerated.

However, the next meeting between my attorney and the prosecutor brought renewed focus on a curio known as a knife pistol. He didn't feel he wanted to make a case on this since at best it was in a gray area of the law. There was no law on it really, but he felt it was in a catch-all section called "any other firearm."

The prosecutor relayed to my attorney that a great deal of time and money had been spent on this particular operation and they would pressure him to indict if I didn't give up at least 19 pieces. So we had gone from the original 70 now to 19.

When I maintained my position, the number I was asked to surrender was next reduced to 10. By September 19, 1979, I was told that this was definitely the last offer. I could select any five and surrender them in exchange for the remainder and no charges would be pressed. It was pointed out to me that the value of five guns could not possibly be worth the trauma of indictment, the trial and resultant publicity which could not only affect my job but my family and my brother's dental practice, as well as my pharmacy license. I was asked to consider this last opportunity over the weekend and submit my answer in writing to my attorney.

I checked with my boss, the executive vice president of the company and the president of the company and I discussed the entire consequences with my family. And receiving assurances from all, I again maintained my position that it was not the value of the prized pieces but the principle. And I told my attorney, "If it comes down to giving up five guns, I am going to court with or without you." I indicated that I would consider surrendering the knife pistol if it would not be destroyed but held in a suitable place, such as a museum, until such time as its legal status could be ascertained. They were very rare and it seemed senseless to destroy something of historical value.

During the many months that had elapsed, now approaching 2 years, I had called quite a number of other victims I had read about in various publications. I obtained information from them as well as copies of some of their legal documents concerning how their cases were resolved. I soon pieced together a pattern that no matter what they had been coerced into giving up to avoid criminal prosecution, when they went to retrieve the remainder of their collection, they were told civil action was being taken against them and none would be returned.

In discussing the matter, my attorney assured me that there were really no criminal charges that could be processed against me. At the very worst, civil action might be taken against the three guns they initially spelled out in the warrant. This concerned two .410 shotguns and a World War II Mauser, all of nominal value. In fact, I had received all three of them in trades with dealers to round the deal, so to speak, if it was a \$50, \$60 difference.

He suggested I agree to give up these in addition to the knife pistol to facilitate the return of my collection and the end to their harassment. His assistant, who actually dug into the background of the case, didn't agree, and he said he didn't see the need to give up anything. I liked his advice and I said "I would only be willing to discuss the knife pistol." At that point my attorney picked up the phone and called the prosecutor and advised him I would only give up the knife pistol but also noting that he had warned me about the possible civil action against the other three.

When the conversation ended, he said the prosecutor would consider it over the weekend, if I gave up the four pieces, to resolve the case. I asked if that meant he had to check with ATF. He said, "Oh, no. He is going to make his own decision."

Then about 5 minutes later the prosecutor called and said if I would agree at that moment to give up the four, he would consider the case closed. I don't really have any way to explain the amount of strain and pressure I was under at that moment, but I assure you that is probably the most tremendous strain I had ever been under. Of course, this was in November and I wanted to end the ordeal for my family if possible before they spent a third Christmas under a cloud.

The answer I gave to my attorney to give to the prosecutor was to tell him to put it in writing. This was November 1978. The seizure was in November 1976. The first copy of this agreement was not received until January 1979. It specifically mentioned that no criminal charges would be filed. Well, I had already been told I didn't have any criminal charges that could be filed. I said this was totally

unacceptable since I knew I hadn't done anything of a criminal nature, and I wanted the word "civil" in the agreement.

Well, it seems that the prosecutor couldn't put the word "civil" in there. He said it wasn't under his jurisdiction or authority. Besides, those papers had already been sent back.

Well, I submitted several alternative statements and finally borrowed the language from one of the legal documents I had gotten from one of the other victims, which said in essence that they would decline prosecution of any and all charges. This was finally accepted in late March 1979.

When my attorney called the BATF holding my collection, Mr. Talbert here in the Falls Church area said he would be glad to get the guns out of his way. He indicated all we had to do was send him a copy of the agreement from the prosecutor that no charges were being filed. My attorney sent the copy and contacted Mr. Talbert to see if he had received it. Instead of reaching Mr. Talbert, a Mr. Rowley answered and said he was unsure of the meaning of the prosecutors' statement and was going to have to have further clarification before the collection could be returned. Furthermore, he wasn't sure where it was.

The next phone call several days later to Mr. Rowley revealed he had passed the matter to the U.S. attorney in this area, a Mr. Williams, and those guns were going to have civil action taken against them. This fitted the same pattern I had learned of from others; no charges, but the Government keep the guns.

Eventually my attorney caught up with Mr. Williams. He stated he really didn't know why the matter had been brought to his attention since it was obviously resolved in Richmond. He said he would write to Mr. Rowley and Mr. Talbert and instruct them to release the collection without further delay.

Several days elapsed and my attorney received such a statement. However, on a call to Mr. Rowley, he still hadn't gotten it. On May 27, Mr. Rowley finally agreed he had all the paperwork and we could pick up the collection, minus four pieces, which we did on May 29, 1979.

I immediately gave Mr. Talbert a letter asking that the four pieces not be destroyed and be held for a reasonable period of time until I could ascertain and understand their legal status and the reason I was forced to relinquish them.

In October 1979 a knife pistol similar to the one I had given up was ruled a curio and a relic in Colorado. However, in a response Mr. Dickerson rendered to my Congressman, he indicated this was a singular gun, and it was still the position of BATF it was an illegal firearm. I have since received a copy of his response while I was on vacation, and I have not had occasion to give a written response to my Congressman. However, I will be happy to do that and provide both positionns to both sides, to this committee as well as my Congressman.

At this point I would like to know what further steps I can take to regain my four guns that I believe were taken from me under duress, and I would trust that some positive action might be taken

to prevent other legitimate gunowners from experiencing the harassment and indignity and trauma my family has undergone. Thank you.

Senator BAYH. Thank you, Mr. Wampler.

[Material subsequently received by the subcommittee follows:]

MECHANICSVILLE, VA., October 23, 1980.

Miss MARY K. JOLLY,  
Russell Senate Office Building,  
Washington, D.C.

DEAR MISS JOLLY: When I had the opportunity to testify before Senator Bayh's committee investigating the activities of the BATF, I mentioned that Congressman J. Kenneth Robinson had recently obtained the Bureau's explanation of their reasoning for keeping four pieces from my collection.

I have enclosed a copy of the Bureau's letter plus my comments elaborating on the details which I believe supplement my testimony before Senator Bayh's committee and effectively refute the BATF's justification for their actions.

I would appreciate you adding this to the record of my testimony as I had promised the committee I would make this material available. Thank you for your continuing activities on my behalf and do not hesitate to notify me should I be able to provide further information.

Cordially,

ROBERT G. WAMPLER.

Enclosures.

[Mr. Dickerson's comments to Congressman Robinson justifying the BATF's position]

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
Washington, D.C., July 31, 1980.

Hon. J. KENNETH ROBINSON,  
House of Representatives,  
Washington, D.C.

DEAR MR. ROBINSON: This letter has been prepared in response to your inquiry of July 14, 1980, regarding the investigation of Mr. Robert Wampler by the Bureau of Alcohol, Tobacco and Firearms (ATF).

On November 16, 1976, a Federal search warrant was issued by the United States Magistrate for the residence of Mr. Robert Wampler in Mechanicsville, Virginia. The search warrant was issued following review of an affidavit filed by an ATF agent providing sufficient probable cause for the Magistrate to believe that firearms and other materials were located in the residence which were intended to be used in or were evidence of violations of the Gun Control Act (GCA). This probable cause was based on the purchase of six handguns from Mr. Wampler by four different undercover ATF agents at gun shows in the Richmond, Virginia, area in August and November, 1976. On November 9, an ATF undercover agent spoke with Mr. Wampler by telephone. During this conversation, Mr. Wampler offered three specific firearms for sale. These firearms included a Mauser pistol, a Garcia shotgun, and a Bronco shotgun. The agent asked if the weapons would be available for inspection at Mr. Wampler's residence during the week of November 15, and Mr. Wampler assured him that they would be.

The search warrant was subsequently executed, and 70 firearms were recovered from the residence including the three firearms offered for sale by Mr. Wampler. A fourth firearm, a .22 caliber knife-pistol, was also recovered. This weapon is a prohibited firearm as defined under Chapter 53, Title 26, U.S.C. As such this weapon must be registered with the Secretary of the Treasury and failure to do so may result in a felony conviction. The weapon in question was not registered.

In February 1979 a plea bargain agreement was concluded between the United States Attorney's Office and Mr. Wampler's attorney. Based on this agreement, the United States Attorney agreed not to seek Mr. Wampler's indictment for violation of the GCA. In return, Mr. Wampler agreed to abandon the three firearms he had offered to the undercover agent as well as the knife-pistol. Mr. Wampler was also required to acknowledge his full understanding of the GCA and to conform to its provisions in the future.

On March 21, 1979, Mr. Wampler forwarded a letter to the Assistant United States Attorney responsible for review of his case. In that letter, he agreed to relinquish ownership of the affected firearms and also agreed to his understand-

ing of the GCA and his intention to comply with the Act in the future. A copy of that letter is enclosed.

In June 1979 Mr. Wampler formally abandoned ownership of the four firearms to ATF. Pursuant to the plea bargain agreement, no indictment was sought against him. All four weapons are currently the property of the United States Government and are located in the ATF Firearms Reference Library, Washington, D.C.

Your letter mentions a Tenth Circuit Court of Appeals decision that the knife-pistol is a curio or relic as defined under the GCA and therefore no longer a prohibited weapon. That decision involved a knife-pistol which was manufactured by the United States Small Arms Company. In ruling the weapon to be a curio or relic, the court cited the fact that the weapon was quite unique and of limited manufacture; however, the court also ruled that the weapon must be assigned a serial number to be affixed thereon and was to be permanently deactivated by sealing the barrel. This ruling addressed one specific knife-pistol and allowed for possession of the weapon conditioned upon the modifications outlined above. It remains the position of this Bureau that knife-pistols are prohibited weapons unless registered with the Secretary of the Treasury.

We would further note that Mr. Wampler, through his attorneys, actively sought the plea bargain agreement which resulted in the decision not to prosecute him for violations of the GCA. In accepting the conditions under which no indictment would be sought, he voluntarily surrendered the four weapons which are the subject of your letter. All four of these weapons were directly involved in a violation of the Federal firearms laws. The remaining weapons recovered from Mr. Wampler's residence were returned to him as a result of the plea bargain agreement and due to the fact that they were not directly involved in the instant violation.

We would also like to note that the remaining 66 firearms were promptly returned to Mr. Wampler following the culmination of the plea bargain agreement. In fact, Mr. Wampler wrote to Bureau officials on June 5, 1979, and thanked ATF "for the courtesies extended to me and my attorneys in facilitating the return of my collection."

We trust that this letter will be responsive to your inquiry. If there are any additional questions, please do not hesitate to call upon us in the future.

Sincerely yours,

G. R. DICKERSON, *Director*.

Enclosure.

[Mr. Wampler's comments on Mr. Dickerson's justification]

Mr. Dickerson asserts in his response that I was a selected target of the BATF for selling six firearms at gun shows in August and November, 1976. He did not mention that these were the only transactions recorded during an 18-month period I was told I was under surveillance.

Mr. Dickerson refers to a conversation during which I allegedly offered three specific firearms for sale and assured the agent he could inspect them at my residence.

The exact details of this allegation may be verified from recordings made by the agent during repeated calls to my home. I felt these recordings exonerated me after my attorney obtained transcripts of them that revealed that I had not really offered to sell the caller anything, but only affirmed that I still had three pieces he had seen at a show and that I had wished to dispose of two of them. The two shotguns were identical, Bronze models by Garcia, obtained on two separate occasions with a dealer in rounding out a trade. I had decided to keep one and get rid of the other along with the W.W. II Mauser pistol obtained in a similar manner.

As for assuring the agent that they would be available for inspection at my residence, I had only extended the courtesy of telling him that he could call me for further discussion if a mutually convenient time presented itself. I never imagined that a simple courtesy could be misconstrued as an intended violation of the law.

Mr. Dickerson notes that my collection was seized in November, 1976, and a plea bargain agreement was concluded in February, 1979, and that I actively sought such an agreement. I believe the time frame and my comments attached (before Senator Bayh's committee) adequately indicate that I sought the re-

turn of my entire collection. Mr. Dickerson's mention of my letter to Bureau officials thanking them for their courtesies implies that I was happy to have back what they would give me. The letter was addressed to Mr. Talbert of the Falls Church BATF office and was intended to specifically thank him for his courtesy, which was in contrast to the agent in charge. This same letter also requested that he does not dispose of my four pieces retained by the BATF for a reasonable time in order that I might ascertain their legal status since I did not believe anything to be of illegal nature about them and still feel they were surrendered under duress.

I am unable to understand Mr. Dickerson's comments or logic at all in reference to the knife-pistol. While he appears to agree that the Tenth-Circuit Court of Appeals ruled a similar piece a curio and relic, quite unique and of limited manufacture, as defined under the GCA, and therefore, no longer a prohibited weapon, he implies that the ruling only addressed one specific knife-pistol and the position of the Bureau remained that knife-pistols are prohibited weapons unless registered with the Secretary of the Treasury plus being deactivated by sealing the barrel and having a serial number affixed.

I had always been under the impression that our system of laws was based on precedent and once an object or act was adjudicated as legal, a similar object or set of circumstances, basically the same, would not be repeatedly challenged. My particular knife-pistol had never been fired during its years in my possession nor would a collector risk its destruction by attempting to fire it. To alter its original appearance by affixing a serial number also leaves me wondering why, since the court case in question mentioned that there had never been a recorded case of such an oddity being used in a crime.

If those conditions are upheld as the only means of my being able to have this piece returned, I would request that some official documentation accompany it verifying the reason for its less than original condition.

With the volume of written material you and your staff must cover, I hesitate to bore you with further detail, but believing very sincerely that I have been done an injustice by the BATF, I will be happy to supply greater documentation if desired.

Any actions that you may take on my behalf that you feel will result in the return of my four pieces would be greatly appreciated.

P.S. The hostage crisis in Iran reflects a distinct parallel with the seizure of my gun collection. There was no reason to take them. There has been great stress caused to the families of the hostages. There have been varying conditions suggested that the U.S. offer as good will for their return without any guarantee from their side and there has been a continuing threat that if the U.S. doesn't accede to their demands the hostages will be tried on trumped up charges.

MECHANICSVILLE, VA., February 21, 1979.

J. KENNETH ROBINSON,  
*Rayburn Building,*  
*Washington, D.C.*

DEAR MR. ROBINSON: I appreciate very much your willingness to see me and take under advisement my comments relative to what I feel are unwarranted abuses and harassment by the Bureau of Alcohol, Tobacco and Firearms.

In my roles as full-time Manager of Personnel Placement at A. H. Robins, and part-time pharmacist at Colonial Pharmacy, I have been advised to seek your counsel by such mutual acquaintances as former Delegate W. Roy Smith, John Taylor, and Jack Ward, all of whom can attest to my character.

I have been an avid gun collector for 20 of my 38 years and until November 18, 1976 had never had occasion to draw the attention of any law enforcement officials other than an occasional traffic ticket. On that date I received an unannounced visit from four BATF agents and a state policeman 6:45 a.m. in the morning at my home. They had a search warrant alleging that I had illegal firearms and accessories concealed on my premises. I shall never forget the trauma, embarrassment, and humiliation caused my wife, my four year old daughter, and me by this intrusion and the subsequent media coverage which painted me and other collectors in an eight state area as the worst of criminals. Some 27 months have now passed and although (I am sure) thorough checks have been made on my collection, none of the pieces has been found to have been acquired or used in an illegal manner.



My attorney advised me that the U.S. Attorney was not particularly impressed with the allegations and even if indicted charges would likely be dropped if I agreed to forfeit my collection to the BATF. Since I could not justify any reason in my mind to agree to such an arrangement, I refused to offer to give up any of the 70 pieces seized (11 belonging to my brother, approximately 25 of obvious antique status, and most of the remainder of desirable collector's value, engraved, gold inlay, etc.).

It was explained to me through my attorney that all infractions of the Federal Firearms Act were felonies, no matter how minor, and that with all of the time, money, and effort expended by those in Washington on Operation Score they would surely find some technicality to charge me with and I really shouldn't fight it. It was further explained that I should consider the adverse impact on my job, my family, my brother's dental practice and my financial condition.

As the months of 1977 and 1978 passed, I was asked from time to time to explain in writing various aspects of my collecting and then told a decision would be made soon as to whether or not I would be indicted. Generally each decision required from four to eight weeks, during which time I was forced to wait and ponder the unpleasant possibilities of a felony conviction.

At this particular point in time they appear to have run out of questions and the U.S. Attorney has indicated a final resolution is near. I have received one letter from the U.S. Attorney stating that he is declining any criminal charges, but indicates he does not have the authority to decline any civil charges or order the return of my collection. Apparently it is up to me to obtain its release as best I can. It appears that the only gray area open for discussion revolves around a curio type knife-pistol popular in the 1980's.

I have received moral support from the National Rifle Association and have learned of many other law-abiding citizens who have seemingly been involved in a pattern of abuse and harassment from the BATF. Many have had their cases not prosecuted criminally by the government, but have had trouble regaining possession of their collections by intimidation and bureaucratic procedures.

I trust I will not have to seek your personal aid on my behalf, but I understand Congress has recently been asked to investigate the questionable practices of the BATF and want you to know that as one of your constituents I strongly support this idea in order that other citizens of this country may be spared the trauma of government intervention into their private lives.

Sincerely,

ROBERT G. WAMPLER.

[From the Washington Post, July 3, 1980]

#### COLLECTOR ASKS U.S. TO RETURN ALL 70 SEIZED GUNS

(By Stephen J. Lynton)

Robert Wampler says his collection of 70 pistols, rifles and other guns has taken him 20 years to assemble and is worth almost \$25,000. It includes 26 engraved weapons, some dating back to 1864.

So Wampler was infuriated when federal agents arrived at his home in Mechanicsville, Va., outside Richmond, shortly before 7 a.m. on Nov. 18, 1976, and seized the 70 guns. Four of the guns have never been returned, he said yesterday. "There is no way to explain the trauma or the humiliation that is involved in something of this nature," he said.

Wampler was among several gun collectors and dealers who appeared at a news conference at the Capitol to protest alleged abuses by the federal Bureau of Alcohol, Tobacco and Firearms. It was staged by Rep. John M. Ashbrook (R-Ohio), an outspoken critic of the bureau.

Ashbrook yesterday accused federal agents of engaging in "tyrannical, Gestapo type action" against legitimate gun collectors and dealers. "We're going to have to do a better job of protecting the rights of citizens to own guns, including collectors," added Rep. J. Kenneth Robinson (R-Va.), who also appeared at the news conference.

G. R. Dickerson, director of the Bureau of Alcohol, Tobacco and Firearms, said later that he would look into the allegations voiced yesterday by Wampler

and others. But he noted that investigations of previous complaints by critics of his agency have failed to turn up evidence of abuses by federal agents. "Every case they bring up we look into," Dickerson said in a telephone interview. "I know of no case in which an ATF agent has ever been charged with a violation of civil liberties."

Wampler, a stocky, soft-spoken man in a three-piece gray suit, who works as a personnel manager for a pharmaceutical manufacturer in Richmond, voiced numerous complaints about the federal firearms bureau at yesterday's news conference.

Despite threats that he would be indicted, Wampler said, he has never been charged with any firearms crime. He complained that he has spent \$2,000 to \$3,000 in legal fees and other expenses because of the seizure of his guns.

Sixty-six pistols and rifles were returned to him by the federal agency on June 1, 1979—about 2½ years after they were seized. Four others—described by Wampler as an unusual 19th Century "knife" pistol, shaped like a pocket knife; a World War II German-made Mauser pistol, and two shotguns—are still in federal custody.

"I would like to know why I can't have the four guns back," Wampler asserted.

Federal officials said yesterday they could comment publicly on only some of Wampler's statements. They said they were barred by federal privacy restrictions from responding to other complaints.

Officials said Wampler's guns were initially seized after an undercover investigation turned up evidence that he was allegedly dealing in firearms without a license. Wampler disputed this allegation yesterday, saying that he had been told by a federal agent in 1965 that he did not need a license and had, therefore, allowed his license to lapse.

Government officials said 66 guns were held until last year because an investigation was still under way. They said they were precluded by privacy restraints from stating why the other four weapons are still being held.

But Peter B. Mastin, assistant special agent in charge of the agency's Washington district office, said, "ATF followed all judicial and proper administrative proceedings in the retention of those firearms."

Senator BAYH. Mr. Jewell?

Mr. JEWELL. My name is David Jewell. I live in Boulder, Colo. I am a British subject. I am 40 years of age, a printer by trade, and a single parent.

I came to this country 10 years ago. I started to hunt and fish and go to gun shows and then began to collect guns, which I found rather refreshing, having come from a country where it is almost impossible to own a firearm.

Initially indiscriminate in my collection, I accrued a lot of different types of guns, at which point being British I decided to collect only British guns. Being of limited means, that excluded the finer rifles and shotguns which can cost anywhere from \$1,000 to \$10,000. So I concentrated on my British military weapons of mostly the World War periods, of which I again have a collection of a couple dozen, excluding the ones that the BATF still have.

It was at this point I started disposing of the unwanted guns by preferably trading them for British guns or selling them. I actually gave one away to a gentleman who was with the British Marines and carried that same type of gun during the war. I also refused to sell a handgun to—I won't call him a gentleman—a man who came to me and I asked him what he wanted the gun for, and he took off his shirt and showed me a bullet scar in his arm and told me he was going to kill this MF policeman I think in Illinois. I took the person's license plate number and informed the local police so they could at least warn the policeman. I don't know what happened about that.

At this point I came to the attention of the BATF who arrested me and confiscated my collection of personal firearms and also 11 guns belonging to other people which were in my care. I was charged with dealing without a license and one interstate sale, which was a strawman's sale—charges which have since been dropped.

The day I was arrested, the BATF was at the annual gun collectors association gun show in Denver, which is a very prestigious affair, where my collection was displayed. They were taking photos and filming. These photos and/or film should quite clearly show my guns were labeled "Collection only, not for sale."

When I was arrested, I was arrested on my way home in the car. There was a carload of BATF in front of me and a carload behind. I had a young man with me, a son of a friend of mine. He was helping me to unload and pack. I was going to drop him off at his home.

He was terrified. Two BATF men got out of the car in front and two BATF men got out of the car behind me. They came with drawn guns and badges. I was, incidentally, wearing my Scottish regalia, which is a kilt, which I go to gun shows in. I was first spread-eagled against the side of the car and then handcuffed and read my rights.

I was then taken to the Denver Federal Center where in the basement they started unloading my car, and they were just dropping the guns on a concrete floor. I would like to point out that one of the guns is conservatively in this book valued at about \$7,000. This book is 3 years old. It is a Winchester model 21 Grand American, which is probably the finest example of American gun craftsmanship ever. In 1977 this gun was valued at \$5,500.

I have repeatedly petitioned to have my guns returned, with no success. BATF claims that allowing the petition would effect the return of the firearms to an individual whose illegal activities caused their forfeiture.

Well, I have never been convicted of anything worse than a speeding ticket in my life.

They also have a Catch-22. When my guns were taken, I filed a \$250 cost bond, which I was advised to do by the BATF. I mailed a check to the clerk of the U.S. district court. The check was returned. We were told as there had been a pretrial diversion where I agreed I would not possess a firearm for 1 year, that it would be inconsistent with me receiving the guns back.

Then I was informed I could refile at the end of that year, which we did. We were then told that as I had not chosen to file a claim, and cost bond, a year earlier, I was now too late.

I am very concerned as to the whereabouts and condition of these guns. Mr. Dickerson was specifically asked by Congressman Volkmer at the July 3 hearing to inform him about the whereabouts of these guns. I would like to know whether this has been done.

I also have a BATF appraisal of the value of my \$19,000 collection which is quite ridiculous at \$2,425. One gun alone, the Winchester Grand American, is worth, as I said, at least \$7,000. BATF value \$150. The gold inlays are worth more than that.

I very much appreciate the opportunity to tell my story. Thank you very much.

Senator BAYH. Mr. Barnett, do you care to make any comment at this time?

Mr. BARNETT. I don't have any comment at this time, sir.

[The prepared statement subsequently submitted by Mr. Barnett follows:]

PREPARED STATEMENT OF J. PAUL BARNETT, NORTHERN VICE PRESIDENT, INDIANA SPORTSMEN'S COUNCIL, AND VICE PRESIDENT, NORTHERN INDIANA GUN COLLECTORS ASSOCIATION

Mr. Chairman, I am Paul Barnett. As northern vice president of the Indiana Sportsmen's Council and vice president of the Northern Indiana Gun Collectors Association, I am here in part on behalf of those organizations. Mainly, I am here as a friend of Mr. Best, whose testimony you have heard.

For the record, I am a former Indiana state trooper, later a high school English teacher. For the last 13 years I have been occupied full time in the field of muzzle loading. Your hearing record of June 12, 1973 contains various of my own experiences and those of other people attempting to pursue their legitimate and worthy activities under another federal law, Title XI of the Organized Crime Control Act of 1970, which in 1974 was amended unanimously by Congress to a form better directed to its expressed purposes.

With regard to Mr. Best's testimony, I would like to say that I was with him when the firearms of which he has spoken were approved for sale. When he was arrested for selling them, I was the first person informed of his distress. When the bond set in his case was identical to the bond set for a young man accused of whipping an old lady with a tire iron during a mugging, I shared Mr. Best's frustration at the anomaly. During the next seven months I was on call from Mr. Best's attorney and himself in varying capacities, in an attempt to minimize his legal expenses. I saw other of his friends assist him in various ways as they did what they could to ease his situation through moral support, contributions to his defense, and so on. And when for unexplained reasons the charges against Mr. Best were dropped four days before the trial, I was the first person to be contacted by his astonished attorney.

During that time, all of us who were involved shared the displeasure of watching a federal agency pursue action against a man of family, of 20 or so years tenure in a socially contributing job, of neighborhood respect, who one night had rushed to the aid of a neighbor being beaten by robbers in his driveway, and whose alleged technical infractions of the Gun Control Act were based on interpretations that were in conflict with earlier interpretations by the selfsame government agency; indeed, by the same agent.

To all of us, there seemed something terribly wrong with that.

Now, eight years later, I would like to express deep gratitude from us all for your holding this hearing so that Mr. Best and the other gentlemen here can make their experiences known to Congress. If, as a result of this hearing, it is found that ways should be implemented to ensure that experiences such as these gentlemen have shared can be avoided in the future, with the burdens of criminal behavior falling more appropriately on persons who have committed it, I am confident that we will all be grateful in further measure for that.

Thank you, Mr. Chairman.

Senator BAYH. Mr. Best, did you finally get all of your weapons back?

Mr. BEST. There was only one confiscated, and that was at the time of my arrest. Cincinnati ordered that gun returned. They said it was taken illegally.

When Agent Bauer returned that gun, he said, "I wish those blankety-blanks in Cincinnati would have stayed out of this because I would have liked to get you 10 years in prison." He made that statement to my wife.

The property tags on all four guns, the ones I was supposed to have sold to the Michigan agent, were all signed by the Indiana agent. So he wrote on there that he had obtained all four guns.

Senator BAYH. They took you right up to the 11th hour and then withdrew charges?

Mr. BEST. Four days prior to the trial, on a Sunday morning, because I was working, my attorney got ahold of me, and we were due to go to trial on Thursday and Friday of the following week. That Sunday morning the attorney told me they had dropped all charges. We don't know why.

Senator BAYH. You spent about \$5,000 in attorney's fees?

Mr. BEST. Yes. And a few of my choice pieces out of my collection, too, which hurt quite a bit.

Senator BAYH. I appreciate your sharing that experience with us.

Mr. WAMPLER, did you get all of your weapons back, or four of them are still gone?

Mr. WAMPLER. Four I still do not have back.

Senator BAYH. When did this take place?

Mr. WAMPLER. I was raided November 18, 1976. I had most of the collection, all but the four, finally returned on I believe May 29, 1979—2½ years later.

Senator BAYH. Is there any excuse or reason why they are keeping the four?

Mr. WAMPLER. Not to my understanding.

Senator BAYH. Were they any more dangerous or any more valuable? Why would they choose just four?

Mr. WAMPLER. Well, initially I was told to give up the whole collection. Initially my attorney went to the U.S. attorney, the prosecutor, and the prosecutor told him, "I really don't think much of this case, but if your client will give up his gun collection, we won't prosecute him, won't bring any charges." Of course, I didn't go along with that.

Over a period of 2½ years they kept coming back saying give up 50, give up 35. They had odd figures. I don't know why the figures were odd or how they were derived, but they confiscated 70 originally, 11 of which belonged to my brother. First they said if I didn't give the whole collection back, I would be indicted. Of course, I waited out that month and I wasn't indicted. I found out you really don't know whether you are indicted unless you read the paper or listen for phone calls. So you sweat a whole month.

Several months went by and I wasn't indicted. Then he said give up 56. I never knew why the numbers. Eventually, after repeated numbers, going progressively lower, I was told the last offer was five guns, and five that I wanted.

Senator BAYH. What do they do with these guns?

Mr. WAMPLER. That is a good question. [Laughter.] The three that I finally selected and we got down to—I refused to give up five—are now in the ATF library I am told. In fact, the only thing that I ever agreed to in any manner to give up, and that was on a temporary basis, until we could determine whether or not it was legal or illegal, was an oddity, known as a knife pistol. I can't even say they were popular because there were not that many of them made. But they were mostly in evidence in the 1870's, 1880's. I think the last company that actually made them ceased somewhere around 1910 or 1912. I had had the thing and never displayed it or anything else. It was just an oddity. It would probably explode if it was fired. But it still was an oddity.

Nevertheless, they decided that this fell in the gray area of the law. There wasn't anything in the law that said a knife pistol was illegal, but it said any other fire arms.

Senator BAYH. I might ask counsel if she would ask a few of these questions. I am particularly anxious to know what the disposition of this case is as far as you are concerned, Mr. Wampler. Do you feel that testifying here may have put you in jeopardy because of your cooperation with the committee?

Mr. Barnett, if you could, I don't know whether you have any thoughts you would like to share with us or not.

Mr. BARNETT. No, not at this time, Mr. Chairman. I am mainly accompanying Mr. Best.

Senator BAYH. I would still like to have more information about where your weapons are, Mr. Jewell, or what steps are being taken. I would like to see a gun conservatively valued at \$7,000. That is quite a weapon. To know why that would be held, what use could be made of it, if you could pursue that.

Ms. JOLLY. I think one of the things it would be good to elaborate on for the record is the kinds of activities you carry on with your firearms. Whether or not you are sportsmen, in terms of hunting, target shooting, or if you mainly use your weapons for collecting purposes or gun shows.

Mr. Best, do you want to start?

Mr. BEST. Mine are mostly collectors' items. I think I have only five modern firearms out of my whole collection. About the only thing I do is a little trap shooting and a lot of tin can shooting.

Ms. JOLLY. Mr. Wampler?

Mr. WAMPLER. I think my guns would be under the terminology of presentation pieces for the most part. A number of them are inlaid with gold, silver, one even had platinum in it.

It is hard to explain what engraving is if you don't understand it, but it is a form of art.

Ms. JOLLY. Dating back to what years?

Mr. WAMPLER. They date back to the 1700's, frankly. But the ones that, of course, caught the attention of the BATF were those that were newer guns. They took them all the way from the year 1866, which I believe was the earliest one with a date on it. They took them right on up to the present.

As far as using them, I am very proud to display them when I have company over, obviously. I display them at shows to attract others of similar kind. I rarely have occasion to shoot guns. I do target shooting once every 2 or 3 years.

Ms. JOLLY. Thank you, Mr. Jewell?

Mr. JEWELL. Mine are strictly collectors' items. They didn't take my personal firearms, like my shotguns, which I actually use. The guns they took from me, not one of them have I ever fired. Strictly collectors' items.

Ms. JOLLY. I believe all three of you had firearms confiscated of one type or another, some of them have been returned by BATF, some have not. In some cases your charges were dropped after you entered into a plea-bargaining situation.

Did you voluntarily sign over the firearms to an agent in the locale and, if so, what were the reasons you might have done this from your perspective?

Mr. JEWELL. In my case, absolutely not. I wouldn't sign over anything to those guys. [Laughter.]

Mr. WAMPLER. I think I covered that fairly extensively earlier. Well, I had never agreed with my attorney, but specifically with his assistant who said, "I don't see any reason to give up anything." That is when I told my attorney I liked his assistant's advice. He said, "Well, they are going to make a big fuss about the knife pistol." I said, "Well, I would discuss giving that up. I would give it up only if I am assured it is not going to be destroyed, and I will give it up long enough to make a determination as to whether or not it is legal or not legal, if it will facilitate the return of my other guns."

He was the one that mentioned that I probably should consider—he said, "If worse comes to worse, there is no way they are doing to hit you with criminal activity. There is nothing they can charge you with. If the very worst happens, they will take you to court for the three guns they named in the warrant," which were two .410 shotguns and the Mauser. Two of these guns I did want to get rid of. I had two shotguns that were identical. One of them I did want to sell. The other one I wanted to keep. The Mauser I wanted to get rid of. He said they could be considered gun trades and, therefore, they could conceivably take those if worse came to worse.

So he is the one that told the prosecutor, "I have warned Mr. Wampler you could charge him civilly with those." The prosecutor said, "OK, give up those three and the knife pistol," and closed the case. That was in November 1978. It was 6 months later before I got them back, the remainder of them.

I signed them over under duress, in my opinion. As soon as I signed them over and as soon as I picked them up, I did give them a statement saying, "You hold onto all four of them while I can determine why I have to give them up." That is on record.

Mr. BEST. In my particular case, the only one that they confiscated was that .410 single-shot, and it was returned. But you have to remember that when they arrested me on that Sunday evening, they had no warrant. So they have never seen my collection. They had no idea what I had at the time.

Ms. JOLLY. Was the firearm returned in a short period of time, or has it been withheld for years?

Mr. BEST. Mine was returned, it was a matter of months, when Cincinnati ruled on it and said it was taken illegally and it should be returned.

Ms. JOLLY. Are you satisfied it was returned in the same condition it was acquired?

Mr. BEST. It was a \$30 gun. It wouldn't have made much difference on that one.

Ms. JOLLY. This question is addressed to all three of you. Do you believe or not believe that you will be caused any additional actions on the part of local agents or the U.S. Attorney because of your testimony before the subcommittee today?

Mr. BEST. That is a hard thing to say. I wouldn't have any idea. I do know that Agent Bauer is no longer in our area, if he is any longer in the service. The detective bureau in South Bend told me he has been fired. I don't know if it is true or not.

Agent Holmes is still in our area, but he hasn't bothered me since this one time.

Mr. WAMPLER. From the fact that the prosecutor in our area never thought anything of the case, I am not at all concerned about him. Most of the agents, with the exception of one, were not from our area. We have never had any problems in our gun shows in the Richmond area or to my knowledge any major difficulty with agents. In fact, the local agents I have met have been reasonably helpful.

Ms. JOLLY. It is your experience that the agents actually don't bring the cases. That is your understanding.

Mr. WAMPLER. I was told by these agents who came to my home that they didn't know anything about what had taken place before. They were there to seize the guns. There were four agents. One of them knew something about guns. The other three had complete disregard. They were there on official business. They didn't know anything about guns.

It was a little bit disappointing, frankly, they had so little regard for anything. The fourth agent, the one who appeared knowledgeable about guns, was even apologetic while they were cataloging them. He had called one of my .22 rifles a Winchester, by the name of a copy made in Brazil. When he started to read the serial number, he said, "Is this a Rossi?" He saw me flinch. He said, "Is that a Winchester?" I said, "Yes, it is." He said, "I am sorry. I have never seen one in this nice a shape."

I feel somewhat uncomfortable about even going to a gun show, and particularly at this point in time. My family, not understanding the depth of the situation as I do, probably gives me greater concern in that they are more worried about it than I am. I believe I am under continuing surveillance and scrutiny.

Mr. JEWELL. I am convinced I probably will be arrested again within the next year or even sooner because I haven't changed my attitude at all. I still go to gun shows. I am very, very careful about what I deal in any more. But I deal in cartridges now. I switched to cartridges. But I am sure they are going to snatch me up somewhere along the line. So I am convinced I am going to get busted again. I have been offered handgrenades recently as well.

Ms. JOLLY. Do you feel you are being targeted by the agents?

Mr. JEWELL. Possibly just as an example, because I keep a very high profile. I go to gun shows. I stick out like a sore thumb with my accent as well. People have complimented me and said, "Oh, give them hell, Dave. Keep it up. You are not going to let them scare you." And they are not scaring me because if worse comes to worst, I will go back to England. If I am driven out of this country, I will leave, which I don't want to do, by the way. I am very happy here.

Ms. JOLLY. Frequenting many gun shows in your own State and other surrounding areas, are you not familiar with most of the agents?

Mr. JEWELL. I believe I am not.

Ms. JOLLY. Do you feel they change agents frequently?

Mr. JEWELL. I am sure they do; yes. In every case there has been an out-of-State agent. In nearly every case of a straw man sale one is always an out-of-State agent. With 1,200 agents, they can bring new agents in on you any time they want.

Most of the local guys say in Denver, for instance, the minute they step into a gun show, the gun show is electrified. "The Feds are here."



You will know the Feds are here. They are pointed out. Anybody who happens to be standing close can be suspect.

Ms. JOLLY. It seems a little different from Mr. Vest's case. At least one of the agents was from the Indianapolis area in that case.

Did you all have appraisals from outside sources on your weapons before they were acquired by BATF, or did you have appraisals afterward by someone, say, from BATF handling this, matter? In your view who was supposed to do the appraisal?

Mr. JEWELL. I have a ludicrous appraisal here, the BATF appraisal of my firearms. For instance, this firearm which I value at at least \$7,000 now has 24-karat gold inlays on it. You could scrape the gold off and get more for it than they are alleging it is worth, period. They are appraising that gun at \$150. It has way over that in 24-karat gold.

Senator BAYH. I am really concerned about the necessity that you spend a lot of time and money trying to get weapons back that are kept after any question of impropriety has been dropped. Now, are they still claiming you have violated the law?

Mr. JEWELL. Their statement was that effecting the return of these guns—their statement is that allowing the petition, that is the petition to return the firearms, would effect the return of the firearms to the individual whose illegal activities caused their forfeiture.

Well, I have never been convicted of anything. As my lawyer pointed out in a letter to them, it is merely an allegation of the agent that illegal activities took place.

Senator BAYH. Gentlemen, I appreciate your taking the time to let us have your personal experience. I know those experiences have been painful. Again, I apologize for the necessity of wearing about three hats here this afternoon. So thank you very much, gentlemen. I appreciate your being here more than I can say.

Mr. JEWELL. Thank you very much, sir.

Senator BAYH. Our next witness is Mr. Michael Beard, Executive Director of the National Coalition to Ban Handguns.

**TESTIMONY OF MICHAEL BEARD, EXECUTIVE DIRECTOR, NATIONAL COALITION TO BAN HANDGUNS, ACCOMPANIED BY MARK TULLER, ARNOLD & PORTER**

Mr. BEARD. Mr. Chairman, we have submitted written testimony which includes eight attachments. I am going to summarize that testimony and request the full testimony be included in the record with the attachments.

Senator BAYH. We would be glad to do that, sir.

Mr. BEARD. My name is Michael Beard. I am executive director of the National Coalition to Ban Handguns. With me today is Mr. Mark Tuller of the law firm of Arnold & Porter.

On behalf of the over 30 religious and lay groups making up the National Coalition to Ban Handguns, I want to thank you, Mr. Chairman, and the subcommittee for the opportunity to testify on the law enforcement activities of the Bureau of Alcohol, Tobacco, and Firearms.

The National Coalition to Ban Handguns is a unique coalition of national organizations which joined together in 1974 to combat the

growing handgun problem in the United States. Participating organizations include legal, medical, religious, professional, and educational associations as well as citizen public interest groups, which in turn collectively constitute more than 10 million Americans.

The goal of the National Coalition to Ban Handguns is the orderly elimination of nearly all handguns from private possession. NCBH seeks to ban handguns from importation, manufacture, sale, transfer, ownership, possession, and use by the general American public, with reasonable exceptions for the military, the police, security officers, and pistol clubs where guns would be kept locked up on the club's premises under secure conditions.

We are seriously concerned about allegations that BATF's enforcement efforts have been overzealous in some cases, leading to civil rights abuses. But after our consideration of the subject, we have concluded that many of the claims against BATF for overzealous prosecution of the law are not well founded. Simply put, we have concluded that in several of the 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.

We therefore strongly oppose current efforts to limit ATF's authority and emasculate the 1968 Gun Control Act. We would like to include for the record a series of newspaper editorials that demonstrate public opposition to gutting the existing law.

Although ATF acted reasonably in these specific instances, we nevertheless believe that BATF has generally been derelict—rather than overzealous—in its duty to enforce the law. In short, ATF has improperly licensed thousands of Federal firearms licensees without applying reasonable standards consistent with the 1968 Gun Control Act. This has led to an army of licensees 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" Federal licensees facilitate the introduction of criminal firearms into New York City.

Our organization, along with private citizens and State and local officials, has petitioned the 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.

Our member organizations have long histories of defending the civil rights of friend and foe alike. We did not, therefore, take the charges against the ATF lightly and launched our own investigation. We dealt at arm's length with BATF and examined materials available to any member of the public under the Freedom of Information Act.

Time limited our ability to analyze each and every case. We therefore decided to look at two of the more celebrated cases of licensees

who allegedly have been prosecuted by BATF without basis—Willie and Paul Hayes, of Valencia County, N. Mex., and Richard Boulin, of Montgomery County, Md. For purposes of the congressional oversight, the question is simple: Was BATF acting responsibly when it decided to prosecute in these cases? We believe BATF did act reasonably in deciding to prosecute, based on the evidence that its investigation had compiled at that time.

In the *Hayes* case, BATF's prosecution was not successful, in part because a successful suppression motion by the defense led the court to exclude ATF's most probative 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, as we understand it, 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 ATF's prosecution policies, where the conduct of the prosecutor rather than the defendant is at issue, it is critical to look at the results of ATF's investigation. Only this way can Congress satisfy itself on the central issue here: Are ATF 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?

The material we studied is 146 pages of transcripts, taken from five conversations between ATF undercover agents and Mr. and Mrs. Hayes in April 1978. The transcripts were made by BATF, in preparation for the trial. During the course of those conversations, the Hayes' are reported as discussing past, present, and future plans for acts that strongly appear to be violations of Federal laws enforced by ATF. 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.

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.

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, and earlier Senate hearings, involved the unlawful

use of a Federal firearm dealer's 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 ATF 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's hard 'cause 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 paperwork or Maryland Police clearance.

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 New Haven, Conn., metropolitan area were selected as our subjects. All 136 were studied on the basis of public information obtained from the Bureau of Alcohol, Tobacco, and Firearms, 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 of the licensees were in direct violation of at least one Federal, State or local law or regulation. Nearly one-half 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 of the dealers holding themselves out as sellers of handguns did not possess a valid State or local license. A violation of State firearms licensing laws is also a violation of Federal law.

In addition, over two-thirds 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 less than a tenth of the licensees listed their telephone in the "Yellow Pages" under "Guns"; nearly 50 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 admitted outright to not conducting a regular business; a further one-fifth of the ostensible businesses could not be contacted by any rea-

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sonable means. Of the licensees who professed actively to use their licenses half 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.

In conclusion, Mr. Chairman, I would like to comment on the political climate behind the barrage of charges recently emerging against the Bureau of Alcohol, Tobacco, and Firearms.

It should come as no surprise to anyone in this room that there has been a well-coordinated campaign to discredit the BATF for political purposes. This campaign is rife with distortion, as is shown by our written testimony. It is also clear that this campaign is one of the first shots—hopefully a blank—in the announced war on the 1968 Gun Control Act.

In 1978 the BATF proposed a series of innocuous regulations designed to facilitate law enforcement officers in tracing firearms used in the commission of crimes. These regulations were unfairly categorized as gun registration schemes or worse. Following the drugging the BATF took on these regulations, various elements of the gun lobby proclaimed a war on the BATF and the 1968 Gun Control Act.

In the past 2 years a great deal of money and staff time has gone into creating the impression of widespread abuses on the part of the BATF. I would urge this committee and its staff to not only look carefully at the tales of horror brought before you by these single-issue, special interest lobbies, but to also look at the background of this coordinated campaign. Look at the information given to the members of these special interest groups by their national organizations. Read the reports to annual meetings where lobbyists promise their members that there will be hearings on ATF abuses which would—in the words of one prominent progunner—"serve the vital purpose of blocking the opposition's own efforts."

There is a now classic story of a law professor who held a ball in his hand before his class. He asked the students to describe the ball. The class described the ball as white. The professor then turned the portion of the ball previously hidden by his hand toward the audience. That side of the ball was totally black. The professor then delivered the obvious lecture on the need to study all sides of an issue before pronouncing judgment.

I suggest to you that much of the hue and cry about alleged BATF abuses is being created by a powerful, wealthy, single-issue lobby which is infamous for only showing half the ball. Our testimony aptly illustrates this point. I am sure that every member of this subcommittee is aware of how these same interests have distorted the truth in the past, have falsely cried wolf to stir up a massive postcard-writing machine, used half-quotes, half-truths and bumper-sticker slogans to bludgeon any idea, institution or individual that stands in their way.

This committee and the press must not take all of the scare stories given to you today at face value. You must look more deeply at each case than previous hearings on this subject have done. I would also remind you to consider the source. You know the record of some of the progun lobbies as well as I. Indeed, some members of this committee may have already felt the sting when something you have said, done or not done has not met with their standard of purity.

If these groups are truly in favor of reform and not simply destruction of the BATF, they would get behind a move to transfer the firearms responsibility of the agency from the Department of the Treasury to the Department of Justice. That is where these activities should be housed.

Thank you, Mr. Chairman.

Senator BAYH. Thank you, Mr. Beard. The reason we are holding these hearings is to try to get a look at both sides of the ball. Your committee is primarily concerned about handguns; is that accurate?

Mr. BEARD. That is correct; handguns and only handguns.

Senator BAYH. Why?

Mr. BEARD. Because we find handguns to be the major responsibility for violation, misuse, loss of life, death and limb and property in our society. Rifles and shotguns serve a very vital purpose in our society for hunting and sporting weapons. Handguns, as far as we are able to determine, simply serve no purpose other than to kill human beings, which it does very successfully.

There are close to 30,000 of our American citizens killed each year with handguns. We think that is a tragedy not necessary any longer in our society.

Senator BAYH. I suppose that as much as you relate hand weapons to criminal activity and human suffering, for the Treasury folks to do the job that ought to be done, you assume they would concentrate their efforts on that particular type of weapon.

Mr. BEARD. We certainly would like to see them concentrate on handguns. Again, let me say this is probably not a job the Treasury ought to be doing. It is a job the Justice Department really ought to be doing.

Senator BAYH. That is where it is now, so we have to look at the agency that is presently functioning.

Mr. BEARD. But I would hope that is one of the questions you would look at when you are going into the question of oversight of ATF, whether it is properly lodged in the Treasury Department at this time.

Senator BAYH. But you think the emphasis in implementing the law and seizing and doing what ATF feels is necessary should be concentrated on handguns?

Mr. BEARD. Yes, sir. Handguns are the problem. If you look at the statistics, you see that rifles and shotguns do not account for a major loss of life in accident, suicide, or intentional murder in our society. Handguns do. It is estimated that handguns account for something like 20 percent of the total firearms population of our society, but they account for 90 to 95 percent of the abuse of firearms in our society.

If that weapon provides no value to our society, why do we continue to allow its indiscriminate use and possession?

I have one point I would like to reiterate. Our study has found that too many people are being allowed to deal in these dangerous, deadly weapons without proper State, local, and Federal laws being adhered to. That is one of the concerns we have, that ATF has not properly policed the licensing procedure that they have.

Senator BAYH. I noticed in some oversight hearings our Appropriations Committee held in April of this year the BATF's own figures

showed that in the period July 1, 1979, to March 31 of this year the Bureau seized 3,740 weapons. That was almost equally divided between long guns and handguns. Apparently, by your definition of where the problem is, the enforcers are missing the mark.

Mr. BEARD. We obviously feel the concentration in terms of enforcement ought to be on handguns. However, I believe that in most cases when a person is dealing in firearms they do not deal exclusively in handguns.

In a number of those cases where a handgun is the responsible cause for the initial arrest, there are a number of other types of firearms in that particular person's possession that get caught up in this net.

Senator BAYH. Let me ask you about specific kinds of examples cited by the preceding witness. For different kinds of activities, they were arrested and/or indicted, fingerprinted, pictured, handcuffed, taken from their homes. Their weapons were confiscated. They were never taken to trial.

Mr. BEARD. I would have to say, Senator, I just cannot comment on that because I don't know any of the facts on the cases except the very selected facts that were given to you orally this afternoon. I would not be willing to comment on something like that until I had looked at a lot more information.

Senator BAYH. Can you see any reason for confiscating weapons ostensibly because of their relationship with an illegal act and then keeping the confiscated weapons after the charges have been dropped?

Mr. BEARD. I wouldn't care to comment on that. That is not an area I am competent in discussing.

Senator BAYH. Are you competent in discussing whether it is right to keep the firearms if the act is illegal?

Mr. BEARD. I am sorry; I didn't hear the question.

Senator BAYH. Could you comment on whether it is right to keep the firearms if the act is illegal?

Mr. BEARD. Right for the Bureau of Alcohol, Tobacco, and Firearms to keep them?

Senator BAYH. Yes.

Mr. BEARD. I am not a legal scholar.

Senator BAYH. I don't want to put you in an embarrassing position, but I was of the opinion that the purpose for confiscation was that the weapon was a lethal weapon being used in an illegal manner, and thus it was like cars used in smuggling whiskey, subject to confiscation. But if it is not an illegal act and the case is not prosecuted, then I can't understand why the weapons are kept.

Mr. BEARD. Well, again, I would say I simply don't feel qualified to answer that, other than to say we think people ought to obey the law.

Senator BAYH. Apparently I am not phrasing the question properly. If they weren't obeying the law, if they did violate a law, then why weren't they prosecuted?

Mr. BEARD. I just do not feel competent to answer that.

Senator BAYH. I don't want to push you beyond that.

I appreciate you gentlemen taking the time to let us hear your thoughts on this. I hope we can keep in touch. I hope you won't be afraid to let us have your thoughts as we go ahead here on this matter.

Mr. BEARD. Thank you very much.

Senator BAYH. One additional question. Have you given any thought to what would happen—I think we all want to accomplish the same thing, you and I and the third parties that might be on the opposite side of the question of view on this, all would like to see no one injured. We would like to see weapons not used in any illegal manner.

Do you suppose it would be helpful in accomplishing that purpose if we were a little more stringent in enforcing those penalties on the use of a firearm in the commission of a felony?

Mr. BEARD. Absolutely. We have constantly maintained that position. This is one area in which we have some agreement with some of our opposition organizations, that illegal use of weapons ought to be prosecuted to the full limits of the law. That is the reason we support legislation such as the mandatory sentencing law in New York State and the type of legislation in Massachusetts, the Hartley-Fox legislation.

Senator BAYH. I authored an amendment that passed the Senate that would have provided for mandatory sentencing for the commission of a felony with a firearm, as well as for the sale of narcotics to those that are not addicted. I am a strong one for due process, but it seems to me at one point of the game we have to think of the due process of the people who are being shot at, whose property is being taken away from them in the commission of a crime. One way to do that is to say, "OK, if you are going to pick up a gun, a firearm, and point it at somebody in a manner that is threatening, the commission of a crime, be prepared to go to jail," period.

Mr. BEARD. You may remember, Senator, a number of member organizations of our coalition supported that legislation that you proposed. A couple of our organizations did not, for civil liberties questions. But the majority of our membership was involved in that.

Senator BAYH. That was one of those few times I found myself on the other side of a civil liberties question with some of those organizations. I guess I was wondering whose civil liberties we were protecting at that particular time.

Thank you, gentlemen, I appreciate your testimony.

Mr. BEARD. Thank you.

[The prepared statement and exhibits submitted by Mr. Beard follow:]

#### PREPARED STATEMENT OF MICHAEL K. BEARD

My name is Michael Beard. I am Executive Director of the National Coalition to Ban Handguns. With me today is Mark Tuller of the law firm of Arnold & Porter.

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We therefore strongly oppose current efforts to limit BATF's authority and emasculate the 1968 Gun Control Act. We would like to include for the record a series of newspaper editorials that demonstrate public opposition to gutting the existing law. (Exhibit 1-5 hereto.)

Although 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 Licensees ("FFL's") without applying reasonable standards consistent with the 1968 Gun Control Act. This has led to an army of licensees 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 one story in the New York Times. We would like to submit that article which details how "car-trunk" federal licensees facilitate the introduction of criminal firearms into New York City. (Exhibit 6 hereto.) The article states:

Possession of a Federal firearms dealer's license—which can be acquired for \$10 from the bureau—entitles the bearer to ship and receive guns through the mails and order guns in quantity from wholesalers. Federal law requires dealers to maintain records on each gun they receive and sell, but agents concede that regulation is at best sporadic. A Federal license can be obtained with comparative ease by someone with no felony convictions who files an application to engage in the retail firearms business. There are 176,000 such license holders nationwide. In addition, many states and localities have separate licensing requirements. Violation of the Federal regulations is punishable by five years in prison and a \$5,000 fine.

We cannot run much of a compliance program, said Wallace Hay, the agent in charge of the office of the Bureau of Alcohol, Tobacco and Firearms in Philadelphia, a city thought to be a principal source of New York's illegal guns. We have 7,234 dealers in Pennsylvania, and only 2,000 are storefront dealerships. Some of these people don't have regular business hours.

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. (Exhibits 7 and 8 hereto.) The survey details the extent to which BATF issues licenses to dealers who are not bona fide businessmen.

#### CIVIL RIGHTS ALLEGATIONS

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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, as we understand it, 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 critical 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?

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 acts 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.

On April 19, 1978, the Hayes are reported to have discussed in detail how they worked with a confederate named Sam Davidson to make unreported multiple gun sales. Those weapons were then apparently sold to illegal aliens:

B.A. [J.R. Alexander (BATF Special Agent)] Well, I just, I might like to maybe buy, if I bought ten of these cheap ones and buy maybe one or two of those.

W.H. [Willie Hayes] I've got about ten or twelve of those back there.

B.A. Yeah.

D.C. [Danny Carpenter (BATF Special Agent)] Well, you just, you just plan on taking 'em all and I can come in, no?

W.H. You just make out the registration, see.

D.C. I see.

W.H. And then just put it in at when it (unintelligible) so it wouldn't look so obvious.

D.C. Oh, oh I see.

B.A. Talking about just leaving the dates off, right?

W.H. And then just put em in our records.

B.A. Okay.

W.H. When they're.

D.C. When they're.

B.A. Written, see. If I bought that many, are you gonna give me any trouble?

W.H. That's what I'm telling you. That's what we would do.

B.A. Oh, okay.

W.H. We'd just put em in a little at a time so it wouldn't be so obvious.

B.A. Yeah, and that'd be easy on me cause I wouldn't have to come back.

W.H. So you wouldn't have to figure (unintelligible).

W.H. Well, but, you remember Sam, that kid that was in here that, he buys at least, he buys two guns a week.

W.H. That's all you can buy.

B.A. Who does?

W.H. That kid that here.

B.A. That one that said he was a pocher.

W.H. Yeah.

He buys two guns almost every week of his life.

D.C. Gee.

B.A. He does?

W.H. And he sells 'em to the wetbacks and he buys.



*Later in the same conversation*

W.H. He, [Sam Davidson] he takes 'em out and sells 'em.

B.A. Oh.

W.H. And then he brings us the money.

B.A. Oh, I see. I can't tell 'em (unintelligible) [legally]?

W.H. No, not for us.

B.A. Oh.

W.H. I have no idea, but, ugh, I don't (unintelligible) guns oh, once in awhile he'll sell a used gun, just because. We've got out guns money invested.

B.A. Yeah.

W.H. And he doesn't have anything invested except his time and so we have to finance them, actually we are financing them. He's using our money, bank money.

B.A. Yeah, I see what you're talking about.

W.H. That's why we don't sell em.

*Later on that same day Paul Hayes produced a miniature shotgun*

P.H. [Paul Hayes] Did you ever see a 410 gauge pistol.

B.A. No, I never have.

P.H. Well, I'll show you one cause you'll never see another one.

B.A. Okay.

P.H. They are against the federal law.

*Later in the same conversation*

B.A. My goodness, boy they are something else.

P.H. That's a wicked rascal. They why they outlawed it here.

D.C. That's nice. (unintelligible)

D.C. I like that.

B.A. The 'The pistols are against the law, aren't they?

P.H. Yeah, the federal law.

B.A. Huh, well I'd better wipe my fingerprints off.

P.H. Ain't nobody gonna get that gun, that's mine.

On April 5th Willie Hayes apparently discussed (with BATF undercover agent Jack Barnett) how they handled stolen merchandise which was bought from illegal aliens:

J.B. Illegally aliens or wetbacks come through here.

W.H. Yes.

J.B. Really?

W.H. Thousands and thousands of 'em. (unintelligible)

J.B. Yeah, a little bit (unintelligible)

J.B. Ya'll do very much pawning business?

W.H. A lot.

J.B. Do ya? What percent of 'em don't pick up their guns and stuff? (unintelligible)

*Later in the same conversation*

J.B. What's the deal on another kind of gun, like a. well, one something like this. Somebody bring it in, you kinda of thought it was hot, what would you do with it? Just keep it?

W.H. We'd put it the rec-, we wouldn't put it in the federal book and ugh, we'd sell it without showing it.

J.B. Yeah.

W.H. Somebody that we know that was interested in a gun like that. But we wouldn't and we would tell 'em, we always tell 'em, it maybe, that it may be pretty hot.

J.B. They may be pretty hot, huh?

W.H. If they's don't want to buy it, that's all right.

On April 5th Willie Hayes apparently bragged about dealing in unrecorded handguns as well as a willingness to obliterate serial numbers in an attempt to render the weapons untraceable.

J.B. Boy, that's a little booger.

W.H. Isn't that a little cute, little thing?

J.B. I never have seen one that little.

W.H. I meant to tell him and I forgot it and it's not registered, ha ha.

J.B. Ah, oh, not registered.

W.H. Not registered. See, so I don't have to account for it.

T.A. Oh.

W.H. So.

J.B. This thing here's only go a, must be a pretty old one. 62224. I guess that might mean something, huh?

T.A. [T.J. Alford (BATF Special Agent)] What is that, the serial number?

W.H. 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.

*BOULIN CASE*

The case of Richard Boulín offers a perspective that illustrates the study we will be summarizing shortly—a federal firearms licensee who was conducting a bona fide business. Mr. Boulín attempted to manipulate the firearms licensing laws to attain an illegal end.

The *Boulín* 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 seven-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's hard cause you can't make a living."

The Boulín 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, Boulín then resold the guns to certain trusted buyers. By this trick he sold handguns without any paperwork or Maryland Police clearance. Clearly, he knew he was stepping over the line:

"I want to get rid of my stuff too cause I'm worried if I keep doing these shows ATF's going to come waltzing in one of these days."

*Later in same conversation:*

"Some skinny guy who looks like he's just gonna shop around. Shit I'm not going to sell to that kind of guy cause really they'd have a hard time doing anything with me with you, cause I gave you my personal guns you know what I mean and they're still going to have to prove that that was you know guns that had been in my businesses which they haven't."

Boulín was, of course, wrong on two counts—the guns were from his business, and it was proven by BATF. He was convicted.

Boulín'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 Boulín gave no such indication. To the contrary he described a continuing relationship with a distributor:

Northeast, [a dealer] they just ship me you know I have a standing agreement with him. Like they ship me one Python or Colt or something every month automatically cause I buy a lot of stuff from him.

Later in the same meeting Boulín described his practice of going to a wholesaler, Sales and Service Ltd. of Silver Spring, and using his dealers license to make a discount purchase which he would then sell to the informant:

BOULIN. Sales and Service I can call him means you're gonna have to do forms on them you know what I mean, there's no way. Straight from the distributor I got to pick them up from the distributor and I'm sure he's going to charge, I don't know what he's going to charge me. Let me call the guy first and find out what he's going to charge me.

In fact Boulín 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:

INFORMANT. Uh huh. What do you got?

BOULIN. Well, I'll go ahead and move those two Rugers probably and I got an Army 45 I'm thinking about moving.

INFORMANT. Uh huh.

BOULIN. I got a colt Python six inch nickel I'm—

INFORMANT. Yeah.

BOULIN. Uh, it was the same situation as what we were talking about.

INFORMANT. Uh huh.

BOULIN. You know what I'm talking about.

INFORMANT. On or off.

BOULIN. Off.

INFORMANT. Okay.

BOULIN. Okay, so you know, if you're interested.

The "On or Off" refers to whether the deal would be through the business or private, i.e., 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 "hate[d] niggers" and that as a Montgomery County policeman his favorite assignment was "the D.C. line you know right there 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 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 in 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.

#### THE STUDY

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 one hundred thirty-six holders of federal firearms dealers' licenses in 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 less than a tenth of the licensees listed their telephone in the Yellow Pages under "guns"; 48.7 percent of the licensees required to do so did not maintain regular business hours; nearly half of those reached answered their telephones 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, half 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.

#### EXHIBIT 1

[From the Washington Post, Sept. 3, 1980]

#### GUNRUNNERS' SNEAK ATTACK

It's been a busy summer for the master gun-worshippers of the National Rifle Association—whose troops have been all over Capitol Hill, methodically whipping up an ugly legislative surprise for all who believe in reasonable controls on handgun traffic. The NRA threat this year is double-barreled: If unchecked, it would mean 1) the end of almost all *existing* federal regulations of guns and 2) a go-ahead for handgun purchases by certain convicted felons and for free-wheeling interstate traffic in all sorts of pistols, machine guns and other firearms that can hardly be considered as sporting equipment.

Besides the old pistol-packers' game of loading key politicians' pockets with campaign contributions, this round of gun-lobby efforts includes sneak attacks to undo votes just taken in Congress that have gone against the NRA. Thanks to cooler heads in the House and Senate committees that traditionally consider gun-control legislation, the gun lobby's initial efforts were voted down. But now the NRA, having disguised its free-for-all gun proposal as a "Federal Firearms Reform Bill," seeks to slip its proposals into law in the form of an amendment to the Criminal Code Bill. In the House, where a committee voted 22 to 5 against the effort to repeal gun controls, a variation may be tried.

Whatever the camouflage, people shouldn't be fooled by this destructive legislative attempt to repeal the reasonable, minimum gun controls that do exist. The 1968 Gun Control Act, which the NRA would repeal, was enacted after the assassinations of Robert F. Kennedy and the Rev. Dr. Martin Luther King Jr. to put some basic safety rules on the books: Licensing of gun dealers, bans against certain types of weapons such as machine guns, prohibitions against sales to out-of-state residents and against gun trafficking by convicted felons.

None of this has, or would, disarm the sportsman. National polls have shown time and again that a solid majority of Americans support federal handgun controls to place some responsibility on handgun ownership and handgun commerce. If thoughtful legislators respect this desire, and if they stop listening to a narrow special-interest lobby, the scant controls now on the books can be preserved.

#### EXHIBIT 2

[From Newsday, Aug. 11, 1980]

#### GUN DECONTROL IN CONGRESS

The National Rifle Association shells out plenty of campaign contributions, but the pro-gun forces are so strong in some parts of the country that money isn't needed to make congressmen timid about trying to control handguns. One congressional staff member estimates that fully one-third of the votes in his western district turn on the gun issue alone.

For the first time in years, the chances of meaningful handgun legislation are so poor that the NRA isn't even concentrating on fighting it. Instead, it's pushing a bill that would further erode the already pitifully ineffective federal gun control laws. Last month, the NRA got powerful support from the Republican platform, which states:

"We believe the right of citizens to keep and bear arms must be preserved. Accordingly, we oppose federal registration of firearms . . . We . . . support congressional initiatives to remove those provisions of the Gun Control Act of 1968 that do not significantly impact on crime but serve rather to restrain the law-abiding citizen in his legitimate use of firearms."

That's shorthand for making it easier to ship and sell handguns across state lines, making it harder to convict people accused of violating the federal handgun laws and making it possible for people convicted of federal felonies to own guns.

The "congressional initiative" that would accomplish these foolhardy objectives was taken by Sen. James McClure (R-Idaho) and Rep. Harold Volkmer (D-

Mo.) last fall. It has now accumulated 53 sponsors in the Senate and 157 in the House. Meanwhile, a gun-control law sponsored by Senate Judiciary Chairman Edward Kennedy (D-Mass.) and House Judiciary Chairman Peter Rodino (D-N.J.) is languishing.

As we've said before, New York's recent action toughening sentences for gun possession may help stem the flow of blood in this state, but gun control laws must be applied nationwide to be truly effective. It's simply too easy to move guns from one state to another.

So it's crucial that the millions of citizens in this country who want to put a stop to carnage by gun—and poll after poll shows they're in the majority—contact their senators and representatives and urge them to support stricter federal handgun controls. The NRA can muster hundreds of thousands of postcards virtually overnight; the other side must show some muscle of its own.

### EXHIBIT 3

[From the Youngstown, Ohio Vindicator, Aug. 12, 1980]

#### OUTRAGEOUS GUN "REFORM"

Under the alluring title of "Federal Gun Control Act," a bill now in Congress not only undercuts the present inadequate federal gun legislation, but brazenly defies public opinion as shown in poll after poll after poll.

The bill is the handiwork of the National Rifle Association, long the most effective instrument of the gun lobby. Perhaps it was the harmless title of the bill, perhaps it was substantial campaign contributions from the NRA that accounted for the impressive list of cosponsors the bill quickly attracted. At last count, these included 53 senators and 157 members of the House, including Rep. Lyle Williams (listed for \$1,600 in NRA campaign funds).

From the name, one might conclude that the bill's purpose is to tighten up the Federal Gun Control Act, adopted in 1968 after Robert Kennedy was assassinated. Quite the contrary: Harlon Carter, executive vice president of the NRA says frankly the purpose is to dismantle provisions of the '68 gun control act.

Among other things, that law forbade importation of cheap handguns, the "Saturday night specials" that have taken so many lives. One of its loopholes was failure to ban importing parts. Thus, cheap guns, assembled from foreign-made parts, still are available. The law needs to be bolstered in other respects as well.

The NRA-backed bill would abolish the requirement for a license to make interstate gun transfers. It would allow persons convicted of nonviolent federal felonies to own guns. It would require a prosecutor to prove that a gun law violation was committed *knowingly*, and it would limit the evidence used by the Bureau of Alcohol, Tobacco and Firearms in proceeding against license violations.

Congress has before it a sound bill to control handguns. It is the Kennedy-Rodino bill; one of its sponsors is easy to identify as a man with good reason to seek handgun control.

It is inconceivable that Congress should go along with the NRA's bill instead of Sen. Edward Kennedy's.

What will it take for our elected representatives to develop the courage to defy the NRA and act for the public good?

Must it be another assassination?

### EXHIBIT 4

[From the Chicago Sun-Times, Aug. 29, 1980]

#### NEW GUN BILL FAR OFF TARGET

The gun lobby has lined up 58 co-sponsors in the U.S. Senate and 175 in the House for another attempt to weaken the already weak federal gun-control law.

Thwarted by judiciary committees in both houses, the gun proponents have de-

cided to try to attach their proposal by amendment to a bill revising the federal criminal code.

The measure would seriously limit the power of the Bureau of Alcohol, Tobacco and Firearms to control nationwide gun traffic.

It would, for example, prohibit the bureau from routinely inspecting gun dealers to make sure they're keeping proper records. Without proper records, police will be unable to trace firearms used in crimes.

It also would allow felons to buy handguns, so long as their felonies weren't "disabling crimes." That would make guns available to those convicted of, among other things, illegal trafficking in guns or drugs.

The bill would do away with the useless requirement that ammunition sales be registered, but that's about the only proposal that is on target in this otherwise bad bill.

House Republicans Philip M. Crane, Daniel B. Crane, Tom Corcoran and Paul Findley are the only Illinoisans co-sponsoring the bill. But others might vote for it unless their constituents advise them not to.

### EXHIBIT 5

[From the Montgomery Alabama Journal, June 27, 1980]

#### GUN DECONTROL

Just over a year ago, supporters of federal gun controls seemed to have an excellent chance of getting their long-stalled legislation through Congress. Now, however, they face a hard fight just to keep the existing legislation on the books.

Nearly half the Senate and one-fourth of the House have signed on as co-sponsors of a bill introduced by Sen. James McClure and Rep. Harold Volkmer which would weaken the federal government's present controls over gun sales and ownership. In contrast, a gun-control bill sponsored by Sen. Edward Kennedy and Rep. Peter Rodino has found only 49 co-sponsors in the House and seven in the Senate.

If the McClure-Volkmer bill passes, the government would be required to prove that a defendant "knowingly" violated the law in order to obtain a conviction, and individuals could buy or borrow guns outside their home states more easily. In addition, convicted felons, now prohibited from owning guns, would be allowed to do so unless convicted of a "disabling crime."

One reason for the bill's popularity in Congress is some widely publicized abuses of authority by the Bureau of Alcohol, Tobacco and Firearms, the agency which enforces federal gun-control regulations. In recent years a number of gun owners, including Vietnam veterans, have been jailed and tried on charges of highly technical violations which courts refused to uphold.

By claiming that their bill would eliminate such abuses, McClure and Volkmer have won support from civil-liberties as well as anti-gun-control forces. But their cure sounds worse than the disease.

Not only would it make it easier for more people, including those with a demonstrated disrespect for the law, to obtain guns, it would make it distinctly harder for the government to convict violators of what was left of the law.

It should be possible to eliminate abuses of the existing gun-control laws without weakening their already scanty protection against criminal trafficking in firearms. The high level of congressional support for McClure-Volkmer is really indicative, not of any deep concern for civil liberties on the part of most congressmen, but only of their fear of the powerful gun lobby.

### EXHIBIT 6

[From the New York Times, June 16, 1980]

#### DEALER IN ILLEGAL GUNS: BUSINESSMAN THRIVING IN FLOURISHING MARKET

Once a month, an inconspicuous late-model rented station wagon drives into Manhattan loaded with neatly stacked cardboard boxes. In the boxes, according to a gun dealer named Sam Yang, are brand-new revolvers and semi-automatic pistols.

For nearly 10 years, one of Mr. Yang's employees has made the short trip—to Pennsylvania, Vermont or other nearby states—to pick up the dealer's monthly shipment. Last year, by his own rough calculations, Mr. Yang realized nearly \$100,000 from his thriving business.

He did not, however, report this income to tax authorities, for he is an illegal gun dealer, hijacking arms shipments and transporting guns across state lines and selling them without a license.

Mr. Yang (a pseudonym) and other illegal dealers are the core of a tight network that the police estimate has flooded New York City with two million illegal handguns to date. He regards himself as typical: "I'm a distributor," he said. "I'm the average Joe who's doing it."

And, he said, New York State's new gun-control law, which imposes stiffer penalties for illegal sale or possession of unlicensed handguns, will have little effect on his business. "There is always a market for guns," Mr. Yang said.

To most of his friends and the rest of the world, Mr. Yang is a respectable restaurant manager. Every day he attends to the many details of a small New York restaurant, known as a comfortable neighborhood place with good, inexpensive food.

Mr. Yang dresses conservatively and displays no signs of ostentation. In soft, deliberately chosen words, he discusses his business with the dispassion of a knowledgeable necktie salesman. There is no hint of bravado. And he never carries a gun.

Mr. Yang is the middleman who oversees the "drop" of illegal weapons into the New York City pipeline and their distribution on the city's streets, smoothed at each step by systematic cash payments. Except for police officers and certain others who require handguns in their jobs, it is nearly impossible for the average citizen to buy a gun legally in New York.

Legitimate gun dealers are licensed by the Federal Government and, according to Mr. Yang, the tens of thousands of these dealers in New York and surrounding states provide a substantial percentage of his inventory, wittingly or otherwise.

"We're out to make money and they're out to make money," Mr. Yang said. "We set it up with dealers to arrange to all of a sudden get ripped off. They get from us and they get from the insurance companies."

"Of course, there are only four or five hits a year," he added, explaining that an individual dealer could be used only once to avoid suspicion by the police and insurance companies.

Michael LaPerch, regional director of the Federal Bureau of Alcohol, Tobacco and Firearms, which issues the licenses and investigates violations of Federal gun laws, said: "There is no doubt that such complicity exists. We have had such cases, and there seems to be an increase in the theft of guns."

Another senior Federal agent, who asked not to be identified, complained that proof was either hard to come by or simply not worth the effort.

"We had a case where there was a quick hit on a gun store," he recalled. "The alarm in the store went off the local police were there in something like five minutes, but no one was there. They called the owner down and he said there were 50 to 70 guns stolen, but it was too quick. In retrospect, it looked like a scam."

"And if the guns are ever used in a crime, the store owner says, 'Hey, what do I know about these guns? They were stolen.'"

#### DEALING WITH THE DEALER

Mr. Yang said he acquired firearms in a number of other ways as well. "One way," he said, "might be to go out and talk to a dealer, feel him out, and tell him straight out what you have in mind."

Such dealers, many of whom trade only with collectors and do not have retail establishments, often agree to sell some of their stock off the books, Mr. Yang said. "Another way is to have four or five people out there buying guns for you," he added.

Possession of a Federal firearms-dealer's license—which can be acquired for \$10 from the bureau—entitles the bearer to ship and receive guns through the mails and order guns in quantity from wholesalers. Federal law requires dealers to maintain records on each gun they receive and sell, but agents concede that regulation is at best sporadic. A Federal license can be obtained with comparative ease by someone with no felony convictions who files an application to engage in the retail firearms business. There are 176,000 such license holders

nationwide. In addition, many states and localities have separate licensing requirements. Violation of the Federal regulations is punishable by five years in prison and a \$5,000 fine.

"We cannot run much of a compliance program," said Wallace Hay, the agent in charge of the office of the Bureau of Alcohol, Tobacco and Firearms in Philadelphia, a city thought to be a principal source of New York's illegal guns. "We have 7,234 dealers in Pennsylvania, and only 2,000 are storefront dealerships. Some of these people don't have regular business hours."

#### "MISSING" SHIPMENTS

Gun shipments from manufacturers to wholesalers, or from wholesalers to dealers, are also diverted periodically to illegal dealers, according to Mr. Yang.

"A typical case is a shipment going to a store and the shipment is hit, or just missing," he said. "The manufacturer says he swears the shipment was on the truck and the shipper says he thought so but can't be sure because sometimes the papers aren't there."

Last year 111 shipments of guns were stolen in New York City, and Federal agents say even discovering that a shipment of guns has been stolen is difficult.

"It takes us 30 to 60 days to find out guns are stolen," Mr. Hay said. "We have to trace them through the trucking company, and individual employees may falsify records so that no one knows they were stolen in the first place. And that takes another 20 to 30 days to unravel, and by that time the trail is really cold."

After Mr. Yang's employee notifies him that a shipment has arrived safely in New York City, Mr. Yang said, the boxes are unloaded at night at one of several secret storage areas.

"The guns usually sit for a week to make sure nobody has come with them," he said. "Only once, or twice have I ever felt the cops even remotely on to me. If they get one of my workers, they can't get me, they can't get my other workers and they can't get my dealers. My workers don't work with one another."

Mr. Yang entered the illegal gun business in 1970 almost by accident. "I started with one gun," he said. "I paid \$50 for a .45 automatic stolen from the Army. It started slowly, through relatives, and it hasn't ended. After a year or so, I started taking on workers. It's almost like opening a business. It's like having a candy store. There's a constant demand."

Mr. Yang rarely handles the guns himself. His five workers distribute each month's shipment through regular buyers, find new outlets or handle sales to individual customers.

"We won't sell to just anybody," he said. "Gangs are a major outlet. We talk to five or six gangs who are out buying guns. Guns are part of their mode of living, their economic survival. They are involved in drugs, fencing, blackmail and guns."

#### GANGS PROVE EFFECTIVE OUTLETS

Conversations with former and current New York City gang members tend to confirm Mr. Yang's contentions. As one former gang member explained: "The supplier sells 10, 12, maybe 14 guns to the gang because the gangs have established themselves as reputable middlemen. Dealers go through gangs because they know that gangs won't blow their cover."

Street gangs, which in the last five years have dwindled in membership, are effective outlets for illegal guns, the former gang member said.

"All the people I sell guns to are my own age," said one Manhattan gang member, who looks much younger than his 17 years. "It's easier for kids to get guns because they don't have 'mans-in-blue' that young." He was referring to police officers who might buy guns on an undercover basis.

"People want guns, so gangs sell guns," said another longtime gang member from the Bronx, who asserted that he regularly carried what he called a ".38 police gun."

"My workers get a percentage from what they sell," he added. "The more they sell, the more they get," he added. He said they sold to bar owners, store owners and "people they've checked out."

#### UNKNOWN CUSTOMERS AVOIDED

Mr. Yang's salesmen will not deal over the counter with unknown customers. "Say you are in a grocery store telling the grocer about crime in the neighbor-



hood," he said. "The grocer listens, then he will talk to my man about you. The next time the grocer sees you he will say, 'There's a man on the corner who might be able to help you out with what you want.'"

"Then my worker will talk to the potential customer, sometimes for an hour, asking questions like, 'What do you need a gun for, or why don't you go to the police?' He hears their life story and can judge if they are a good risk or not. If so, you would give my guy money, say \$150, and then he would call you up and tell you where to pick the gun up."

Mr. Yang refuses to handle used guns. "Everything is new—straight from the box," he said. "There's no other way. I'd never deal a used gun because if it was ever used to shoot someone and you get caught with it, you're the one in trouble."

Unlike the case with other small businesses, inflation has apparently not hampered sales. "Prices have tripled over the past 10 years," Mr. Yang said, "but business remains good."

#### LITTLE RISK, MUCH MONEY

An indication that prices are increasing in the illegal-gun business was provided by details of an undercover investigation against what Federal agents in the city describe as one of the biggest gun-dealing operations in the Bronx. During the yearlong investigation, agents paid more than \$300 apiece for four handguns. The cost of new illegal handguns is at least twice that of their regular retail price.

Mr. Yang attributes his success and continued participation in illegal gun trafficking primarily to what he sees as the laxity of the police and the courts. "Personally I'd like to stop doing it, but the risk isn't there," he said with a shrug. "The money is too good. Maybe if the police were given the power they had before John Lindsay took over this would stop."

He is not oblivious to the implications of his trade. "I know it hurts people," he said. "It used to cost 10 grand to get someone killed. It only costs \$200 today. Today people spit on cops."

"When I was younger, it was a lot harder, riskier. A lot more police had a lot more power and respect. To tell the truth, I probably wouldn't be in this if they still had the power."

#### EXHIBIT 7

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, Apr. 17, 1980)

"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 percent 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 fraud-

ulent 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 dealers 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., 80th 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") (Italic 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  $\frac{1}{4}$  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	100	.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 inviolence \* \* \*." 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 legiti-



mate 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, New York.

"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, South Dakota.

"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, Virginia.

*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.

Respectfully submitted,

SAMUEL S. FIELDS,  
Field Director.

Enclosures.

STATE OF CONNECTICUT,  
GENERAL ASSEMBLY,  
Hartford, Conn., April 16, 1980.

Mr. G. R. DICKERSON,  
Director, Bureau of Alcohol, Tobacco and Firearms,  
Washington, D.C.

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,  
State Representative.  
THOMAS F. WALL,  
State Representative.  
IRVING R. STOLBERG,  
State Representative.  
RONALD L. SMOKO,  
State Representative.  
JOSEPH CARBONE,  
State Representative.  
WILLIAM R. DYSON,  
State Representative.  
GAIL ORCUTT,  
State Representative.

NEW HAVEN, CONN., April 16, 1980.

Mr. G. R. DICKERSON,  
Director, Bureau of Alcohol, Tobacco and Firearms,  
Washington, D.C.

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,

JOANNA DEMBER, Secretary.

APRIL 16, 1980.

Mr. G. R. DICKERSON,  
Director, Bureau of Alcohol, Tobacco and Firearms,  
Washington, D.C.

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,  
JUDY YOST,  
RUTH GOODRICH,  
ROBERT TEITELMAN.

DEPARTMENT OF POLICE SERVICE,  
New Haven Conn., May 9, 1980.

SAM FIELDS,  
Field Director, National Coalition to Ban Handguns  
Washington, D.C.

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, Chief of Police.

OFFICE OF THE MAYOR,  
West Haven, Conn., April 22, 1980.

Mr. G. R. DICKERSON,  
Director, Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C.

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, Mayor.

DEPARTMENT OF POLICE SERVICE,  
West Haven, Conn., May 7, 1980.

Mr. G. R. DICKERSON,  
Director, Bureau of Alcohol, Tobacco and Firearms,  
Washington, D.C.

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, Chief of Police.

## EXHIBIT 8

## COMPLIANCE OF FEDERAL FIREARMS LICENSEES WITH FEDERAL, STATE AND LOCAL LAWS AND STANDARD BUSINESS PRACTICES

## 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 licenses 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 their 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>

<sup>1</sup> "Handgun Crime Control: Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on Judiciary," 94th Cong., 1st sess., at 52 (statement of David R. MacDonald) (Apr. 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.

## 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.

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).

<sup>3</sup> National Firearms Act, 48 Stat. 1236 (1934), as subsequently amended.

<sup>4</sup> Federal Firearms Act, 52 Stat. 1250 (1938), repealed by Public Law No. 90-351, § 906, 82 Stat. 234 (1968).

<sup>5</sup> Federal Firearms Act, § 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 No. 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 C.F.R. § 178 et seq. and 18 U.S.C. § 923.

<sup>9</sup> 18 U.S.C. § 923(a) (1), (2) and (3); (b).

Type and license	Number of licenses as of	
	Annual fee	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.

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% 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.

<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.

§ 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. Shultz*, 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. §§ 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 C.F.R. § 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 C.F.R. § 178.127 requires licensees to deliver their firearms dealer records to the Regional Commissioner within 30 days after going out of business.

c. *The license 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 C.F.R. § 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. § 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 C.F.R. § 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 license 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.

<sup>13</sup> In *Bonham v. ATF 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 C.F.R. § 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).

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 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 (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 subject 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	.7
Wallingford.....	16	11.8
West Haven.....	12	8.8
Woodmont.....	1	.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.

<sup>14</sup> 27 C.F.R. § 178.57. See also 27 C.F.R. § 178.127.



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
Total discontinued.....	29	100

#### 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

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
Total changed address.....	30	100

#### 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" LICENSEES)

	Number of subjects	Percentage
Possessing required permit.....	59	80
Failing to possess required permit.....	14	20
Total in sample.....	73	100

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%) were operating without a direct violation of federal, state or local law.

TABLE X.—MAJOR VIOLATIONS PER DEALER

	Number of subjects	Percentage
No major violations.....	31	22.8
1 major violation.....	39	28.7
2 major violations.....	57	41.9
3 major violations.....	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 are 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 effort. 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.....	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 C.F.R. § 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?"

(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.....	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.....	129	100.0

<sup>1</sup> Data not available on seven 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.....	72	100.0

<sup>1</sup> Data not available on four "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 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	Percent
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
Business response.....	36	48
Total.....	75	100

<sup>1</sup> Data not available on six "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 (p. 32).....	31	38.3
Premises open to general public (table XII).....	42	51.1
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 more 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 (total).....	42	30.1
Total.....	136	100.0

#### VI. CONCLUSION

Based on the New Haven survey it is clear that the 1975 assertions by Assistant Secretary David R. MacDonald ("less than 30 percent [of federal firearms dealers] actually conduct a bona fide business") and the 1978 pilot project in Chicago are valid assessments of the situation.

Of 136 subjects, only 22.8 percent were in compliance with federal firearms statutes, as well as state and local tax and zoning laws. An examination of dealer business practices showed few conducting business in the accepted way. A total of 69.1 percent of all licensees were not conducting a bona fide business.

Senator BAYH. Our next witness is Mr. Neal Knox, executive director of the National Rifle Association, and Mr. David Hardy, who is a consultant for the National Rifle Association.

#### TESTIMONY OF NEAL KNOX, EXECUTIVE DIRECTOR, INSTITUTE FOR LEGISLATIVE ACTION, NATIONAL RIFLE ASSOCIATION, ACCOMPANIED BY DAVID HARDY, CONSULTANT, INSTITUTE FOR LEGISLATIVE ACTION, NATIONAL RIFLE ASSOCIATION

Mr. Knox. Good evening, Mr. Chairman. My proper title, just for the record, is executive director of the National Rifle Association Institute for Legislative Action, which is a branch of NRA. I am accompanied by Mr. David Hardy who is the author of a book entitled "BATF's War on Civil Liberties." He was retained by the NRA Institute last year to compile information on BATF practices.

I have here a copy of volume I, No. 1, of Gun Week. It is dated November 18, 1966. I was the editor at the time. You will note that the headline states "ATT Agent Claims Federal License Required To Sell or Trade Any Gun."

An ATTU Agent, then it was a unit of IRS, had stopped all trades and sales of firearms at a trade sale in Chesnee, S.C. The local police chief told me that Agent W. T. Ray, a 15-year ATT veteran, had stated that firearms sales could only be made through a dealer in order for the sale to be recorded. When I asked Agent Ray about that statement, he said he had been misquoted, explaining that a gun owner "would have to have a Federal firearms license to sell to a dealer."

He also said, "Since it doesn't say anything differently, when a man sells a gun, he is a dealer. for he is 'engaged in the business.' There is nothing there that says whether he has to sell 1 gun, 5 guns or 100 guns before he is 'engaged in the business.'"

He is quite correct, it doesn't say. And that is one of the big problems in the law. When the Gun Control Act was being marked up back in

1964 to 1968, Treasury officials strongly opposed any careful definition of dealer. They stated that the agency needed maximum discretion in enforcing the law. Our arguments that selective enforcement would lead to abuse were ignored, and the Gun Control Act of 1968 was written without any such definition. That key explanation was deliberately left vague.

I do agree with Mr. Davis, who said this afternoon that there must be clear policies concerning the law so people know when they are violating the law. But this law is unclear, and only the Congress can clarify that law.

As a result of this vagueness, in recent years we have had examples such as the case of Mr. R. C. Lindsay of Stuart, Fla., who was denied renewal of his license because three firearms sales did not qualify him as a dealer. Yet Mr. Patrick Mulcahey of Columbia, S.C., was charged with "engaging in the business" without a license on the basis of precisely three firearms sales. He was acquitted.

When the 1968 Gun Control Act was passed, the number of agents involved in gun law enforcement had been increased from an estimated 2 or 3 man-years in the mid-1960's to 214. But by 1980 there were some 700 agents. Yet even more agents were added, and it became a full bureau I believe in 1971. Now it has some 1,200 firearms enforcement agents and some 100 inspectors devoted to firearms matters.

With a vague law, with official policies against prosecuting persons who actually committed crimes of violence with illegal weapons, and with administrative pressure to produce statistics to justify the existence of such a large agency, the result has been widespread abuse of civil liberties.

This is the fourth set of hearings concerning BATF practices in the past 14 months. The first such hearing in July 1979 heard the testimony of Mr. Vernon D. Acree, a veteran of many years of law enforcement and a former Commissioner of Customs.

Mr. Acree testified that based on his study of BATF cases in two States, no less than 75 percent of ATF cases were brought against unintentional violators who were lured or enticed into technical violations by BATF agents.

We have heard they have reformed, but in the past 3 months—just 3 months—we have received report after report of BATF entrapment of law-abiding citizens.

We have heard from Larry Wold of Chicago, Ill., a 12-year veteran of police work, who was charged and convicted of "engaging in the business of dealing in firearms" based on guns he had sold to dealers.

We have heard from Franklin Riley of Virginia. Riley had been solicited to sell from his collection by BATF agents. When he became suspicious of one of them, he called the local sheriff to report the BATF undercover agent. BATF secured an indictment, though, for "engaging in the business." But on July 3, 1980, the charges were dropped.

We heard from another Virginia man, Philip Meador. He likewise was charged with "engaging in the business" but was acquitted by jury. When his attorney attempted to read into the record the promises of BATF not to pursue law-abiding persons, the Government objected and the objection was sustained—showing how much those promises are worth in the real world.

We have also heard from Harold Robertson, a Maryland State trooper and veteran of nearly 13 years of law enforcement, who had been commended by the Governor for saving civilian lives during a disaster. Like the others, Trooper Robertson was charged with "dealing without a license." I am informed that when his case came before the jury, it took them about 14 minutes to let him go. But it also cost him a lot in legal fees, a lot of money, like these gentlemen we heard this afternoon.

In short, the evidence is clear that BATF's promises are empty. Despite its claims to have reformed, the record shows that BATF is still pursuing law-abiding individuals, seeking to inveigle them into unintentional and technical violations. And in so doing, it is almost totally ignoring the real criminal.

I would like to offer for the record two pieces of correspondence, copies of which were recently sent to me. In these letters, two Chicago judges charged that BATF had been uniformly and consistently refusing to accept cases against genuine street criminals, even when requested to do so by the prosecutors.

I would also like to offer for the record a copy of the article that I wrote for Gun Week almost 14 years ago. It talks about the problems both gunowners and Treasury were having with the nebulous phrase "engaged in the business."

I am pleased to point out that some 59 Senators are cosponsors of the McClure-Volkmer bill which would at last define the phrase "engaged in the business" as just one of the much-needed reforms of the 1968 Gun Control Act.

I would like to add, Mr. Chairman, that on behalf of the 1.8 million members of the NRA, we thank you for holding these hearings and for giving us this opportunity to testify.

With your permission, Mr. Chairman, I would like to turn the floor over to Mr. Hardy, who is a former editor of the Arizona Law Review and a fellow of the Institute for Humane Studies.

[The information referred to follows:]

CIRCUIT COURT OF COOK COUNTY,  
Chicago, Ill., December 28, 1979.

HON. BENJAMIN R. CIVILETTI,  
U.S. Attorney General, Justice Department,  
Washington, D.C.

DEAR MR. CIVILETTI: Approximately thirty days ago I was assigned to a felony branch of this Court. During my tenure in that division I heard several cases that involved violations of various federal firearms laws. Some of these involved sawed-off weapons and some involved possession of weapons by convicted felons. I took note of these federal violations by instructing the police officers and/or prosecutor to notify the U.S. Alcohol, Tobacco and Firearms Bureau so that these cases could be prosecuted or dealt with by the federal authorities.

Two days before I left that felony branch of the Court, I was advised by the assistant prosecutor that the federal authorities did not want to prosecute these violations. I then made telephone calls to "A.T.F." to verify this information. Much to my chagrin it was true.

For many years before being appointed to the bench I represented a law enforcement and scientific criminalistic laboratory association known as "A.F.T.E." (Association of Firearms and Toolmark Examiners). I have always been interested in proper law enforcement. In addition, I am interested in adequate laws concerning the misuse of fire arms.

Due to the present epidemic of crime and violence, something should now be done. I believe that additional laws relating to guns and their misuse may

be needed, however, instead of waiting for new legislation, some federal agency should vigorously enforce the laws we now have.

I might suggest that the U.S. Justice Department notify all the State Courts and the Judges who deal with criminal matters, in re: federal gun laws, to be aware of whom to refer these violations to at the federal level. If, in fact, these were followed up on, a great deal of progress would be made in the area of stopping violent crime and gun violations. This type of program I do not imagine would bring opposition from sportsmen, such as hunters, skeet and trap shooters, etc. In fact, this type of enforcement might even bring their support.

I remain available to assist you in every proper way.

Very truly yours,

EDWARD D. ROSENBERG, *Judge.*

EPTON, MULLIN, SEGAL & DRUTH, LTD.,  
Chicago, Ill., January 8, 1980.

HON. EDWARD D. ROSENBERG,  
*Judge, Circuit Court of Cook County,*  
Chicago, Ill.

DEAR JUDGE: Thank you for sending me a copy of the letter forwarded to the Honorable Benjamin R. Civiletti, Attorney General of the United States.

Before returning to the practice of law, I served for over eighteen years on the bench of the Circuit Court of Cook County.

From 1959 through 1969, I was the presiding Judge of Boy's (youth) Court (ages 17 to 21) reputed to be the busiest criminal court in the nation.

Hopefully, I am not oversimplifying a matter very close to my heart (and to my head) when I say, "you expressed my sentiments clearly and completely." It was during the sixties that I personally phoned Senator Dodd (committee chairman) and asked for some help from the "A.T.F." I wish you better success than I had.

Congratulations for your efforts, stay with it.

Sincerely,

SAUL A. EPTON, *Judge.*

[From Gun Week, November 18, 1966]

ATT AGENT CLAIMS FEDERAL LICENSE REQUIRED TO SELL OR TRADE ANY GUN

CAROLINA "TRADE DAY" FIREARMS SALES HALTED

Gun trading at the Chesnee, S.C., Trade Day came to a halt Oct. 17 when a veteran federal agent told traders that their gun sales were in violation of federal law.

W. T. Ray, an agent of the Alcohol and Tobacco Tax Unit, which enforces federal firearms laws, said that no person could sell a single gun at the trade day or anywhere else without a federal firearms dealer license.

He added, according to Chesnee Police Chief Cletus Wall, that traders who held a federal firearms license could not legally transact any business at the trade day unless they held a separate license listing "Chesnee Trade Grounds" as the address.

"Trade days," traditional in many parts of the South, are scheduled gatherings where residents sell or trade farm equipment, furniture, horses, pocket knives, dogs, guns and many other items. Chief Wall said the Chesnee Trade Day began in the 1920's.

Chief Wall, who stated he holds a federal firearms dealer license, said Agent Ray told him that to transfer a gun a seller had to "go through" a dealer so a record could be made of all gun sales.

"I questioned him specifically about that," Chief Wall said.

Agent Ray, contacted by Gun Week Oct. 28, denied that point.

"I was misquoted," he said. The agent explained that in his opinion a person couldn't transfer a gun through a dealer, for to do so he would have to sell to a dealer, and "he would have to have a federal firearms license to sell to the dealer."

Agent Ray said he based his enforcement on the Federal Firearms Act regulations stated in Treasury Department Publication No. 417. "It says a person

'engaging in the business' must have a federal firearms dealer license," Ray said.

Questioned if that applied to the sale of a single firearm between two individuals Ray said, "Our interpretation on it is that if a person sells a firearm he is engaging in the business."

When asked if his agency was attempting to issue federal dealer licenses only to individuals involved in the firearms trade for profit he said, "You could make a profit off one gun."

Ray told Gun Week he could not state whether other agents in his region were defining the regulations in the same way.

"I can speak only for myself," he said, "But we're all operating under that one pamphlet. That's the interpretation I have placed on it and of course if it's the wrong interpretation I'd like to get it cleared up."

"As it stands now," he added, "since it doesn't say anything differently, when a man sells a gun he is a dealer for he is 'engaged in the business.' There's nothing there that says whether he has to sell one gun, five guns or a hundred guns before he's engaged in the business."

Treasury Department Regulation 177.22, which Agent Ray referred to, is part of the regulations based on the Federal Firearms Act. It states: "Any person engaged in the business of selling firearms or ammunition or cartridge cases, primers, bullets or propellant powder, at wholesale or retail . . . must obtain a Federal Firearms Act license as a dealer in order to lawfully transport, ship, or receive firearms or ammunition in interstate or foreign commerce."

Asked where the regulations state that a dealer or individual must obtain a federal license if he does not ship or receive firearms in interstate commerce, Agent Ray replied, "Do you know of any gun manufacturer in South Carolina?"

He said if a gun were made in another state it had been involved at some time in interstate commerce and a federal license is necessary to sell it.

When asked if he had been interpreting the 28-year-old law and regulations in the same manner during the 15 years he had been an agent, Ray said, "Let me put it this way, the stress has not been placed upon firearms until just recently and we are mainly in liquor enforcement work."

"We have only been working firearms as we can find time in connection with our liquor work. This is the first time we've had enough time to work it," he added.

Answering complaints received by Gun Week that he had confiscated firearms at the trade day, Ray said the only gun confiscated was an illegal .22 rifle with barrel sawed off to nine inches and the stock also sawed off.

Chief Wall confirmed that only the illegal gun was confiscated and that no charges were filed.

Agent Ray said he talked to the persons at the Chesnee Trade Day cautioning them against selling guns without a federal license and explaining that a dealer was privileged to sell at the location stated on the license; and that a license could not be transferred from one location to another except in the case of gun shows.

A Treasury Department ruling dated Sept. 6, 1966, states that a federal firearms dealer may sell firearms at a gun show on premises other than those covered by his license by notifying (in duplicate) the Assistant Regional Commissioner, Alcohol and Tobacco Tax division of the name, date and location of the show.

The notice must be sent at least 10 days in advance of the show date and, if approved, one copy will be returned to the dealer, who must have it available for inspection at the show."

"That applies only to a gun show, of course," Agent Ray said. "Trade lots could not be classified as a bona fide show."

NRA INSTITUTE FOR LEGISLATIVE ACTION

News Release

AUGUST 15, 1980.

BATF ABUSES UNCHANGED: PROMISES BROKEN

Washington—The top lobbyist for the 1.8 million member National Rifle Association charged today that the Bureau of Alcohol, Tobacco and Firearms

has broken its promise to Congress that the agency would halt its abusive law enforcement practices which have resulted in widespread civil liberties violations of American citizens.

Neal Knox, Executive Director of the NRA's Institute for Legislative Action, testifying before U.S. Sen. Birch Bayh's Subcommittee on the Constitution of the Senate Judiciary Committee, said, "The BATF has promised to stop enticing innocent citizens into technical violations of the law. The BATF has promised to stop harassing law-abiding gun owners and dealers. The BATF has promised to use the Gun Control Act to apprehend violent criminals, not to hinder legitimate firearms users. All of these promises have been broken."

Sen. Bayh's subcommittee heard from a number of witnesses today who told of recent civil liberties violations committed against them by the BATF. Similar charges of BATF civil rights abuse have been heard before Congressional hearings last summer and earlier this year. These hearings have sparked a growing number of Federal legislators to cosponsor legislation aimed at rectifying the abuses spawned by the Gun Control Act of 1968. Fifty-nine U.S. Senators and over 170 U.S. Representatives have now cosponsored the Federal Firearms Law Reform Act, introduced by U.S. Sen. James McClure (R-Idaho) and U.S. Rep. Harold Volkmer (D-Missouri). The Reform Act will redirect the thrust of BATF's enforcement activities.

"It's become undeniably clear, both to the nearly two million members of the NRA and the bulk of the United States legislators, that the Gun Control Act is being used against law-abiding citizens, not against criminals," Knox said.

"It's time to change that. It's time to clarify the ambiguities of the Gun Control Act and to force the BATF to confront real crime. This can be done through passage of the Federal Firearms Law Reform Act," Knox added.

#### FACT SHEET: GOVERNMENT CIVIL LIBERTIES ABUSES OF GUN OWNERS

Few statutes contain as many vague commands as the 1968 Gun Control Act, and no statute has been as consistently abused. The Bureau of Alcohol, Tobacco and Firearms (BATF) which enforces the Act, has built much of its arrest and seizure statistics upon easily-made, riskless raids upon law-abiding persons who inadvertently committed—or were lured into—a violation of a technical requirement of that Act.

The major types of abuse fall into five categories. Three are substantive—"straw men" and "Scherer cases," aimed at licensed dealers, and "dealing without a license," aimed at nondealers. Two are procedural—confiscation of guns and vindictive pursuit of acquitted citizens.

**"Straw Man" Sales.** This requires two agents—one a local resident, one a non-resident. The nonresident walks into a gun shop and tries to buy a firearm. The federally licensed firearms dealer refuses to sell to him because he cannot sell to an out-of-state resident. The second agent says that he is a local resident and usually claims to be a relative who will buy it "for" the other agent. The resident fills out all the necessary paperwork but lets the nonresident pick up the firearm. After the transaction is completed, the dealer is charged on a felony count for selling to a nonresident. BATF used this tactic from 1975 until recently, when a Federal judge in South Carolina informed BATF that he would no longer hear "Straw Man" cases unless the Bureau notified all of South Carolina's federally licensed dealers about their straw man policies.

**"Dealing Without a License."** The Gun Control Act of 1968 requires that all persons engaged in the business of gun dealing secure a Federal license. Yet the term "dealing" is left undefined. BATF agents will approach a gun collector, usually at a number of gun shows over a period of months, and buy a small number of the collector's personal guns. Although such occasional sales are actually allowed under the law, the agents will arrest the collector, charging him with dealing without a license. Arrests have been made on as few as two gun sales, convictions on as few as four, spread out over many months.

**Scherer-Type Cases.** Named after Tony Scherer, the first victim. Agents locate a licensed dealer who also has a private gun collection. They ask to buy a gun from his private collection. If he sells it to them as though it were private property (i.e., without logging it into his federal dealership records), he is charged with being a dealer who sold without recording. This is based on a literal reading of GCA 68's requirements that a dealer record his sales—BATF says that

means any sales, even of personal property. BATF has never informed dealers of this requirement; indeed, in 1979 the BATF Director wrote U.S. Senator Haya-kawa (Cal.) insisting that a dealer's collection could be sold *without* recording.

**Confiscation.** Strictly speaking, this is an adjunct to the other abuses. BATF is empowered to seize guns "intended to be used" in violations of the gun act. Agents will often go in on a case where a limited number of alleged violations have occurred and confiscate every firearm in the victim's house—including those of his children, wife, etc. Thus, where a collector is alleged to have sold three guns without getting a dealer's license, they may confiscate his entire collection of over a hundred guns. Where a dealer supposedly made two straw man sales, they may seize his entire inventory, forcing him into bankruptcy since he still must pay wholesalers.

**Vindictive Pursuit.** If BATF is defeated in the criminal case, it will pursue civil remedies despite the victim's vindication by jury. Thus an acquittal of "straw man" charges is usually followed by BATF's revocation of the dealer's license on the same grounds; a collector's vindication on "dealing without a license" charges is generally followed by notice that his collection is being forfeited on those grounds. Sometimes collections have been forfeited, or held for upwards of two years, where no charges were ever brought. An acquitted victim is still faced by thousands of dollars in legal fees for a second trial; one awaiting trial can be pressured to plead guilty to avoid the fiscal burden.

The National Rifle Association has long maintained that government restrictions and regulations on firearms have no effect on the criminal, but lead to the government's infringement on the law-abiding citizen's right to individual firearms ownership. Twelve years under the Gun Control Act of 1968, with the subsequent widespread civil liberties abuses committed in the name of federal gun law enforcement, bear this theory out.



UNITED STATES SENATE - OFFICE OF THE SECRETARY  
MESSAGES, COMMUNICATIONS, PETITIONS AND MEMORIALS

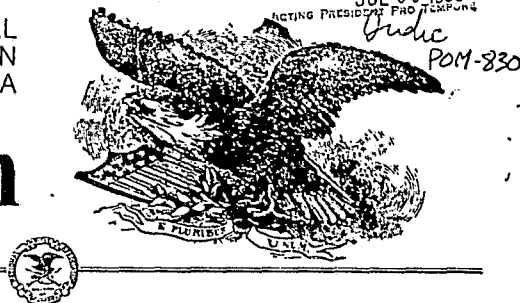
DM-830 REFERRED TO COMMITTEE: Judiciary DSOB 2226

DATE DELIVERED: JUL 30 1980 RECEIVED BY:

A resolution adopted by the National Rifle Association, relating to rights of firearms possession, ownership, and use for lawful purposes, including self-preservation and defense, sporting and hunting; to the Committee on the Judiciary.

THE NATIONAL  
RIFLE ASSOCIATION  
OF AMERICA

# Resolution



WHEREAS, Various departments, administrations, bureaus, and other agencies of the federal government—among them the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury, the Law Enforcement Assistance Administration (LEAA) of the Department of Justice, the Occupational Safety and Health Administration (OSHA) of the Department of Labor, and the independent Environmental Protection Agency (EPA)—have adopted a pattern of regulations and operating procedures which invade the privacy of the individual and violate the constitutional and statutory rights of every law-abiding citizen, millions of whom are legitimate firearms owners and hunters; and

WHEREAS, Such agency regulations and procedures are in direct conflict with the unalienable rights of law-abiding citizens and the principles of the National Rifle Association of America; and

WHEREAS, These agency regulations, conduct, activities and procedures exceed the congressional mandate and authority of these federal agencies, and constitute unauthorized and improper legislative and executive functions usurped by these agencies in contravention of the intent of Congress, and require unnecessary substantial increases in the size and cost of the federal bureaucracy, all in violation of the fundamental law, the constitutional system of checks and balances, and the wishes of the American people; and

WHEREAS, Such pattern of practices and activities by these agencies constitutes flagrant excesses and abuses of governmental power against which our founding fathers sought to protect the individual law-abiding citizen by the adoption of the United States Constitution and its Bill of Rights, specifically including the Second Amendment which protects the use and possession of arms; and

WHEREAS, Such unauthorized anti-firearms-owner practices and activities constitute a continuing mass harassment of millions of law-abiding American citizens by self-styled bureaucratic "protectors" acting under the guise of moving against the unlawful acts of a small fraction of the population, which alone should be the focus of law enforcement efforts, and who should be punished on an individual basis for their crimes of violence; and

WHEREAS, One such federal agency, the Law Enforcement Assistance Administration (LEAA) of the Department of Justice, is promoting the adoption of recommendations contained in a publication entitled *A National Strategy to Reduce Crime*, published by the National Advisory Commission on Criminal Justice Standards and Goals, which the LEAA itself funded and sponsored, calling for enactment of uniform state laws for the elimination of private ownership and possession of all handguns, for the imposition of still other and further gun controls on the people of this nation, and for the institution of a national network of record-keeping on firearms and surveillance on citizens, particularly firearms owners; and

WHEREAS, Another federal agency, the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of Treasury, sought to circumvent the decisive rejection by Congress of multiple firearms registration proposals by issuing regulations having the same effect, costing in excess of 100 million dollars to implement, having no effect on armed crime, and ushering in the type of massive system of dossiers on innocent citizens which have proven so detrimental to civil liberties; now, therefore, be it

RESOLVED, By the Members of the National Rifle Association of America in meeting assembled this 12th day of April, 1980, at Kansas City, Missouri, that the National Rifle Association of America expresses its unalterable opposition to any and all such practices, and calls upon the appropriate and relevant agencies, departments, administrations, bureaus, and other units or subunits of the federal government, under admonition of vigorous legal challenge, to cease and desist all such *ultra vires* policies, activities, regulations, and practices which exceed their congressional mandate and authority, or which violate the rights of the individual under the Constitution and Bill of Rights, especially the Second Amendment of the Constitution of the United States; and, be it further

RESOLVED, That the National Rifle Association of America condemns any and all such policies, activities, purported rule-making, and practices by federal agencies levied against the unalienable, natural, common-law and Constitutional rights of firearms possession, ownership, and use for lawful purposes, including self-preservation and defense, sporting and hunting, and, be it further

RESOLVED, That the National Rifle Association of America will oppose all such agency harassment, policies, conduct, activities and practices with all resources at its command; and, be it further

RESOLVED, That the Secretary of the National Rifle Association of America be instructed to forward copies of this resolution to the President, the Vice President, members of the President's Cabinet, heads of the agencies involved, President of the Senate, Speaker of the House, and Chairmen of the Standing Committees of the United States Congress, with proper distribution to the national news media.

Senator BAYH. Mr. Hardy.

Mr. HARDY. Mr. Chairman, I have a written statement which I would appreciate if the subcommittee would permit me to introduce for the record. I believe I can substantially condense the statements made in the written statement.

I believe that when we examine the Bureau—and in one capacity or another, with the Institute for Humane Studies and with the Second Amendment Foundation and with the National Rifle Association, I have been studying the Bureau for going on 3 years now—two preliminary questions come to mind.

The first is not whether abuses have occurred: That pretty much has to be accepted as fact. The question is: Are these general policy or are these aberrational behavior? If they are general policy, why is that general policy, is the second question.

I believe with regard to the first question that the conclusion has to be that it is a general and continuing policy. In particular, Mr. Chairman, earlier in this hearing you requested Mr. Richard Davis to, in effect, set certain priorities. Mr. Davis agreed to three priorities. The first was the question of criminal knowledge. The second was the question of the type of sale, whether there was knowledge that the sale was made to a criminal. The third was the type of weapon: Obviously weapons that are used in crime should receive a higher priority in terms of law enforcement.

The sad fact of the matter is that BATF's current enforcement efforts fail in each of the three criterion, each of the three priorities which Mr. Davis suggested here.

First of all, with regard to the question of criminal knowledge, Mike Acree, a 40-year veteran of law enforcement, testified not too long ago that 75 to 80 percent of ATF's cases are indeed brought against unsuspecting individuals who were entrapped into a technical violation of law.

Second, with regard to the type of sale, obviously—and the National Coalition to Ban Handguns here a short time ago accepted this also—the priority enforcement should be against sales to prohibited persons, in particular sales to convicted felons.

BATF's own figures which were introduced at the second set of hearings before Senator DeConcini showed that these are the lowest priority on the BATF scale. Two-tenths of 1 percent of BATF cases were brought against persons for intentionally selling to felons. Only 9.8 percent of their cases were brought against felons in possession. So a total of 1 BATF case out of 10 was brought against either a felon possessing a firearm or a person who knowingly sold to such a felon. Once again, the actual facts as far as how the agents are enforcing the law in the field are at total variance with the priorities which were announced to this subcommittee.

Third, with regard to the type of firearms which are being confiscated, ATF some time ago, I believe in hearings before yourself, Mr. Chairman, designated the major crime problem as being what they defined as Saturday night specials. They gave three criteria for a Saturday night special.

In the course of preparing my book, "BATF's War on Civil Liberties," I had occasion to analyze over 5,900 BATF gun confiscations. I

used the BATF's own "Reports of Property Subject to Judicial Forfeiture." I used the values they put on the guns, the description of handgun versus rifle, and so on. Even accepting these figures, which as Mr. Jewell's case should adequately indicate, reflect substantially decreased valuation of the firearms, but even accepting their figures, only 4.04 percent of the guns confiscated by BATF met their own description of Saturday night specials.

At this time BATF was insisting that a substantial majority of firearms used in the illegal trafficking had a value under \$50. In fact, the average value which I found for guns confiscated by BATF was well over \$100; well over twice the level they claimed.

The question is whether the reforms which were announced by Mr. Davis and by Mr. Dickerson beginning in 1978 and reaching their culmination in—I believe it was July 1979 at the first set of hearings—have in any way altered this.

The subcommittee, as previous subcommittees have, has received many promises of alteration. The fact of the matter is from an objective standpoint, it is easily demonstrable that the reforms have accomplished nothing in the real world.

At the second set of hearings before Senator DeConcini, BATF was requested to provide statistical information on the percent of their cases before and after the reforms were announced, which involved cases against felons in possession of firearms. That percentage dropped by one-third after the announcement of the reforms. It fell from about 14 percent to 8.6 percent. Cases against those selling to felons remained unaltered at two-tenths of 1 percent, which, incidentally, worked out to one arrest over the 9 months following the announcement of the reforms. Cases for dealing without a license, which as the subcommittee heard today are a primary source of BATF abuses, went up. I forget the exact figure. I believe it was from 22 to 23 percent of BATF cases, over twice the number of cases brought against felons in possession and those selling to felons combined.

The value of confiscated guns did not increase. Instead, it went up from \$108 before to \$115.96 after.

In short, the reforms which have been promised by BATF can be objectively demonstrated to have failed. If anything, BATF has moved farther from its own priorities as announced here today.

This brings us to the second question, why is there this problem, which appears to be inherent in the BATF's operations. There are several factors which I explore in my written statement. First is the Bureau's needs. It has to produce arrests. It has to produce what was in Vietnam a body count, except the body count here is felony counts against American citizens.

So far they haven't had terribly much luck. In the last fiscal year I believe they produced approximately 840 gun arrests. They had 1,200 agents operating in enforcing the Federal firearms laws through criminal means at that time. Thus, they had substantially less than one arrest per agent per year for gun violations.

If BATF were to essentially reform its ways, if it were to give up the type of entrapment that was discussed before this hearing today, they would have to accept the fact that their quota would fall even lower. Obviously, there comes a point at which you would ask if it is

worthwhile employing a Federal agent for 18 months or 2 years to get a case against a felon in possession which could just as easily be handled by the local police, which I believe in most cases originally captured the individual in any event.

But a second and more serious defect, inherent defect, lies in the law itself. The law is incredibly vague. You can't place too much blame on the agency for bringing technical cases when the offenses under the law are technical. You can't blame them too much for bringing cases against those who have no criminal intent when the law itself doesn't require criminal intent. Perhaps I should emphasize the term "too much," but you can't blame them for giving citizens felony records when any offense under the act is a felony.

There is also a cause that goes deeper than this. The normal restraints upon improper law enforcement do not apply in this area. The BATF's activities, its illegal activities, have been consistently ignored by virtually every group that would normally protest government's infringements upon personal liberty. I think the subcommittee heard an example of this, the National Coalition to Ban Handguns, in particular, which numbers among its members the American Civil Liberties Union, which I am also a member of, the Americans for Democratic Action, and similar groups. Yet, with regard to the Hayes case which they discussed in length, quoting from the transcripts, what they essentially seek to do is to impugn the reputation of private citizens who won acquittal by a jury of their peers, and in particular attempt to impeach their acquittal by using evidence which they state was ruled inadmissible in a court of law. This itself would be strange tactics for a group which has such distinguished members, and I would suggest totally without keeping in the tradition of those members in any other field than the firearms laws.

Actually, the situation goes deeper than that. This New Mexico couple who testified at the second set of hearings before Senator DeConcini, ran a rural New Mexico general store, and they were licensed firearms dealers on the side. BATF several years ago raided them on strawman charges. At the time of their arrest, BATF confiscated their entire firearms inventory, which I believe was valued at about \$20,000. Of course, the Hayes were still obliged to pay their creditors upon that sum.

They removed the firearms which for the most part were new firearms. They removed them from the protective boxes, pitched them into large packing crates approximately 2 by 3 feet, of course scratching them and damaging them. Mr. Hayes was ill and prior to trial had heart surgery. They were ultimately acquitted by the jury. BATF attempted to revoke their license, then abandoned the effort, noting in the abandonment that the Hayes had no criminal intent, that they called up the local ATF office and asked for advice on how to consummate the sale in question.

The ATF to this day is withholding their entire inventory. Shortly before the second set of hearings ATF had offered to return the inventory if the Hayes would release the agents from civil liability for any civil rights infractions. From my own standpoint, I believe that that



amounts to compounding the initial violations with the crime of extortion. But apparently the laws governing compounding felonies and extortions do not apply to BATF, at least in its own mind.

The logical question arises: If the Hayes were involved in all the criminal acts outlined by the National Coalition, No. 1, why did the jury acquit them on all counts? No. 2, why did BATF give up the attempt to revoke their license?

The NCBH's answer is simplistic. The Government's "most probative evidence," in their language, was excluded on purely technical grounds—the grounds being the BATF had re-recorded certain tapes and thus broke the chain of evidence, and in particular was thus barred from using transcripts which show the alleged illegal intent of the Hayes.

In fact, virtually every one of these statements is at best a misrepresentation and at worst blatantly false.

First, this "most probative evidence," the tapes, was not in fact excluded. One of the five tapes was excluded at the trial. The remaining four were played to the jury before the jury chose to acquit them.

Second, that one tape was not excluded on technical grounds. The objection to it had nothing to do with the chain of evidence. The grounds of exclusion were purely substantive; namely, the quality of the tape.

Third, the transcripts, which is what NCBH quotes from—not the tapes, but the Government-prepared transcripts—were not even offered in evidence by the prosecution because the prosecution conceded they might not reflect the truth.

And fourth, the BATF transcripts quoted are in fact for the most part a fabrication, do not reflect what the court reporter took down from the tapes as they were played at trial.

Permit me to document this by reference to the transcripts of trial of January 1, 1980. At page 151 the defense attorney begins objecting with reference to the transcripts stating:

I also state for the record, Your Honor, that these transcripts are totally inaccurate. There are great portions left out and added and errors. Interpretations from what I could hear from the darn tape were totally erroneous as they were put down.

On page 146:

I would like the record to reflect, if the court has been following the transcript, that the transcript and the tapes are at great disparity.

Of course, this might just be the opinion of the defense attorney. On page 150, the transcript shows, however, the opinion of the U.S. prosecutor, Mr. Smith. The court had just finished protesting it had not been furnished with a copy of the transcripts. Mr. Smith explains:

We showed you, tried to show you last week, showed you yesterday, the transcripts of the tapes. Now we are not using the transcripts for the jury because the transcripts—there is always a problem about whether transcripts accurately show what is on the tape or not. We don't want to get into that problem.

Nowhere in the transcript of the trial does the prosecutor move for the admission of those transcripts.

As far as tape No. 1, which was excluded, the judge makes it clear that his ruling is based upon the quality of the tape, not upon any chain of evidence problem. The court, on page 151:

I feel sorry for you. You want to go ahead and convict him but can't get down there and testify and say something, and I don't think that tape is saying anything.

On page 152, the judge goes on and adds:

They are not going to use that to convict somebody with. I wouldn't. You wouldn't.

Mr. Smith, the prosecutor:

Judge, whether I would or you wouldn't is—well, none of us know.

The court:

Well, the Circuit Court wouldn't. Let me put it that way.

Eventually the remaining four tapes were admitted. The court reporter, who was after all a trained official, selected by a Federal court for the specific purpose of transcribing verbal testimony and reducing it to writing, attempted to transcribe what was played on the tapes. The transcripts as recorded by the court reporter vary substantially from the NCBH transcriptions. I will prepare for the subcommittee, if it desires, a comparison of the two.

I have gone through an earlier statement received from the National Coalition to Ban Handguns in connection with the hearings before John Conyers. Contained in that, the same quotations which were put into the record today I have gone through and interlineated showing which portions of those quotations were found to be inaudible or reflected as blank spots on the tape.

Virtually every incriminating statement relied upon by the national coalition in this statement is either a blank spot on the tape or is totally inaudible. There is even one statement which was gotten down by the court reporter but which ATF carefully omitted from its transcript. This shows that the supposed nonresident agent was supposedly from another State; namely, Texas. The BATF transcript states something to the effect that he has to go back to Texas. This is followed by an inaudible statement. The original statement, as gotten down by the court reporter, shows that was inaudible was "I have been working down here," which was presumably omitted from the BATF transcript because it would tend to demonstrate he was not in fact a nonresident.

I believe it is this manner of, if you will, coverup even to its own supervisors, in which the agents transcribing these tapes conceal what is actually said, which is responsible in large part for the illegal BATF activities and their perpetuation.

[The documents referred to follow:]

The attached exhibit is from the written statement submitted for the National Coalition to Ban Handguns, through Sam Fields, for oversight hearings on BATF before the Subcommittee on Crime, House Judiciary Committee. Lines have been drawn through all parts of NCBH's transcript which the Court Reporter's transcript shows were "blank spots on tape" or "inaudible." Portions ruled inadmissible are crossed out. Citations to trial record are on left margin.

On April 19, 1978, the Hayes are reported to have discussed in detail how they worked with a confederate named Sam Davidson to make unreported multiple gun sales. Those weapons were then apparently sold to illegal aliens:

Trial Transcript  
Page 296

Inaudible  
words are  
crossed out

~~B.A. [J.R. Alexander (BATF Special Agent)]  
Well, I just, I might like to maybe buy,  
if I bought ten of these cheap ones and  
buy maybe one or two of those.~~

~~W.H. [Willie Hayes] I've got about ten or  
twelve of those back there.~~

~~B.A. Yeah.~~

~~D.C. [Danny Carpenter (BATF Special Agent)]  
Well, you just, you just plan on taking  
'em all and I can come in, no?~~

~~W.H. You just make out the registration, see.~~

~~D.C. I see.~~

~~W.H. And then just put it in at when it  
(unintelligible) so it wouldn't look so  
obvious.~~

~~D.C. Oh, oh I see.~~

~~B.A. Talking about just leaving the dates off,  
right?~~

~~W.H. And then just put em in our records.~~

~~B.A. Okay.~~

~~W.H. When they're.~~

~~D.C. When they're.~~

Trial Transcript  
Pages 296-297

Inaudible  
words are  
crossed out

Excluded

Trial Transcript  
Page 297

Blank spot on  
tape

Trial Transcript  
Page 297

~~B.A. Written, see. If I bought that many,  
are you gonna give me any trouble?~~

~~W.H. That's what I'm telling you. That's what  
we would do.~~

~~B.A. Oh, okay.~~

~~W.H. We'd just put em in a little at a time  
so it wouldn't be so obvious.~~

~~B.A. Yeah, and that'd be easy on me cause I  
wouldn't have to come back.~~

~~W.H. So you wouldn't have to figure  
(unintelligible).~~

~~W.H. Well, but, you remember Sam, that kid  
that was in here that, he buys at least,  
he buys two guns a week.~~

~~W.H. That's all you can buy.~~

~~B.A. Who does?~~

~~W.H. That kid that here.~~

~~B.A. That one that said he was a pocher.~~

~~W.H. Yeah.~~

~~W.H. He buys two guns almost every week of  
his life.~~

~~D.C. Gee.~~

~~B.A. He does?~~

~~W.H. And he sells em to the wetbacks and he  
buys.~~

LATER IN THE SAME CONVERSATION

~~W.H. He, [Sam Davidson] he takes em out and  
sells em.~~

~~B.A. Oh.~~

~~W.H. And then he brings us the money.~~

Blank spot on  
tape

Trial Transcript  
Page 297

~~B.A. Oh, I see. I can't tell em  
(unintelligible) [legally]?~~

~~W.H. No, not for us.~~

~~B.A. Oh.~~

~~W.H. I have no idea, but, ugh, I don't  
(unintelligible) guns oh, once in awhile  
he'll sell a used gun, just because  
we've got out guns money invested.~~

~~B.A. Yeah.~~

~~W.H. And he doesn't have anything invested  
except his time and so we have to finance  
them, actually we are financing them.  
He's using our money, bank money.~~

~~B.A. Yeah, I see what you're talking about.~~

~~W.H. That's why we don't sell em.~~

LATER ON THAT SAME DAY PAUL HAYES  
PRODUCED A MINITURE SHOTGUN

Trial Transcript  
Page 298

Inaudible  
words are  
crossed out

~~P.H. [Paul Hayes] Did you ever see a 410 gauge  
pistol.~~

~~B.A. No, I never have.~~

~~P.H. Well, I'll show you one cause you'll never  
see another one.~~

~~B.A. Okay.~~

~~P.H. They are against the federal law.~~

LATER IN THE SAME CONVERSATION

Trial Transcript  
Page 299

Inaudible words  
are crossed  
out

~~B.A. My goodness, boy they are something else.~~

~~P.H. That's a wicked rascal. They why they  
outlawed it here.~~

~~D.C. That's nice. (unintelligible)~~

~~D.C. I like that.~~

Trial Transcript  
Page 299

Inaudible  
words are  
crossed out

~~B.A. The pistols are against the law, aren't  
they?~~

~~P.H. Yeah, the federal law.~~

~~B.A. Huh, well I'd better wipe my fingerprints  
off.~~

~~P.H. Ain't nobody gonna get that gun, that's  
mine.~~

On April 5th Willie Hayes apparently discussed  
(with BATF undercover agent Jack Barnett) how they  
handled stolen merchandise which was bought from illegal  
aliens:

Excluded

~~J.B. Illegally aliens or wetbacks come through  
here.~~

~~W.H. Yes~~

~~J.B. Really?~~

~~W.H. Thousands and thousands of 'em.  
(unintelligible)~~

~~J.B. Yeah, a little bit (unintelligible)~~

~~J.B. Ya'll do very much pawning business?~~

~~W.H. A lot.~~

~~J.B. Do ya? What percent of 'em don't pick  
up their guns and stuff? (unintelligible)~~

LATER IN THE SAME CONVERSATION

Trial Transcript  
Pages 178-79

Inaudible  
words are  
crossed out

~~J.B. What's the deal on another kind of gun,  
like a well, one something like this.  
Somebody bring it in, you kinda of thought  
it was hot, what would you do with it?  
Just keep it?~~

~~W.H. We'd put it the rec, we wouldn't put it  
in the federal book and ugh, we'd sell  
it without showing it.~~

Trial Transcript  
Page 179

J.B. Yeah

W.H. Somebody that we know that was interested in a gun like that. But we wouldn't and we would tell 'em, we always tell 'em, it maybe, that it may be pretty hot.

Inaudible words  
are crossed  
out

~~J.B. They may be pretty hot, huh?~~

~~W.H. If they don't want to buy it, that's all right.~~

On April 5th Willie Hayes apparently bragged about dealing in unregistered handguns as well as a willingness to obliterate serial numbers in an attempt to render the weapons untraceable.

Trial transcript  
Pages 145-46

J.B. ~~Boy, that's~~ a little booger.

W.H. Isn't that a ~~little~~ cute little thing?

J.B. I never have seen one that little.

W.H. I meant to tell him and I forgot it and it's not registered, ha ha.

J.B. ~~Ah, oh,~~ not registered.

Inaudible words  
are crossed  
out

W.H. Not registered. See, so I don't have to account for it.

T.A. Oh

W.H. So

J.B. This thing here's only go a, must be a pretty old one. 62224. I guess that might mean something, huh?

NCBH omits this part of transcript, which shows why gun is "unregistered". (i.e., not entered in dealer records: N.M. has no registration law). The gun is a personal firearm, not business, and not for sale.

P.H. I don't remember what gun my wife (inaudible) shoots one with a barrel this short. What have you got got the gun get the gun on (audible) well what kind is that little bugger (inaudible)

W.H. I don't know B-A-R-N-A-R-D-E-L-L-I an Italian gun that-that's just fit my purse or pocket um-hum this not going to sell this one no I am going to keep it it doesn't work I have to take it in and have it fixed

Agent: broke

W.H.: uh-huh

Inaudible words ~~T.A. [T.J. Alford (BATF Special Agent)] What is that, the serial number?~~  
are crossed  
out

~~W.H. 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.

#### BOULIN CASE

The case of Richard Boulín 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. Boulín attempted to manipulate the firearms licensing laws to attain an illegal end.

The Boulín 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 seven-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.

NOTE: In the Richard Boulin case, the tapes were never played to a court reporter, so the transcripts produced by NCBH cannot be compared by any neutral, valid source. However, NCBH's claim that these transcripts were obtained legally from BATF is provably false. Attached is a response to an FOIA request, submitted to BATF, seeking copies of any FOIA requests by NCBH, Sam Fields, or any officers of NCBH. The response, written by the chief of the Bureau's Disclosures Branch, states:

Our files do not indicate any record of a request by Samuel Fields or the National Coalition to Ban Handguns with regard to U.S. v. Boulin.

It might be possible that NCBH secured the supposed transcripts from the court itself, so I requested Mr. Boulin's attorney to inquire of this with the clerk of the federal district court involved. The clerk's reply is attached, and shows that the supposed transcripts are not even in the court's file, unless they be contained in sealed packages which the clerk cannot lawfully open.

Accordingly, we are left with three possibilities:

1. the National Coalition to Ban Handguns obtained the transcripts from BATF without going through the Freedom of Information Act. This would mean the BATF agents responsible have committed a criminal violation of the Privacy Act, 5 U.S.C. §552a(i). NCBH and its employees may be guilty of aiding and abetting this violation, or conspiring to secure it. Additionally, their representatives would have perjured themselves before this Subcommittee, in having claimed that they "dealt at arm's length and examined materials available to any member of the public under the Freedom of Information Act."

2. the transcripts were obtained illegally by NCBH, other than from

BATF. The implications of this hypothesis need no elaboration.

3. The transcripts were never obtained by NCBH, and indeed came neither from the government nor the courts, but are falsified. The implications here too are obvious.

Whichever of the above are correct, it is apparent that the supposed foundation for the documents is false.

The conclusions drawn by NCBH, that Boulin "acquired guns as a licensed dealer and then transferred them to himself as a private individual", then "resold the guns to certain trusted buyers," thereby selling them "by trick" or "scam," is likewise false. Boulin was a licensed dealer from February 2, 1976, to February 2, 1978. Of the five guns he was charged with selling without recording:

- two were purchased in 1973, long before he even became a dealer;
- one was acquired by personal gift;
- one was acquired in trade for a personal firearm
- one was acquired by him, on a personal basis, from another private citizen at a gunshow.

All of the five were quality firearms (four were Colts, one a collector's Luger). None were sold at his business premises. His testimony that he had been advised by BATF that he could sell his personal firearms without recording them into the business inventory was nowhere denied. Indeed, after his conviction it was discovered that BATF's director had written Senator S.I. Hayakawa, advising that:

ATF recognizes that a licensee may maintain a private collection of firearms independent of his business inventory and lawfully dispose of such firearms without entering the transaction in the licensee records. As stated in ATF Industry Circular 72-30, a licensee who uses the firearms license to acquire personal firearms must record in the business records the acquisition and disposition. Such firearms may be kept on the licensee business premises for purposes of display or decoration and not for resale so long as they are segregated from the business inventory by appropriate identification. The licensee's subsequent sale of such personal firearms

need not be recorded in the business records and a form 4473 executed by the purchaser would not be required.

Accordingly, even if these alleged transcripts were correct, and NCBH's conclusions correct, Boulin was prosecuted for an offense which the director of BATF maintains is completely lawful.

It is regrettable that NCBH, which claims its members "have long histories of defending the civil rights of friend and foe alike," and which supposedly "did not take the charges against BATF lightly," has chosen to demonstrate its concern by a cowardly and vicious attack upon two families who have been ruined, economically and emotionally, by illegal search, falsified statements, and malicious prosecution by BATF. It is noticeable that, while these individuals are ruined for unintentional technical violations (which even the head of BATF maintains are legal), NCBH and its officers enjoy immunity from such harassment. (I attach documentation, demonstrating that when their officials were involved in a knowing violation of the firearms laws, the government refused to undertake even an investigation: quite a contrast to its conduct toward Richard Boulin). Perhaps if NCBH did not enjoy this remarkable, extralegal, protection it might be able to deal "at arm's length" with the government and examine in a genuinely impartial manner the allegations being made. As it is, their conduct is more appropriate to an apologist for state oppression than to a civil libertarian.



OFFICE OF  
THE DIRECTOR

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

SEP 02 1980

Mr. James Jay Baker  
Office of Chief Counsel  
Institute for Legislative Action  
1600 Rhode Island Avenue  
Washington, D.C. 20036

Dear Mr. Baker:

This is in response to your requests dated July 7, 1980, and received at this office on July 16, 1980, requesting Bureau documents. In one request you ask for materials, "whether written or oral", etc. concerning the cases of U.S. v. Hayes, U.S. v. 170 Firearms, Etc., and U.S. v. Boulin. In the other request, you ask for copies of communications, including, but not limited to letters, memoranda, records of telephone calls, etc. between the National Coalition to Ban Handguns, Hangun Control, Inc., and a number of individuals and the Department of Treasury, and their employees.

Request # 1 - Specifically,

Request includes copies of all documents relating to requests made under the FOIA or otherwise by Samuel Fields or the National Coalition to Ban Handguns for information concerning the above-mentioned cases.

Attached are copies of the documents in our files in connection with the National Coalition's request for transcripts of tape recordings relevant to U.S. v. Hayes, U.S. v. 170 Firearms, and 34,520 Rounds of Ammunition. These documents were previously disclosed by the Special Assistant, ATF Liaison, under the direction of the Deputy Assistant Secretary (Enforcement and Operations). Our office has also had the opportunity to disclose the materials in this case. In fact, Mr. Fields has had that opportunity. If you desire to review the documents (transcripts), please contact us to make arrangements.

Our files do not indicate any record of a request by Samuel Fields or the National Coalition to Ban Handguns with regard to U.S. v. Boulin.



Request # 2 - Specifically,

Request was for all communications between the Department of the Treasury, its officers, employees and agents on the one hand, and the National Coalition to Ban Handguns, Handgun Control, Inc., Samuel Fields, Dr. Robert Abelson, Ph.D., Jason Cheever, Charles Ford, and Charles Lesnick on the other hand.

Index categories "National Coalition to Ban Handguns" and "Samuel Fields" produced correspondence within the scope of the request. Copies of the relevant materials are attached. We have no materials indexed under "Handgun Control, Inc." or under the other named individuals. Checks were made with (that is, searches were made) Criminal Enforcement, the Office of the Director, and Chief Counsel, besides our immediate office. There were no materials indexed under these names or subjects in any of the offices.

The files also contain memoranda from the Chief, Disclosure Branch to Chief Counsel, and from the Chief Counsel to Chief, Disclosure Branch but these are not included since these are not communications such as requested in your letter, and, thus, are not within the scope of the request.

Attached are copies of all communication as requested. As you can see, there are deletions based upon the exception to disclosure contained in 5 U.S.C. § 552(b)(5). Other deletions were made pursuant to 5 U.S.C. 552(b)(6).

We have enclosed a sheet explaining the exemptions used and the procedure for appealing the deletions made in this package. If you have any questions concerning these requests, please feel free to call me. Lastly, I want to apologize for the delay in responding to you and also to thank you for your patience in this matter.

Sincerely yours,

*Paul Mosny*  
Paul Mosny  
Chief, Disclosure Branch

Office of the Clerk

United States District Court

Paul R. Schlitz  
Clerk

U. S. Courthouse  
101 W. Lombard Street  
Baltimore, Maryland 21201

301-962-2600  
FCS 922-2600

June 19, 1980

Mr. David H. Martin  
Santarelli & Gimer  
2033 M Street, N.W.  
Washington, D.C. 20036

Re: United States of America  
versus Richard Boulton  
Criminal Case No. HM-77-0598

Dear Mr. Martin:

In response to your letter and per our conversation of this date, this is to inform you that the above entitled case does not reflect any transcripts of tape recordings made by an informant containing conversations between that informant and your client, Richard Boulton.

Please note that our Court file does reflect that there are sealed materials pertaining to said record which are in our possession, but which are not available to the public. I am enclosing a copy of the docket entries for your information.

If you have any questions, please do not hesitate to call.

Very truly yours,

PAUL R. SCHLITZ  
Clerk

by

*Claire L. Kaufman*  
(Mrs.) Claire L. Kaufman  
Deputy Clerk

Clk  
Enclosure

ROBERT E. BAUMAN  
First District, Maryland

Congress of the United States  
House of Representatives  
Washington, D.C. 20515

June 29, 1979

COMMITTEE ON RULES

COMMITTEE ON INTERIOR  
AND INSULAR AFFAIRS

The Honorable Griffin Bell  
Attorney General  
Department of Justice  
10th & Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Attorney General:

I am aware of the case of Geoffrey S. Gavett and the National Coalition to Ban Handguns v. Clifford L. Alexander and the National Rifle Association, et. al. (Civil Action No. 78-2130), now pending in the United States District Court for the District of Columbia. The plaintiffs in the case, as you know, challenge the constitutionality of 10 USC 4308 (a) (5) which provides for the sale to members of the National Rifle Association, at cost, of arms, ammunition, targets, and other supplies and appliances necessary for target practice. This provision is part of the Civilian Marksmanship Program, set forth in 10 USC 4307-4313, and is overseen by the National Board for the Promotion of Rifle Practice, whose mandate is to encourage small arms target practice so that individuals called upon to serve in the Armed Forces will be qualified as marksmen.

The purpose of this letter is to urge that the Justice Department conduct an investigation to determine whether the plaintiffs in the case, while contriving indicia of standing to commence the law suit, violated the Gun Control Act of 1968, 18 USC 921-928.

The transcript of the deposition of Geoffrey S. Gavett taken on March 30, 1979, reflects that Gavett purchased a .30-06 rifle in Maryland in March of 1978. Gavett, a resident of Maryland, signed ATF Form 4473 and paid the dealer, Herman's Sporting Goods. Sam Fields, an employee of the National Coalition to Ban Handguns, was with Gavett when Gavett purchased the firearm. After the purchase, Gavett gave the gun to Fields, a resident of the District of Columbia. Between the time he took the gun from Gavett in Maryland until the time he returned it to Gavett on April 2, 1978, at a car rental agency in Virginia, Fields kept the gun in the District of Columbia.

Fields had the gun with him when he met Gavett at the headquarters of the National Coalition to Ban Handguns in the District of Columbia. Together, they drove from NCBH headquarters to the car rental agency in Virginia, in Fields' car. After renting a car for Gavett to take to North Carolina, Fields gave the gun to Gavett. Fields returned to the District of Columbia in his own car. Gavett picked up a friend and then drove to North Carolina with the gun for a shooting match in an effort to qualify to purchase a gun under the Civilian Marksmanship Program.

Gavett's testimony strongly suggests that both he and Fields have committed both conspiracy and substantive violations of the Gun Control Act of 1968.

When Gavett, a resident of Maryland, transferred the rifle to Fields, he may have violated 18 USC 922(a) (5), which provides in pertinent part:

It shall be unlawful ... for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any state other than that in which the transferor resides...

Subsection (a) (5) then goes on to exempt its application to "the loan or rental of a firearm to any person for temporary use for lawful sporting purposes." There is nothing in Gavett's testimony to suggest that Fields intended to use the rifle for sporting purposes. Rather, it appears that Fields was merely storing the rifle for Gavett.

When Fields transported the firearm from Maryland to the District of Columbia, he may have violated 18 USC 922 (a) (3) which provides, in pertinent part:

It shall be unlawful ... for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides ... any firearm purchased or otherwise obtained by such person outside the State...



United States Department of Justice

ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION  
WASHINGTON, D.C. 20530

27 AUG 1979

Honorable Robert E. Bauman  
House of Representatives  
Washington, D.C. 20515

Dear Congressman Bauman:

This is in further response to your letter of June 29, 1979, to the Attorney General asking the Justice Department to order an investigation of possible violations of Federal and District of Columbia firearms laws by the plaintiffs in the pending civil case of Geoffrey S. Gavett and the National Coalition to Ban Handguns v. Clifford L. Alexander and the National Rifle Association, et. al. (Civil Action No. 78-2130, U.S.D.C. Dist. of Columbia.) As you know, the Department of Justice is defending Secretary of the Army Alexander.

You cited the transcript of a deposition of Geoffrey Gavett taken on March 30, 1979, as indicating that Gavett committed a violation of 18 U.S.C. 922(a)(5) and Sam Fields, an employee of the National Coalition to Ban Handguns, committed a violation of the same statute and also a violation of 18 U.S.C. 922(a)(3). You also stated that Gavett and Fields may have violated Section 201 of the D.C. Firearms Control Regulation Act of 1976. That section has been codified as § 6-1811 of the D.C. Code. We have reviewed the deposition transcript and agree with you that it may indicate technical violations of some of the above-cited statutes. It is possible that further investigation would confirm these violations.

However, I have decided not to ask for further investigation. Any violations which might have been committed in this context would be technical in nature and would not have been committed with a motivation that would warrant prosecution. Rather they would have been committed in the course of getting a weapon to and from a rifle match in North Carolina which Mr. Gavett entered as a factual predicate to bringing a lawsuit challenging the Federal statute concerning the disposition of surplus firearms, an issue of

valid public concern. Although specific intent is not required to violate these provisions of the Gun Control Act, motivation is a factor weighed when evaluating the appropriateness of prosecution. I am advised that similar considerations have persuaded the Chief of the Law Enforcement Section of the Office of the Corporation Counsel for the District of Columbia to concur in this position with respect to the possible D.C. violations. Since these offenses, if established, would not warrant prosecution, a fortiori, an investigation is not warranted.

If you have further questions, please do not hesitate to contact me.

Very truly yours,

Philip B. Heymann  
Assistant Attorney General  
Criminal Division

ROBERT E. BAUMAN  
FIRST DISTRICT, MARYLAND

FILE

COMMITTEE ON INTERIOR  
AND INSULAR AFFAIRS

Congress of the United States

House of Representatives

Washington, D.C. 20515

November 15, 1979

The Honorable Philip B. Heymann  
Assistant Attorney General  
Criminal Division  
United States Department of Justice  
Washington, D.C. 20530

Dear Mr. Heymann:

Thank you for your letter of August 27, 1979, offering an explanation of your failure to investigate possible violations of federal and District of Columbia criminal statutes by Sam Fields, an official of the National Coalition to Ban Handguns, and Geoffrey S. Gavett, who is also connected with that organization.

Your letter states that you agree with me that Gavett's deposition transcript "may indicate technical violations of some of the statutes" cited in your letter. The statutes you cite are 18 USC 922 (a) (5), 18 USC 922 (a) (3) and Section 201 of the D.C. Firearms Control Regulation Act of 1976. Your letter further advises that you have decided not to investigate these violations for the following reasons:

- A. The violations committed would be technical in nature.
- B. The violations would not have been committed with a motivation that would warrant prosecution.
- C. The violations would have been committed to enable a law suit challenging a federal statute concerning the disposition of surplus firearms, an issue of valid public concern.

Your letter constitutes a most extraordinary statement by a public official responsible for fair enforcement of criminal statutes. It also raises many more questions than it answers. It is most important that these questions be answered as soon as possible so that persons who may be prosecuted in the future, or who may have been prosecuted in the past, may know to what standards they will be held and what defenses and remedies are available to them. I have attempted to group these questions to correspond to the reasons you gave for declining not only prosecution, but investigation as well.

1. What do you consider to be a technical violation of the Gun Control Act of 1968? Although all violations of the Act, codified in Sections 921 through 928 of the United States Code are *malum prohibitum* in nature, they are felonies, punishable by up to five years imprisonment. Can you identify by section those violations which are "technical" and apparently, therefore, not worthy of prosecution? Do you perhaps consider that all violations of Sections 921 through 928 are technical, with the result that the decision to prosecute depends exclusively on your application of B and C, above, to the facts and circumstances of particular cases?

2. What are the standards for determining whether a particular motive for committing a violation of the Gun Control Act is such as would warrant prosecution? Have you promulgated, perhaps in the Manual for United States Attorneys or by a Criminal Division directive, a list of motives which warrant prosecution or guidelines for analyzing motives? Are individual Justice attorneys or United States Attorneys free to make their own decisions whether a particular motive for violating the statute warrants prosecution? If any prosecutive directives or instructions have been written along these lines, I would appreciate being furnished copies of them.

How do prosecutors in particular cases determine the motive for particular violations? Is the motive determined before or after investigation? Does the prosecutor first seek out the person who committed the violation and, if so, how much reliance, if any, is placed upon his description or version of his motive?

Is the motive test new to this Administration or to your incumbency or has it been used prior to either? Is it also applied to other statutes? If so, please identify them. Will you apply it retroactively to redress any past injustices? Have you, personally, applied the motive test to any case prior to that of Fields and Gavett?

3. If one violates the Gun Control Act to enable a law suit raising an issue of "valid public concern," are there any circumstances under which he may be prosecuted? Can you identify issues of "valid public concern,"

When Fields transferred the firearm to Gavett at the car rental agency in Virginia, another violation of 18 USC 922 (a) (5) may have occurred.

Under the provisions of 18 USC 2, which punishes those who aid and abet offenses, both Gavett and Fields may both be guilty of all three substantive offenses. A conspiracy, under the general conspiracy statute, 18 USC 371, might also be charged, with the result that both could be guilty of all substantive offenses committed pursuant to the conspiracy. Pinkerton v. United States, 328 U.S. 640 (1946). The Gun Control Act violations are felonies punishable, pursuant to 18 USC 924, by up to five years imprisonment and a fine of \$5,000. Violation of the conspiracy statute is punishable by five years imprisonment and a fine of \$10,000.

It also appears that Gavett and Fields have violated the District of Columbia's Firearms Control Regulation Act of 1976. Section 201 of that act provides, in pertinent part that

...no person or organization shall, within the District possess or have under his control any firearm, unless such person or organization is the holder of a valid registration certificate for such firearm. In the case of an organization, a registration certificate shall be issued (1) only to an organization which has in its employ one or more commissioned special police officers or other employees licensed to carry firearms, and which arms such employees with firearms during such employees duty hours ...

The Firearms Control Regulation Act also prohibit, in Section 601, the possession of ammunition by anyone other than a licensed dealer, a government agent acting within the scope of his authority, or a holder of a valid registration certificate for a firearm of the same caliber as the ammunition possessed.

The penalty for first violations of this act is a fine of up to \$300 and imprisonment for not more than ten days, or both. Subsequent violations are punishable by a fine of \$300 and imprisonment not less than ten days nor more than ninety days.

Investigation should be undertaken by the Bureau of Alcohol, Tobacco and Firearms, under supervision of the appropriate United States Attorney and the Criminal Division of the Justice Department, to determine all the facts and circumstances surrounding the occurrences described in Gavett's testimony. This would include a determination whether any others, including the National Coalition to Ban Handguns, which provided the money for the rifle, or Leonard Simm,


Gavett's attorney, who may have counseled concerning its purchase as a prerequisite for the law suit, may have participated in violations of law.

It is particularly important that you take appropriate action in this matter since, should Gavett be indicted, he would be prohibited from receiving a firearm under the Civilian Marksmanship Program because of the provisions of 18 USC 922(h), which makes it unlawful for any person under indictment for, or convicted of, a crime punishable by imprisonment for a term exceeding one year, to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. Further, should he be convicted, he would not be eligible, under 18 USC 925(c), for relief from this disability.

It is unconscionable that prominent individuals using the law to make a political point should be free from prosecution while ordinary citizens who have violated the Gun Control Act unintentionally and with no criminal intent are prosecuted regularly. Therefore, I request an investigation of the Gavett/Fields case.

I would appreciate your comments concerning these matters as soon as you have had an opportunity to review them.

Faithfully yours,

  
ROBERT E. BAUMAN  
Member of Congress

REB:dar

Mr. HARDY. I can also make available to the subcommittee an analysis which I have done on several others of the matters discussed by BATF and which were covered in BATF's statement to the subcommittee.

One case in particular, the *Kenyon Ballew* case, Mr. Ballew, as you may be aware, was a Silver Spring, Md., man who was shot by BATF agents. Excuse me, to be precise, he was shot during a raid led by BATF agents, upon his house, based upon the alleged ground that he owned hand grenades.

BATF's letter to the subcommittee is to the effect that the warrant was lawfully obtained in Mr. Ballew's case, and that when the search was conducted, his door was beaten in only after he refused to open the door, and that the grenades were in fact found inside.

My own studies of the Kenyon Ballew file, which involved approximately 700 pages of paperwork secured by the FOIA from the BATF and Treasury, demonstrated quite clearly that all of these statements were false. In particular, the search warrant was secured by repeated and blatant misrepresentations. The affidavit claims that a reliable informant claimed that Ballew had hand grenades. The reliability of this informant is "based on three separate reports of burglaries" which, according to police reports, took place or were attempted.

The documents demonstrate the truth of the matter is BATF agents never even spoke with the agents in question. They based it on hearsay. The fact is that the three separate reports of burglaries which occurred were the informant's confession to his own past crimes. They were not reliable criminal tips as to the plans of other parties.

Second, the affidavit goes on to claim that Ballew owned guns and the police had received periodic reports of gunfire in this area. This statement is true on its face, untrue in its implication. The agent who secured the search warrant inserted exactly that same statement in another search warrant affidavit for another person who was served at the same time, whose only offense was to live in Ballew's building. Presumably anyone living in that same building could have the same statement made of them. So BATF simply transferred it from one affidavit to another.

Third, the affidavit claims the police would be lured to the area by a false report and then shot from ambush. The implication is intended that Ballew was plotting this attack. This was a false implication. In fact, the Treasury records show that the officer who passed on this report told the agency he had been threatened to this effect by a drunk that he drove home to the apartment building on January 1, 1971, and he had never told Treasury agents that he believed this man was Ballew or in any way associated with Ballew. In fact, on January 1 of that year Ballew was not living in the apartment building but living on the other side of town. He only moved in 2 weeks later.

The Treasury records further show the BATF agents broke in the door after Mrs. Ballew offered to open the door for them. Treasury internal investigators spoke with Officer Thomas Blount who was in the raiding party. Their report states:

Blount stated that he heard the knocking on the door from the other side of the living room when the agents tried to gain access. He also heard the agents tell them to open the door. He also heard the woman inside the apartment holler-

ing at the door, "Who are you? Wait a minute. I am going to open the door. How do I know you are police?"

Essentially BATF had conducted that raid and succeeded in covering up the true basis of it by means of their reports both to the Hill and otherwise for the following 8 years, up to the present day. I think this is endemic in the type of action in which BATF has been able successfully to engage.

There has been entrapment on a mass scale, such as documented in my written statement, and specifically the misuse of informants, the payment of contingency fees to witnesses and informants, in violation even of the basic code of ethics for attorneys.

The practical effect which it has had upon gunowners has been several. First, there are gunowners, such as the gentlemen who testified before the subcommittee, who have been harassed, who have been forced to expend thousands of dollars on their own defense, sometimes forced to expend it in an attempt to secure the return of firearms even after acquittal.

But second, among certain segments in the gun collecting area, you find almost a paranoia which has the effect of exacting a severe cost in terms of civil liberties. To quote from one letter which I received, which has no signature, I might add:

This is to inform you of some of the actions of BATF people in the State of Maryland. There is one informant that was used by BATF who entrapped some 33 gun collectors. These collectors had their telephone conversations recorded, and the informant went into their homes where their conversations were again recorded. Prior to this, none of the collectors had a criminal record. Most of them had been in the service of their country.

He goes on, "The BATF is more interested in making recordings in the homes of American citizens than in going after criminals." He discusses some of the cases and then continues:

Sometimes these collectors were offered a plea bargain of turning in their friends in return for escaping the charges. It is hard to say how many people have been entrapped as most collectors would rather keep the matter quiet. Many of the persons who have had their homes raided by armed agents who are stepping over small children and had their guns confiscated are not mentioned in the newspapers. The BATF is in the process of cultivating an informant; i.e., one who will later entrap other collectors. I know, because I am one of those. Other collectors are so scared they will not talk to old friends for fear their old friends will be informants. People are scared to talk over the phone as their conversations may be recorded.

I must admit as an attorney I have on occasion advised many of my clients to be extremely cautious in discussing the political aspects of firearms laws. One of the techniques used in entrapment on the part of BATF is to induce a person into a conversation, the gist of which is how foolish the 1968 Gun Control Act is, and hope they can get statements to construe that not only does he dislike it on a political basis, but he doesn't think very much of it and wouldn't mind stepping over it. On several occasions I have instructed clients to be extremely cautious in speaking of this.

If I may sum up, I think the evidence is clear that BATF has engaged in abuses of this type as a matter of general practice, that 90 percent of their cases do not concern felons in the possession of firearms, do not concern those selling to felons, which are the very offenses which Congress had in mind when it passed the Gun Control Act of



1968. On the contrary, they have preferred to pursue individuals such as the gentlemen who testified before the subcommittee specifically because cases against these individuals can be mass produced in a very simple fashion. They are not individuals who hide. They are not individuals who are hard to track down. They are not individuals who are apt to resist violently and therefore endanger the lives of agents.

The BATF has taken the course of least resistance in the enforcement of an extremely vague statute, and in pursuit of the statistical body counts, has succeeded in ruining the lives of large numbers of American citizens.

I thank the subcommittee for its indulgence.

Senator BAYH. Thank you, Mr. Hardy. Let me ask you, as a lawyer, why do you think they are doing this?

Mr. HARDY. Pardon?

Senator BAYH. Why do you think they are pursuing this course of action?

Mr. HARDY. I think the reason why—well, to back up, I have occasionally asked myself that question because in the city from which I come, there is no great question about how you would arrest criminals actually dealing in firearms. There is one particular bar downtown where everyone knows all the criminals in town hang out. I am perfectly serious. It has been widely reported in the newspapers. They can buy cocaine there or anything else they want. Obviously, all ATF has to do is send an agent down to the bar with a fistful of money and they could probably bring somewhere around 50 fencing cases, felons in possession, that manner of thing.

But for years they have consistently refused to try anything of the type. I think the reason why is, No. 1, those types of cases are somewhat dangerous and take a good deal of work—not busting the individuals who are actually there, but if you are going to track the criminal network, it is going to take a lot of undercover work and it is going to take a certain amount of risk. I think they prefer to avoid that.

No. 2, I think that you have a situation where—this I do not know as a matter of personal knowledge—but I have been informed by individuals in the Treasury that there is some manner of employment rating system which rates the worth of what ATF agents are doing. This assigns different values to their work. One of the values is: work is rated extremely low if it is limited to one case. So a felon in possession counts as, "Well, you may have stopped one felon, that is all." That is of extremely low priority.

On the other hand, if you charge a person with being engaged in the business, then you count as having stopped a man who was a dealer, and therefore presumably dealt with a volume of guns. It is a much higher priority. Agents with these cases are rewarded with promotions and so forth.

I can't say I know that for a fact myself, but I have been informed that is a fact by persons who should know. I would recommend that the subcommittee perhaps attempt to check into this, using whatever resources they would have.

Senator BAYH. I would like us to do that. I think it is reasonable to suggest certain criteria by which an agent could be judged. But

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to judge an agent's performance that way is like judging George Brent's batting average by counting foul balls instead of base hits.

Mr. HARDY. Precisely.

Senator BAYH. I would think that arrests would not be the key, but convictions. Who actually did that, and if it was serious enough, you could convict them of violating a law.

Do you have an observation on that Mr. Knox?

Mr. KNOX. I would like to comment on your very good question of why did they do this? I have a little different idea as to the reason than Dave. It boils down to this: The Congress gave the BATF an impossible job. First of all, they put a law on the books that has nothing to do with violent offenses with guns. I firmly believe that. They tried to enact an interdiction system. I think it was Mr. Davis who testified that there are no large cases of trafficking in guns. But I believe Congress thought there was when they passed the Gun Control Act.

Congress set up the basis to use a law against criminals. But in fact the U.S. attorneys won't take those cases. The judges won't take those cases into their court. Officers have told me that Federal courts have said, "You won't make my court into a police court." So, therefore, those cases that are of substance aren't prosecuted.

If we have Joe Splivens hold up a bank with a machinegun, he gets off—let's say a liquor store—even if he gets off on the State charge, the fact that he has been brought before a State court is enough to disqualify him from prosecution by the Feds. And so what we have is law-abiding citizens who see this guy with a machinegun and nothing is done to him by the Federal police, not because of BATF's fault but because they won't bring those cases into Federal courts. So the BATF has had a problem here of too much and too many—too much budget, too many agents. Two hundred were more than they needed so they got 700, and 700 were more than they needed so they got 1,400. And they still don't bring cases against the criminal element because the prosecutions won't come. So those guys look around and try to make a case and try to do something to justify their existence, and they bring up guys like Mr. Best, Mr. Wampler, Mr. Jewell. Those kinds of cases the courts will take. The U.S. prosecutor will take those.

If I get a little bit upset, I apologize, but I get very upset because I have been watching this for years and years and years, and I don't see anything happening to help the problem.

Senator BAYH. If you will excuse me, it doesn't make any sense what is happening. The U.S. prosecutors get graded, and I assume that there are several levels by which they are judged by their peers. The number of indictments might be one. The number of convictions might be one. But I can't imagine the number of arrests might be one. And this practice does not make any sense from the standpoint of a U.S. district attorney, because if the statute is drawn so vaguely and if the facts are so nebulous that you can't really bring the case to trial, I don't see how that makes the Federal prosecutor look very good.

Mr. KNOX. There is some truth in that.

Senator BAYH. That is why the whole practice doesn't seem to make much sense to me.

Mr. HARDY. Mr. Chairman, with regard to BATF, if you examine most of their appropriation statements, you will find they do not

even proclaim the number of arrests they make. They have a special term called "perfected investigations." A "perfected investigation" amounts to a case which is carried to the point of being given to the U.S. attorney. This is their classification.

It is considerably more difficult to determine how many arrests were made. Their body count hinges upon these "perfect investigations."

Senator BAXTER. Perfected investigations, sufficient to give a district attorney? By whose definition, the district attorney or the ATF people?

Mr. HARDY. Well, sir, it is by BATF. That is how they classify it. Not all of them are accepted for prosecution. I think they were boasting recently they only had about 11 percent turned down, which was an alltime high acceptance rate for them.

If you stop and figure that out, that works out that 1 case out of 10 was such that even the prosecutor was even unwilling to touch. It works out to some rather questionable investigations.

One matter which I think I might also get into which is related here is the fact that ATF for all purposes and effects does not have a way of setting true policy and having it implemented, because even when the hierarchy announces it will pursue only serious criminals, in many cases the people who are actually setting the real grassroots policy are not even the agents but, rather, their informants.

From the agent's standpoint, the easiest way to handle this job is to retain a certain number of informants, permit them to go out and set up business, and he comes in at the last minute to document what comes down. So in most cases those informants are actually the policymaking individuals.

I had the opportunity approximately a year ago to interview at great length a man who was a BATF informant for several years and had made, according to his own statement, about 125 cases for them. He subsequently gave up because he had doubt as to their competence, and the manner in which they functioned had on two occasions nearly gotten him killed. So he had decided to become an informant for safer organizations.

The gentleman went on and I questioned him regarding how he was paid. He at first starts talking about how he was paid, if I can read briefly from the transcript of our interview:

INFORMANT. At first as piecemeal, so much a case, and then at the last part with the agent I was getting some good money, \$600 a month plus bonuses, which averaged at that time, the first month I think it was about \$1,100 or \$1,200 and the second month I think it was \$2,800.

Mr. HARDY. How were the bonuses determined?

INFORMANT. Basically you get your \$600 a month expense, so to speak, which is pretty good for doing nothing. And if you get a vehicle seizure, it is more money, and the more guns the guy has, the more money you get. The more bodies you get, the more you get. So conceivably the sky is the limit as far as the reward goes.

Mr. HARDY. About how much of a bonus would they give you for vehicle forfeiture?

INFORMANT. Probably about \$400, which ain't bad. It is worth getting sometimes to get the guy to transport it [the illegal firearm] someplace to test-fire it.

Mr. HARDY. About how much would you get for—how would the number of firearms seized affect the bonus?

INFORMANT. Well, the more firearms, the more PR, and they could put the guy off as a massive illegal dealer or something and, therefore, would generate a good feeling as toward the BATF as taking off a super criminal.

Mr. HARDY. Was there ever any understanding for the bonus for obtaining a case against a licensed dealer?

INFORMANT. Nailing a dealer was prime material. It got you good brownie points.

Mr. HARDY. I take it you, yourself, weren't involved in the dealer cases.

INFORMANT. Well, the only dealer I knew doing anything illegal was protected by ATF.

The informant later went on to point out how he was getting bonuses for vehicle forfeitures—and I might add this ties in with Mr. Best's case, where there was the comment, "If you had a better vehicle, we could probably get you out of it."

He clarified that one of the reasons he did not care to have BATF agents around was that they would scare off potential illegal gun sellers by attempting to act too tough, and in particular by attempting to intimidate them should they attempt to back out of a bargain.

The report goes on.

Mr. HARDY. You were mentioning something about trying to play it tough and threatening the person on the other side with their supposed Mafia status and so forth.

INFORMANT. Right. They had no idea of how to operate. One thing, when you deal with somebody, it is, you know, if you back out, I am going to blow you away. Or if you back out, I will put you in the hospital with two broken legs. Only the big man—

his term for police—

does that type of talking because if you are dealing with narcotics, guns, stolen cars, hot women, any damn thing, if either party at any time feels "Hey, I am a little nervous about this," forget it. You both get up and walk out. You don't say, "Once I start dealing, man, there is no backing out. Otherwise [cutting sound]." You don't do that. They have no reality of how a deal really goes down and they really don't give a [expletive deleted]. They are god, so to speak, and they go in and they can do whatever they want. They are going to scare the [expletive deleted] out of the guy. Lots of times they have made statements like, "He wasn't going to come through on the deal, so I scared the [expletive deleted] out of him by threatening to blow him away and he went and got the gun for me."

I might add that this is not the only report of that type of conduct which goes beyond entrapment to the point of extortion. One ATF agent in the New Jersey region, I believe it was William Bartell, was fired by the Bureau and prosecuted successfully for extortion—I believe it was about 4 or 5 years ago—after he had some of his informants beat up an individual who refused to sell an illegal gun.

There is also one case in New Hampshire which I secured the transcript of and would make available to the subcommittee, if they desire, in which an ATF informant up there pulled the same trick, terrifying an individual into going through with an illegal sale so the agents could then charge him. The defendant involved admitted on the stand during his trial he had made the illegal transaction, admitted that he knew it was illegal, and pled as his sole defense that he had been extorted into it, that he did it only because he was put in fear of his life and the life of his family by the ATF informant. He was then acquitted by the jury. The case in question is David Baxter.

I believe the chairman asked the BATF about that case in his letter, and the BATF responded with statements from the same informant who is accused of the act, to the effect Mr. Baxter was known to engage in illegal deals. This is surely one of the few times I have ever

heard of requesting the suspects to give you information as to whether they committed extortion and then expecting their denial should be binding upon an oversight committee.

Mr. KNOX. Mr. Chairman, if I could come back on this other point just a second. I have a letter that I asked be inserted in the record. It is a letter from Judge Edward D. Rosenberg, Circuit Court of Cook County, dated December 28, 1979, to the Honorable Benjamin J. Civiletti, U.S. Attorney General.

I will read from that:

Approximately 30 days ago I was assigned to a felony branch of this court. During my tenure in that division, I heard several cases that involved violations of various Federal firearms laws. Some of these involved sawed-off weapons and some involved possession of weapons by convicted felons. I took note of these Federal violations by instructing the police officers and/or prosecutor to notify the U.S. Alcohol, Tobacco and Firearms Bureau so that these cases could be prosecuted or dealt with by the Federal authorities.

Two days before I left that felony branch of the Court, I was advised by the assistant prosecutor that the federal authorities did not want to prosecute these violations. I then made telephone calls to ATF to verify this information. Much to my chagrin, it was true.

Skipping a couple of paragraphs, it goes on,

I might suggest that the U.S. Justice Department notify all the State Courts and the Judges who deal with criminal matters, in re: federal gun laws, to be aware of whom to refer these violations to at the federal level. If in fact these were followed up on, a great deal of progress would be made in the area of stopping violent crimes and gun violations. This type of program, I do not imagine would bring opposition from sportsmen, such as hunters, skeet and trap shooters, et cetera. In fact, this type of enforcement might even bring their support.

That was signed by Judge Rosenberg. After he wrote that, Judge Saul A. Epton, retired, wrote him thanking him for a copy of the letter and pointing out that he also served on the court. He said:

Hopefully, I am not oversimplifying a matter very close to my heart (and to my head) when I say, "You expressed my sentiments clearly and completely." It was during the sixties that I personally phoned Senator Dodd (committee chairman) and asked for some help from the ATF. I wish you better success than I had.

[The correspondence is incorporated in the record previously.]

Mr. KNOX. My point is, Mr. Chairman, both in what Dave is saying and what I am saying, it is correct. One is a matter of philosophy. The second is a way of operating within that philosophy.

Consider the Moorhead trial, Dave Moorhead, Vietnam veteran, one of the witnesses who testified last year, a part of the transcript was read into the record. The Federal court judge, I have forgotten his name, said that he would do something he had never done before. He took it away from the jury and turned Moorhead loose. He apologized on behalf of our Government. He said it is a "travesty."

At that hearing last year Mr. Bob Dickerson, who is the head of BATF, also apologized to Mr. Moorhead who was there. Senator DeConcini asked him the same question you asked earlier today. What about training and discipline? In the response, as I remember—Dave probably will remember it more precisely—but as I recall, he said there had been seven agents who had been punished at BATF. Incidentally, I don't think any of those were the people that were involved

in the *Moorhead* case. He said seven agents had been punished. He said three of those were severely orally admonished.

I told Bob Dickerson right after that came out that if I didn't severely orally admonish my people pretty often, they didn't think I loved them.

Mr. HARDY. The figure on the seven, I believe one of them had been fired, three of them or four of them given written reprimands, and the remainder given oral reprimands. That concerned a 7-year period from 1972 to the present and concerned all ATF agents disciplined in connection with arrest-related misconduct. So it might exclude certain other types of misconduct, but all misconduct relating to arrests for 7 years for a 1,200-man or 1,500-man work force.

Senator BAYH. I appreciate you gentlemen taking the time to be here. There may be a question or two we might like to ask for you to answer in the written record. It is getting close to 6:30.

I would like to have our record include a statement by Senator Simpson of Wyoming who also would like to have his concern expressed here, plus we have a number of matters that will also be included, such as citizen letters. Those will be included in the record.

[Senator Simpson's statement follows:]

#### STATEMENT OF SENATOR ALAN K. SIMPSON OF WYOMING

I appreciate the opportunity to make a very brief comment on gun control. I have always been opposed to any form of gun control or registration. The United States Constitution guarantees the right of the people to keep and bear arms in Article II of the Bill of Rights. To me that says it all.

Having practiced law for many years, I know that there is always "another side." We have all heard a string of horror stories involving firearms—all kinds of firearms, not just so-called "Saturday night specials."

Just like all other forms of freedom, the right to keep and bear arms leads to specific evils in specific circumstances. In America we have chosen to provide maximum freedom in the belief that the net overall effect is positive. Once the principle of gun control is accepted, we can only argue expediency—that the line should be drawn one place rather than another, on the basis of inevitably limited perspectives. We cannot ever be fully aware of all the direct and indirect results of what we do. The obvious short-term effects of an action can too frequently make it appear beneficial even when the actual long-term result, considering indirect as well as direct effects, is quite harmful.

Gun control is a tough, gut-hard issue in my part of the country. It is crystal clear what the feelings of my constituents are on this issue. I share those feelings.

Senator BAYH. Thank you very much, gentlemen. Keep in touch with us. Thank you for your patience.

Mr. KNOX. Thank you very much.

Mr. HARDY. Thank you, Mr. Chairman.

[Whereupon, at 6:35 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

[The prepared statement submitted by Mr. Hardy and additional materials follow:]

#### PREPARED STATEMENT OF DAVID T. HARDY

Mr. Chairman and Members of the Subcommittee: My name is David T. Hardy and I am a partner in the legal firm of Sando & Hardy, Tucson, Arizona. I also have the honor to be a member both of the American Civil Liberties Union and of the National Rifle Association, and to have in the past served as Associate Editor of the *Arizona Law Review* and as a fellow of the Institute for Humane Study's Law and Liberty Project.

Unlike the majority of the witnesses who have testified regarding the Bureau of Alcohol, Tobacco and Firearms, my familiarity with the Bureau has been gained neither as a member nor as a victim of that organization. I originally was interested in the practical and constitutional aspects of firearms regulations, publishing articles in Chicago-Kent Law Review, William and Mary Law Review, Business and Society Review, and (in co-authorship with Kenneth Chotiner, Vice President of the ACLU of Southern California and Mark Benenson, General Counsel to Amnesty International) contributed several chapters to Donald Kates' anthology "Restricting Handguns: The Liberal Skeptics Speak Out".

Hearing disturbing reports of civil liberties infringements by the Bureau of Alcohol, Tobacco and Firearms, I undertook to research these and published my preliminary findings under the title of "On Turning Citizens Into Criminals" in Law and Liberty, the journal of the Institute for Humane Studies. This preliminary study was later reprinted in Case and Comment, Congressional Record, and as a by-line article in the Baltimore Daily Record. The Second Amendment Foundation retained me to serve as Project Director of a task force investigating the practices of the BATF, a task force whose members included Representative John Ashbrook, former Secretary of the Treasury William Simon, the Chairman of the ACLU's Privacy Committee and a Director of the ACLU of New Jersey together with such respected legal authorities as Professors Kenneth Karst of UCLA, Jack Koons of Berkeley, Robert Katz of Antioch, Steven Herzberg of the University of Wisconsin and Patrick Basal of Duquesne. The investigation and drafting of this report consumed approximately 6 months and included contact with over 140 individuals and the production, through the Freedom of Information Act, of well over 1,000 pages of BATF records and internal orders. The study has been published under the title of "The BATF's War on Civil Liberties", and I understand that copies have been made available to the Members of the Subcommittee.

In February 1979 I was retained by the National Rifle Association as a consultant upon BATF civil liberties abuses and I have spent the intervening time working primarily upon this matter. Thus, in one capacity or another I have spent the past 2½ years compiling a comprehensive picture of BATF activities.

The picture which I have found has not been an especially appealing one. BATF agents have frequently been guilty of the usual civil liberties infractions. These include searches and seizures in excess of the warrant (most frequently, obtaining a warrant authorizing seizure of guns "intended to be used" in violation of law, but then seizing every firearm contained within a residence or business, and sometimes seizing every firearm even where the warrant was specifically limited to certain firearms); misstatements or deception of the court in applying for a search warrant; active seeking of prejudicial pre-trial publicity (indeed, one Bureau manual specifically instructed agents that such might be used to influence court and juries), and similar tactics.

Far more disturbing, however, was a pronounced tendency of ATF to develop entrapment upon technical charges into a way of life. BATF frequently generated cases—particularly in mass raids—by entrapment and seduction of rural gun dealers who had relatively little understanding of the law, and virtually no inclination toward criminality. The individuals thus entrapped and prosecuted formed an unusual group; all had impeccable records, most were actively assisted law enforcement, and the majority had served their nation in time of war (three, in fact, were disabled veterans and one an ex-POW). The forms of entrapment were varied but generally fell under three headings.

"Dealing without a license" cases were brought mainly against collectors. The Gun Control Act of 1968 requires a person to obtain a \$10 occupational license and keep certain records if he is "engaged in the business of dealing in firearms". It furnishes no definition of what "engaged in the business" means, and BATF's published regulations merely repeat that phrase. (Apparently even BATF is not sure of what it means; I am told that the Second Amendment Foundation sent an identical query to each of BATF's regional headquarters, asking if a particular number of gun sales under a particular situation constituted engaging in the business; they received five different responses from four different headquarters). Certain court cases have interpreted "engaged in the business" very broadly, to apply to persons who would not normally think of as "dealers", who have no business premises, collect firearms as a hobby and only occasionally sell or swap them, and earn their living elsewhere. The cases have also noted that there is no minimum number of sales, profit, or business establishment required.

Armed with this knowledge, BATF agents would approach a gun connector with a collection of perhaps a hundred firearms. Posing as other collectors or gun enthusiasts, they would offer him a suitable price for one of them and make the purchase. Sometime later a different agent might purchase a second or third firearm. Generally, if the agents could induce the collector to sell four or more firearms over a period of about 6 months, they would then arrest him on felony charges of engaging in the business without a license. As often as not, they would then confiscate his entire collection, claiming that it was "intended to be used in violation". (Indeed, BATF has on at least one occasion ordered an agent to arrest an individual who sold a total of one pistol and one rifle through a classified advertisement.<sup>1</sup> I might add that BATF in July 1979 promised to attempt to define "engaged in the business" by regulation. It has not yet done so; yet in the absence of this definition prosecutions upon this vague ground have continued. Between July 1, 1979 and March 31, 1980, by the Bureau's own admission, it brought a total of 125 cases on this ground—compared to one case for sale to a felon and 52 against convicted felons in possession of firearms.<sup>2</sup> The Bureau has thus continued with entrapment on vague charges even as it seeks help in defining the supposed crime!

#### STRAW MAN ENTRAPMENT

In contrast to engaging in the business entrapment, entrapment on "straw man" sale charges required a team of two agents. Under the Gun Control Act of 1968, citizens are prohibited from transferring a firearm to a resident of a different state. One BATF agent will pose as a person interested in buying a firearm, but will produce out-of-state identification. Upon being refused, he will later return with the other agent, who will pretend to be a friend of his and produce valid local identification. The local agent will then state that he is buying the firearm for the other agent and will fill out the forms, signing them as the purchaser. The agents then return at a later date and charge the seller with having sold to the non-resident and with falsifying his record by listing the resident agent as purchaser. This was for many years one of the BATF's favorite ways of driving dealers out of business; in its initial major use in 1975, over 30 licensed dealers found themselves convicted felons after a series of raids based on this doctrine.

The "straw man" case is an archtypical example of secret law making by administrative fiat. The Gun Control Act itself requires a dealer only to record the name of the initial purchaser, not to record any subsequent dispositions; it is a "forward tracing" system, not a "current owner registration" system. The "straw man doctrine" is actually an administrative law of sizable complexity. As nearly as can be understood at this point, its provisions are as follows: if one person buys a gun for another, the dealer must generally put down the name of the first transferee. If, however, the second transferee is prohibited from purchasing from the dealer, the dealer must put down the name of the second transferee in his records (which means, of course, that he cannot make the sale). There is, however, an exception to this exception: if the second transferee is prohibited from purchasing by reason of his youth, then the dealer must record the name of the first transferee and can make the sale to him. Presumably recording of the wrong name in any of these circumstances constitutes a felony violation. The minor problem is that ATF has never published this administrative rule on recordkeeping in the Federal Register, as is required by the Freedom of Information Act.<sup>3</sup>

As a matter of fact, they have gone to considerable lengths to keep it secret, in order that dealers may be more easily entrapped. Indeed, ATF has gone to lengths to keep this doctrine a secret even from Congress. The Chairman may recall asking the Bureau's then Director whether a prohibited purchaser might "simply say to a relative, Sam, go in there and buy a handgun; here is the money." The Director responded "Yes Sir, there is no question that this represents a gap in the law." He added a statement that "there is nothing in the law which prohibits a person from buying a handgun from a dealer and then turning

<sup>1</sup> I attach, as documentation, a letter from William Pace dated December 5, 1978.

<sup>2</sup> Senate Appropriations Committee, Subcommittee on Treasury, April 17, 1980.

<sup>3</sup> 5 U.S.C. Sec. 552(a) (1) requires publication of all "substantive rules of general applicability", "statements of general policy", and "interpretations of general applicability", with all amendments of these.



around and selling it to someone in a prohibited category."<sup>4</sup> This testimony was given in October 1975; BATF had commenced the undercover approaches in South Carolina the previous March and April.

Among those ruined in those initial raids was James Floyd, a 33-year-old gentleman with a clean record, who held down a job with the telephone company and in the evening operated a small rural firearms dealership. At his trial the ATF conceded that he did not deal in cheap firearms; "I would say that he stocks quality merchandise," and conceded that he had been chosen on pure chance rather than for criminal activities. Agent Charles Lamons, the non-resident agent chosen for the approaches, testified that the other two agents simply noticed a newspaper ad for Mr. Floyd's shop and therefore decided to begin with him. When Lamons called Floyd, Floyd indicated he wanted to obey the law, not violate it: "I said I was from out of state and he says 'well, if you are from out of state' the voice said, 'if you are from out of state, then I cannot sell you a firearm.'" Agent Lamons did not leave Floyd alone, but dropped by with his "cousin," another undercover agent. Lamons admitted indicating that the local resident would be the purchaser: "and he says, 'well, now I will have to have some identification,' and I said 'he is buying it.'" Lamons added that a bystander in the shop, apparently impressed by Floyd's adherence to legal detail, stated "come on man, I'm not a Fed." Floyd replied, according to Lamons, "yeah, but I try to be straight even when I'm by myself."<sup>5</sup> BATF nonetheless entrapped this clearly law-abiding individual, and pressed charges. Mr. Floyd is now a convicted felon. His business and livelihood are ruined, in order that ATF might add another arrest to their statistics.

Federal Judge Robert Chapman, trying these 1975 cases, became so upset that he refused to allow any additional prosecutions unless BATF informed dealers of the straw man doctrine. The judge's threat to cut off the gold mine of easy arrest brought quick results. BATF drafted a warning. On January 27, 1976, the special agent in charge sent it to another agent with a statement showing how BATF prized keeping the doctrine secret in order to expedite entrapment:

"Since you are preparing to make an undercover straw purchase, we suggest that the suspected dealer be furnished a copy prior to making your buy. We recognize that this may jeopardize your buy, but Judge Chapman feels that dealers should receive ample warning."<sup>6</sup>

These warnings were only given in that one state; dealers in the rest of the country were not informed, in order that they might still be available for entrapment. Judge Chapman would note three years later that in the intervening years not a single prosecution had been brought in the state of South Carolina, demonstrating that when informed, dealers would not violate the law.

Beginning in February 1977, two special agents filed formal "employees suggestions" to end straw man sales by fully informing dealers. One suggested that the 4473 form, which a dealer must fill out as part of a gun sale, be modified to contain an affirmation by the purchaser that he was not buying for prohibited persons; the other suggested a conspicuous warning right over the signature blank that "it is unlawful for the buyer to purchase a firearm for the purpose of giving to another who is a prohibited person". Acting Assistant Director for Criminal Enforcement Marvin O. Shaw wrote to one of the agents on August 31, 1977 stating that while his suggestion might "reduce the incidence of straw or conduit purchases by an uninformed citizens" it could not be accepted since "while the intent of your suggestion is clear to us, its language and application are not consistent either with the provisions of the Gun Control Act or its legislative history." Exactly how this was reconciled with the ongoing straw man prosecutions is not revealed.

James Wachter, Chief of the procedures branch in Washington then authorized placing a warning on the back of the 4473 form: "we feel that a warning on the back of the 4473 may be the most feasible way of helping elevate the problem." This made no sense at all. The back of the 4473 contains no signature blanks and no questions. It only contains some fine print instructions and is virtually never seen by the seller or the buyer.<sup>7</sup> This was obviously a tactic designed to keep the straw man warning as inconspicuous as possible so as not to interfere with con-

<sup>4</sup> Hearings, Subcommittee to Investigate Juvenile Delinquency, Oct. 25, 1975, at p. 118-10.

<sup>5</sup> Transcript, *U.S. v. Floyd*, Aug. 6, 1975, at pp. 65-67, 88.

<sup>6</sup> Letter dated Jan. 27, 1976, attached as documentation.

<sup>7</sup> Copies of these memoranda are attached.

tinuing entrapment. And the entrapment did continue: In October 1977, for instance, BATF conducted large scale raids based on straw man charges in three different states—Virginia, Arizona, and Florida. Among the Virginia dealers raided was Woodrow Greer of Roanoke, who had been disabled during the assault on Bougainville in the Second World War. He had been a gunsmith for 30 years and never received so much as a technical violation; fortunately for him, the judge threw out all charges in advance of the trial. Among those arrested in Florida raids were the Lodiger brothers of Jacksonville, both of whom were veterans, one of a Nazi POW camp. Far from behaving illegally, during the middle of the transaction they telephoned BATF's local office for advice. The jury promptly acquitted both. In Arizona, ATF was unable to secure a single felony conviction against the nine defendants charged. The only felony conviction came against their own informant, whom they discovered was using his pay to illegally purchase firearms.

BATF's emphasis on keeping the straw man doctrine secret was again illustrated when, in March 1979, I sent the Bureau a Freedom of Information request seeking all documents dealing with straw man sales and containing a paragraph broadly describing such sales. Although ATF had at this point over four year period conducted (by my estimate) approximately 100 prosecutions on this ground, had received, debated, and formulated the warning for the South Carolina dealers, reviewed (in several different offices) and responded to two employee's suggestions and had drafted, approved, and printed new 4473 forms with the hidden warnings, BATF responded:

"We have determined by the six ATF records systems which might possible have contained a 'straw man' purchase references that there are no retrievable records under the designation 'straw man' except in the criminal enforcement firearms branch. Those records consist of the draft of an industry circular pertaining to single 'straw' purchases which will be distributed in the near future. It is in the final review process now and is not releasable in advance."

Thus a dealer could not have received instructions on how to handle such a sale even had he made a specific request under the Freedom of Information Act. (The circular to which the response replied was finally released in August 1979, about one month after hearings in which ATF essentially announced that it was abandoning straw man sales in any event. To this day it has never been published in the Federal Register nor incorporated into regulations). Since ATF has reduced its straw man sales approaches to virtually nil, the non-compliance with that Act may be academic: except to the approximately 100 dealers who were charged with non-compliance with the secret administrative law.

#### SCHERER-BOULIN ENTRAPMENT

A third major form of entrapment is what I term the "Scherer-Boulin" case. Here ATF agents will locate a licensed firearm dealer who also has a private collection of firearms. The Gun Control Act imposes a requirement that a licensed dealer keep records of his inventory and sell only after securing certain "paperwork" from the purchaser. It imposes no such requirement on a private citizen or gun collector. Unfortunately, it contains nothing clarifying the duties of a dealer who also has private firearms, not kept at his business nor considered part of its inventory.

Originally, in the 1972 Industry Circular 72-30, BATF had indicated that even where a dealer keeps a personal gun on his premises he might not be required to record it:

"It is recognized that some dealers may have personal firearms on their business premises for purposes of display or decoration and not for sale. Firearms dealers who have such personal firearms on licensed premises should not intermingle such firearms with firearms held for sale. Such firearms should be segregated from firearms held for sale in appropriately identified (for example by attaching a tag) as being 'not for sale'. Personal firearms on licensed premises which are segregated from firearms held for sale and which are appropriately identified as not being for sale need not be entered into the dealer's records."

However, only a few months later, BATF successfully brought a prosecution against Anthony Scherer of Illinois, upon charges that he had not logged into his inventory and sold with appropriate paperwork some personally owned firearms that were kept at his house and never even brought onto his business premises.

Scherer had acquired the enmity of BATF agent Thomas Brennan, back in 1962. During his trial agent Brennan admitted that for 10 years he had spent every moment of his spare time monitoring Scherer, for no better reason than that he believed a person could not make money legally as a firearms dealer and therefore must be making it illegally. On an almost daily basis he drove past Scherer's house, recording license numbers of cars parked near by. At trial, the notes he had made of his 10-year surveillance filled 10 notebooks. By his admission, beginning in 1964 he had set out to entice Scherer into a violation. No fewer than 11 informants were procured to approach Scherer with illegal offers; uniformly they failed. At length an informant purchased four firearms from his personal collection, and Scherer was arrested on charges that he had not recorded them into his inventory or treated them as business property. The BATF successfully convicted him, arguing that industry circular 72-30 applied only to owning firearms, not to selling them (a distinction which was not drawn in the circular):

"In accordance with the circular in statutes, a dealer can hold private collections which are not reflected in his business records as long as they are segregated. . . . The weapons involved in the indictment . . . were not held; rather, they were sold. . . . No circulars or statutes have been published which recognized a licensee's power to deal in private firearms." (U.S. v. Scherer, Brief of the United States, Page 38).

Another victim of this type of case was Richard Boulton of Maryland. A former police officer with an impeccable record, Boulton had gotten his dealer's license mainly so that he could sell firearms to other police officers. He was entrapped by a BATF informant into selling firearms from his private collection. ATF arrested him and confiscated the entire collection, in which he and his wife had invested their savings. BATF successfully argued to the judge that "both the letter and spirit of the law requires that a licensed dealer comply with the recordkeeping requirements of the law when disposing of weapons from his personal collection." (Government's response, motion to suppress, page 4). Shortly after Boulton was convicted, Bill Garrison of the Second Amendment Foundation forwarded to me a copy of a letter from the Acting Director of the BATF to Senator S. I. Hayakawa, relating to an article I had written. I had mentioned this form of entrapment and ATF responded to the Senator:

"As a third form of entrapment, Mr. Hardy alleges that ATF agents approach a federally licensed dealer and persuade the dealer to sell some privately owned firearms without making a record of the transaction. . . . ATF recognizes that a licensee may maintain a private collection of firearms independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the licensee records. As stated in ATF Industry Circular 72-30, a licensee who uses the firearms license to obtain personal firearms must record in the business records the acquisition and disposition. Such firearms may be kept on the licensee's business premises for purposes of display or decoration and not for resale as long as they are segregated from the business inventory by appropriate identification. The licensee's subsequent sale of such personal firearms need not be recorded in the business record and a form 4473 executed by the purchaser would not be required." (emphasis added).

This letter had in fact been written while Boulton's case was still under advisement, although it reached me only after the conviction had been handed down. I forwarded it to Mr. Boulton's attorneys, who filed an appropriate motion. The government responded with a new letter from the head of BATF dated April 7, 1980 stating that "on reconsideration we have determined that the statements are not accurate and do not comport with the official position taken by ATF with respect to a firearms licensee's disposition of personal firearms." It went on to add that "at an appropriate time in the near future, we will again inform all federal firearms licensees of the recordkeeping requirements pertaining to the acquisition and disposition of their personal firearms as well as seek to correct any inaccurate ATF has made about this subject matter." Today, over five months later, this measure which was to be taken "in the near future" has apparently not been taken. In short, ATF has adopted four different positions on this question and prosecuted and convicted these men based on the fact that they did not understand what ATF's positions was at any one given time. None of these positions was ever published in the Federal Register, as is required by the Freedom of Information Act. None were ever promulgated in regulations. Only the first position, which suggested that these sales were legal, was ever contained

in an Industry Circular. The purpose, once again, seems to be to create "secret law" under which dealers could be entrapped.

#### REASONS FOR ENTRAPMENT POLICIES

These, then, were the three most popular modes of entrapment. While few law enforcement agencies could claim a perfect record on avoiding entrapment, none have made it a way of life to the extent of BATF. None, in particular, have chosen to employ *malum prohibitum* statutes to entrap persons without criminal intent. The logical question is why this is so. I believe that there are three key reasons.

The first is the agency's need. Whether owing to the deficiencies of the agency or the deficiencies of the law, ATF has consistently been unable to generate any volume of legitimate firearms prosecutions. It is therefore forced to rely upon entrapment to generate a suitable quota. In the last fiscal year, for instance, the 1,200 BATF agents devoted to criminal enforcement of the firearms laws made a total of 840 arrests. I can think of few police agencies that would tolerate a productivity of quite a bit less than one arrest per officer per year. If the number of arrests is divided into their criminal enforcement firearms budget, it works out to somewhat over \$70,000 of budget authority per arrest. Obviously, if entrapment were to cease, these statistics would be even worse. BATF has thus been forced to rely upon entrapment to fill out its "body count".

A second reason is the law itself. The prohibitions of the Gun Control Act of 1968 (e.g., against "engaging in the business" without a license) are extraordinarily vague. Moreover, the majority of offenses contained in the act do not require proof of criminal intent in order to convict. Thus the agents may easily entrap an individual who has no criminal intent or knowledge. Finally, every offense under the Gun Control Act is a felony, down to the most trivial, technical offense, even where there was no criminal intent. To this extent, we can scarcely blame an agency for generating "technical charges" under a law which contains for the most part "technical charges" or for prosecuting people who lack criminal intent under a law which lacks a requirement of criminal intent.

The broad and vague commands of the Gun Control Act of 1968 were apparently drafted toward maximum discretion to the enforcing agency. The great bulk of potential violations under the Act do not involve conduct which is harmful or immoral in itself, *malum in se* thus the ability of the Gun Control Act to put genuine criminals out of circulation must primarily depend upon waiting for genuine criminals to commit regulatory or technical offenses in the course of accomplishing a truly criminal design. The main problem is that honest citizens without criminal intent also commit technical offenses. Thus such an approach to law enforcement confides an undue, and almost unlimited, discretion in the charging agency.

Discretion is one commodity ATF has consistently lacked. Policy has been decentralized to where individual offices operate largely independent on the national headquarters, and exercise their own functions in deciding against whom the law will be applied and under what circumstance. (Indeed, as noted above under the discussion of "engaging in the business", different regional offices even interpret the same statute differently, much less exercise discretion in applying it to different persons). BATF agents have been involved in improprieties at a rate unprecedented by any other federal—or most state—law enforcement agencies, and by in large the reaction of headquarters is to cover up such incidences rather than discipline them. As a few examples:

Kenyon Ballew, a Silver Spring, Maryland resident, was in 1971 shot by a raiding team led by BATF agents. The bullet penetrated his skull, leaving him disabled for life. I have appended to this presentation the results of my study of the BATF's own investigatory reports. These reports show that virtually every statement relied up to secure a search warrant for Mr. Ballew's apartment was either false or intentionally misleading. They further demonstrate that Treasury investigators were informed by one of the officers involved that the team had broken down Ballew's door with a battering ram after Mrs. Ballew had offered to open it to them. The same investigators also discovered that the claim that the officers were easily recognized as law enforcement, since they were wearing police arm bands, was false; the neighbors saw them dash up to the car and put on those arm bands, not before. ATF for the past 9 years has successfully covered up these illegalities. It is noticeable in their letter to the Subcommittee they still repeat the same incorrect and inaccurate statements.

To review a few cases which have involved BATF agents during 1979 and 1980: In April 1979, in San Rafael, California a BATF agent and a local police officer walked or weaved out of a bar at 2 a.m. In the parking lot they encountered three other law enforcement officials who were strangers to them. The two groups fell into a fist fight and before it was over eight shots had been fired. Fortunately, only two were wounded, the local police chief commenting: "thank God they were lousy shots."<sup>9</sup>

On July 10, 1979 in Florida, three BATF agents and a local policeman went to make an undercover purchase. One agent armed with a rifle, rushed the other two agents as they were dealing with the suspect. The two agents near the suspect then grabbed him, later admitting that they did not identify themselves as law enforcement. As that group was wrestling, the agent carrying the rifle opened fire, shooting one ATF agent in the back and wounding the suspect. The agent with the rifle admitted to then firing another shot at the floor, although he denied he shot the remaining agent—who, however, mysteriously fell with a bullet in his big toe. The suspect, apparently believing that he was under murderous assault, then fired upon and downed the agent with the rifle. Three BATF agents were down and the score appears to have been: BATF—two; Suspect—one. Surviving agents then conducted a "consent" search of the suspect's apartment, which included breaking open a locked box in his personal bedroom. The "consent" was given by an undercover informant who shared the house with him. The judge of course held that this was an illegal search and seizure, and the jury which heard the charges acquitted the suspect on all charges of assaulting the officers and possession of illegal devices.

On February 4, 1980, a 36-year-old BATF agent from New York was arrested on charges of having raped and robbed four 14-year-old girls at gun point and also sexually attacked and robbed a housewife. Although the agent was identified on the street, and police were summoned by one of the victims in fall 1979, he was not suspended from his law enforcement duties until the day of the indictment.

In August 1980, during the trial of several klansmen for the shooting deaths of five Communist Workers Party members, it was charged that a BATF agent who had infiltrated the Nazi Party and Klan had been instructing them on constructing machineguns and had been urging them to kill members of the CWP.

On August 9, 1980, the Miami Herald reported that an ATF agent had been arrested for abusing both alcohol and firearms. Apparently while driving while intoxicated he had nearly run over a local officer. When stopped he identified himself as a special agent, then drew a firearm on the officers and threatened them.

To the best of my knowledge none of these agents were ever disciplined for their conduct, although the last chose to resign after his arrest on charges of assaulting an officer. ATF agents have thus become accustomed to doing as they pleased with no fear of discipline. During the July 1979 hearings before its Appropriations Subcommittee, BATF was asked whether any agents had ever been disciplined for arrest-related misconduct. Its reply:

"Since the Bureau was formed in 1972, seven special agents involved in arrest situations have been disciplined; one was removed from the service, four were given written reprimands, and two were orally admonished."

Hardly an overdose of discipline for a group totalling at its peak about 2,000 agents, and over a 7-year period.

#### 1979 REFORMS

Nor are the announced reforms likely to do much good in this context. First, nothing is done about the law which permits these abuses to occur, nor is the agency situation, which requires it to generate arrests and thus gives the incentive to the abuse, altered. Second, the most important reform—decentralization of the internal inspections function to regional headquarters—will probably worsen the situation. The initial problem was lack of control over local agents by headquarters. Now the control of headquarters is further reduced, since it must go through a level of regional inspectors merely to determine if its policies are being followed. Instead of an abuse being met by a team from the national headquarters, with no ties to any particular region, it will be met by inspectors

<sup>9</sup> News article documenting this and the following cases are attached.

from that region who have every incentive to make "their region" look good to the national headquarters.

Proof of any promises lies in performance. As an objective test of performance of these reforms, we might expect three occurrences if the reforms were working. First, abuses should come to an end; second, the value of firearms being confiscated should drop; third, cases involving prosecution of actual criminals or gun suppliers (for example, cases against felons in possession of guns or for selling to a felon) should increase while those involving purely regulatory offenses (especially engaging in the business, since that is in the process of definition) should decline. The proposed reforms, on an objective basis have failed all three tests.

Abuses have not in fact ended. As discussion demonstrates, agents are as uncontrolled as ever. Moreover, within the past few months I have had several "dealing without a license" cases reported involving individuals with impeccable backgrounds. One of them was a small town police chief who was charged with "dealing" for having bought several firearms for his mayor and other police officers; another was against a Maryland state trooper with an excellent record who had been commended by the Governor for saving civilian lives at the risk of his own. The abuses have not ended. Their volume has declined, but this may be due to BATF's overall case volume having declined. (BATF had projected arrests for last fiscal year at 2,090; in fact they made only 840, less than a half of their projection).

The value of guns being confiscated has not in fact declined. In the July 1979 hearings, BATF indicated that the average value of guns seized in the past was \$108.29.<sup>10</sup> This is the same bureau which told the Subcommittee to Investigate Juvenile Delinquency that "a substantial majority of handguns used in street crime is of low quality with a market value of less than \$50."<sup>11</sup> But following a second set of appropriations hearings, BATF gave the value of guns confiscated subsequent to the announcement of its reforms (for the period July 1979 through March 1980, inclusive). The value had increased to \$115.97.<sup>12</sup> Obviously confiscations aimed at collectors items have not decreased under the reforms but have increased. The Bureau also admitted that during the subsequent period it had confiscated nearly as many rifles and shotguns as pistols—1,110 rifles and shotguns versus 1,282 pistols.

Third, BATF has not shifted away from technical charges such as dealing without a license toward proper charges such as felon in possession or selling to felons. Before the reforms, 14.5 percent of its cases had been for felons in possession; after this dropped to 9.8 percent a drop of almost a third. Sales to felon remained a uniform—and virtually immeasurable percentage, at two-tenths of 1 percent of cases brought both before and after. Dealing without a license, on the other hand, primarily a technical charge used to entrap collectors, went up from 22.1 percent to 23.5 percent after the reform.<sup>13</sup>

In short, while the reforms were accompanied by a great many promises (e.g., "it has been my intention since assuming office in February of this year to direct the efforts of the Bureau toward the goals of reducing the number of guns in the hands of criminals, while at the same time insuring that law abiding citizens receive the cooperation and support that they deserve"; "resources are now being applied only when an association has been established with a criminal activity";), in fact the number of cases directed against genuine criminals dropped, the number of technical cases increased, the value of guns confiscated went up instead of down, and abuses have continued to occur. On any objective test, the announced reform's are empty promises. That the motivation to cover up rather than correct wrong doing has not been terminated is also documented by the report which I will furnish the Subcommittee dealing with an analysis of BATF's replies to the letter transmitted by the Chairman.

In conclusion, it is apparent that BATF has engaged in mass entrapment based on technical and unintentional violations of firearms law. This behavior is inherent in the nature of the law which it enforces, in the nature of the agency's needs and in their personnel associated with the agency's actual field operations. Every indication is that the reforms, announced in July 1979, have actually worsened the situation rather than improved it.

I thank the Committee for its time and consideration.

<sup>10</sup> Senate Appropriations oversight hearings, July 1979, at p. 424.

<sup>11</sup> Senate Subcommittee to Investigate Juvenile Delinquency, October 1975, at p. 365.

<sup>12</sup> Senate Appropriations oversight hearings, April 1980, question II 1 (c).

<sup>13</sup> Senate Appropriations oversight hearings, April 1980, question II 1 (d).

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## NATIONAL ASSOCIATION OF TREASURY AGENTS

National Headquarters and General Counsel  
WILLIAM M. PACE, Executive DirectorPOST OFFICE BOX 112  
ABERDEEN, MISSISSIPPI 39730Office Hours: 9:30 A.M. - 2:30 P.M.  
Monday through Wednesday  
601/369-2310

At other times call: 601/369-4860

December 5, 1978

Mr. David T. Hardy  
Attorney at Law  
Pioneer Plaza  
100 North Stone - Suite 901  
Tucson, Arizona 85701

Dear Mr. Hardy:

One would require several days to exhaust all the material available to illustrate examples of the illegal invasions of privacy by BATF and the other federal enforcement agencies.

The purpose of the NATA v. Carter suit was to include investigators in the rights granted all other employees by EO 11491 so that they would have some mechanism to defend themselves if they were punished for refusing or objecting to illegal investigative methods. Aside from equitable reasons, that is also the purpose of the Pace v. Treasury suit. Formerly, BATF supervisors would upgrade agents who did not object to any methods of investigation. (That point is specifically covered in Plaintiff's Reply brief page 5.)

The NATA v. Carter suit was rendered moot by the Civil Service Reform Act of 1978. Now the President must "determine" if investigators are to be excluded. Consequently, NATA will not appeal the 5th Circuit decision in that case. The Pace v. Treasury suit was dismissed in the U.S. District Court of Northern Mississippi in a 17 page opinion by Judge Orma Smith. In September 1978 the 5th Circuit at New Orleans affirmed that dismissal. We are now preparing a petition to the Supreme Court of the United States.

Please bear in mind that the controversy over investigative methods is not the only basis for classifying experienced BATF special agents.

The present system allows the arbitrary selection of agents for promotion for personal reasons. It allows, and insures, a system of "palace guard" cronyism.

Rather than attempt to describe all the overzealous attitudes of BATF management, let me give you some illustrative examples.

Computers: In 1975 two regional officials of BATF toured the southeast with essentially this statement to all agents: "We have invested a great deal of money in a computer and it is not receiving enough statistics. From now on we want you to send in all the information you have on every one you suspect--tag number, telephone and social security numbers, list of associates, etc. When one agent suggested that this procedure was wrong except for those persons arrested, he was told to do as he was told.

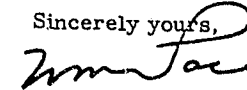
CUE: Enormous pressure was placed on agents sent to the CUE cities to "produce statistics." One agent was given an advertisement from an Alexandria, Virginia newspaper offering two guns for sale. Acting undercover he purchased one (a .22 caliber target pistol) and reported that the seller was not a "dealer" and had only one other for sale, a .22 caliber rifle. He was told to return to the citizen, purchase the rifle and charge him with carrying on the business of a firearm dealer without a license. He did as he was told. That unfortunate citizen wound up as a "criminal case" statistic.

Approximately 65 agents were transferred from the SE to the Washington, D.C. area for CUE. Because of the pressure exerted against them, only two of them are still in that area and only about 10 are still in the federal service. Those that were not eligible for optional retirements sought disability retirements.

The Special Agent in Charge who pressured these agents, was later commended by the BATF.

I am attaching three documents. It is imperative that you copy what you need from these briefs and motions and return them to me by return mail.

Sincerely yours,

  
William M. Pace  
Executive Director

WMP/jg

- Attachments: 1. Motion for Summary Judgment  
2. Brief of Appellants  
3. Reply Brief of Appellants

501 Federal Office Building  
901 Sumter Street  
Columbia, South Carolina 29201  
January 27, 1976

ATC:DGE

Resident Agent in Charge  
Greenville, South Carolina

Special Agent in Charge

Suggested Warning to Firearms Dealers -  
Straw Purchase

You will find attached hereto a document drawn up by the Honorable U. S. District Court Judge Robert F. Chapman. Judge Chapman feels that the attached warning should be furnished to each licensed firearms dealer in the State.

We are in the process of studying this document, however, since you are preparing to make an undercover straw purchase, we suggest that the suspected dealer be furnished a copy prior to making your buy. We realize that this may jeopardize your buy, but Judge Chapman feels that a dealer should receive ample warning prior to a straw purchase attempt. The fact that the dealer received this warning should be fully documented.

I am assigning District Office Analyst Truman and Assistant Special Agent in Charge Jones to this project and hopefully, we can perfect a document that will cover our needs in this matter.

Also, if you so desire, you may add an acknowledgment to the last page to show that the dealer did in fact receive it, etc.

151  
Durwood G. Russell

Attachment

CODE	INITIALS	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
SUB	DATE	DATE	DATE	DATE	DATE	DATE
NAME	NAME	NAME	NAME	NAME	NAME	NAME
DATE	DATE	DATE	DATE	DATE	DATE	DATE

ATF FORM 10-72

CORRESPONDENCE APPROVAL AND CLEARANCE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Dept. of the Treasury  
Form No. 1003  
(Rev. 10-70)

## EMPLOYEE SUGGESTION

FOR OFFICIAL USE  
DATE RECEIVED: 1/14/77  
SUGGESTION NO.: ATF-60-155



## INSTRUCTIONS

- Complete and sign. It is suggested you retain a copy.
- Include any sketches or pictures or other material that will clarify your suggestion.
- You may submit the suggestion to your supervisor or awards representative.

1. NAME AND TITLE (PRINT OR TYPE) John A. Spurgeon Special Agent  
BUREAU ORGANIZATIONAL UNIT  
Alcohol, Tobacco & Firearms U.S. Treasury Department  
OFFICE ADDRESS (STREET, CITY, STATE, ZIP CODE) 700 West Capitol (P.O. Box 2461), Little Rock, Arkansas 72203  
SUPERVISOR'S NAME AND TITLE Resident Agent in Charge

2. SUBJECT OF THE SUGGESTION  
Additional information to be added to ATF Form 4473

3. DESCRIBE PRESENT PROCEDURES OR CONDITIONS  
Presently the ATF Form 4473, Firearms Transaction Record, does not require the buyer to state if he is buying the firearm for someone else and there is no warning statement advising that the buyer of a firearm for someone else in order to circumvent the law is a violation.

4. EXPLAIN YOUR SUGGESTION (HOW IT WILL WORK, WHAT IT WILL DO AND WHERE IT CAN BE USED)  
It is suggested that (1) a statement be added to item 8 of ATF Form 4473, saying... "It is unlawful for the buyer to purchase a firearm for the purpose of giving it to another who is a prohibited person, not permitted to purchase, receive or possess a firearm". OR (2) add question 8i... "Are you buying this firearm or completing this form for the purpose of getting this firearm for someone besides yourself who it would be unlawful for to purchase, receive or possess this firearm."

During the present era of CUE this would assist ATF in making criminal cases involving "straw" purchases. By adding this to the 4473 there would be no doubt in the minds of juries or firearms buyers whether or not the buyer and dealer knew they were violating the law. Although ignorance of the law is not an excuse it can be in the case of a conspiracy. Therefore, if one of these two suggestions were adopted it could be helpful in a conspiracy case of this nature. (I personally have run into this problem.)

This suggestion would make it absolutely clear that a resident of a state can not fill out the ATF Form 4473 for the purpose of getting a firearm for someone to an out-of-state resident.

5. STATE BENEFITS TO GOVERNMENT (HOW SAVINGS WHERE POSSIBLE) ESTIMATED ANNUAL SAVINGS  
At present ATF is trying to stop the illegal flow of firearms, SALARIES 13  
in interstate commerce. It is my feeling that the addition of SUPPLIES 13  
this information will help the honest or unsuspecting citizen EQUIPMENT 13  
from violating the law and special agents in perfecting criminal  
cases against those who violate the law. TOTAL 13

Any cash award resulting from this suggestion is in addition to your regular pay and no further claim can be made against the Government in accordance with 5 USC 4502 (c).

DATE 1/14/77 SIGNATURE [Signature]

SEP 21 1977

Special Agent John A. Spurgeon  
Bureau of Alcohol, Tobacco and Firearms  
700 West Capitol  
Little Rock, Arkansas 72203

Dear Agent Spurgeon:

Thank you for your employee suggestion to require the inclusion of an additional question or admonitory statement on ATF Form 4473, Firearms Transaction Record. Your question or statement would serve to warn all purchasers of the provisions of law prohibiting "straw" acquisitions and transfers of firearms. Moreover, such a warning would establish prior knowledge of the law by persons conspiring to violate it.

We agree that your statement, with modifications, may reduce the incidence of "straw", or conduit, purchases by uninformed citizens. However, we cannot adopt your suggestion because no foundation in law exists which fully supports it, and because a similar suggestion antedating yours has been received. We hope that the following considerations more clearly explain the basis of our decision.

Federal gun laws do not criminalize the mere purchase of a firearm by one person for another. The transfer prohibition in the Gun Control Act applies to the sale or delivery of a firearm to a person the dealer knows, or has reasonable cause to believe, is in a prohibited category. While the intent of your suggestion is clear to us, its language and application are not consistent with either the provisions of the Gun Control Act or its legislative history.

To alleviate this long-recognized problem, we are planning to intensify the education of dealers by printing an appropriate

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Special Agent John A. Spurgeon

notice on the reverse of ATF Form 4473. We feel that to dealers fully informing them of the unlawful nature of sales will lend more support to the Act than would the purchasers you suggest.

We hope that this satisfactorily explains our position. We appreciate the time and effort you put into your suggestion and hope that you will continue to submit suggestions which will improve ATF operations or procedures.

Sincerely yours,

(S)  
Marvin O. Shaw  
Acting Assistant Director  
(Criminal Enforcement)

TPRybczyk/dmr 8/12/77





THE DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
OFFICE OF CHIEF COUNSEL  
WASHINGTON, D.C. 20226

AUG 4 1977

REFER TO  
CC-25,625 L:REW

MEMORANDUM TO: Chief, Procedures Branch (RE)  
FROM: Assistant Chief Counsel (Litigation)  
SUBJECT: Employee Suggestion from John A. Spurgeon  
Concerning a Warning Statement on Form  
4473, Advising the Buyer that Straw  
Purchases are Violations of the Law

Reference is made to your request of July 5, 1977, that we review the employee suggestion submitted by John A. Spurgeon concerning a warning statement to be included on ATF Form 4473 concerning straw purchasers. The problem of straw purchasers purchasing firearms for persons in a prohibited category or a non-resident has long been a problem of ATF. The Bureau currently has several ideas under review for curtailing such straw purchases.

In the recent case of Meredith v. Bureau of Alcohol, Tobacco and Firearms, decided March 18, 1977, in the United States District Court for the District of South Carolina, the court indicated that South Carolina licensees would not be charged with violations of sales to non-residents through straw purchasers unless it could definitely be shown that the licensee willfully made the sale through the straw purchasers to the non-resident. With the assistance of the district court judge and the U.S. Attorney's office, the SAC in South Carolina made available to all licensees in South Carolina an information sheet indicating that they were under a burden to ascertain the qualified nature of the purchaser (a copy of which is attached).

We do not believe the problem of straw purchasers can be solved by a question and answer or warning statement to the purchaser on the Form 4473 as put forth in the

- 2 -

Chief, Procedures Branch (RE)

employee suggestion. The prohibition in the Act goes to the sale or delivery of a firearm to a person the dealer has reasonable cause to believe falls in the category of a person to whom a firearm may not be sold. The mere purchase of a firearm for another is not prohibited. The problem arises with a licensee allowing a prohibited person to have a qualified purchaser sign the forms when in truth and fact he knows or has reasonable cause to believe the sale is being made to the prohibited person. We feel that a warning on the back of the Form 4473 may be the most feasible way of helping to alleviate the problem.

The problem can best be attacked by informing the licensed dealers of the unlawful nature of such a sale. A suggested statement such as "WARNING: The law prohibits the sale or delivery of a firearm to a person who the dealer knows or has reasonable cause to believe is a non-resident not eligible to be sold a firearm or a person who falls within one of the other categories of persons to whom sales may not be made. Thus, the sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as a mere conduit, intermediary, or 'straw purchaser' for one who the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws and subject the licensee to criminal prosecution and/or revocation of his firearms license."

*James R. Wachter*  
James R. Wachter

Attachment

EMPLOYEE SUGGESTION

2-1-77 147-70-354

**INSTRUCTIONS:**

A. Complete and fill in the suggested information.  
 B. Include any sketches or pictures or other material that will clarify your suggestion.  
 C. You may attach this suggestion to your department or division report, if you wish.

1. NAME AND TITLE (PRINT OR TYPE):  
 Special Agent

2. DIVISION:  
 Alcohol, Tobacco & Firearms U. S. Treasury Dept.

3. OFFICE ADDRESS (STREET, CITY, STATE, ZIP CODE):  
 [REDACTED]

4. SUPERVISOR'S NAME AND TITLE:  
 Resident Agent in Charge

5. TITLE OF THE SUGGESTION:  
 Revision of ATF Form 4473, Firearms Transaction Record

6. DEDUCE PRESENT PROBLEMS OR CONDITIONS THE CURRENT CERTIFICATION ON ATF Form 4473 under Section A, Part 8, reads as follows:  
 "I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony."

7. EXPLAIN YOUR SUGGESTION HOW IT WILL ACHIEVE WHAT IT WILL DO AND WHERE IT CAN BE USED:  
 It is suggested that the current certification on ATF Form 4473 under Section A, Part 8, be revised to read as follows:  
 "I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also certify that I am not purchasing the below described firearm(s) for, or delivering them to any person who would be required to answer any of the above answers in the affirmative. I further certify that I am not purchasing the below described firearm(s) for exportation outside of the United States without having proper authorization from the U. S. Department of State, as required by law. I understand that the making of a false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony."

The ATF Form 4473 is one of, if not the most important and effective tools used by the Bureau of Alcohol, Tobacco and Firearms on a national scale in the fight against crime and violence. This suggested revision of the certification on the ATF Form 4473 will result in better achieving the goals of Congress as set forth in the 1968 Gun Control Act.

(If more space is needed, continue on separate sheet)

8. STATE BENEFITS TO GOVERNMENT (SHOW SAVINGS WHERE POSSIBLE):

ESTIMATED ANNUAL SAVINGS	
Salaries	\$
Supplies	\$
Equipment	\$
TOTAL	\$

If this revised certification is adopted, any person who signs the ATF Form 4473 under Section A, Part 8, as the transferee (buyer) and is later determined to have purchased the firearm for an individual who is prohibited by Federal law from purchasing or possessing a firearm, the transferee (buyer) would be prosecuted for a violation of Title 18 USC, Section 922(a)(6) and possibly Title 18 USC, Section 371, Conspiracy.

DATE: 2/1/77

SUGGESTER'S SIGNATURE: [REDACTED]

DECLASSIFIED  
REL FOIA (b)

## EMPLOYEE SUGGESTION (Continued)

## Item 5.

be libel for prosecution for a violation of Title 18 USC, Section 922 (a)(6), Title 18 USC, Section 924 (a), Title 18 USC, Section 371, Conspiracy, or Title 18 USC, Section 2, Aiding and Abetting.

In addition, if this revised certification is adopted, any person who signs the ATF Form 4473 under Section A, Part 8, as the transferee (buyer) and who is later determined to have purchased the firearm(s) for exportation out of the United States without having proper authorization from the U. S. Department of State, the transferee (buyer) would be libel for prosecution for a violation of Title 18 USC, Section 922(a)(6) and possibly Title 18 USC, Section 371, Conspiracy.

A recent Circuit Court of Appeals decision (U.S. v Lizarrraga-Lizarrraga, 541 F. 2nd 926 (9th Circuit 1976) requires evidence that proves the defendant knows he is violating the law when he exports ammunition or arms subject to the Arms Export Control Act.

If this revised certification on the ATF Form 4473 is adopted, the signature on the 4473 under Section A, Part 8, of the transferee (buyer) is sufficient evidence to prosecute the buyer for a violation of Title 18 USC, Section 922(a)(6), when it is determined that the buyer illegally exported the subject firearms described on the 4473. U.S. v Harper 458 F. 2nd 891, pages 894-895, 7th Circuit denied 1971 and U. S. Supreme Court 92 S. Ct. 1772 1972 state in essence that a person shows knowledge of the contents of a form when he signs his name to that form. Therefore, the conditions of knowledge required in the U. S. v Lizarrraga-Lizarrraga would be satisfied should the certification be revised as suggested and the buyer could also be prosecuted for a violation of Public Law 94-329, Sections 38(a)(1), 38(b)(2), 38(a) and 22 CFR Section 127.01.

FOIA (b)(6)

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## ACTION ON SUGGESTION

1. INITIAL EVALUATION OF SUGGESTION - Include results expected and show savings where possible.

The employees suggestion has considerable merit. At the present time several Assistant United States Attorneys have indicated that the form 4470 lacks certain wording that often causes doubt in the minds of a jury. The changes in the form, proposed by the employee would alleviate many of the issues defense attorneys raise surrounding the vagueness of the form. Even though ignorance is not an excuse for committing a violation, attorneys have been successful in placing doubt in the minds of the jury.

ESTIMATED ANNUAL SAVINGS	
SALARIES	\$
SUPPLIES	\$
EQUIPMENT	\$

(If more space is needed, continue on separate sheet)

AWARD RECOMMENDED DATE: 8/17/77 EVALUATOR'S SIGNATURE AND TITLE: [Redacted] Acting Assistant Special Agent in Charge

2. REVIEWS - If there is disagreement with the suggestion, the evaluation or the benefits expected, attach separate statements explaining in full. Indicate agreement with your statements by endorsement.

SIGNATURE AND TITLE OF REVIEWING OFFICERS	RECOMMENDATION (ENTER DATE)		AWARD RECOMMENDED	ESTIMATED ANNUAL SAVINGS
	APPROVE	DISAPP.		
[Redacted]			260	\$

SIGNATURE AND TITLE OF APPROVING OFFICIAL: [Redacted] ACTION: ☒ APPROVE ☐ DISAPP. DATE: 8/17/77

3. AUTHORIZATION OF PAYMENT OF AWARD - A cash award is approved under the regulations of the Incentive Awards Program. This is not an authority to exceed an appropriation, allotment, suballotment, appropriation or reappropriation. Check delivery instructions are below.

AUT. OF AWARD	DATE	SIGNATURE AND TITLE

DELIVER CHECK TO: [Redacted]

4. FISCAL OFFICE - [Redacted]

OFFICE: [Redacted]

DATE: [Redacted]

ROLL OFFICE: [Redacted]

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R:R:P:TPR  
5300MEMORANDUM TO: Assistant Director  
(Criminal Enforcement)FROM: Assistant Director  
(Regulatory Enforcement)

SUBJECT: Employee Suggestion ATF-70-234

This is to advise you that we are not adopting the employee suggestion submitted by Agent [Redacted]. However, Agent [Redacted] suggestion contributed to our improvement of a widely-used form, and we wish to present him a Certificate of Appreciation.

For your convenience, we have prepared and attached a reply to Agent [Redacted] for your signature. We would request return of the yellow initial copy whether you decide to send our proposed reply or prepare one of your own.

If you have any questions concerning our proposed reply, please contact Tom Rybczyk at 586-7803.

Stephen E. Higgins

Attachment

TPRybczyk/dmr 8/17/77

CODE	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
RRP						
SUN	RYBCZYK					
NAME						
DATE	8/17/77					
ATF FORM #2-73						

CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

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

MAR 1 1979

Mr. David T. Hardy  
1230 16th Street, NW 7th Floor  
Washington, D.C. 20036

Dear Mr. Hardy:

This is in response to your letter dated January 23, 1979, received January 30, requesting information concerning the "straw man" case.

We have determined by a search of the six ATF record systems which might possibly have contained "straw man" purchase references that there are no retrievable records under the designation "straw man," except in the Criminal Enforcement Firearms Branch.

Those records consisted of the draft of an industry circular pertaining to "straw purchases" which will be distributed in the near future. It is in the final review process now and not releasable in advance (FOIA exemption (b)(5) provides for the withholding of pre-decisional documents).

We find no reference to remarks by the Director pertaining to straw purchases before any Senate hearing in 1975. Perhaps you have in mind a speech made by the Director before the Subcommittee on Crime (House Committee on the Judiciary on Firearms Legislation) on March 26, 1975. In this speech, the Director refers to a lack of dealer qualification criteria and the absence of a requirement for positive identification of purchasers under the old Federal Firearms Act, and that Title I of the Gun Control Act permits a Federal firearms licensee to sell a firearm only to a person who is a resident of the state where the licensee is doing business.

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The only germane reference to "straw purchases" found in the ATF Directives System is contained in ATF 0 3310.4, Exhibit 2, Index to Offenses, page 10, for violation of Section 922 (b)(3).

We enclose a copy of pages 10 and 11 covering Sec. 922(b)(3).

A list of FOIA exemptions and a page setting forth the FOIA appeal procedure are enclosed also.

Sincerely yours,

*Paul M. M...*  
Assistant to the Director  
(Disclosure)

Enclosure

ATF O 3310.4  
11/28/77  
Exhibit 2

## OFFICIAL USE ONLY

12. Section 922(b)(3)a. Description:

Licensed person selling or delivering firearm to an unlicensed person whom the licensee knows or has reasonable cause to believe does not reside in the State in which the licensee's place of business is located.

b. Elements:

- (1) Accused is a licensee.
- (2) Accused sold or delivered a firearm to another person.
- (3) Purchaser was unlicensed. (Matter of affirmative defense.)
- (4) Purchaser did not reside in State in which accused's place of business was located.
- (5) Accused knew or had reasonable cause to believe that purchaser did not reside in State in which accused's place of business was located.
- (6) Date of sale and/or delivery.
- (7) Place of sale and/or delivery.
- (8) Location of accused's place of business.
- (9) If firearm was a rifle or shotgun and purchaser resided in State contiguous to State in which accused's place of business was located.
  - (a) Purchaser's State of residence does not by law permit such sale or delivery.
  - (b) The sale did not comply with legal conditions of sale in one or both contiguous States.
  - (c) Purchaser and/or licensee did not, prior to the sale, or delivery for sale, of the rifle or shotgun, comply with all of the requirements of § 922(c) applicable to intrastate transactions other than at licensee's place of business.

c. Exceptions:

- (1) Delivery of such firearm by the licensee was a loan or rental of a firearm to a person for temporary use for lawful sporting purposes.
- (2) Firearm sold or delivered was a rifle or shotgun obtained by the purchaser to replace a firearm which was lost, stolen, or became inoperative while the purchaser was in the State of purchase participating in organized rifle or shotgun match or contest, or engaged in hunting, and purchaser did present to the licensee a sworn statement (1) concerning the loss, theft, or inoperative condition

## OFFICIAL USE ONLY

ATF O 3310.4  
11/28/77  
Exhibit 2

12. Section 922(b)(3) - Cont.c. Exceptions:

- of the firearm replaced and showing that such purchaser was participating in an organized shooting match or contest or was engaged in hunting, and (2) identifying the chief law enforcement officer of the area where purchaser resides to whom licensee shall forward such sworn statement by registered mail.
- (3) Accused was returning firearm or replacement firearm of the same kind and type to a person from whom it was received. (Matter of affirmative defense - exception appears in § 922(a)(2)(A).)

13. Section 922(b)(4)a. Description:

Licensed person selling or delivering to an unlicensed person any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle without specific authority from the Secretary.

b. Elements:

- (1) Accused was licensed.
- (2) Accused sold or delivered to another person a destructive device, machinegun, short-barreled shotgun, or short-barreled rifle.
- (3) Purchaser was not licensed. (Matter of affirmative defense.)
- (4) Sale or delivery was not specifically authorized by the Secretary of the Treasury or his delegate (27 CFR Part 178.)
- (5) Detailed description of the firearm as a covered weapon.
- (6) Date of sale and/or delivery.
- (7) Place of sale and/or delivery.

c. Exception:

Purchaser was a research organization designated by the Secretary or his delegate (27 CFR Part 178.) (Matter of affirmative defense.)

FREEDOM OF INFORMATION ACT (FOIA)  
EXEMPTIONS, SUB-SECTION (b)

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

FREEDOM OF INFORMATION ACT 5 U.S.C. 552 APPEAL RIGHTS

You may file an administrative appeal of the denial of information (as explained in the accompanying letter) with the Director, Bureau Of Alcohol, Tobacco and Firearms, Washington, D.C. 20226. Such appeal should:

- (1) Be made in writing and signed by the requester;
- (2) Be addressed to and mailed, or hand delivered, within 35 days of the date of our initial determination (this letter), to the Director;
- (3) Reasonably describe the records requested from the denial of access to which an appeal is being taken;
- (4) Set forth the address where the requester desires to be notified of the determination on appeal;
- (5) Specify the date of the initial request and date of denial of the initial request; and
- (6) Petition the Director to grant the request for records and state any arguments in support thereof.

Your appeal will be promptly considered by the Director and you will be notified of his determination by mail.



DEPARTMENT OF THE TREASURY—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		TRANSFEROR'S TRANSACTION NO.	
<b>FIREARMS TRANSACTION RECORD</b>			
<b>PART I — INTRA-STATE OVER-THE-COUNTER</b>			
NOTE: Prepare in original only. All entries other than signatures must be typed or clearly printed in ink. All signatures on this form must be in ink.			
<b>SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notice and Instructions on reverse.)</b>			
1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss)	2. HEIGHT	3. WEIGHT	4. RACE
5. RESIDENCE ADDRESS (No., Street, City, State, Zip code)	6. DATE OF BIRTH	7. PLACE OF BIRTH	
8. CERTIFICATION OF TRANSFEREE (Buyer) — An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:			
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?	d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?		
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?		
c. Are you a fugitive from justice?	f. Have you been discharged from the Armed Forces under dishonorable conditions?		
	g. Are you an alien illegally in the United States?		
	h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?		
I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.			
TRANSFEREE'S (Buyer's) SIGNATURE		DATE	
<b>SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notice and Instructions on reverse.)</b>			
THE PERSON DESCRIBED IN SECTION A: <input type="checkbox"/> IS KNOWN TO ME <input type="checkbox"/> HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER			
9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.)	10. NUMBER ON IDENTIFICATION		
On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.			
11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.
15. MANUFACTURER (and importer, if any)			
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used.)		17. FEDERAL FIREARMS LICENSE NO.	
18. TRANSFEROR'S (Seller's) SIGNATURE		19. TRANSFEROR'S TITLE	20. TRANSACTION DATE

ATF F 4473 (5300.9) PART I (3-78) EDITION OF 2/77 MAY BE USED

**IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)**

- Under 18 U.S.C. Chapter 44 and Title VII of Public Law 90-351, 18 U.S.C. Appendix 1201-1203, as amended, firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under Chapter 44 may determine if he may lawfully sell, deliver or transport a firearm to the person identified in Section A, and to alert the transferee (buyer) or certain restrictions on the receipt, and possession of firearms. This form should not be used for sales of transfers where neither person is licensed under 18 U.S.C. Chapter 44.
- WARNING** — The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary, or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.
- The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. Chapter 44 prohibits the shipment, transportation or receipt in interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to marijuana or a depressant, stimulant or narcotic drug, or by one who has been adjudicated mentally defective or who has been committed to a mental institution. In addition, Title VII (18 U.S.C. Appendix 1201-1203) makes it unlawful for anyone who has been convicted of a crime punishable by imprisonment for a term exceeding one year, who has been discharged from the Armed Forces under dishonorable conditions, who has been adjudicated mentally incompetent, who, having been a citizen of the United States, has renounced his citizenship, or who is an alien illegally in the United States, to possess a firearm.

**INSTRUCTIONS TO TRANSFEREE (BUYER)**

- The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. If, because of inability of the buyer to read or write, the answers are written by another person, this person and another person will sign as witnesses to the buyer's answers and/or signature.
- When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under the penalty of perjury, stating:
  - that the firearm is being acquired for the use of and will be the property of that business entity, and
  - the name and address of that business entity.

**INSTRUCTIONS TO TRANSFEROR (SELLER)**

- Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.
- The transferor (seller) of a firearm will, in every instance, complete Section B of the form.
- If more than one firearm is involved, the identification required by Section B, Items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper which must be attached to the form covering the transaction.
- The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of the Gun Control Act of 1968 (18 U.S.C. Chapter 44) and Title VII, Unlawful Possession or Receipt of Firearms, (82 Stat. 197), and 27 CFR Part 178 (Commerce in Firearms and Ammunition).
- Upon completion of the firearm transaction, the transferor (seller) must make a part of his permanent firearms records the Form 4473 (5300.9) Part I recording that transaction and any supporting documents, Form 4473 (5300.9) Part I and any supporting documents must be filed either chronologically by date of transaction, alphabetically by name of transferee (buyer), or numerically by transaction number if the transferor assigns transaction numbers to Form 4473 (5300.9) Part I.
- In addition to completing this record, the licensee shall report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4, in accordance with 27 CFR 178.126a.
- Additional forms are available from:  
Bureau of Alcohol, Tobacco and Firearms  
ATF Distribution Center  
3800 S. Four Mile Run Drive  
Arlington, Virginia 22206

**DEFINITIONS**

- Intra-State Over-the-Counter Transaction** — The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), who is a resident of the state in which the transferor's business is located, occurring on the transferor's business premises.
- Published Ordinances** — The publication (ATF P 5300.5) containing those State laws and local ordinances relevant to the enforcement of Chapter 44 of the Title 18, U.S.C., which is annually published in the Federal Register and distributed to each Federal firearms licensee by the Director, Bureau of Alcohol, Tobacco and Firearms.

ATF F 4473 (5300.9) PART I (3-78)  
U.S. Government Printing Office: 1978-0-721-755

Mr. DAVID T. HARDY,  
National Rifle Association, 1600 Rhode Island Avenue,  
Washington, D.C.

CEDAREDGE, COLO., June 10, 1979.

DEAR MR. HARDY: Thank you for your letter of June 6, 1979 regarding the NRA's projected hearings on BATF improprieties under Messrs. Davis and Company. Please allow me to say that I totally support your efforts in this regard. The BATF has not been accountable to the American public for much too long a time.

Yes, Mr. Hardy, I think that my case is the Ohio case to which you refer. Please bear with me and I will attempt to inform you about the basics of my experience in this regard:

On September 23, 1974 I informed BATF Agent Jerry Johnston that I intended to turn him in for planning to steal confiscated guns and being involved in an illicit savings bond chain letter scheme. His response was to draw his revolver and shoot me. By the grace of God I was able to grab his revolver and push it away from my body. He shot at me three times, one of the shots struck me thru the left hand and blew off my index finger. His shots were close enough to my head to cause powder burns along my left cheek and ear.

I was unable to take the gun from him and it was clear that he meant to kill me. As a last resort, I drew my own revolver and shot him. As a result of this shooting, I was sent to the hospital and Johnston died as a result of the gunshot wounds I had inflicted. This act of killing another human being, even though it was in self defense and under great provocation, is an act that I deeply regret and will be sorry for as long as I live. But I was given no choice in the matter, it was either fight or die and I chose to live. From that point until this very day, the BATF has done everything possible to hush up this incident and to ruin my life.

This incident occurred in the Federal Building at Dayton, Ohio where both Johnston and I were employed as BATF Special Agents. Immediately after the shooting the BATF ordered a hush order and closed the scene to any other federal agency and the News media. I was ordered by my supervisor to "Make no statements to the Press." This hush order is well documented by the Dayton Daily Newspapers who had to obtain a freedom of information suit against BATF in order to get any information on the shooting.

Because of the nature of the facts surrounding the shooting (BATF Agents being involved in stealing confiscated guns and illegal chain letter schemes) I and my attorneys felt that the BATF may attempt to cover up or blotch up the investigation into these matters. I, through my attorneys, formally requested that the investigation be conducted by an impartial agency, either the Dayton Police or the FBI. The BATF refused to relinquish control of the investigation, and continued to whitewash and cover up the facts.

A few months after the shooting a Federal Grand Jury at Dayton, Ohio looked into this matter and determined that I was innocent of any Criminal wrongdoings in regard to the shooting. So despite a one sided investigation by the BATF, I was cleared of any wrongdoing by a federal grand jury.

Because Grand Jury proceedings are secret, I do not know what went on in the Grand Jury, but I suspect that little or no investigation by BATF was done into the matter of the confiscated firearms and I do know that the other BATF agents involved in the savings bond mail fraud scheme merely received letters in their personal files that said in effect "please don't do that anymore".

However in my case it was different, I was to be made the scapegoat for this matter. It had been proven that I was not involved in stealing the confiscated guns and that I was not involved in the mail fraud scheme by the federal grand jury. My sole offense was bringing these matters to light and getting shot for my efforts by my fellow BATF Agent. The BATF immediately attempted to fire me for "Causing bad publicity for the Agency". This firing attempt took place immediately after the Grand Jury cleared me of any wrongdoing and I had inquired as to whether or not I still had a job.

To make a long story shorter, the Civil Service Commission ordered my reinstatement on the charge of "Causing bad publicity for the agency", and the BATF immediately fired me again. This time for supposedly using "poor judgment in the killing of Agent Johnston". Again I appealed the firing attempt and the Civil Service Commission ordered my reinstatement. I submit that BATF Supervisors knew full well that they had no grounds for firing me, but wanted to keep up the harassment in order to make me quit. The net effect of these repeated firing

attempts was to keep me from working for well over a year until the Civil Service Commission literally forced BATF to put me back to work.

After BATF was forced to reinstate me in my job (By order of the U.S. Civil Service Commission), BATF supervisors and agents embarked upon a course of vengeful, capricious and harassing treatment towards me. They made my return to work as difficult and stressful as was humanly possible. BATF embarked upon a course of constant harassing transfers and changes in Duty stations and assignments. In the short time span of 3 months (March 8 to June 3, 1976) I was assigned for duty in the following cities for periods of time ranging from a few days to a few weeks: Cincinnati, Ohio, Charleston, W. Va., Glyncro, Georgia, Dayton, Ohio, Cleveland, Ohio, Detroit, Michigan, and Van Nuys, Calif. The net result of all this was to keep me long distances from my family and make it as difficult as possible for me to spend weekends at home. I was forced to travel more in the 3 months after the agency was forced to reinstate me, than I did in my entire career with BATF preceding the shooting. Based upon the minor duties I performed in these cities, I believed this constant travel was unnecessary and a blatant waste of taxpayer money. Again the constant transfers and harassment were designed to force me into quitting.

From the moment that BATF was forced to put me back to work I received hostility and ostracism from my supervisors and fellow BATF Agents. In Detroit a note was placed in my desk which said "Snitches butt out". In Van Nuys, Calif. a supervisor held a gun inspection in which my firearm was the only one inspected and he proceeded to verbally reprimand me in front of the entire office. I was told I was a "troublemaker" and would not be tolerated by the BATF Agent in charge in Van Nuys, Calif.

For the sake of brevity, after three months of this type of treatment I had a nervous breakdown, I could no longer take it. I had been shot, dragged thru the courts, repeatedly fired, suffered the trauma of having killed a fellow human being, lost my home and was on the verge of bankruptcy, and mentally browbeaten and harassed until I could just no longer stand it. I filed for retirement based upon the gunshot wound I had received and my nervous and emotional condition. The disability retirement was granted in 1976 and I have not worked since that time.

Mr. Hardy, there is something bad wrong with a Federal Bureaucracy where this type of thing can happen. I was penalized for being honest and bringing to light the fact that BATF agents were committing crime. My law enforcement career was terminated because I believe that those that enforce the law should also be subject to that law.

There are many dedicated and ethical BATF agents. Some who do not personally endorse the Gun Control Law of 1968, but who must enforce it if they are to keep their jobs. The most damaging effect of my case is that it stands as an example to those who might speak out against BATF wrong doing. To do so means certain loss of their jobs or careers.

All of the aforementioned occurrences happened under the directorship of Rex Davis. He was fully aware of what was going on in my case because I directed several letters to him personally asking him to investigate my case. In my opinion Rex Davis gave his stamp of approval to the harassment I received or else the persons involved would not have been so blatant in their actions. Rex Davis made no effort to stop my being fired nor to stop the harassment that was being directed against me.

Based upon my 5 years experience with BATF under the directorship of Rex Davis, it is my opinion that Rex Davis was not competent to run BATF. When ethical agents are penalized for their honesty, with the full knowledge of the director, then such a director is not qualified to run a Federal Bureau.

In my opinion the orientation of the BATF seemed to change over the years. Especially after BATF was taken from under the control of IRS and given Bureau status. During this period of time the emphasis seemed to be on Empire building. The BATF top brass were concerned with getting more and more gun control laws. More laws would justify more employees and a bigger BATF. In turn each supervisor could qualify for a higher GS rating which in turn would mean bigger salary and benefit packages. I have often heard different supervisors say "Whiskey and explosive laws are little stuff, Gun laws are our future". Civil Service laws require a supervisor to be graded according to the number of employees he supervises. The more employees the higher the GS rating. During the Rex Davis directorship it appeared to me that this "Empire

"Building" was the prime concern of the Bureau, and to justify such growth more gun laws were needed. As a consequence the Bureau pushed for more gun controls. Over the years the Bureau seemed to change from an emphasis on Federal liquor control laws to strictly Gun law enforcement. In my opinion this was brought about in part by the Empire Building desires of ATF directorship, and supervision.

Furthermore there seemed to be a push by BATF supervisors to develop more gun law violations type of cases. This was known throughout BATF as the numbers game. BATF could take these huge numerical statistics before Congressional appropriations committees and thereby justify bigger and bigger budget requests for enforcement of Gun Control laws. Again the only way I know how to describe this trend is "Empire building", and this took place under the Davis directorship.

I hope that you find this information useful Mr. Hardy. I totally support your efforts and will comply with any requests you may have of me. If there is anything further that you may wish to know, any documentation that I may have, or anything else that you think would enhance your efforts, please let me know.

Sincerely,

CASPER CARROLL GIBSON.

STOUTSVILLE, OHIO, September 7, 1979.

Mr. DAVID HARDY,  
1600 Rhode Island Avenue,  
Washington, D.C.

DEAR MR. HARDY: Thank you for your letter inquiring about Jerry's case. I am writing this for my husband who is now a patient in the psychiatric ward at University Hospital in Columbus, Ohio.

Jerry was charged with dealing without a license and 2 counts of selling to an out-of-state resident (both to BATF agents).

His first appearance in court, in Cincinnati, Ohio, was on May 7. At this time he was formally charged, fingerprinted, and assigned a probation officer. Jerry plead guilty to the charges, as we had no money to pursue any other course of action.

The probation officer came to our house the next day. He told Jerry that the charges carried a possible \$10,000 fine and 5 years in prison. This was more than Jerry could handle. He suffered a nervous breakdown and he was admitted to Grant Hospital the next day. When he was released from the hospital, he was off work for 6 weeks and under the care of a psychiatrist.

His trial was held June 4. The judge was very sympathetic. He fined Jerry \$1000.00 but didn't put him on probation as he had no previous criminal record.

When Jerry went back to work at the Post Office (a job he held for 21 years) a postal inspector was waiting for him. Since a felony was involved, the case had to be reviewed to see if Jerry could keep his job. We worried about that for over a week. They suspended him for a week without pay, but he wasn't fired.

The damage had already been done. Jerry buckled under the pressure. Having a criminal record, and losing his good name in the community was devastating to him. Unable to do his job, (he kept falling apart) he filed for disability 3 weeks ago. Until this is settled, we have no income.

Jerry had a relapse a week ago and is hospitalized again. This is brief and inadequate, but how do you put human suffering into words?

Sincerely,

JUNE ELLEN CASSILL.  
JERRY W. CASSILL.

ROSE SOUTHERN & PADDEN,  
Fairmont, W. Va., September 2, 1980.

RICHARD E. GARDINER,  
Office of the General Counsel, National Rifle Association of America, Institute  
for Legislative Action, 1600 Rhode Island Avenue, Washington, D.C.

DEAR MR. GARDINER: I have received your letter and enclosures of August 28, 1980. On Tuesday, August 28, 1980 my client, Mr. Mugnaro died of a heart

attack. Although he had a history of heart disease, I believe the stress of the criminal prosecution aggravated his condition.

Thank you for the information and if I may, I would like to retain it in the event that I have an opportunity to represent another defendant charged with a similar offense.

Thank you again for all your help and time.

Very truly yours,

H. H. ROSE, III.

Bill

Dear Sirs,

This letter is to inform you of some of the actions of the "Batf" people in the State of Maryland. There is one informant that was used by the Batf who intrapred some 33 gun collectors. The collectors had their phone conversations recorded and the informant went to their homes where their conversations were again recorded. Prior to this time none of the collectors had a criminal record and most of them had been in the service country. The harassment of gun owners is not the word here in Maryland, but it is one of taking U.S. citizens and making them into criminals.

The BATF is more interested in making recordings in the homes of American Citizens rather than go after criminals. The average gun collector who has a family and is buying a home car, and is a good victim. Their method (BATF) is to plea bargain and to try and have the collector intrap their friends by way of buying or trading in his friends home and being wired at the same time.

If the collector turns down their deal then he is faced with a 10,000 dollar fine and 10 yrs. in jail. Thus in dealing in human nature the Batf are now using this method - they are making criminals out of anyone they can. This method is also used by the K.G.B.

The 1968 gun act was originally passed to control the dealers, but now it is being used against the American Citizens by a runaway Federal Agency.

It is hard to say just how many persons have been intrapred as most collectors would rather keep the matter quiet. Many of the persons who have had their homes raided by armed agents, who were stepping over small children, and have had their guns confiscated are not mentioned in the newspapers, the BATF are in the process of cultivation of informant i.e. one that will later intrap other collectors. I know because I am one of those persons. Other collectors are so scared that they will not talk to old friends for fear that their friends may be informants. People are scared to talk over the phone, as conversations may be recorded.

I have been advised by Atty. to not talk to anyone as he feels that the Gov. will go after me. But, I can not stand by and see our Constitution walked on by a runaway fed. agency.

Attached is list of names, it is my hope that if these people are contacted, they are Americans, and they are not afraid on the Batf. and they will talk to you, and tell the truth.

No name

## KENYON BALLEW: SUMMARY OF BATF DOCUMENTS

Few persons on either side of the gun control issue would fail to recall the Kenyon Ballew incident of eight years ago. Ballew, a young veteran, Boy Scout Commissioner, and collector of replica cap-and-ball revolvers, resided in Silver Spring, Maryland. He, like millions of other Americans, possessed some deactivated grenade shells, purchased at military surplus. All lacked explosive or detonators; one was plastic and another was no more than a burned-out smoke grenade, essentially a tin can with numerous holes in the side.

According to the BATF's later tale, their agents heard of these grenade shells from a "confidential informant" (whom they have to this day refused to identify). This informant also told of a "Papa" Thomas, who lived in an apartment upstairs in Ballew's building. Thomas, the informant said, had several sawed-off shotguns and a proclivity for robbery. Curiously, this informant was not a BATF informant; rather, his information was passed on from local police. The Bureau agents never bothered to talk to the informant face-to-face. They accepted the hearsay statements of local police as to what he had said and how reliable he was. Based on this, they decided to raid Ballew's apartment (Apartment No. 2) and Thomas' (Apartment No. 102) on the same night and at the same time. The Bureau agents quickly obtained search warrants for both apartments by giving a federal magistrate affidavits reciting (now at the level of third-level hearsay) what they believed to be the informant's claims. They also acquired the services of a number of Montgomery County police as a back-up force, and several battering rams. Obviously their dreams were of dramatic headlines in nearby Washington, D.C.

The actual raiding party chosen to conduct this armed break-in of a citizen's home was comprised mostly of inexperienced agents, one of whom had not yet even gone to the Treasury law enforcement school. Two experienced and high-level supervisors were present on the raid but chose to remain in their car a half block away, out of the way of any possible harm. The agents delayed their raid in order to insure a dramatic arrest along with the search and ultimately found themselves executing a daylight search warrant a few minutes past 8:30 pm. Although raids involving risk of a break-in are normally conducted by uniformed officers, the raiding force was almost entirely in plain clothes, with only one uniformed local officer for each raiding party. Two of the officers scheduled to enter Ballew's apartment were narcotics enforcement officers who in their line of employment had cultivated their appearance to resemble that of a dope addict. As they approached the door to Ballew's apartment, Kenyon Ballew was inside taking a bath; Mrs. Ballew was clad only in panties.

The agent's dreams of glory quickly faded. The raiding force at Thomas' apartment knocked, called out their business and began to batter down the door. The door was opened from within and they stormed inside. As they began their search, which left the apartment a shambles, they discovered that apartment No. 102 was not Thomas' residence, but rather occupied only by three young children. They had the wrong address. At Ballew's apartment, the agents' haste to use the battering ram resulted in tragedy.

The agents had in fact gone to Ballew's back door, a door which had furniture in front of it. They knocked and demanded to be let in. Mrs. Ballew, undressed and startled at the sudden call from the back door, later testified she offered to open the door and asked how she would know they were police (the officers later claimed to have heard nothing). She got no reply; instead, as she later described it:

"It was banging and then they started screaming and banging. It sounded like a half dozen people beating on the door all at once. . . I thought I heard something like 'open up.' and right after that something very heavy hit the door, and hit it a second time, and it started to pull away from its hinges. . ."

She screamed, "They're breaking in!" and retreated in haste. Her husband rushed from the bathroom and picked up a replica of a pre-Civil War revolver, holding it so as to cover the door.

The ram broke the door open only about eighteen inches, and the way was still blocked by furniture. Although a uniformed officer had been scheduled to enter first, he was shouldered aside by an overzealous and inexperienced BATF agent named Seals. Seals, wearing plain clothes, leaped over the furniture and staggered into the room. Upon seeing Ballew, he began firing with a 9mm automatic, a newly purchased weapon which he had not yet received authorization to carry. As he fired he fell to the ground so suddenly that the officers behind him,

hearing his shots, thought that he had been shot. In fact, Ballew, possibly confused by these strange intruders who claimed to be police yet had just broken down his door and were now shooting at him, stood with gun in hand but did not fire back.

Two more men pushed part way through the opening into the house. These were the undercover narcotics detectives, likewise not in uniform. Mrs. Ballew would later comment that they had looked more like street people than police, with beards, long hair, and grubby clothes. Ballew still stood without firing a shot. The undercover agents began firing at Ballew. He did not return their fire. Finally, a soft-point bullet struck him in the midline of the brain; blowing a large hole through his skull and lodging in the midline of the brain; among the other items confiscated during the search, officers would list human tissue and hair blown onto the wall. Ballew fell backward. His gun finally fired, into the floor opposite from the agents. The agents proceeded to search the apartment. Mrs. Ballew would later testify that she was handcuffed and placed in a police car while her husband lay bleeding (and in her mind dying) on the floor. Agents ultimately found the grenade casings sitting in a coffee can in the closet. To assure that Mrs. Ballew would not have to worry about her property, the police accompanying the agents carted off every major item of property in the apartment; as one of the agents would later testify,

"I do not believe that items of value were left on the premises, but I can't say that for a certainty." (Deposition of Marcus Davis, August 14, 1974, page 110).

Ballew miraculously (and with the aid of some excellent brain surgery) recovered, although he remains to this day in a semi-vegetable state, with major paralysis, little speech ability and loss of most reasoning functions. His shooting became the subject of wide outcry, and not only inside the pro-gun press; the Washington Post and Washington Star ran numerous articles and several critical editorials, and members of Congress likewise made repeated and critical inquiries of the Bureau.

To quiet the controversy, the BATF announced an investigation. On August 2, 1971, a spokesman for the Bureau released a press release concluding that "The actions of the law enforcement personnel in executing the search warrant were legally proper under the circumstances."

They also released to the media what purported to be an investigative report—which we will call here "the Treasury Report"—to support these claims. It ended by promising a few minor reforms to correct some minor administrative problems which BATF was willing to admit existed. The agent involved in overseeing the raid was quietly promoted and the Ballew case faded into oblivion.

Recently, however, we made a request under the Freedom of Information Act for copies of the BATF's own files on Kenyon Ballew. The BATF responded with copies of all except for a third "management implications" study of the shooting, of which they claimed every single copy had somehow been lost. We have secured word from one person who saw that particular study that the reason for its destruction or purported loss is obvious: the third report was extremely critical of BATF problems and deficiencies in management and the numerous civil liberties evasions which occurred. Analysis of the files which were produced by the Treasury were enough, however, to demonstrate some startling conclusions.

Based on these reports from the Treasury's own investigators, it is possible to prove that the "Treasury Report" and its purported investigation reports are in fact a massive coverup of the information obtained by the Treasury in the two real investigations dated June 21 and June 28, 1971. These investigations indicated that the search warrant was obtained through deception of the federal magistrate by Bureau agents, that members of the raiding party in fact heard Mrs. Ballew offer to open the door before they battered it down, that some of the plain-clothes men who supposedly wore police armbands may have in fact only put them on after the shooting, and that the grenade shells found were not in fact "destructive devices" under the Treasury's own definitions.

In all, nine major (and countless minor) portions of the Treasury Report are false or conceal material information; the final investigation report was not the report compiled by investigators but was in fact designed to cover up and suppress the true investigations that had been undertaken. In light of seriousness of this statement—the conclusion that a Treasury Bureau and its staff

deliberately deceived the American public and media in regard to the illegal search and shooting of an American citizen—it is appropriate to examine, point by point, with direct references to the documentation, the most damning discoveries.

I. WAS THE SEARCH WARRANT AGAINST BALLEW'S APARTMENT OBTAINED THROUGH FALSE AND DECEPTIVE STATEMENTS TO THE FEDERAL MAGISTRATE BY BATF AGENTS?

The treasury report quotes the entire of the affidavit for Ballew's apartment (Apartment No. 2, 1014 Quebec Terrace), which informed the federal magistrate under oath that:

(a) A "confidential reliable source" said Ballew had grenades; this source had proven his reliability by tipping off police as to three burglaries in the past which had in fact been attempted.

(b) A "source" said he also owned firearms, and a local officer said there were weekly reports of shooting "in the vicinity of 1014 Quebec Terrace".

(c) Another officer said they had received a threat that police would be ambushed and shot while responding to a false alarm "in the vicinity of 1014 Quebec Terrace."

In contrast, the Treasury Report does not reproduce the entire of the affidavit for the search of Thomas' apartment (supposedly Apartment No. 102, 1014 Quebec Terrace) nor does it indicate, by ellipsis or otherwise, what part was cut out. Why the strange omission?

An examination of the BATF's confidential files show the reasons. The omitted portions of the affidavit show, as reasons for being allowed to search Thomas' apartment, the same acts which the Ballew affidavit implies Ballew was suspected of committing. The Thomas affidavit states that officers received reports of shooting in "the vicinity of 1014 Quebec Terrace" and that a confidential source said police would be ambushed while responding to a false alarm in "the vicinity of 1014 Quebec Terrace". The BATF's files show clearly that the agent (Agent Marcus Davis) who obtained the search warrant viewed these acts as the acts of Thomas, not Ballew. In the report of investigation dated June 21, 1971 the BATF investigators note:

"(Officer) Seminuk reported that a negro male known as "Papa" Thomas, who resided at 1014 Quebec Terrace, an apartment building, had three sawed-off shotguns, a 12-gauge, a 20-gauge and 410-gauge; that on June 4, 1971, he received a call from Private Hibbs, Montgomery County Police Department, that they discussed the information the Seminuk had previously furnished them; that they also discussed Montgomery County Police Department's awareness of "Papa" Thomas and that there had been previous reports of shooting in that vicinity of 1014 Quebec Terrace. They further discussed the threat that had been received by the Montgomery County Police Department that there would be a false alarm at that address and that when police responded they would be ambushed. . . . Davis recalled that on June 5, 1971 he received information from a Private Lewis Ciamillo, Montgomery County Police Department, concerning a "Papa" Thomas. . . . That records of MCPD show Thomas has been arrested for armed robbery and the case is still pending. Ciamillo also stated Thomas is reported to constantly be armed; that on January 1, 1971, in the presence of Corp. James Mahoney, MCPD, a source. . . . stated that one day the police would receive a false report in the vicinity of 1014 Quebec Terrace, Silver Spring, Md., and that when the police responded to this call they would be shot without warning." Report of investigation, June 21, 1971, at page 5).

Agent Davis' own handwritten notes classify the ambush threat under suspected acts of Thomas, but not Ballew. As the Treasury investigation summarized Davis' notes:

Page 12 shows:

6/5/71

Louis Ciamillo & (name blanked out) 1/1 to effect that one day a cruiser is going to run up and we are going to shoot you (then following gun shots from the rear of 1014 Quebec Terrace, Silver Spring, Md.). 1014 Quebec Terrace, Apt. 182, Silver Spring, Mr. James Russell Thomas c/m/17 a/k/a "Papa". (Report of investigation dated June 28, 1971, at page 8) (Apt. 102 is Thomas' apartment, not that of Ballew).

From this two things are evident. First, BATF agents consciously made a misrepresentation to the federal magistrate when they claimed, as showing probable cause against Ballew, acts which they themselves suspected had been

committed, not by him, but by another person who resided in a different apartment in his building. The suspected acts of the other person were described as occurring "in the vicinity of" his apartment building, and the vital information that they were attributed to another person was not brought before the magistrate in the warrant affidavit relating to Ballew. Second, the Treasury Report's editing of the Thomas affidavit, without so much as ellipses to indicate the concealments, is apparently intended to remove from the public eye sections which overlapped with the Ballew warrant and would permit the reader to realize that the same acts were being used to justify the searches of two different persons' apartments. Thus the BATF's own guilty knowledge is demonstrated; the acts of a federal agent in deceiving a federal magistrate, in order to secure a search warrant, are covered up rather than repudiated.

Nor did the misrepresentations to the magistrate stop at this point. Even the nature of the alleged tip that police would be ambushed in that area was misrepresented to the magistrate. Although the affidavit would seem to indicate that this was a tip from some manner of informant who is privy to criminal plans for murdering the officers, the officer from whom Davis allegedly secured the information described the circumstances far differently. As he described it, the January 1, 1971 information came as follows:

"It was New Year's Eve. My partner and I were driving an individual home to Quebec Terrace from the 707 Restaurant where he was involved in a fight, and he had been drinking, and he gave us that information. I mean at the time we just passed it off as loud, belligerent talk, and that evening we got a call about 15 minutes after we dropped him off, there was a call for a knife fight at Quebec Terrace. . . . There was no fight at all when got there." (Deposition of Louis Ciamillo, November 29, 1974, at page 4).

The same officer went on to state:

"I don't think, if you are trying to draw some correlation between what that gentleman told us on the 1st and Mr. Ballew, you know, it hadn't entered my head that Mr. Ballew was actually going to carry out this threat or that he was in any way associated with this other gentleman." (Id at 9-10).

In fact, it was later demonstrated that Ballew did not even live in the apartment building at the time the threat was made! The Ballews moved in on the evening of January 15-16, 1971, whereas the threat had been made on the evening of December 31-January 1. Agent Davis, while reporting this six-month old incident in the search warrant affidavit, later confessed that he had made no efforts to determine whether or not Ballew had been residing in the apartment building at the date when this earlier information was given. Thus, a drunken threat made on an evening six months before the search, by an individual not associated with Kenyon Ballew, and which the officer reporting it to the ATF agent did not associate in any way with Kenyon Ballew, was used by the agent to give the federal magistrate the impression that some manner of informant was tipping them off as to the intention of Ballew. In this respect, also, the search warrant was secured by deception of a federal magistrate.

Nor did the deception stop here. The affidavit which persuaded the magistrate to issue search warrants keyed upon statements of an anonymous informant. His statements are, for example, the only evidence that Ballew possessed what anyone claimed could be grenades. The agents did not bring this informant before the magistrate, nor provide the informant's personal testimony, nor was the magistrate even informed of the identity of this secret, nameless accuser. Under existing law, as repeatedly set down by the United States Supreme Court, an affidavit based on accusations by such a secret informer must set out enough data about the informant to prove to the magistrate that the informant is a reliable source. Usually this is done by an officer's sworn statement that the informant has several times tipped him of about crimes that others were planning, and that these crimes in fact later came about or were attempted. Without this proof of past reliability, no warrant can be issued on an anonymous informant's claims. In order to convince the magistrate to issue the warrants, Agent Davis described the informant in his affidavit as:

"A confidential reliable source (the source's reliability is based on three separate reports of burglaries which were to occur in the Langley Park of Prince George's and Montgomery County, MD., which according to police reports in fact took place were attempted; these reports were in the recent past)."

A search of the Treasury's private investigation shows little with regard to the identity of the informant or the nature of his tips. In one place it is stated that



he was under arrest for breaking and entering at the time he gave the tip on Ballew. (Report of investigation, June 21, 1971 at page 7). Agent Davis' handwritten notes give a startling statement however, for under the heading 6/6/71 there is a summary of data on the informant's tip and identity. After cutting out the informant's name and adding a description of Ballew there is the following note with regard to the informant:

(Admitted to No. B & E [breaking and entering] which MCPD had reports on—recovering some of the property involved).

Thus we find the source of the informant's alleged "tips" on burglaries "which according to police reports in fact took place or were attempted." They were not tips as to the criminal plans of others, nor accurate predictions of their activities. Rather, they were the informant's own confessions as to his past crimes. The statement to the magistrate that these were tips of burglaries "which were to occur" is blatant perjury. Curiously, in subsequent civil litigation, the U.S. attorney's office responded glibly:

"Plaintiff also charges that the informant is not an informant as to other crimes, but was in fact the admitted perpetrator of these crimes. Semantics aside, an admission against interest carries its own proof of reliability." (Motion to dismiss and/or for summary judgment, dated 2 June 1974, page 218 of record, *Ballew v. United States*).

Thus in this respect also, the agents obtained the search warrant against Ballew by the knowing and intentional commission of perjury in order to deceive the federal magistrate. Once again, this startling information is completely suppressed in the final supposed investigation report which was released to the public and the media. That report likely passed over Davis' notes with the comment that there were no files kept other than his notes and "special investigator Davis did maintain brief notes in his personal possession. Although these latter findings, in our opinion, do not affect the validity of the search warrant, they have highlighted certain administrative deficiencies which the Treasury is ordering remedied. . . ."

## II. DID THE AGENTS PROPERLY SECURE APPROVAL OF THE MAGISTRATE AND THE UNITED STATES ATTORNEY PRIOR TO SECURING AND EXECUTING THE SEARCH WARRANT?

The Treasury Report adds, as further proof that the agents properly embarked upon the search, that "the U.S. magistrate found sufficient probable cause and issued a search warrant." The Treasury Report does not reveal, as is discussed above, that the approval was apparently based upon half truths and the withholding of material information regarding the reliability of an informant the magistrate was never permitted to see or question for himself. Prior to issuing the public Treasury Report, the BATF was informed that there were serious deficiencies in the supposed approval of the magistrate. For example, Roger Barth, then with the legal division of the Internal Revenue Service, submitted a memorandum after reading the first investigation report. This memorandum noted as one of the 19 discrepancies which were found, that:

"Detective Lieutenant Miles Daniels of the Montgomery County P. D. characterizes the informant, who it must be remembered is an informant of the Montgomery County P.D. and not of the ATF, as a 'generally reliable' source, a far cry from a reliable source. Why was this not made clear to the magistrate?"

Nonetheless, the BATF went ahead with its whitewashed public Treasury report, completely omitting the questions which were being raised even within the Treasury itself.

In similar fashion, the Treasury Report informs the media and the public:

"It must be noted that prior to their appearance before the U.S. magistrate, ATF agents spoke with an assistant United States attorney. After hearing the evidence, the assistant United States attorney advised that there was sufficient probable cause to obtain a search warrant."

This is not actually the advice he gave, even by the most favorable version of his statements. According to Agent Davis' own statement to the Treasury investigators, Assistant U.S. Attorney Charles Bernstein "told him if the informant in the case was reliable, to get a search warrant." (Report of investigation, June 21, 1971 at page 10). By omitting this provision, the Treasury report and its supposed investigation report conceals evidence contained in the real investigation reports, establishing that either the U.S. attorney was not informed as to the informant's alleged reliability or, after being so told, he still had substantial doubts.

Moreover, investigation has shown reason to question even this conditional agreement. Agent Davis' story as to the conference with the United States attorney changed from time to time in many significant details. As noted above, he initially maintained that the attorney approved the obtaining of the search warrant "if the informant in the case was reliable." When it came to testify in the civil lawsuit brought by Ballew, his sworn statements were precisely to the contrary:

"Q. Did you have a conversation with Mr. Bernstein in which you were advised by him that your case depended on the reliability of the 'source'?"

"A. Mr. Bernstein never said anything like that phrase to me, no sir. (Deposition of Agent Marcus Davis, August 14, 1974, at 38).

Nor was this the only problem with Agent Davis' statements. During the trial he testified that Bernstein in their initial conversation did not request him to call back before he obtained the warrant:

"Q. Fine, but in any event, did not Mr. Bernstein ask you to call him back before you did anything else?"

"A. I don't recall any such statement as that, no sir." (Id. at page 40).

Mr. Bernstein told Treasury investigators a different story:

"Assistant United States Attorney Charles Bernstein . . . stated that after discussing the situation with Davis, he told him that there was [probable cause], but he wanted Davis to call him back prior to the issuance of the warrant." (Report of investigation, June 21, 1971 at 11).

Davis confirmed this in his written statement to the investigators:

"On June 7, 1971 at approximately 5:00 PM, I discussed the matter concerning the search warrant with AUSA Charles Bernstein. He asked that he be kept advised of developments in the matter." (Written statement of Agent Marcus Davis, dated June 14, 1971).

Likewise, the Treasury's internal report by Roger Barth notes "Bernstein made it clear that, although he thought there was probable cause to get a search warrant . . . he wanted Davis to call him back prior to the issuance of the warrant." This was not done. Why?

Davis even changed his story back and forth as to the date when he secured the approval from Bernstein. The trial court in the Ballew suit noted that "on Friday, June 4, 1971 Davis telephoned Assistant United States Attorney Charles G. Bernstein. . . Bernstein told Davis he did not think it sufficient for a search warrant and suggested that he develop more information before seeking a warrant." This was based at least in part on Davis' testimony at the trial:

"The Court. What did he say to you?"

"The Witness. I would have to guess although I don't actually recall, that he felt it was not sufficient at that time because I didn't seek a search warrant that particular day, and if he had thought it was sufficient, I would have at that date." (Transcript of trial at 128).

This was in direct contradiction to the explanation he had given the Treasury investigators only a few days after the incident:

"Davis stated that on June 4, 1971, he called Assistant United States Attorney Charles Bernstein and discussed the case with him; that Bernstein told him that if the informant in the case was reliable, to get a search warrant. . . ." (Report of investigation dated June 21, 1971 at page 10).

In the first version, the version claimed under oath at trial, Bernstein initially refused to approve the search warrant but on June 7 gave his approval. In the second version, the version given as explanation to the Treasury investigators, Bernstein gave his approval in the first conversation on June 4, 1971. Thus the statement released in the supposed investigation report, flatly claiming that the U.S. attorney "advised that there was sufficient probable cause to obtain a search warrant" is disproven by the real investigation reports, which were not released to the public. Even according to the agent's own version, the U.S. attorney said at most the warrant would be proper only if the informant were reliable. Moreover, the story of the agent in this regard shifted rapidly from time to time in relation as to instructions given him and even the very date when the approval was obtained.

## III. DID THE AGENTS IN THEIR ZEAL BREAK DOWN THE DOOR EVEN AFTER MRS. BALLEW HAD OFFERED TO OPEN IT?

The Treasury Report claims in its introduction that:

"Interview of ATF investigators and police officers assigned to execute the search warrant disclosed that ATF investigator Seales knocked on the door



several times and announced in a clear voice "Federal officers with a search warrant. Open up." After what ATF investigators and police officers describe as a reasonable time, during which Seales and three other investigators heard either scuffling inside the apartment or a voice saying something they could not understand, apartment No. 2 was forcibly entered."

This crucial statement is the most leading in the entire Treasury Report. Note the statement that only noises or an indistinct voice were heard by "Seales and three other ATF investigators." The raiding party consisted of more than just those agents. This omission is intentional, made for the reason that one of the raiding party distinctly heard Mrs. Ballew state "Wait a minute, I'm going to open the door" before Agent Seales (who was listening with his ear to the door) gave the order to use the battering ram to break in. The Bureau's secret files show the following interview of MCPD Officer Blount who, apparently not realizing the significance of what he was stating, informed Treasury investigators:

"Blount stated . . . that he heard the knocking at the door from the other side of the living room when the agents tried to gain access and he heard the agents tell them to open the door. He also heard the woman inside the apartment hollering at the door asking 'Who are you, wait a minute, I'm going to open the door. How do I know you're police?'" (Report of investigation, June 17, 1971 at page 44).

The Treasury report simply glosses over this, probably the most critical statement in the entire investigation. Only five pages from its end does the report even acknowledge that Officer Blount claimed to have heard anything. And in acknowledging it, the supposed investigation which the Treasury publicly released provides, not the statement contained in the real investigation reports, but a doctored summary which omits the "I'm going to open the door" and attempts to make it look as if all the statements (rather than just "they're breaking in" came after the door was being beaten down rather than before. Compare Treasury Report quotation with the summary contained in the real investigation report:

#### TREASURY REPORT

"I heard knocking and voices coming from the front and then the voice of a woman in the apartment. As the ram hit the door I heard the woman holler something to the effect 'Who are you, they are breaking in and how do I know you are police?'"

#### INVESTIGATION REPORT

"Blount stated . . . that he heard the knocking on the door from the other side of the living room when the agents tried to gain access and heard the agents tell them to open the door. He said he heard the woman inside the apartment hollering at the door, asking 'Who are you, wait a minute, I'm going to open the door, and how do I know you're police?' Blount said he tried to look in the apartment, but he could only see through a small opening. . . . He could not see either Kenyon Ballew or the woman from this position. He stated that the next thing that he heard was the woman say 'They're breaking in,' and he recalls hearing the ram hit the door about four times."

Obviously, in doctoring the investigation report, the Treasury desired to prevent the public from asking embarrassing questions—such as whether the officer ordering the break-in, who was listening with his ear to the door, heard those same words, or whether, in his zeal for a spectacular raid, he chose to order the break-in despite hearing such a statement. Indeed, the problems posed by Blount's clear testimony did not escape ethical authorities within the Treasury. Roger Barth commented in his memorandum on the first investigation report that:

"Blount states that he heard Mrs. Ballew 'hol'ering at the door" to Seales and the others. 'Who are you, wait a minute, I'm going to open the door. How do I know you're police?' This contradicts Seales and Davis, but it is consistent with the statement of at least one ATF agent and at least one police officer, given the night of the incident, in which they admit hearing a response from within the apartment, but claim not to have understood it."

By the time of the civil trial, the agents and Officer Blount had found a remedy for what they heard. They simply denied under oath that they had heard anything, heedless of their previous statements. Agent Davis who had informed investigators that after Agent Seales knocked at the door "I did hear sounds

as though someone was scuffling away from the door," (Statement of Marcus J. Davis, June 14, 1971, Page 3) testified under oath at the trial that:

Q. How did you get into the apartment?

"A. . . . Agent Seales knocked at the door in a normal manner. . . . He heard no response. At that time, Agent Seales knocked loudly on the door with the flat of his hand and at that time he announced 'Federal officers with a search warrant, open up.' We waited for a period of time and it became quite evident that nobody from inside was going to open that door. I heard nothing that I could construe as human sounds from inside that apartment. . . .

Q. You heard someone inside, didn't you?

"A. No sir, I did not.

Q. Are you sure of that?

"A. Yes sir, I am positive of that." (Trial transcript at 164).

After being confronted with his earlier written statement, which had been obtained by the attorney for Ballew, Agent Davis admitted "I did hear a sound as though someone was scuffling away from the door." (Id. at 167). Likewise, ATF agents had by then had an opportunity to explain to Officer Blount the damming effect of his statement that Mrs. Ballew had stated "Wait a minute, I am going to open the door." His testimony at trial simply denied hearing such a statement, in contradiction to his statements to the investigators the day after the shooting:

"A. To the best of my knowledge, when I heard the knocking on the front door and the men outside the front door hollering for them to open up, I heard a woman holler "Who is it?" I believe that is what you said and something about "How do I know you are the police?" And then I heard her holler "They are breaking in," and that was the extent of anything inside until the shots were fired.

Q. That is all you recall as having heard?

"A. Yes, just the woman hollering. . . .

Q. Did you hear a female voice hollering 'Wait a minute, I will open the door?'"

"A. No, sir." (Deposition of Officer Thomas Blount, September 27, 1974 at pages 8-9).

#### IV. WERE THE AGENTS AND OFFICERS WHO BROKE INTO THE BALLEW APARTMENT EASILY IDENTIFIABLE AS POLICE?

Of the officers and agents at the Ballew apartment only one, Officer Kramer of the Montgomery County Police Department, was in uniform. Every other participant was in plain clothes, although standard operating procedure for most police departments is to permit break-ins of this type to be accomplished only, or at least primarily, by officers in full police uniform, for the purpose of minimizing the risk of a mistake by a law-abiding citizen within. The Treasury Report, endeavoring to give the impression that the presence of the uniformed officer was obvious, states:

"At the time entrance to the Ballew apartment was forced, uniformed police officer Kramer was stationed at the front end of the battering ram nearest the door where he could be seen and (was) one of the first to enter."

Unfortunately, the Treasury Report neglects to mention that, as BATF Agent Marcus Davis admitted to Treasury investigators, "a uniformed officer who was at the front of the ram somehow was pushed to the rear." (Report of investigation, June 21, 1971 at page 40). The charts accompanying the investigation show, in depicting the situation at the moment Ballew was shot, that uniformed officer Kramer is at the extreme rear of the raiding party, still beyond the door and clearly not visible through the 18" opening which had been forced and which itself was filled with two undercover agents who were shooting at Ballew. The Treasury Report thus creates the false impression that the uniformed officer entered first when the real investigation reports show he was in truth the last in line and did not enter until after the firing was over.

As to the non-uniformed officers, the Treasury Report seeks to undermine Mrs. Ballew's claims that several appeared like street people or dope addicts, causing the confusion on the part of her husband. The Treasury Report described the ATF agents as "attired in street dress clothes with either suit coats or shirts and ties" and badges on their coat pockets while the county plainclothes men were stated to have worn "a yellow short-sleeved sweatshirt" and a "short-sleeved red and green horizontally-striped polo shirt." They both allegedly wore

armbands with large police insignia. While admitting that they had mustaches and "sideburns extending below the ears" the Treasury Report assures us that "none . . . wore a beard."

The BATF's private reports, however, show a radically different picture. Only one agent would have been visible to Ballew—Agent Seals, the first to enter the apartment. His sole identification would have been the badge on his coat pocket, but since Seals testified that he immediately dropped to a crouch on the floor upon seeing Ballew, and dropped so suddenly that the agents behind him thought that he had been shot, Ballew would hardly have had an opportunity to observe the badge on his chest pocket.

The Treasury Report's flat claim that the two plainclothes men who next entered were wearing conspicuous police armbands is likewise impeached by the actual Treasury investigations. The two officers who were at Ballew's door themselves claimed that they wore armbands, but when the investigators questioned a neutral witness, one of the neighbors who was outside immediately after the shooting, they found:

"The only additional thing he could remember about the raid was that after the shooting he saw two men run from the apartment of Ballew to a car, and place armbands on their arms." (Report of investigation, June 21, 1971 at page 74).

This crucial statement is, as might be expected, completely cut out of the public Treasury Report. This statement clearly did not escape the attention of the persons preparing the Treasury Report, however. Once again, IRS Counsel Roger Barth noted in his memorandum:

"It is disclosed that a civilian witness, Gordon Paul Chittum, Jr., reported that following the shooting two men ran to a car and put on armbands. As team chief, did not Agent Davis check to see that his men had their identification properly affixed before commencing the raid? If not, why not?"

Obviously it was precisely these questions which the BATF did not desire the public to begin asking. It accordingly dealt with the witness' inconvenient testimony by drafting the supposed investigation report which accompanied the Treasury Report, and which simply omitted such.

Finally, the investigation reports show that the Treasury Report's effort to deny Mrs. Ballew's statement that the officers were bearded, is likewise unfounded. The Treasury Report assures the public that "none of the ATF investigators or the Montgomery County Police officers who executed the search warrant at Apartment No. 2 wore a beard." The facts as found by the Treasury investigators tell precisely the opposite story. Officer Blount told investigators a few days after the shooting that "the undercover men also had beards or mustaches and chain whiskers." (Report of investigations, June 21, 1971 at page 440. Another neighbor, who arrived at the scene after the first agent witnessed the undercover agents putting on their armbands, told investigators that "there were two hippie-looking young men at the scene" whom he further described as having "mustaches, long hair and wearing sweatshirts, who were identified as police by armbands. . . ." (Id., page 71.) ATF investigator Joseph T. Long, in a statement given to Treasury investigators on June 16, 1971 stated that "one Montgomery County officer had the stubble of a beard and was attired in sport clothes." Officer Louis Pace reported to investigators on June 15, 1971 that "I do know that one of the County officers had a neat van Dyke-type beard."

The Treasury Report thus seeks to whitewash evidence that the plainclothes men in fact did have beards and long hair, and thus were easily mistaken for street people rather than officers, that they may have on their police armbands only after the shooting, that the uniformed officer was the last to enter rather than the first, and that other lay witnesses considered the plainclothes men to appear like street people, identifiable as police only by the armbands (which apparently were added after the shooting).

V. WAS MRS. BALLEW, WHOM AGENTS HAD NO REASON TO BELIEVE WAS INVOLVED IN ANY OFFENSE, TAKEN FROM HER APARTMENT AND WOUNDED, HUSBAND AND HELD IN HANDCUFFS?

The Treasury Report attempts to deny the claims that Mrs. Ballew was kept from comforting her husband after he was shot, by being pushed outside the apartment in her underclothing, then handcuffed and held in a police car. The

report claims as to first that "investigation has disclosed no evidence that Mrs. Ballew was pushed or made to stand outside of her apartment prior to her removal by the police." That sentence slides by smoothly, but let us read it carefully. It is precisely her removal by police that we are talking about; there was no claim that anyone other than the raiding party was responsible for pushing her out. And there is in the actual Treasury investigations abundant evidence that she was, in fact, forced from her apartment in handcuffs while her husband lay wounded within.

The Treasury investigators reported that during their questioning of Officer Hibbs:

"He commented that Sara Louise Ballew was taken from the apartment prior to the time Keyon Ballew was removed because she was constantly screaming and creating trouble in the apartment." (Investigation, June 28, 1971 at page 26.)

Likewise, the investigators found when interviewing Colonel Atkins of the MCPD that:

"Colonel Atkins stated that his investigation showed that after Mrs. Ballew was taken out of the apartment to get her out of the way of the search, she was placed in a patrol car where she was handcuffed." (Id., page 32.)

Elsewhere in the investigation, BTAF agents claimed, in confused contradiction that

1. Mrs. Ballew was never outside the apartment in her underclothing and also that

2. She was outside the apartment, but only because she ran outside on her own. (Untitled Treasury investigation reports, numbered 5 at page 10 and numbered 6 at paragraph 9).

Likewise, the Treasury Report attempts to gloss over the fact that ATF agents cheerfully permitted state police, who had no search warrant and were accompanying them only to lend support if necessary, to virtually clean out the Ballew apartment in Mrs. Ballew's absence. The Treasury Report, after discussing extensively what was seized under the search warrant, glosses over the remaining seizures:

"Our investigation reveals a tighter control on the removal of additional property should have been exercised by the Federal officers in charge on the search." As Agent Davis later testified:

"Q. If you saw someone pick up a tape recorder or a little radio, obviously that wouldn't be a—

"A. I saw a number of those things picked up. I saw a number of them removed."

"Q. Under your orders?"

"A. It would have been my orders to secure the premises. We could not secure the apartment in such a way that the neighbors couldn't have entered and I would have safeguarded all property within the premises." (Deposition of Agent Marcus Davis, August 14, 1974 at 107-08).

The search was quite thorough, as Agent Davis summarized:

"I do not believe items of value were left on the premises, but I can't say that for a certainty." (Id. at page 110).

One of the officers explained:

"I think someone tried to straighten the door out so it would shut, but the door couldn't be locked. . . . Since we could not secure the area, I believe the property other than evidence was removed. . . ." (Deposition of Donald Sloan, 15 August 1974 at page 29).

The minor problem is that BATF investigator L. D. Callans provided the Treasury investigators with a statement concluding:

"After we finished our search of the apartment sometime between 10:30 and 11:00 P.M., we left, securing the front door by bending out the dents as well as we could and securing it from the inside with the chain lock. A Montgomery County police officer and I were the last to leave the apartment by the rear door, both of us making sure it was locked." (Statement of L. D. Callans, June 5, 1971).

IRS Counsel Roger Barth in his commentary on the first investigation report commented with regard to one of the minor seizures, that of a rifle grenade marked "inert", that Davis had stated was

"Not seized pursuant to the warrant but was retained for examination by an ordnance expert."

"Where does the Treasury law enforcement school or the ATF find that distinction in the federal rules of criminal procedure? You either seize it or list it on return or you leave it there. Any county sheriff knows that much and it's

difficult to believe that Davis is other than concocting a story to cover another of the many mistakes of that evening. This should be pursued."  
It was not, as might be expected.

#### VI. WERE THE GRENADE SHELLS FOUND IN BALLEW'S CLOSET DESTRUCTIVE DEVICES?

The Treasury Report notes the investigators found four items that were possible destructive devices and recites their descriptions straight from the search inventory as one "baseball type plastic body hand grenade", two "canister hand grenades" and one "military hand grenade fragmentation type". The Treasury Report does not inform the reader that the inventory was in fact outrageously incorrect. The "canister" grenades were in fact empty canisters for smoke grenades—the empty canister being no more than a tin can to hold the smoke generating material, perforated by a large hole in the bottom and smaller holes on the side. The "fragmentation type" grenade was in fact a practice grenade which has unusually thick walls and a hole in the bottom and is specifically not to explode but rather to expel a cloud of white smoke during the practice. The strange "plastic body" grenade turns out to be an empty plastic sphere designed to hold tear gas powder and used specifically because it does not generate fragments and thus could not injure the person against whom the tear gas was being used.

After creating the impression that these items were in fact deadly grenades, the Treasury Report asserts that even the empty shells qualify as "destructive devices" since "ATF firearms experts further advised that two of the three grenades required only the addition of the seized black or smokeless powder to be completely functional, while the third required only a plug of wood, wax, lead or similar material to be completely functional."

Once again, the words must be read very carefully lest their meaning slip past. What is meant by "fully function"? Is a plastic casing made "fully functional" by placing some rifle powder inside of it? How could burning powder burst a tin canister which is already perforated with numerous holes specifically designed to let the smoke escape rather than contain it? An examination of the "expert" report on which the Treasury Report bases this statement shows that "fully functional" does not relate to functioning in the sense of an explosion, but only asserts that the canisters could be charged with powder.

"Items 3, 4 and 5 could be fully activated (charged) in a matter of a few minutes merely by filling the bodies of the grenade with either black powder or smokeless powder, either of which was readily available in sufficient quantities. Item 4 (practice grenade M-21) would have required a plug in the bottom to retain the charge. . . ."

This cautious report, obviously submitted by a Bureau "expert" pressured to give an opinion that would let the Bureau off the hook, subsequently rebounded. When Ballew filed a civil action against the Bureau, it was necessary for the experts to fulfill the expectations they had generated. This they did by some extraordinary means. For example, they ultimately got the smoke grenade canister to burst by wedging a wooden plug into the large hole in its bottom, wrapping the small holes of the side shut with fiber tape, then filling the canister full of a 50-50 mix of black powder and pistol powder. With this much doctoring, they ultimately managed to get a minor explosion. Likewise, they managed to coax a pop out of the plastic grenade by filling it with this powder. Although it generated no fragments, the expert explained that if detonated in a confined space such as an automobile, it might after all break an eardrum. (Trial transcript, pages 523-30.)

Of course, since the time fuse had already been burned in each grenade, it would have detonated instantaneously, which might have posed some problems for anyone trying to use it as a weapon.

Moreover, the Bureau's files show that it had several times taken positions that grenades and shells in which explosives had been removed were not destructive devices. On October 30, 1968, during the amnesty for registering destructive devices, the Bureau sent out a teletype announcing that "grenades, bombs, shells and similar devices which have no powder or detonator are not, repeat not, destructive devices since the combination of parts is not precedent for ready assembly of a destructive device. Registration of such devices shall not be made." The Bureau gave a written opinion to an unnamed Californian on July 9, 1969 in answer to his question of whether it was lawful to possess ord-

nances including grenades "as long as the above are deactivated, unloaded or dummy?", that "deactivated, unloaded or dummy devices would be excluded from the act, except reusable artillery shells and components thereof", which might if sold in quantity require an ammunition dealer's license. Likewise a memo was sent to the chief of enforcement, Southeast Region, accompanied by photocopies of grenades. The memo urges that certain grenade fuses which incorporate blasting caps might in themselves be destructive devices. Over sketches of the combat grenade and its detonator—equipped fuse is written "should be destructive devices". But over "fuse, hand grenade M-201 A1" is marked "should not be destructive device". This is the fuse which was attached to all three of the Ballew grenades that were alleged to be destructive devices; since it is not designed to set off an explosive charge, it includes no blasting cap. (Report of investigation, June 21, 1971 at page 56). Thus the Ballew situation drove the Treasury to fabricate a case of violation of the 1968 Gun Control Act, by means of extensive tampering with evidence, and the ignoring of its own opinions so frequently given to collectors—and even an instruction to its agents that they were not to register such dummy or deactivated hand grenades, even if the owner desired to.

#### VII. DID THE BATF IN FACT TAKE ANY MEASURES TO PREVENT THE RECURRENCES OF THE BALLEW INCIDENT?

In its press release of August 2, 1971, the BATF assured the public that certain "corrective actions" would "be taken immediately". These consisted of "detailed instructions" to insure three objects:

1. "Thorough and tighter supervisory control" of searches;
2. "Tighter control" on "removal of property by local police under a federal search warrant" and
3. "Complete and accurate recordkeeping procedures."

The Treasury's private files show that each of these remedies was subverted even as it was taken. Comforting words were uttered, but steps were taken to insure that agents would understand that it was "business as usual".

The "detailed instructions" were never given for fear that the persons being raided might be able to use such instructions to show the incompetence of agents conducting the search, and thus to impeach the quality of the prosecution. In the Treasury files was found a memorandum, discussing drafts of instructions, which stated:

"When possible manual should avoid prescriptions of exact action to be taken and should be limited to stating principles and giving guidelines. . . . A cogent reason for keeping the instruction away from prescription of precise action is that the basis for criticism by persons seeking to defeat rather than to further effective enforcement of the laws will be reduced." (Memo, Office of the Secretary of the Treasury, dated November, 1971).

So much for the "detailed instructions" which had been promised.

As to stricter supervisory control, the drafts of the proposed regulations essentially required applications for warrants to be cleared with the then head of the field office. Even this minor requirement was given a huge exception lest it "cramp the style" of zealous agents: Such clearance was not required where the delay would "increase the chance that the purpose of the search would be frustrated" and the agent applying is GS-11 or higher. In the Ballew case, the agent applying was a GS-11, and claimed to be afraid that their informant, the burglar, would be released in the morning and might tip off "Papa" Thomas in Apartment 102. Thus even this general control would not have prevented the Ballew shooting. No controls were put on reliability of informants, truthfulness of affidavits, or perversion of evidence. Rather than "detailed instructions" "general guidelines" were to be laid down, specifically designed to be so vague that no agent could ever be criticized for failing to follow them.

As to the removal of property by state officers under a federal warrant, the proposed orders are more concerned with helping such than with restricting it. The entire of the "detailed instructions" here consist of two sentences stating that if items are seizable under state but not federal law "the search leader should cooperate with state law enforcement agents to permit a seizure to be made but should not seize such items" himself and which inform the federal agent to obtain copies of the state inventory or warrants for his own files.

As to the recordkeeping orders, the proposed draft does advise agents to keep

files on upcoming searches and to make personal notes on evidence. But, lest an agent mistakenly think that this means he should write down matters which might harm the Bureau's search or suggest that another agent's actions were improper, he is warned "to make such notes as . . . are appropriate in view (1) the probability that the notes will have to be turned over to counsel for the defendant under 18 USC Sec. 3500 if the special investigator becomes a witness." This, at least, might change some aspect of the Ballew tragedy. Agents are now on notice that, when in the future they obtain a warrant based upon "tips" consisting of the informant's own confessions, they should at least not write this down in their notes and thus contribute to embarrassment of the Bureau.

## CONCLUSION

The above areas are merely the major points of interest in the Ballew case. Numerous lesser questions remain unanswered. Why were the two highest ranking agents sitting in a car fifty feet away, out of the zone of any possible danger, effectively abdicating any supervisory responsibility for the raid? (As Roger Barth notes, "Although two area supervisors were aware of the forthcoming raid, were present at the briefings and at the scene of the raid, neither was in command. . . . Arguably, had the more experienced area supervisors been leading the raid, tragedy might have been averted.") Why were the agents responsible for the search and shooting permitted to "investigate" their own shooting immediately afterward (their reports state they did so prior to executing the search warrant), disturbing evidence, chopping the bullets from the wall with hatchets and thus destroying traces of the angles from which the bullets entered and exited, and in at least one case using the very bullet found? If agents were frightened of violent resistance, why did they not enter and search the premises during the day when Mr. Ballew was not home and arrest him at his place of work or upon his return? Why was an agent with only one month experience with ATF, who had not even yet been sent to Treasury law enforcement school, permitted to go along on a raid where the situation might quickly escalate (as the decision to carry the battering ram suggested).

These questions remain unanswered. So, for that matter, do the major issues raised above. The Bureau preferred to cover up rather than face the evidence that the search warrant had been based upon omission of material fact and outright deception of the magistrate; that evidence which the agents knew did not relate to Ballew was included in his search warrant affidavit; that overzealous agents. After the search, Agent Seals was promoted two GS stages; after the shouldered aside the only uniformed officer at the door; that the agents who in fact entered were not easily identifiable as police and were described by other neighbors as appearing more like street people than officers; that Mrs. Ballew was handcuffed and expelled from her own apartment as her husband lay wounded within, and that the apartment was then effectively cleaned out of every item of value by state agents who were supposedly merely escorting the ATF agents. After the search, Agent Seals was promoted two GS stages; after the trial in the civil matter, when the agents and officers so dramatically changed their testimony, the agents received congratulations from the U.S. attorney trying the case:

"The success in defending any lawsuit is never any better than the quality of the individuals involved in the incident upon which the suit is based. In this respect we were very fortunate in the Ballew case. From the time the suit was filed until the completion of the trial both Mr. Davis and Mr. Seals demonstrated ability of which your Bureau can truly be proud. During their extensive testimony, both of deposition and trial, their answers were always honest, candid, knowledgeable and persuasive. . . . Our attorneys found it to be a distinct pleasure to represent federal employees who possessed such professional abilities. I would ask that the preceding comments be forwarded by you to appropriate officials in your Bureau."

Ballew, in contrast, is today still a semi-vegetable, with a judgment against him by the United States for court costs in excess of a thousand dollars. The Ballew cover-up, whitewashing the illegal search and irresponsible shooting of an American citizen, makes the Watergate cover-up look minor—right down to the last detail.

The BATF cover-up succeeded.

[From the Daily Times, Serving Mamaroneck and Larchmont, Apr. 15, 1978]

## FEDERAL AGENTS ACCUSED OF BEATING PAIR

(By John Castellucci)

A Yonkers salesman and a Bronx accountant charged Friday that federal agents beat them after stopping their car on the Hutchinson River Parkway Thursday.

Frank Chismar, the salesman, and Joseph Paolucci, the accountant, made the charge in statements given to the Westchester County Parkway Police Department, which has jurisdiction over the Hutchinson Parkway, and Thursday had sent a patrolman to the scene of the alleged beatings.

Chismar, 28, of 59 Elissa Lane, Yonkers, said he was beaten repeatedly after agents of the federal Bureau of Alcohol, Tobacco and Firearms (ATF) stopped him near the Lincoln Avenue exit of the parkway in Pelham.

Paolucci, 34, of The Bronx, said the agents, who were in civilian clothes, refused to identify themselves and struck him whenever he said they had the wrong people.

Michael LaPerch, special agent in charge of the bureau in Manhattan, acknowledged that Chismar and Paolucci had been detained but denied that there had been misconduct on the part of bureau officials.

LaPerch added that the bureau was investigating the incident in cooperation with Parkway and New York City police. He said the two men were stopped in connection with an investigation of gun-trafficking, which the bureau currently has under way.

According to LaPerch, that investigation already has resulted in the arrest of Frank Sisto, 28, of The Bronx. Sisto, who is being held on \$10,000 bail in the Metropolitan Correction Center, was arraigned Friday on charges of armed theft, possession of a sawed-off shotgun, carrying a firearm during the commission of a felony and assaulting a federal officer.

LaPerch declined to identify the officer. He said Sisto had been arrested Thursday but refused to say whether federal agents were searching for him when they stopped Paolucci, Chismar, and a woman passenger, Brenda Thompson, of the Elissa Lane address. According to Paolucci, however, federal agents explained that they had mistaken him and his friends for three others.

"They said they were looking for two guys and a girl in a Buick and they looked like us."

Paolucci said Chismar, who has a heart condition, passed out while federal agents were beating him. He said the agents took them into Pelham, called an ambulance and told them to forget the incident after apparently realizing they had made a mistake.

Paolucci said Alex D'Atri, who identified himself as the special agent in charge, threatened Paolucci when it became apparent that he might file a complaint.

"When I asked him where the precinct was, he gave me his phone number and said, 'If you guys know what's good for you, you'll take this phone number, go home and call me in three days. You won't go to no precinct.'"

D'Atri, of the ATF office in Manhattan, could not be reached for comment.

Chismar and Paolucci said they disregarded the threat. Along with Miss Thompson, they went to Village of Pelham police headquarters after being treated and released at Mount Vernon Hospital. They reportedly filed a complaint with a lieutenant from the 43rd Precinct in The Bronx, who had come to Pelham after the incident occurred.

On Friday, Sgt. Edward Burns, a spokesman for the New York City Police Department, confirmed that detectives from the 43rd Precinct had assisted federal agents when they stopped Chismar, Paolucci and Miss Thompson on the parkway. Sgt. Burns also said the department was investigating the incident to determine whether any police misconduct had occurred.

Frank LaSorta, a spokesman for Mount Vernon Hospital, confirmed that Chismar and Miss Thompson, had been admitted for treatment late Thursday afternoon. He said Chismar was released from the hospital at 6:30 p.m. and Miss Thompson at 6, but declined to say whether law enforcement officials had accompanied them. "You can understand how sensitive our position is," LaSorta said.

The incident, which occurred about 3:45 p.m. Thursday, tied up traffic on the Hutchinson River Parkway. John Foley, a motorist who witnessed the incident between Miss Thompson, Chismar and the law enforcement officials, said officers in plain clothes beat Chismar in open view of motorists on the parkway.

Foley, of 64 Hill St., New Rochelle, said he was following another car in the northbound lanes when an unmarked vehicle pulled alongside the car and forced it over to the guard rail.

Foley said more than a dozen officers jumped out of the unmarked car and several other vehicles, among them a Checker Cab. He said a group of officers surrounded one of the men and began beating him repeatedly, eventually removing him to a car, where the beating was continued.

Chismar said he was pistol-whipped, punched and kicked. "All I know is one guy held me down and the door kept opening and feet and fists kept coming in and hitting me."

According to Chismar, one of the agents kept asking him, "Where's Bobby? What did you do with the gun?" He said the beating let up after he fainted.

Neither he nor Paolucci could explain why they were stopped. Both denied having a gun or a criminal record.

Paolucci estimated that there were 17 federal agents and plainclothes detectives at the scene. He added that they handcuffed Miss Thompson and told her to choke when she said she was going to throw up.

He said they struck him whenever he asked them a question.

[From the Daily Times, Apr. 19, 1978]

POLICE ADMIT ERROR IN ARREST

(By John Castellucci)

Law enforcement officers mistook a Yonkers salesman for a robbery suspect when they tried to arrest him on the Hutchinson River Parkway last Thursday in Pelham.

The salesman, Frank Chismar of 59 Elissa Lane, Yonkers, and a passenger, Joseph Paolucci of 2600 Netherland Ave., the Bronx, have charged that officers in civilian clothes beat them after stopping their car near the Lincoln Avenue exit of the parkway about 3:45 p.m. Thursday.

Chismar and Paolucci say Brenda Thompson, another passenger, was handcuffed and forced to kneel at the side of the road while the beatings allegedly took place. They say the law officers, who wielded shotguns and pistols, identified themselves as agents of the federal Bureau of Alcohol, Tobacco and Firearms and detectives from the 43rd Precinct in the Bronx.

On Tuesday, Capt. James Trainor, 43rd Precinct commander, called the incident "a legitimate case of mistaken identity" and confirmed that law officers were searching for Frank Sisto, a robbery suspect, when they stopped 28-year-old Chismar and his friends.

Sisto, also 28, of 2475 Southern Blvd., the Bronx, was arrested Thursday night on charges of armed theft, possession of a sawed-off shotgun, carrying a firearm during the commission of a felony and assaulting a federal officer.

According to a deposition filed at his arraignment, Sisto allegedly stole \$300 and a Smith and Wesson semi-automatic pistol from an undercover agent on April 7.

The deposition, signed by Anthony L. Gondiosa, identified Gondiosa as the agent. It indicates that he works for the Bureau of Alcohol, Tobacco and Firearms, an agency of the U.S. Treasury Department entrusted with breaking up illicit gun-trafficking rings, arresting underworld arms dealers, ferreting out illegal weapons caches and tracing firearms used in crimes.

According to Gondiosa, Sisto pointed a sawed-off shotgun at him just as he was about to buy a gun from a man identified only as Robert Gallucci. The transaction, which was illegal, would have resulted in the arrest of Gallucci.

Gondiosa said he set it up in the course of an undercover investigation on behalf of the bureau. He identified the \$300 and the Smith and Wesson pistol as bureau property and said Sisto robbed him of them when he met with Gallucci at Glebe Avenue and Overing Street, which lies within the jurisdiction of the 43rd Precinct in the Bronx.

Michael LaPerch, special agent in charge of the bureau in Manhattan, Tuesday said Gallucci was still at large but declined further comment on the case. Federal agents were apparently searching for him as well as Sisto when they stopped Paolucci, Chismar and Miss Thompson on the parkway.

[From the Sarasota Herald-Tribune, Dec. 18, 1979]

AGENT CLAIMS IN GUN-RUNNING CASE HE SHOT UNDERCOVER COUNTERPART

(By Matt Bokor)

JACKSONVILLE (AP) — A federal Treasury Department agent testified Monday that he shot a counterpart during a botched gun transaction with an accused dealer of illegal weapons.

Special Agent John Goff Jr., also testified he was "pretty sure" he didn't shoot another agent from the U.S. Bureau of Alcohol, Tobacco and Firearms on July 10 when the undercover lawmen had agreed to purchase allegedly illegal weapons from Herbert Gardner.

Gardner, 29, is on trial charged with assaulting the three agents—Goff, Gene Farnell and Terry Kirkland—who were wounded along with Gardner in the shootout around a schoolbus on the banks of the Suwannee River near Live Oak.

Goff was shot in the arm, leg and back. Kirkland was shot in the big toe; Farnell in the arm and Gardner in the neck. All recovered, but Gardner must still undergo therapy.

Defense lawyer Bob Willis maintained in his opening statement Monday that all of the shootings could have been avoided.

Goff said he shot Farnell as Farnell grabbed Gardner who had just pulled a .45-caliber automatic pistol. Earlier in the day, Farnell confirmed he was shot with his own rifle which Goff was carrying.

"How was it that you happened to shoot agent Farnell," Willis asked.

"Apparently just about the time I pulled the trigger, he lunged on him. I wouldn't have fired if Gene had been tackling him," Goff testified. Kirkland and Farnell set up the gun transaction a day earlier.

Goff, along with Suwannee County Sheriff Robert Leonard, tagged along for extra security and hid in the bushes near the school bus.

The ATF agent and the sheriff charged the bus when they heard voices coming from the vehicle, Goff said. He said the two men feared the other agents were in trouble.

Goff said he hopped into the bus then squeezed off another shot in the aisle, standing clear of plywood partitions which divided the remodeled vehicle. Goff said he then aimed the gun back at the ground and ducked behind the partition.

"Is it possible you turned it (the gun) around and shot Terry Kirkland in the toe," Willis asked.

"I'm pretty sure I didn't," Goff answered.

Gardner also is charged with several counts of possession of illegal weapons, including homemade hand grenades. The maximum penalties if found guilty on all 22 counts would be 210 years in prison and \$200,000 in fines.

He also faces first-degree murder charges in Colorado in connection with the August 1971 slayings of a Utah couple, Raymond S. Hanna, 54, of Price, and Marilyn Ida Brown, 33, of Salt Lake City.

"We didn't choose to arrest Mr. Gardner when he was in the schoolbus because he had too much of an arsenal in there," Farnell testified.

The day of the trade, Farnell and Kirkland entered the bus Gardner used to peddle his weapons, Farnell testified.

"Herb Gardner handed me a .22-caliber rifle that had an obvious silencer on it and a cheap scope on top of it," Farnell said as Gardner, a pale, thin man, listened at the defense table.

Farnell said Gardner loaded the rifle with a single cartridge so the agent could test-fire it.

Farnell stalled because Goff and Leonard were waiting in bushes nearby for the signal to move in, he said.

"I was afraid that if I test-fired it, Sheriff Leonard and Agent Goff would think I was in trouble and come charging in," he said.

Farnell said he stepped back into the bus when the sheriff came running toward the bus. Behind him was Agent Goff.

"Herb Gardner was looking out the window and said, 'What the hell is this?' and I said, 'I don't know.'"

"I saw him reaching into the back pocket and grab a .45 pistol," Farnell testified.

Farnell tried to stop Gardner but couldn't and was shot in the arm as he moved in, he said. "As I tried to get up, I heard bullets all around me. By the time I got up it was all over."



Goff suffered wounds in the chest, arm and leg, while Kirkland was shot in the toe. Gardner wore a bullet-proof vest during the exchange and was shot in the neck. The burly Suwannee County sheriff was the only lawman to escape injury.

[From the Miami Herald, Aug. 9, 1980]

ALCOHOL-FIREARMS AGENT ACCUSED OF DRUNKENNESS, WAVING PISTOL  
(By Earni Young)

It's one of those things that nobody wants to talk about. A special agent for the U.S. Bureau of Alcohol, Tobacco and Firearms (ATF) is accused by police of being drunk while driving a government vehicle and waving a loaded pistol at two officers in a crowded store.

"I'd prefer it if you'd ask one of the guys over at ATF," said M. Milligan, the Metro detective who arrested Special Agent Patrick Dullaghan last month. At ATF, bureau chief David Tucker refused to comment beyond the fact that Dullaghan had resigned two weeks after the arrest.

ATF is responsible for criminal enforcement of government laws against alcohol, cigaret and firearms smuggling and excise tax evasion.

Dullaghan could not be reached for comment.

According to a report filed by Milligan, he was working off-duty as a guard at the Great Valu Store, 26600 S. Dixie Highway, on July 2, when Dullaghan almost ran him down. "Mr. Dullaghan was intoxicated and displayed the classic symptomology of the state," Milligan's report said.

When Dullaghan identified himself as an off-duty special agent for ATF, Milligan and another officer who had arrived offered to let him call someone to drive him home. Dullaghan refused, drew a .38-caliber revolver from an ankle holster and pointed it at the officers.

"Nobody is going to make any calls. Nobody's going to ruin my career," said Dullaghan, according to the report. After a brief struggle, the two officers succeeded in getting the gun away.

Dullaghan was charged with two counts of aggravated assault. Trial is set for Sept. 8.

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SPECIAL AGENT IS CHARGED IN SCUFFLE

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"I'd prefer it if you'd ask one of the guys over at ATF," said M. Milligan, the Metro detective who arrested Special Agent Patrick Dullaghan last month. At ATF, bureau chief David Tucker refused to comment beyond the fact that Dullaghan had resigned two weeks after the arrest. "I don't think it's appropriate for me to say anything further," he said. "Why are you interested?"

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[From the New York Post, Feb. 5, 1980]

T-MAN HELD AS QUEENS ELEVATOR SEX FRIEND

(By Chris Oliver)

A U.S. Treasury agent has been accused of a series of sex assaults on young girls.

Francis McCann, a special agent for the Bureau of Alcohol, Tobacco and Firearms for eight years, was indicted yesterday in Queens on five counts of sexual abuse and six counts of sodomy for alleged attacks on girls between 12 and 14.

The investigation of McCann is also covering similar type incidents in Queens over the past five years, said Lt. Thomas Walsh of the Queens Sex Crimes squad. McCann, 36, is also charged with robbing several of his victims.

A resident of Jackson Heights, Queens, until 1972, allegedly molested the young women in the neighborhoods of Jackson Heights, Rego Park and Forest Hills. The special agent, who lives in Piscataway, N.J., is charged with forcing the girls into elevators and taking them to the "motor room" near the top of the elevator shafts.

McCann, who is married and has one child, has been suspended from his \$23,000 federal position pending the outcome of the trial.

Under the threat of a knife or a gun, he would rob them and commit the sexual acts, the indictment by Queens D.A. John Santucci alleges.

"There are about 11 other incidents where the same-type ruse was used," another sex squad cop said. "The attacker would lure them into buildings by trying to steal their school lunch money."

[From the Journal-American, Oct. 31, 1978]

Our views:

DO SOME CHECKING BEFORE BARGING IN

If you were a revolutionary terrorist trying to dream up a good cover, you couldn't do better than trying to look like Betty and Elmer Turngren of Kirkland.

A middle-aged couple. Parents of five. Longtime residents of their quiet Kirkland neighborhood. Devoutly religious. A man disabled by a heart condition. A friendly, outgoing woman who once worked for the local police department.

Surely, you'd think, the police would never suspect them of illicit activity. The police would stop in surprise, to check and double check any accusations.

Not the Kings County special weapons and tactics (SWAT) unit and agents from the federal Bureau of Alcohol, Tobacco and Firearms. They stormed into the neighborhood Friday night, ousted residents and surrounded the Turngrens' house as if Field Marshal Cinque of the Symbionese Liberation Army had resurrected himself from the infamous Los Angeles firefight and was hiding out in Kirkland.

Betty and Elmer Turngren turned out to be exactly the persons they appear to be. And the SWAT crew didn't find much in their house in the way of weapons—a pistol and five antique guns, entirely within the law.

When it was all over, the police suddenly grew very tight-lipped. All information was restricted, for one reason or another. Did they check out the Turngrens' background? That couldn't be revealed, because it would threaten their privacy as citizens. A curious thought, after they had been threatened with violence and humiliated before the entire neighborhood.

The government is so obsessed with secrecy it can't think of a thing to say. We have a couple of suggestions:

"We're awfully sorry," for openers.

"You just have somebody in to put your house back together and send us the bill," has a nice ring to it, too.

County Executive John Spellman could look into it, too, to see who perpetrated this outrage on innocent citizens and to institute safeguards to see it doesn't happen again. Congressman Lloyd Meeds ought to look into it on the federal level.

Since neither Spellman nor Meeds is up for re-election next week, no one could accuse them of grandstanding on the issue.

The veil of secrecy thrown around the operation may be impenetrable. That's frustrating because it's more likely to conceal official incompetence than necessary intelligence.



Most upsetting of all is the police determination to hide the identity of their secret informant. It's not that important to us to know who he is. We're just afraid they plan to use him again.

[From the Prescott Courier, June 23, 1980]

# FIGHTING UNCLE SAM

(Budge Ruffner)

Right or wrong, when you butt heads with the bureaucracy, you lose. Paul and Billie Hayes live in Bosque Farms, Valencia County, New Mexico. Texans, they first settled in Socorro in 1935 and when Billie's father died, they moved to Bosque Farms and continued to run his store, Cole's Mercantile Company.

They kept the stock as it always had been kept, to meet the needs of rural living. Canned goods, barbed wire and once in awhile, some fresh produce, sheep salt and a few firearms were carried. They prospered, paid their bills and "never got a parking ticket." It was a good life.

On April 26, 1978, a little past high noon, federal agents of the Bureau of Alcohol, Tobacco and Firearms (after a week's investigation) served a search warrant on Billie and Paul Hayes and placed them under arrest for the illegal sale of firearms.

A few days before the arrest, an illegal alien (undocumented worker is a government euphemism) had borrowed his employer's pickup and used it to steal a cow. When he was arrested, a .22-caliber revolver was found under the truck seat. The illegal alien stated he had purchased it from Cole's Mercantile Company. The federal investigation of Billie and Paul followed.

They had indeed sold the gun, but to Max Perea, the owner of the pickup and a farmer at Bosque Farms who had hired the illegal alien a few months ago. Max Perea was well known in the community. He told the agents he had purchased the pistol (the store records recorded the sale), but all this was to no avail.

In the course of the investigation, several undercover agents visited the store posing as interested purchasers, one as a Texan. The "Texan" tried to get Paul to sell him a gun—an illegal act, as a gun cannot be sold to an out-of-state resident. Paul refused to sell the masquerader a gun. He did sell the "New Mexican" actor-agent a gun, all well within the letter of the law. Alcohol, Tobacco and Firearms Bureau tapes played at the trial clearly indicated Paul had refused to sell the gun to the "Texan."

When the pair were arrested, the ATF agents confiscated 170 of their guns and 54,528 rounds of ammunition. Nine months later the couple went to trial. The trial lasted five days and the jury rendered a verdict of "not guilty" within minutes.

However, the couple's savings of \$22,000 had been spent for their defense. Paul, because of the ordeal, has had a triple-bypass heart operation, costing \$26,000. Their store, which always before had made them a comfortable living, netted only \$3,467 in 1979.

"People are afraid to deal with us," Mrs. Hayes told me.

The Hayes' guns and ammunition, worth \$60,000, are still being held by the U.S. Attorney, R. E. Thompson, who refused to return them until the couple signed an agreement not to sue the government for damages. They refused.

Paul is a Navy veteran of World War II service in the Southwest Pacific. Proud of his country, he always flew the flag outside the store. It is not there any more. Recently, the couple filed a \$10 million suit, naming Secretary of the Treasury Michael Blumenthal and several ATF agents as defendants.

I talked by phone to Billie Hayes last Thursday and asked her about the progress of the lawsuit.

"We can't get into court, they told us the docket is full," she said.

I asked her how her husband was getting along.

"Not very good right now," she said. "IRS agents came in here yesterday for an audit. They are still here. It's got him pretty upset. But we did get some good news, the National Rifle Association is going to help us with some of our legal expense."

I asked her about the illegal alien.

"He took off," was her sad reply.

Pre-World War II Germany?

Russia? Iran?  
Bosque Farms, Valencia County, New Mexico, U.S.A.?  
How could it happen here?

[From the Washington Star, August 5, 1980]

# ANTI-ATF PROTEST STAGED BY COMMUNIST WORKERS

(By Adrienne P. Williams)

A small group of Communist Workers Party members yesterday staged two demonstrations to protest what they contend was involvement of the federal Bureau of Alcohol, Tobacco and Firearms in a violent demonstration last year in Greensboro, N.C.

CWP spokeswoman Phyllis Jones claimed yesterday that the federal agency was responsible for the deaths of five CWP members in a clash with members of the American Nazi Party and the Ku Klux Klan.

She said the two groups "were urged into this by the Federal Government. . . . The murders were no accident."

The bureau has admitted that one of its agents infiltrated the local branch of the Nazi Party but has denied published reports that he knew of any planned violence.

During the first demonstration, held at noon, about 20 protestors marched in a loose circle in front of the McLean home of bureau Director Glenn R. Dickerson. They chanted slogans and carried red banners that proclaimed "Death to the Klan. Avenge the CWP 5."

One party member handed out leaflets to the curious while another talked with a group of construction workers on their lunch break.

Later on, the group staged a similar demonstration in front of the bureau's headquarters at 1200 Pennsylvania Ave. N.W. There were no arrests during either protest and police described the demonstrations as "orderly."

Earlier in the day, however, the outline of a swastika was burned into the Dickersons' front lawn and an effigy hanged from a tree. The CWP claimed responsibility for that incident, which occurred shortly before 4 a.m.

Fairfax County police said neither Dickerson nor any members of his family were at their Lorraine Avenue home during the early morning incident or the later demonstration. No family members were available for comment.

About a dozen residents of the exclusive neighborhood came out to stare at the demonstrators.

"I'm sorry they have nothing better to do," remarked one neighbor who asked not to be identified. "They're very fortunate to live in a country where they can do this sort of thing."

Another neighbor, who also would not give her name, was more tolerant. "I feel people have a right to say things," she said. "But it isn't that I think it's pleasant, particularly."

When asked if there had ever been other demonstrations on her street, she replied, "I'd say we have some politically alert people on this street . . . but it's pretty peaceful and quiet."

James F. Lynch, director of public relations for the ATF, yesterday confirmed published reports that a bureau agent had infiltrated a Greensboro unit of the American Nazis and attended several meetings.

Lynch said the agent, identified as Bernard Butkovich, attended the meetings to determine whether the Nazis had an illegal cache of submachine guns but received no indication that the group had any such weapons or planned any violence.

During a CWP rally in Greensboro last Nov. 3, armed members of the Nazi Party and the Klan drove into the crowd and opened fire, killing five members of the CWP.

Six Nazi and Klan members have been charged in the shooting deaths. Testimony in the trial began yesterday in Greensboro.

Star Staff Writer Richard F. Harris also contributed to this report.

[From the News-San Antonio, April 27, 1979]

#### FIVE OFFICERS IN WILD GUNFIGHT AT SALOON

SAN RAFAEL, CALIF. (AP)—In what could be a textbook case of mistaken identity, authorities are piecing together conflicting accounts of an incident outside a saloon in which five law enforcement officers got into a brawl and gunfight—with each other.

Two of the officers were wounded superficially and another needed 11 stitches over an eye, police said Thursday. One of the officers said he was knocked out and doesn't remember a thing.

"Thank God they were all lousy shots," said Police Chief Frank Benaderet.

Benaderet said it has been determined that San Rafael police officer James Cook, 33, and Larry Williams, a federal Treasury Department agent, walked out of a saloon about 2 a.m. Wednesday. After that the stories get fuzzy.

Cook and Williams told investigators they were looking for a lost wallet—it isn't clear whose—in the dark parking lot when they saw three men. They were David Washington, a policeman from nearby San Mateo; Gary Lee, a military policeman based in San Francisco, and Loren Platt, a state Justice Department agent.

Benaderet said the group of three, which also had just stepped out of a saloon, apparently thought Cook and Williams were crooks stalking parked cars—including theirs.

Cook and Williams apparently thought they were being set upon by the other three, the police chief said.

Benaderet said both groups claimed to have identified themselves, and each claimed the other didn't do so.

"Words were exchanged and a fistfight ensued," Benaderet said.

"Although there are conflicting statements as to the chronology of events, it is apparent that Washington and Cook drew guns and began firing at each other."

Eight shots were fired from a .38 caliber revolver and a .357 caliber revolver. Washington and Cook were each wounded in the leg.

"Each says the other drew first," Benaderet said.

When Washington was down on the ground from his wound, police said, Lee picked up his fallen buddy's gun and continued the shootout.

Meanwhile, police were called by neighbors. Officers who arrived at the scene said they found Washington and Lee wounded and Platt somewhat dazed.

Williams, wounded over one eye by someone's fist, and Cook fled the scene and were picked up later by police.

"The indications at the scene were that although they had been drinking, it was not apparent that they were drunk," the chief said. "But we did give them blood tests."

[From the Police Product News, April 1979]

#### LETTERS

##### ATF ANTI COP

I have enclosed a recent news article (below) involving a firearms related indictment and trial in which I was acquitted. I think it is of interest in the way the BATF expended large amounts of manpower and money to make a big case out of technical violations. A phone call or information visit would have assured compliance and at far less time and cost. Having gone through this ordeal, I have some observations I would like to share with you and with my professional colleagues.

I feel most decidedly that Police Executives and Police Officers are very naive, ignorant, and lax when it comes to firearms transactions involving any kind of weapons. Police Officers, as a rule, take for granted certain privileges and exemptions granted to law enforcement by dealers and manufacturers. Law enforcement officers consider guns just another tool of their trade, and it is conceivable that many may find themselves, as some of us already have, facing criminal charges even though no criminal intent was present. Federal law and Regulations do not require specific or criminal intent or even knowledge. BATF appears to be more interested in justifying their existence than in assisting or resolving these communication and legal problems within the law enforcement

community. The problem is further compounded by some over-aggressive and overzealous agents who are trying to make a name for themselves and a promotion by going after Police Officials and Departments.

Of course, some Police Executives and Officers do knowingly abuse their privilege and violate their oath of office for personal profit, but these are a very small minority.

I don't think BATF is necessarily bad, but their priorities are misplaced. What I would like to see is a closer working relationship and better communication between BATF and local law enforcement, instead of the adversary relationship which presently exists. I would like to see a warning published to all members of the law enforcement community regarding laws pertaining to registration of NFA Title 2 firearms, whether they be purchased, donated, or seized weapons. (Title 2 firearms are sawed-off shotguns, silencers, automatic machine guns, etc.)

Purchasing of tax exempt weapons, including handguns and any other type of Police firearms, must by law remain the property of the department and may not be purchased by this means for personal use. Officers frequently buy and sell guns in the capacity of a dealer without benefit of a license, not realizing that they may be committing a technical violation. The law allows "casual sales" of firearms between individuals, but does not define casual sale. Some of these laws are very broad and vague; therefore, I urge that all Police Officers familiarize themselves with these provisions so they will not suffer as I have. I learned these things the hard way, after the fact.

This incident has taught me many things, including the law. It has been a very expensive and personally frustrating and humiliating experience. I hope that by sharing my experience, it may spare others from having the same experience and suffering.

D. R. LANE, CHIEF OF POLICE, GORDON, NEBR.

"The culmination of a federal agency's 2-year investigation took place Wednesday, February 2, 1979, in USDC—Donald R. Lane, chief of police of Gordon, was found not guilty by a jury deliberation of only 2½ hours.

"The Bureau of Alcohol, Tobacco, and Firearms had alleged that Lane, when chief of police of Clifton, Arizona, possessed Title II firearms (automatic weapons) that were not registered to his department.

"Testimony in the case established the firearms were not registered with BATF, but to Gila County sheriff's office and the Kearny police department. Chief Lane insisted the weapons were, indeed, registered and utilized only by law enforcement.

"Apparently, the U.S. government, after a lengthy investigation costing taxpayers thousands of dollars, failed to convince the jury that a professional law enforcement officer's actions in this case were illegal as alleged.

"Defense attorneys contended that BATF agents completely overreacted in a local situation that might have been better handled by administrative courtesy. The real 'bad guys' continue to be criminals in possession of automatic weapons!"

SANDO & HARDY,  
Tucson, Ariz., November 10, 1980.

Senator BIRCH BAYH,  
Chairman, Subcommittee on the Constitution,  
Senate Committee on the Judiciary,  
Washington, D.C.

DEAR SENATOR BAYH, I would like to thank you for initiating and holding the recent hearings into abuses by the Bureau of Alcohol, Tobacco and Firearms, and also to inform you of an additional set of abuses which has come to my attention since my testimony.

Bill Crew, of the NRA's Range Development Department, has informed me of a case which he has been working on as a private individual. This case involved a BATF agent named Jerry Pistol, of North Carolina. Agent Pistol apparently has a reputation for singling out local law enforcement personnel for harassment, and has reportedly terrorized those in his area by his abuses. The case in which Mr. Crew was involved concerns a police chief of Troy, North Carolina, named Harold Elam. Pistol devoted long hours to building a case against Chief Elam, based on his having bought some firearms for the town mayor and other officials. He was thus charged with being "engaged in the business of

dealing" in firearms and ultimately his health status forced him to plead guilty to this, a federal felony. This is hardly "criminal trafficking" of the type the Bureau claims to be solving.

More seriously, Mr. Crew uncovered multiple instances of perjury, illegal search and seizure, and wanton harassment, in connection with this and other cases prosecuted by Agent Pistol. He documented this in a series of witness interview reports and affidavits which were sent to Leon Wigrizer, Treasury Inspector General. I have attached copies of his letter and the reports. Mr. Crew, who is himself a former BATF attorney, also contacted a number of retired BATF agents whom he had known from past service. They uniformly indicated that Pistol had 1. a reputation for falsehood (one, an agent for over 10 years, described him as "the most fourteen karat liar" he had ever known) and 2. a reputation for behavior indicating serious mental instability. In particular, he appeared to suffer from some manner of delusions and paranoia. This was exhibited during the Elam case with his claims that Elam was threatening him and in his statements to Mr. Harris that Elam might kill him if he possessed a firearm.

Since conferring with Mr. Crew, I have been contacted by a Jim Dorn, of Charlotte, North Carolina. Mr. Dorn was a police officer of long experience and good reputation, who in 1977 was convicted and ruined on what I call the "Scherer-Boulin" charge. He had been teaching self-defense classes at a local college and was asked to repair some firearms. Since you must have a federal firearms license to repair firearms as well as sell them, he obtained one. He never used it to acquire or sell firearms. When he needed some money, he sold a few of his personal guns to a federally-licensed dealer; hardly a criminal transaction. But he was charged with being a federal dealer who had failed to record his transactions, even though they were of personal firearms, not business inventory.

Mr. Dorn described the conduct of the BATF agent in charge as highly irrational. The agent took him in a vehicle—apparently without an arrest warrant—for some 250 miles to his mother's house. There the agent proceeded to execute a search warrant, which he had obtained on the way by stopping at a golf course to talk a federal magistrate into signing. The warrant was for seizure of illicit machine guns, which neither Mr. Dorn nor his mother have ever had. The agent and his subordinates thoroughly ransacked her house, to the point of tearing down the insulation in her attic to see if they might be hidden there. They searched Dorn's automobile, down to taking off the seats and hubcaps (searching for some very tiny machineguns, one might presume). Then on the road back, the agent stopped the automobile, got out by the roadside, knelt and began loudly to pray for Dorn. Dorn, who was by now convinced he was in the hands of a lunatic with a federal badge, was even more surprised when the agent got back into the automobile and begged him to confess his sins (i.e., possession of machineguns) and be forgiven. After his indictment, the agent called him repeatedly to ask him to come to church with him and confess all. Shortly after the case went to trial, the agent called once more, this time telling Dorn that he knew Dorn was following his family around and threatening to "blow your head off" unless he stopped.

This sounded very much like the Elam case, and I asked the name of the agent. Mr. Dorn related that he was a Jerry Pistol! Mr. Dorn did not know of Chief Elam's case; he had come across my name in an article I had written. He added that back in January 1978 his mother had filed a complaint against Pistol for his search and irrational acts. The BATF Internal Affairs people had interviewed him but obviously did not act upon the complaint, as two years later Pistol was performing the same acts against Chief Elam and the others listed in the witness interviews. Note also, from the interview of attorney Hugh Lee of Rockingham, North Carolina, that BATF has had notice of other abuses by Pistol including illegal searches, that his supervisors have been forced to apologize to one of his clients, and that Pistol has terrified law enforcement in the area.

It seems to me that there are two conclusions to be reached here. First, the agent involved is of questionable mental stability and in particular seems to experience delusions and fears of persecution. This may even explain his unusual preoccupation with harassing local law enforcement personnel—hardly a normal target. It certainly explains his wild claims of machinegun conspiracies, threats to witnesses (who themselves say they have never heard such threats) and his own threats to kill a defendant he insists is following his family around. Second,

the BATF has had repeated notice of this condition and of its impact upon the citizens they are supposed to be protecting, and has chosen to cover it up in the interests of whitewashing its operations in that area. This is an interesting example of how their internal affairs function has been operating and how well it functions to protect American citizens from the abuses permitted under the vague and overinclusive Gun Control Act of 1968.

Very truly yours,

DAVID T. HARDY.

OCTOBER 28, 1980.

MR. LEON G. WIGRIZER,  
Inspector General, Department of the Treasury,  
Washington, D.C.

DEAR MR. WIGRIZER: Based upon the following allegations, I believe that your office, and your office alone, should conduct a thorough investigation of BATF Agent, Jerry Pistol of North Carolina:

1. That he gave false testimony before a Federal Court on July 29, 1980. This can be verified by Max Eugene Harris of Troy, North Carolina; John C. King, Commissioner of Troy, North Carolina; Harold Elam of Troy, North Carolina; Chief of Police, Warner, of Troy, North Carolina; Police Officer Lawrence J. Turner of Troy, North Carolina; and Mayor Roy Maness of Troy, North Carolina. (Transcript pages 61-88)

2. That he has harassed FFL dealers. This can be supported by Joe Perkins, Highway 220, Bisco, North Carolina; Jack McIntyre of Troy, North Carolina; Bill Tobias, Albemarle, North Carolina; Western Auto Store, Rockingham, North Carolina; and Western Auto Store, Troy, North Carolina—Paul Poole, Manager.

3. That he has been unscrupulous and dishonest in his investigations. This can be affirmed by James E. Roberts, District Attorney with the 19th District, Concord, North Carolina; Harold Elam of Troy, North Carolina; Lawrence J. Turner, Police Officer of Troy, North Carolina; Hugh Lee, Attorney at Law, Rockingham, North Carolina; Jack McIntyre, Troy, North Carolina; Chief of Police, Warner, Troy, North Carolina; Roy Maness, Mayor of Troy, North Carolina; L. D. Lee, retired BATF Agent, Florence, South Carolina; Sheriff McSwain of Stanley County, North Carolina and many others.

4. That he has made or caused to be made illegal searches and seizures. This can be supported by Leo Epps of Troy, North Carolina, Charles Carpenter of Wadesboro, North Carolina and Harold Morse of Troy, North Carolina.

5. That he failed to inform the Grand Jury or the U.S. Attorney in the Elam case that the State of North Carolina had completed an investigation on November 16, 1978, which allegedly was instigated by BATF Agent Pistol and the State Bureau of Investigation found no criminal conduct.

6. That he gave or caused to be given false information to the Grand Jury on overt act No. 6 of the indictment returned in this case on May 29, 1980. This can be supported by John C. King.

I believe a close verification of the case report that resulted in indictment CR80-67-S in the Middle District of North Carolina, Salisbury Division, returned the 29th day of May 1980, could show false information was supplied to the U.S. Attorney. It will show a total and complete disregard by Agent Pistol of the Firearms Program Policy Statement dated April 1, 1980, and a disregard of the Gun Control Act of 1968 since many of the guns that were purchased by Elam were exempt from the provisions by Section 925(a), 1 of that Act.

His enforcement performance is in conflict with BATF policy as stated by Mr. Dickerson in a letter to Mr. Gardner written sometime in 1979 containing office symbol CC-29, 228 FB:IMK, wherein the Director recognizes the role of agency when a non-prohibited person purchases for another non-prohibited person and that there is only a violation when there is a sale to a prohibited person. It would also be in direct contradiction of the policy statement made by Mr. Dickerson in a letter of May 5, 1980 to Senator Mathias of Maryland where he states that it is the "intent \* \* \* to criminally misuse the weapon" that is controlling; the overall policy statement made by BATF Director in a letter to Senator Dennis DeConcini dated September 7, 1979; press release of policy statement regarding dealer inspection by BATF dated October 12, 1978 as well as the Policy of BATF as stated by Richard J. Davis, Assistant Secretary for Enforcement and Operations, Department of the Treasury on September 15, 1980 before

the Subcommittee on the Judiciary. Lastly, it will show that none of the guns involved were sold to prohibited persons.

A casual check in Montgomery County, North Carolina failed to disclose anyone who would give Jerry Pistol a good reputation for truth or veracity. It is my understanding that he enjoys the same reputation in much of Stanley, Union, Richmond, and Hanson Counties of North Carolina.

In view of these serious allegations, it would appear that Mr. Pistol should be suspended or placed in an administrative leave status until this investigation is completed, since, not only is there allegations of unscrupulous and unprofessional actions of a Federal Agent, there is also possible prejudice and contempt of court violations.

Attached are copies of sworn statements and reports of interviews that should assist your agents in their investigation.

WILLIAM P. CREWE.

#### REPORT OF INTERVIEW OF LEO EPPS

On the 14th of October, Leo Epps stated that if there was something in the records that said that he bought 100 or so guns from Harold Elam, it was a lie. He said to his knowledge he only had two gun dealings with Elam and that one was a few years ago where he had purchased a handgun from Elam on the street in Troy, North Carolina and the other one was years and years ago when he bought a gun from Elam.

He said that he did not want to get involved, that he had pled guilty, that he did buy a gun and gave the dealer false information and his wife stood by him and that they just don't want to have anything to do with the situation.

Pistol has it in his case report that Epps bought over 100 guns from Elam. In fact, the U.S. Attorney told Elam that Epps would testify to that. On two different occasions, Epps said that that was false. "No way would he swear to a lie" was his exact statement. He said that he had known Elam for a long time and as far as he was concerned, he was a good man and a gentleman.

#### REPORT OF INTERVIEW OF CHARLES "FIREBALL" CARPENTER

Mr. Carpenter believes that Agent Pistol is crazy. He said that on one occasion two local officers forcibly relieved him of his gun when he was in an automobile. The officers, in relieving him of his gun, told him that they were doing it at the request of BATF Agent, Jerry Pistol. They gave no reason for the illegal acquisition of his gun. He said it took him a lawyer and a number of months before he got the gun back. No charges were ever made.

He said subsequent to that his girlfriend's trailer was searched in a very unprofessional manner by Pistol. He jerked the telephone out of her hand and seized a piece of personal property that had no relationship to any violation or a gun. He left no copy of the search warrant. He would be happy to testify as to the illegal, unorthodox, and unscrupulous investigative tactics of Jerry Pistol.

#### REPORT OF INTERVIEW OF ROY MANESS

Mr. Maness, who is now Mayor, was the Commissioner in October of 1978. Pistol testified that Maness started screaming and hollering when he visited police headquarters on that date.

Mr. Maness said that at no time did he raise his voice when talking to Pistol, that he stated that he just asked Pistol what was going on and after a calmed discussion he left with Pistol, in Pistol's automobile, and was returned to police headquarters.

Mr. Maness said that he would be glad to talk to an investigator or testify to the truth of the above statement.

#### REPORT OF INTERVIEW OF BILL TOBIAS

I talked with Bill Tobias and both he and his wife stated that as far as they were concerned, you only had to talk to Jerry Pistol for five minutes to ascertain that he was a liar. He told Tobias that he would put him out of the business as people like him should not be in the business.

Many times on Saturdays, Pistol came in when the store was heavily crowded and would attempt to preach. At one time, the Treasury Department was investigating to determine whether or not Pistol was sane and Tobias gave a state-

ment in that case. He feels he has been harassed by Pistol ever since. As a result of a call to the National Rifle Association about BATF abuse he started and maintained the following record:

1/11/78—12:30 to 3:15 pulled records to be checked—this was all Jerry Pistol and usually John Warrick and the record continues as follows:

3/28/78—2:30 to 3:30 pulled records to be checked.  
3/28/78—9:25 to 10:50 pulled records; made 3 copies.  
5/22/78—9:50 to 10:15 pulled records; made 2 copies.  
5/29/78—4:30 to 4:35 pulled records to be checked.  
5/16/78—4:25 to 4:50 pulled records to be checked.  
5/24/78—1:50 to 2:10 pulled two records; made 1 copy.  
6/21/78—9:30 to 11:00 pulled records to be checked.  
6/28/78—10:15 to 10:30 tracing guns.  
7/11/78—10:45 to 11:10 checking records.  
7/11/78—4:10 to 4:55 checking records.  
7/18/78—3:45 to 4:15 talked to Suzie. Pistol made Bill Tobias change his recordkeeping to make it easier for him to check.  
8/1/78—1:50 to 2:15 checking records.  
8/15/78—12:50 to 4:10 checking records.  
8/16/78—1:45 to 3:15 checking records.  
1/18/79—10:45 to 11:30 checking records.  
2/15/79—9:15 to 10:05 Detective Fray was with him on this occasion.  
2/22/79—10:35 to 12:00 checking records.  
2/22/79—2:00 to 3:50 checking records.  
2/27/79—9:00 to 10:00 checking records.  
5/18/79—1:30 to 2:00 checking records.  
11/1/79—12:30 to 1:30 checking records.  
2/12/80—9:00 to 9:45 checking records.  
Detective Fray is a friend of Pistol's. He is now the Chief of Police in Albermarle.

Tobias said that Pistol is not welcome in this County and that he's not welcome in other counties and his method of operation was to get Deputy Sheriff's part-time police officers and others who had been fired or were malcontents in an attempt to develop cases against police officers, whether they be police or sheriffs. He also said that Chief Warner in Troy and his wife told him that Pistol wanted to pay them money to have them give false testimony. This was against Leo Epps. He said that Pistol has a very bad reputation in Stanley County as well as Union and Hanson Counties.

#### STATEMENT OF HAROLD F. ELAM

With regard to the hearing held on July 29, 1980 in the United States District Court in Greensboro, NC, on page 61 of the Excerpt of Proceedings, Officer Pistol stated that he knocked on the door of the police station. That's false. The truth is that I was sitting at the front desk and saw them drive into the parking lot. The door is open from 8:30 a.m. to 4:30 p.m. Pistol and Agent Dale Winters walked in. Agent Pistol showed his credentials and the first statement made was, "Chief Elam, I have you for selling guns". He then asked me to go into my private office to talk and then asked if he could tape our interview. I advised him that I would not consent to it. Agent Pistol then read a list of rights.

Pistol read off a list of weapons and asked me where the weapons were. Pistol said that there were 32 guns sold either to the Town of Troy or to me. I advised Pistol that I could have bought that many weapons in the past eight or ten years. Pistol then asked where the guns were. I told him that I bought some of the weapons for the Town and some for other officers and town officials. I also told him that I had purchased some of the weapons for my own use and collection. Pistol read off a bunch of serial numbers which was impossible for me to remember. I told him that I had some of the guns. He said, "Where are they?" and I told him that I didn't think it was none of his business.

I told Pistol that I was tied up in Court involving a murder trial and I needed to be there. He said that what he had to do was more important. I then asked Pistol to let me call Mr. John King and tell him what was going on. Pistol refused to let me make a call for about one and a half hours while he questioned me. I advised him that I needed to get Mr. King up there so he could get someone to work. When I called Mr. King I also called the Town Attorney, Russell Hollers. He told me if I knew where the guns were to go ahead and tell him. So, when Pistol asked me where the guns were I told him all I could.

At no time have I ever told Pistol that I had sold the guns as he stated on page 63. In fact, I, at that time, owned 8 guns and many of the guns were town property or property of the police officers. On bottom of page 63 and top of page 64, Pistol states that he told me to take off my firearm, unload it and put it in the drawer. He never asked me to do anything. He told me that he was going to photograph and print me. He went out to the car, in which he came up in, and got a camera out of the trunk. Agent Winters stayed in the room with me. At no time did Pistol tell me that it was of my own free will, as he stated on page 63.

Pistol stated on page 64 that I was free to call anybody or to do anything I pleased. This is false. I was told by Pistol not to call anyone until he finished his business. Had I been free to go, I would have returned to the Courthouse where I was supposed to be. They were waiting on me to testify. Pistol also commanded me to take off my uniform shirt for the photos. He did not make a request; there was nothing said about going home and getting a shirt.

On page 66, Pistol stated that I handed him a camera. That is not true. He went to the car and got it out of the trunk. On page 66, Pistol marked the statute and made the statement that it was not a serious offense and that I would not get anything but a light fine and probation.

On page 67, Pistol said that he did not say anything about going to court. This is not true. He told me that I would be going to court in about 6 to 8 weeks. That was in April, 1978. He also never made the statement, "Down the road some place", or "I did not specify any time on it". All of that is untrue.

On page 68, reference to charge being serious; Pistol denies that. He told me that if I would help him and give him a statement on a tape recorder, that he would recommend that I get a light fine and probation. I told Pistol then that he hadn't shown me where I had violated any federal law.

On page 68, Pistol stated that I and Ernest Warner had paid Gilbert Warner a visit in uniform and wearing side arms. This is false. I was not in uniform, neither was Ernest Warner. I was not wearing a side arm.

On page 70, Pistol stated that he had received information from sources that I had approached people about changing their testimony. I have never asked anyone to change their testimony. He said that he advised me that these people were government witnesses and for me to treat them that way. All of that is untrue. As soon as I got out of my car, Pistol was standing on the sidewalk. He stated, "Mr. Elam? You and Earnest Warner are in serious trouble". I stated to Pistol, "What for now?" Pistol said, "Threatening the lives of government witnesses".

At that point, I became very angry. I said, "Mr. Pistol, if you give me a list of your government witnesses, I will not speak to them". He then told me he was arresting me on the spot, and that he was going to take me to Greensboro. I then told Pistol that he wasn't nothing but a lying son-of-a-bitch, and to leave me alone unless he had reason to arrest me. He stated that I, Harold Elam, had threatened Charles Gilbert Warner's life. None of this is true.

On page 71, Pistol stated that Ernest Warner had put his hand on his gun and appeared to pull his service revolver. That is false. Earnest Warner was standing there with a pail in his right hand with evidence in it from a fire.

On page 70, Pistol stated that he did not mention arrest at any time. This is false. He placed me under arrest and told me he was going to take me to Greensboro, right then.

On page 71, Pistol stated that Commissioner Maness started hollering and screaming. This statement is not true. Maness never raised his voice. Maness walked up and asked what was going on and Pistol told him to come to Charlotte and he would tell him. Maness told Pistol that they had a room upstairs. Pistol told Maness to get into the car and he would talk to him. Maness got in and left.

On page 73, Pistol stated that I asked if they minded if they closed the drapes. This is false. The drapes were never mentioned. The drapes do not open; they stay shut all the time.

On page 76, Pistol stated that I said there were bigger gun dealers than I was. This is a lie. Pistol told me that he had me but it was not me that he was after. I asked him who it was and he said Jimmy Norris and Frank Brady. I knew that Pistol had been trying to set me up for a gun buy for months. I would have been stupid to make any statement to him that would get me in trouble.

On page 83, Pistol stated that I had put Max Harris and Gilbert Warner in fear of their lives. I have never said a threatening word to either of them. Max Harris and I grew up together and are close friends.

Pistol stated to me on April 5, when he was trying to get me to give him a statement on tape, that he had just finished a case in Richmond County just like mine and that it took a jury only 7 minutes to convict him. He was a preacher.

The reason that I pled guilty to the charge was because my attorney told me that the Government would have to agree to drop the other charges. Also, my Doctor told my sister and I that he had doubts whether I could live through a long jury trial, in the condition that I was in. Also, at this time I could not refute the statements made by Agent Pistol. I was walking on crutches and was having to go to Winston, Salem or Greensboro when I wasn't even able to be out of bed. On the day of the hearing, I still owned part of my gun collection but I had to get rid of it that day. So, I had to sell it for about half of what I had paid for them. I have never sold a gun to a prohibited person nor have I engaged in the business of dealing in firearms.

I have spent fifteen years trying to enforce the law, not to break it. I have the following awards completed:

1. Degree of Associate in Applied Science in Criminal Justice—Protective Service Technology—Montgomery Technical Institute.
2. Advanced Law Enforcement—State of North Carolina.
3. 77 hours in Accounting—Montgomery Technical Institute.
4. 20 hours in Defensive Tactics—Montgomery Technical Institute.
5. 8 hours in Firearms Training—Montgomery Technical Institute.
6. 160 hour course of instruction in Criminal Investigation—Richmond Technical Institute.
7. 8 hours in Radar Computerized Speed Detection—Richmond Technical Institute.
8. North Carolina Drug Control Seminar—Davidson County Community College.
9. Firearms—Davidson County Community College.
10. 10 hours in Firearms Training—Montgomery Technical Institute.
11. 30 hours in Crowd & Riot Control—Montgomery Technical Institute.
12. Basic Elements of Law Enforcement—North Carolina Bureau of Investigation.

All of the above statements are true to the best of my knowledge and ability.  
Date -----

HAROLD F. ELAM.

Harold F. Elam, being first duly sworn, deposes and says:  
That he has read the foregoing Statement and knows the content thereof; that the same is true of his own knowledge except as to those matters and things therein stated upon information and belief and as to those matters he believes it to be true.

#### REPORT OF INTERVIEW OF MAX EUGENE HARRIS

Mr. Harris lives in Troy, North Carolina, works at a rug mill and part-time at a filling station. He first met BATF Agent Pistol sometime in 1978 and to the best of his recollections had two discussions with him.

One time Pistol wanted to know if Harris carried a pistol and Harris advised Pistol that he did not. He also wanted to know if he carried one in his car and Harris told him that he didn't and that he didn't even carry a knife. Pistol said that if he did he should take it out of his car in case Elam or Warner stopped him for anything; they would probably say that he was going for his gun. Pistol said something to the effect that they would blow him away.

On another occasion, Pistol wanted to know if he had any dealings with John Carson King. Harris said no and Pistol then asked him if he had not borrowed money from him. Harris said yes, that he bought some land and borrowed money from King for that. Pistol wanted to know if King ever threatened him for payments and Harris said no. Pistol said that if he does, to let him know.

Harris had bought two guns from Elam but had sold them by the time Pistol had talked to him. Pistol told him that he had violated federal laws by selling the guns and tried to get him to call Elam to engage in a conversation on selling guns so that he could tape the conversation. This he refused to do. He has known Elam all of his life and at no time did Elam ever threaten him in any manner with regard to the investigation that was conducted by Mr. Pistol.

On the advice of an attorney by the name of Fisher, Harris will not sign a statement. Mr. Fisher told him that if he made a statement that he would be



the next one in court. Mr. Harris also said that if Pistol is suspended or fired he would be glad to make a statement and testify as to the statement above.

SHERIFF OF MONTGOMERY COUNTY,  
Troy, N.C., September 26, 1980.

To WHOM IT MAY CONCERN: I, Sheriff Eben R. Wallace, Jr., wish to state that I have known former police chief Harold Elam for many years and during the time he was Chief of Police for the town of Troy he—as far as I could determine—carried out the duties of that office in a dedicated, professional method both as an officer and as an individual.

Under the leadership of Mr. Elam the Police Department seemed to move ahead.

Sincerely,

E. R. WALLACE, JR.

REPORT OF INTERVIEW OF SALLY N. WARNER

On Friday, September 26, 1980, Sally Warner, who works in the office of the Registrar of Deeds in Troy and is the wife of the Chief of Police, Ernest Warner, said that she and her husband would be happy to testify to the false statements that Agent Pistol made at the hearing in Greensboro.

This refers to Ernest Warner unsnapping his weapon, the threats that were made by him and Elam and that Commissioner Maness acted in a very irrational manner on the 21st of October, 1978. She also said that they are afraid to give a statement because Pistol may make a case against them because Pistol told Jack McIntyre that he was out to get Warner.

REPORT OF INTERVIEW OF CAREY GILLIS AND JOHN SHEPPARD

Carey Gillis and John Sheppard are listed as witnesses by Pistol in the Elam case. They said that two or three years ago Pistol asked them if they had ever bought guns from Elam. Both Gillis and Sheppard said no. Pistol said that he had people that would get up in court and testify they had seen Sheppard buy guns from Elam. Sheppard said this is not so. They gave no statements. Pistol could have made a report of interview.

REPORT OF INTERVIEW OF GLENDA GARNER, TROY, N.C.

I talked to Glenda Garner by telephone. It is alleged in the case report that Elam flashed a roll of money in front of Glenda Garner and told her that this came from a sale of a gun to Epps. Ms. Garner said that this is not true, that she did not know Epps, had never known of him. She said she never made a statement to Pistol, that he put everything on a tape recorder and it appeared that most of it was the names of people that worked there and what their habits were.

REPORT OF INTERVIEW OF JACK M'INTYRE, TROY, N.C.

Jack McIntyre is a Federal Firearms Licensee in Troy, North Carolina. He lives in a rural area, has a shop and is more of a gunsmith than he is a gun dealer. He said that Pistol has been to him over a period of 18 months attempting to make a case against Frank Bray, who at one time was running for Sheriff.

At various occasions during this 18 month period, Pistol told McIntyre that he was going to get him for selling guns. McIntyre told him that he would never get him because he doesn't sell any guns, that he probably has the first gun he bought. Pistol said no, he sold one gun about 25 years ago.

McIntyre said that Pistol has a terrible reputation in this area, that he is unscrupulous in his tactics, that apparently he has a phobia for attempting to get law enforcement officers and would do anything, even of a technical violation, to get a law enforcement officer. He said that he is a disgrace to the Federal Government. He would be willing to testify of this reputation and anything that Pistol told him along the way.

Apparently, on a number of occasions, Pistol has been by to go through his books. He has asked him about Elam and Warner selling guns. Pistol also stated that he was going to get the present Chief of Police, Warner, in Troy, North Carolina. He would not trust Pistol under any circumstances. He said he thinks he was set up in a gun case by an altered serial number on a .45 auto-

matic and he said he called Winston-Salem about the incident because he was afraid to call Charolette in fear that they would send Pistol. He said the bottom line is that Pistol is an idiot.

REPORT OF INTERVIEW OF HUGH LEE, ATTORNEY AT LAW, ROCKINGHAM, N.C.

Mr. Lee said that he has had a number of contacts with BATF Agent Pistol and that as far as he is concerned, Pistol is a mental case, the man is crazy and a disgrace to the Federal Government as a law enforcement officer. He said he had complained to Charolette on more than one occasion, and that just about every occasion it was a white-wash deal.

On one occasion, Pistol had a lady at the Western Auto Store in Rockingham in hysterics. She came to him, he called Charolette and Charolette had Pistol apologize to her. He said in the Preacher's case that he handled, that Pistol went into his house, actually tore his house up—threw furniture around—conduct unbecoming of a Federal Officer. The Preacher had a conviction in Georgia when he was a young man and was running for public office. Pistol found out that he had a conviction and had a gun collection and went after him to destroy him in running for public office. The case was settled. (Pistol has bragged about his case in that the jury was only out seven minutes when they convicted him. There was no conviction by a jury in this case.)

He said that all officers in this area are afraid of him, that he will frame them, make a case about them. He said that when ATU was working in his area, as far as he know, ATU had an excellent reputation for effective and honest law enforcement. He said that this one man has destroyed the respect for Federal Officers in this area. Mr. Lee will testify to this or he is willing to give information to any Federal Agent investigating the competency or the credibility of Agent Pistol.

GENERAL COURT OF JUSTICE,  
OFFICE OF THE DISTRICT ATTORNEY,  
NINETEENTH PROSECUTORIAL DISTRICT,  
Concord, N.C., November 16, 1978.

Chief HAROLD F. ELAM,  
Troy Police Department,  
Troy, N.C.

DEAR CHIEF ELAM: As you are aware, pursuant to complaint, I requested an investigation of your department with regards to gun transactions and credentials for law enforcement officers. This investigation has been concluded by the State Bureau of Investigation.

I wish to advise you that the State Bureau of Investigation found no criminal conduct in this regard. However, there are certain irregularities which I wish to bring to your attention, the elimination of which should remove further concern.

First, your gun control is a little haphazard in accountability. A closer account of guns seized and the disposition of seized guns should be more accurate and according to law. Further, you should in the future refrain from purchasing guns for your friends, this merely invites problems for you if you continue this practice.

Secondly, your system of personnel switching shifts is very irresponsible. It appears that payment for services is not in keeping with the persons who actually perform the duty. Even though this is not criminal in nature, you are merely inviting investigation by the Internal Revenue Service because the pay records of the City of Troy do not accurately reflect who receives these wages.

In other words, Harold, what I am saying is that you should give more attention to detail and make the records reflect what actually happens in your department. Until you do so you will continue to subject yourself to criticism and possibly investigation.

With kindest regards, I am  
Very truly yours,

JAMES E. ROBERTS.

STATEMENT OF LAWRENCE J. TURNER

My name is Lawrence James Turner. I am a Police Officer in Troy, North Carolina and I have been a police officer in Troy, North Carolina for approximately 10 years. On the 21st of October, 1978, about 3:30 in the afternoon, I was at police headquarters but not in uniform. I had on a T-shirt and dungarees



when Agent Pistol of BATF entered and asked for Chief Elam. He was not in the office at that time and I called him over the radio and told him that Pistol was there and wanted to see him.

The present Chief of Police for Troy, North Carolina, is Ernest Warner and about the same time that Chief Elam arrived at police headquarters, Ernest Warner appeared from a fire investigation with evidence in a bucket. The discussion that occurred between Pistol and Elam indicated that Pistol was accusing Elam of threatening alleged government witnesses. He said that he was going to carry him to Greensboro. I heard the word "arrest" mentioned, but I do not know whether Agent Pistol mentioned that or not.

I have read the transcript of the hearing on the motion on July 29, 1980 in criminal action CR 80-67-01-S. I was a witness in that hearing. I heard Agent Pistol's testimony and I have read the transcript. He testified under oath, on page 69, that I was armed. That is a falsehood. I was not armed at that time. I also read the transcript where he said that "Police Officer Warner unstrapped his gun and put his hand on his gun and then looked like he was about to draw his weapon". That is false. Officer Warner did not put the bucket of evidence down and at no time did he unstrap his gun or go for his gun. That testimony of Agent Pistol is false.

Also, on page 71 of the transcript, Officer—BATF Agent Pistol testified, "about 8 officers came out". "There were a total of 8 other individuals." This is false. There were only 3 police officers there. The only three officers that were outside were Turner, Elam and Warner.

During the discussion between Mr. Elam and Mr. Pistol, Commissioner Maness and King arrived. I have read the transcript and heard Officer Pistol testified, "Commissioner Maness started hollering and screaming at us also". Commissioner Maness never raised his voice, did not holler, nor did he scream at any time while Officer Pistol was there. Also, his testimony on page 84, that he did not mention anything about Greensboro when he answered, "No, sir" is a false statement.

Since the hearing in Greensboro, I have discussed the case with Chief Warner about going for his gun and about threatening Gilbert Warner and Max Harris. Shortly after the case, Chief Warner told me that the testimony that Pistol gave was false, that he never went for his gun and that he never threatened Gilbert Warner or Max Harris. In fact, the truth of the matter is that during the discussion over tampering with witnesses on the 21st of October, it was Officer Pistol who first became angry and belligerent and put his hand on his pistol. None of the Troy Police Department made any attempt or any motion to go for their guns.

I have also heard Max Harris state, on more than one occasion, that Elam never threatened him. That he was afraid of nobody. On Friday, the 5th of September, 1980, at a political rally and dinner, I was in the presence of Max Harris and an attorney from Troy by the name of Harry Fisher. As late as that date, Max Harris again stated that no one ever threatened him.

On page 66, Agent Pistol stated, "So he chose to undress himself, handed us a camera, and we took a picture of him. He was very cooperative".

THE COURT. Do you mean with his camera?

Pistol. Yes, sir.

He re-enforced this statement of pages 78 and 79.

During April we did not have a camera that was operating. I believe that the Sheriff's Office did our photography work during this period. So this testimony is also false. Also, on page 73, Pistol testified, "The window was open in his office going out overlooking the back door; and he asked if we minded if he closed the drapes, and he closed them."

This has to be a false statement as the drapes are of a permanent structure—they cannot be opened. They were that way then and are that way today.

I have known Harold Elam for a number of years. He is an honest police officer. He never engaged in the business of dealing in firearms, but did occasionally, sell or swap guns to improve his personal gun collection or his hunting or target weapons, which as I understand it, is consistent with the 1968 Gun Control Act.

LAWRENCE JAMES TURNER.

Lawrence James Turner, being first duly sworn, deposes and says:

That he has read the foregoing Statement and knows the content thereof; that the same is true of his own knowledge except as to those matters and

things therein stated upon information and belief and as to those matters he believes it to be true.

SALLY M. WARNER.

My Commission Expires December 18, 1982.

TELEPHONE CONVERSATION BETWEEN MR. ELAM AND MR. EPPS ON SEPTEMBER 16, 1980

Hello, Leo?

Yes.

This Harold. Harold Elam.

Yes.

How are you getting along?

All right, doing okay. How are you?

I ain't much either. Have you heard anything lately?

I haven't heard a thing. Not nothing.

I was just wondering how—everything has been so quiet since—

Yeah, I know it. But they are working like hell. I called Ivy Hall and Ernie and that's the last word I've had.

You called Earnest Warner?

Yeah. That's—

Earnest has got—he won't hardly talk to me—

Well, he want me to come down the other night. I don't know what the hell. I called and told him—I said I ain't done nothing to nobody. Them damn rascals. But I know—they're—they said they weren't going to give up until they got who they wanted.

Well, who are they? Do you have any idea?

I believe I do. But I know less about him than I know about anybody.

Is that right?

That's Right. If he's ever dealt in anything, I don't know it, but John Carson.

Is that right? Sounds like he's ever—

If he has, I don't know nothing about it whatsoever. Sure don't.

I knew that when that thing came up in court that—accusing me and you being—

That's exactly right. Sure did, but you know—

You know that you said that—

That weren't so.

That's exactly right.

Them damn \* \* \*. I think it started with Gene Bristow and the Brady's whenever you fired Bill or something and that damn—that gun that I sold to Brady Jordan and I sold one to Pat Sparks and they traced that around. They had it in black and white. They showed me—they treated me as shitty as hell. I stayed in jail for 2½ days.

You know what they done to me don't you?

Yeah. I sure do.

It cost me \$2,500.

Well, it's cost me more than that.

Yeah, you had to pay a lawyer—

\$1,600 I paid him and then all the other damn—I ain't had a good night sleep yet, to tell you the truth.

Well, look—I just didn't want you to feel hard at me—

Lord, no—Nooc Nooc Nooc—you are the one—

Well, they had to get in writing up there that—that they come to me and had down in writing that you said that you was going to testify that you had bought 120 guns—

Lord, have mercy, God—

And I said I just don't believe this.

How could I swear a damn lie like that?

Well, that's what I didn't know—that's—

The hell \* \* \*. Well, they just spoke to you at the end of pleading guilty. A jury never would have found you guilty.

Well, they didn't have anything.

No. They had me. See what they had me add to that shittin \* \* \*. That's what convicted me. I had to plead guilty cause I had a black and white and I had five charges before I signed the paper. See, I was \* \* \* to the fact—All those permits—

Shooting—signed the damn permit. I didn't know what—that I was actually violating the law.

I want to see you sometime. I'll see you—

Fine. That would do. Come by anytime.

Okay. And—

Yes, sir. And I hope we can remain friends because damn, I wouldn't do nothing against you for—

Well, I didn't know what you had said or—

Hellll, no. I tell you this—you know the \* \* \* will not \* \* \* tell you five hundred lies to get you to tell the truth one time.

You know it too, right?

You're damn right. Come by whenever you can.

Okay, we'll see you.

Bye.

Bye.

The proceeding statement was taken on September 16, 1980 at approximately 3:15 p.m. A conversation between Harold Elam and Leo M. Epps of Troy, N.C. who was a witness to be in the court case No. CR806701-S of United States of America v. Harold Franklin Elam. (Said by Harold Elam).  
Leo Epps 576-1751.

In February 1978 I had gone to our branch office in Rockingham. When I got there I was told to make a return call to the town hall in Troy. I called the town clerk and he said there was a Federal agent at the office who wanted to talk to me in person as I was the police Commissioner. He said he couldn't tell me what it was about but it was very important. I came back to Troy and met a Mr. Jerry Pistol at the city hall. He informed me that he was an A.T.F. officer and that he was investigating our chief of Police (Harold Elam) for being in the gun business. He asked if Mr. Elam had ever sold me any handguns. I told him that Mr. Elam had not sold me any guns, but that he had picked several up for me at the police supply, and that I had paid for them through the town office. I told him that I was a certified and sworn officer and he agreed there was nothing wrong with my purchasing the guns. I showed him the guns and he got the serial numbers off of them.

In April 1978 Chief Elam called me to the City Hall (the Police office). When I arrived Mr. Pistol and another A.T.F. officer and Mr. Elam were there. Mr. Elam informed me in the presence of Mr. Pistol, that Mr. Pistol had made him take his gun from the holster and put it in his desk drawer, had him take his uniform shirt off, and made a picture of him. I did not see this, however Mr. Elam did not have his side arm on at this time. Mr. Pistol told me that he was continuing his investigation and that he thought it was O.K. to a copy of the report to the A.T.F. before he took any action against Mr. Elam.

On October 12, 1978 I received a call that there was some trouble at the police station. I went down there. Mr. Pistol, another A.T.F. officer, Mr. Elam and two town

police were at the scene. Mr. Elam and Mr. Pistol were having quite an argument. When I arrived they stopped arguing and things quieted down. Mr. Ray Maness, another Commissioner was with me. Mr. Maness told Mr. Pistol that he was not familiar with the situation and asked Mr. Pistol if he would go up to the office and explain it to him. Mr. Pistol said he would not go up to the office, but that if Mr. Maness would get in his car he would bring Mr. Maness up to date on the investigation. Mr. Maness, Mr. Pistol and the other C.T.F. officers got in the car and rode off. Mr. Maness did not raise his voice or get in an argument before they left in the car.

On Monday following the above mentioned incident Mr. Watten, who was Mr. Pistol's supervisor called me and was very upset about the incident. I told him I was glad that I went down there, because I think the argument would have gotten out of hand had it not been broken up. He said he would have Mr. Pistol stay away from the Police Station in the future.

*John C. King*

## APPENDIX

### PART I.—ADDITIONAL STATEMENTS

#### PREPARED STATEMENT OF N.T. "PETE" SHIELDS, CHAIRMAN, HANDGUN CONTROL, INC.

Mr. Chairman, Handgun Control, Inc., is a citizens' lobby formed by victims of handgun violence to win passage of effective and properly enforced handgun laws. I, myself, am a handgun victim. My oldest son, Nick, was shot and killed with a pistol in 1974 in the San Francisco ZEBRA killings.

Since that time I have devoted my life in an effort to reduce the likelihood that another family will suffer the loss of a loved one because of a handgun.

I am also a hunter and a sportsman who is fully aware of the emotion that surrounds this issue. That is why I have consciously sought to find common ground between law-abiding gun owners and handgun control advocates to develop a partnership against handgun crime in America.

Our nation today is in the grips of a handgun war. There is a one in five chance that you or a member of your family will encounter handgun violence in your life time. There were more handgun murders last year than in any year since 1975, and from preliminary 1980 statistics the situation is getting worse.

Despite this dramatic increase in violent crime, there has been little or no effort to develop a national program to stem this epidemic. Instead the focus of the Department of Justice is on white collar crime and not violent crime. Instead we have thousands and thousands of American citizens being killed, wounded and raped in handgun attacks.

The topic of today's hearings is oversight of the performance of the Bureau of Alcohol, Tobacco and Firearms. Is their performance in implementing existing law within the bounds of their legal authority, the constitutional rights of law-abiding gun owners and dealers and to the benefit of a safer and less threatening society for all of us?

Mr. Chairman, we do not defend or criticize the work of the Bureau of Alcohol, Tobacco and Firearms. As to the various charges of harassment we have no first hand knowledge either way. However I firmly believe when someone's performance is questioned, you go to the top for an answer. In this situation I would hope that the committee would ask for Secretary Miller's reaction and explanation of these charges, and, if he has confirmed any questionable practices, what steps he has taken to correct them.

More importantly I would hope the committee would ask both Secretary Miller and Attorney General Civiletti whether the law enforcement functions being complained about here belong in the Department of the Treasury at all; or whether in fact the whole function should not be implemented by the professional law enforcement arm of our government—the Justice Department. This question has been posed before. In 1975 Senators Jacob Javits and Charles Percy proposed a reorganization of the federal government's enforcement of firearms laws. 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, this organization must enforce Federal alcohol and tobacco laws as well \* \* \*

"Most importantly, it cannot adequately supervise the 150,000 federal licensed gun dealers and assist State and local law enforcement agencies in 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 possible \* \* \*

"It is of the utmost importance that we modernize, reorganize, and upgrade the Federal capability in this field and develop an interrelated system to information verification and handgun identification running from manufacturer to dealer to first owner and to private resales of handguns."

In 1977 President Carter's Reorganization Task Force urged the transfer of the firearms responsibility to Justice.

And in 1979 Senator Kennedy has proposed this same transfer. One of the provisions of Senator Kennedy's bill S. 1936 now pending before the full Judiciary Committee, is the creation of the Firearms Safety and Abuse Control Administration within the Department of Justice.

We concur with the need to consolidate not only many of the Federal Government's law enforcement efforts, but specifically the transfer of BATF's non-tax-collecting firearm function to the Justice Department as proposed by Senator Kennedy.

The Congress and the Administration have yet to closely examine the responsibility question.

Senator McClure has taken a different approach in his bill S. 1862. In his zeal to legislate away what he perceives as severe BATF abuses without transfers of authority, it appears he has seriously weakened the 1968 Gun Control Act's ability to fulfill its purposes of providing support "in fighting crime and violence."

An analysis of S. 1862 by the highly respected law firm of Wilmer & Pickering shows that among other things this legislation as presently drafted would:

Allow certain convicted felons and those under indictment to purchase handguns legally.

Unnecessarily preempt states laws governing the transportation of firearms within state borders.

Substantially weaken existing control on the illegal transfer of firearms.

I would ask that the entire legal memorandum be placed in the record.

Mr. Chairman, in your effort to clarify and if necessary correct BATF's performance I urge you not to miss the major question of whether the law enforcement functions being evaluated here truly belong in the Department of the Treasury or whether as the President and so many of your colleagues have previously argued they belong under the authority of our law enforcement community in the Justice Department.

The question of how best to organize our law enforcement efforts to reduce illicit gun trafficking and the tragic level of crime and violence which it fuels, should not be avoided again. We urge you Mr. Chairman to resolve this question first and in the process you may resolve the questions of possible abuse.

WILMER & PICKERING,  
Washington, D.C., March 28, 1980.

Mr. NELSON T. SHIELDS, III,  
Chairman of the Board, Handgun Control, Inc.,  
Washington, D.C.

DEAR MR. SHIELDS: This letter responds to your request for an analysis of the major features of H.R. 5225 and S. 1862 (the Federal Firearms Law Reform Act of 1979). Our analysis focuses on the extent to which the proposed legislation would alter existing law, and the consequences of, and any problems presented by, those suggested changes. It is not intended as a comprehensive, line-by-line survey of every aspect of the bill, but rather is meant to highlight its most important sections. We show that the bill would change the current law in a number of significant respects and that, for the most part, those changes would substantially reduce the efficacy of existing federal controls over firearm crime and illegal trafficking in firearms.

We identify the four broad problem areas summarized below.

I. The Bill Would Substantially Weaken Existing Controls on the Illegal Transfer of Firearms.—Foremost among the changes are the provisions that would allow any person that meets minimum federal eligibility requirements to purchase, receive or transport a firearm in interstate commerce and would allow persons other than federally licensed manufacturers, importers, dealers and collectors to make the transfer, as long as it did not violate the state and local law at the place of residence of the transferee. These provisions would eviscerate the current system of federal controls on illegal trafficking in firearms, would increase the likelihood that criminals and other ineligible persons could own firearms, and would hamper the effective operation of state and local gun control laws.

II. The Bill Would Improperly Reduce the Category of Persons Ineligible to Obtain Firearms.—The bill would significantly reduce the category of persons subject to the various federal prohibitions on firearm ownership, by excluding persons convicted of a number of serious felonies and persons under indictment for a felony. These revisions are not required as a matter of constitutional law, are unworkable and are contrary to the public interest.

III. The Bill Would Unnecessarily Preempt State Laws Governing the Transportation of Firearms Within State Borders.—The bill would establish a new mandatory federal standard governing the transportation of handguns that would require states to allow the transportation of firearms within their borders under conditions much laxer than their own gun control laws. This federal standard represents an intrusion into the rights of states to control illegal and dangerous gun traffic.

IV. The Bill Would Unduly Restrict the Effectiveness of Federal Firearm Controls.—The bill contains a number of provisions aimed at controlling, either directly or indirectly, the ability of the Bureau of Alcohol, Tobacco and Firearms (BATF) to implement and enforce the federal firearms laws. These provisions would greatly hamper the effective operation of that agency.

For example, the bill would effectively prevent the BATF from employing one of its most effective enforcement tools—the routine inspections necessary to determine whether federal licensees are complying with the law. In addition, the bill would cripple the BATF's regulatory effectiveness by imposing a minimum one-half year delay in the rulemaking process. The bill also establishes a narrow definition of "engaged in business" for federal licensees that is unnecessary and inappropriate on its merits. Finally, a number of provisions contain asserted "protections" for persons accused of violating the gun control laws. These proposals would restrict the BATF's ability to seize the guns, or bring successful actions to revoke the federal licenses, of dangerous persons.

All of these provisions are discussed in detail below. It is important to recognize, however, that perhaps even more serious than the problems posed by each of these various provisions taken alone is the compounded effect of the package taken as a whole. Thus, for example, not only would the bill weaken the law governing firearms transfers, but it would also restrict the ability of the BATF to enforce the remaining standards and limit the opportunities for states to step in and ensure that tougher standards apply within their own borders and to their own citizens. Similarly, not only would the bill limit the class of persons barred from obtaining a firearm, but it would also reduce the likelihood that even those remaining in the prohibited category are effectively excluded from access.

#### I. THE BILL WOULD SUBSTANTIALLY WEAKEN EXISTING CONTROLS ON THE ILLEGAL TRANSFER OF FIREARMS

##### A. Interstate transfers by persons other than Federal licensees

The centerpiece of the current system to control illicit trafficking in firearms is the general prohibition on the interstate purchase, receipt and transport of firearms by persons other than federally licensed manufacturers, importers, dealers and collectors. This prohibition, which is subject only to certain narrowly limited exceptions, seeks to ensure that persons transporting firearms in interstate commerce have undergone a federal eligibility check through the licensing process and are subject to continuing federal oversight. At the same time, persons that meet minimum federal standards are allowed to purchase guns intrastate as long as such purchase is consistent with state and local law.

The bill, assertedly in furtherance of the goal of administrative simplicity, would dismantle this system. It would permit any person to purchase, receive or transport a firearm in interstate commerce, as long as such transfer would not violate the state and local law at the person's place of residence. And it would permit any person to transfer a firearm to any other person as long as the transferor did not know or have reasonable grounds to believe it would violate the transferee's state or local law. These provisions would eliminate a significant measure of federal control over illegal interstate commerce in firearms and would greatly increase the likelihood that ineligible persons could purchase guns. They would also undermine the ability of law enforcement authorities to trace crime guns because there would be no record of interstate transfers between non-licensees.

The bill would substitute for the existing structure a system that is essentially unworkable. If a transferee wishes to circumvent his own state law, it is unlikely he will be stopped. It is unrealistic to expect a transferor in California, particularly a non-licensed individual with no prior exposure to the gun control laws, to be able to determine whether a transfer to a Delaware resident violates the transferee's state and local law. As a result, the provision is unlikely to be enforced effectively, thereby subverting minimum federal requirements as well as the application of the relevant state laws.

Moreover, the interstate purchase provision completely negates the already scant protections contained in Section 102(h) of the bill, which prohibits sellers from selling to persons they know or have reasonable cause to believe do not meet the minimum federal eligibility requirements (*i.e.*, persons convicted of disabling crimes, illegal aliens, etc.). Under current law, where federally licensed dealers, importers, manufacturers and collectors are subject to that standard with respect to sales to persons within their state, there is at least some possibility that the federal licensee may know or have reasonable cause to believe that the person is ineligible. *See* 18 U.S.C. § 922(d). Under the new proposal, where the potential customer can be from any state and the transferor can be a person without any federal responsibilities, the deterrent effect of this prohibition is virtually eliminated.

#### B. Lawful versus lawful sporting purpose

As noted above, current law makes it generally illegal for any federal licensee or any non-licensed person to provide a firearm to someone understood to reside in another state. One exception to this prohibition is that a gun may be loaned or rented for temporary use for "lawful sporting" purposes. 18 U.S.C. §§ 922(a)(5)(B), (b)(3)(B). This limited exception applies to permit a sportsman to make temporary use of a gun in another state, a type of "transfer" that does not interfere with the purposes of the general prohibition against the interstate transfer of firearms to non-licensees.

As shown above, the bill permits non-licensed persons to provide a firearm to another person, subject to the requirement that the transferor does not know or have reasonable grounds to believe that the transferee would violate a law in his home state by acquiring the gun. The bill creates an exception to this provision for the loan or rental of a firearm for temporary use for "lawful" purposes. § 102(d).

In this context, the exception bears no rational relationship to the prohibition. The implication of this provision is that a Maryland resident may provide a gun to a Virginia resident or even another Maryland resident, even if the transferor knows the recipient is prohibited from such receipt, as long as it is intended to be a temporary loan. Obviously, if someone is prohibited by state or local law from receiving a gun, there is no basis for the federal law to step in to permit such receipt, even as a temporary loan.

An additional loophole is created by changing the criterion to "lawful" purpose rather than "lawful sporting" purpose. Congress wisely limited the exceptions in §§ 922(a)(5), (b)(3) when it passed the original statute in 1968, fearful of the potential abuses that broader exceptions might engender. In contrast to these narrower exceptions, the "lawful purpose" formulation could be stretched to read many ways; it could permit virtually free transfers between persons in the form of "loans" for the avowed purpose of self-defense, regardless of whether such transfers are consistent with state law. There is no legitimate federal interest in allowing an otherwise unlawful loan of a gun to a vigilante in New York City who intends to roam the streets carrying the gun with the "lawful purpose" of "protecting" himself and his fellow citizens.

### II. THE BILL WOULD IMPROPERLY REDUCE THE CATEGORY OF PERSONS INELIGIBLE TO OBTAIN FIREARMS

#### A. Definition of "disabling crime"

Current law prohibits felons from receiving or transporting firearms in interstate commerce. 18 U.S.C. § 922(g)-(h). It also prohibits licensed manufacturers, importers, dealers or collectors from transferring firearms to such persons. 18 U.S.C. § 922(d)(1). The bill proposes to amend these provisions by limiting the restrictions to persons convicted of a "disabling crime." A "disabling crime" is defined in Section 101(e):

"The term 'disabling crime' shall mean a violation of Chapters 5, 7, 12, 35, 37, 39, 42, 49, 51, 55, 68, 77, 81, 84, 95, 96, 99, 102, 103, 105, 113, 115 and 117 of title 18, attempts at violations of the aforementioned chapters, or any similar crime punishable in a court, except a State offense classified by the law of a State as a misdemeanor and punishable by a term of imprisonment of two years or less."

The proposed restriction to "disabling crimes" is presumably intended to define a subclass of felonies (or equivalent state crimes) that involve violent tendencies sufficient that the perpetrator should be prohibited from owning a firearm.<sup>1</sup> From a policy standpoint, however, it should be remembered that an individual who has committed a crime punishable by a year or more imprisonment has demonstrated a serious disrespect for the law and a willingness to invade the rights and interests of other members of society. That fact alone raises substantial doubts about the eligibility of such a person to handle, in a manner consistent with the safety and welfare of others, such a dangerous and potentially lethal instrumentality as a firearm.

More importantly, as a practical matter, it is exceedingly difficult to make a meaningful categorization of felonies according to whether they do or do not demonstrate a propensity for violence. Certainly, the proposed limitation fails to achieve that purpose. The definition of "disabling crime" would permit persons convicted of a broad range of violent crimes to own a firearm. Thus, the bill would remove prohibitions on the receipt of firearms by persons convicted of violations of 18 U.S.C. § 351, dealing with the assassination, kidnapping or assault of a Member of Congress; 18 U.S.C. § 1792, dealing with mutiny or riots at a federal prison, or the transportation into such institutions of firearms or other lethal weapons; 18 U.S.C. § 32, dealing with the willful destruction of an aircraft or aircraft facilities or the willful incapacitation of an aircraft crew member; 18 U.S.C. § 33, dealing with the willful destruction of a motor vehicle or motor vehicle facilities, or the incapacitation of a driver; 18 U.S.C. § 871, dealing with threats to take the life of or inflict bodily harm on the President or successors to the presidency; and 18 U.S.C. § 1364, dealing with interference with foreign commerce by violence, through the use of fire or explosives.<sup>2</sup> In addition, under the proposed definition, even violations of Chapters 40 and 44, dealing with unlawful use of explosives and firearms, would not render a person ineligible to own a firearm.

Even if the bill were revised to include a more comprehensive list of obviously violent crimes in the definition of "disabling crime," the classification would still raise problems in terms of long-term legislative practicality. Under this proposed structure, any time a new crime is defined or an existing crime is re-codified, the Congress would be required to make the determination whether the crime indicated sufficient violent propensities that it should or should not be included in the list of disabling crimes, and would then have to amend the definition. Aside from the sheer burden this procedure would impose, there would be a significant risk of inaccuracy and oversight, as is revealed with the current definition, which includes violations of Chapter 68, formerly the chapter covering narcotics violations, but now repealed.

The bill employs the "disabling crime" concept in the penalty section as well. Current law imposes additional penalties for transporting or receiving a firearm in interstate commerce with the intent to commit a felony. 18 U.S.C. § 924(b). Section 104(b) of the bill would modify this provision to impose the extra penalty only if the firearm were transported in connection with a "disabling crime." This approach is clearly inappropriate and is not even consistent with

<sup>1</sup> This proposed limitation on the class of persons prohibited from receiving or transporting a firearm is not required as a matter of law; the current prohibition based on a classification of all felons has been upheld as constitutional. *See Cody v. United States*, 400 F.2d 84 (8th Cir.), cert. denied, 409 U.S. 1010 (1972); *United States v. Synnes*, 438 F.2d 764, 771-72 (8th Cir. 1971), vacated on other grounds, 404 U.S. 1009 (1972). Furthermore, the limitation is not necessary to protect the ability of allegedly nonviolent felons to obtain access to firearms. Current law already contains a provision that a person convicted of a felony may obtain relief from the disabilities imposed by these prohibitions, upon a determination by the Secretary "that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c).

<sup>2</sup> See also 18 U.S.C. §§ 875-877 (various felonies involving threatening communications and extortion, many punishable by 20 years imprisonment); 18 U.S.C. § 872 (conspiracy to injure or impede an officer); 18 U.S.C. § 1501 (assault on process server).

the purported justification for the "disabling crime" limitation. Even if it were determined that prior commission of certain felonies should not make a person ineligible to transport or receive a firearm, it does not follow that the transportation of a firearm with intent to commit such crimes should be decriminalized.

#### B. Persons under indictment for a felony

Current law imposes prohibitions on persons indicted for felonies, as well as those convicted of such violations. The bill would impose such prohibitions only on persons actually convicted. The asserted justification for this change is that a person should be considered innocent until convicted and should not suffer a "penalty" prior to that time. But the extension of such prohibitions to persons under indictment for a felony has been part of the federal firearms laws since 1938, and courts have consistently upheld it as constitutional.<sup>3</sup> See *United States v. Craven*, 478 F.2d 1329, 1338-40 (6th Cir.), cert. denied, 414 U.S. 866 (1973); *United States v. Friday*, 404 F. Supp. 1343 (E.D. Mich. 1975); *United States v. Quiroz*, 449 F.2d 583 (9th Cir. 1971). As the court concluded in *Craven*, it is "eminently reasonable" to base the indictment classification on the conclusion that "the indictment of an individual for a crime punishable by imprisonment for a term exceeding one year is so often indicative of a propensity for violence . . ." 478 F.2d at 1339.

As the courts have recognized, the state of being indicted is always temporary and, given the likely dangerous propensities of such persons, it is permissible therefore to require indicted persons to tolerate a temporary limitation on their ability to use firearms. *Id.*, citing, *United States v. Thoresen*, 428 F.2d 654, 662 (9th Cir. 1970). The asserted public interest in protecting the ability of an indicted felon to own or transport a firearm during the period between his indictment and conviction (or acquittal) is outweighed by the greater public interest in keeping firearms out of the hands of dangerous persons who are likely to misuse them. The unfortunate and frequent instance of persons indicted for a violent rape or armed robbery committing another equally violent offense while out of jail pending trial leaves no doubt as to the wisdom of the current prohibition.

### III. THE BILL WOULD UNNECESSARILY PREEMPT STATE LAWS GOVERNING THE TRANSPORTATION OF FIREARMS WITHIN STATE BORDERS

Another proposal that could give rise to illegal gun traffic is the suggested change to 18 U.S.C. § 927. This section now provides that Congress does not intend to preempt state firearms law unless the particular state and federal provisions directly conflict and cannot be reconciled. Section 107 of the bill, however, specifically preempts any state law prohibiting the transfer of an unloaded, inaccessible gun through that state.

Such a provision would clearly fly in the face of the rights of states to limit the gun traffic within their borders. A state may have a legitimate interest in preventing, for example, the shipment through its ports of crates of guns to either domestic or international terrorist groups. Such guns could very easily qualify under the proposed amendment as unloaded and inaccessible. Yet Congress surely has little interest in insisting that a state provide a staging ground for the shipment of such weapons.

### IV. THE BILL WOULD UNDULY RESTRICT THE EFFECTIVENESS OF FEDERAL FIREARM CONTROLS

#### A. The bill would effectively prohibit BATF compliance inspections

If amended as proposed, the Act would lose one of its most effective enforcement mechanisms—compliance inspections. Section 103(d) of the proposed bill would amend section 923(g) of the Act to provide for inspections of a licensee's records only if the BATF has reasonable cause to believe that a violation of the Gun Control Act has occurred and that evidence of such a violation might be found on the licensee's premises. Such a provision would effectively eliminate on-premises compliance inspections because it would be very difficult for inspectors to develop the requisite reasonable cause without actually seeing the records in question.

<sup>3</sup> The application of legal disabilities to persons under indictment arises in other contexts as well. For example, under the Ball Reform Act of 1960, 18 U.S.C. § 3146(a) (1), (2), (5), an indicted person is subject to a number of restrictions, including limits on his rights to travel, to associate with others, to receive visitors, or to leave his home at night.

The sponsors of the legislation assert that this provision is merely an effort to put firearms inspections in accord with certain language in the Supreme Court's decision in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), limiting the inspection powers of the Occupational Safety and Health Administration (OSHA). Even a cursory reading of *Barlow's*, however, reveals the Supreme Court's specific recognition of the legitimacy of inspections of firearms dealers. The firearms industry has long been subject to close supervision and inspection, according to the Court, and an entrepreneur embarking on such a business voluntarily chooses to subject himself to the full arsenal of governmental regulation and in effect consents to the restrictions placed upon him. 436 U.S. at 313. See *United States v. Biswell*, 406 U.S. 311, 316 (1972) (warrantless inspection of federal firearms licensee is not unconstitutional; if inspections are to serve as a credible deterrent, they must be frequent). Compounding their error, the sponsors would subject the BATF to far stricter requirements than those endorsed for OSHA.<sup>4</sup> Such a change lacks any sound justification.

#### B. Ninety-day public notice period and legislative veto

Sections 106(c) and (d) of the bill alter the administrative provisions applicable to the BATF's rulemaking authority. Current law already requires "reasonable public notice" prior to the promulgation of any rules and regulations dealing with firearms, 18 U.S.C. § 926(2). Section 106(c) of the bill imposes a minimum 90-day public notice period. Section 106(d) establishes a legislative veto procedure, which imposes an additional 90-day waiting period after any rule dealing with firearms is promulgated. These proposals would cripple the BATF's rulemaking ability and hamper its effectiveness by requiring at least a half-year delay in the effective date of every rule it intends to issue, however major or minor, however significant or routine.

If there are problems with BATF procedures, the answer is not to impose barriers that would impede the agency's ability to act and make decisions in a responsive and efficient manner. A better solution would be to transfer the authority for the regulation of firearms from the BATF to the Justice Department, an agency with more experience in crime control and enforcement.

#### C. Definition of "engaged in the business"

Current law makes it unlawful for anyone except a licensed dealer to engage in the business of dealing in firearms or ammunition. 18 U.S.C. §§ 922(a) (1), 923(a).<sup>5</sup> The term "dealer" is defined as any person engaged in the business of selling firearms or ammunition at wholesale or retail. See 18 U.S.C. § 921(a) (11); 27 C.F.R. § 178.11. The term "engaged in the business" is not defined in the statute or in the regulations.

Section 101(c) (14) of the bill establishes a definition of the term "engaged in the business" as it applies to dealers, as well as to the other types of federal firearms licensees. This statutory definition is unnecessary at the present time. The BATF on December 19, 1979 issued an Advance Notice of Proposed Rulemaking setting forth a comprehensive inquiry into the need for, and proposed format for, such definitions, outlining a range of alternative interpretations and seeking public comment on all aspects of the issue. 44 Fed. Reg. 75186-87 (1979) (to be codified in 27 C.F.R. § 178). That proceeding should provide valuable information necessary for an informed judgment about the most appropriate formulation of the definitions. The Notice correctly observes that a number of serious policy issues are presented by these definitions, as is demonstrated by the fact that the courts have developed various conflicting interpretations, focusing on several different types of factors as significant indicia of "engaging in business." See 32 A.L.R. Fed. 946 (1977). In such circumstances, it is essential that a full airing of the issue and consideration of the relative merits of all of these factors be undertaken before any final definitions are adopted. Accordingly, until the BATF proceeding is completed and the comparative advantages of a range of legitimate approaches are analyzed, there is no need for adoption of the proposed formulation.

<sup>4</sup> The bill requires the BATF to show reasonable cause to believe that a violation had occurred as a predicate to inspect a dealer's premises. In contrast, *Barlow's* imposes the much more limited burden on OSHA to show that its searches be pursuant to a "general plan for enforcement" based on "reasonable administrative standards" instead of reflecting a more arbitrary selection of the establishment searched. 436 U.S. at 320-21.

<sup>5</sup> These provisions include similar requirements for licensed manufacturers and importers.



The particular definitions proposed are also too narrow. The definition of dealer would exclude from federal licensing requirements (1) part-time businesses that may conduct a substantial number of sales but do not constitute the principal livelihood of the owner, (2) resale brokers who sell large "drop shipments" but do not maintain an inventory, and (3) new business not yet engaged in the regular course of business but fully intending to do so.<sup>a</sup>

*D. Sanctions for persons convicted of violations other than those charged*

Section 103(c) of the bill proposes that if a licensee is charged criminally for violations of the Act or its regulations but not convicted of such charges, the Secretary cannot use any of the violations alleged as a basis for interfering with the license. As a practical matter, the provision fails to achieve its intended purposes. The proposal fails to account for a central element of our criminal justice system—plea bargaining. For example, a licensee could be charged and convicted for tax evasion involving illegal shipments of firearms. This licensee could have been charged initially with various crimes and also with violations of the Gun Control Act in connection with the illegal shipments. In the course of plea negotiations, the Gun Control Act violations could be dropped, even though the predicate for the licensee's ultimate plea would clearly involve the conduct upon which violations of the Act were based. Under the proposal, this conduct could not be a basis for revoking the license, even though all parties concerned recognized it had occurred.

Finally, as a legal question, the proposed formulation is contrary to the settled rule of law that even a criminal acquittal does not bar a later civil proceeding based on the same acts. See, e.g., *One Lot Emerald Cut Stones and One Ring v. United States*, 409 U.S. 232, 235 (1972); *Stone v. United States*, 167 U.S. 178, 188 (1897). The primary justification for the rule is that the burden of proof in a criminal proceeding is far higher than that in an administrative setting. As a result, the failure to obtain a conviction may have little bearing on the validity of the civil charges, and should not foreclose a legitimate case from being brought.

*E. Restrictions on the forfeiture and seizure of firearms*

Current law 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. 18 U.S.C. § 924(d).

Section 104(d) of the bill removes application of the seizure and forfeiture provisions to weapons intended to be used in a violation. Moreover, forfeiture would only occur after the owner or possessor of the involved weapon has been convicted. And dismissal of any charge upon which seizure is based, or a result other than a finding of guilt as to such charge, would preclude forfeiture and require return of the seized weapon.

Many problems are caused by this change. First, a major loophole is created by the omission of guns intended to be used in a violation of the Act or other federal criminal law. An individual plotting to assassinate an officeholder may be planning to use a particular weapon. If he is caught in time, before the gun is put to use, his conviction for conspiracy might not be grounds for forfeiture of the weapon.

Second, an assassin could borrow a gun from an acquaintance, use it for his crime, and return it. Convicting him for assassination, however, would not confer authority on law enforcement agents to seize and retain the gun permanently, because he is not the owner or possessor of the gun.

Finally, this provision also ignores the nature of plea bargaining. The example of a typical holdup or mugging illustrates this. The prosecutor may, to secure a guilty plea and for a variety of other reasons, drop charges involving possession of a gun and accept a plea to mere assault. The defendant would nevertheless be required to admit to the use of a gun as part of the plea. Under the bill, however, the dismissal of the gun-related charges during the plea bargaining process would require law enforcement authorities to return the gun to the convict, perhaps to use on another victim.

<sup>a</sup> We also note that Section 101(c), presumably as a result of poor draftsmanship, defines "engaged in the business" as applied to an importer of firearms as a person who imports one firearm in any calendar year, thereby exempting importers of more than one firearm.

*F. Return of seized guns*

Seizure and forfeiture provisions are addressed in another context. Section 104(d)(2)(C) of the bill would permit seizure and forfeiture of weapons only if particularly named and individually identified as involved in or used in a violation of the Act or any other federal criminal law.

Such a change from existing law would clearly permit crime guns to remain in the hands of criminals. If an owner of five guns used one to commit a bank robbery, was captured, and his weapon seized, the bill would not touch his remaining four guns. Assuming he was incarcerated for his offense, upon his release he could use his cache of weapons to commit an even more serious offense in the future.

*G. "Knowing" violations*

An additional one-word proposed change could significantly weaken the application of the law to criminals. Currently the law provides that a license may be revoked if the holder has violated the Act or its regulations. 18 U.S.C. § 923(e) Section 103(b) of the bill would amend the provision to insert the word "knowingly" before the word "violated."

Such a change is plainly unwarranted and would provide criminal defendants with an additional layer of defense against legitimate prosecutions. The "knowingly" requirement might make knowledge of the provisions of the law an element of the offense—a tremendous burden for prosecutors. The regulatory features of the Gun Control Act, like regulatory measures throughout our laws must provide that mere accomplishment of the proscribed act or omission satisfies the standard for criminal liability. A criminal intent requirement undermines the efficacy of such regulatory provisions.

V. CONCLUSION

We have shown that a number of provisions of the proposed legislation would have a detrimental effect on the operation of current federal and state control over firearm crime and illegal gun traffic. These problems are compounded by the combined effect of the various provisions taken together. These many serious defects in the legislation provide a strong basis for opposing the bill.

Sincerely,

LESLIE C. SEEMAN,  
RICHARD F. GOODSTEIN.

NATIONAL COUNCIL FOR A RESPONSIBLE FIREARMS POLICY, INC.,  
Alexandria, Va., September 29, 1980.

Statement submitted by David J. Steinberg, Acting Chairman of the National Council for a Responsible Firearms Policy, to the Subcommittee on the Constitution, U.S. Senate Committee on the Judiciary, in hearings on alleged civil liberties violations in enforcement of gun control legislation.

The National Council for a Responsible Firearms Policy concerned with the total public interest as the sole standard of its involvement in this policy area is submitting this statement in connection with the Subcommittee's hearings on alleged violations of civil liberties by the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (ATF) under the Gun Control Act of 1968.

Our Council, which campaigned for the Gun Control Act of 1968, has worked diligently over the years for a coherent, comprehensive firearms policy fully responsive to the imperatives of public safety and fully respectful of the rights of all Americans in this matter, those who own guns and those who do not. We sought much more than the 1968 law at that time, and have since urged additional legislation we regard essential to public safety—essential, incidentally, as the gun interests should recognize, to the very future of responsible gun ownership in America. At all times, we have insisted that the standards of firearm legislation and related regulations should be clear, reasonable and equitable and that implementation should be in the best traditions of American law enforcement.

We note with concern the charges that have been made alleging violation of the civil liberties of various gun collectors, gun dealers and other gun owners by ATF agents. We are not in a position to evaluate these charges or investigate their validity. We note with confidence the stated determination of the ATF Director to stop any investigatory practices found to involve violations of

civil liberties. We believe the Bureau should have a reasonable opportunity to carry out whatever administrative reforms are necessary. We believe the Director should be held fully accountable by the Secretary of the Treasury, the President and the Congress for the most effective adherence to the highest standards in these enforcement activities.

We note with dismay the effort mounted by the National Rifle Association and allied interests to secure legislation supposedly aimed at correcting the Bureau's alleged misdeeds. The vehicle they propose is a bill entitled The Federal Firearms Law Reform Act, which currently is reported to have the endorsement of 59 Senators and over 170 Representatives. Whatever meritorious reforms this bill may possibly contain, there is much in the bill that weakens the greatly needed regulation enacted in 1968 and would be a significant setback for public safety. The bill as a whole amounts to throwing out the baby with the bathwater.

We commend the Subcommittee for holding these hearings. We trust that the Judiciary committees of both houses will show a keen interest, through oversight hearings and in other ways, in the practices and overall effectiveness of the Bureau of Alcohol, Tobacco and Firearms in enforcing the gun-control legislation. We urge both committees, both houses and the President to move with deliberate speed to produce additional firearms legislation that, in contrast to what at best is an incremental, infrequent and inadequate response to the ever growing problem of violence with firearms, would fully, coherently and constructively address the needs of the nation in this matter. The nation's negligence in this regard is appalling.

We repeat our concern, expressed above, that the law, the regulations and their implementation must be fully responsive to the imperatives of public safety and fully respectful of the rights of all Americans, those who own guns and those who do not.

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(over)

August 11, 1980

The Honorable Birch Bayh  
363 Russell Senate Bldg.  
Washington, DC 20510

Dear Senator Bayh:

We were recently informed that you plan to hold public hearings which will investigate harassment campaigns conducted by the Bureau of Alcohol, Tobacco & Firearms against gun owners.

As part of the public testimony, I wish to offer into testimony the attached Dec. 3, 1979 issue of THE WEEKLY BULLET, which printed my study investigating whether or not the B.A.T.F. is misinforming the public about the legality of individual firearm sales. My study revealed, that in response to the same question as to whether or not an individual needed a Federal Firearms License to lawfully sell a personal firearm, four different responses were received from five different B.A.T.F. regional offices.

You may want to inquire why so many different answers were given to the same question? All of the essential research material is enclosed. The names of those individuals who wrote the letter of inquiry to their regional B.A.T.F. office have been deleted, in order to prevent B.A.T.F. reprisals against them.

Should you have any questions, please do not hesitate to contact me. Furthermore, another of our studies investigating the B.A.T.F. is also enclosed, which we offer for public testimony: "The BATF's War on Civil Liberties: The War on Gun Owners."

Sincerely yours,

*Bill Garrison*  
Bill Garrison  
Research Director

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## Defining "Dealer"

Volley 4, Round 48

December 3, 1979

Dear Subscriber:

Last week we mentioned the apparently common practice of the BATF of misinforming law-abiding citizens about the requirements of the law, and then arresting them for following the BATF's advice. In no area is this more common than in the so-called "implied dealership" entrapment -- a collector or shooter who sells a small number of guns, and is arrested for dealing without a license. In this issue of TWB, we have a special report on BATF implied-dealership entrapments, and what the average citizen can expect if he ever makes the mistake of calling the local BATF office for advice. We are indebted to Second Amendment Foundation Research Director Bill Garrison, who did the leg-work for this issue.

### "ENGAGED IN THE BUSINESS"

Publications of the Bureau of Alcohol, Tobacco and Firearms (BATF) state that persons "not engaged in the business" of selling firearms, but who sell four to six a year, do not need a license to do so. This is the Bureau's official position. Their quasi-official position is that persons selling such a small number of guns may not obtain licenses to sell, even if they want to. Licensed dealers are required to operate out of a bonafide shop, and be open regular hours. Dealers who have made too few sales have had their licenses revoked. The BATF position is that small numbers of sales do not need licenses, and may not obtain them.

This was also the policy set forth in the BATF pamphlet, Gun Control Act: Questions and Answers, which states that "a non-licensed resident of a state may make an occasional sale to another non-licensee residing in his state (as long as he is not 'engaged in the business')."

During 1975 Senate hearings into juvenile crime, a letter from former BATF director Rex Davis was produced which stated in part that: "We have long held that the occasional sale of a personally owned firearm by an unlicensed individual is not construed as being 'engaged in the business.'"

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More important to TWB readers than Rex Davis' glib assurances, however, was a memo to the director from the BATF's legal division, which advised against the Bureau establishing a formal definition of "dealing", as such definition might unduly limit possible BATF prosecutions.

There have definitely been prosecutions. In the course of writing *The BATF's War on Civil Liberties: The Assault on Gun Owners* (available from the Second Amendment Foundation for \$4.00), David Hardy discovered that the BATF often used their assumed role as gun law experts to advise innocent non-dealer gun owners that a certain sale was legal. When the official advice was followed, the seller found himself the subject of a felony prosecution for dealing without a license.

Although we have no difficulty believing Hardy's charges, we thought it desirable to specifically investigate the "dealing without a license" entrapment scheme. The method of investigation became clear through a conversation between Bill Garrison, SAF research director, and a former BATF special agent. The agent gave Garrison a sobering account of the agent's "service" in the Montana BATF regional office:

It was a standard operating procedure -- a common joke -- that whenever a gun owner telephoned our office inquiring about the legality of selling off several of his firearms, or how he could comply with BATF regulations, such phone inquiries would be circulated around our office with different agents giving different, pre-arranged answers. Sometimes, agents would provide false answers to the inquiries, ask who they were, and then set them up in entrapment situations to arrest them for illegal selling of firearms. At the time I agreed with such entrapment practices, but I now disapprove of them.

### A Common Pattern

To test the truth of this and other allegations, we sent an identical letter to each of the seven BATF regional offices. In the responses, we looked first for any obvious misstatements of the law, and second, for consistency (or lack of same) in the responses.

Our letter of inquiry read:

I have three handguns that I would like to sell. I am planning to advertise these handguns in the local newspaper.

Please inform me if I need to first obtain a Federal Firearms Dealers License (FFL) from your office before I can sell the handguns.

If I do need a FFL, please send to me the FFL-dealer application form. If I do not need to obtain a FFL, please cite for me a BATF regulation stating I don't need the FFL.

The replies received from each region follow:

### Region 1: Central

[Please see next page]

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"In reply to your letter...enclosed is a copy of ATF publication 'Federal Regulation of Firearms and Ammunition.' I believe that the section regarding unlicensed persons, page 10, of the publication answers your questions regarding the sale of your handguns.

"A license to deal in firearms is issued to engage in the business of dealing in firearms as explained in the enclosed publication. The sale of a personal firearm has certain restrictions which are also explained."

Question 27 of the pamphlet reads:

Q. Can someone who isn't in the gun business sell a firearm to another person who resides in the same State as the seller?

A. Yes. There is nothing in the Gun Control Act which prohibits such a sale between residents of the same State... In general, a single sale, unattended by other circumstances, does not require a person to be licensed.

### Region 2: Mid-Atlantic

This office simply provided a copy of ATF Form 7, an application for a dealer's license. There was no letter of explanation.

### Region 3: North Atlantic

This office sent the same pamphlet as did Region 1, but again there was no letter of explanation.

### Region 4: Southeast

The Southeast Region office sent the BATF pamphlet, "Gun Control Act: Questions and Answers", which is an older version (by three years) of the pamphlet sent by Region 1. The question listed above had been underlined by someone in the office, and the following letter was included:

"A license is not needed to sell your personal gun, as long as the guns were not purchased for the purpose of making a profit. When you sell the guns, you must make sure that the purchaser is not prohibited from buying the guns."

### Region 5: Southwest

Despite two inquiries, no response was ever received from this office.

### Region 6: Midwest

Two inquiries were also made to this office. The answer to the first was a letter:

"You do not need an FFL to sell your personal firearms. However,

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I would like to suggest that you sell your firearms to a dealer, rather than advertise, in a newspaper."

However, the second inquiry produced a very different response: the office sent only the above-mentioned question-and-answer booklet, and a form to apply for the dealer's license.

So, not only did responses differ from region to region, they even differed within the same regional office.

### Region 7: Western

No responses were received from this office.

The bottom line: four different responses from five offices. Like the IRS, the sister-organization of the BATF in the Treasury Department, the advice given a citizen is no defense against criminal charges.

The same is true of advice given in person. An Ohio man who attended a January, 1976 gun show to swap and sell several firearms had a table near a BATF information booth. He told the agents what he was doing and received their assurances that his activities were proper. He carried on his business there for two days. Soon after, his home was raided and \$4,000 worth of firearms were confiscated. Two years later, no charges had been filed, but neither had his collection been returned.

While we will let TWB readers come to their own conclusions as to whether the complicated definition of dealer is maintained for entrapment purposes, or is just another example of bureaucratic confusion. Whatever the reason, these cases underscore the need for a fair and comprehensive definition of the term, "engaged in the business...."

As we reported in the last Round, the BATF has assured us that they will soon be publishing a "notice of proposed rulemaking" which will allow the public to suggest definitions.

David Hardy, in *The BATF's War on Civil Liberties*, suggested that:

The definition of "dealer" in firearms needs a consistent and more definite statement, so that individuals may determine with greater certainty whether they are in fact dealers and should obtain -- and are entitled to -- a license. Clarification might be undertaken by presumptions based on number of sales -- sale of a certain number of firearms a year might create a presumption of dealer status, and fewer than that a presumption of non-dealership. At a minimum, a list of criteria for dealers (number of sales, replenishment of supply after sale, short time-lapse between purchase and resale) should be publicly stated.

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Virginia

(Name for identification purposes only.)

Dear S.A.F. Member:

We are attempting to get the BATF to clarify its regulations pertaining to how many handguns a civilian can sell yearly without having to become a Federal Firearms License (FFL) dealer.

We believe that BATF offices are giving different opinions to different people. Therefore, we are requesting your assistance in helping us to see if different BATF-regional offices are issuing different opinions.

If you would like to help us, please send the enclosed letter and mail it in the BATF-addressed envelope. Once the BATF responds to your reply, mail it to us in the SAF envelope. Similar letters to yours are being sent to other BATF offices by other volunteers.

(Once you have read the attached letter, please rest assured that we do not intend to have you sell any firearms. We merely want to compare how different BATF offices answer this letter from other regions.)

We appreciate your efforts in helping us to preserve your Second Amendment right of keeping and bearing firearms. If you have any questions, please phone me "collect" at (206) 454-7012.

Sincerely yours,

Bill Garrison  
Research Director

BG:svc  
Enclosures

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BATF Regional Office

Dear Sir:

I have 3 handguns that I would like to sell. I am planning to advertise these handguns in the local newspaper.

Please inform me if I need to first obtain a Federal Firearms Dealer's License (FFL) from your office before I can sell the handguns.

If I do need a FFL, please send to me the FFL-dealer application forms. If I do not need to obtain a FFL, please cite for me a BATF regulation stating I don't need the FFL.

Sincerely yours,

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May 1, 1979

Bureau of Alcohol, Tobacco and Firearms  
Southeast Region, Office of the Regional  
Regulatory Administrator  
3835 North East Expressway  
Atlanta, GA 30340

Dear Sir:

I have 3 handguns that I would like to sell. I am planning to advertise these handguns in the local newspaper.

Please inform me if I need to first obtain a Federal Firearms Dealer's License (FFL) from your office before I can sell the handguns.

If I do need a FFL, please send to me the FFL-dealer application forms. If I do not need to obtain a FFL, please cite for me a BATF regulation stating I don't need the FFL.

Sincerely yours,

*Name withheld*

A license is not needed to sell your personal gun, as long as the guns were not purchased for the purpose of making a profit. When you sell the guns, you must be sure that the purchaser is not prohibited from buying the guns. Please see question # 28 in the enclosed Questions and Answers booklet. If you have any further questions, please contact this office (404) 455-2675.



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DEPARTMENT OF THE TREASURY Bureau of Alcohol, Tobacco and Firearms CORRECTION NOTICE				1. DATE REPLY REQUIRED
2. FORM NUMBER	3. SERIAL NUMBER	4. DATE OF FORM	5. PERIOD COVERED	
6. FROM: BUREAU OF ALCOHOL, TOBACCO AND FIREARMS 230 South Dearborn St. Chicago, IL 60604				
7. TO:			INSTRUCTIONS 1. Please provide the information requested or correct the error indicated. 2. Return the original and retain a copy of this form for your records. 3. If you are unable to comply by the requested date (Item 1), please acknowledge and let us know when you can complete the necessary action.	
8. NATURE OF INQUIRY OR ERROR <div style="border: 1px solid black; padding: 5px; display: inline-block;">Name withheld</div>				
9. ACTION REQUESTED Tried calling you by phone but had no luck. You do not need an FFL to sell personal firearms. However, I would like to suggest that you sell your firearms to a dealer, rather than advertise, in a newspaper. Please call our office, for further questions. 312-353-3823				
10. SIGNATURE (Requesting official) <i>Edwin W. Townsend</i>		11. TITLE Explosives/Firearms Examiner	12. DATE May 8, 1979	
13. REMARKS (Continue on reverse if necessary)				
14. SIGNATURE OF PERSON REPLYING		15. TITLE	16. DATE	

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DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
550 MAIN STREET  
CINCINNATI, OHIO 45202  
MAY 2 1979

received  
5/5/79

name  
withheld

In reply to your letter dated May 1, 1979, enclosed is a copy of ATF Publication 5300.12, Federal Regulation of Firearms and Ammunition. I believe the section regarding unlicensed persons, page 10, of the publication answers your questions regarding the sale of your handguns.

A license to deal in firearms is issued to engage in the business of dealing in firearms as explained in the enclosed publication. The sale of a personal firearm has certain restrictions which are also explained.

If we can be of further assistance please contact me at the above address or phone (513) 684-3715, or Edwin W. Townsend, Area Supervisor, at (513) 684-3351.

Sincerely yours,

*K. A. Daley*

K. A. Daley  
Supervisor, Firearms and Explosives  
Licensing Section

Enclosure

# **The BATF's War On Civil Liberties: The Assault on Gun Owners**



Report of the  
Task Force to Investigate the  
Enforcement Policies of the Bureau of  
Alcohol, Tobacco and Firearms.

David T. Hardy, Project Director



Second Amendment Foundation  
Bellefield Office Park, 1601-114 SE, Suite 157,  
Bellevue, WA 98004 (206) 454-7012

**CONTINUED**

**5 OF 8**

**The BATF's War on Civil Liberties:  
The Assault on Gun Owners**

**Task Force to Investigate the Enforcement Policies of the  
Bureau of Alcohol, Tobacco and Firearms**

**David Hardy, Project Director**

**single copy price: \$4**

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## ABOUT THE AUTHOR

David T. Hardy received his Bachelor of Arts degree from the University of Arizona where he graduated with honors and distinction in 1972. He received his Juris Doctorate from the University of Arizona College of Law in 1975. He graduated with great distinction and served as Associate Editor of the *Arizona Law Review* from 1974 to 1975. Mr. Hardy is a member of the Bar of the State of Arizona and is licensed to practice before the Federal District Court of Arizona. He serves on the Legal Advisory Board of the Second Amendment Foundation. Mr. Hardy is an avid sportsman and firearms enthusiast.

Mr. Hardy has written extensively in the area of law and firearms regulation. He is the co-author of a lengthy article titled: "Of Arms and the Law," 51 *Chicago-Kent Law Review* 62 (1974). Other S.A.F. publications authored by him include "Everything The B.A.T.F. Never Wanted Congress to Know About 'Operation CUE'," and "No Case for Stricter Firearms Control: A Rebuttal to the General Accounting Office's Report."

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# Everything The B.A.T.F. Never Wanted Congress To Know About "Operation CUE"\*

\*Or How An Agency Uses A Boondoggle  
To Increase Its Public Funding.

by David T. Hardy



Second Amendment Foundation  
Bellevue Office Park, 1601-114th S.E., #157, Bellevue, Washington 98004  
(206) 454-7012

IN DEFENSE OF  
THE RIGHT TO LIFE  
AND BEAR ARMS

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Additional copies of this critique are available from the Second Amendment Foundation, 1601 114th S.E., Suite 157, Bellevue, Washington 98004. Single copy, \$1.25; three copies, \$3.00; five copies, \$4.50. Prices for larger quantities available upon request.

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## Foreword

The Bureau of Alcohol, Tobacco and Firearms (B.A.T.F.) launched its "Operation Concentrated Urban Enforcement," or more simply "Operation CUE," with great expectations that a massive influx of federal agents into large metropolitan areas would substantially reduce firearm-related crime. Two federally financed studies (one produced by B.A.T.F. and one by an independent firm) confirmed the expectations. Both studies concluded that increased manpower and hence increased Congressional appropriations would "contribute significantly to a reduction of major violent crime committed with firearms."

The full ramifications of that conclusion for the responsible gun-owning public, from a civil libertarian perspective, and for all taxpayers who are already over-burdened by thousands of government projects, prompted the Second Amendment Foundation to retain David Hardy to analyze the two studies and write this critique.

Dave Hardy reveals for public scrutiny the serious shortcomings of "Operation CUE" and the incredibly shoddy analysis used in both federally financed studies to justify increased appropriations for a programmatic boondoggle.

This review is provided in order to present to Congress an objective and detailed analysis of a government program which is being used as a public relations campaign, paid for by public funds and aimed at increasing B.A.T.F.'s public funding.

Jeffrey D. Kane  
Executive Vice President  
Second Amendment Foundation

## About the Author

David T. Hardy received his Bachelor of Arts degree from the University of Arizona where he graduated with honors and distinction in 1972. He received his Juris Doctorate from the University of Arizona College of Law in 1975. He graduated with great distinction and served as Associate Editor of the Arizona Law Review from 1974 to 1975. Mr. Hardy is a member of the Bar of the State of Arizona and is licensed to practice before the Federal District Court of Arizona. He serves on the Legal Advisory Board of the Second Amendment Foundation.

Mr. Hardy has written extensively in the area of law and firearms regulation. He is the co-author of a lengthy article titled: "Of Arms and the Law," 51 CHICAGO-KENT LAW REVIEW 62 (1974). Mr. Hardy is an avid sportsman and firearms enthusiast.

## Everything the BATF Never Wanted Congress to Know About 'Operation CUE.'

The subject of firearms regulation has not been cursed with a shortage of argument. The past twelve years have seen, for example, no less than seven Congressional hearings (one of which ultimately was published in 8 volumes), seven books, and approximately fifty articles in legal journals devoted solely to this topic.

A close examination of the bulk of these publications would disclose, however, an enormous shortage of empirical data and in-depth study. As a general rule, assertions and assumptions dominated over hard data; discussion of available statistical data tended to be limited to nonsystematic references to cities and states which had been carefully selected to prove whatever point the author desired to establish. Only within the past few years have serious and in-depth studies begun to become available—most notably, the Harvard Center for Criminal Justice's study of the Bartley-Fox law,<sup>1</sup> and the Police Foundation's study of firearms abuse.<sup>2</sup>

**"To any serious student of firearms regulation, the (CUE) study cannot be considered other than a grave disappointment."**

In the aftermath of these privately funded studies, the Bureau of Alcohol, Tobacco and Firearms announced its plans to conduct a government-funded statistical analysis of the federal firearms laws. The reaction among the scholarly community was favorable; after all, if private foundations with limited funds and data bases could produce suitable studies, a federal-financed program should be able to produce a truly epic result. At the same

time, a certain amount of suspicion might have been appropriate. The purpose of the BATF-financed study was to determine whether increases in manpower and money for the BATF would reduce firearms crime. Since the BATF was petitioning Congress to increase their manpower and money,<sup>3</sup> it might be suspected that their study as to results of increasing their own budget and

**"... The actual monetary cost of the program is not stated ... accordingly, it is impossible to assess the actual cost-effectiveness of CUE..."**

staffing would be more than a little biased. Early press releases tended to confirm both the hopes and fears regarding the program. Claims of dramatic reduction in homicide, robbery and assault were made, with promises of a fuller report to follow. At the same time, the reports contained a suspicious amount of "bureaucratic" language—such as noting that the crime decreases "co-occurred" with the program.

At long last, the study itself appeared. Entitled "Concentrated Urban Enforcement", or abbreviated "CUE", the federally financed study appeared in two volumes.<sup>4</sup> To any serious student of firearms regulation, the study cannot be considered other than a grave disappointment.

The CUE program covered three cities and two different time periods, becoming effective in Washington, D.C., on February 16, 1976, and in Boston and Chicago on July 1, 1976.<sup>5</sup> The special enforcement effort was limited to these three "target cities"; for purposes only of comparison, St. Louis and Los Angeles were designated as "control cities" and are thus mentioned in

the CUE report but not subjected to the CUE enforcement effort. The enforcement effort consisted essentially of an increase in federal enforcement personnel in each target city, increased emphasis on closing sources of firearms flowing into the target cities from other areas, and educational programs for dealers.<sup>6</sup> The CUE study had a dual emphasis: first, an assessment of the effectiveness of the enforcement and, second, the tracing and examining of firearms commerce within the studied cities.

**"... the term 'amateurish' ... appears in the mind when comparing CUE's summary ... with the detailed crime impact assessments of the privately funded Police Foundation and Harvard studies."**

BATF's assessment of its program's effectiveness is made in terms of its direct impact upon prosecutions and its derivative impact upon crime levels. In relation to prosecutions, the study notes numerous investigations and actual prosecutions in the subject cities,<sup>7</sup> although comparisons are difficult to make.<sup>8</sup> This effect might be expected as the direct result of the increased resources given BATF: the number of BATF agents nearly doubled in Boston, nearly trebled in Washington, and nearly quadrupled in Chicago.<sup>9</sup> At the same time, while an extremely detailed accounting is given of time devoted in each city to each form of agent activity,<sup>10</sup> the actual monetary cost of the program is not stated. Accordingly, it is impossible to assess the actual cost-effectiveness of the CUE approach as opposed to other possible strategies against violent crime.

Of greater interest is the question of effect in terms of impact upon crime levels. CUE's analysis here is surprisingly deficient. It seems strange, in assessing a federally financed study contracted in part to a private research corporation, to use the term "amateurish". Yet such a term appears in the mind when comparing CUE's one-page summary of the impact upon crime levels,<sup>11</sup> backed by a three-page exhibit,<sup>12</sup> with the detailed crime impact assessments of the privately funded Police Foundation and Harvard studies. Early press releases had stressed the crime impact and claimed impressive reductions, asserting

that the program had "contributed significantly to a reduction of major violent crime committed with firearms,"<sup>13</sup> although qualifying with "At minimum, decreases in gun related crime occurred after CUE began".<sup>14</sup> The report ultimately rendered gives much more conservative results. The measure chosen of violent firearms crime declined not only in the target cities over the program's span, but also in those cities before the program, and in both the control cities and the twenty largest urban areas during the program.<sup>15</sup> The final results are thus announced as showing that the rates have decreased "more significantly" in the target cities during the program;<sup>16</sup> no attempt is made to quantify the difference, to prove that the decrease would not have accelerated without the program,<sup>17</sup> or otherwise to analyze the results.

The BATF's study of "crime-related" firearms is likewise deficient in comparison with earlier studies. CUE simply incorporates the methodology of earlier BATF studies, Project Identification and Project 300.<sup>18</sup> Yet it was precisely these studies which had been so vigorously criticized by the Police Foundation in its study on firearm abuse. These earlier studies had been interpreted by the Bureau as demonstrating that the "Saturday Night Special"—a firearm never precisely defined, but generally characterized by small caliber, short barrel and low price—played a primary role in firearm crime. The Police Foundation had noted that the BATF

**"Notwithstanding the serious biases and flaws (discovered by the Police Foundation in earlier BATF studies), the CUE study simply incorporates the methodology of the earlier studies."**

studies were guilty of serious misstatements as to the nature of the guns studied. BATF identified the guns comprising their data base as "crime guns" or "handguns used in crime".<sup>19</sup> But the Police Foundation discovered that the guns studied in fact included all guns taken into custody, temporarily or permanently, by police. Included in the samples, and comprising from twenty to twenty-five percent thereof, were guns found by the police and considered abandoned, and those voluntarily turned in

by citizens.<sup>20</sup> Also included were the officers' own firearms turned in for inspection, and citizen firearms given for temporary safekeeping.<sup>21</sup> The remainder came from arrestees, who may or may not have been convicted of any crime. Over half of the arrestees had moreover not been arrested for any crime involving use of the firearm, but solely for illegal possession of the gun itself.<sup>22</sup> A study of guns "used in crime" where the only crime was owning the gun, would seem an exercise in circular reasoning. Moreover, the investigation by the Police Foundation found that BATF had been guilty of biasing the results toward cheaper, newer, smaller-caliber guns. First, police officials informed the Police Foundation that BATF had asked them, in transmitting the figures used in its reports, to screen out the older firearms—meaning pre-1968 firearms—which were likely to be the more expensive and higher quality ones.<sup>23</sup> When questioned by the Police Foundation, BATF could not indicate how many firearms had thus been screened improperly from the sample.<sup>24</sup> Second, BATF procedures for assigning a price to the firearms reported were rather crude. Rather than determining the actual price for each firearm, BATF assigned price classifications to the manufacturer.<sup>25</sup> The result was that all of one producer's output was classified as the "under \$50" class, while the manufacturer's guns actually seized

**"An assessment of the effectiveness portion of the CUE study reveals numerous, serious, deficiencies. Underlying all of them is an apparent bias toward proving CUE ... effective."**

proved to be over \$100 in actual price.<sup>26</sup> The BATF moreover completely omitted long guns, which constituted approximately 20% of the seizures, and tended to be much more expensive.<sup>27</sup> Finally, it failed to consider that the price actually paid on the street might be several times the "legal" price: the BATF's own studies indicated that undercover men purchasing firearms were paying nearly \$100 for even the cheaper guns.<sup>28</sup>

Notwithstanding the serious biases and flaws, the CUE study simply incorporates the methodology of the earlier reports. The

failure to cure these defects—or even to acknowledge their existence<sup>29</sup>—is surprising, considering that the CUE report lists *Firearm Abuse* as "one of the documents used . . . to describe factors influencing the impact of CUE. . . ."<sup>30</sup> Not surprisingly, the CUE study yields results more in line with the earlier BATF studies than with *Firearm Abuse*. CUE concludes that the surveyed firearms are predominantly short-barrelled, small caliber, inexpensive revolvers.<sup>31</sup> A shift, during the CUE program, away from newer pistols and toward older pistols and shotguns, is taken as an indication of CUE's effectiveness,<sup>32</sup> as are increases in use of sawed-off shotguns<sup>33</sup> and homemade firearms.<sup>34</sup> In terms of origin, it is noted that approximately 42% of the firearms were first purchased outside the state where confiscated, and 80% were purchased outside the jurisdiction of the city of confiscation.<sup>35</sup> The majority of these "imported" firearms were not, however, brought into the city in bulk lots by illegal sellers, but were purchased by individuals who later moved or returned to the city.<sup>36</sup>

An assessment of the effectiveness portion of the CUE study reveals numerous, serious, deficiencies. Underlying all of them is an apparent bias toward proving CUE, and thus increased funding and manpower for BATF, effective. A tendency is thus apparent toward glossing over, or totally omitting, factors suggesting a limited impact, while evidence indicating a greater impact is emphasized. Since the study was published by BATF, based largely on BATF data,<sup>37</sup> this is not totally surprising. The weaknesses of the effectiveness study can be studied in terms of its data base, its analysis of crime-rate impact, and its study of firearms use changes.

From the beginning of the study, an unexplained anomaly in the data base is obvious. The CUE program and its study centers upon three cities—Washington, Chicago, and Boston. No reason is given for their choice as the study "target cities." They can hardly have been chosen as "typical" of the nation, for their criminal statistics have deviated greatly from national trends—for example, during the year before CUE, their homicide rates dropped while national rates rose.<sup>38</sup> Regionally, Boston is located in an area with lower-than-average firearm ownership to

begin with,<sup>39</sup> and Chicago's entire region has experienced unusually large violence declines in recent years, compared to the rest of the nation.<sup>40</sup> Boston's Bartley-Fox law, moreover, had already been in effect prior to CUE<sup>41</sup> and may have tended to reduce firearms carrying<sup>42</sup> below levels that were unusually low already.<sup>43</sup> The atypically low firearms use in Boston had been known to the BATF, and commented on in *their own* reports, prior to the city's inclusion in the CUE report.<sup>44</sup> Chicago likewise has conditions rendering it atypical: its firearm population is radically different from national averages,<sup>45</sup> it had already been noted as the location of unusually aggressive local police firearms enforcement,<sup>46</sup> and had recently enacted mandatory sentencing for firearms law offenses.<sup>47</sup> Washington also has unusual features in terms of population,<sup>48</sup> social conditions<sup>49</sup> and political structure.<sup>50</sup> While failing to explain the choice of these as "target cities", the study also fails to explain omission of New York City, our largest urban area and one normally thought of when firearms control is considered.

**"(BATF) glosses over the fact that 'violent firearm crime' is arbitrarily defined so as to exclude firearm murders. . . . No reason for this omission is given: it can be expected that, of all violent crime, readers and policymakers are more interested in murder than in assault. . . ."**

The choice of the two "control cities" is even more mystifying. No reason is apparent why Los Angeles and St. Louis should be considered especially similar to Boston, Washington and Chicago, nor is any reason given. The choice is simply announced and a favorable comparison proclaimed. Yet the control and target cities are obviously in different geographical regions, with varying firearms possession rates<sup>51</sup> that make comparison invalid.<sup>52</sup> Demographic variables such as population density<sup>53</sup> and non-white population<sup>54</sup> also vary dramatically. Police staffing in terms of population, is significantly lower in "control" cities than in the CUE cities.<sup>55</sup> More directly, CUE itself documents major differences in firearms commerce,<sup>56</sup> which indicates that one of the cities picked as a

control city had twice as many legal gunshops as two of the target cities. As might be expected, their violent crime rates have historically diverged from target city rates.<sup>57</sup> No reason is therefore apparent why control city rates should be expected to parallel those of the target cities; absent such, a

**"Overall murder rates, including all weapons, likewise show trends unfavorable to CUE. While we cannot lightly conclude that the CUE authors intentionally 'juggled' statistics to subtly omit those unfavorable to BATF, no other explanation . . . is apparent."**

failure to parallel during CUE can prove little.

The methods employed to obtain the data also show great failings. The target cities are reported to have experienced decreases "in the rate and volume of violent firearm crime".<sup>58</sup> The phrase glosses over the fact that "violent firearm crime" is arbitrarily defined so as to *exclude firearm murders*—only aggravated assault and robbery are included.<sup>59</sup> No reason for this omission is given: it can be expected that, of all violent crime, readers and policymakers are more interested in murder than in assault;<sup>60</sup> moreover, homicide should be more responsive to firearm controls than robbery.<sup>61</sup> The omission is all the more strange since interim reports and press releases had prominently claimed murder-rate reductions in the first months of CUE as proof of its impact.<sup>62</sup> A possible, although highly questionable, reason becomes apparent when results including murder rates are considered. Grouping all three major firearm crimes, it can be seen that target city rates were decreasing prior to CUE, that during CUE the rate of decrease *slowed* in one city and accelerated in another, and that target city decreases were exceeded by the control cities.<sup>63</sup> Overall murder rates, including all weapons, likewise show trends unfavorable to CUE.<sup>64</sup> While we cannot lightly conclude that the CUE authors intentionally "juggled" statistics to subtly omit those unfavorable to BATF, no other explanation for the omission of murder rates from CUE's final report, after prominently discussing them in early press releases, is apparent.

Even if the figures omitting gun homicides are accepted as the proper criterion of gun control effectiveness, the CUE results are still doubtful. The study proceeds to utilize those figures in three comparisons, demonstrating that "violent firearm crime" declined "more significantly" in target cities during CUE than before it, in target cities than in control cities during it, and in target cities than in the 20 largest Standard Metropolitan Statistical Areas (SMSA) over the CUE period.<sup>65</sup> Each of these comparisons glosses over significant underlying facts. It might be noted, for example, that "more significantly" tends to obscure the fact that target city rates were declining prior to CUE, and did decline during CUE in control as well as in target cities, as well as in the 20 SMSAs.<sup>66</sup> Likewise, while the two chosen crimes did decline "more rapidly" during CUE,<sup>67</sup> the rate of decline was accelerating prior to CUE.<sup>68</sup>

Similarly, the comparison with "control cities" yields equivocal results. Rates for the selected crimes were declining more rapidly in target than in control cities even before CUE,<sup>69</sup> and no significant differences in trends can be detected during it.<sup>70</sup> Further, the use of other, more appropriate, control cities might yield radically different results. A comparison of Washington with nearby Richmond, for example, shows similar assault trends in both cities, while Washington's robbery rate decline is much less significant.<sup>71</sup> If Chicago were compared with nearby Decatur, instead of Los Angeles, the results likewise become quite doubtful.<sup>72</sup> Examination of nationwide figures show numerous crime declines during CUE, in non-CUE cities. In Miami, Florida, robbery fell by 20.2% in 1976; in Cleveland it dropped 21.7%; in Indianapolis, 21.2%; in Houston, long cited as an example of loose gun laws, robbery fell 21.9%. Murder rates fell 14% in Las Vegas, 25.6% in Baltimore, and 54.4% in Atlantic City. We could claim, as the BATF does for its CUE cities, that these decreases "co-occurred" with CUE. But obviously they were not caused by it; they illustrate, rather, a widespread trend toward nationwide decreases in those types of crime. Thus, the control-city/target-city comparison hardly gives clear evidence of CUE impact.

The third comparison, that of target cities with the 20 largest SMSAs, has similar defects. Accurate comparison with the CUE cities is all but impossible due to differing

reference periods. Figures for CUE cities are reported on a quarterly basis; figures for the major SMSAs are listed only annually. Since, at the time of the study CUE had been in effect only six months in two targets and barely one year in the third, a comparison with areas for which only full-year averages are available can hardly be made, least of all from the standpoint of establishing trends. A casual examination of the study's charts—the rates are not disclosed—indicates a tendency of target city rates to behave more favorably than SMSA annual averages even before CUE: in the preceeding year, target city rates fell while SMSAs' increased. Thus the last comparison cannot be taken as showing an effect of CUE upon violent crime.

**"Using BATF's own data . . . we find no reason to believe that CUE has had any positive effect of crime. Gun crime (in the CUE cities) was declining before CUE: during CUE, the rate of decline fell by three-quarters in one city and reversed into an increase in the second."**

A close analysis of the statistics astonishingly tends to show CUE's ineffectiveness. Before CUE, Boston's crime rate was falling, and her gun crime rate was falling faster than the non-gun rate. Comparing the first half of 1976 with the first half of 1975, we see total violent crime falling 10.3%, total gun crime down 19.4%.<sup>73</sup> This, it must be recalled, is before CUE's effectiveness. During CUE, in the second half of 1976, gun crime did fall an additional 4%;<sup>74</sup> the decline in gun crime was thus cut by three-quarters during CUE. Further, any gun crime reductions appear to have been temporary. The first quarter of 1977 (only 6-9 months after CUE began) saw gun crime rising by 13.1% over the past quarter,<sup>75</sup> even as non-gun crime fell by 8.7%.

Chicago's trends likewise refute the BATF's claims. Again, gun crime was falling before CUE, dropping 29.1% between the first half of 1975 and the first half of 1976.<sup>77</sup> By comparison, it rose 7.0% the next half, after CUE went into effect, while non-gun crime rose only 5.9%.<sup>78</sup>

Washington's trends are harder to assess, since the law did not go into effect in mid-year but rather in February. Washington's rates are also historically unstable.<sup>79</sup>

While Washington did experience a gun crime reduction during CUE, the CUE report neglects to inform the reader that non-gun crimes also fell over that period—evidence of a general crime decline regardless of weapon used.<sup>80</sup>

Thus, using BATF's own data rather than relying on their interpretations thereof, we find no reason to believe that CUE has had any positive effect on crime. Gun crime was declining before CUE: during CUE, the rate of decline fell by three-quarters in one city and reversed into an increase in a second. The most recent quarter available shows that, less than a year after CUE's implementation, gun crime tended to rise substantially, and more rapidly than non-gun crime in the target cities.

In light of these considerations, it would appear that the measure employed by the BATF to demonstrate the utility of increasing its manpower and activities are of questionable weight, being flawed both in respect to selection of data, "violent firearm crime", and the methods of analysing that data. In comparison with the earlier, private studies, no attempt was made to test statistically the crime rate impact or its significance,<sup>81</sup> to obtain case-by-case data, or to discount other possible influences—such as changed state or local gun laws in two target cities,<sup>82</sup> or South Carolina's legislation<sup>83</sup> and federal regulation<sup>84</sup> aimed at limiting interstate flow of guns over the same time period.

While the question of CUE's effectiveness could best be examined by measuring its impact on crime rates, the study also considers a second possible approach to determining its effectiveness. Shifts in firearm criminal use patterns may indicate that the program is affecting gun abuse, although without consideration of crime rate impact it is not possible to determine whether this in turn is of ultimate benefit to the body politic. Two primary shifts in use are noted, a shift from newer to old firearms, and from handguns to long guns—shotguns and rifles.<sup>85</sup> A shift from older to newer guns might indicate that CUE was restricting importation of the newer firearms; how a handgun to long gun shift would prove CUE's impact is not obvious, for the enforcement efforts were aimed at all firearms and not just handguns. Presumably, the study means to imply that a shortage of all firearms forces criminals to utilize

whatever is at hand, shifting to long arms due to a general shortage. It must be noted, however, that this connection is nowhere documented, nor are other possible explanations discussed or excluded.<sup>86</sup> Indeed, there is reason to suspect that CUE was not responsible for such use shifts. The definition of "new gun" was set as firearms one to three years old, age being measured from first retail sale.<sup>87</sup> For unexplained reasons, firearms less than a year old were thus excluded. Yet, at the time of the study's

**"The prices which BATF undercover agents had to pay to obtain illegal firearms during CUE are approximately the same as those they paid prior to CUE, suggesting no unusual scarcity."**

end, CUE had been in effect only six months in two jurisdictions and barely a year in the third. Thus the definition of "new guns" excludes almost all firearms sold during CUE, and conversely includes many sold during the one and one-half to two years before its implementation. A shift from these firearms, on whose sale CUE is unlikely to have had much effect, can hardly be ascribed to CUE. Other countervailing evidence may be found in the form of the classic measure of scarcity: price. The prices which BATF undercover agents had to pay to obtain illegal firearms during CUE are approximately the same as those they paid prior to CUE,<sup>88</sup> suggesting no unusual scarcity.

Finally, assuming that CUE indeed caused shifts from handguns to longer weapons, and newer firearms to older ones, the study does not address the question to whether this shift is socially desirable. Older firearms tend to be of larger caliber,<sup>89</sup> which can double or treble fatality rates per attack.<sup>90</sup> Rifles and shotguns can likewise inflict more lethal wounds than handguns,<sup>91</sup> and CUE notes increased numbers of shotguns sawed-off for concealability as one of its consequences.<sup>92</sup> Thus, the second measure of CUE effectiveness, that of firearms use shifts, has major definitional flaws and tends to assume the value of results which may not in fact be desirable.

From assessment of the CUE enforcement impact, the study moves to less self-serving fields with a survey of seized firearms. Unfortunately, the study incor-

porates the methodology of earlier BATF studies,<sup>93</sup> which were extensively criticized by the Police Foundation.<sup>94</sup>

The gun survey results resemble those of earlier BATF reports, emphasizing—perhaps stereotyping—the “Saturday Night Special”. While necessary to remain consistent with the earlier studies, this emphasis sometimes conflicts with the figures: the study notes that, in the three target cities, the percentage of “crime related handguns” which fall “within the established definition of a Saturday Night Special”<sup>95</sup> is only 25%, 25%, and 20%.<sup>96</sup> In reinforcement of this *a priori* assumption, the study tends to emphasize whichever of the traditional factors (short barrel, small caliber, low cost) applies, and to discount those which do not. In Washington, a “trend” toward such factors is announced,<sup>97</sup> although no data from which a

trend over time could be determined are given, and the charts show in fact that nearly half the firearms are over .32 caliber.<sup>98</sup> In Chicago, the report heavily emphasizes the predominance of short-barrelled firearms, and barely mentions that a majority were over .32 caliber.<sup>99</sup> In Boston, the problem is more difficult, as two of the three criteria are violated: a majority of seized firearms are large in caliber and high in cost, albeit with short barrels.<sup>100</sup> This embarrassment is minimized by labelling this divergence “a dominant characteristic unique to the Boston area.”<sup>101</sup> Given the biases outlined by *Firearm Abuse*, which incline BATF methodology toward finding incorrectly high proportions of small caliber, short barrelled, low cost firearms, these equivocal results hardly establish the stereotypical “Saturday Night Special” as a uniquely criminal implement.

## Conclusion

An assessment of the CUE report must therefore close on a note of disappointment. After examining the detailed work

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done by private foundations, with private funding and data sources, it is unfortunate to find such serious shortcomings in a study backed by federal agencies and tax funds. The CUE study suffers from an excess of self-interest, with a study on the effectiveness of giving an agency additional money and manpower being conducted by the very agency which desires that money and manpower. The result is serious omissions

**“As a search for objective truth, the BATF CUE report is clearly the greatest failure of recent studies into firearms legislation.”**

and glossing over of unfavorable indications, with emphasis of whatever tends to

indicate the effectiveness of the program—even when no statistically reliable assessment of such information is given. As a search for objective truth, the BATF CUE report is clearly the greatest failure of recent studies into firearms legislation.

It might also be noted that a careful examination of the CUE report may have rather ominous implications for those advocating additional firearms regulation. The study tends to indicate, in accord with earlier studies,<sup>102</sup> that stolen guns already make up approximately one-quarter of the criminal arsenal. Likewise, the use of homemade firearms is shown to increase under strict enforcement;<sup>103</sup> considering the great deadliness of such weapons,<sup>104</sup> the potential for evasion is great. Enforcement efforts aimed at pistols are claimed to induce a shift to longer arms, shotguns and rifles, and indeed the study claims a shift of this type as one of the evidences that it was functioning.<sup>105</sup> Yet medical authorities indicate that such longer arms may have a significantly higher fatality rate than assaults with small caliber, short-barrel pistols.<sup>106</sup> Finally, it is argued that most interstate evasion of gun control laws, with citizens purchasing in other states, occurs at the individual level.<sup>107</sup> People who feel a need for self-defense thus “vote with their

**“... The CUE study does not even detail the costs of the program in terms of its marginal results—or civil liberties. ...”**

feet” and are willing to make extended trips to evade a law which they consider irrational, and are willing to expend large sums of money in order to purchase firearms illegally for such protection. In short, the CUE study also demonstrates that both criminals and honest citizens feeling a need for protection are willing to go to enormous lengths to travel and purchase new guns, to fabricate homemade guns, to shift to the

use of other, more deadly firearms, or to steal firearms in order to evade even so minor a restriction as a stricter enforcement of existing federal law. How much these effects would be amplified under any really strict firearms control may thus be estimated. The cost of enforcing such a program, both in terms of money—the CUE study does not even detail the costs of the program in terms of its marginal results—or civil liberties—in terms of arrests of individual citizens circumventing the law for self-protection, or unreasonable searches of their homes or vehicles in order to “root out” their self-protection firearms<sup>108</sup>—would thus appear to be extreme.



## Footnotes

<sup>1</sup>Gun Law Project, Center for Criminal Justice, Harvard Law School, *And NOBODY Can Get You Out*, The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the use of Firearms and the Administration of Criminal Justice in Boston. (July 14, 1976) (unpublished ms. available from Center for Criminal Justice) [hereinafter "Gun Law Project"]. A modified form of the report, with some updates on reported information, is reprinted as Beha, *And NOBODY Can Get You Out*, 51 *Bost. U. L. Rev.* 96 & 289 (1977). The Gun Law Project essentially concluded that the law studied, which provided one year incarceration without parole for illegal carrying of a firearm, had not been evaded by prosecutors or courts; had apparently reduced carrying of unregistered guns; but that no reliable evidence of actual effort on crime rates could be determined.

<sup>2</sup>S. Brill, *Firearm Abuse: A Research and Policy Report* (1977) (Published by Police Foundation, Washington, D.C.) [Hereinafter *Firearm Abuse*].

<sup>3</sup>For example, the BATF's director had, in correspondence to one congressman, later entered in congressional hearings, stated that the BATF's budget requests totalled \$52.8 million and 2,003 staff positions, but to fully enforce the 1968 Act, they would need a \$287 million budget and 9,506 positions. *Hearings Pursuant to S. Res. 72 before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess., Vol. I at 242-43 (1975).

<sup>4</sup>The CUE study is actually two publications. The first, published and compiled by the BATF itself, is entitled simply CONCENTRATED URBAN ENFORCEMENT (1977). The second, compiled by the DBM Corporation, is entitled: FINAL REPORT: IMPACT ASSESSMENT AND EVALUATION OF OPERATION CUE, VOLUME II: APPENDICES (1977). The first volume will hereinafter be referred to as CUE; the second volume as CUE II.

<sup>5</sup>CUE I.

<sup>6</sup>CUE v.

<sup>7</sup>Washington, through June, 1977, claimed 1,483 investigations initiated, 530 defendants recommended for prosecution; 189 had been convicted at the time of the study. Chicago had 1,795 investigations commenced, 158 recommendations for prosecution, and 34 convictions; Boston reported 1,552 investigations, 227 recommendations and 39 convictions. The latter two cities, due to the brevity of the study period, had large numbers of pending investigations and judicial procedures. CUE, 11-18, 85.

<sup>8</sup>The study fails to list investigations, recommendations for prosecution, and convictions in the target cities for periods before CUE. The only comparison given is with the control cities; but no reason is given as to why control city figures would match target cities' in absence of special effort. See CUE 11-18. Early press releases did note major increases, however, in Washington: a 180% increase in manpower resulted in a 135% increase in investigations and a 76% increase in recommendations for prosecutions; conviction comparisons are not given. Bureau of Alcohol Tobacco and Firearms, Interim Report: Analysis of CUE (February 15, 1977), at IV.

<sup>9</sup>See CUE I.

<sup>10</sup>The study gives breakdowns, to a tenth of a percent, of agent time spent on street investigation, off-street investigation, report writing and travel, for each city, together with proportionate breakdowns of each type of violation and time spent. CUE, 2-4. The data is further broken down into manhours expended by city, by months and by type of case: this breakdown consumes over half the report's second volume. CUE II C-1 to C-60.

<sup>11</sup>See CUE vii.

<sup>12</sup>See CUE II, D-13 to D-17. This actually consists of but three printed pages, as the even-numbered pages are left blank.

<sup>13</sup>BATF press release, March 24, 1977, p.1.

<sup>14</sup>*Id.*, 2. An earlier increase had somewhat expanded for English language by noting that a reduction in firearms crime "co-occured" with CUE. Bureau of Alcohol, Tobacco and Firearms, note 8 *supra*.

<sup>15</sup>CUE vii.

<sup>16</sup>*Id.*

<sup>17</sup>It might be noted that homicide rates *nationally* began to decline in 1975; the decline accelerated by a factor of eight in 1976. FEDERAL BUREAU OF INVESTIGATION, CRIME IN AMERICA: THE UNIFORM CRIME REPORTS 1975 at 15, 1976 at 8 [hereinafter "UCR"].

It should also be observed that firearms use can fluctuate dramatically without outside influence, as a property of statistical variation and chance. For example, percent of firearm use in robberies in Cleveland between 1970 and 1974 jumped radically from year to year: 27%, 37%, 20%, 43%, 41%. Use in aggravated assaults in Dayton between 1965 and 1973 likewise lurched unpredictably: 28%, 35%, 36%, 34%, 48%, 54%, 58%. *Hearings on Firearm Legislation before the Subcomm. on Crime of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., pt. 4 at 1557, 1560 (1975). Thus, without appropriate statistical testing or proof of significance, a short-term change in firearms use cannot be attributed to any particular cause—particularly when rates are declining on a general basis nationwide.

<sup>18</sup>Project Identification, also known as "Project I", and its companion study, Project 300, are reprinted in *Hearings Pursuant to S. Res. 72*, note 3 *supra*, Vol. I at 355, 484. These studies, appropriately illustrated with overlays of firearms, bear the marks of a public relations effort. As scholarly works, they are markedly inferior to the efforts of private agencies, for the reasons outlined in the text.

<sup>19</sup>See *Firearm Abuse* at 24-25.

<sup>20</sup>*Id.*, 23-24.

<sup>21</sup>*Id.*, 24.

<sup>22</sup>*Id.*, 24. Some individuals so arrested are more interested in protecting themselves against criminals, than in committing crime. One judge of an urban court, devoted solely to trying firearm offenses, has testified:

Probably the most striking experience that one takes away from an exposure to gun court is that of the kinds of people that appear there as defendants. Most are there with their first arrest, many are old people. Shopkeepers, persons who have been previous victims of violent crime, and others who carry guns because of a sincere belief in the need for their protection constitute the greater part of the call. *Hearings on Firearms Legislation*, note 17 *supra*, pt. 2 at 581. To include guns seized mainly from these individuals in a sample of "crime guns" is hardly accurate.

<sup>23</sup>*Firearm Abuse* at 57-58.

<sup>24</sup>*Id.* 58. The BATF itself has confessed this weakness. See Project Identification at 8.

<sup>25</sup>*Firearm Abuse* at 58.

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*, 58-59.

<sup>28</sup>See note 88 *infra* (BATF agents paying average of \$95.30, \$99.95, and \$92.90 for illegal guns in Washington, Chicago and Boston).

<sup>29</sup>The CUE study simply noted that "Utilizing the base established by Project I, the Concentrated Urban Enforcement operation expanded the original concept . . ." CUE 37. The base is not discussed in any detail, and the results thus obtained are labelled as descriptive of "all firearms known to be related to crimes . . .", *id.*, "crime related firearms," *id.* at 38, "firearms used in crime" *id.*, 38, 46, 50. But the study also describes the guns as "all firearms obtained by cooperating police departments", *id.* at 37 or simply "guns obtained . . .", *id.* at 40, 41, 43. As the Police Foundation study established, there is great difference between "firearms used in crime" and "firearms confiscated by police". See notes 19-22 *supra*.

<sup>30</sup>CUE II, B-2.

<sup>31</sup>CUE 40.

<sup>32</sup>*Id.*, 42-43.

<sup>33</sup>*Id.*, 47 (21% of Washington "crime related" long arms have barrels sawed to less than legal minimum); 50 (Chicago: 38%); 54 (Boston: 62%). The study repeatedly refers to "a trend" toward use of such weapons during the CUE period. However, the data cited to back such a conclusion is somewhat weak. See *id.*, 106 (Washington: use increases from 19% of sample to 23%); *id.* at 114 (use drops in Chicago from 31% to 22%); *id.* at 119 (use stable in Boston, slight increase from 84% to 85%).

<sup>34</sup>The CUE study, in its final form, does not discuss use of homemade firearms. A preliminary study released by BATF did find, however, that use of homemade firearms in Washington increased from 17% to 22% during CUE. Bureau of Alcohol, Tobacco and Firearms, note 8 *supra*, at VI.

<sup>35</sup>CUE, xi.

<sup>36</sup>" . . . the majority of the firearm movement from States is occurring on an individual basis. . . . An individual will acquire a firearm in another state through the actual purchase by relatives or friends and then transport that firearm back. . . . Self-protection appears to be the primary motive for acquisition and the lack of local purchase restrictions facilitates his actions." *Id.*, 61.

<sup>37</sup>The data on type, origin and age of firearms, for example, was procured by "ATF personnel and local enforcement participants" and traced by the ATF National Tracing Center. *Id.*, 38.

<sup>38</sup>The following chart is illustrative:



JURISDICTION	HOMICIDE RATE:				
	1972	1973	1974	1975	1976
UNITED STATES	8.9	9.3	9.7	9.6	8.8
BOSTON	4.6	5.7	5.6	5.3	3.8
CHICAGO	11.5	15.1	15.9	13.9	13.4
WASHINGTON, D.C.	12.4	13.2	13.4	13.2	10.1
ST. LOUIS	12.7	13.4	13.9	16.1	13.1
LOS ANGELES	12.8	12.4	12.9	14.3	13.8

Source: UCR, table 5, for each year.

<sup>39</sup>G. NEWTON & F. ZIMRING, FIREARMS AND VIOLENCE IN AMERICAN LIFE 10 (1969) (Staff Report to the Nat'l Comm'n on Causes and Prevention of Violence) (gun ownership by households—any gun, 33% in East, 49% National average; handguns, 15% vs. 20%); *id.* at 160 (comparison of firearm crime rate of, *inter alia*, Massachusetts with other states inappropriate even using multi-variate statistical tools); Gun Law Project at xv (Massachusetts has had historically a low gun crime rate).

<sup>40</sup>In 1975, for example, the murder rate dropped 2% nationwide, but 5% in the Northcentral region. 1975 UCR at 15. The preceding year it had climbed 6% nationwide, but fell 3% in the northeast. 1974 UCR at 15. 1975 aggravated assaults, rose 8% in the Northeast and 10% in the West, but only 2% in Northcentral areas. 1975 UCR at 20. Robbery likewise rose 8% in the Northeast, 10% in the West, and only 3% in the Northcentral region. *Id.*, 24. Curiously, firearms utilization in robbery was much higher in the Northcentral area at 52.7% versus 32.7% in the Northeast and 44.4% in the West. *Id.* at 26.

<sup>41</sup>The Bartley-Fox Law went into effect in April, 1975. Gun Law Project 8. CUE went into effect in Boston in July, 1976, a year and a quarter later. CUE vi. Indeed, the final portion of the Gun Law Project noted the potential of the CUE program, then in a planning stage. Gun Law Project 178.

<sup>42</sup>See Gun Law Project, at 115-21.

<sup>43</sup>See note 35, *supra*.

<sup>44</sup>One BATF study, pre-CUE, had noted that: Because of the enactment of the mandatory penalty section of the firearms regulations, the total number of firearms submitted in the Boston area was minimal for a major metropolitan area. Project Identification at 16.

<sup>45</sup>Nationwide, long arms substantially outnumber handguns; studies indicate that the figures for Chicago are reversed, with approximately one-fifth more handguns than long arms. *Hearings on Firearm Legislation*, note 17 *supra*, at 513 (testimony of F. Kane).

<sup>46</sup>See Firearm Abuse at 33-34.

<sup>47</sup>*Hearings on Firearm Legislation*, note 17 *supra*, at 580 (testimony of Judge D. Shields).

<sup>48</sup>Washington's population grew by 38.8% between 1960 and 1970, a rate five times that of Boston (7.9%) and thrice that of Chicago (12.2%) U.S. DEPT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 19-20 (1976). Its nonwhite population is 71.1%, compared to Boston's 16.3%.

and Chicago's 32.7%. *Id.*, 22-24.

<sup>49</sup>The major employer in Washington is the federal government, with manufacturing making up only 6% of the total; 41% of the population is inadequately housed; 50% of major crime is unreported. REPORT OF THE PRESIDENT'S COMM'N ON CRIME IN THE DISTRICT OF COLUMBIA 10, 12, 21 (1966).

<sup>50</sup>The District has, of course, no state government; its jurisdiction is extremely limited in area. The SMSA described by the name of Washington, D.C. actually includes the District, three Maryland counties and four Virginia counties. CUE i.

<sup>51</sup>See note 39, *supra*.

<sup>52</sup>*Id.* Hardy & Stompoly, *Of Arms and the Law*, 51 CHI-KENT LAW REV. 62, 81, 88-89.

<sup>53</sup>Target city Boston is paired off with control city St. Louis: population density, in families per square mile, differs by over a third (13,936 vs. 10,167); likewise, target Chicago and control Los Angeles differ by nearly 250% (6,073 vs. 15,126). U.S. DEPT OF COMMERCE, note 48 *supra*, at 22-24.

<sup>54</sup>Boston's 16.3% differs radically from St. Louis' 40.9%; Chicago's 32.7% likewise varies from Los Angeles' 17.9%. *Id.* Nor, for that matter, does the CUE report produce figures on changes in age population in the control and target cities over the time in question, nor place of birth of newly arrived persons. Several studies have determined that persons raised in areas with high violence rates have a higher homicide propensity even after moving to another region, and that differing homicide rates can in part be explained by this factor. See Gastil, *Homicide and a Regional Culture of Violence*, 36 AM. SOCIOLOGICAL REVIEW 412 (1971); cf. Pettigrew & Spier, *The Ecological Structure of Negro Homicide*, in CRIME IN AMERICA 69 (B. Cohen, ed. 1970).

<sup>55</sup>Second Amendment Foundation memo from Bill Garrison to Jeff Kane, "A Quick Look at BATF's CUE Project," dated Jan. 4, 1978:

During 1976, the ratio of policemen to civilians in Chicago was 1 policeman per 469 civilians (1:469), and 1:609 in Washington, D.C., whereas the control cities were less manned: St. Louis 1:900 and Los Angeles 1:866. If these five cities were chosen on the basis of population similarities, it can be noted that the policeman/population ratio of Chicago (6.9 million population) was 1:469, whereas equally populated Los Angeles was less staffed at 1:688, a difference of 46% in police superiority in CUE's Chicago over "equal-for-comparison" non-CUE Los Angeles. Although non-CUE St. Louis had a few more policemen per 1,000 civilians that did Boston (1:1,042), even without additional CUE agents the police of St. Louis were able to reduce its robbery rate by 10.5%, while CUE-impregnated Boston reduced its robbery rate a little better with its 10.9% decline, during the last half of CUE (Jan.-June 1977).

<sup>56</sup>The study's tables reveal that there are more licensed firearms dealers in control city St. Louis (1443) than in targets Washington (681) and Boston (553) together. Chicago, at 1116, does come close to Los Angeles at 1141. CUE, 128.

<sup>57</sup>See note 38, *supra*.

<sup>58</sup>CUE vi-vii.

<sup>59</sup>The exclusion is rather neatly done. The text simply notes, after referring to decreases in "violent firearm crimes" that the graphs shown are based on "the combined total of robbery by firearm and aggravated assault by firearm, reported on a quarterly basis. . . ." In the designated areas. *Id.* at vii. No explanation for the omission of homicide is given: indeed, the possibility of including homicide is not mentioned, nor is attention otherwise drawn to the choice. The study much later, in reference to a study of types of firearms utilized, adds a cryptic postscript: "In regard to specific criminal acts, robbery and aggravated assault are two consistent categories that denote crimes of violence." *Id.*, at 48. Once again, no explanation for their choice—or the meaning of "consistent categories"—is given.

<sup>60</sup>It might be noted that most prior studies of firearms regulations have focussed primarily on homicide rates. See, e.g., Hardy & Stompoly, note *supra*, at 90-93.

<sup>61</sup>Advocates of firearms regulation have often noted, in response to the argument that a criminal can always obtain a firearm, that homicides are often crimes of passion without advance planning. See *Hearings on Firearms Legislation*, note 17 *supra*, at 578 (testimony of J. Aspen). But cf. Hardy & Stompoly, note *supra*, at 101 n. 227 (crime of passion argument contradicts position that state controls are evaded by purchases in other states: If murderer has time to or inclination to obtain in advance, a gun from another state, he also has time to find an illegal source, construct one, or otherwise evade law).

<sup>62</sup>Indeed, murder by firearm was the first category listed under "Violent Crime by Firearm". Bureau of Alcohol, Tobacco and Firearms, note 8 *supra*, at V.

<sup>63</sup>One of the tables published in the statistical appendices, and not mentioned in the main CUE study, gives figures for all three crimes in terms of total number, number with firearms and percent with firearm (number with firearm is not available for Boston), comparing the changes during CUE (preceding year vs. following year) and before CUE (second year preceding vs. preceding year). The results are interesting.

CITY	FACTOR	PRE-CUE CHANGE		CUE CHANGE	
Washington	Total crimes	+ 7.5%		-20.3%	
	with gun:	+ 4.5%		-25.8%	
	percent w/gun:	- 1.6%		- 7.1%	
Chicago	total	-20.2		-18.3	
	with gun	-31.3		-22.7	
	percent	-13.3		-8.0	
Boston	total	-12.4		-28.2	
	percent	- 9.4		- 9.3	
St. Louis	total	+10.5		-10.7	
	with gun	+16.7		-15.5	
	percent	+ 7.2		- 5.9	
Los Angeles	total	+ 1.2		+ 4.0	
	with firearms	+ 7.4		+ 7.5	
	percent	+ 9.8		0.0	

Source: CUE II, at D-15.

The chart here reproduced is perhaps a useful lesson in the dangers of statistical interpretation. The dramatic turnaround in St. Louis, with trends percentage of violent crimes involving firearms going from an increase of 7.2% the year before to a decrease of 5.9% during, and firearm crime changing from a 16.7% increase to a 15.5% decrease, could surely be interpreted as strong evidence of a turnaround due to strict gun control laws. The minor problem is that St. Louis is *not* where the strict enforcement was deployed that year. Likewise, a shift in the comparison periods of only a few months will measurably alter the results. If St. Louis' years before and years during are calculated from July (time of Chicago & Boston CUE) instead of February (time of Washington CUE), the turnaround is much less—percent goes from -1.6 to -0.0, instead of +7.2 to -5.9; crime with firearms goes from 0.0 to -12.0 rather than +16.7 to -15.5. *Id.*

<sup>64</sup>Between 1975 and 1976, homicide rates in control city St. Louis dropped by 18.75%, compared to a 16% drop in Washington and less than 4% in Chicago. Only Boston, of all the target cities, exceeded the St. Louis homicide rate decline. Likewise, Chicago's rate decline in 1975-76 was considerably less than its 12.5% decline the year before CUE. See note 38, *supra*.

<sup>65</sup>CUE at vii.

<sup>66</sup>The CUE study does not give the rate figures from which its charts are computed: these observations may be confirmed by examining the charts contained in the study. *Id.* The number of crimes with and without firearms are, however, listed by city for each month, in the study's appendices. See CUE II at D-1 to D-12. Some interesting observations may be made, bearing in mind the CUE initiation dates of February, 1976 for Washington and July, 1976 for Boston and Chicago:

1. The most significant reductions in Boston firearms crime occurred in 1975. Firearms homicides fell to 56 that year, compared to 70 the year before. Firearm robberies hit peaks in early 1975. (January: 270 versus 200 in 1974) but fell sharply by the end of the year (November and December, 205 and 210, versus 258 and 228 in 1974); by the initiation of CUE, firearms had already fallen to around 100 a month.

2. Chicago crime likewise sharply declined before CUE's effect—1976 showed, for the three months preceding CUE, 538, 565 and 512 firearm robberies, compared to 749, 762 and 783 the year before.

3. The drops are extremely pronounced in control city St. Louis: firearm homicides fell from 182 in 1975 to 126 in 1976, firearm robberies fell from 3079 to 2581. What is even more interesting is that these firearm crimes fell much more rapidly than non-firearm crimes. Homicides other than by gun fell only slightly, from 60 to 56, although non-gun robbery fell from 3209 to 2722. Gun assaults dropped from 1022 to 900, while non-gun assaults increased from 2551 to 2700. These indications of sharp declines in gun crimes in the face of lesser declines—or increases—in non-gun crime, could be taken as strong indications of gun restriction effectiveness, except that St. Louis is a control city, and stricter en-

forcement was not present. The need for caution in interpretation of crime level changes is thus illustrated.

<sup>67</sup>CUE, vii.

<sup>68</sup>See note 66, *supra*. This is especially apparent in the graph for Washington: trends from the preceding year show a sharp rise midway in the year, followed by a declining "plateau", ending in a rapid drop early in the following year. 1975 repeated this pattern; CUE went into effect at the very end of the plateau period, when a rapid drop would be expected in any event. But it might be noted that the plateau itself, just before CUE, was showing a considerably more steep decline than the same period the year before, indicative of a declining trend.

<sup>69</sup>Once again, we must rely upon the charts furnished by CUE. In the Chicago-Los Angeles comparison, it is obvious that, from mid-1974 to CUE's initiation in mid-1976, Los Angeles rates were on a mild increase, while Chicago rates fell steadily. Both Boston and St. Louis rates fluctuate more widely, but St. Louis' rates tend to be considerably higher.

<sup>70</sup>The chart indicates approximately parallel declines for the designated crimes. See also note 66, *supra*.

<sup>71</sup>The following chart will illustrate the similarity:

	1975	1976
ROBBERY		
Washington	473.6	367.8
Richmond	284.3	182.3
AGGRAVATED ASSAULT		
Washington	222.2	204.8
Richmond	219.8	203.8

SOURCE: 1975 and 1976 UCR.

<sup>72</sup>Once again, a chart is appropriate:

	1975	1976
ROBBERY		
Chicago	374.7	299.4
Decatur	78.3	80.3
AGGRAVATED ASSAULT		
Chicago	273.8	244.2
Decatur	206.9	152.0

SOURCE: 1975 and 1976 UCR.

<sup>73</sup>Gun Crime: down 1,293 to 1,042  
Non-Gun Crime: down 5,098 to 4,574

Source: CUE II, Appendix D. CUE classifies major violent-crime occurrences by "Gun" and "Total". "Non-Gun" as used here is based on subtraction, utilizing the CUE figures.

<sup>74</sup>Down 1,042 to 1,000. *Id.*

<sup>75</sup>Down 5,835 to 3,922. *Id.*

<sup>76</sup>Gun: up 488 to 552.

Non-Gun: down 1,579 to 1,442. *Id.*

<sup>77</sup>Down 7,301 to 5,173. *Id.* Nongun crime fell only 16.2% over the same period (10,870 to 9,110), thus showing that gun crime was falling more rapidly than nongun crime even before CUE.

<sup>78</sup>Gun Crime: up 5,173 to 5,534  
Non-Gun Crime: up 9,110 to 9,644. *Id.*

<sup>79</sup>For example, in the years 1963-66, Washington homicides went down 3.5%, up 26.8%, up 49%, then

down 5.8%. Between 1951 and 1956, they fell as much as 39.7% in a year and rose as much as 25%. *Report of the President's Commission on Crime in the District of Columbia* 33 (1966). With random fluctuations of this magnitude, even dramatic yearly changes cannot be safely attributed to any one cause. Both periods show a tendency for homicides to surge upward, followed by a year of reduced increase, followed by a sudden drop—precisely the pattern in 1974-76. Without statistical analysis—which the CUE report suspiciously omits for crime rates, although including it for gun types—we cannot determine whether the 1974-76 pattern is due to CUE, to random fluctuations or some general pattern. Since both gun and nongun rates behave alike (gun crime as percent of all crimes was 47% in 1975, 45% in 1976, and 46% in first quarter 1977), the latter explanations are actually the most likely.

<sup>80</sup>Nongun violent crime fell from 5,888 occurrences in Feb.-Dec. 1975 to 4,963 in Feb.-Dec. 1976, a 15.7% drop.

<sup>81</sup>The failure to subject the crime impact results to appropriate statistical analysis is rendered more surprising by the use of such analysis on the gun-impact results. See CUE II at D-28, D-24.

Although BATF boasts of its CUE accomplishments in reducing robbery in Boston by 10.9% during the last half of CUE (Jan.-June 1977), it is interesting to note that during this same period, four of the six Massachusetts cities having over 100,000 residents reported even greater declines in their robbery rates without any CUE assistance, than did Boston with CUE assistance. This suggests that other state-wide factors, i.e. Bartley-Fox Law, in conjunction with CUE, led to a decrease of robbery within Boston besides CUE alone.

Massachusetts Cities (over 100,000 population)			
Robbery	Jan.-June		Change
	1976	1977	
Boston	2852	2628	-10.9%
Cambridge	239	127	-46.9
Fall River	57	93	+63.3
New Bedford	56	47	-16.1
Springfield	173	117	-32.3
Worcester	265	186	-37.4

Source: FBI U.C.R. Oct. 12, 1977.

<sup>82</sup>See notes 44, 47 *supra*.

<sup>83</sup>South Carolina enacted a law, effective July, 1973, which prohibited sale of certain cheap handguns; by statute effective in June, 1975, sale of more than one handgun to the same individual in any given month was prohibited. FIREARM ABUSE 91. South Carolina had previously been singled out as a major source of firearms shipped to northeastern states in violation of local law: one study indicated it as the point of origin for 17% of guns confiscated in New York. FIREARM ABUSE 92. Hence its proscription as an outlet could be expected to have an impact on northeastern firearm availability, independent of CUE efforts.

<sup>84</sup>Effective July 1, 1975, BATF regulations required dealers to report sales of more than one handgun to the same individual within a five working-day period. 27 C.F.R. 178.126(a).

<sup>85</sup>CUE 42-45.

<sup>86</sup>The shift to longer arms could also be due to their greater effectiveness: see notes 91, 109 and accompanying text, *infra*. It has also been reported that media reports can influence weapons choices. For example, Boston police at one point petitioned for issuance of shotguns. A sizeable media battle ensued over their greater deadliness. The petition was denied:

But the real upshot of the controversy was that the criminals—who watched television and read the papers, too—saw how scared the police were of sawed-offs and realized what a deadly edge they had. The number of sawed-off shotguns used in armed robberies shot up fifty percent to between sixty-five and seventy-five percent.

D. GRENNELL, LAW ENFORCEMENT HANDGUN DIGEST (Rev. Ed.) 1976.

<sup>87</sup>CUE 47, 51, 55, 95.

<sup>88</sup>The average price paid for firearms by undercover agents making street purchases was \$95.30 in Washington, \$99.95 in Chicago, and \$92.90 in Boston. CUE 91. Pre-CUE figures are available for Boston only: in 1974, BATF agents were paying an average of \$87.21 per handgun. Firearm Abuse 91. A five-dollar inflation over two years is scarcely indicative of great shortage in supply; it may, on the other hand, indicate that the mandatory penalties effective for carrying had restrained the demand.

<sup>89</sup>Firearm Abuse 57-58.

<sup>90</sup>See Zimring, *The Medium is the Message*, 1 J. LEGAL STUDIES 97, 103 (1972) (fatality rates for single wounds: .22, 36%; .38, 83%. Multiple wounds, 36% and 100% respectively); *Hearings on Firearms Legislation*, note 110 *infra*, pt. 4 at 1621 (exhibit) (.38 fatal in 35%, .32 in 18%, and .22 in 9% of Cleveland hospital admissions surveyed). In one case, the ineffectiveness of such a gun was increased by misuse of .32 short instead of .32 long ammunition. The user attempted suicide: four shots fired into the side of the head, at point blank range, failed to penetrate or even fracture his skull. Mason, Rose and Alexander, *Four Nonlethal Head Wounds Resulting from Improper Revolver Ammunition*, 12 J. FOR. SCI. 205 (1967).

<sup>91</sup>See Hardy & Stompoly, note 52 *supra*, at 112; Taylor, *Gunshot Wounds of the Abdomen*, 177 ANN. OF SURGERY 174, 175-76 (1973); DeMuth, *The Mechanism of Shotgun Wounds*, 11 J. OF TRAUMA 219 (1971).

<sup>92</sup>CUE 47, 53. But of note 33, *supra*.

<sup>93</sup>See note 29, *supra*.

<sup>94</sup>See notes 19-28, *supra*.

<sup>95</sup>The study unfortunately fails to state what the established definition is.

<sup>96</sup>CUE 47, 50, 54.

<sup>97</sup>*Id.* 46.

<sup>98</sup>*Id.* 96. (caliber in excess of .32: 48% of murder, 46% of robbery, 43% of assault, and 73% of rape-used firearms.

<sup>99</sup>The CUE report notes:

The analysis further identified a 'criminal preference' for short-barrelled revolvers of .32 caliber or less and inexpensive cost. Although handguns of more than .32 caliber were frequently used, there was clearly a dominant preference for short-barrelled revolvers of inexpensive cost.

CUE 52.

<sup>100</sup>CUE 55-56.

<sup>101</sup>CUE 55.

<sup>102</sup>CUE at 46. Similar results were reported by the Police Foundation, which roughly estimated nationwide thefts of 100,000 handguns yearly. Firearm Abuse at 103, 104. Likewise, Project Identification found approximately 22% of guns seized were stolen. *Id.* at 1.

<sup>103</sup>See note 34, *supra*.

<sup>104</sup>See Hardy & Stompoly, note 52, *supra*, at 99 n. 215-16.

The construction of these weapons is often quite ingenious. Some persons simply use sections of automobile radio antennae as barrels on frames made from cap guns, filling the hammer so that it will operate as a firing pin: the result is a functioning, if crude, .22 caliber pistol. Others ream chambers in the larger airguns to accommodate rimfire cartridges, or modify blank-firing pistols. Those who seek weapons with greater power often use firecrackers to drive loads of buckshot, fishing sinkers, or metal scrap from barrels made of steel pipe. See Koffler, *Zip Guns and Crude Conversions—Identifying Characteristics and Problems* (pts. 1-2), 60 J. CRIM. L.C. & P.S. 520 (1969), 61 J. CRIM. L.C. & P.S. 115 (1970); Smith, *Zip Guns POLICE*, Jan.-Feb. (1963), at 10; DiMalo & Spitz, *Variations in Wounding Due to Unusual Firearms and Recently Available Ammunition*, 17 J. FOR. SCI. 377 (1972); 1968 *Hearings* 471 (statement of J. Dingell); 1967 *Hearings* 593 (statement of B. Stanczyk).

Zip gun projectiles are fired from short, unrifled barrels and are often expanded by the muzzle blast; their instability causes them to tumble upon impact, inflicting serious tissue destruction. Koffler, *Zip Guns and Crude Conversions—Identifying Characteristics and Problems*, 61 J. CRIM. L.C. & P.S. 115, 124 (1970). The larger firecracker models have been found capable of penetrating two-inch planks and 45-gallon steel drums. *Id.* Canadian authorities have found such weapons to be able to fire ball bearings through a 3/16 inch steel plate at fifty yards range. Koffler, *Zip Guns and Crude Conversions—Identifying Characteristics and Problems*, 60 J. CRIM. L.C. & P.S. 520, 529 (1969).

<sup>105</sup>See CUE 42-45; note 78 *supra*.

<sup>106</sup>See Hardy & Stompoly, note 52 *supra*, at 112. (Noting that inexperienced handgun users typically miss four-by-six foot targets at fifteen yards, that even the massive .45 pistol inflicts less severe wounds than rifles and shotguns, and that most pistol homicides involve small-caliber firearms with fatality rates one-half to one-third those of the .45). See also *Hearings on Firearm Legislation*, Note 17

*supra*, pt. 4 at 1525 (attach with .38 three times as likely to be fatal as .22); notes 90, 91 *supra*.

<sup>107</sup>See note 36, *supra*.

<sup>108</sup>Already, enforcement efforts are such as to give second thoughts to civil libertarians. One commentator, himself favorable to gun control, has commented that the BATF has "shown less awareness of the Constitution than any other group of law enforcement officials at any level of government, with the possible exception of Mississippi sheriffs." R. SHERRILL, *THE SATURDAY NIGHT SPECIAL* 280 (1973). One Ohio prosecutor has admitted that 50-75% of weapons arrests stem from questionable if not clearly illegal searches. *Hearings on Firearms Legislation*, note 17 *supra*, pt. 4 at 1589, and a federal appellate judge has stated that no existing gun law, and no foreseeable future law, will be enforceable so long as evidence obtained by illegal police searches is inadmissible at trial. *Wall Street Journal*, October 14, 1977, at p. 17. The ACLU has suggested that St. Louis police have conducted over 25,000 illegal weapons searches, aimed mainly at blacks, in recent years, and in Michigan, almost 70% of gun prosecutions are thrown out due to an illegal underlying search. Kates, *Inquiry*, Dec. 5, 1977, at 33.

The inability of CUE to validly demonstrate statistically significant effects on violence in Boston, despite: 1. one of the two strictest statewide laws in the nation, see NEWTON & ZIMRING, *FIREARMS AND VIOLENCE IN AMERICAN LIFE* 181 (1970); 2. the one-year mandatory minimum sentence, which was stiffly enforced, see note 1 *supra*; 3. a special federal effort aimed at interdicting interstate supplies and increasing federal prosecutions, suggests that the urge for self-defense is strong. What infringements on liberty, in terms of prosecutions, illegal searches, and draconian sentences would be necessary to achieve a significantly better result for the entire nation, rather than one city, is worth deep consideration by any civil libertarian.

<sup>109</sup>This would seem to contradict the traditional notion that concealability is a prime asset of a handgun: since concealability is of minimal importance to an indoor attack and of maximum importance to an

attack requiring transportation of the weapon out of a residence.

Another explanation is possible. These figures do not assess that attempts at homicide in and out of residence, but only the numbers of successful homicides. To the extent that handgun marksmanship is marginal, see note 110 and accompanying text, shots outside of a residence are apt to involve longer ranges and thus more misses. Thus the handgun could be used more often out of doors but result in fewer killings.

Neither of these considerations, which find support both in this study and in *A Synopsis of a California Poll of Handgun Ownership and Use* [Hereinafter *California Poll*] cited below, lends much support to those who are optimistic regarding handgun bans. To the extent that concealability is of marginal importance to accomplishing a homicide, and long arms are more likely to hit and thus to kill, such a ban could likely reduce attacks minimally and increase the proportion resulting in hits substantially.

The California Poll report was released by the California Dep't. of Criminal Justice, Bureau of Criminal Statistics, on March 25, 1977; the poll was actually conducted by The Field Institute in early Nov. 1975, for the Calif. Bureau of Criminal Statistics.

<sup>110</sup>*d.* Reports of poor marksmanship have been discussed elsewhere as a possible explanation for predominance of single hits in homicides, in lieu of using lack of lethal intent as an explanation. See Hardy & Stompoly, note 52 *supra* at 104, 112, n. 281. The California Poll is the first to secure a general quantification of the ability of a layman, under stress conditions, to hit or miss an intended human target. Other studies have reported that, of actual hits, a majority are in the arms or legs; only 15% struck chest or shoulders. *Hearings of Firearms Legislation before the Subcomm. on Crime of the House Comm. on the Judiciary*, 94th Cong., 1st Sess. (1975) (eight parts), pt. 4 at 1648 (exhibit). The proclivity of attackers to miss the target entirely three times out of four, and to miss the vital areas in over half the remaining cases, contradicts claims that handguns are atypically deadly.

# APPENDIX I: THE STATISTICAL EFFECTS ON ROBBERY OF "OPERATION CUE" IN THREE PILOT CITIES COMPARED TO TWENTY-FIVE CITIES WITH THE HIGHEST INCIDENCE OF ROBBERY.

Robbery Ranking		City	(A) 1974- 1975 Change	(B) 1975- 1976 Change	(C) 1976 Robberies per 100,000 population	(D) 1977 Change
						6 mo. Pre-CUE Jan.-June 1976) v. Last 6 mo. CUE (Jan.-June 1977)
1	1	New York, NY	+ 9.6%	+ 2.9%	915.0	-13.5%
2	2	Detroit, MI	+ 4.8	- 1.7	593.8	-22.9
3	5	Las Vegas, NV	+19.4	- 8.6	426.7	- 3.1
4	9	San Francisco, CA	+17.6	+ 6.1	420.5	-19.8
5	3	Baltimore, MD	- 9.4	-15.3	416.9	- 2.2
6	8	Los Angeles, CA (C)	+11.9	- 4.8	400.9	+21.2
7	4	Washington, DC (P)	+15.8	-22.3	367.8	- 5.9
8	12	Jersey City, NJ	+15.9	- 4.1	357.5	-16.0
9	13	Dayton, OH	+28.2	-12.9	324.0	+ 6.6
10	10	St. Louis, MO (C)	+14.2	-16.5	321.5	-10.5
11	16	Newark, NJ	+ 2.4	-12.4	306.1	-26.1
12	23	Trenton, NJ	-16.8	+ 0.8	305.7	- 6.9
13	11	Chicago, IL (P)	-13.1	-20.1	299.4	- 9.1
14	26	Atlantic City, NJ	+30.5	- 4.1	262.5	?
15	20	Paterson, NJ	- 6.2	-16.7	262.3	+ 1.3
16	25	Gary, IN	+14.9	- 9.3	259.7	+10.5
17	28	Toledo, OH	- 6.4	+11.9	255.4	+16.7
18	21	Kansas City, KS/MO	+ 2.7	-18.1	256.5	- 1.1
19	24	Nashville, TN	+26.7	-12.3	253.5	-12.5
20	27	Louisville, KY	- 0.3	+ 3.2	249.3	-33.6
21	22	Boston, MA (P)	+ 9.0	-20.0	246.3	-10.9
22		U.S. Average	+ 4.3	-10.3	195.8	?

Source: 1975 & 1976 FBI UNIFORM CRIME REPORTS including 1977 quarterly reports.

— Cities with reported reductions equivalent or greater than the average 20% reduction in pilot cities.

(P) — Pilot Cities

(C) — Control Cities

## EXPLANATION OF APPENDIX I.

The Chart lists 28 cities with the highest robbery rates during 1976. These cities have been selected because their robbery rates were all greater than 28th ranked Boston, which had the lowest robbery rate among the cities selected for "Operation CUE".

The 1975 ranking of cities is provided to show how the cities changed rank between 1975 and 1976.

Of the top 22 cities with the highest robbery rates during 1975, BATF selected Washington, Chicago and Boston as pilot cities for "Operation CUE". They are the 4th, 11th and 22nd most-robbery-prone cities, respectively. No reasons were given why Boston and Chicago were selected. Washington, D.C. was selected at the insistence of Congress. (Cities selected as pilot cities for "Operation CUE" are set in bold face type and labelled "P.").

St. Louis and Los Angeles were selected as control cities. BATF offered no explanation how the two control cities were chosen other than its comment that there were similarities between all five cities. (Cities selected as control cities are set in bold face type and labelled "C.")

Column A indicates robbery trends from 1974 to 1975.

Column B indicates robbery trends from 1975 to 1976.

Column C indicates how many robberies occurred per 100,000 population during 1976.

Column D indicates the change in robbery rates during the last half of "Operation CUE" (January to June 1977) in relationship to robbery rates during the six

months prior to "Operation CUE" (January to June 1976). *N.b.*: Data for the first half of "Operation CUE" (July to December 1977) has not been released by the F.B.I. However, this should only tend to favor BATF's contentions because the greatest impact of "Operation CUE" should have been felt during its last six months.

BATF claims that "during ["Operation CUE"] statistics show that the percentage of firearms-related violent crimes—particularly aggravated assault and armed robbery—decreased by 20 percent. While it is true that nationally violent crime reflected a statistical decrease during this period, the decline in Washington, Boston and Chicago far outstripped the national trend." From a media statement issued by Rex. D. Davis, Director, BATF, August 25, 1977.

While that statement is true on its face, the implication that "Operation CUE" can be credited with any of these decreases is unsupportable.

The Chart indicates that of the 28 most-robbery-prone cities, seven cities (other than the pilot cities) reported robbery reductions of at least 20 per cent. Hence, one out of four cities on the Chart had equivalent or greater decreases than the pilot cities. The cities are indicated by shaded areas on chart.

The average reduction in robbery from 1975 to 1976 throughout the United States was 10.3 per cent. Furthermore, of the 23 cities that reported decreasing robbery rates, 20 cities had reductions without any additional federal enforcement personnel.

*Chart and explanation developed by Bill Garrison, Research Director, Second Amendment Foundation.*

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

JAN 14 1981

Honorable Orrin G. Hatch, Chairman  
Senate Committee on Judiciary  
Subcommittee on the Constitution  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

On September 15, 1980 your subcommittee conducted a hearing on enforcement of the Gun Control Act by the Bureau of Alcohol, Tobacco and Firearms. Witnesses appearing before you at that time included representatives of the National Rifle Association, several persons who had been investigated by this agency for alleged violations of the Gun Control Act, and the Treasury Department's Assistant Secretary for Enforcement and Operations.

Although I was unavailable to testify before you at that time, I have had an opportunity to review the transcript of your hearing, including the written statements submitted by the various witnesses. I appreciate this opportunity to respond in writing to various of the allegations and statements which were made to you. I feel this is particularly important because, while the Assistant Secretary certainly represented the policies of the Treasury Department, he obviously was unable to respond in detail to every allegation or statement of alleged fact presented by the various witnesses.

I know that you are no stranger to the emotionalism which surrounds the general issue of gun control in this country. As director of the agency charged with enforcement of the Gun Control Act, I can assure you that many of our actions, policies and regulations are challenged by both the pro-gun and anti-gun communities. In general, and as is made evident by the testimony which you received, the pro-gun community frequently condemns our actions as excessive while persons seeking greater gun control fault us for inadequate regulation or enforcement.

By way of introduction to my comments on the testimony, let me state that I have previously researched many of the allegations which you received as a result of their presentation at earlier congressional hearings. In general, I have found that such allegations fall into three major categories. Some are simply untrue. Others have a resemblance to the truth but are so distorted by

the passage of time and the witnesses' bias that they present an unfair or essentially untrue message. Finally, some of the allegations are, indeed, correct. I have attempted to address myself to those allegations which had merit and I have instituted a number of corrective actions within the the past 2 years in an attempt to optimize the performance of this agency. Following a series of hearings last year before Senator DeConcini I took action in a number of problem areas, including an attempt to define the phase "engaged in the business of dealing in firearms," straw purchases, reorganization of this Bureau's criminal and internal affairs structures, seizure and handling of confiscated weapons, and personnel review of proposed investigations of licensed gun dealers.

ATF attempts to enforce the statutes under our jurisdiction in the most constructive and effective manner. It is clear that the Gun Control Act has had and will continue to have a positive impact in the fight against the criminal misuse of firearms and explosives. This agency has a mandate from the Congress and an obligation to the American people to do everything in its power to protect our citizens from the tragic and violent result of the misuse of such devices. I believe strongly in the right and obligation of the Congress to conduct continuing oversight regarding our policies and operations. I believe that great good has come from our previous experiences with the Congress, and I sincerely hope that such a constructive and objective relationship can continue to assist us in our mission.

It is essential to the Congress, however, to receive accurate, honest and objective input through the hearing process. The discussion which follows is an effort to provide balance and to clarify the record with regard to the information which you received. I have divided my comments into three general areas. First, a number of cases conducted by this agency were presented to you and were described from the viewpoint of the testifying witness. The great majority of the cases were quite old, but I have caused the records to be examined in order that all aspects of the investigation and subsequent prosecution might properly be presented. Second, several of the witnesses discussed our internal affairs or inspection function. Such a function is vital to any law enforcement agency and I am proud of our record in this regard. I believe that your record is incomplete in many aspects in this



area, and I will present information to make it more complete. Third, the operational and administrative policies of the agency were severely questioned by your witnesses. Again, I find that many of our procedures were badly misrepresented and I will attempt to explain them more clearly for you.

#### CASES

The first case questioned by Mr. David Hardy was the arrest of Mr. Kenyon Ballew in 1971. This case has been routinely cited by critics of ATF because Mr. Ballew was shot and severely wounded during his arrest. I discussed this case in considerable detail in my letter to the subcommittee in June, 1980. As noted in that letter, the matter was exhaustively investigated by the inspection service of the Internal Revenue Service who found no basis for any disciplinary action against the agents. Although Mr. Hardy contends that the affidavit supporting the search warrant was based on conflicting or misleading information, the warrant and affidavit were closely scrutinized by the United States District Court and the Circuit Court of Appeals as a result of a civil action against ATF under the Federal Tort Claims Act. The affidavit and warrant were sustained by both courts. This ten year old case, (which occurred before the creation of ATF as a Bureau in 1972), has received substantial official judicial review and we will not comment further on the findings of the District Court and Court of Appeals.

The next case involves Mr. Herbert G. Gardner, who was arrested on July 10, 1979 in Florida following a shooting incident with the arresting officers. During the undercover phase of this investigation agents purchased a hand grenade from Mr. Gardner and negotiated for purchase of a sawed-off shotgun, a 22-caliber rifle with attached silencer, a 12-gauge boobytrap device, and four additional grenades. Gardner also claimed to have access to at least one machine gun and an M-79 grenade launcher with ten live rounds. Mr. Gardner was arrested while attempting to sell an additional five hand grenades, the silenced rifle, and other illegal weapons. Although indicted on 22 counts of assault and Gun Control Act violations by a Federal grand jury, Mr. Gardner was acquitted in Federal court. On January 11, 1980, Gardner was indicted on State assault charges as well as possession of hand grenades, a sawed-off shotgun and carrying a concealed weapon during the commission of a felony.

He has been convicted of those charges and was sentenced to nine years imprisonment. Gardner was also charged by Colorado authorities with a double homicide which occurred in Clear Creek County, Colorado on August 21, 1971. That charge is based upon Gardner's possession and ownership of the Ruger .41 magnum revolver which was established by ATF through ballistics to be the murder weapon.

In Mr. Hardy's oral statement, he referred to a 1978 case involving Mr. and Mrs. Paul Hayes, in which the defendants were indicted by a Federal Grand Jury on May 1, 1978 and acquitted following a jury trial in January 1979. The two questions involved here appear to be first, why the Hayes were investigated, and second, why firearms which were seized from them have not been returned. With regard to the first question, a local law enforcement agency approached ATF with a request for assistance in investigating the Hayes. There was evidence that firearms were being illegally sold to Mexican Nationals and other nonresidents. During our investigation five firearms were purchased from the Hayes by persons presenting out of state identification. All undercover contacts were electronically monitored pursuant to Department of Justice authorization. After the results of the investigation were presented to the United States Attorney, he obtained an indictment and the defendants were tried. The fact that defendants may be found innocent of criminal charges at a trial does not necessarily mean that there was insufficient probable cause to warrant involving them in the judicial process.

The firearms which were seized from the Hayes were not returned to them upon their acquittal because the United States Attorney, who had jurisdiction over the weapons, elected to proceed with judicial forfeiture against the weapons. This matter is still in litigation and is completely out of the hands of ATF to resolve.

Mr. Hardy also referred to an unsigned letter which he received alleging that ATF used an informant to entrap 33 gun collectors in the State of Maryland. This appears to relate to "operation TRIAD" which was conducted in late 1977 and early 1978 in the tri-state area of Maryland, Virginia and Delaware. This case resulted from the cooperation of an individual who was convicted of manufacture and sale of sawed-off shotguns. As a result of his cooperation, 21 case



reports were submitted recommending prosecution of persons who were in violation of the Federal firearms and explosive laws. A total of 16 persons were indicted and one more was charged by information. Sixteen persons were convicted and one was acquitted after three trials. During the undercover phase of the investigation, 107 handguns, 55 long guns, and 45 Title II weapons were purchased as evidence. Fifteen explosives purchases were also made during this investigation. Following the arrests and searches, 385 handguns, 316 long guns, and over 112,000 rounds of ammunition were seized. The purchases and seizures were made from 34 different suspects in the three State area.

With regard to Mr. Hardy's allegation that ATF engaged in electronic monitoring to perfect these cases, the allegation is true. This was done pursuant to Department of Justice and Bureau authorization and was done for the purpose of documenting illegal activities. The fact that 16 out of 17 of the suspects were convicted clearly establishes that the wiretaps were consistent with existing Federal law and restrictions.

Mr. Hardy also refers to the purchase of private firearms collections from licensed dealers under a section which he refers to as the "Scherer-Boulin entrapment." Although both of these cases continue in litigation, and therefore cannot be discussed extensively, I must note that the Scherer case was reviewed at the District and Circuit Court levels with his conviction being sustained. The United States Supreme Court denied certiorari to Mr. Scherer. Mr. Bolan was also convicted.

#### INTERNAL AFFAIRS

Witnesses also stated to the committee that ATF often fails to take action against agents who act improperly or violate the law. The integrity of this agency is a high priority and we have taken numerous steps to insure that it is properly maintained. One of my first actions upon becoming director of ATF was to reorganize the internal affairs function, primarily by decentralizing the office and establishing an internal affairs presence in the various regions. Mr. Hardy attacks our recent reorganization, asserting that the result would be inspections conducted by inspectors

from the region involved "who have every incentive to make their region look good to the national headquarters."

The reorganization of the internal affairs function was undertaken, in part, to counteract the allegations of failure to effectively pursue improper conduct. By placing inspectors in the regional offices, internal affairs investigators were more readily available to respond to allegations. These investigators are not responsible to regional officials but report directly to the Assistant Director for Internal Affairs in Washington. Contrary to any assertion that an inspector would be inclined to cover up any allegations in order to make his region look good, the opposite is true. Any attempt to make a particular region appear to be more efficient would require it to initiate and carry out more investigations rather than less. With regard to the three examples cited by Mr. Hardy, I feel that they substantiate the effectiveness of our internal affairs operation.

One of the cases he mentioned involves an ATF special agent assigned to the New York district office. On October 12, 1979, New York City police detectives reported to ATF that they were investigating a series of female molestation cases. On October 7, 1979, an ATF agent was observed in the area of one of the assaults. This was reported to the ATF district office.

The matter was immediately reported to the ATF office of internal affairs who began to assist the New York City Police in the conduct of the investigation. A warrant was issued for the agent's arrest on October 23, 1979, and the agent was arrested. He was immediately relieved of all enforcement duties. Following his indictment he was officially suspended.

It should be noted that the agent has subsequently been tried in connection with one of the assaults. The trial ended in a hung jury. It is by no means certain that he will be convicted of any of the other assaults. None the less, the ATF response to this matter was extremely forthright and aggressive. It is our position that any accused person is innocent until proven guilty. To demand that the agent be fired, or to imply that the Bureau did not properly handle this allegation suggests that the critic would advocate violating the agents civil rights.

Mr. Hardy also refers to the case of former ATF agent William Bartel, who was removed from the Bureau and prosecuted for extortion. ATF initiated an internal affairs investigation of Bartel in January 1973, after receiving indirect allegations that he may have been involved in some illegal conduct. The internal affairs investigation determined that Bartel was involved in illegal conduct with several of his informants. Pending conclusion of the investigation, Bartel was relieved of his enforcement powers and placed on administrative duties.

A complicating factor in this investigation was that the United States Attorneys office in Newark, New Jersey, initially requested ATF to terminate its investigation, and this caused considerable delay due to discussions between the Treasury and Justice Departments which finally resulted in ATF being allowed to pursue the investigation in cooperation with the United States Attorney. Ultimately, Bartel entered a guilty plea to one count to sending threatening communications through the mail. Following the imposition of sentence Bartel resigned from ATF in lieu of being fired.

Another incident described by Mr. Hardy in his prepared statement refers to an ATF agent who was arrested for State violations as a result of an incident in which he was driving while intoxicated. The facts, as related in Mr. Hardy's statement, are accurate. He does admit that the agent chose to resign after being charged in State court. The agent in question had been on the job for approximately two years and had been required to attend alcohol counseling sessions when it was determined that he had an alcohol problem. He had also been admonished on several occasions by his supervisors and managers regarding alcohol use. He resigned in lieu of being terminated. There is no basis for criticizing the Bureau in this matter as the agency responded to an employee problem and acted forcefully when the agent was unable to deal with his alcoholism.

#### ATF OPERATIONS

Mr. Hardy refers to ATF's statistics reflecting a declination rate of 11 percent as being an all time high for the agency. He states that this would indicate that 11 percent of our investigations are deficient to the point that a prosecutor would not pursue

them. The fact is that the statistics referred to by Hardy reflect a substantial increase in the rate of acceptance for prosecution by U.S. Attorneys. An 11 percent declination rate is commensurate with, if not considerably better than, that of other Federal agencies. Mr. Hardy implies that declination by the United States Attorney indicates that a prosecution is defective when, in fact, the majority of declinations are the result of other factors such as prosecution of the defendant by other agencies, death or serious illness of the defendant, or merely the prosecution policies of the individual U.S. Attorneys office. No Federal agency has a 100 percent acceptance rate for prosecution.

Both Mr. Hardy and Mr. Knox criticized the overall enforcement accomplishments of the agency. Mr. Knox states that ATF has designed "an official policy against pursuing prosecution against persons who actually committed crimes of violence with illegal weapons, and with administrative pressure to produce statistics to justify the existence of such a large agency..." Knox also stated that "ATF is still pursuing law abiding individuals, seeking to inveigle them into unintentional and technical violations" while "almost ignoring the real criminal." Hardy is critical of the fact that in FY-81 ATF had a total of 840 firearms arrests as a result of 1200 agent man years being expended in the firearms area.

With regard to Mr. Knox's criticism, ATF has no such investigation or prosecution policy. Our current guidelines state that all enforcement programs will be administered uniformly, applying the same standard of impartiality to all violations investigated. These guidelines parallel the prosecution guidelines of the Department of Justice, and direct our investigative emphasis toward problems of primary Federal interest while attempting to provide assistance to State and local enforcement agencies. Paramount in this strategy is organized and white collar criminal activity. Crimes of violence receive the highest priority in allocation of our resources.

Mr. Knox introduced two letters from judges which appeared to be critical of ATF. One judge contended that ATF refused to prosecute referred cases involving youths aged 17 to 21 during the period 1959 through 1969. The other judge sat on a felony bench for 30 days and attempted to refer cases brought before him

to ATF for Federal prosecution. Federal prosecutive policy and guidelines are set by the Department of Justice, not by any particular investigative agency. It is routine policy for Federal agencies to refer a criminal to State courts when those courts have jurisdiction for particular violations, in order to alleviate the Federal court case load. Seldom will Federal prosecutors accept referrals from State courts when they (the State courts) admittedly have jurisdiction enough to prosecute the case. Justice Department policy for many years has prohibited Federal prosecutors from prosecuting defendants for violations for which they have already been charged in State courts. Any decision by ATF agents to refuse State cases which had already been prosecuted in a court having jurisdiction comparable to the Federal system, was in compliance with long standing Justice Department guidelines.

Mr. Hardy's criticism concerning a declining arrest rate must be examined in light of the fact that ATF and all other federal agencies experienced considerable decline in arrests and prosecutions beginning in 1977 and continuing through the end of 1979. This resulted from a tightening of Department of Justice guidelines which placed emphasis on white collar crime, and multi-jurisdictional/multi-defendant prosecutions rather than volume prosecutions. This is true of all Federal agencies and is not peculiar to ATF. This resulted in a substantial decline in prosecutions of individual felons in possession of illegal weapons.

Finally, in response to Mr. Knox's observation that ATF does not pursue "real criminals," statistics simply do not support his contention. Over 50 percent of the persons arrested by ATF have a prior criminal record. Numerous instances of ATF involvement with dangerous and violent criminals are cited in the statement in which I delivered before the House Judiciary Committee last July. Inasmuch as this statement has been submitted for your record, I will not repeat those cases, but would refer you to that document for further evidence to substantiate ATF's impact in the criminal community.

A recent case which illustrates the beneficial impact of the Gun Control Act on violent crime, including the prevention of violent crime, occurred recently in New York City. Operation Sweep was an extensive undercover operation directed against illegal firearms trafficking by major organized crime families. This operation resulted in the purchase of numerous handguns, silencers, long guns, machine guns and explosives. Forty-seven subjects were arrested and charged in both State and Federal courts.

During the undercover phase of the investigation, agents learned of plans to rob a hotel and murder any witnesses to the crime. This was prevented by the arrest of the persons planning the crime. Operation Sweep also provided sufficient intelligence to solve a number of robberies and murders which had recently been committed in the New York area. Three of the ATF agents involved in this case were recently placed on the Roll of Honor of the New York City Police Department.

Both Mr. Hardy and Mr. Knox are extremely critical of ATF's investigation of licensed firearms dealers. They claim that the definition of engaging in the business of dealing in firearms is kept deliberately vague by ATF in order to permit this agency to entrap and arrest innocent persons. Curiously, the National Rifle Association, in a document signed by Mr. Knox, is on record as opposing ATF's efforts to better define the phrase. Following the hearings before Senator DeConcini last year I committed to issue an advance notice of proposed rulemaking so that the general public could comment on the advisability of attempting to define the phrase. Senator DeConcini's request to us to do this was based primarily on Mr. Knox's testimony before him. Mr. Knox, however, in commenting on the advance notice, stated that this was a matter which was beyond the authority of ATF and which should be addressed by the United States Congress through legislation.

#### CONCLUSION

At the conclusion of his statement, Mr. Hardy states "every indication is that the reforms, announced in July 1979 have actually worsened the situation rather than improved it."

The fact is that during his statement he refers to only one identifiable investigation which was perfected subsequent to July 1979. The rest of the investigations cited by Mr. Hardy were discussed at previous hearings or occurred prior to 1979. My policy has been and will continue to be to use the laws at my disposal to prevent guns from getting into the hands of criminals and the criminal misuse of weapons. I believe that this is clearly reflected in the results of ATF's enforcement efforts.

I thank the committee for its efforts to assist in resolving difficulties in this area and I appreciate this opportunity to express my views.

Sincerely yours,

*G. R. DeLoach*  
Director

PART II.—CORRESPONDENCE FROM CONCERNED CITIZENS REGARDING VIOLATIONS OF THEIR CONSTITUTIONAL AND CIVIL RIGHTS

Route 1 Box 1200  
Great Falls, S.C.  
Aug 8, 1980

Dear Sir:

I have never been in service. And never been in any kind of trouble all my life that is every since I was 16 I have made my own living. Me and my wife have raised three boys and both of us had to work hard to keep them in school. And then seven years ago I got hurt on my job and had to have an operation the first one wasn't a success and they had to operate the second time this time the nerves in my back was messed up and the Dr. had to put a plate in my back to hold the nerves in place and I have

been total disable every  
since then. And then after  
it had the last operation  
and was disable to work  
my wife got sick and  
was in and out of the  
hospital and we got  
were. we couldn't make  
a living and my wife, my  
son Ray and myself had  
been collecting old guns  
for years in which  
my wife had some other  
fathers guns he gave to  
her and my son's and  
also they had other guns  
that meant a lot to them.  
But this one man kept  
coming by my home and  
begging me to sell him a  
gun. Then he brought  
this other big fat man  
with him and he  
kept begging me to sell  
him a gun so we were  
having a hard time with

all the sickness we  
were having. So I sold him  
one of my guns then later  
he kept on hining me and  
begging me until I sold  
him another one and I  
had an old gun that  
wouldn't even shoot and  
he kept on begging for  
it. I told him it wouldn't  
shoot but he said that didn't  
matter he wanted it anyway  
so he gave me \$5.00 for it. This  
was in October when he  
got the guns then I didn't  
see them anymore until  
in January. Me and my  
wife was in the bed  
sick and my son was  
out at the store with  
Mr. Stone and he came  
running out to the house  
and told me the law was  
up here for me. Before my  
wife could get up there  
men come rushing in.

and told me they had a  
peace warrant for me and  
I had to give them all  
my guns and I had to  
go to Columbia with him  
my wife told him I couldn't  
ride far as account of  
my back so they told me  
they would call an ambulance  
for me to go in and one  
of the men stood at the  
foot of our bed until we  
got up and put our clothes  
on - that is he had a gun  
on me like I was a  
criminal if I told them - I  
didn't know I had done  
anything wrong but they  
wouldn't listen to me and  
they stood over me until  
we got up that was my  
wife also had to get up  
and they wouldn't let her  
go out of the room faster  
to get up. When she got  
up and got her clothes

on. They told her to show  
them all the guns and  
she did she even gave  
them her gun's and our  
sons gun's but they told  
them which guns were  
there's and which guns  
was my's and they said  
they had to take all the  
guns in and they tagged  
each gun but they told  
my wife and son they  
could bring there's back  
but when we got to Columbia  
they kept all the guns and  
my wife's and our sons and  
they hadn't done anything  
for them to take there  
guns from them but they  
kept them and I also didn't  
know I was doing wrong  
when I sold them my guns  
I thought you could sell  
antique guns I didn't know  
that it was against the  
law to sell them. Because



I had never been in any trouble in my life and if I would have known I was doing wrong I would have never sold them. But the two men keep begging and telling me that they collected antique guns so I finally let them have two guns and the third one was the one that wouldn't even shoot it didn't even have a pin in it so it couldn't shoot really it wasn't no good to me. But when they came back up here in January they got me for selling more than two guns to the same person in a month's time and as I told you one of the guns was no good and he just keep on begging for it. I was going to give it to him but he said no take

this five dollars for it. So he just bribe me into selling it where he could turn me in because I wouldn't sell him any more of my guns. Because really I didn't want to sell them to start with because I really enjoyed my gun collection and was planning on keeping them but we were in bad shape my wife sick and me disable to work and a boy in school we were having a hard time so after the two men keep coming to my house and begging me so I sold them the two good guns and the one that wouldn't shoot so that made them say I sold the same man more than two guns within a month. But I still don't see how they could come and take all my guns

from me. And as I've already  
 told you that the ATF took  
 my wife's and my son's  
 gun's and they had not done  
 anything as I told you also.  
 When they was getting the  
 guns they said they would  
 give my wife & son their  
 guns back but they haven't.  
 They got either 33 or 35 guns  
 & pistols from our house  
 that day. The lawyer that  
 I had has a list of the  
 guns & pistols but I don't  
 have a list if you need  
 a list I will get it from  
 lawyer Martin and send it  
 to you all. And as I said  
 in my letter I didn't know I  
 was doing anything wrong.  
 If I had I would have never  
 sold the first one because  
 what I sold the gun for  
 wouldn't even start to pay  
 a lawyer. But now I have a  
 real close friend of mine

let me have the money to  
 pay the lawyer with. If it  
 hadn't have been for him I  
 don't know what we would  
 have done. I have never been  
 so upset in all my life never  
 been in any trouble until  
 this and then when they got  
 me they showed my picture  
 & told my name to the T.V.  
 News and put my name  
 in the papers like I  
 was a criminal of some  
 kind. Then after all this  
 happen to me they wrote  
 me a letter and made  
 me pay for the  
 guns I sold. So in the long  
 run we were worst off then  
 than we were before I sold  
 the guns. And I see in the  
 paper every week where  
 people are buying guns for  
 less and I can't see how  
 they can sell them what  
 they got me for selling mine.

and when they are admitted they always have three or more and they will tell you if you buy them all you can get them cheaper than if you buy just one. They have had me on probation for four years which this don't bother me because as I told you I have never been in any trouble and I believe in trying to do what is right. They will not let you have a gun of no kind in our home for protection. Before my son got married he had to leave his hunting gun with someone else because they couldn't have one in the trailer. I asked my probation officer question about the gun laws and he says he don't know then and any office I talk to gives me a different answer on the gun laws. I sure

would appreciate it if you have something on the gun laws where you can send it to me. Because I don't want to even get in any more trouble. I sure would like to know the laws on the guns and they say that my wife can never have a gun in our home as long as we live. I sure hope there is something you can do to help me if I still can't understand where I was doing wrong. And I know my wife or son wasn't doing anything wrong for them to take these guns because they didn't sell any of these guns. You don't know how much this means to us with you checking into this for me and if you need any more information just write me

and I will do my best in  
answering you back.  
Thanks again for your  
being interested in this  
and let me hear from  
you. I can't remember the  
names of the men that  
came to my home and took  
our guns but maybe  
Lawyer Martin can  
remember them and I  
can get their names from  
him and let you know.

The A. (you)  
Mr. Lee B. Price  
Route 1 Box 1200  
Great Falls, S.C.  
29055

SENATOR BIRCH BAYH  
RUSSELL SENATE OFFICE, Room 363  
WASHINGTON, D.C. 20510

AUG 10, 1980

DEAR SIR: IN REFERENCE TO THE HEARINGS  
YOU AND YOUR STAFF WILL BE HOLDING AUGUST 21, 1980  
ON BATF ABUSES & ILLEGALITIES I WISH TO BE  
HEARD.

1. I SERVED WITH THE U.S. COAST GUARD FOR FOUR  
YEARS & WAS HONORABLY DISCHARGED. I HAVE WORKED  
WITH LAW ENFORCEMENT AGENCIES FOR CLOSE TO  
TWENTY YEARS, BEING A CORRECTION OFFICER AND  
ALSO IN MY TRADE AS A GUNSMITH. MY RECORD  
UP UNTIL THE BATF WAS SPOTLESS & MY  
HONESTY IN LAW ENFORCEMENT DEALINGS UNQUESTIONED.  
MY CRIME WAS I WAS INTICED TO ACT AS A GO BETWEEN  
FOR TWO POLICE OFFICERS, ONE ACTIVE AND THE OTHER  
HAD LEFT THE FORCE. NOT KNOWING THIS AT THE TIME  
I AGREED TO ACT AS A GO BETWEEN IN THE SALE OF  
A GUN COLLECTION. MR. JOSEPH KELLY - ACTIVE P.D.  
NEEDED MONEY TO PAY FOR THE HOSPITAL BILLS HIS  
WIFE WAS RUNNING UP. SHE WAS AT THE TIME DYING  
OF CANCER. FEELING SORRY I AGREED TO SELL  
HIS GUNS TO A VINCENT BLASDALE, EX-POLICE OFFICER  
NOT KNOWING HE WAS WORKING AS AN INFORMER FOR  
THE BATF. I ALSO HAD KNOWN VINCE FOR ABOUT  
FIFTEEN YEARS AND TRUSTED HIM. I, IN MY SPARE TIME  
WAS EXPERIMENTING ON A NEW TYPE SILENCER AND  
VINCE HAD KNOWLEDGE OF THIS. ALL THIS WAS USED  
TO BAIT ME TO DELIVER MR. KELLY'S GUNS SO I  
COULD BE ARRESTED & CHARGED. I HAD TO HAVE  
A PUBLIC DEFENDER, WHO PLEA BARGAINED AND I  
WAS PLACED ON FIVE YEAR PROBATION.  
FOR THE PAST FOUR YEARS I HAVE BEEN WRITING  
LETTERS TO SENATORS, CONGRESSMAN AND EVEN

THE PRESIDENT OF THE UNITED STATES.  
 I HAVE SPOKEN ON THE PHONE TO A MR. STANDISH  
 OF THE PARDON ATTORNEY'S OFFICE AND APPLIED  
 FOR A PRESIDENTIAL PARDON. (COPIES ARE EN-  
 CLOSED) HIS HONORABLE FRANK THOMPSON JR.  
 HAS BEEN OF GREAT HELP TO ME.  
 I'VE BEEN INVESTIGATED BY THE F.B.I., THE  
 IRS, AND THE PROBATION OFFICE. GOD ONLY  
 KNOWS WHO ELSE HAS CHECKED MY LIFE'S HISTORY.  
 I KNOW THE STATE OF NEW JERSEY ALSO WAS LOOK-  
 ING IN TO MY PAST. I HAVE COME OUT WITH  
 A CLEAN SLATE ALL THE WAY. IF IT WASN'T  
 FOR MR. FRANK THOMPSON I WOULD HAVE NEVER  
 KNOWN THE REPORTS THE BATF SENT IN TO WASHING-  
 TON, D.C. AND PLACED IN THEIR FILES.  
 IN SEEKING A PARDON WHICH I NEED TO RE-  
 STORE MY LICENSE TO REPAIR GUNS THE REPORTS  
 CONTAINED BY THE BATF ARE ERRONEOUS AND ARE  
 A DEFAMATION OF MY CHARACTER. I WAS GIVEN A  
 SUSPENDED PROBATION ON JAN 1980 IN PHILADELPHIA  
 FEDERAL COURT AFTER SERVING ONLY HALF MY TIME.  
 ALL THIS CAN BE CHECK OUT AS IT IS ALL RECORDED  
 IN MY RECORDS. BEING ON A DISABILITY I FEEL  
 THIS HAS PLACED A HARDSHIP ON MY FAMILY AND  
 COST ME MANY DOLLARS IN DOCTOR BILLS AND RX'S  
 FOR NERVES & DEPRESSION. I WAS MADE PROMISES  
 IF I PLEADED GUILTY WHICH WERE NOT KEPT. ONE  
 WAS NO WORD WOULD LEAK OUT TO THE PRESS OR  
 RADIO STATIONS, THAT WAS A JOKE! MY NAME HAS  
 BEEN SLANDERED IN THE NEWSPAPERS AND ON LOCAL  
 RADIO STATIONS. I WAS KIDDED ABOUT BEING AN-  
 OTHER AL-CAPINE. MY ONLY HOPE RESTS IN  
 MY PARDON, WHICH I HAVE BEEN WAITING SIX  
 MONTHS FOR. UNTIL THIS TIME I REALLY NEVER  
 GAVE MUCH THOUGHT TO THE BATF OR ANY OTHER

FEDERAL AGENIES. I DID A GREAT DEAL  
 OF GUN REPAIRING FOR THE JUSTICE DEPARTMENTS  
 IN BOTH NEW JERSEY AND PENNA. I WAS  
 GLAD TO BE OF SERVICE TO ANYONE WHO NEEDED  
 ME FOR MY TALENT. FEDERAL, STATE, OR LOCAL  
 I EVEN WAS WORKING FOR THE BURDINGTON  
 COUNTY POLICE ACADEMY, BRIDGE POLICE AT COST.  
 SINCE MR. FRANK THOMPSON JR.'S INFORMATION  
 RECEIVED UNDER THE DISCLOSURE ACT I HAVE  
 ASKED MY PUBLIC DEFENDER - MR. EDWARD H. WEIS  
 SUITE 850 PUBLIC LEDGER BLD. PHILA. PA. TO FILE  
 ON MY BEHALF CHARGES AGAINST MR. G. R. DICKERSON  
 DIRECTOR OF THE BATF. I AM STILL WAITING TO  
 HEAR FROM HIM ON THIS MATTER.  
 MY FEELING TOWARD THE GOVERNMENT AND THE  
 BATF I CANNOT PUT IN WORDS. THEY WOULD BE  
 RATED X. I AM A CHRISTIAN AND I AM SUPPOSED TO  
 TURN THE OTHER CHEEK. I'VE TURNED IT TO MANY  
 TIMES IN THE PAST YEARS. I FEEL THAT ANYONE  
 WHO MAKES A MISTAKE IN JUDGEMENT JUST ONCE  
 SHOULD NOT BE PUNISHED HIS ENTIRE LIFE.  
 I AM REFERRING TO THE LABEL "FELON"  
 WHICH REMOVES THE MAN'S RIGHT TO BEAR ARMS  
 OR OWN A FIREARM. THIS PLACES A PERSON IN  
 THE SAME CLASS AS A RAPIST, MURDER, ETC.  
 IF THIS IS THE VIEW OF OUR SENATORS & CONGRESS-  
 MAN IN WASHINGTON, D.C. THEN THIS COUNTRY IS  
 NO PLACE FOR PEOPLE LIKE MYSELF TO LIVE.  
 I HAVE ALWAYS BELIEVED IN JUSTICE AND IN PLACING  
 IT FAIRLY IN OUR LIVES. TODAY THE CRIMINALS WHO  
 COMMIT VIOLENT CRIMES ARE SHIPPED ON THE WRIST  
 AND THE LAW ABIDING PEOPLE WHO STRAYS IS ABUSED.  
 IF THIS IS TODAY'S JUSTICE SYSTEM, THEN I WANT  
 NO PART OF IT. MANY COUNTRIES TRY TO EN-  
 COURAGE CRAFTSMANSHIP AND ARE LOOKING FOR

INVENTIVE TYPE PERSONAL. TODAY WE ARE BEING HELD BACK BY A HANDFUL OF ANTI-GUN GROUPS WHILE THE RUSSIANS ARE INVENTING NEW WEAPONS & MAKING FULL USE OF TALENTED PEOPLE.

MY FRIENDS AND I HAVE HAD MANY OPEN TALKS ABOUT OUR COUNTRY AND THE POLITICIANS IN POWER WHO ARE RUNNING IT. MOSTLY ABOUT THE ANTI-GUN MOVEMENTS HEADED BY SEN. KENNEDY AND HIS KIND. WE SINCERELY BELIEVE THIS IS INSPIRED BY THE COMMUNISTS & THE TEACHING OF MARX AND LENIN. WE HAVE COMMITTED OURSELVES TO CORRECT THIS IN THE NOV. ELECTIONS. IF NOT, WE THE OPPRESSED GUN OWNERS SEE THIS GREAT COUNTRY AS ANOTHER ROME. THE GOVERNMENT HAS PUSHED IT'S SELF TO FAR INTO THE LIVES OF THE WORKING CLASS.

ONE OF THESE BUREAUCRATIC DEPARTMENTS WHICH HAS OVER STEPPED IT'S SELF IS THE BATF. WE THE WORKING PEOPLE COULD EASILY DO WITHOUT THIS HARSH AND UNPLEASANT AND CRUDE ARM OF THE TREASURY DEPARTMENT. IF THIS ARM IS NOT CURBED IT WILL DESTROY OUR COUNTRY IN TIME. GOD HELP US ALL.

IF YOU WISH MORE DETAILED INFORMATION AND VIEWS, FEEL FREE TO NOTIFY ME. I HAVE NOTHING TO HIDE FROM BIG BROTHER.

Sincerely,  
Joseph D. Mozelewski Sr.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., October 2, 1979.

Mr. JOSEPH D. MOZELEWSKI,  
Burlington, N.J.

DEAR MR. MOZELEWSKI: This will acknowledge my receipt of your most recent letter regarding the Bureau of Alcohol, Tobacco and Firearms and your continued interest in securing a Presidential Pardon.

I would urge you to contact the attorney who represented you initially. Since you contend your records with the Bureau contain erroneous information, it would be in your best interest to secure a transcript of the trial and any other information which would help you substantiate your point.

I trust I have been helpful in this regard.

Kind regards.

Cordially yours,

FRANK THOMPSON, JR.

JOSEPH D. MOZELEWSKI.

Mr. JIMMY CARTER,  
President of the United States,  
Washington, D.C.

DEAR MR. PRESIDENT: I realize you are a very busy man and must receive thousands of letters daily. I would appreciate it if you could spare the time to read my letter. I am in need of all the help I can receive from you and your executive staff.

I have been a gunsmith for the past 20 years or more. Ten years ago I became disabled and had to live on Social Security and VA assistance. My gunsmith work helped me to balance out my income and help my family. It helped to keep my mind off of my handicap. I always was one who enjoyed experimenting with firearms and trying better ideas to improve them. Most of my work has been for law enforcement agencies and local sporting goods dealers.

Back in July 14, 1976 I was enticed by undercover ATF agent to violate the 1968 gun control law. On Feb. 8, 1977 I pleaded guilty to possession of a silencer not registered. Possession of a 22 cal. rifle to fire automatic. To transport firearms out of state for illegal sale. I acted as a go between for a police officer. Sir, I don't say that I was right in what I did. I was helping this police officer to sell his guns so that he could get money to save the life of his wife who was dying of cancer in the hospital. For my part in this I lost my Federal Firearms License and received five years probation. I am labeled as a felon under the 68 gun law and cannot repair or have firearms. I am now starting my third year of probation. I feel that this is harsh punishment to receive and suffer the rest of my remaining years of life. I am a Christian who believes the punishment should fit the crime. I am told the only way I can ever work repairing firearms is to be granted a pardon from the President or his Executive Staff. This is the only way I can again be restored to my position as a gunsmith and clear my record as a felon. I never have been in trouble before with the law. In fact I worked as a Correction Officer before my disability in the local sheriff's department. I am a member of the A/Federation of Police and hold memberships in other law enforcement agencies.

Sir, I am pleading to you in the name of God to please consider my position and help me in any way you can. I understand you are a good Christian and maybe you can understand my burden and hardship and what this has caused my family and myself in hardships.

Thank you.

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
Washington, D.C., August 16, 1979.

Hon. FRANK THOMPSON, JR.,  
House of Representatives,  
Washington, D.C.

DEAR MR. THOMPSON: We are in receipt of your inquiry dated July 17, 1979 regarding Mr. Joseph D. Mozelewski of Burlington, New Jersey. Please allow us to provide you with background information regarding your constituent's problems before suggesting a possible remedy.



Mr. Mozelewski was investigated by ATF as a result of information indicating that he had illegally manufactured silencers for firearms and provided them to organized crime figures. Defamation of character (at no time was I asked about organized crime), my attorney is looking into this as a counter charge against the Government. During the ATF investigation he sold three firearms and attempted to sell fifteen others with altered serial numbers to an ATF undercover agent. These firearms included two rifles equipped with silencers and a "homemade" .22 caliber machinegun. At the time of his arrest, Mr. Mozelewski possessed three additional unregistered silencers. He subsequently pled guilty to five counts of a fourteen count Federal indictment and was placed on probation for five years. Mr. Mozelewski lost his Federal firearms license as a result of this conviction.

Since Mr. Mozelewski's criminal activities involved the use of firearms and were, in fact, violations of the Gun Control Act of 1968 and the National Firearms Act, he is not eligible for relief from disabilities as provided in Title 18 U.S.C. § 925(c).

However, Title 18 U.S.C. § 1203(2) Appendix, provides an exception to this ruling in cases where a Presidential Pardon has been granted, expressly authorizing the person to receive, possess, or transport in commerce a firearm, making an application for relief from disabilities unnecessary.

We regret that we cannot be of greater assistance to you in this matter, but I am sure you recognize that we must abide by the laws as enacted by Congress.

Sincerely yours,

G. R. DICKERSON,  
Director.

8-11-80

Senator Birch Bayh,

Sir, information has come to my attention that you are wanting information about B.A.T.F. abuses. I can give you an example of abuse by the B.A.T.F. that entails criminal conspiracy, deliberate civil rights abuse, perjury, concealing material evidence from the court in order to justify what they did and a number of other things that is both un-American in principal illegal in practice and represents injustice in the most despicable manner by agents of the B.A.T.F. Enclosed is some material for your consideration. I can come to talk to you in person if you so desire.

Thank you,

George Curranich

P.O. Box 335

Laurie, TN. 37086

615-793-7443 home

793-7436 off

I am a U.S. citizen, honorably discharged from the armed forces. Have been elected as a constable for 6 years held police commissions for at least 12 years in my state. The B.A.T.F. pulled my F.F.L. destroying a business I spent 10 yrs. making. I spent \$10,000 in lawyers fees at least \$100,000 in lost revenue from my business for 1 yr. My country lost a friend and ally when the agents of my country did this to me and my family.

**To Whom It May Concern:**

The following statements are true to the best of my knowledge and beliefs:  
On March 3, 1977, Ms. Terri McFarland, an employee of the State of Tennessee, Dept. of Corrections, came into my store, Lavergne Gun Shop, and told me she had been offered one hundred dollars, \$100.00, to set me up. In fact there were

two proposals, me, George Curevich, Laverne Gun Shop and Robert Pope of Gun World. This was to be done by attempting to create an illegal transaction so that her boyfriend could put us out of business because we were hurting his retail business.

I asked Ms. McFarland who she was talking about and she said her boyfriend, Tommy Boner, owner of Four Seasons Gun Shop at Donelson, Tennessee. She said his brother was a State Senator and that Tommy had planned to use his brother's position to put the Feds (B.A.T.F.) on us. I asked her what she told him and she said she had refused to participate in the scheme. At this time he told her that was alright because he had a black man that would do it for him.

I started thinking about this a lot . . . that if a Senator would conspire with Federal Agents to hurt me and my family, then they needed to be exposed because they, in truth, were the criminals and I felt they should be prosecuted . . . and the Senator impeached from Office. About one month later, I called Larry Hickerson at Gun City in Nashville and told him about the happenings and asked his opinion. He said that he didn't know what to suggest to protect myself and I let it go at that time.

In the last week of May or the first week of June 1977, a black man came into my store and said as he walked in, in a loud voice, "Hi, I'm from Alabama and I want to buy a gun". I told him that I could not sell a gun to an out of state resident. He then told me that he was thinking about moving up here and asked me to suggest a place. I told him that across Murfreesboro Road there was an area called Sand Hill with a lake and interstate and the police didn't act like a bunch of Nazis. He said thank you and left the store . . . this whole conversation was witnessed by Roy D. Scruggs of Smyrna, Tennessee, who was in the store at the time. I made a comment to Roy about the strange way that the black man presented himself to me, but then dismissed it at the time as nothing else happened to arouse my suspicions.

The next time this black man came into the store was on June 24, 1977, (I was helping Craig Estes of Smyrna pick out a new bow for his birthday, June 29) he greeted me in the same way as before, then told me that he had taken my advice and moved to Sand Hill. The next thing he said was that he wanted to buy a gun off paper. He said it loud enough that Mr. Estes stopped and looked up at me. I decided then that this must be the man that Ms. McFarland had warned me about. I began asking him different questions about guns and I soon realized he was not knowledgeable about firearms. As I walked him up to the counter, I told him that I had three guns that I could sell him off paper, but he would have to pay me cash (\$60.00 each) for them. I put the guns in a paper sack and he paid me \$180.00 cash for them.

As he was leaving I asked him for identification since I didn't even know his name. He showed me his driver's license and I wrote down his name (Elijah Shepard), number and date of birth. After he left, I told Mr. Estes that I thought that he was a government informer and that I had sold him three cap and ball revolvers. I told Mr. Estes that I was going to laugh all the way to the bank and deposit the money. I made out a bank deposit slip for the \$180.00 and said that I wanted the B.A.T.F. to make a case out of that. I then called Mr. Boon's office (B.A.T.F.) and asked him what I should do when someone tells me they live in Tennessee but have an out of State drivers license. He told me that a driver's license was not a means of establishing residency but a form of identification. He said that I should have the person certify in writing that he is a resident of the State of Tennessee. I then called Douglas L. Daugherty, a Metro Police Officer, whom I trusted and told him what had happened and asked him to check the man's records. Mr. Daugherty then called back to say the man's record was clear, I told him that if Mr. Shepard didn't have a record on the books, he had to be working for Boner or B.A.T.F. I told him that I planned to gather information and attempt to make a case against them because I felt they were traitors to my country and my people. Mr. Daugherty told me that I shouldn't expect to obtain justice when it is their Officers, their Courts and their witnesses and they would screw me up. I told him I couldn't accept that. I also told him that these people are enemies of my government and that that they abuse and persecute innocent people for financial or political gain, and a man that loves his country cannot tolerate this type of conduct.

Later, I called Police Chief James Victory in the presence of Mr. Daugherty and told him something was going on that was terribly wrong. I then went up to the Police Department and told Chief Victory that the B.A.T.F. was sending a black man into my store to attempt to set me up. Chief Victory said, "Well if the

government is doing it, be careful". It made me angry that he was not willing to help me. I wondered if he was involved, also. I asked him if I could see his (the police dept.) law books in an effort to learn something that I could do to expose these people. I went to see the law books four times in the next five or six weeks.

E. Shepard came back into the store on July 1, 1977 and asked to buy some .25 automatics. I had five in stock that I sold him and I told him they had to be registered. He kept wanting me to fill out the part one of the 4473 form required on guns, but I knew not to do that because of something that Judge L. Clure Morton had said one time in a case I was in. Judge Morton said that "The burden of criminal intent rested upon the shoulders of the person who filled out Part 1 of the 4473 and he also said that it had to be filled out in the person's own hand writing. Shepard seemed to be playing the part of the drunk "Uncle Tom" and he tried to get me to fill out the form for him but I refused. I also had him certify in writing that he was a resident of Tennessee for thirty (30) days or more. He kept telling me that he was busted for dope and a sawed-off shot gun but I knew he was lying because of my previous check on his record, that he had no knowledge of. I did not fill out pistol application for purchase of these guns for these reasons:

(1) I didn't know Chief Victory's involvement and I didn't want to tip him off at that time.

(2) I knew that Robert Pope had sold pistols at Gun World for over a year without a State Pistol License to sell them and Chief Victory had done nothing about it.

(3) Gun World sold guns (pistols) without ever filling out pistol applications that were required and that I had brought this to the attention of Chief Victory and he still did nothing about it.

(4) I had complained bitterly to Chief Victory that it was breaking the law and even discriminating for him to allow Gun World to sell pistols without filling applications for purchases and for me to be required to do so, however, he did not correct the situation.

The next Shepard was in the store was on July 15, 1977. He purchased three handguns from me (one S & W and 2 old guns over 50 years old). He signed for the S & W but not for the two old guns because they are classified as curios and relics under the Gun Control Act and, I believe at that time they didn't have to be signed for.

Shepard came into the store again in six weeks or so with three old guns, trying to sell them to me or trade them. I told him that they were junk and that I didn't want them in my store. After he left, I told Roy Scruggs who witnessed the incident, that I thought they were trying to plant the guns in my store . . . that they were either stolen or that the numbers had been recorded by the B.A.T.F. to trace where they went. I asked him to remember what happened and that I was sure that he was an agent. Shepard was in my store on several other occasions in 1977 attempting to buy guns off paper, but I told him each time to come back and I would try to find him something. I wanted him to keep coming so I could learn all I could about him and the people behind him. I also thought that it would help if I became a U.S. Deputy Marshall, so I could arrest them and expose what they were doing, so they couldn't cover it up. (I was called for my interview the morning before the raid on my store.)

I was surprised that the government did not try to charge me with a violation of the Gun Control Act and it bothered me. I didn't understand at the time why they didn't charge me but I realized that they wanted time to go by so I would forget details and dates and circumstances prior to and after firearm transactions. If I hadn't known what they were doing, their strategy would have been correct, but I told witnesses emphatically that Shepard was an informer and that I wanted them to bear witness as to what they had seen.

On January 27, 1978, Shepard came into my store again wanting a handgun off paper. I sold him a .32 automatic that was 70 years old, which was classified as a curio or relic. He left.

On April 7, 1978, Shepard came into the store again and asked for a sawed-off shotgun about 12 inches long. I told him to look around and see what I had, (some \$30,000 worth of guns and do you expect me to risk it all for a \$35.00 shotgun) I also told him I wasn't doing it then or any other time. I walked to the door and saw a late model car across the street. I thought this might be a way of pulling them out into the open. I told Gary Martin, who worked for me, to go with Shepard and do what he asked him to do and that I would explain

later. I made sure that Gary handed the gun to Shepard and that Shepard gave the money to Gary. I also told Gary to make sure that he was off my property before he did anything with Shepard. When Gary came back, he asked me what was going on and I told him that Shepard was a government agent and that I wanted him to come out in the open and charge me, because, until he did so, they had not criminally conspired to hurt me, but when he did, they have conspired criminally to put me out of business by creating illegal transactions and that I wanted to expose this type of conduct. Gary was upset with me but I told him that they were only after me because I had the FFL. I told him that all he had to do was tell the truth and everything would be allright and I would tell what happened.

I know that you wonder why I didn't tell the U.S. Attorney, The TBI, FBI, etc., but for various reasons I did not trust them. I can explain my reasons if you so desire.

On April 24, 1978, Shepard called me on the phone and tried to get me to admit anything incriminating but I played dumb because I figured the conversation was taped. Since things had not happened that would cause any charges to be placed against me, I decided that the next time that he came in I was going to get his fingerprints and arrest him. I knew that he would not be able to claim that I signed anything.

Shepard came in on April 25, 1978, asking to purchase a S & W nickle plated 357 magnum revolver. He walked in while two customers (Leonard Reese and Chuck Hogan) were present. He walked up to the counter, pointed to the gun and said that he wanted to buy it. Shepard never touched the gun or paid me for the gun. I told him three times that he could not take the gun until his pistol application was approved by Chief Victory. He filled out the form 4473 and I fingerprinted him and filled out the pistol application. Before I could leave with the application and bring the police back with me, the BATF came in on a signal from Shepard, "is this where I sign?"

When Troy Hamner and Perry Anderson pulled up outside, I said "well, well, look here, the BATF. Shepard ran out the door. Mr. Hamner informed me that he had a search warrant. He showed me the warrant when I asked him and I told him to go ahead and look around but that I was going with him and that he had better not take anything out of his pockets or put anything in them that I could not recognize because I did not trust him . . . that they could set up people and put them out of business. At that point Hamner got about one inch from my face and yelled, "I'm a government agent, are you going to deny me due process?". I shoved him away from me and told him that I wasn't denying him a damn thing but if he got in my face yelling again or yelled at me, I would knock his damned teeth out. At this point, Perry Anderson pushed Chuck Hogan a customer over the display counter and searched him and Hamner told me to put my hands up. I asked him if he had a warrant for my arrest and he said no. I told him if he attempted to put his hands on me without a warrant that I would resist by any force necessary. At that point, I reached into my pocket for my pistol. I told him that he was a criminal conspirator and traitor to my country, that he was working for left wing politicians who were attempting to steal our freedom. At this point, two customers attempted to enter the store and Perry Anderson ran to the door and shoved one man in the face out the door backwards and without identifying himself as an agent. The man lost his balance and tried to catch himself on the door facing. Perry Anderson shut the door on that man's fingers and nearly broke them. That is when I really got mad. I told those bastards that the streets would run red with their blood if they didn't stop this crap and Tory Hamner said that he had orders from the top to get me. Hamner also asked if my store was paid for and when I said that it was, he said, "No wonder you can sell guns cheaper than in Nashville". That's when I knew for sure that Ms. McFarland was right about a merchant trying to set me up for financial gain.

I swear by all that is right and just that Elijah Shepard was in my store, Laverne Gun Shop, on many occasions that are not recorded by the BATF. My witnesses to that fact are live human beings . . . decent law abiding citizens. They can attest to three other occasions. I also cannot remember any one named Eddie coming into the store . . . and if he truly did come into the store, why is there not a recording to verify our conversation. My calling cards lay right out on the counter where anyone can pick them up without talking to anyone. It was also brought out in court by Shepard that he had been staying in Ten-

nessee since June of 1977 and working here. I cannot understand why he would be considered an out of state resident. I also cannot understand why I was convicted of selling him a gun on April 25, 1978, when he never paid for or had possession of the gun.

GEORGE CUREVICH, Owner.

August 11, 1980.

*To Whom It May Concern:*

This statement concerns the Bureau of Alcohol, Tobacco and Firearms action against Mr. George Curevich of Laverne, Tennessee. In a conversation with Mr. Curevich in June 1977 Mr. Curevich told me, Douglas Daugherty that a man who identified himself as Elijah Sheppard had entered Mr. Curevich's place of business and attempted to make illegal purchases of firearms. After a check of Elijah Sheppard's identification from records available to me as a Metropolitan Police Officer, it appeared Elijah Sheppard was the person he claimed to be. At that time I agreed with Mr. Curevich that Elijah Sheppard had apparently been sent by the BATF in an attempt to create an illegal transaction. Mr. Curevich told me that he planned to gather information in order to expose the BATF and the tactics employed against legitimate firearms dealers. Mr. Curevich also was in touch with the chief of the Laverne, Tennessee Police Dept. and made a phone call in my presence explaining the situation to Chief Victory. Anyone having further questions please feel free to contact me at any time.

DOUGLAS LEON DAUGHERTY,  
Nashville, Tenn.

Subscribed and sworn to before the undersigned a Notary Public in and for Davidson County, Tennessee, this 9 day of November 1978. Notary Margaret Neblett.

Commission expires August 8, 1981.

POST OFFICE DEPARTMENT,  
LaVergne, Tenn., November 3, 1978.

*To Whom It May Concern.*

Subject: Mr. George Curevich.

I have known Mr. George Curevich for about 15 years. I have been Postmaster at LaVergne during this time and he has been a businessman with a post office box; therefore, I have had cause to come in contact with him quite frequently and to know him very well. I am also Vice Mayor and City Commissioner of LaVergne and in this capacity I have known something of his business operations. I am Chairman of Deacons at Miracle Baptist Church where Mr. Curevich attends church. I teach a couples bible class and he is in my class.

Mr. Curevich is a very dedicated citizen and has always taken a great interest in his community and assisted with civic projects and club activities. He is a very patriotic American and in this respect is far above the average.

I have never known anything during the fifteen years against his character or moral conduct. I have never known or heard of him mistreating anyone in his business dealings.

Mr. Curevich is a man of integrity, honest, trustworthy and a man of "his word". I would not hesitate to trust him in business dealings or any other matters.

I find it very easy to recommend Mr. Curevich without any qualifications or reservations.

Sincerely,

A. C. PUCKETT, Jr.

UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF PRISONS CLASSIFICATION STUDY

FCI, TALLAHASSEE, FLA.

Committed Name: Curevich, George C.  
Register Number: 31925-120 D/S.

PSYCHOLOGICAL REPORT

Birthdate: 04-26-44.

Examination Dates: 2/13, 2/15, 3/16/79.

Tests Administered: Beta, MMPI, Rorschach, CPI, ISB, DAP, Bender, TAT.

Referral: Mr. Curevich was committed to this institution by Judge L. C. Morton of the U.S. District Court, Middle District of Tennessee, Nashville Division, for a

90-day period of Study and Observation. Mr. Curevich has been convicted on 10 counts of illegal sale of firearms by a dealer. No specific referral questions were set forth by Judge Morton.

Findings: Mr. Curevich is a 34-year-old, white, American born male who stands approximately 6'0" tall, weighs about 200 pounds, and is of medium to heavy build. During interviews with the examiner, Mr. Curevich appeared to be straightforward, intense, and somewhat dominating. He was prompt in reporting for testing at the scheduled times and was completely cooperative during all phases of evaluation. He feels angry and frustrated at his current situation as he feels he has been "betrayed by his country." He is eager to tell his version of the incidents leading up to his conviction. He reports that federal agents conspired against him and he feels a need to expose these "traitors to my government." He presents himself in a favorable light as a hard working, honest, law-abiding citizen who has been wronged and who is now trying to fight back against those who are attempting to take away his freedom.

Mr. Curevich displayed appropriate affect and behavior at all times and showed no evidence of a thought disorder. He was well-oriented to person, place and time. Mr. Curevich was somewhat guarded and defensive early in the evaluation process. He was concerned about the purpose of the psychological evaluation and felt that it might be used by the Judge to justify a long prison sentence. As the evaluation proceeded, he became more open and relaxed but continued to try to convince the examiner of his story. In general, the information contained in this evaluation is considered to be a valid appraisal of the inmate's current intellectual and psychological functioning.

According to his performance on the Wechsler Adult Intelligence Scale, Mr. Curevich is functioning in the Bright Normal range of intellectual abilities (WAIS FSIQ=115, VIQ=116, PIQ=112). His score on the Revised Beta Examination was 120. His scores on the WAIS indicate that he is functioning as well as or better than 80 percent of the population using the WAIS as an index of intelligence. There was no significant difference between his performance on the verbal and non-verbal portions of the test. He shows an ability to remain alert and concentrate on a problem as long as he feels it is within his capabilities. If frustrated, he gives up quickly and makes a cursory attempt at a solution. He usually shows good social judgment and common sense, however, if confronted with an ambiguous or novel situation he may show poor judgment and act impulsively and inappropriately. In general, Mr. Curevich functions extremely well in an environment in which he is familiar with the expectations. When placed in a new environment he can make necessary changes, but he may have some problems during periods of adjustment.

His intelligence scores are somewhat surprising in light of the fact that he left school after the 10th grade. However, he has shown initiative and intelligence in vocational pursuits and has apparently built up a successful privately-owned small business.

The results of the personality evaluation indicates that Mr. Curevich has unfulfilled dependency needs as well as feelings of inadequacy and insecurity. However, he defends against these feelings so well that he is probably not aware of them himself. He likes to characterize himself as individualistic and self-sufficient. In his relationships with others, he comes across as self-confident, outgoing, and resourceful. He likes to interact with other people and tends to assume a leadership role in social situations. In his business he tends to be conscientious and hard-working. He is achievement oriented and his obsessive-compulsive qualities defend against the anxiety he feels about the possibility of not succeeding. He feels compelled to make good on his own and would be reluctant to ask anyone for help because that would be perceived as a weakness on his part. He is optimistic and feels that hard work and persistence will always pay off in the end. Mr. Curevich tends to repress and/or avoid any "negative" emotions that he might feel. He has hostile and aggressive impulses that he keeps under tight control. His moralistic, patriotic, and religious attitudes also act as a reaction formation against any dishonest or immoral feelings, thoughts, or behaviors that he may have.

In summary, Mr. Curevich is an intelligent and resourceful man who gives the impression of being self-confident, outgoing, and conscientious. However, much of his behavior is apparently motivated by an underlying feeling of insecurity and a basic mistrust and suspiciousness of others.

Recommendations: Because of his intelligence and resourcefulness, Mr. Curevich can and does adjust successfully to most situations in which he finds himself. If conviction of illegal sale of firearms means he can no longer own a gun shop, then he will probably become established and successful in some other vocational endeavor in a short period of time. However, if incarcerated, his adjustment will probably be very difficult because of his hostile attitude regarding his conviction. Supportive therapy will be absolutely necessary in such a situation in order to help him work through his feelings of anger and frustration. Insight oriented therapy would probably be of limited usefulness because he is resistive to any questioning of his rigid value system. Vocational and/or educational rehabilitation are not indicated.

ERIO CURTON,  
*Psychology Student.*  
J. KENNETH KLING, Ph.D.,  
*Asst. Chief, Psychology Department.*



# Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646  
AUG 12 - 1980

SENATOR BIRCH BAYH  
RUSSELL SENATE OFFICE  
BIDG ROOM # 363  
WASHINGTON, D.C. 20510

DEAR SIR:  
MR DAVID HARDY WITH THE NATIONAL RIFLE ASSOC-  
ILA. HAS WRITTEN TO ME. ASKING ME TO WRITE  
A LETTER TO YOU FOR THE PURPOSE OF OBTAINING  
CIVIL RIGHTS VIOLATIONS BY THE BATF.  
I HAVE BEEN A VICTIM OF SUCH A SCHEME.  
I HAVE BEEN IN CORRESPONDANCE WITH NRA-ILA  
THROUGH LETTERS & BY PHONE MANY TIMES SINCE  
1975 WHEN BATF CROSSED ME UP AND MADE A  
WRECK OUT OF MY LIFE.

INSTEAD OF WRITING A NOTHER LONG, LENGTHY LETTER  
I WILL SEND SOME COPIES OF ONES THAT I HAVE  
ALREADY WRITTEN IN THE PAST.

SINCE TIME IS RUNNING SHORT I FEEL THAT  
THE SAME INFORMATION WILL BE OBTAINED AND  
IN A MORE COMPLETE WAY.

I DON'T KNOW HOW MUCH GOOD ALL THIS IS GOING  
TO DO, BUT THANK YOU SO VERY MUCH FOR TAKING  
A STAND FOR US UNFORTUNATE ONES AND FOR THOSE  
THAT THE SAME MIGHT HAPPEN STILL.

SURELY IN A DEMOCRACY THAT WE HAVE  
SOMETHING CAN BE DONE TO CORRECT SUCH A  
UNDERHAND, UNDERMINING, DEGRADING, CRIPPLING  
DELEMA THAT WE ARE IN.



# Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646  
AUG 12 - 1980

THERE IS A NEED TO PUT A SUDDEN STOP TO  
THIS KIND OF THING IN THIS COUNTRY NOW AND FOR  
GOOD. — JUST SAY AFIAT NO AND MEAN IT.  
BELOW IS A LISTING OF ARTICLES THAT WOULD  
EXPRESS MY FEELINGS AT THIS TIME AND ALWAYS.  
TO RE-ITERATE SEE THE FOLLOWING;

- 1- FEB 9 1978 ISSUE OF REPORT FROM WASHINGTON PG 2
- 2- LETTER TO WILLIAM PGBREW (DEPUTY EXECUTIVE DIRECTOR NRA-ILA)
- 3- " " RICHARD GARDNER NRA-ILA.
- 4- " FROM US DEPT OF JUSTICE.
- 5- " CONGRESS OF THE UNITED STATES (BUTLER DERRICK)
- 6- " TO NRA-ILA TO MR NEAL KNOX
- 7- " FROM US REPRESENTATIVE BUTLER DERRICK.
- 8- " TO " " " "
- 9- COPY FROM JUNE 1980 AMERICAN RIFEMAN PG 15
- 10- " OF LETTER TO DAVID HARDY (NRA-ILA) 6/19/79
- 11- " " " " NRA-ILA JAN 11, 1978

ALL OF THIS ADDS UP TO INTRAPMENT AND  
UNCONSTITUTIONAL. PLEASE — FOR EVERYONE'S  
SAKE PUT A STOP TO IT NOW.  
THANK YOU IN ADVANCE

Sincerely  
William L. Smith



[From Reports from Washington, NRA Institute for Legislative Action]

#### A GOOD MAN'S PLIGHT

Thank you for your issue of "Reports from Washington," December 7, 1977. How well I remember that day in my life—I was already in service.

In reading this issue I am aware of the serious problem we face to "keep and bear arms" as a law-abiding citizen. What can the good honest people that try to "do right because it is right" do if the Federal Government takes away our weapons and leaves us defenseless against the criminal, who will have their guns regardless.

I should be one to speak "I have no rights." I am a victim of just what your paper states, I have already been hung by the Feds in my small business. I have been accused, tried, and convicted of something that I did not do. I had to hire an expensive lawyer, then was told by him that the Judge said to "plea bargain" and this would make it light on me; nevertheless, this left me a felon (with no rights). You know the rest.

I have served my probation and now am ready soon for my pardon papers which will be another year, according to regulations. But it seems that by that time our President might not ever sign a release to any felons.

I am soon to be 60 years old, have always gone by the rules as a law-abiding citizen. In fact, some of the city and county officers of the community are my best friends and they know me well. A past Congressman and the County Sheriff were two of my character references. I am a Mason and Shriner in good standing since 1950. Up until this time in my life I had never been approached by any law officer for any reason. I try to live a good Christian life, am active in church work and have been most of my life.

They put me out of the firearms business January, 1975, with two years probation and a fine. I did not knowingly nor willingly sell a firearm to leave the state of South Carolina. But in their way of doing things they took 31 small dealers at one drag in such a manner. This is very much underhanded, unfair, and degrading.

I would tell any young man not to let any government take away his rights. Had I to do this over again I would have a jury trial to keep from being called a felon, now that I understand its meaning. I could not even vote for the president when Carter was elected, but I listened to every campaign speech that they all made. By the way, Carter—by his Christian attitude—would have been my choice. After reading this issue he will surely lose a great deal of his votes by all gun lovers.

Believe me, I am one in my own "rite." My grandfather was a fine gunsmith and blacksmith (he was also a Smith, J.C.). Several of his sons can do the same and now I am no different. I profess to be a good mechanic as watchmaker, repairing clocks, jewelry, diamond setting and gunsmithing; having done extensive study in all fields with each. My store has a good reputation to this end.

I am truly grateful to NRA for forming the NRA Legal Defense Committee. You may pass a copy of this letter to them for study. I may get a little help from it, but mostly some young man may not be caught up in the same trap.

I know that this is a lengthy letter but I did get some of what I had on my mind out in the open. If it is at all possible, I would like to discuss this problem at length with Mr. Lloyd M. Mustin. Maybe, just maybe, this Committee would have some bearing on getting me a fair shake on receiving an early pardon.

WILLIAM L. SMITH,  
Greenwood, S.C.

NATIONAL RIFLE ASSOCIATION OF AMERICA,  
INSTITUTE FOR LEGISLATIVE ACTION,  
Washington, D.C., February 14, 1978.

Mr. WILLIAM L. SMITH,  
Smitty's Jewelers,  
Greenwood, S.C.

DEAR MR. SMITH: This refers to your letter of January 11, 1978 concerning your problem with the Bureau of Alcohol, Tobacco and Firearms.

I must state that while your situation occurred in 1975, the attitude of BATF continues today. Over this weekend I just reviewed two cases from Tucson, Arizona, where they did buy from jewelers through a straw man and they were

ordered to plea bargain by the Judge. One jeweler refused to and went to trial and was acquitted by the jury. In another case, they reduced the five counts to one count. The jeweler refused to enter a plea to that count and at the last minute, the case was dismissed.

I think this is carrying out the stated policy by the director of the BATF to reduce the number of dealers; and from some of the cases that I see, it's almost as "as I see fit". We do have on tape, one BATF agent stating that he will determine who is a dealer and under what circumstances he can sell guns.

I have just returned from Corpus Christi, Texas and talking to Gus Cargil, who is a collector and had some \$60,000 worth of guns seized. It took two court orders to get his guns back to him with no charges brought against him.

I would like to know what the exact circumstances were of your situation and problem with BATF. As far as the legal defense committee is concerned, I am the secretary of that committee and we are having a meeting the end of this month to set up a criterion for selecting cases and other administrative matters that must be disposed of. What the committee must do is develop a working operation that we can submit to the Board for approval and then the committee will be in business and in a position to accept cases and assist individuals in their Second Amendment rights and in carrying out the objectives of the NRA by-laws.

For some time, in fact, between 1956 and 1962, I did extensive trial work in the southeast. I tried cases in both Greenville and Spartanburg, South Carolina for the BATF and the U.S. Government. I must state that during this period of time, I never saw the activities of BATF that we are now getting reports from all over the country.

I do want to thank you for your letter. I would be pleased to hear from you about the details of the encounter with the BATF as I said before and if I can be of any help, do not hesitate to call me at Area Code (202) 457-5960.

I might add that one problem with Chapter 44, Title 18 "the 1968 Gun Law", is that there is no misdemeanor provision. Any violation of that chapter or regulations issued thereunder is a felony, which I think is wrong. I also think that the treatment that you received from BATF is wrong and not in accord with the dictates of Congress when the 1968 Gun Law was enacted.

Again, many thanks for your letter. I must say that on December 7th, I was also on a destroyer when the raid was pulled on Pearl Harbor. It is distressing to me that the courts seem to follow along the dictates of BATF under this law and make first offenders out of people who have served their country with honor and have served their state, county, and community in the manner of which you have. It seems to me that somewhere in our system of justice, there should be accounting in this area.

Sincerely,

WILLIAM P. CREWE.



203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

MR WILLIAM P. CREWE  
NRA ILA  
1600 RHODE ISLAND AVE.  
WASHINGTON, DC. 20036

2/22/78

Copy

DEAR MR CREWE.

THIS IS IN REFERENCE TO YOUR LETTER OF  
Feb 22, 1978

I DO APPRECIATE YOUR CONCERN WITH MY  
PROBLEM, OR WITH THE PROBLEMS OF MANY THOUSANDS  
OF SMALL DEALERS & COLLECTORS THAT CANNOT HELP  
THEMSELVES, YOUNG & OLD ALIKE.

I STILL CONTEND THAT I AM NOT AFTER THIS  
SO MUCH FOR PERSONAL GAIN, BUT TO HELP SOME  
UNFORTUNATE YOUNG BUSINESS MEN OR COLLECTORS  
IF THIS BE POSSIBLE.

I AM AN OLD MAN (60) & A FELON AS YOU KNOW.  
IT WOULD BE POSSIBLE TO LIVE OUT MY LIFE WITH  
THIS ON ME EXCEPT FOR THE "CYRIL" PART OF IT ALL.  
WITHIN A SHORT TIME NOW I WILL BE OF AGE TO RETIRE,  
AND THEN THE FEDS WILL KEEP ME UP ON S.S.  
SUCH AS IT IS.

HOW CAN ANY GOV. OR REPRESENTATIVE USE THE TERM  
LIKE YOU STATED IN YOUR LAST LETTER 2/14/78 AS A SCOFF.  
THIS DOES NOT LEAVE AN HONEST TAX PAYER ANY RIGHT  
AT ALL. YOU MIGHT AS WELL CALL THIS A GASTAPO TACTIC  
JUST BECAUSE HE DOESN'T LIKE YOU AND WOULD RATHER  
HAVE ONE OF HIS PERSONAL FRIENDS HAVE THE LIC. OF  
AN ALREADY LEGAL DEALER IN GOOD STANDING.

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

YOU ASK ABOUT THE EXACT CIRCUMSTANCES INVOLVING  
MY SITUATION.

I WILL TRY TO EXPLAIN, BUT IT WILL BE QUITE  
LENGTHY TO DESCRIBE AT BEST.

AS I STATED IN MY EARLIER LETTER I BASICALLY  
KNOW THE LAW ABOUT THE SALES OF GUNS AND  
CERTAINLY WOULD NOT SELL TO AN OUT OF STATE  
RESIDENT.

I FELT NO GUILT TO SELL TO MR JUSTIN SINCE  
HE RESIDED WITHIN THE STATE AND KNOWING  
THAT HE WORKED FOR THE CITY OF GREENVILLE, SC.  
I DID NOT SELL THIS PISTOL TO HIM KNOWING THAT IT WAS  
TO LEAVE THE STATE OF S.C.

I KNOW THAT I TALK (RAMBLE) A LOT IN MAKING  
ANY SALE - YOU MIGHT CALL IT A GIFT OF GAB. AND  
IN MAKING SALES COULD SAY SOMETHINGS THAT  
COULD BE INTERPRETED WRONGLY OR MISUNDERSTOOD  
AND TO MEAN OTHER THAN WHAT I SAID.

SO THEY USED THIS TO THEIR ADVANTAGE. THEY  
MISCONSTRUCTED, WORPED AROUND, DISTORTED & BY CERTAIN  
CHANGES MADE IT SOUND LIKE I DIDN'T CARE HOW I  
MADE THE SALE, JUST AS LONG AS I MADE IT.

I HAVE LOST MANY SALES BECAUSE THE PERSON  
IN MY OPINION WAS NOT QUALIFIED TO PURCHASE  
A PISTOL FOR VARIOUS REASONS. SOME HAVE EVEN  
LEFT MY STORE MAD.



③

# Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

TO THE BEST OF MY KNOWLEDGE THE STATEMENTS  
BY AUSTIN & YOUNG ARE ABOUT THE WAY THEY INTERED  
MY STORE.

JUST A NORMAL DAY - THEY WERE ONLY ANOTHER  
NORMAL CUSTOMER COMING IN, LOOKING FOR A GOOD  
BUY ON HANDGUNS.

HE (MR YOUNG) PICKED OUT ONE IN THE CASE, ASKING  
THE PRICE. THEN LOOKED AT ANOTHER AND ASKED THE PRICE.  
THIS PART OVER, HE SAID THAT HE WOULD TAKE THE FIRST  
ONE, A .45 CAL AUTO. PIANA.

AS STANDARD PROCEDURE I TOLD HIM OF THE LAW.  
FIRSTLY THAT HE MUST BE AN S.C. RESIDENT TO WHICH  
HE REPLIED THAT HE LIVED IN MD. QUICKLY I TOLD HIM  
THAT HE COULD NOT BUY ONE IN S.C. THAT I WOULD NOT  
SELL TO AN OUT OF STATE PERSON. AT WHICH TIME  
I PUT MY PISTOL BACK INTO THE SHOW CASE.

THEN MR. AUSTIN ASK IF HE MAY BUY THE PISTOL.  
I ASSURED HIM THAT IF HAD PROOF THAT HE WAS AN S.C.  
RESIDENT. THAT I WOULD SELL TO HIM. HE SHOWED ME  
HIS S.C. DRIVERS LIC. AS A I.D. THIS MADE IT LEGAL.  
I DID NOT KNOW THAT HE WAS GOING TO GIVE IT TO YOUNG  
IN ANY WAY.

I DO WANT TO BRING OUT ONE MORE POINT. I  
THINK THIS IS WORTHY OF MENTION.

ITS THE WAY BATE HANDLED THE MATTER. SUCH  
AS PRESENTING THE CASE TO A SECRET GRAND JURY  
BEFORE I WAS EVEN NOTIFIED OF ANY CHARGES. I ALSO  
LOST MY RIGHT HAVE A PRELIMINARY HEARING - SHOULD  
THIS HAPPEN IN A TRUE DEMOCRACY?



# Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

2/14/78

MR. RICHARD GARDNER

1600 RHODE ISLAND AVE N.W.  
WASHINGTON, D.C. 20036

DEAR MR GARDNER.

INCLOSED IS THE COPIES OF DOCUMENTS THAT  
WE WERE DISCUSSING BY PHONE.

I TRUST THAT THERE IS A WAY TO GET ADDRESSES  
OF THE PEOPLE LISTED. THIS ONLY SHOWS NAMES  
& THEIR ATTORNEYS.

AS TO THE CHARGES AGAINST ME, I KNOW THE  
LAW - WOULD YOU BELIEVE I WOULD HAVE SOLD  
A FIRE ARM ILLEGALLY FOR THE SINK OF A 40%  
PROFIT IN THE SALE. ETC. (THE SETTLER, I KNOW PERSONALLY)

ANOTHER CASE IN POINT THERE ARE ONLY 2 WEAPONS  
INVOLVED YET THERE ARE 4 CHARGES AGAINST ME.

AS YOU CAN SEE BY THE 1 FORM 4473 INCLOSED, I DID  
NOT TRY TO ~~COVER~~ COVER UP OR SELL ILLEGALLY. I ALSO  
HAVE A S.C. FORM. IN CASE YOU NEED MORE.

I FEEL THAT I HAVE BEEN USED, BUT GOOD. AND  
IT IS NOT JUSTIFIED. I KNOW OF SOME PEOPLE IN  
MY OWN TOWN THAT ARE REGULAR GUN RUNNERS  
THAT HAVE GOTTEN RICH SELLING WITHOUT ANY RECORDS.  
AND ARE STILL DOING IT. - THE FEDS ONLY PICK UP  
ON THE EASY PREY - THOSE THAT CANT FIGHT BACK.

AT THIS TIME DO NOT USE MY NAME TO THE FEDS  
HARDLY AFTER MY PARDON, NAMES CAN BE USED  
TO A BETTER ADVANTAGE IN WHAT WE ARE TRYING TO DO.

Yours cause to mind  
Y PUPPISIM

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Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

SINCE I MUST GET THIS TO YOU QUICKLY BEFORE YOU HAVE YOUR COMMITTEE MEETING. I MUST SEND THIS BIT OF INFORMATION ON TO YOU, TRUSTING THAT THIS MUCH CAN HELP.

SORRY I WOULDN'T TAKE TIME TO TYPE A FORMAL LETTER, TIME IS IMPORTANT FOR YOU.  
FORGIVE MY MISTAKES ETC.

SINCERELY

William Smith

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Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

4/26/80

KC B9368D

PO BOX 3105

NRA ILA

PO Box 1730

WASHINGTON DC 20013

COPY

MR KNOT

DEAR SIR;

THIS IS IN ANSWER TO YOUR LETTER OF JUNE 80 CONCERNING THE GCA '68 GUN CONTROL LAW

I AGREE VERY MUCH WITH ALL YOU HAD TO SAY IN THE ABOVE LETTER - HIGHLY WELL PUT & TO THE POINT.

UNFORTUNATELY I AM NOT IN A GOOD POSITION TO HELP VERY MUCH THE WAY I WOULD LIKE TO, IN A FINANCIAL FRONT, BUT I DO A LOT OF ADVERTISING FOR NRA & ILA AND WHAT THEY ARE DOING.

YOU SEE SINCE I AM ONE OF THOSE LAW ADDING CITIZENS THAT HAS BEEN TREATED JUST LIKE YOU DESCRIBE, I HAS NOT BEEN ABLE TO <sup>MEET</sup> ALL OF MY OBLIGATIONS & EXPENSES AS I COULD BEFORE THIS HAPPENED.

WITH ALL OF THIS PLUS INFLATION & RECESSION I AM ALL BUT OUT OF BUSINESS I HAVE HAD TO BORROW MONEY TO PUT INTO THIS STORE.

I AM 62 YEARS OLD, NEVER WOULD I HAVE THOUGHT THAT I WOULD HAVE ASKED FOR ANY SOCIAL SECURITY AT SUCH AN EARLY AGE.

①

W

**Smitty's Jewelers** (TIME SHOP)

203 MAIN STREET    TELEPHONE 223-2767    GREENWOOD, S. C. 29646

BUT I HAVE ALREADY RECEIVED 2 CHECKS ALL THIS  
SIMPLY BECAUSE I HAVE NOT MADE ENOUGH THE  
LAST 3 YEARS.

I HAVE CARRIED MY PROBLEM TO MY CONGRESSMAN  
(BUTLER DERRICK) HE GAVE ME VERY LITTLE TIME  
HE SURELY DID NOT HEAR ME OUT. I FEEL,  
AT THIS POINT, THAT HE DIDN'T CARE TO BE BOTHERED  
WITH NONE OF THIS GUN BIT.

I SUPPOSE THAT HE FEELS LIKE— WHY SHOULD  
I TAKE UP MY TIME WITH THIS FELON. HE CAN  
VOTE FOR ME ANYWAY.

HOW CAN A PERSON WITH NO "RIGHTS" BE HEARD  
SO A WRONG CAN BE MADE RIGHT?

ENCLOSED IS A SMALL CONTRIBUTION (A WINDOW INTO)  
LET'S TRUST THAT EVEN SMALL AMOUNTS CAN HELP.

I KNOW IT CAN, IF EVERY ONE WOULD.

BY THE WAY. I APPLIED FOR A PARDON  
AND WAS REFUSED— WITH NO EXPLANATION.  
MY BEST WISHES WITH YOU & NRA & ILA IN  
CONGRESS & THE ABOLISHING OF THE GUN  
LAW.

BEST REGARDS,

*William L. Smith*

UNITED STATES DEPARTMENT OF JUSTICE,  
OFFICE OF THE PARDON ATTORNEY,  
Washington, D.C., April 30, 1980.

Mr. WILLIAM LESLIE SMITH,  
Greenwood, S.C.

DEAR MR. SMITH: Your pardon application has been carefully considered both  
in this Department and at the White House and the decision has been reached  
that favorable action is not warranted. Your petition, therefore, has been denied.  
There is no appeal from this decision.

As a matter of long established policy, we do not disclose the reasons for the  
decision in a clemency matter.

I regret my reply cannot be more favorable.

Sincerely,

JOHN R. STANISH,  
Pardon Attorney.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C. July 2, 1980.

Mr. WILLIAM L. SMITH,  
Greenwood, S.C.

DEAR MR. SMITH: The attached letter copy is forwarded to you for your review.  
Although it does not say exactly what we would like, Mr. Stephenson does give  
some degree of hope.

With warmest regards, I am

Respectfully,

BUTLER DERRICK,  
Member of Congress.

U.S. DEPARTMENT OF JUSTICE,  
PARDON ATTORNEY,  
Washington, D.C., June 26, 1980.

Hon. BUTLER DERRICK,  
Member of Congress, Anderson, S.C.

DEAR CONGRESSMAN DERRICK: Thank you for your letter of June 10, 1980,  
received in this office on June 17, 1980, requesting reconsideration of the pardon  
application submitted by William Leslie Smith.

Mr. Smith's pardon application was fully considered both in the Department  
of Justice and the White House before the decision was reached that favorable  
action was not warranted. While there is no appeal from a pardon decision,  
current policy permits Mr. Smith to reapply for pardon in April 1982, two years  
from the date his petition was denied. It has been our experience that unsuccessful  
pardon applicants occasionally receive favorable consideration upon reapplica-  
tion. Upon request, we will be glad to advise Mr. Smith concerning submission of  
a new petition when he becomes eligible to reapply.

Your interest in this matter is appreciated. I have directed that your letter  
be made a part of Mr. Smith's pardon file.

Sincerely,

DAVID C. STEPHENSON,  
Acting Pardon Attorney.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., June 10, 1980.

JOHN R. STANISH,  
Pardon Attorney, U.S. Department of Justice,  
Constitution Avenue and 10th Street NW.,  
Washington, D.C.

DEAR MR. STANISH: One of my fellow South Carolinians, William L. Smith,  
has contacted me regarding his recent petition for a pardon. Although I am  
in receipt of a letter from you to Mr. Smith denying his petition, I respect-  
fully ask that this individual's file be re-opened and a careful review be given  
to his request.

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As a matter of record, I wish to advise you that I have personally investigated Mr. Smith's background and determined that he is a highly respected citizen in his home community, Greenwood, South Carolina. Mr. Smith, having led a useful and productive life, wishes now to have the stigma of a conviction erased from his past.

I would appreciate it very much if you would let me know what possibly can be done within your guidelines to help this gentleman.

With warmest regards, I am,

Respectfully,

BUTLER DERRICK,  
Member of Congress.

Enclosures.

535



Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

6/26/80 PIB 3105

HONABLE

BUTLER DERRICK

133 CANNON HOUSE Bldg.

WASHINGTON DC 20515

COPY

DEAR MR DERRICK

THANKS VERY MUCH FOR GIVING ME A SMALL PORTION OF YOUR TIME. I AM SORRY THAT YOU HAD SUCH A FULL DOCKET THE DAY THAT I WAS IN YOUR OFFICE IN GREENWOOD.

I RECEIVED A COPY OF THE LETTER THAT YOU SENT TO PARDON ATTORNEY JOHN R - STANDISH. THE WORDING SOUNDS GOOD TO THE EAR. I TRUST BY THIS TIME THAT YOU HAVE HEARD SOMETHING FROM HIM IN MY BEHALF.

I DON'T HAVE ANY IDEA OF HOW LONG THIS SHOULD TAKE NOR WHAT I SHOULD & COULD DO AT THIS POINT. I NEED SOME GUIDELINE.

I NEED SOMETHING TO HOLD ON TO. THIS

STIGMA IS RUINING MY PHYSICAL & MENTAL ATTITUDE TO THE WHOLE OF MY LIFE. AT TIMES I CAN'T EVEN BELIEVE THAT THIS THING HAPPENED TO ...



Smitty's Jewelers (TIME SHOP)

203 MAIN STREET TELEPHONE 223-2767 GREENWOOD, S. C. 29646

THERE IS JUST NO FAIRNESS TO THIS WHOLE  
THING WITH BATF. WHAT IS JUSTICE & WHAT  
RIGHTS DOES ANY LAW ABIDING - TAX PAYING  
CITIZEN HAVE LEFT?

I KNOW, NOT TO MAKE THIS LETTER TOO LONG,  
FOR I KNOW THAT IT WOULD NEVER BE READ.  
WITH ALL THAT YOU HAD TO DO, WITH PEOPLE  
LIKE ME WITH PROBLEMS, BUT ANY PERSONAL  
HELP THAT YOU CAN & WILL GIVE ME, YOU WILL  
NEVER KNOW HOW MUCH IT WILL BE APPRECIATED.  
THANKS AGAIN FOR EVERYTHING SO FAR.

YOU HAVE KEPT THE REFUSAL FOR MY  
PARDON THAT I GAVE TO YOU. WILL YOU  
PLEASE MAKE A COPY & SEND IT TO ME. I DO  
LIKE TO KEEP ALL OF THE LEGAL DOCUMENTS  
PERTAINING TO THIS CASE IN MY FILE.

I TRUST THAT I MAY HAVE ANOTHER CHANCE  
TO TALK TO YOU REAL SOON, SO THAT YOU  
CAN GET TO KNOW ME & MY FEELINGS - MAKE,  
JUST MAKE - GET A BETTER UNDERSTANDING  
OF HOW SO MANY PEOPLE IN THIS COUNTRY  
HAVE BEEN TREATED, & THEIR LIVES RUINED

REMAIN  
RESPECTFULLY  
N. J. L.

[From NRA Official Journal, June 1980]

#### SENATORS TOLD OF MORE BATF ABUSES

The Bureau of Alcohol, Tobacco and Firearms harassment and civil liberties abuse of gun owners across the country received still more Congressional exposure recently at a special oversight hearing of the Senate Appropriations Subcommittee on Treasury, Postal Service and General Government.

The April 17 subcommittee hearing was chaired by U.S. Sen. Dennis DeConcini of Arizona. A number of victims of BATF law enforcement excesses testified about the rigor they had withstood at the hands of the agency and in turn, the BATF officials gave assurances that such abuses were no longer occurring and promised that the Bureau was on the road to reform.

Hearings last year before this same subcommittee revealed the seriousness and extensiveness of BATF misconduct. At that time, Sen. DeConcini said that he was "shocked" at the Bureau's mistreatment of private citizens, and remarked that "the picture painted was one of an agency that had, for all intents and purposes, abandoned any attempt to respect the rights of citizens."

At those hearings, newly-appointed BATF Director G. R. Dickerson told the subcommittee that he would not tolerate abuses of civil liberties, and outlined various reforms that had been undertaken to correct the management of the agency.

Yet Sen. DeConcini in his opening remarks at this year's hearings noted that "disquieting reports" of Bureau mismanagement continued to filter to the Congress.

U.S. Sen. Pete Domenici of New Mexico introduced his constituents Mr. and Mrs. Paul Hayes to the subcommittee. The couple had, Sen. Domenici said, "been dragged through the wheels of justice by the BATF."

"Because of this ordeal," Sen. Domenici said, "Mr. Hayes health has broken, he has spent \$17,000 defending himself and is still not rid of BATF harassment."

"It took a jury just seven minutes to find them innocent. Yet BATF has refused to return their property and the Hayes still cannot conduct their business," Sen. Domenici said.

The Hayes were arrested by heavily armed BATF agents in an entrapment scheme. Although they were acquitted they have had their firearms license revoked by the BATF and still have not recovered their inventory from the Bureau.

"If this is the law in the United States," Hayes said at the hearing, "I'm damn sorry I ever fought for this country."

Mr. and Mrs. Hayes have filed a \$10-million lawsuit against the BATF.

Following the Hayes' testimony, Donald Vingino, a Tucson, Arizona firearms dealer, related how he, along with eight other licensed dealers in the area, was arrested in 1978 on other BATF entrapment tactics.

The BATF failed to get a single felony conviction against any of the dealers. Vingino refused BATF offers to plea bargain, took his case to court, and was acquitted.

He, too, had to face a BATF administrative hearing on the revocation of his license. To date the Bureau still has not reinstated his license in full but has only granted him permission, in a letter, to conduct business until July 1980. At that time the BATF will decide whether or not to restore his Federal firearms license.

Vingino told the subcommittee how at the time of his arrest the BATF had taken special pains to have the local media cover the event.

"There is virtually no way we can recover our business because of all the adverse publicity," Vingino said.

The other victim of BATF abuse who testified at the latest oversight hearing was Patrick Mulcahey, a softspoken gun collector from Columbia, South Carolina.

Mulcahey told the subcommittee that a BATF agent had pressed him into selling, over a three-month period, three firearms from his personal collection. After the sale of the third gun, Mulcahey was charged with being "illegally engaged in the business" of dealing in firearms.



Mr. DAVID T. HARDY,  
NRA/ILA,  
1600 Rhode Island Avenue,  
Washington, D.C.

GREENWOOD, S.C., June 8, 1979.

DEAR DAVID: I will call you by your first name if I may. It will make me feel more at home. In case there might be any correspondence, I am called by my nickname "Smitty".

Thank for the letter just received dated May 22, 1979. I am so glad that the BATF is soon to be put on the carpet in Congress—this is long overdue—They have ruined too many law-abiding citizens' lives!

I am glad to find that someone really has some feelings for the thousands of law-abiding citizens that have been treated so badly and really without just cause. (I will dwell on that statement a little later on.)

I have been more active as a member of NRA since I have been without any rights (felon, if you please). You can see (if my records have all been filed with you), that I have written to you in personal letters plus the one that was published in the Report From Washington 2/9/78, which I tried to write as an unselfish letter. I was thinking of all the young men in our country that are felons today and must go through their whole life defenseless and shamed by the Feds.

NO, I am not ashamed. I'm just an old man 61 years old that is mad with such a corrupt government such as we have today—beginning at the top and coming all the way down the ladder to our local government.

You have asked me to start a letter with my background, etc. You gave me some guidelines. To answer some of these it might seem that I am bragging. I would much rather you get some of this information from someone else, but I guess I must be the one in this case to "toot my own horn".

My age—61 (April 5, 1918). I am from a good Christian family, which we all have been very active in our Baptist church work (Southern Baptist Convention). I am a member of the First Baptist Church of Greenwood, South Carolina. I professed my faith in Jesus Christ at the age of 13 years. I lived a normal childhood and never was in any kind of trouble. Early in high school I had a desire for military service and went one year to C.M.T.O. Later at age 17 I joined the South Carolina National Guard (263rd Coastal Artillery). On January 13, 1941, were called to active service. As you know, December 7, 1941, Pearl Harbor was attacked. This meant that I was in for the duration of the war.

I am a Mason and Shriner and have been active, especially as a Master Mason since 1950. I am a member of Greenwood Lodge 91, Greenwood, South Carolina, and Hejaz Shrine Temple, Greenwood, South Carolina. I have been a member of the Moose Lodge No. 834, Greenwood, South Carolina, for 15 years. I have also been associated with the American Legion and am a lifetime member of D.A.V.

I was born in the City of Greenwood and except for military service I have been here all my life. (My father and mother being natives of this section.) My father came to Greenwood at age 17 from the farm only 20 miles away.

I have been married 34 years. I have two fine children that are Christians. They have fine singing voices and sing in the church choir and work in civic projects. I also have one grandchild which my wife and I love dearly—we see no difference between him and our daughters.

My children get their talent from me. As a young man I studied the violin and have played in several orchestras. I have also sung Gospels in several mens' choirs—I still participate in this.

I am a personal friend of our County Sheriff, Giles Daniel, as well as other officers within the City and County.

When I was honorably discharged from military service in 1945, I started working in the jewelry and watch making business. I spent more time in the South Carolina National Guard after that date with the rank of Sergeant.

I trust that I will not have to resurrect all the BATF paperwork that was involved in my arrest and conviction for I have sent to you one full set of these. They should be in your files. Please check on this for it would take me some time to compile all of it again. For your record the warrant for my arrest is dated November 11, 1975, No. 75-510 Violation of Title 18 U.S. Code, Section 922 (6) (3), 922 (M) and 2.

As to the manner of the arrest, it was very orderly. I did not resist for I could not believe what was happening to me. I could not believe I had done anything wrong. How foolish one could be to sell only one piece and hold yourself liable in such a way.

As being a person having never been in trouble with law enforcement, they only explained that I would not have any problems, I would only be out of the fire arms business. Not ever was anything said about the seriousness of a felonious crime, neither did my lawyer push me to have a jury trial. In fact, I was told that if I did ask for one, what the consequences would be—Just do it our way and everything will be alright. In my scared dilemma I did as they said and caused them no trouble.

As time went on I found out what a serious spot I was in. I have not been able to live it down. This has been a big burden on me and my family.

Financially, I am almost broke. I have been in the hospital twice as a result of this. I now have a Hiatus Hernia that I feel is caused from the worry and strain that BATF has caused. I have spent untold amounts of money on doctor and drug bills and am still not well. I cannot think as I once did, I have a very distrustful attitude. In the past I believed in people. I question anything and everybody now. And what I think of anybody in Government would take a full book to write—and to think people in office should be setting the example. They are selfish, looking out for themselves only, not for the people that put them there—they do not intend to represent us.

You ask the question, "What was taken?" The judge told me that I would not need to have a Saturday back yard sale, but he would give me ample time to get rid of them. I did try to sell them out, at cost prices or whatever, but with the miscellaneous stock that I had and the season, I did not have a chance. So as a last resort the pieces that were left were sold to one person for \$1.00. Otherwise they would have taken them—including my valuable collection, some dating back before 1898. I had several pieces that had been in my family many years.

My Grandfather was a fine craftsman as a Blacksmith and Gunsmith, he hand made some 3 pistols in his lifetime. I have uncles that are fine craftsmen so this leads to me. I have a heritage of Silversmith, Blacksmith, Gunsmith, Wood Craftsman, Auto Mechanic, etc. Now me—as a complete jewelry repair and watch and clockmaker, I specialize in antique watch, clock, and jewelry making and rebuilding, stone setting and appraising. I also enjoyed repairing fire arms. These Feds took all this part of it away from me. Yes, I had a prize collection.

You asked if I could describe the tension this harassment caused. I do not think I can really put all of it in writing but whatever it is is still going on inside me. I guess it always will unless we can put this Fed group under some kind of control with such gestapo tactics, they have no conscience. We are a number—not a name.

I am sure the publicity did not do me any good but I have so many people in this city that cannot believe it when I say that I am a felon, criminal, have no rights, cannot vote, etc., yet they know me for what I am. I am so glad that I built a good reputation in this city. I think sometimes, should I have to move to another state or cit and be among strangers, how would I fare? I feel sure that I would not be accepted.

I feel that I have been dealt a hard blow and without just cause. They certainly warped the truth around to make it sound like they wanted it to be heard to the grand jury to bring a trial—I along with 36 others at the same time. (You have a list of them all in my file in your office.)

You ask in your letter—Describe the after effects on me. I guess I have said some in this regard as I have been writing but as to actual expenses: My lawyer—\$1,200.00, Fine—\$500.00, transportation to Greenville and Columbia, South Carolina (several trips), loss of time from my store talking to my lawyer, and discussions with my personal friends including Congressmen, County Sheriff, City Police Chief, my Pastor and other members of my church, all of which is still embarrassing to me. I have nothing to hide so why should I keep my mouth shut? These Feds need to be talked about on the streets or wherever.

You asked about my attitude towards the government before and after this incident.

I must have had a very patriotic feeling for my country as mentioned earlier about my Service connection (12 years Guard and active duty) and now I can have no say-so about it—Do you not think this hurts? I used my right to vote, I still pay my taxes to do so but cannot. Oh yes, the government took my rights but they will accept my tax money.

I do not think I am anywhere near by myself when I say we are ripe to have a very serious insurrection in this country if there are not some drastic changes in the way this country is run. Where are our statesmen? The people at least

try to do the right thing and stand up for God and Country. Why can't we as a nation see what has happened to other nations, that through history, have tumbled because of such corruptness.

Why would any young man want to risk his life to fight for such a corrupt, narrow, unjust, greedy, two faced, underhanded—and we could go on using adjectives to describe our kind of leadership (the enclosed copy of the "Letters to the Editor" is a good example of bad spending alone).

While I am on this article, please note the Jenkins Case and the name Bruce Mirkin—another underhanded job done by the BATF. I wish that I had saved more of the newsprint in this trial—this Mirkin should be serving time also. This is not just my opinion, this is all over town the same way.

In reference to your letter, your first paragraph states so much that you (NRA/ILA) is preparing to do this summer. You people there surely must be burning some midnight oil. You did not state your priorities. I did notice that the petitions for pardon was at the bottom of the list. Do you not think that these thousands of good people should be on there "somewhere at the top of the list." Get our rights back so we can vote and carry weight.

As to Pardon—as I understand it, a pardon does not erase the Felon Records. The charges are too strong for such a slight variance of the law, if the "straw man sale" is at all legal. The law is wrong in the first place. The 1968 gun law had no provision for the harshness of a crime. For first offenders there surely could have been a license suspension for say three months and if someone continued to do the same violation then action could have been taken, but not in such an underhanded way. We must stop this government from invading our privacy.

You said in your letter that you hoped that I would write to Congressmen of my experiences directly to the Congressional Committees involved for publication in their records.

I do not think that time permits me to write another letter as lengthy as this. I think I would need another letter from you and outline just what to tell them. Also just who is the Committee and the address?

Would a copy of this letter be suitable to send to them? I am sure that there has been a lot said here that they would not be interested in. They probably would not take time to read it—sorry I have made it so long for you as well.

As per our telephone conversation of 6/8/79, I will be writing another letter for the Congressmen's benefit but will you please give names and addresses as well as a guideline so that I might not make such a long letter?

Also, would you please send me several copies of the Report From Washington dated February 9, 1978? This contains a print of my letter to you.

Thank you very much for your assistance.

Yours truly,

Enclosures.

WILLIAM L. SMITH.

#### RULES DO APPLY TO ALL

Congratulations on your editorial, "Rules Apply to All," regarding Senator Dennis' blatant abuse of his powerful position, especially his commuting by state plane to the tune of 11,000 tax dollars last year.

Moncks Corner is approximately 90 miles from Columbia. When Mr. Dennis travels from the State House to Columbia Airport, boards a plane, flies to Moncks Corner, debarks and drives to his home, the maximum time he can save over that required to go by auto is 30 minutes—hardly justification for such an expenditure.

As for the rules, however, it seems the same ones do apply to all—to all legislators, that is. "The State" reported that they "traditionally" receive mileage allowance whether they drive their own autos daily or not; consequently, Mr. Dennis' cohorts see no reason for him to return the \$1,300 he received for travel expenses while using the state plane.

Your key sentence was that he "voluntarily sought (and fought for!) the senate seat and the position he holds." It is indeed strange that now he finds he cannot spare the time from his law practice to carry out his state duties without use of an official plane.

We are entitled to a strict accounting for use of our taxes. Perhaps only a very loud public outcry will force our "public servants" to tell us exactly how our money is spent, especially on their own perquisites.

Mrs. L. A. SCHNEIDER.

#### JENKINS SHOULD BE RELEASED

We the undersigned would like to express our views concerning the "railroading" of Rev. LeRoy Jenkins into prison.

The people of Greenwood should hang their heads in shame for allowing our law officials to go all out to bring this man down as they did.

His religious beliefs and the fact that he had people sending him great amounts of money with which he was buying up property here in Greenwood did not sit too well with a lot of people; also his attack on our law officers got their dander up. We the undersigned believe that these forces went after Jenkins tooth and nail.

Anyone who listened to the tapes made by Bruce Mirkin should have been able to see how this man was constantly suggesting to Rev. Jenkins to allow him to do the job. Wonder what suggestions did he make when the tape recorder was not recording?

LeRoy Jenkins did not receive justice! Twelve years for him and only three months for the others? In our opinion, Mr. Mirkin should have received the 12 years.

Please, please let us remedy this situation and remove this shame from Greenwood by releasing Rev. Jenkins and have Mr. Mirkin and Solicitor Jones apologize to him.

BURRY MOSS.  
CHARLES HARRISON.

JANUARY 11, 1978.

NRA INSTITUTE FOR LEGISLATIVE ACTION,  
Department PJR, Box 2019,  
Washington, D.C.

DEAR SIR: Thank you for your issue of "Reports From Washington" paper, December 7, 1977. How well I remember that day in my life—I was already in service.

In reading this issue I am aware of the serious problem we face to "keep and bear arms" as a law abiding citizen. What can the good honest people that try to "do right because it is right" do if the Federal Government takes away our weapons and leaves us defenseless against the criminal, who will have their guns regardless.

I should be one to speak "I have no rights." I am a victim of just what your paper states, I have already been hung by the Feds in my small business. I have been accused, tried, and convicted of something that I did not do. I had to hire an expensive lawyer, then was told by him that the Judge said to "Plea Bargain" and this would make it light on me; nevertheless, this left me a felon (with no rights). You know the rest.

I have served my probation and now am ready soon for my pardon papers which will be another year, according to regulations. But it seems that by that time our President might not ever sign a release to any felons.

I am soon to be 60 years old, have always gone by the rules as a law abiding citizen, in fact, some of the City and County Officers of the community are my best friends and they know me well. A past Congressman and the County Sheriff were two of my character references. I am a Mason and Shriner in good standing since 1950. Up until this time in my life I had never been approached by any law officer for any reason. I try to live a good Christian life, am active in church work and have been most of my life.

They put me out of the fire arms business January, 1975, with two years probation and a fine. I did not knowingly nor willingly sell a fire arm to leave the state of South Carolina. But in their way of doing things they took 31 small dealers at one drag in such a manner. This is very much underhanded, unfair, and degrading.

I would tell any young man not to let any government take away his rights. Had I to do this over again I would have a jury trial to keep from being called a felon, now that I understand its meaning. I could not even vote for President when Carter was elected, but I listened to every campaign speech that they all made. By the way, Carter—by his—would have been my choice. After reading this issue he will surely lose a great deal of his votes by all gun lovers.

Believe me I am one in my own "rite." My grandfather was a fine gunsmith and blacksmith (He was also a Smith, J.C.) Several of his sons can do the same

and now I am no different. I profess to be a good mechanic as watchmaker, repairing clocks, jewelry, diamond setting and gunsmithing; having done extensive study in all fields with each. My store has a good reputation to this end.

I am truly grateful to NRA for forming the NRA Legal Defense Committee. You may pass a copy of this letter to them for study. I may get a little help from it, but mostly some young man may not be caught up into the same trap.

I know that this is a lengthy letter but I did get some of what I had on my mind out in the open. If it is at all possible, I would like to discuss this problem at length with Mr. Lloyd M. Mustin. Maybe, just maybe, this Committee would have some bearing on getting me a fair shake on receiving an early pardon.

Enclosed is a check for a one-year subscription to "Report From Washington" and in a separate letter I have renewed my NRA membership.

Best Regards,

WILLIAM L. SMITH.

AUGUST 12, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building, Room 363,  
Washington, D.C.

DEAR SENATOR BAYH: I am writing you in regard to Dave Hardy letter that I received and will be happy to give you any assistant that I can with this matter.

I have been a citizen of the United States all my life and have served my country in the Army in 1951 from March 1951 to July 1951, when which my father was engaged in farming in Waseca, Minn. I have been very cooperative with the police department of Mankato as we live near a school and see different things going on around the school which we have advised the police about. I know the Chief of Police Mr. Alexander personally. I have been active with the Boy Scouts for over 10 years and my son (Marvin) became an Eagle January of 1979. I helped with gun safety with several boys in Scouts and also taking them target shooting in evenings and Sunday afternoons. I am interested and involved with my family very much and this is one thing that we would do as a family is go hunting together and my son and I was looking so forward to going on a big hunt when he became of age. I still go hunting with him as a guide and bow and arrow hunting but it is not the same and I can not teach him the things he should still know since I can not touch a gun. I am interested and involved in church work, for sure the youth and was Sunday School superintendent for 7 years and the last three years have helped with taking the youth group up in BWCA waters for 5 to 7 days. This would be the senior high group and would be a group of 20 people. I have been a law abiding citizen in every way I can have never had any criminal charges against me. I do not drink or smoke and I am very much against drugs or any form of alcohol.

I have been married almost 28 years and have one daughter (Beverly) and she is married and is very active with her husband in the Navigators ministry in Maryland. I have one son (Marvin) and he is very active in school sports and church and is Tri-Captain of football.

Back on October 24, 1977 we were putting on our private coin, rare jewelry and gun display in the St. Croix Mall in Stillwater, Minn. A man came up to me (which later turned out to be a Federal Agent by the name of Mr. Jim McGann) and asked to buy a handgun. I told him I could not sell one until he filled the white form out with the police dept. and bring it back to me in 7 days as Minn. law required a 7-day waiting period on handguns.

If the police filled it out then I could sell it to him. He could not fill it out because he was from northern Minnesota and he needed the gun real bad for his wife's protection. I told him I could not sell it to him and he kept after me for 3 days and finally I gave in and sold him my wife's unregistered gun. I made the transaction and this made me at fault. Then they kept after me on other guns and I was such a nice guy and if I couldn't help his friend and all this stuff. Then finally on March 1, 1978 Mr. McGann set is up to look at several more guns that he wanted to maybe resell and after about a half hour after he was here he had four other federal agents come with a search warrant and was here from 9:30 a.m. to 9 p.m. and just tore my house apart. They not only took my guns but my families guns as well which was mostly a collection that we had put together as a family. I was accused of not logging my guns in a book that should have been sent to me.

Then on the next Saturday the federal agent (Mr. McGann) and a federal agent from the DEA by the name of Mr. Jim Lewis came to our house and wanted to talk to us about the drug traffic in Mankato. They thought that we were involved in bootlegging guns and machine guns over to Lebanon and that large amount of guns were being flown over to Lebanon off of our lakes and that they were being put in false bottom cars and trucks and taken over to Lebanon. They said that if we would help on this that the sentence would be lighter on me. My wife and I did checking on this and we found out that there was three vehicles that went over to Lebanon out of Mankato with guns in. We also found out that a Lebanon's Charles Ferris received 10 chandeliers from Lebanon in his restaurant and the FBI got wind of it and they were there when the boxes arrived and they opened them and they were filled with drugs in the light sockets and plugs. There was nothing ever done one it, but instead a Lebanon's cook, by the name of Mrs. Jerry Erkel from Mankato cooked a meal at Cubs restaurant for five federal men, which is owned by Charles Ferris. We also found out that three vehicles had gone over to Lebanon with guns in and the cars were all bought by a Mr. Roy Ramy who is deceased at this time. He passed away in Nov. of 1979. His son name David Ramy keeps coming up in the search of things all the time. I was to work with Mr. Jim McGann on this and he would tell Mr. Jim Lewis anything that I would come up with. I told him several different things with the instruction of the attorney and the Federal agents got so red face about it that he demanded that I stop doing anymore investigation on this, that I was wasting my time. If anybody is against drugs and alcohol they got the right person. The drug problem is so bad in Mankato that a few years ago they had a special man in town working with it that they had to move him out because to protect his life. Our mayor is doing nothing about this and in fact during the last election the man that was running against him left town a week after the election and can't be found and stopped campaign about a month before the election. I talked to one person that lived beside a dealer in drugs and she called the state and they said that Mankato is next to New York for drugs and still everybody is scared to do something about it.

When I applied for my license I had two different licenses for regular guns and one for antique guns. I explained to the man that came to check me out on the license that I did not want the license so much for selling but to be able to buy guns and supplies at wholesale prices so I could buy guns at wholesale prices that I felt could be collector items. He said that this would be no problem. I did not sell very many guns in the time that I had my license and he also advised me that somebody would be checking on me some time to see that I had questions or etc. During the four years that I had my license not once did anybody ever ask to check my records or call on me. I later found out that this summer when this was taking place several dealers where check that summer of 1977 in Mankato, because they were trying to run this down where the guns were coming from that were going over to Lebanon. One of the cars that did go over was taking by John Ramy's nephew to Roy Ramy, and this station wagon was just full of guns and he almost got over to Lebanon, but when they got in the harbor they discovered something and he jumped overboard and swam to shore and they never caught him.

On Aug. 16, 1978 I plead guilty to two counts under the advisement of my attorney. But all this time I was being told that if I could give them any information that the charges would be dropped and it was in the paper several different times that the charges possibly would be dropped. I was guilty to what I did but not without being talked into it. Mr. Jim McGann even offered me National Guard Reserve items free like clothes and bullet casing if I would sell him guns. This is against the law and he is not losing his job or property because he broke the law. Then on Sept. 27, 1978 I was sentenced to two years of probation and \$1,000 fine. The judge dropped one of the charges. I would not have not felt this would have been a bad lesson but when they still think that they can keep my property, which at the time of March 1, 1978 the government valued them over 50,000.00. This is a pretty stiff punishment for no warning or nothing.

They claimed that all the guns were for sale because I had price tags on all of them, but I didn't have price tags on all them as many of them were in the attic right from the factory and were stored in the original boxes as they were larger guns that we as the family were going to use for large hunts. You can ask several different people that wanted to buy guns from me and I wouldn't sell them because they were my collection. The main reason that I had price tags on them so if people would bring a gun in and I was not home that my wife would have



some guide line to go by to buy a gun if she thought I would use it in my collection. Also in August 1977 my brother died from a heart attack, and he was only 54 years old. My father died at the age of 63 years old with a heart attack. I have several uncles died with heart attack so heart condition is pretty popular in my family and this is not doing anything for me. This would also give my wife and son some guide line to know what the value would be on them if something would happen to me. They always say have your house in order. With this many guns nobody can remember the value.

The U.S. District Attorney first offered me back 14 of my guns and since then have had several talks with him and have hired another attorney and they now offer us 81 guns. If I was such a bad man why didn't they put me in prison and throw away the key. But many people wrote letters to the probation officer what type of person I was in the community. These guns were not all my own guns as the family members had there own collection and they took them also. My son had just finished paying for a \$1,000.00 gun when this happened from shoveling snow and mowing lawns and etc. and it had to be in my name yet as he was not old enough to have the gun in his name.

With all these articles in the paper which I am enclosing a copy of the first article that was put on the front page of the Mankato Paper and has hurt my coin business also because some people have mix feelings about you. This has been a burden on my family in cost of this as I have had to pay out nearly \$10,000.00 for expenses and this is nothing for mental and grieve that it has affected my family and myself. The value of the time of the search and we all know that guns have gone up in value like every thing else. I had guns that were only one of a kind in my collection.

I feel that I was entrapped into this that if I did break down and sell my first guns why couldn't they warn me then and give me a fine, but keep on making me feel like a good guy and I was brought up to help a person in need, but I have changed my mind very much on this and I feel this is not the way to be.

My outlook on the government and nation is not too good. My son will be 18 in November and he had over \$2500.00 worth of guns taken from him that he had paid for himself and they will not give them back to him as he had no part in this and my wife her guns and my daughter and son-in-law guns and still he is very close to the draft age and he is suppose to fight for his country and as a father and mother see his son do this when the government will do this to you. It is very hard for me to pay my taxes when my money is used to try to cause you expenses and still with your own money to fight a department like the BATF. I thought that they were to help you and not fight you.

I feel that the crime I did was very small I did not harm anybody or cheat anybody out of any thing, but do a man a favor and keep at you for 6 month period and do things illegal themselves but the government doesn't do any thing to him.

I have refigured my guns and it comes to around \$30,000.00, that I would get back after spending a \$1,000.00 fine plus 2 yrs probation which I have completed in one month, plus not being able to go hunting with my family as I would like to. The rest of the guns that they will be keeping is worth \$40,000.00 to \$45,000.00 worth of guns. I am a small business man and worked very hard to put this collection together for my family security in the future and have a government just come in and take your life earnings in a few hours and destroy a man's name and family and the five federal agents thought that they were smart about it. I don't know if what other crime I could have done and had my personal property taken away from me like this and I have worked in other branches of government and not one has not identified himself when talking to him.

Also the other day I talked to Mr. Lewis from the DEA and he said that no information has ever been turned over to him in the last two years and have some recent information and was offered drugs by a business man in town the last few months but they will not do anything about.

I feel that all charges should be dropped from me and I have seen the guns and they are getting rusty and I feel that I should be reimbursed from the government for this and my fine paid back to me, my license given back any rights that have been taken away for hunting and voting etc.

I am happy to help you in any way and will be glad to fly out to Washington at my own expense to get this matter taking care.

Sincerely,

BERNIE KOTTKE.

# AGENTS SEIZE 208 GUNS AT KOTTKE'S COIN SERVICE

Agents of the U.S. Bureau of Alcohol, Tobacco and Firearms (ATF) seized 208 guns at Kottke's Coin Service, 914 N. Broad St., March 1, according to Delbert Knopp, resident agent in charge of the St. Paul ATF office.

Kottke's Coin Service is owned by Bernie Kottke, who also resides at 914 N. Broad St. Knopp said today that no arrest has been made nor have charges been filed. The case has been turned over to the U.S. Attorney's office.

Federal agents have been making a concentrated effort to eliminate gun "bootleggers" in Minnesota. Bootleggers are a major source of weapons used in crimes.

Joseph Walbran of the U.S. Attorney's office, said no charges have been filed yet, so he isn't free to discuss the case. "It's safe to say we didn't go down there for nothing," Walbran said however.

The case is in administrative suspension and Walbran said it may come before the grand jury at its meeting in early April. "It just depends on when the report is typed up so I can review it and whether I think there's sufficient cause to seek charges," Walbran added.

Kottke said today there has been some false publicity in Minneapolis newspaper reports Monday and today, which included the number of guns seized. Newspaper accounts have reported 300 guns seized.

"The whole thing is blown way out of proportion," Kottke said. "There'll be quite a story, later, but until I get it straightened out with my lawyer I don't care to comment." Kottke is being represented by David Roston of Minneapolis.

One official said Kottke apparently flew from place to place across the country obtaining merchandise at gun shows.

The federal effort against bootleggers began about a year ago. The federal Bureau of Alcohol, Tobacco and Firearms was aroused when random checks showed that few convicted felons were illegally buying guns from licensed dealers.

Gun bootleggers constitute "a whole subculture," says William Nickell, special agent in charge of the bureau's Upper Midwest division.

The bootleggers of weapons exists mainly because convicted felons and some other people can't legally buy guns. Burglars who steal guns from homes and need a fence often are the dealers' supply source.

No area in the state is "dry" of such activity, says David Krug, who heads the bureau's Minneapolis office. "They're in the suburbs, they're outstate, they're in Thief River Falls or Minneapolis . . . You just don't know."

"This is hunters' country," Krug said of Minnesota. "There are a lot of guns around here."

Bootleggers get some guns from people on the street who simply need money, Krug said.

GALAX, VA., August 13, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building, Room 363,  
Washington, D.C.

Thank you very much for giving me this chance to tell you about my problem. I respect the law very much, and have been a law abiding citizen since 1949. At that time I was 18 years old and was wild and unconcerned. I was drinking heavy, took my Uncle's car over the state line and wrecked it. I got two reckless driving tickets. I learned my lesson at that time, but it seems like the black mark stayed with me.

On October 4, 1977 two A.T.F. officers entered my store and presented me with a search warrant. They took all the A.T.F. records and mailed me a copy of them in about a week. (all mixed up)

I didn't hear anything else until December. One of my wife's friends told her at work that she had seen my picture on channel seven tv. She called the station and it was true. They were alarmed that it was on the news before we even knew about it. About two days later I received in the mail the seven accounts that they had me charged with.

To make this letter shorter I will give you the information as it happened in my store.

Account # one. On August 18, 1977 I sold two pistols to John A. Tuttle of Roanoke, Va. They charged me with selling to James T. Crosswell. They came in late in the afternoon, looked around and then looked at guns. Crosswell wanted

two hand guns, one for him and one for his wife. I asked if he had Virginia license or if he lived in Virginia and he said no. I told him I could not sell out of state. We then talked about gun laws and Tuttle decided to buy them and gave me a Virginia license. I also told him if he bought two guns I would have to fill out a special form to be sent to the A.T.F. They talked between themselves while I went to the back of the store to get the forms. Tuttle filled out two yellow forms 4473, one for each gun. Signed his name and address. I picked the money up from the counter. They both seemed very nice, I even gave them the shells. I sold both guns for \$60. Profit was \$16.00.

I sold two guns to Michael Brown, Blue Ridge, Virginia. I was charged with selling them to Richard Rawling. On August 25, 1977. He came in, looked around and didn't talk much. He picked out a 22 rifle single shot, he said he wanted to buy it for his boy, also bought a 38 pistol and shells. He filled out 2 yellow 4473 forms. I made \$5.00 profit on him.

On August 31st I sold two handguns to R. W. Epperson and was charged with selling them to James Watterson. They came in late in the afternoon and said they were truck drivers and was getting truck loaded with furniture at one of the factory's. They looked at the handguns and talked about gun laws. R. W. Epperson asked about registering a gun. I told him he was responsible for the gun when he signed for it. I told him when he sold a gun that he should get a bill of sales with the date sold. He filled out 2 yellow forms. I also told him I would have to fill out a special form to notify the A.T.F. for selling two handguns in one week. He said he didn't care.

They also charged me with failing to enter correct bookkeeping.

The trial was in Abingdon, Virginia in April, they assigned me a lawyer, his name is Rick Boucher. He said we had a good case of entrapment and he thought we would win. A few days before the trial someone dug up the event which happened in 1949 and said it was still against me. This is what the U.S. Attorney told him, "We have discuss matter with U.S. Attorney and he will forget what happened in 49 if he will plead guilty on one of the accounts." Mr. Boucher advised me to do so.

I had to pay the lawyer fee of \$225.00 and they gave me three years of probation, which will be up in April 1981. The judge said he was lenient because of a good record and citizen since 1949.

I have lawyer friends and police friends and they all know that I did not do wrong but I did not get a chance to prove it. I still have my little store and also a Security job. I do feel bitter that such things happen. I hope with God's help that I can have my rights back again. I would like to have my gun license, but its not so important as voting and not having black marks against you. If you can help me I would appreciate it very much.

Sincerely,

EUGENE I. BRACKINS.

P.S. I was not even in the gun business to make a lot of money. I only liked guns. From 1974 thru Dec. 31, 1977, I sold 634 guns which gave me a total of 208 weeks, this gave me an average of 3 guns a week.

This also included trading.

Senator BIRCH BAYH,  
Russell Senate Office Building, Room 363,  
Washington, D.C.

FERN PARK, FLA., August 14, 1980.

DEAR SENATOR BAYH: I've been advised by the National Rifle Association of the upcoming hearings regarding BATF abuses. As my husband was a victim of BATF illegalities through "straw man tactics", NRA requested our case be brought to your attention. Being convicted of an erroneous crime has caused deep depression and financial hardships affecting the entire family. Proud of his heritage, an American through and through, unjustly charged, convicted and penalized, caused a devastating affect. There were times I thought my husband would kill himself just to be heard. He called Washington, went to the newspapers, contacted broadcasters and spoke to other victims, but it seemed all roads dead ended for there was such power behind the BATF no one felt equipped to fight. That you are now undertaking to do so gives us renewed hope. There can be no greater misdeed than that of United States Government Officials imposing illegal tactics

upon honest law abiding citizens to prove a pointless point and it seems to me that the BATF used my husband to satisfy some kind of statistics not caring that an entire family was to be victimized, impoverished and despondent. God be with you during the investigation of these abuses. I believe that the crimes committed by the BATF must be made known and their victims exonerated without further costs to them.

From the age of twelve until he was nineteen my husband Charles J. Scannapieco worked part time as an Ice Man in Long Island City, Queens, New York. He was then hired by New York City Sanitation Department where he was employed for twenty years. He earned the respect of his superiors and was on occasion a chauffeur for Mayor Wagner and Relief Chauffeur for Commissioner Paul R. Scravane. His record with the department was impeccable. In 1969, at age thirty-nine, he was the youngest man to retire in the City of New York. He then relocated to upstate New York to the land of his dreams, for since his youth his outlet from city pressures was to pursue hunting and fishing ventures. By 1971 he opened a small town sporting goods store. Misfortune eventually dissipated his reserves as he was robbed twice. In 1977 we decided to move to Florida where life seemed to offer more peace. In October 1977, his sporting goods background enabled him to obtain a job at Central Florida Arms and Pawn in Orlando. He was hired to work three days a week on a noncommission basis.

Unbeknownst to us, the worst of misfortunes were yet to come, for it was just about that time that the BATF started their "straw man tactics" in the Central Florida area. My husband was arrested in September of 1978, charged with selling a gun on December 7, 1977 to a Robert Chamberland, a non resident of the state of Florida. This transaction took place nine months prior to the arrest, but records indicated that the gun was actually sold to a Michael Craw who showed proper Florida identification at the time of purchase. It turned out that Craw was a BATF agent from Tampa. Chamberland had tried to purchase a gun from my husband, but was turned away as he couldn't prove he was a Florida resident. Sometime thereafter Craw came in and made his purchase with proper credentials. It appears that Chamberland, a bus driver, has been involved in these "straw man tactics" across the country, playing the entrapment game on unsuspecting gun dealers, happily ruining their lives for his own gain. It seems to me he should be arrested for toying with the law. Others were involved in these "straw man tactics" in the Central Florida area and my husband was charged with two other so called illegal sales, which were made thus only by trickery and twisting of facts. One was made on December 7, 1977, which again involved BATF Agent Craw and Special Agent Michael Zezima from New York. The other was made on January 9, 1978, involving Special Agent Zezima and Pamela Dassdorf, a resident of Florida. They were playing games while my husband was trying to earn a living. He was working for a salary and received no commissions so there was no motive for him to sell anything that would risk his good citizen standing. Isn't there supposed to be a motive when deciding if there is a crime and who is guilty thereof. My husband never made a gun sale to anyone who didn't prove that they were Florida residents. Why should he? Why would he? It would be stupid for anyone to risk one's job, one's license, jail, fines . . . just to sell a cheap gun! How can anyone believe that an honest law abiding citizen, father of five impressionable children, would bother to do such a thing. We were shocked that the case went to court. It appears that all the dealers in town were tricked by this group, but only my husband and his boss went to jury trial. The others made some sort of deals with the BATF. My husband was too indignant to consider making a deal.

The trial lasted for four gruelling days as we listened to such fabrications we didn't understand the procedure, the motives of the BATF or our lawyer's nonchalance! On day four my husband was found guilty on two counts out of six. He was pronounced guilty of counts one and three, yet one and two went together, three and four, etc. This didn't make sense to us, but no one cared. He was sentenced to three years probation and given a \$2000 fine. The lawyer charged him \$5000 for the trial and another \$5000 for the appeal. We are still paying on these costs and have lost a fortune in income as my husband could no longer work at Central Florida Pawn and Arms or at any other business that dealt with guns. We sold everything we had of value to survive. My husband became despondent for he'd lost his business due to thievery, his opportunity to work because of trickery and found himself a convicted felon for something he didn't do for reasons he couldn't understand. He lost his zest for life, his health deteriorated and he wanted to die. If it wasn't for the special happiness and love extended to him

by our precocious two year old daughter, I do believe he would have faded into death's oblivion. We are now expecting another child and new hope fills our hearts as we feel the hearings on BATF abuses may bring new horizons to new birth.

My husband's appeal was denied and we don't understand how or why. As a matter of fact, we've come to believe our lawyer was not competent to take on such a case and that the BATF took full advantage of this. We were told this was a test case and we never had a chance as they used my poorly represented husband as an example. The fiasco began with the two pre-trial hearings. Our lawyer only represented us at one. The other was denied us. He represented both my husband and my husband's employer under separate trials. We were advised that this arrangement was to our disadvantage, but as we'd already invested all our money there was nothing we could do. After the trial was over, before sentencing, one of the jurors visited my husband at Central Florida Pawn and Arms to advise that he knew he was innocent but that one juror held out guilty so the others agreed to charge my husband with a couple of counts for they were afraid the judge would be mad at them if they couldn't come to some agreement. The juror requested to be nameless, but advised my husband to contact his lawyer as he would know what to do. The lawyer started contacting the jurors who in turn contacted the judge to complain. The judge threatened to charge the lawyer with jury harassment if he continued his irritating inquisition. It seemed if there was a chance for our lawyer to screw up he took full advantage of it. We don't know if he was just plain stupid or on the receiving end of other sources. We have a copy of the trial transcript and newspaper clippings regarding the lawyer's harassment of the jurors. The trial transcript is filled with discrepancies and perjuries by the government's witnesses.

My husband is willing to fly to Washington to present his case and records personally for he has never had a chance to tell it the way it was. He wants to cooperate in every way to bring the crimes committed by the BATF to the public's attention. We've tried to summarize pertinent matters in this letter but it is difficult to cover everything. We thank you for your concern and our prayers are with you. Please contact us if we can be of assistance.

Sincerely yours,

Mrs. SUSAN SCANNAPIECO.

Aug 14, 1980  
1601 East Perry  
Encl 46227

To Senator Birch Bayh  
From Donald R. Shay  
Sub. Civil Rights

Dear Sir

I wish to inform you of the abuse that I and my family suffer from A.T.F before and after it was arrested after which I was force to break the law in fear for my family life, the agent force me to convert a M1 Carbine to a M2 machinegun, after I refused to do the job he also claimed to be a gun runner for the Italian mob. he claim to be the nephew of a man who shot + killed the governor of Kentucky he claim to hated black people and talk about killing all of them at the time of the arrest my car was search he for the warrant was served the arrest was also in my brother name and not mine my right was never gave or read to me Director Brim told me (well he dont need them



My wife had a heart attack at the time of the arrest and Bin would not let me or my children give her help. I begged A.T.F. to call for help. 10 min later they called an ambulance, during this time my Daughter Melissa try to get to her mother agent Rap Back handed her across her face and she had a tooth knock out she was 12 years old while another agent held a shotgun in my face threw a picture window. Bin claimed that he own my home and everything in it. At that time A.T.F. invited strangers off the street to view my home. Agent Howard admit freely to my lawyer that I was innocent But he wanted to put me in prison Agent Howard got up during a recess in court and went threw my lawyer brief case and look at the defence evidence. A.T.F. had a informer drive by the agent home so I could be assented and put Back in jail.

Senator I could go on for hour telling you what happened. I hope you will look at this letter and other that has been abused.

Bill freely to contact me at 784-8946

Thank you

Donald R. Shay

JENKINS IMPORTS CORP.,  
Santa Barbara, Calif., August 16, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building, Room 363,  
Washington, D.C.

DEAR SENATOR BAYH: I have been requested to write you, outlining what I believe to be illegal abuse and harassment by the Bureau of Alcohol, Tobacco and Firearms (BATF). I herewith outline my experience as briefly as I can:

In 1974, as a representative of ELCO-ARMS of Soignies, Belgium, and with a properly issued and current Federal Firearms License for the IMPORT of sporting arms, I was approached by a wealthy sportsman to have me have built for him a very de luxe and very handsome over and under double rifle. It took over a year for this double rifle to be hand made, and when it was about three months from completion, the makers notified me so that I could apply for the necessary Form 6, and pay the balance due upon completion, and the shipping and insurance to the United States.

I applied for the Form 6 to properly import the gun, and in a matter of a few weeks, I received a telephone call from BATF in Washington, D.C. that they were not going to allow the gun to be imported, as it was a rifle, and rifles from EASTERN zone were not permitted to be imported. I tried to explain over the telephone, and wrote a number of letters to no avail. Finally, it was agreed that if I had my name engraved upon the barrel and the action that it was built for my own personal use, and re-applied for a Form 6 and so stated that the gun was for my own use, then BATF would issue me a Form 6 for importing the gun. No amount of explaining that Belgium was in WESTERN zone, and not EASTERN zone did any good, whatever.

I applied for a new Form 6 as agreed, and at the same time, telephoned the makers in Belgium that the engraving to indicate that it was my personal gun, had to be done. They did engrave both the barrel, and heavily engraved the action with my initials, as requested. They did make an additional charge for this work, as the gun was by then, finished, and it required refinishing the barrel, and recutting the very fine engraving of scroll work already done on the action.

The gun was shipped, and duly received. When I presented it to the client who had ordered the gun, he flatly refused to accept the gun, because of the additional engraving done at the demand of the BATF. The customer forfeited his deposit, which was only 50% of the ultimate cost of the gun, as the deposit did not include Customs, shipping, Excise, etc.

I am not a large dealer. I am disabled, and unable to work at any kind of a regular job requiring regular hours. I know and am well able to operate in the firearms field, but with something of this nature, it is customary that the client puts a deposit down of a sufficient amount to cover the basic costs up to delivery of the sporting arm into Customs. Since this gun was of exceptional beauty, with outstanding quality of wood, first quality game scene hand steel engraving, and otherwise of the highest expected and requested workmanship, its cost was quite high. To be able to finance this cost, I had made arrangements with the bank to borrow enough money to pay the Customs and other immediate expenses, until the client paid me the balance due, which was expected to be less than 30 days.

When the client refused the gun, then I had to "buy it", myself, making arrangements to do so with the bank. The total cost of the gun from Belgium in 1975 was \$4,560.00, of which I had to borrow to make up.

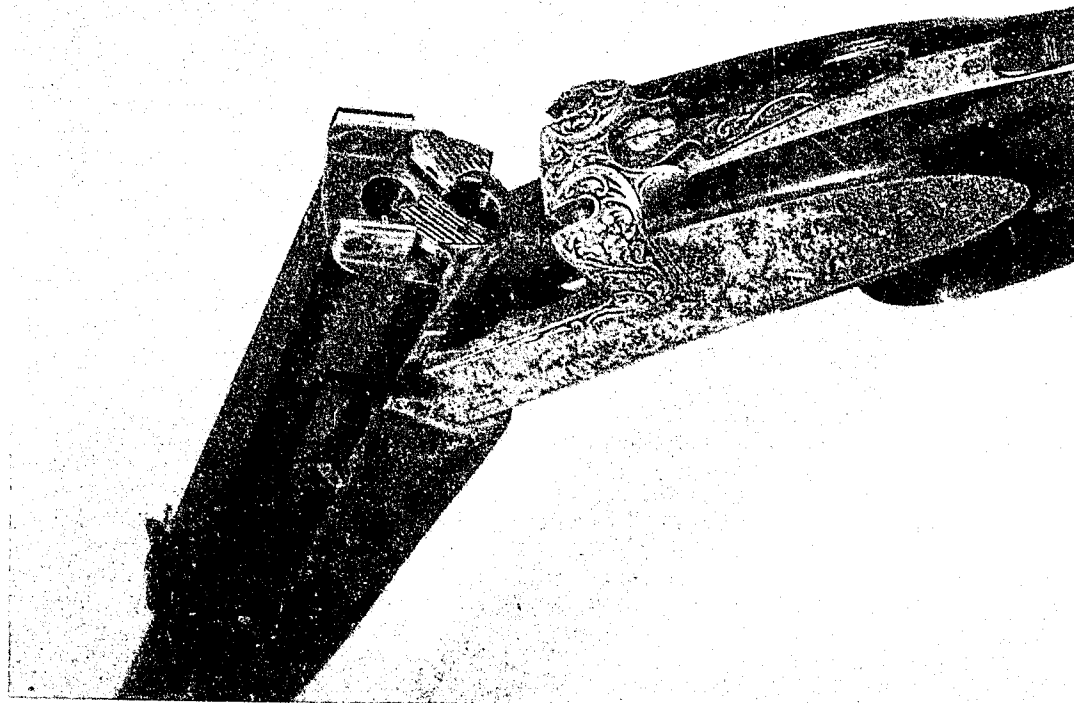
Because of the specialized nature of the gun, both by request of the client and the demands at the last minute of BATF, the gun is virtually unsaleable. Since I am physically unable to fire the gun, and as art work, it means little to me, then I have invested and paid for an item which is of little value. The sporting arm, at 1980 dollars, would cost approximately \$10,000 to duplicate. I have advertised the gun at odd times at less than I paid for it. Because of its unusual nature, I have received no offers, whatever.

A description, along with pictures of this very fine rifle, appears in the September-October 1978 issue of Number 59 RIFLE magazine. A description of who I am, and what I have been able to accomplish in past years appears in the July-August 1977 issue of Number 52 RIFLE magazine and illustrates some of my work as done in past years, No. 59, page 34, and No. 52, page 30.

I trust that the information will assist you in your appraisal of BATF.

Yours truly,

J. J. JENKINS.



4540 Bunker  
Chesapeake, Va

8-18-80

19 JUL 82 PM 4:26

SENATOR Birch Bayh  
RUSSELL SENATE OFFICE Bldg  
Room 363  
WASHINGTON, DC 20510

RE: BATF HEARINGS

Dear Sir:

IT IS MY UNDERSTANDING THAT YOU WILL BE SPORHEADING THE INVESTIGATION INTO THE BATF RAIDS OF 1976. IT HAS LONG BEEN OVERDUE AND I'M GLAD THAT A MAN OF YOUR INTEGRITY HAS ACCEPTED THIS AWESOME RESPONSIBILITY.

I WILL GIVE YOU A BRIEF DESCRIPTION OF MY BACKGROUND AND THEN RELATE MY UNPLEASANT EXPERIENCE WITH THE BATF.

I GRADUATED FROM VIRGINIA POLYTECHNIC INSTITUTE (VPI) IN JUNE OF 1966 WITH A B.S. IN CHEMISTRY.

I THEN TOOK A POSITION WITH UNION CARBIDE CORP IN WEST VIRGINIA. FROM THERE I WENT TO HERCULES INC, TO WORK AT RADFORD ARMY AMMUNITION PLANT, RADFORD, VA DURING THE VIETNAM PERIOD, AFTER WHICH I ATTENDED OLD DOMINION UNIVERSITY (ODU) TO WORK ON MY MBA. IT WAS DURING THIS TIME THAT I BECAME INTERESTED IN REAL ESTATE - GOT MY LICENSE (AGENTS), PROCEEDED TO OBTAIN MY BROKERS AND EVENTUALLY OPEN TWO CENTURY 21 OFFICES.

ON NOV. 18, 1976 DURING THE EARLY MORNING HOURS (APPROX 7 TO 8AM), SEVEN OR EIGHT BATF OFFICERS LED BY SPECIAL AGENT ~~TO~~ SAMUEL R. GEMMILL OF THE FALLS CHURCH OFFICE ENTERED MY HOME.

AT THEIR REQUEST, I SHOWED THEM MY GUN COLLECTION AND IN THEIR WORDS "VERY NICE". SEVERAL AGENTS THEN SEARCHED THROUGH DRAWERS AND CLOSETS, ETC. I WOULD LIKE TO INTERJECT HERE THAT IT WAS VERY DISTURBING TO BE AWAKENED

- 2 -

at such an hour and to have so many people searching your house, it was very upsetting to my family and especially my wife who thought I was going to be <sup>arrested</sup> ~~be arrested~~ and taken off to jail at any minute.

My hobbies during and after college were hunting, shooting and gun collecting. As a hobbyist and sportsman I would go to several gun shows now and then to add to and/or upgrade my collection. If you are a collector, you know that you can find many hard-to-find guns there that you can't find at your local gun shops.

I had on numerous occasions discussed with local offices of the ATF what was proper and legal. On all occasions I was told that I could buy and sell. Many times they would have agents at the shows handing out literature to the people. The local ATF supervisor at the time (Bill McFarland) often told me the same. See enclosed ATF handout.

After inspection of my collection and satisfying themselves that there were no additional guns hidden away, Mr. Gemmill apologized for the intrusion and said that there must be some kind of mixup. That he could see no law that I had violated. He, frankly, did not know why he was there - He was just following orders. He made a phone call and then told me that he would have to take some of the guns. We negotiated, and at about 60 guns, they settled for seven. Mr. Gemmill stated that he was going to recommend that the guns be returned and that no charges be brought. STATED THAT I should hear from

- 3 -

them in a couple of weeks.

Shortly afterwards, <sup>the</sup> tension & anxiety became very great when the publicity broke on TV, radio and the newspapers. My name and address were given with indications that I was dealing in "BLACK MARKET" firearms for distribution in the large metropolitan cities. This was complete nonsense - however, it was just the beginning.

My income for 1976 was over \$20,000. The following year it decreased to something over \$9000. Word came back to me that a number of my clients and acquaintances thought I was in jail for black marketing in guns. It definitely affected my income and that of my business.

About a month had passed and no word from the ATF. I finally called Mr. Gemmill. He apologized and said that his recommendation was overruled by his superior, Mr. Michael FLAX, who wanted to confiscate the guns and prefer charges. He suggested that I contact an attorney, and then proceeded to advise me what to do to protect the guns from destruction.

My attorney contacted the ATF, who referred him to the U.S. Attorney in Roanoke, Va. We were informed that they were going to indict me and we had better meet with them. My crime was selling a gun at the Roanoke Gun show - a gun which the ATF has classified as a curio, and taking a deposit on a gun at the Richmond VA Gun show. Therefore, in Feb. 1977, my attorney and I flew to Roanoke to meet with Morgan Scott, Assistant U.S. Attorney.

**CONTINUED**

**6 OF 8**

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During our meeting it was strongly suggested that it could be very expensive, time consuming, and emotionally demanding to go to court and fight the charges, whether they were just or not, and that it would be in my best interest to negotiate.

Reluctantly, I relented and agreed to go on a pretrial diversion program and concede 3 of the guns to the Government. The pre-trial diversion program was to begin immediately. The first demands were that I could have no contact with guns, i.e., no hunting, no going to gun shows, no buying any gun for my collection, no going, even, into the gun stores, no carrying of my personal pistol either on my body or in my car (for which I had a concealed weapons permit) or in my house, etc., etc. I ~~complied~~ complied with this request. Secondly, I was to report to a Federal Probation Officer in Norfolk, VA. for a full investigation after which if the report was favorable I would continue on the program and at the end of the agreed period, the remainder of my guns would be returned and it would be all over; and, I would again be able to exercise all of my rights and freedoms. May I insert here that the reasons I agreed to such intolerable & unjust demands were because (1) financially I was not able to fight the U.S. Gov't, (2) My family had been through enough, (3) My Real Estate brokerage did not need the publicity or the pressure.

I was to sign the agreement with the U.S. Attorney's Office after the report from the

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Probation Officer. Although the Probation Officer informed me that he had sent in a very favorable report and continued to <sup>wait and</sup> received no word from the U.S. Attorney's Office,

Finally with this case drawing through weekly 2 years, my attorney began to exert pressure upon the U.S. Attorney's Office to either sign the Pre-trial diversion agreement or bring charges and get the case resolved. We had all been through enough.

The U.S. Attorney's Office responded that they were not going to prosecute for lack of evidence. Well "GLORY BE" was it all over AT LAST. You would think so but not yet. It was now Jan. 5, 1978 and the matter would not be resolved until sometime in June.

I'm now going to condense the next 5 months events into just a few lines and you can review several of the enclosures included with this letter.

In a nutshell, Although there were no charges, they did not want to return my guns but ~~and~~ finally did so with me agreeing to allow them to keep one. Also they wanted me to sign an agreement to hold them harmless for their actions. I refused, and finally the ~~guns~~ <sup>guns</sup> (except 1) were released with the comment that they would take the chance that I would not sue them.

To them my case was finally over, but it will never be over until the truth is disclosed and measures taken to assure the public that a department of the government can not again perpetrate

-6-

such a hoax and injustices on the American People.

I can assure you that I was innocent of any wrong doing and acted with the consent and approval of the ATF.

I hope that you will look very deeply into the actions of the BATF and not be swayed by any political pressure that may be applied. The exoneration of their acts will have a far reaching effect that is almost impossible to imagine.

I would be glad to meet with you or any of your representatives and go into detail. I have enclosed only a few pieces of correspondence but my files will be open to you if you desire.

Sincerely  
Bert Dodd,



Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. Appendix §§ 1201-1203) prohibits the receipt, possession or transportation of firearms in commerce or affecting commerce by felons, persons discharged under dishonorable conditions, mental incompetents, illegal aliens and former citizens who renounced their citizenship.

These Federal law provisions are in addition to the State and local laws regulating firearms and ammunition. The Gun Control Act of 1968 and Title VII of the Omnibus Crime Control and Safe Streets Act are enforced by the Bureau of Alcohol, Tobacco and Firearms, U. S. Department of the Treasury. Further information may be obtained from your nearest ATF office.

For further information about the Gun Control Act, contact the nearest ATF office listed in the telephone directory or a regional office shown below.

**AREA SERVED**

**Regional Director**  
Bureau of Alcohol, Tobacco and Firearms  
2 Penn Center Plaza, Room 300  
Philadelphia, Pennsylvania 19102  
Phone: 215-597-2209

**Regional Director**  
Bureau of Alcohol, Tobacco and Firearms  
P. O. Box 15, Church St. Station  
New York, New York 10008  
Phone: 212-264-7448

**Regional Director**  
Bureau of Alcohol, Tobacco and Firearms  
P. O. Box 2009  
Atlanta, Georgia 30301  
Phone: 404-526-6146

**Regional Director**  
Bureau of Alcohol, Tobacco and Firearms  
Room 6519, Federal Building  
650 Main Street  
Cincinnati, Ohio 45202  
Phone: 513-664-3331

**Regional Director**  
Bureau of Alcohol, Tobacco and Firearms  
35 East Wacker Drive  
Chicago, Illinois 60601  
Phone: 312-353-3778

**Regional Director**  
Bureau of Alcohol, Tobacco and Firearms  
1114 Commerce Street  
Dallas, Texas 75202  
Phone: 214-749-2853

**Regional Director**  
Bureau of Alcohol, Tobacco and Firearms  
Room 868, 870 Market Street  
San Francisco, California 94102  
Phone: 415-356-6004

**Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia**

**Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico and Virgin Islands**

**Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee**

**Indiana, Kentucky, Ohio Michigan and West Virginia**

**Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin**

**Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, Texas and Wyoming**

**Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah and Washington**



Department  
of the  
Treasury  
Bureau of  
Alcohol,  
Tobacco  
and  
Firearms

# under the GUN CONTROL ACT



You can ... have firearms for sporting purposes  
... carry your own guns across State lines for sporting activities

... buy or sell firearms to another resident of your own State

... buy hand guns if you are over 21 and long guns if you are over 18

... Import sporting type weapons through a licensed dealer

Certain ... certain persons such as felons and addicts cannot have guns  
things are prohibited

... buying firearms out of State (with exceptions)

... the importation of surplus military and non-sport weapons (with exceptions)

... dealers selling to non-residents (with exceptions)

... possessing unregistered machine guns and certain other controlled weapons

The Bureau of Alcohol, Tobacco and Firearms presents the following information on the Gun Control Act of 1968 (GCA) under various Titles as passed by the 90th Congress of the United States of America

ATF P 5320.2 (1

Property of NRA Institute for Legislative Action  
MAR 14 1977

559

Friday, Nov. 19, 1976

# Agents Seize 1,350 Guns

Friday, Nov. 19, 1976

## Believed Illegally Bought

By STEVE GOLDBERG  
Virginia-Pilot Staff Writer

Federal agents Thursday seized about 50 guns after they traced weapons sold in shows to locations in eight states, including Virginia.

About 200 agents participated in raids concentrated along the Eastern Seaboard.

City-two firearms were confiscated in a speake during raids conducted by the team of Alcohol, Tobacco, and Firearms. Five guns were seized from Richard Hrus of Dick's Buck and Bass, a store in 400 block of North Battlefield Boulevard and seven were seized from Burt of the 4500 block of Bruce Road. It also said that they seized records of William R. Reed Jr. of The Gunner in the 4100 block of Shawnee Road, that no guns were found there.

Officials claimed that gun shows are a major source of illegal weapons that usually find their way into the hands of criminals in the Washington area.

"We intend to stop the flow of guns into metropolitan areas where they are used in crimes as homicides, armed robbery, and aggravated assaults," ATF Director D. Davis said.

Thursday's raids centered on suspected sources of weapons for the Washington area, but ATF officials said they hope to end the crackdown on gun shows.

The raids followed nine months of undercover work during which ATF agents

bought guns at shows in a number of states. None of the shows was held in Tidewater.

It is legal to exhibit guns at shows and to place orders for their purchase, but ATF agents said that gun dealers must mail orders to customers after having them fill out forms required by federal regulations.

Davis claimed in a press release that agents "freely purchased" about 80 handguns from licensed and unlicensed gun dealers at shows without being required to fill out the forms.

### Today's Chuckle

A holiday is a day off followed by an off day.

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At a Washington news conference, Davis said that more than 2,000 guns would be seized by the time all 38 search warrants issued were executed, and he claimed the raids "certainly will have an impact on gun crimes in this area." The Associated Press reported.

A total of 17 search warrants was executed in a number of localities in Virginia, including Richmond, Roanoke, Newport News, and Arlington. About 450 weapons were seized in the state.

Raids also took place in North Carolina, Delaware, Kentucky, Maryland, Ohio, Pennsylvania, and South Carolina.

No charges were placed Thursday. Officials said they planned to turn the results of their investigations over to federal prosecutors.

A person convicted of violating federal gun laws can be punished by up to five years in prison.

ATF agents said that they have the power to seize only weapons used in violation of federal gun laws or intended to be used in violation of those laws.

The laws require that only licensed gun dealers can be in the business of buying and selling guns; that gun dealers cannot sell guns away from their dealerships; and that purchasers must fill out a form identifying themselves and swearing they have not been convicted of certain crimes or have never been committed to a mental institution.



Treasury Agent William T. McFarland examines the captured firearms.

MATTOX, SONDEJ, YOUNG & WHITLOW,  
Portsmouth, Va. February 7, 1977.

DAN MILLER, Esquire,  
Attorney at Law, National Rifle Association, Institute for Legislative Action,  
1600 Rhode Island Avenue, N.W., Washington, D.C.

DEAR MR. MILLER: I represent Mr. Bert Dodd, the defendant in the enclosed documents. Mr. Dodd is a real estate agent in Portsmouth with a good reputation. He is an avid gun collector and has been for many years. He has no criminal record except for traffic violations. He does not have an FFL. His interest in guns is primarily as a collector, selling and trading the guns to upgrade his collection. The A.T. & F. agents came to his home and took seven guns on or about November 19, 1976. He has a number of other guns they did not take. They said he would hear from them within the week. He has heard nothing. Now, in attempting on his own to get his guns back, he has been told that A.T. & F. is going to "forfeit" these guns worth approximately \$2,000.00.

Please discuss this with your co-counsel and see whether or not the NRA would be interested in helping Mr. Dodd. I will also be willing to assist Mr. Dodd.

Very sincerely yours,

RICHARD S. YOUNG.

DEPARTMENT OF JUSTICE,  
UNITED STATES ATTORNEY,  
WESTERN DISTRICT OF VIRGINIA,  
Roanoke, Va., September 2, 1977.

Re: *United States v. Albert W. Dodd, Jr.*

RICHARD S. YOUNG, Esq.,  
P. O. Box 968, Portsmouth, Virginia

DEAR MR. YOUNG: Investigation conducted by the Probation Department has determined that your client, Albert W. Dodd, Jr., is a suitable candidate for deferred prosecution or pre-trial diversion.

The object of pre-trial diversion is to divert some persons charged with federal offenses from the traditional criminal justice process prior to trial and to place them in a structured rehabilitation program. The participant would be supervised by a Probation Officer for a set period of time after which, if completed successfully, the charges are dismissed.

In accordance with the above, please appear with your client in the United States Attorney's Office, Room 320, Poff Federal Building and U.S. Courthouse, 210 Franklin Road, S.W., Roanoke, Virginia, on Wednesday September 7th, 1977, at 11:00 A.M.

I look forward to seeing you and your client at that time.

Very truly yours,

MORGAN E. SCOTT, Jr.,  
Assistant U.S. Attorney.

Agreement with Morgan Scott, 2/18/77. Go into pre-trial diversion program, Bert Dodd, Morgan Scott and Richard S. Young sign—probation officer look into background of Bert Dodd, one-year probation unless sooner absolved. No arrest, no criminal activity during the forthcoming year. This means down to anything like drunk driving. No sale or purchase of firearms. Bert Dodd will forfeit Browning 25, Colt 22 auto, and M2. Papers? Will return other guns to wife, we agree, Bert Dodd will talk to Flax but this is not a condition pre. to sign pre-trial diversion program,

DEPARTMENT OF JUSTICE,  
UNITED STATES ATTORNEY,  
WESTERN DISTRICT OF VIRGINIA,  
Roanoke, Va., November 29, 1977.

Re: *United States v. Albert W. Dodd, Jr.*

Mr. RICHARD S. YOUNG,  
*Mattox, Sondej, Young & Whitlow,*  
420 Crawford Street, Portsmouth, Va.

DEAR MR. YOUNG: We have scheduled a pre-trial diversion conference for Mr. Dodd in Room 320, Poff Federal Building, 210 Franklin Road, SW, Roanoke, Va., on December 13, at 2 p.m.

As you requested, we are enclosing a copy of the Agreement for Pre-trial Diversion. Please have your client available as noted above.

Very truly yours,

MORGAN E. SCOTT, Jr.,  
Assistant United States Attorney.

Enclosure.

DECEMBER 16, 1977.

Re: *United States v. Albert W. Dodd, Jr.*

MORGAN E. SCOTT, Jr., Esquire,  
Assistant United States Attorney,  
Western District of Virginia, Roanoke, Va.

DEAR MR. SCOTT: We received a proposed pre-trial disposition that was not in accordance with the notes that I took when we were in your office in Roanoke last February.

Your secretary was kind enough to send me this document so that we could inspect it. The following items do not agree with my statement:

1. Nowhere in the agreement appears the guns will be returned to Mr. Dodd's wife as was agreed with the exception of three guns that were to be retained.
2. Mr. Dodd was to be on probation only for one year and it seems the document would start the probation now which does not seem to be correct.

I called your office approximately December 7, 1977, and notified your secretary that we could not be down on the 13th as the agreement did not seem correct and she was to give you a message to call me. She did tell me you were in a rather long trial.

In the hope of helping this matter along, I am sending you a copy of my notes that I dictated when I returned from Roanoke which were taken directly from my handwriting.

If this is the agreement as you remember it, could your secretary type up this agreement and have the probation start when we agreed to it, which was in your office, and would end in February 1978.

Could we then meet at a suitable place and time, sign the agreement, at which time the guns could be turned over to Mrs. Dodd or to me, and I will turn them over to Mrs. Dodd?

DEPARTMENT OF JUSTICE,  
UNITED STATES ATTORNEY,  
WESTERN DISTRICT OF VIRGINIA,  
Roanoke, Va., January 5, 1978.

Re: *Albert W. Dodd, Jr.*

RICHARD S. YOUNG, Esq.,  
*Mattox, Sondej, Young & Whitlow, 420 Merchants & Farmers Bank Bldg., 430*  
*Crawford Street, Portsmouth, Va.*

DEAR MR. YOUNG: I am declining prosecution on Mr. Dodd's case in this district at this time. Pretrial diversion authorization by me has been withdrawn.

You and Mr. Dodd should take up the matter of return of the firearms with the United States Attorney's Office in the Eastern District of Virginia where the firearms were seized. You may indicate to them that I was willing to recommend the return of half of the firearms to Mr. Dodd. I have forwarded a copy of this letter to the Norfolk Office of the Eastern District of Virginia.

Sincerely yours,

MORGAN E. SCOTT, Jr.,  
Assistant United States Attorney.

FEBRUARY 8, 1978.

Re MA:A:RR—Unique Identifier 3212-11-76-4519H; Seizure of six firearms; seizure of Winchester carbine rifle, SN 1321819.

Mr. LEONARD N. AQUILINO,  
*Regional Office Services Manager, Department of the Treasury, Bureau of Alcohol,*  
*Tobacco and Firearms, 2 Penn Center Plaza, Philadelphia, Pa.*

DEAR MR. AQUILINO: I am enclosing two copies of notices that were sent to Mr. Albert Dodd by you dated March 14, 1977.

We are requesting that you accept this letter as Mr. Dodd's Petition for return of all of the firearms except the Winchester Carbine Rifle. He will post such bond as may be required. If there are claim forms that we must fill out, please forward those to me and they will be immediately executed.

I believe an explanation of some of the background of this case will be necessary for you. Mr. Dodd was charged in connection with displaying and selling these firearms at a Gun Show and as a result of that these firearms were seized at his home. Mr. Dodd and I went to Roanoke, Virginia, and met with the United States Attorney, Mr. Morgan Scott, Jr., on February 18, 1976. At that time, and as a result of our conferences on that day, an agreement was reached with Mr. Scott and Mr. Dodd that the probation officer would look into the background of Albert Dodd and if his record was good then he would go into the pre-trial diversion program and all but three guns, a Browning 25, a Colt .22 and a M2 Rifle, would be returned to his wife.

Mr. Dodd commenced on the probation program.

When we received your Notice in March, we called Mr. Scott in Roanoke, and notified him of the action being taken by your Bureau. He stated that he would ask that the matter be stopped until his agreement with us could be concluded. Apparently, he did so, as we watched the newspaper carefully and publications were not made on March 28, April 4 or April 11, 1977, as your Notice set forth.

Then we received a letter dated January 5, 1978, from Mr. Scott that he was declining all prosecution on Mr. Dodd's case. Please see a copy of that letter. In that letter, Mr. Scott requested that we take up the matter of the return of the firearms with the United States Attorney and Mr. Scott says that he would recommend one-half of the firearms. We cannot agree to this, as he has declined prosecution and even when he was going to prosecute, he was going to return all but three, and we request all be returned except the M2 Rifle.

I talked to one of the United States Attorneys in Norfolk and they suggested that I write to you. Your help in making this claim for these firearms would be greatly appreciated and we will comply with your request should any further documents be needed. If there are any questions concerning this, please do not hesitate to call me long-distance collect.

Very sincerely yours,

RICHARD S. YOUNG.

MATTOX, SONDEJ, YOUNG & WHITLOW,  
Portsmouth, Va., March 27, 1978.

Dr. A. SCOTT KRUG,  
*Regional Executive, National Wildlife Federation, 120 Hubler Road, State*  
*College, Pa.*

DEAR DR. KRUG: Last year I discussed with you the plight of a client of mine who without a Federal Firearms License sold a hand gun at a Gun Show in Richmond and again in Roanoke, to a BAT&F agent undercover. Subsequent to those sales, a search warrant was obtained through the Federal authorities locally.

Early one morning in late 1976, seven or eight agents came to the man's house and made a thorough search and seized eight pistols and one carbine leaving my client with his other collection of pistols and rifles.

Subsequent to that my client received a notice from the United States Attorney's office in Roanoke that he was being indicted under the Federal Firearms Act of 1968 for the sale of the firearms to an out-of-state resident.

My client and I went to Roanoke and had a conference with the U.S. Attorney. We proved to his satisfaction that my client was a reputable business man, etc., did this only as a hobby and had no previous criminal record.

As a result of that conference it was informally decided that my client would go under what is called a pre-trial diversion program. This is an informal type of probation and if the client behaves himself for the stipulated period the charges are dismissed.

Pursuant to that informal agreement my client went to see the probation officer and nothing further was heard from the U.S. Attorney in Roanoke until I received a letter probably in December of 1977 or January of 1978, that the U.S. Attorney had elected to drop all charges and not prosecute at all.

Running through all of this was an agreement, on which I took notes and the client remembers, that all but three of the firearms were to be returned to him in exchange for his entering into the pre-trial diversion program. When the U.S. Attorney wrote me recently and elected to drop charges he said that he would only recommend that half of the guns be returned.

The BAT&F in mid-summer of 1977 sent my client a notice that they would proceed with the legal confiscatory procedures available to them and gave notice that they would publish these proceedings in a local newspaper. We requested the U.S. Attorney to tell them not to do it because of our agreement. Apparently he did so as the notices were never published in a newspaper.

Recently, I wrote to the BAT&F demanding the return of the guns since the charges were to be dropped. I received a letter from the attorney for the BAT&F stating that we had to file a Petition alleging the facts, etc. The interesting point was that it was in the bureaucratic decision of the BAT&F to agree or disallow our Petition. In the event of an unfavorable decision the attorney pointed out that there was no appeal to the Federal Court.

I don't like those odds.

I have determined to file suit in the United States District Court in Norfolk for the return of the firearms, and I certainly hope we will be successful.

This entire proceeding has caused my client a great deal of worry and concern and adverse publicity as when the guns were seized there was a blow up in the newspaper here. Also, he had had to pay my airfare to Roanoke and for research, etc.

I can not recall in my practice of law, a proceeding by any government body that smacks more of nazism and intimidating tactics.

My point is, should we win this case my client would like to publish the facts in every form available to him to let the people know what is going on and your advice and thoughts along this line would be greatly appreciated.

With kindest regards,

RICHARD S. YOUNG.

MATTOX, SONDEJ, YOUNG & WHITLOW,  
Portsmouth, Va., March 27, 1978.

Re: CC:MA-12,129, ERJ, Seizure of Firearms, Case No. 3213-11-76-4519H (Albert W. Dodd).

THEODORE G. THOMAIDES, Esquire,  
Regional Counsel, Department of the Treasury, Office of Chief Counsel, 2  
Penn Center Plaza, Philadelphia, Pa.

DEAR MR. THOMAIDES: We are going to file a Petition or file suit in the local district court for return of the firearms. My client has been exceedingly tied up in business affairs and we have been unable to get together on a mutually convenient time.

At the meantime, it would be greatly appreciated if you would give me the name of the Director of the BAT&F and his address so that we may serve him if we proceed in the district court.

Very sincerely yours,

RICHARD S. YOUNG.

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
OFFICE OF CHIEF COUNSEL,  
Philadelphia, Pa., April 10, 1978.

MATTOX, SONDEJ, YOUNG & WHITLOW, Esqs.,  
420 Merchants & Farmers Bank Building,  
430 Crawford Street, Portsmouth, Va.

Attention: Richard S. Young, Esq.

GENTLEMEN: In re: Seizure of Firearms, Case Number 3213-11-76-4519H, (Albert W. Dodd):

This will acknowledge receipt of your letter dated April 7, 1978, in which you asked to be advised of any publication of the notice of seizure of the subject firearms other than March 28, 1977, April 4, 1977 and April 11, 1977.

This is to inform you that notice of the seizure will be published in the Virginian Pilot, Norfolk, Virginia on April 10, 1978, April 17, 1978 and April 24, 1978. The final claim date will be May 10, 1978.

Telephone inquiry concerning this matter should be directed to Mr. Edwin R. Jonas, 597-2051, Area Code 215.

Sincerely yours,

THEODORE G. THOMAIDES,  
Regional Counsel.

MATTOX, SONDEJ, YOUNG & WHITLOW,  
Portsmouth, Va., May 9, 1978.

Re: Seizure of Firearms, Case Number 3213-11-76-4519H, Albert W. Dodd, Jr., Refer to: CC:MA-12,129 ERJ.

EDWIN R. JONAS, Esquire,  
Philadelphia, Pa.

DEAR MR. JONAS: This is to acknowledge your call to me on May 8, 1978, and our conversation pursuant to the call on the 9th of May, at which time you requested me to withdraw Mr. Dodd's Petition and you would recommend that all of the guns except item number 7 would be returned. I declined and we reached a mutual compromise agreement.

It is my understanding that you will recommend the return forthwith to Mr. Dodd all of the firearms and material seized from him except number 7. Mr. Dodd does not concede that item number 7 was illegal, but he understands that there is a stamp on the carbine that indicates that it was an automatic weapon. He states emphatically that it was not designed to fire automatic, but in the spirit of compromise and in the interest of getting his guns back as quickly as possible he will forfeit item number 7.

It was further my understanding, that there will be a delay of another six weeks before Mr. Dodd's guns can be returned to him and that this delay is beyond your control. I did ask you to expedite the matter for Mr. Dodd, if possible.

I further understood you would hold the Petition and not process it further until you are able to get the results of your recommendation.

The foregoing was my understanding of our conversation and if I am incorrect, please let me know.

I further request by this letter that if you are not able to accomplish the return of the guns to Mr. Dodd within six weeks from the date of this letter that you transfer the Petition to the United States District Court as requested for adjudication.

Very sincerely yours,

RICHARD S. YOUNG.

JUNE 7, 1978.

Re: Seizure of Firearms, Case Number 3213-11-76-4519H, Albert W. Dodd, Jr., Refer to: CC:MA-12,129 ERJ.

EDWIN R. JONAS, Esquire  
Philadelphia, Pa.

DEAR MR. JONAS: Pursuant to our telephone conversation of June 7, 1978, it is my understanding that you will call the local office and direct them to release Mr. Dodd's guns to him upon him signing a proper receipt without release.

It is also my understanding that you mailed a \$250.00 check back to him or me.

Mr. Dodd can be reached through this office at the following phone number 804-393-0087, or at his office 804-488-2501, it would be appreciated if you would have the local agents contact him as to when he can pick up his firearms.

Your cooperation in this matter is appreciated.

Very truly yours,

RICHARD S. YOUNG.

DEPARTMENT OF THE TREASURY,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
Philadelphia, Pa., June 7, 1978.

In re: Seizure of Firearms, Case Number 3213-11-76-4519H, (Albert W. Dodd).

MATTOX, SONDEJ, YOUNG & WHITLOW, Esqs.,  
Portsmouth, Va.

(Attention: Richard S. Young, Esq.)

GENTLEMEN: In accordance with your telephone call of May 26, 1978, we are returning Albert W. Dodd's check in the amount of \$250 made out to the Treasurer of the United States and drawn on the Citizens Trust Bank, Portsmouth/Norfolk, Virginia 23704.

The six firearms which we agreed to return to Mr. Dodd will be returned to him as soon as he signs a release.

Telephone inquiry concerning this matter should be directed to Mr. Edwin R. Jonas, 597-2051, Area Code 215.

Sincerely yours,

THEODORE G. THOMAIDES,  
Regional Counsel.

Enclosures.

OFFICE OF THE ATTORNEY GENERAL, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

RELEASE AND RECEIPT OF PROPERTY

TO: Special Agent in Charge Bureau of Alcohol, Tobacco & Firearms 701 West Broad Street Falls Church, Virginia	UNIQUE IDENTIFIER 3213-11-76-4519H	DATE 5/12/78
<p>1. Browning, semi-auto pistol and leather case, .25 cal., six-shot, SN 453167</p> <p>2. S &amp; W revolver and leather case, .38 cal., six shot, 2" bbl., SN 676757</p> <p>3. S &amp; W revolver, model 36, .38 cal., 2" bbl., SN J315281</p> <p>4. Browning, semi-auto pistol, .25 cal., 6 shot, SN 394192</p> <p>5. Colt, semi-auto pistol, .45 cal., U. S. Army M1911A1, SN 1202501</p> <p>6. Colt, semi-auto pistol and holster, model Huntsman, .22 cal., long rifle, SN 192793</p>		
(Use reverse if necessary)		
You are hereby authorized to release the above-described property to: (Name and address) Albert W. Dodd, Jr. 4540 Bruce Road Chesapeake, Virginia		
Storage costs for this property from <u>N/A</u> to <u>N/A</u> will be paid by <u>N/A</u> . The Bureau of Alcohol, Tobacco and Firearms, The recipient of the property will be responsible for all storage charges incurred by the property after <u>N/A</u> 19 <u>78</u> . Please furnish this office with the original <u>order</u> <u>form</u> upon execution of same, and furnish one copy to the property recipient.		
SIGNATURE <i>Joseph M. O'Brien</i> Joseph M. O'Brien	TITLE Reg. Administrative Officer	
RELEASE		
I hereby certify that on <u>6-19-78</u> 19 <u>78</u> , I released this property as shown below.		
SIGNATURE <i>Albert W. Dodd, Jr.</i>	TITLE 1. J. J.	FIRM REPRESENTED (if any) Bureau of Alcohol, Tobacco and Firearms
RECEIPT		
I hereby acknowledge receipt of this property on <u>6-19-78</u> 19 <u>78</u> , from, (Name of releasing firm or government agency): the Bureau of Alcohol, Tobacco and Firearms, and I agree to hold the United States of America and the Bureau of Alcohol, Tobacco and Firearms harmless in connection with any claim or dispute which may arise as a result of this action. A.W.D.		
SIGNATURE <i>Albert W. Dodd, Jr.</i>	TITLE	PERSON, FIRM, OR GOVERNMENTAL AGENCY REPRESENTED Albert W. Dodd, Jr.

ATF Form 202 (5-77) REPLACES ATF Form 202 WHICH MAY BE USED



DENVER, COLO., August 18, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SENATOR BAYH: I am pleased that you are investigating the Bureau of Alcohol, Tobacco, and Firearms. On March 15, 1979 and again on April 16, 1978, I was arrested by B.A.T.F. agents and charged with "Engaging in the Business of Dealing in Firearms without having a Federal License" because I went to Gun Shows to trade, buy, or sell guns.

Their belief seems to be that this makes me some sort of criminal, although I don't recall ever being at a gun show without seeing several uniformed police officers present, none of whom seemed to find any wrongdoing but, perhaps only B.A.T.F. is qualified to detect the menace of the American firearms enthusiast.

I have been interested in firearms, also books, swords, ships, airplanes, ideas, and other dangerous things since I was a very small boy who read a lot of history, science fiction, and adventure stories.

My first Gun Control Act arrest cost me \$2500 in attorney's fees (case dismissed Dec. 1970). I was never indicted, merely charged, but my wife freaked out at seeing me handcuffed and locked and retained an expensive attorney. The second, April 16, 1978 resulted in a pretrial diversion and dismissal after one year, (no conviction).

B.A.T.F. is still refusing to return over \$2000 worth of guns to me. They value them at \$900. One of them has a list price of over \$600. I have consulted two attorneys about suing for the return of my property. They both thought I had a good case, but that I would need to spend a lot of money which I don't have.

The B.A.T.F. had under cover agents try to get me to sell them guns illegally over a span of about eight or nine years, (1969-1978), both in Colorado and when I lived in Texas. On one occasion at a Houston Gun Show, a man asked me the price on a Colt pistol. I told him. He said, "I'll take it." I asked for a Texas drivers license and he said he was from another state, but he sure wanted that Colt. I refused to sell it to him. I left my table and walked across the room later and saw him manning the B.A.T.F. display.

By 1977 and 1978 I was getting more interested in swords and knives which meant that to buy them I would have to sell some guns which I did mostly, it would appear to under cover B.A.T.F. agents, five of them in six or seven months.

I noticed some men with a movie camera up on the balcony at the Colorado Gun Collectors Show. A friend asked them about it and was told they were from a television station. Right! Station B.A.T.F.! Their agents wouldn't lie. I would ask anyone who wanted to buy a gun if I would be breaking any law in selling it to them. Each time the under cover man would tell me that I was not breaking the law by selling him the gun.

When I left at the end of the show, I was arrested and my vehicle searched without a warrant. They asked my permission to search. I emphatically refused to give it and they searched anyway. They seized several guns which were in a piece of luggage in the back of my van. I later found out that this was illegal. The U.S. Attorney seemed to think so too. He agreed not to introduce the seized guns as evidence in any trial.

I submitted the "Petition for remission or mitigation of forfeiture" and also the "Request for reconsideration". When my petition was denied, they just said that I was breaking the law and they were keeping my guns.

I had to earn the money to buy those guns. The B.A.T.F. just stole them as far as I can see.

I know several other people this was done to by B.A.T.F. I hope that your committee can put an end to such practices, but I am somewhat dubious.

Sincerely,

ROYCE KERBOW, Jr.

PERRYSBURG, OHIO,  
August 18, 1980.

Senator BIRCH BAYH  
Russell Senate Building,  
Washington, D.C.

DEAR SIR, last week I was contacted by the NRA (National Rifle Association), and informed that you were having some hearings in reference to raids made by the Bureau of Alcohol, Tobacco, and Firearms. (BATF)

Here is my case as I remember it:

I applied for a Federal Firearms License in 1973. I had always enjoyed hunting, and firearms collecting as hobbies. At that time, I was told there would be an agent who would come to my home and explain how the License was to be used. The day the agent was due to arrive, I received a call by phone to tell me that my license was in the mail, and the agent would be unable to keep the appointment. The caller informed me that there was not much to know about the regulations anyway and that I could probably figure them out for myself.

After receiving my Federal Firearms License, I decided to go into business on a full time basis. I never heard from BATF until October, 1977 when an inspector came to check my books (records required to be kept by Licensee by the Federal Government). He said that the only fault that he could find with my record keeping, was the fact that I had not listed the guns that were in for repair. At this time, I asked him if I should have a separate list of my own personal firearms as well, and offered to take him into my home (where my personal collection was kept), and he stated that he was only interested in the firearms, and firearms and ammunition records in the shop. He said he was not concerned about my personal collection because they were not in the business premises. (My home is separate from the workshops, which was converted from a detached 2-car garage).

Two or three weeks after the inspector's visit, I began receiving phone calls from one Joe Szymanski asking to buy some firearms. I told him to come out to the shop and talk to me and see the selection of firearms available. The calls continued and finally Mr. Szymanski made himself known in person at the shop. He asked me if he could purchase firearms, without completing the proper federal forms. When I asked him the reason for this he stated that he could probably resell them at a profit. I resisted his offers for a while, but since business was slow (non-existent for a while) and my wife had no full time job at the time, and we had to eat, I decided after much begging on his part (sometimes he would spend 3-4 hours in the shop) I consented to sell him a firearm without completing the federal form. He bought a total of 5 firearms in all. He kept calling and coming in and asking for more firearms, stolen firearms as well. (I later was charged for selling a firearm to him that was stolen, or allegedly stolen, from another gun shop). The person who brought this allegedly stolen gun into the shop as a trade-in later committed suicide, and I believe that he might have been working with BATF in their entrapment scheme. I finally got rid of Mr. Szymanski by telling him that I would call him if I had notions about selling him any more firearms. I never called him. I did not hear from Mr. Szymanski again until one night in March, 1978 when he called and described a particular type of gun that he wanted. I told him that I did have one of the type in stock, and he said he would be out to buy it.

Two days later, I was doing business as usual, when three cars came flying into the driveway. Eight or ten men came running out of those cars, pinning on badges as they ran, with hands on their sidearms, heading toward the shop. They came in the door, handed me a piece of paper and told me I was under arrest. I asked the special agent (Kelby Marlett) was this a search warrant, and what was I being charged with. He replied "It says on the warrant". (The warrant did not describe any particular type of contraband that was to be searched for). At this time, they led me outside, removed my coat and frisked me. There were some customers in the shop when they entered. They were asked for identification, and asked to leave before I was served any paper. At this time they confiscated every firearm that was displayed in the shop that was for sale (which had all been entered in record) and all firearms in for repair (which had been entered in a separate record book). These firearms were not placed carefully in boxes (which were available), but literally thrown, on top of each other into one large cardboard box. During the raid, agents were running all over the shop, waving firearms in the air, and saying things like "Look at me, I'm dirty Harry". I was told to sit quietly in a chair and not say anything. In the meantime, my wife, who was very concerned at seeing all of the activity in the yard, and seeing men walking in and out with large amounts of firearms, suspected that possibly I might be in danger, and called the Police Department where she was employed on a part time basis, and asked someone to come over to make sure everything was OK (she was afraid to come into the shop. because she thought maybe there was a wholesale theft in progress by armed men). Upon the arrival of one of the officers, she was informed by him that I was under arrest, and that these were agents of BATF. He then called the Chief of Police, who also came to the shop.

After the destruction was completed in the shop, they informed my wife that they had permission to search the house. She resisted the search at first by saying that there were no firearms for sale in our home, but they insisted they had the right to search and fearing bodily harm, she permitted them to open the door and enter, but did not give them permission to search. They searched every nook and cranny in the house, even though they were told my personal firearms were kept only in one spare bedroom, and no where else. My wife had a few personal firearms (which had never been fired and were part of her collection) in the bedroom. She informed them that this was her personal collection, but they confiscated all of them. They searched closets, drawers, my child's room, and left no corner untouched. My wife stated later that she felt as though she had been raped, although no physical contact had been made. I was rendered helpless to protect my family, and totally in a state of mental anguish during the entire incident, which took place in little more than an hour or two. The local police were very helpful in their presence, assuring me that they would see to it that things were done in a proper manner, but they too were powerless in preventing the agents from throwing all of my personal firearms into the trunks of cars, in such a manner as to damage them beyond repair.

After a receipt was left with my wife, for the firearms confiscated, I was put into a car, to: "make everything official" to be booked at the federal court facility in Toledo. The ride to Toledo was unbelievable. Wearing in and out of traffic at speeds of 80-85 MPH; I guess they felt they had arrested a "Desperado", who might escape at any moment. I do admit that I had a couple of traffic tickets in my life. Maybe that was what left the opinion that I was indeed a "John Dillinger"-type, and to be guarded with such heavy security.

I was arraigned before a Federal Magistrate (Francie Pietrykowski) who seemed to know nothing of the charges (although he was the Judge who had signed the search warrant). I was released on an Own Recognizance Bond, and instructed not to leave Northwest Ohio until my next Court appearance (of which I would be notified by registered letter).

Next came months of Court room procedure, months of anguish over loss in excess of \$15,000.00, trying to find a job, (no one wanted to hire someone who had been charged by the United States of America for a felony), personal anguish over family matters, etc. My attorney informed me that a long court battle would prove fruitless, since I would be under disability, unable to sell my firearms that could be released (they were willing to release those in the shop that had been entered into the record), and that he would agree to accept a percentage of the firearms sold if I would agree to plead guilty to 2 of seven counts leveled against me. Since my entire life's savings was locked up in a Federal Court House at the time, I could see no alternatives that were practical. It is easy to be idealistic when you're not hungry. Of course I suppose, I could have sold my home, or mortgaged it, or asked for welfare, or maybe got into some other Federal give-away plan, or asked for a public defender, or paid a fortune for a lawyer who was more versed in Federal "red-tape", and I guess some would say that I should have gone for broke and suffered through a couple of more years of Federal Court appearances. Personally, my life could not be put on hold indefinitely.

What price did I pay? I have a lifetime ahead of me with a record with the Federal government as a convicted felon. I did not have to pay for all of the free publicity that I received through local newspapers and radio and television, who do have the right guaranteed by the constitution (Freedom of the Press) to print and broadcast allegations etc. My family name was dragged through the mud, although I guess honor is not important at this point in time. Since the finding of the Judge was in favor of probation, I have the honor of reporting my monthly income to my probation officer, and my right to travel freely is and has been restricted until November, 1980. I can never again enjoy the right to hunt, or possess another firearm, nor will I ever be able to have a job that requires bonding. The BATF remains honorable in the eyes of the general community. They have the right to deny citizens (my wife and myself) their right to privacy as guaranteed by the Fourth Amendment of the Constitution, and they can deny our right guaranteed by the Second Amendment (the right to keep and bear arms).

I can say that I am still an American, but I can no longer say that I am a Proud American.

If there is any further information that you want or need, please feel free to contact me.

Sincerely,

DANIEL A. MITCHLER

## Ohio Gun Collector Victim Of BATF Abuses

Jerry Cassill of Stoutsville, Ohio, is one of the victims of the Gun Control Act of 1968. Cassill, a longtime hunter, shooter and gun collector, had an absolutely clean record, a steady job with responsibility, and an avid hobby, but beginning in the fall of 1975 all of this would change.

Cassill's case is one of the many examples of law-abiding citizens who, in attempting to comply with federal firearms regulations, have subsequently become the victims of the arbitrary and vengeful enforcement practices of the BATF. Cassill and his son were in-

terested in gun collecting. In 1975 they visited various gun shows in their area in the hopes of furthering their collection through trading and buying.

Before they made any purchase or transaction of any kind, Cassill and his son sat down and studied the gun laws to make sure that anything they did would be in compliance with federal, state and local laws.

In January of 1976, Cassill was displaying some of his collection at an Ohio gun show. The booth adjacent to Cassill's was occupied by

agents from the Bureau of Alcohol, Tobacco and Firearms. Cassill wanted to make sure that all of his actions were legal and struck up a conversation with several of the agents.

The BATF agents assured Cassill that his participation in the gun shows and his occasional buying and selling of a gun at them was legal and did not necessitate his procuring a Federal Firearms License. The agents told Cassill that as long as he didn't advertise his firearms, or set up a "store front" business with regular working hours, he was just a

hobbyist and didn't need a license.

In 1978 Cassill was raided by BATF agents. The charge—several counts of dealing in firearms without a license.

Cassill's entire gun collection, valued at over \$4,000, was confiscated. BATF press releases, which were carried in newspapers and read over local radio and television newscasts, listed Cassill's residence as the place where "illegal guns" had been seized.

Cassill was charged, read his rights and carted off to jail. Suffering severe emotional stress, and on the verge of a nervous breakdown, it became clear that Cassill could not withstand the rigors of a jury felony trial. He pleaded bargained, pleading guilty to one count of dealing in guns without a license.

The day after Cassill pleaded guilty, a probation officer informed him that the charges carried a maximum of five years in jail and a possible \$10,000 fine. Cassill had not been informed of this previously.

This shock was too much for Cassill. He suffered a nervous breakdown and was hospitalized the same week.

After his release from the hospital, the judge, who recognized Cassill's previously unblemished record, sentenced him to a modest fine and no jail term.

Cassill returned to his job at the Post Office where he had worked for the past 21 years.

He was met by a postal inspector who informed him that since he had been convicted of a felony, he would have to review the case before Cassill would be allowed to return to work. Cassill was suspended for one week without pay. At the end of the week Cassill was informed that he could come back to his job.

The event, however, proved too much for Cassill. He was hospitalized under psychiatric care. For weeks his family awaited settlement for a disability claim. Even today, he is only able to work part-time, and his family is nearly destitute.

Yet the Cassill case, and many like it, has not gone unnoticed. Congressman William H. Harsha (R-Ohio) learned of the case and related its circumstances and events to the entire House of representatives in a floor speech on Feb. 3, 1980. In his speech, Harsha said that the Federal Firearms Reform Act, which is currently being considered by Congress, would have prevented Cassill's "persecution," as Harsha called it. Harsha noted that under the proposed legislation a firearms collector such as Cassill would not have been subject to the harassment he had suffered.

Harsha concluded his speech by telling House members, "Delay in enacting the Federal Firearms Reform Act can only result in more honest citizens such as Cassill being harassed by Federal officials."

*This is a copy of article that was in "Reports from Washington" Mar 1/1980, a newspaper put out by the NRA. The facts are taken from a letter I had written to a Mr. Hardy (head of a task force investigating BATF abuses.*

*All the facts in the above are correct with the exception of underlined. He was not jailed, but was photographed, fingerprinted and now has a criminal record which has been hard on him emotionally because he has always been a devoted man.*

*Mrs Jerry Cassill - 8145 Fosnaugh Stoutsville Ohio 43154*

U.I. \_\_\_\_\_

## STATEMENT OF

Name JERRY W. CASSILLAddress 8165 FOSNAUGH SCHOOL RD., STOUTSVILLE, OH.Made to JOHN R. MILLERSpecial Agent, ATF on APRIL 20, 1979at 8165 FOSNAUGH SCHOOL RD., STOUTSVILLE, OH.

in the presence of \_\_\_\_\_

My name is \_\_\_\_\_. Before I made this

statement I was advised by Special Agent John R. Miller, ATF, of my right to remain silent; that anything I say can be used against me in court or other proceedings; that I may consult with an attorney before making any statement or answering any questions and have him present with me during questioning; and that I can have an attorney assigned by the U. S. Magistrate or the Court to represent me if I cannot afford or otherwise obtain one. I understand that I have the right to remain silent and that I may invoke this right, or the right to consult a lawyer at any time, and I hereby waive the right to remain silent and freely and voluntarily make this statement without consulting an attorney or having one present during the making of this statement.

I have been selling firearms since approximately September, 1966, at which time I borrowed one thousand dollars from the 1st National Bank in Cincinnati, Ohio, and purchased a gun collection from a man in Lancaster, Ohio. I have sold firearms at gun shows in Canton, Lima, Mansfield, Wadsworth, New Lexington, Washington Court House and Franklin, Ohio.

Page 2

U.I. \_\_\_\_\_

Statement of JERRY W. CASSILL

In going to these shows I had expenses of paying my son Michael, gasoline, Motel, club membership fees, and display table fees.

I have never kept track of the number of guns I sold. I tried to trade guns in order to build up my stock of firearms. I kept records of guns I had on hand but as I sold the guns I no longer kept the records.

I was careful to avoid selling firearms to out of state residents until January, February and March of 1978. At this time I had a lot of bills to pay and needed money.

Prior to 1968 I had a Federal Firearms License. I let this license expire after the 1968 Gun Law was passed. Sometime around 1976 I again applied for a Federal Firearms License by calling the ATF office in Cincinnati, Ohio. A few days later I received an application for a gun license. I thought I would be <sup>legal in</sup> selling guns without a license. I talked to an ATF Agent in Canton, Ohio, who told me that I could sell and trade guns as long as I didn't sell to out of state residents or sell guns as a business.

U.I.

Statement Of JERRY W. CASSILL

I sold mostly expensive and/or rare guns. By doing so, I could ~~trade~~ <sup>trade</sup> one gun for several others and increase my stock.

I did not have any single source of firearms. I purchased firearms from different people at different locations.

I do not know how much money was involved in my gun activities. I had a checking account at the Clear Creek Valley Banking Co. which I used to pay expenses, and purchase firearms. I borrowed one thousand dollars to purchase firearms on one occasion and six hundred dollars on two ~~to~~ or three other occasions. I kept the statements and cancelled checks from this account and have provided them to Agent Miller. Agent Miller in turn gave me a hand written receipt for the checks etc.

On May 12, 1978, ATF Agents seized my firearms stock. These were firearms which I traded with three exceptions. The three guns which were exceptions were my personal guns and I have given Agent Miller a description of these guns.

U.I.

Statement Of JERRY W. CASSILL

THE ONLY TIME I can remember selling a firearm to a non resident, ~~to~~ except the ATF Agents, was once at Schompp in Franklin, Ohio. I think that man lied to me and gave me a fictitious name.

I accepted checks from individuals who purchased firearms from me and normally had twenty five to thirty five guns in stock.

*[The remainder of the page is crossed out with a large X.]*

Statement Of JERRY W. CASSILL

Signature

, 19

Special Agent, ATF

Witness

JERRY W. CASSILL

DOCKET NO. CR-1-79-30

## JUDGEMENT AND PROBATION/COMMUNITY SERVICE ORDER:

In the presence of the attorney for the government  
the defendant appeared in person on this date —

MONTH	DAY	YEAR
06	04	79

CCUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Richard Penn, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,

1 NOLO CONTENDERE,

       NOT GUILTY

## FEELING & JUDGMENT

There being a finding/~~verdict~~ of

( ☐ ) NOT GUILTY. Defendant is discharged

There being a finding of ~~guilt~~ of X GUILTY.

Defendant has been convicted as charged of the offense(s) of Unlawful Sales of Firearms to Out-of State Resident, in violation of Title 18, Sections 922(a)(5) and 924(a), as charged in Counts I and II of the Indictment.

Count I of the Indictment is dismissed.

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is ~~to be confined to the custody of the Attorney General for the term of years to be determined by the court.~~

ordered to pay a fine in the amount of ONE THOUSAND DOLLARS (\$1,000),  
as sentence on Count II of the Indictment. No fine is imposed on  
Count III.

**SPECIAL  
CONDITIONS  
OF  
PROBATION**

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

FILED BY  
U.S. District Judge

           U.S. Magistrate

Date June 4, 1979

THIS DATE 2 4 9

THIS DATE 2 10 68  
BY 41515

( ) CLERK  
( ) DEPUTY



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA

vs.

JERRY W. CASSILL

CR-1-79-30  
Criminal No.

INDICTMENT  
18 U.S.C. 922(a)(1) & (5) &  
924(a)

The Grand Jury Charges:

COUNT I

That since on or about the 6th day of November, 1976, until on or about the 12th day of May, 1978 in the Southern District of Ohio, JERRY W. CASSILL knowingly did engage in the business of dealing in firearms without being licensed to do so under the provisions of Chapter 44, Title 18, United States Code;

In violation of 18 U.S.C. 922(a)(1) and 924(a).

COUNT II

That on or about the 25th day of February, 1978, in the Southern District of Ohio, JERRY W. CASSILL, not being a licensed importer, manufacturer, dealer or collector of firearms, knowingly did sell a firearm, that is, a Smith and Wesson, Model 27, .357 caliber revolver, serial number N11996, to Charles C. Sauvage, Jr., a person other than a licensed importer, manufacturer, dealer or collector of firearms, JERRY W. CASSILL, knowing, and having reasonable cause to believe, that the said Charles C. Sauvage, Jr. then resided in the State of Kentucky, a state other than that in which JERRY W. CASSILL resided at the time of the aforesaid sale;

In violation of 18 U.S.C. 922(a) 5 and 924(a).

COUNT III

That on or about the 11th day of March, 1978, in the Southern District of Ohio, JERRY W. CASSILL not being a licensed importer, manufacturer, dealer or collector of firearms, knowingly did sell a firearm, that is, an Echasa, .32 caliber automatic pistol, serial number 62857, to Charles C. Sauvage, Jr., a person other than a licensed importer, manufacturer, dealer or collector of firearms, JERRY W. CASSILL knowing, and having reasonable cause to believe, that the said Charles C. Sauvage, Jr. then resided in the State of Kentucky, a state other than that in which JERRY W. CASSILL resided at the time of the aforesaid;

In violation of 18 U.S.C. 922(a)(5) and 924(a).

A True Bill.

*Robert E. Wessell*  
Foreman

*James C. Cissell*  
JAMES C. CISSELL  
United States Attorney

United States District Court  
FOR THE  
SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION

UNITED STATES OF AMERICA

JERRY W. CASSILL

v.

No. CR-1-79-30

TAKE NOTICE that the above-entitled case has been set for Arraignment at  
9:30 A.M. on Monday, May 7th, 1979, at 842 U.S. Post Off. Bldg.  
5th & Walnut Sts.  
Cincinnati, Ohio

Date April 30, 1979

JOHN D. LYTER

Clerk.

By *Janora M. Buckner*  
Deputy Clerk.

To Richard Penn  
Attorney at Law  
120 S. Court St.  
P.O. Box 513  
Circleville, Ohio 43113

Jerry Cassill  
8165 Fosnaugh School Rd.  
Stoutsville, Ohio

AC 614 474-2248

Enclosed is a copy of the Indictment which was returned on  
April 27, 1979.

Mr. Cassill: Please report to the U.S. Marshal's Office in  
Room 815 at least 15 minutes before court time.

ELVE  
MR. ELLIS  
Rm 827  
Probation Dept.

771-51-7-0-00-000-047

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
PROBATION OFFICE  
746 U. S. Post Office & Court House  
Cincinnati, Ohio 45202

May 25, 1979

Mr. Richard Penn  
Attorney at Law  
120 South Court Street  
Circleville, Ohio 43113

RE: CASSILL, Jerry W.  
Docket No. CR-1-79-30

Dear Mr. Penn:

The presentence investigation ordered in the above case has  
been completed and the report has been submitted to The  
Honorable David S. Porter, sentencing judge.  
The Court will set this matter for final disposition.

Under the Rules, and upon your request, you are permitted  
to read this report prior to sentencing. If you desire to  
do so, you are asked to telephone U. S. Probation Officer  
Elve A. Ellis, Jr. at 684-2978 prior to the sentencing  
day and make an appointment.

Very truly yours,

*Clement L. Hils* AC 513  
Clement L. Hils  
Chief U. S. Probation Officer

cc: U. S. Attorney  
Clerk of Courts

SENTENCING DAY - 9:30 this 4th JUNE

**United States District Court** ISSUED IN BLANK  
 FOR THE  
 SOUTHERN DISTRICT OF OHIO-WESTERN DIVISION

UNITED STATES OF AMERICA

v.

JERRY W. CASSILL

No. CR-1-79-30

TAKE NOTICE that the above-entitled case has been set for Sentencing at  
 9:30 A.M. on Monday, June 4, 1979, at 842 U.S. Post Off. Bldg  
 5th & Main Sts.  
 Cincinnati, Ohio

Date May 29, 1979

JOHN D. LYTER

Clerk.

By *Lenora M. Lucken*  
Deputy Clerk.

To Richard Penn  
 Attorney at Law  
 120 S. Court St.  
 P.O. Box 513  
 Circleville, Ohio 43113

Jerry Cassill  
 8165 Fosnaugh School Rd.  
 Stoutsville, Ohio

Mr. Cassill: Please report to the U.S. Marshal's Office in  
 Room 815 at least 15 minutes before court time.

RICHARD W. PENN  
 ATTORNEY AT LAW

June 5, 1979

120 SOUTH COURT STREET  
 P. O. BOX 513  
 CIRCLEVILLE, OHIO 43113  
 (614) 474-8886

Bureau of Alcohol, Tobacco and Firearms  
 U.S. Post Office and Court House  
 Cincinnati, Ohio 45202

RE: Jerry W. Cassill

We hereby make a request for return of the firearms confiscated  
 from Mr. Cassill. He needs these returned to recoup family  
 funds invested in these. He intends to dispose of them through  
 a licensed dealer, probably on a wholesale basis, and will  
 cease, except for a few items to possess firearms in any quantity.

Please advise.

Yours very truly,

*Richard W. Penn*  
 Richard W. Penn

RWP:sa

584



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

550 MAIN STREET  
CINCINNATI, OHIO 45202

June 11, 1979

REFER TO  
C:RA:IS

Mr. Richard W. Penn  
Attorney at Law  
120 South Court Street  
Circleville, Ohio 43113

Dear Mr. Penn:

Re: Firearms seized from Jerry W. Cassill - U.I. 28-04-0478-3006 X

In your letter dated June 5, 1979, you state that you are making a request for return of the above property, confiscated from Mr. Cassill.

We do not know whether you are aware that Mr. Cassill filed a petition on June 8, 1978, for return of this property, and the petition was denied by the Bureau of Alcohol, Tobacco and Firearms.

We are not at liberty to disclose any further information in regard to this matter without a Power of Attorney authorizing you to receive such information on behalf of Mr. Cassill.

Sincerely yours,

*William H. Steinman*  
William H. Steinman  
Office Services Manager

*Jerry Cassill:*  
*this is letter I received.*  
*R W Penn*

*sent J. Cassill 6/13/79*

585

NEW AND USED GUNS  
BOUGHT, SOLD AND TRADED  
ALL KINDS OF SMALL ARMS

AMMUNITION

TELEPHONE (504) 525-9752

NRA LIFE MEMBER  
LICENSED DEALER

D. A. SCHNEIDER

E. H. SCHNEIDER

BLACK POWDER GUNS, AND  
SUPPLIES, INCLUDING  
KITS AND REPLICAS

CRESCENT GUN & REPAIR CO., INC.

2401 SO. CLAIBORNE AVE.

NEW ORLEANS, LA. 70125

U. S. HIGHWAY 90

August 19, 1980

POLY CHOKES INSTALLED  
CUTTS COMP. INSTALLED  
EXPERT GUN BLUING  
GUN NICKEL-PLATING  
GUN PARKERIZING

Senator Birch Bayh  
Russell Senate Office Bldg.  
Room 363  
Washington, D. C. 20515

Dear Sir:

AUTHORIZED REPAIR STATION  
FOR

BENJAMIN  
BROWNING  
COLT  
CROSMAN  
ITHACA  
MARLIN  
MOSSBERG  
REMINGTON  
SAVAGE  
WINCHESTER

I am an American citizen, 48 years of age, born in New Orleans, La., married, and have three children. I have been a gunsmith and connected with the gun business for over thirty years. In August, 1974, I purchased the gun store, Crescent Gun & Repair Co., 2401 So. Claiborne Ave., New Orleans, La. 70125. I owned this store until February 13, 1978, when my Federal Firearms License was revoked.

During my time as owner of Crescent Gun & Repair Co., Inc., we were investigated by the BATF starting February 8, 1976, an investigation that lasted until July, 1977. During this period, my wife and I, our female employees, friends, customers and business associates were subject to personal abuses, scare tactics and threats by the BATF. The BATF Agent who investigated us was an agent by the name of Leonard Scheuman.

The BATF investigation of our business began with their questioning our method of selling some of our handguns. New Orleans, at that time, had an ordinance that required a handgun purchaser to take his receipt to the New Orleans Police Department to obtain a purchase permit. Orleans Parish, in which New Orleans is located, is the only parish in the State of Louisiana, which required such a permit. This permit would take some times three to four weeks to be issued. As the only strictly gun store in New Orleans at that time, our business was severely affected. At that time some of our handgun sales were handled through a gun store in Jefferson Parish, a parish which adjoins Orleans Parish which did not have such a permit requirement. Mr. Scheuman, the BATF Agent, knew of our method in this respect prior to the investigation and even told us that he saw nothing wrong with our method. The New Orleans Police Department also were informed and they saw nothing wrong with our method.

During the investigation, some of our employees were threatened by Mr. Scheuman with being "dragged" before the Grand Jury and then in front of a trial jury and guaranteed that they would be imprisoned. At no time was anyone arrested during the investigation which lasted about eighteen months.

Mr. Scheuman created a sense of fear in some of our customers with threats of arrest because of their association with us. Many of these

ALL SCOPES  
ALL MOUNTS

COMPLETE RELOADING COMPONENTS

BRAUER BROS. MFG. CO.  
GUN CASES  
HOLSTERS  
CARTRIDGE BELTS  
GUN SLINGS

PACHMAYR RECOIL PADS

customers no longer patronize this store. In addition, some of our business associates were warned against doing business with us stating that we were going to be arrested.

In one particular case, we bid on a large quantity of merchandise, which bid we won. As Mr. Scheuman had advised us that in thirty days we would be in jail, we forfeited the bid and thereby lost quite a bit of money and customers. We later found out that ATF had no such plans for any such arrest. This occurred in March of 1976.

Shortly thereafter, Mr. Scheuman appeared at our store and twice drew his gun and threatened to shoot our dog, who posed no threat to him as the dog was penned away behind a steel door. His excuse was that he hated dogs and dogs should not be in a place of business. On both occasions, I was between Mr. Scheuman and the dog, and if the gun had fired, he would surely have killed me. When we questioned him about pulling the gun and possibly injuring me or others in the store, he exclaimed, "I hate dogs, and I generally hit what I aim at."

This same day, on checking our records of sales, Mr. Scheuman said that he felt we were selling too many guns to blacks. Our store is located in central city and we do have many black customers. We explained that we only sold guns to persons who are qualified to buy guns with no regard to black or white, provided they can fill out the proper city and federal forms necessary. He implied that we should deny sales to as many blacks as possible as the Gun Control Act was directed to felons and blacks constitute the largest percentage of felons. He implied black women who bought guns gave these guns to their felonious boy friends or husbands. We know as a fact that these women buy guns for protection for themselves, and many of them are over sixty years old. These women were responsible citizens who would not turn guns over to another person to commit a crime.

At one point, Mr. Scheuman called me on the telephone but was very evasive about the purpose of the call. He implied that it was very bad. In the end, he said he only had to pick up our records and laughed because he realized that he had led me to believe that he would appear with an arrest warrant, as he had told me previously that the next time I saw him, he would have an arrest warrant in his hand, not only for me but for our female employees.

From time to time, Mr. Scheuman would call me with innuendoes about him not forgetting about our case, that he was still working on it part-time, and each time he would say he had an additional number of felonies which we would have to face in court. At one point, he said these felonies numbered over one hundred. At one time, Mr. Scheuman met my brother-in-law, who had a minor involvement in the case, and told him to tell his sister and brother-in-law (meaning my wife and I) that he would have both of us in jail very shortly and if my brother-in-law would cooperate with him, he would forget about my brother-in-law's part in the case. My brother-in-law told him that he had told Mr. Scheuman the truth, and Mr. Scheuman told him that the truth was not what he wanted and that he would explain to my brother-in-law exactly what he was looking for.

Some of our customers have files on this case concerning Mr. Scheuman's visits to them, his statements to them and their statements to him, which files include threats and derogatory statements about Crescent Gun and myself made by Mr.

Scheuman. Also, these customers have copies of letters written by them to the U. S. Attorney and the BATF concerning these visits, but no action was ever taken concerning them. It seems that gun people are set aside from all other people in the U. S. and have no rights. We are the only people whose rights are denied. BATF makes rules constantly that try to prevent the normal operation of a business or the sporting use or ownership of firearms.

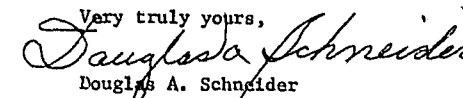
Finally, after the long investigation, the only thing they could find was that we violated a City of New Orleans ordinance, which was a misdemeanor. However, under the Gun Control Act there are no misdemeanors, only felonies. After our license was revoked, which was on February 13, 1978, we were advised by BATF that we could reorganize and apply for a new license under a different store name, as my wife and I were not felons, only the corporation. We re-incorporated under another name and applied for a new license, which license was denied to us because we were connected with a felonious corporation. My son-in-law and my brother, who became employees of Crescent Gun but who were neither working here at the time of the violations nor were they ever part of the corporation, were personally attacked in our letter of denial. We called BATF with regard to our denial, and they refused to comment as well as lie about allowing us to reorganize.

There were many other abuses which are hard to put on paper, but during those eighteen months we spent many sleepless nights and lived in constant fear as we were repeatedly reminded by Mr. Scheuman that arrest would be forthcoming shortly. Some of our customers were advised that we would be arrested and that if these customers saw us to tell us what Mr. Scheuman said. They were also told to disassociate themselves from us or there would be serious consequences to them, the least of it being "dragged", as Mr. Scheuman put it, before the Grand Jury.

It was always my wish to own my own gun business, a business in which I have worked for over thirty years, but due to some simple errors, with no wilful intent to defraud or break the law, my wife and I are denied this for the rest of our lives with no amnesty or pardon or relief from disability. After our license denial, my wife and I cannot own a gun shop or any place of business which is under the Gun Control Act. We only have jobs now, and we are denied our opportunity to reach our full business potential and creating something for our family to carry on. The most heinous crimes provide for some relief, but BATF has under no circumstances any relief from disability.

All of our business practices were directed by an attorney who assured us that our methods were well within the Gun Control Act. The BATF and the New Orleans Police Department also had full knowledge of our business practices, in particular, Mr. Scheuman of the BATF, who had given us his blessing until such time as he may have gotten angry about our female employees or our black customers or even our dog. Many people feel that his personal dislike for my wife, Elsie, may have caused this extensive investigation.

We have many letters and notes which we can put at your disposal. Many incidents occurred which are not included herein. The investigation of this case took eighteen months of taxpayers money and enormous cost to us in lost business due to what we believe was a personal vendetta on the part of the BATF agent.

Very truly yours,  
  
 Douglas A. Schneider

Senator BIRCH BAYH,  
Russell Senate Office Bldg.,  
Washington, D.C.

ARVADA, COLO.

SIR: On April 16, 1978, I was arrested by B.A.T.F. agents for alleged violations of the Gun Control Act of 1968, the circumstances of the arrest are as follows;

Mr. Stan VanBuren and myself had attended the Currigan Hall Gun Show that weekend. At three-thirty Sunday afternoon, April 16, Stan's 15 year old son Scott, complained of stomach pains. We hurriedly packed up all we had on the table and left the gun show to take his son to a hospital fearing he might have appendicitis. We were pulled over to the curb and stopped approximately one block from the Federal Building in downtown Denver by B.A.T.F. agents. They stated that I was under arrest for violation of the Gun Control Act and they frisked me, handcuffed me, and requested that I remove my firearms from the back of Mr. VanBuren's vehicle. I refused to do so. They then put me in the back of their vehicle and forced Mr. VanBuren to remove my firearms from his vehicle. They threatened him, pushed him around and told him he was next. He was told his car would be impounded and he would not be able to continue on his way to the hospital with his sick son who, they jokingly stated, was probably sick from the food at the gun show. Mr. VanBuren was told that his car would be immediately impounded if he did not cooperate with them. He then separated and handed over my guns. I asked to see their warrant and they told me that I would see it soon enough. I am sure they did not have one with them at the time.

I was then taken to the Federal Building and booked and fingerprinted. After the arrival of a magistrate, myself and five other people who had been arrested the same day, for the same thing, were all released on our own recognizance. We were told to return in three days and should we not be able to afford an attorney one would be appointed to us.

I retained an attorney and at a later date I was indicted and charged with three counts against me.

One was a direct sale to an out of state agent six months prior to my arrest. Another was a straw man set up. The other was dealing in firearms.

I then found out that I had been under observation for the previous six months prior to my arrest by B.A.T.F. agents.

There had been nine people arrested in Denver in that weekly period for violations of the Gun Control Act of 1968. One of the cases went to trial and was thrown out of court. The other eight were terminated through the pretrial diversion program okayed by judge Fred Winners. None of the nine arrested resulted in a conviction. The party who had gone to court and had the charges thrown out, never received his confiscated firearms back due to his fear to go and get them. One of the other parties, a Mr. Robert Schear, went to court and his firearms were ordered returned to him, and he went and got them. Mr. Gary Toon, for reasons unknown to me, received one of the two firearms that were taken from him back. Another party named Dutch, received all of his firearms back without going to court somehow through political influence. Mr. David Jewel has not received his ten thousand dollars worth of firearms back at this time to the best of my knowledge. Mr. Royce Kerbow and myself filed administrative petitions for our firearms to the B.A.T.F. and were turned down three times so far. I must state at this time that my firearms were declared moot by the prosecuting attorney as evidence in my trial. Their reason for not giving myself and Mr. Kerbow's firearms back are that they had been legally taken and they do not have to give them back. I have since applied for and received a firearms license to deal in firearms. But am still unable to effect the return of my confiscated firearms without spending more than their value in attorney's fees.

It is my contention that this happening was completely unnecessary. It could have been completely avoided had a B.A.T.F. agent visited me at my house and told me that I was doing enough "business" to warrant my getting a Federal Firearms License. I had no objection to getting a license and would have done so. I had never previously read the Gun Control Act of 1968 and was only aware of what other people had told me as far as its contents were concerned. My previous respect for treasury agents has now been down graded to somewhere below a used-car salesman. I no longer have any confidence in the agents or

trust in them. In this area, at gun shows, you will quite frequently hear them referred to as the American Gestapo. Mr. VanBuren no longer attends gun shows due to his fear of these agents.

I am sorry to say that I can no longer believe in equal justice for all after this occurrence. Six arrests after a five hundred table gun show is hardly equality. And the return of the personal property to people able to afford the right attorney, while retaining other peoples property is hardly what I call equality.

I trust this information will be of use to you and should any further information be necessary please feel free to contact me at any time.

Sincerely,

JAMES GOWDA.



WILSON SPORTING GOODS  
R.R. 4 - P.O. BOX 340  
ROBINSON, ILLINOIS 62454  
Phone 618-544-3700

Senator Birch Bayh.  
Russell Senate Office Bldg. Rm 363  
Washington, DC, 20510

Senator Bayh,  
as per a request of your staff enclosed  
you will find a complete account of our  
experience with the BATF. I did receive  
the last of the guns in Aug of 79 due  
to the efforts of our Congressman Dan Crane.

I sincerely hope you can do something  
to stop the abuse of the BATF. We  
survived them. Some dealers don't &  
we run scared that they will find  
a new rule to harass us with again.  
The BATF are the ones who should  
be behind bars.

Thank you. Bobbie Wilson

I have a story to tell, I don't know how interested the public will be. I'm sure some don't want to know, and some won't believe; these people I pity, like the ostrich with its head in the sand; like the citizen who sees a rape, mugging, child beating, or purse snatching; and turns their head, afraid to be involved. If we don't get involved NOW there will be a new book on the best seller list "THE DECLINE AND FALL OF THE AMERICAN EMPIRE".

On March 12, 1978 my husband, Jerry, called me from Sweetwater, Texas, this was a Sunday evening, he always calls me after a gun show to give me the information needed to keep the records required by the BATF. At this time in the course of our conversation, he told me a gun dealer from Fort Worth, Texas, L.C. Johnson, told him there was a rule of the BATF that said a dealer couldn't deliver a gun to another dealer at a gun show. He advised Jerry to pack up and get out of Texas. Jerry's reply was "Yes you would really like that, then you would have no competition at this or other Texas shows". We decided I should call a office of the BATF and see if there was such a rule, we have always tried to operate within the framework of the law.

The following day, Monday, I called the regional office in St. Louis, Missouri. I asked about the rules for gun shows, told them exactly how Jerry operated at gun shows, asked them to give me the answers, and follow up with a letter. I told them that the following week-end Jerry would be at the gun show in Kerrville Texas. They said they would get back to me in a couple of days, that they weren't interested in legitimate dealers, only criminals, not to worry, they didn't know the answers to my questions, but they would get them, and any changes that might be needed in our operation they would advise us and they could be made at that time.

O.K. now you know me as a "RAT FINK", I told on my husband (set him up) I told them what he was doing and where he would be. "Please forgive me for this, I'm basically honest, and really believed our Government had the interest of the people at heart; I was wrong". They didn't call or send the information.

That week-end at Kerrville, Texas four BATF agents seized 87 of our firearms, because Jerry delivered a gun away from his business premises. Let me explain... Jerry delivered a gun to a Texas dealer (Joe McGuire), who in turn delivered it to a Texas resident, who just happened to be a BATF agent. To my knowledge, no charges have been brought against Joe. All the paper work required was completed. The 1968 gun law was supposedly created to keep records on gun sales for tracing purposes in crimes using firearms, Not to inconvenience the legitimate sportsman.

As for the transaction Jerry made it is against the rules, what he should have done is brought the gun home, shipped it to the Texas dealer, who would then, in turn would have delivered it to the Texas resident. The paper work would have been the same, the only difference would have been the time factor, one week to ten days, the expense of shipping. (There is no waiting period for a firearm in Texas.)

The 1968 gun law was rushed through congress in the wake of the assassination of President Kennedy, it was to control the sale of firearms to criminals, it hasn't. What it has, is loop holes that have allowed the BATF to add rules and regulations indiscriminately for the past 11 years, very few of us, with the exception of some Lawyers, can read the 8 1/2 X 11 inch, over 380 pages of fine print, and understand all of it; it is changed and added to annually.

It is now April of 1979, as to date we have spent approximately \$3,000.00 Attorney fees and \$5,000.00 to the UNITED STATES GOVERNMENT to get the firearms returned. In February 1979, Jerry picked up 86 of the firearms in San Antonio, Texas, the 87th a Smith & Wesson model, 49 Nickel, Serial # J570 945, they still have, and they still have the option of pressing criminal charges against Jerry (*Can anyone believe that the error Jerry made is the act of a desperate Criminal, and that this has anything to do with violent crime in these United States?*) I haven't included the expenses of telephones, trips, and ect. as they are too numerous to list. Jerry also had to sign a release and pay the \$5,000.00 before he was allowed to see our firearms.

I realize \$8,000.00 doesn't sound like much to some people, but we are a very small business. We have been in the gun business since 1975 we have had a FFL much longer, so we could buy guns for our personal collection, that's how a lot of gun dealers start out. Financially we have been severely damaged, not only in the loss of money but the loss of income.

#### Loss of Income:

Due to the fact that the buying public doesn't want to do business with someone in trouble with the government, after all we had to do something really bad, (*Our government is fair and just!*) "I don't want to associate with that kind of degenerate!" "Something like that couldn't happen to me." Famous last words I have said them.

#### Loss of Income:

Jerry has even been invited outside to fight, because, since the seizure of our firearms he won't deliver guns to a dealer at a gun show (No one knows this is a rule) This is the practice all over the country at gun shows, the BATF isn't enforcing the rule, A few weeks ago at the Dallas, Texas show two dealers I know were given permission by the Director of the regional office to deliver at the gun show. He sat right on the table and watched them. There is a dealer in Louisville, Kentucky,

and...

Paul Pierce, who says he has a letter from BATF giving him permission to deliver at shows. And he does. I personally know of no other dealer who has had his guns confiscated for this rule violation. With every one else delivering at shows who would trust a dealer, they don't know personally, to take their money, give them a receipt (piece of paper) and promise to ship their gun to their local dealer. *Again I repeat "Not to inconvenience the legitimate sportsman!!!"*

#### Loss of Income:

Due to the lack of firearms in inventory, held by the government (*Government? Don't you mean BATF? Bureau of Alcohol, Tobacco, and Firearms. Division of the Treasury Department?*) "Do you realize how massive the Treasury Department is? Do you realize who really runs the government? The President, The Congress, they are up for re-election every few years, did you ever vote for a Bureaucrat? How long have they held the same office, or been in the same basic power packed job? Now tell me this is a democracy! How many of you are so secure in your jobs you make the rules not follow them?"

The BATF have been in my shop numerous times since the seizure, they took my books and photo-copied them, they have been here to check this and that, mostly routine, however they weren't checking the area gun stores here for these routine matters. The last time they came in, they had a list of about ten guns, this list had model, serial numbers, caliber, and manufacture; some of the information was incomplete, and some wrong. They had no information as to where the guns came from or where they went, or even approximate dates we might have had them. To know we had these guns, the BATF would have to have the information of, where from, or where to. It took 4-5 hours to locate the guns on their list (*only 30 minutes if they had the above listed information!*) when we had located all the guns I realized, all the information was in the books they had photo-copied. "I don't know what you would call this, I call it as I see it HARASSMENT and a flagrant waste of taxpayers money....!!!)"

Let me expound on the above, you as a citizen of these UNITED STATES, may hate guns, may believe they are as vile as the serpent in the Garden of Eden, or as in Nazi Germany, the one most important thing to remove from public ownership. Let's approach this on a level we can all understand, MONEY, not mine but yours, if we spent \$8,000.00 for the return of our guns, how much did the government spend? "I know they traced a lot of the guns on my books that they photo-copied, some of the sportsmen who were the recipients of the guns told me they called on them." There is no way I can check on their expense, I don't know who can, but just think two men came to our shop, from a office

in excess of 200 miles away spent 4 to 5 hours in our shop, plus traveling time (an average of 8 hours traveling) at the time of the seizure we had in excess of 3,500 guns on the books, do a little multiplication, boggles the mind doesn't it?

Now for the clencher, in January of 1978, in Slidell, Louisiana Jerry had a Smith & Wesson, model 19, 2 1/2 inch, blue, serial number 8K79888 stolen. Jerry gave the above information to the local police, and told them who stole it, they wouldn't even question the man. So I called the St. Louis, Missouri, office of Criminal enforcement, BATF, they told me they had no authority over stolen guns.

Well is your head still in the sand? Did our fathers die in Germany in vain? Do we still have a second amendment to the constitution, or is the ink starting to run? *THE RIGHT OF THE PEOPLE TO KEEP AND BARE ARMS SHALL NOT BE INFRINGED UPON!*..... I sure wish BATF rules and regulations were that clear"..  
 PEOPLE TO KEEP AND BARE ARMS SHALL NOT BE INFRINGED UPON!.....

Now lets try the First amendment, I intend to send copies of this to many News Papers and Magazines. some pro gun some not. To those who have the Intestional fortitude to print this, I take all responsibility for it's content, please don't change it. If because of my views of our government I am harassed or even incarcerated we will know how well the first amendment is holding up.

Let your conscience be your guide, for me I see the problems, I am only one, but I must do what I can to make all of you aware of the direction our government is taking, I alone can do nothing, together we may still have a chance. I welcome any of your comments.

Thank you for reading this, no matter what your views are, maybe I have started you to thinking.

I Remain:

Bobbie Wilson (Mrs. Jerry Wilson)  
 Wilson Sporting Goods  
 RR# 4 P.O. Box 340  
 Robinson, IL. 62454 Ph. 618-544 3700

THE GREENSBORO RECORD,  
 Greensboro, N.C., August 26, 1980.

HON. BIRCH BAYH,  
 Chairman, Subcommittee on the Constitution, Judiciary Committee, U.S. Senate,  
 Washington, D.C.

DEAR MR. CHAIRMAN: I understand that the Subcommittee on the Constitution soon will hold oversight hearings on the practices of the Bureau of Alcohol, Tobacco & Firearms. Mary Jolly, the subcommittee staff director, has told me that due to the current KKK-Nazi murder trial in Greensboro, it is unlikely the hearings will cover Special Agent Bernard Butkovich's infiltration of the North Carolina Nazis prior to the Greensboro shootings.

However, with the thought that later hearings might include the Butkovich case, I have enclosed a copy of a letter to ATF Director G. R. Dickerson appealing the denial of my Freedom of Information request for the investigative report the bureau prepared on Butkovich following the shootings here last November which claimed the lives of five anti-Klan demonstrators. Any assistance you could provide on this matter would be appreciated.

Sincerely yours,

MARTHA WOODALL.

THE GREENSBORO RECORD,  
 Greensboro, N.C., August 26, 1980.

Mr. G. R. DICKERSON,  
 Director, Bureau of Alcohol, Tobacco & Firearms,  
 Washington, D.C.

DEAR MR. DICKERSON: This is a formal petition appealing Mr. Paul Mosny's denial of my Freedom of Information request for a copy of the ATF report prepared in the aftermath of the Nov. 3 Greensboro shootings about Special Agent Bernard Butkovich's involvement with the North Carolina Nazis. Mr. Mosny described the report to me as Butkovich's internal inspection file.

My request to see the report was denied on the grounds that the release of the information would constitute an unwarranted invasion of personal privacy. I do not believe that argument applies in this case for several reasons:

To begin with, ATF officials, such as Mr. James Lynch, your assistant for public affairs, have responded to questions about the propriety of Mr. Butkovich's conduct and queries about the role he played with the Nazis by saying that ATF had reviewed his conduct and concluded he had done nothing improper. Therefore, it seems only proper and fair that ATF should release the report it is using to support those statements.

Furthermore, in this situation I would hope you would balance an employee's rights with the public's right to know. For whatever reasons and under circumstances that remain unclear, your employee's involvement with the Nazis coincided with the Nazi-Klan caravan that ended with the deaths of five people in Greensboro. It was a tragic and terrible crime that has been the subject of national and even international interest and concern.

From the moment that Butkovich's association with the Nazis was disclosed last month, ATF's response has basically amounted to "no comment."

I urge you to reconsider that response, and I ask you to overturn Mr. Mosny's decision and grant my FOI request. I believe that ATF has a responsibility to the public to offer a complete and candid account of Butkovich's association with the Nazis. A prompt response will do much to lift the clouds of uncertainty and distrust that have settled over ATF in the minds of citizens as a result of this case.

My original FOI request to Mr. Mosny was dated July 14. The letter containing his formal denial was stamped Aug. 6. I apologize for not submitting this appeal earlier, but the material was not delivered until last Friday (Aug. 22). I had checked with Mr. Mosny repeatedly after he mailed the letter and other ATF material I had requested. The delay in my receiving the package apparently was caused by the fact it was mailed to the wrong zip code.

I look forward to hearing from you soon.

Sincerely,

MARTHA WOODALL.

cc: Sen. Birch Bayh, chairman, Senate Judiciary Committee, Subcommittee on the Constitution; Rep. John Ashbrook, member, House Judiciary Committee, Subcommittee on Crime.

CENTRAL FLA. ARMS & PAWN,  
Orlando, Fla., September 4, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SENATOR BAYH: I was born and raised in Orlando, Fla. and am well liked and respected in my community. I've owned and operated "Central Fla. Arms and Pawn" since October 1966. I've always been willing to help my fellow man and take great interest in the disadvantaged. Therefore, when the BATF used their "Straw Man Tactics" on me, I was not only infuriated that Government Officials could do such a thing, I was hurt as a human being.

The person who set me up, Robert Chamberland, whom I've known for years, was a resident of Florida while I knew him. I did not know he had changed his residence until he came in to purchase a gun at the time the "Straw Man Tactics" began, at which time I would not sell him a gun. Mr. Chamberland said under oath that he personally set up over 30 dealers around the country under the same tactics and also under oath that he did not receive any moneys from the Government for his active part in these tactics. I would like to hear this man, before a Congressional Hearing, repeat these same answers under oath and have the Senate investigate him to see if he has received any money from the Gov't.

From my understanding, Informers are paid large sums of money if they get convictions and if that's not reason enough to perjure themselves, I don't know what is.

A summary of my charges is as follows:

- (1) Stated sold 2 guns to Robert Chamberland on Nov. 15, 1977 and made entry in books the guns were sold to Michael J. Crow, who in fact did purchase said guns. (counts 1 thru 4)
- (2) Stated sold on Dec. 15, 1977 to Agent Michael Zezima (N.Y. resident). In which said gun was actually sold to Michael J. Crow (BATF agent from Tampa, Fla.) (counts 5 & 6)
- (3) Stated sold 2 guns on Jan. 17, 1978 to Agent Michael Zezima which in fact was actually sold to Pamala Dassdorf who is a Fla. resident. (counts 7-10)

After being arrested 9 months later it was very difficult to remember when and what transaction had taken place.

But the Government had everything written down and read it before and during the trial to refresh their memory.

Of 11 people arrested, everyone made deals with the Gov't except me and my employee. One is still in the gun business and he is also a full time Fire Lieutenant for City of Orlando Fire Dept.

After the trial, a Juror came to me and talked at length telling me the jurors did not understand the language used by the lawyers and the Judge. They compromised and found me guilty on the first four counts and not on the remaining six. I was put on 3 yrs. probation and fined \$3,000.00. A convicted felon for life for something I did not do.

This has affected me greatly as buying and selling guns was where I received 75 percent of my income. I was the largest dealer in Central Fla. for many years. Now I've had to cut my business building in half as I can no longer sell guns! Since I lost my gun license, I've started dealing heavily in jewelry and on May 31, 1980 I was robbed of my entire stock. I had no insurance coverage. I was robbed by 2 black males. One put a gun to my head and said "I know you don't have a gun". It was someone who knew I couldn't defend myself or my property.

I was left broke and defenseless by the BATF tactics professionally and personally. They have the money and power to break anybody who doesn't have resources to defend themselves like the Gov't, has. It's hard to describe what happened in a letter as I am having someone write this for me. I have a 10th grade education and could not write or spell as good as could be.

But I would gladly come to Washington and tell you the story in detail of what the BATF did to me; my business and my life.

Sincere thanks for your attention in this matter. If there are any more questions, please do not hesitate to write me.

Sincerely Yours,

FRED K. BROOKS.

National Rifle Assn.

Senator Birch Bayh

Fried Sept 5 1980

Dear Sir:

I am 73 year old now + 74 Oct 19 1980  
your concern is evidently about  
the reach, seizure, confiscation, price  
arrest, of all my Fire arms and ammo  
by Alcohol & Tax units.

They knew I had them on  
hand because I wrote to them asking  
them to come get them and put them  
all up for sale, perhaps a year before  
also to State of Md. I had begun  
to realize it was impossible to sell  
hardly anything, some which between  
Del & Va with no out of State Sale I  
sold as much as I could to Nassawadox  
Gun shop in South Va. Md. also  
returned to York Pa. Va. Gun Co. many  
cheap revolvers at a loss. I wanted  
out at a loss but not at total loss.

A phone call said I could come  
to Washington Mon Sept 15<sup>th</sup> 1980  
for a hearing, to bring what records  
I had with me. The Berlin Police  
Dept. is supposed to have these records  
in a Brief case which belongs to me.

The making strong, of errors  
wrote out to a Hand Book of Business  
it could use the money now as a  
compensation, surely Edmund J. [unclear] Sr.

SEPTEMBER 9, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

SENATOR BAYH: I would like to take this opportunity and relate my experiences with the B. A. T. F. I have been attending gun shows for the past fifteen (15) to eighteen (18) years, as I enjoy the hobby of gun collecting and have built up a small collection during this time. I only went to shows in my immediate area.

After attending gun shows for several years, I started renting a table to display some guns I had which I would like to swap for other types more valuable to my collection. I had seen other people do this and so I saw no harm in doing so. I have seen the gun shows advertised on T.V. in my area and also in several magazines. While attending some shows I have "swapped" guns with several police officers both in uniform and off-duty. So I didn't think I was doing any wrong. Never in all of the gun shows I have attended did anyone ever approach me and say that what I was doing is illegal—this is B. A. T. F. personnel included.

On August 21, 1976 I sold a gun to a undercover B. A. T. F. Agent from Maryland. At a later date this same B.A.T.F. Agent (Michael M. Flax) called my house and my wife told him I was at work. He then called me at work and said he was going to be in my vicinity and ask if I had any guns for sale. I named about four (4) out of the collection of twenty-six (26) guns I had at the time which I would be willing to get rid of. This was on November 4, 1976.

On November 17, 1976 six (6) agents came to my house about eight (8) o'clock in the morning and told me that I was being charged with illegal gun sales from the Roanoke, Virginia gun show. These agents went through my house looking for guns and taking pictures. All of my guns were stored in two (2) gun cabinets: one (1) in my family room and one (1) in the living room. Yet they continued to search my whole house leaving things in pretty much of a mess. After about three (3) hours they left taking all of my guns with them. These guns were all legal—all of them shotguns and rifles except four (4) handguns. Most of these guns I have had for several years.

It seemed this action that I was involved in was a Net they had done to several gun shows and they hit us all at the same time.

I had to attend court in Danville, Virginia on February 14, 1977 and pleaded Nolo Contendere. I received a \$500.00 fine, a years probation, and worst of all was charged with a felony.

After several meetings I was able to get eighteen (18) of my twenty-six (26) guns back. I was asked to name the guns I had available for sale of which I only had four (4), however, the B. A. T. F. said they had to have at least one-third (1/3) which was their "pound of flesh". This is exactly the term they used.

My attorneys fees amounted to three (3) thousand dollars plus the loss of my eight guns not to mention all of my time and worry as I had never been in this type of problem before.

I was never selling guns for a living as I am a computer operator with the government; I am a member of the Army Reserve for the past eighteen (18) years, am engaged in farming part-time, and also have some apartments for rent. I just enjoyed gun shows and gun collecting as a hobby—as other people might golf or similar type activities.

I am still trying to get my rights restored as I also enjoy hunting as I was raised on a farm, but at this time I am having very much difficulty so I would appreciate very much anything you can do for me.

Enclosed are some copies that my attorney who has prepared in trying to have my sentence reduced but we haven't been very successful.

Thanks very much for your time and I would be glad to help you any way I can. Also hope to hear from you soon in regard to this action.

Sincerely,

LOWELL T. HYPES.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA

(Background and conviction)

UNITED STATES OF AMERICA

v.

LOWELL T. HYPES

## BACKGROUND

Lowell T. Hypes was born on June 15, 1938, in Montgomery County, Virginia. He graduated from Blacksburg High School and entered the Armed Services in 1961, serving in Germany before being discharged in 1963. He was employed by VPI&SU in the Physical Education Department in 1964 and in 1965 became a computer operator for Deputy Chief of Staff for Logistics (DCSLOG) Department of Army as a computer operator. His position necessitated top secret clearance.

Following his discharge from the service, Hypes remained in the Army Reserve and obtained the rank of Master Sergeant. He has received numerous Certificates of Merit and Accommodations from the Commanding Officer at the Radford Army Ammunition Plant and also from the Army Reserve.

Hypes, in addition to his regular employment and Army Reserve duties, is a part-time farmer and enjoys quail and pheasant hunting.

Additionally, he has been attending classes at New River Community College where he has obtained an A average.

## ARREST AND CONVICTION

Lowell T. Hypes enjoys collecting guns, which he has done since a young boy. Several years ago, during the lifetime of his father, he attended several flea markets and began trading and swapping old guns. In August and September of 1976, he attended a flea market in Roanoke and Hillsville, Virginia. He never attended more than four gun shows in any one year and on these occasions, he sold a hand gun to an agent of the Bureau of Alcohol, Tobacco and Firearms. Several weeks later, he and numerous other individuals were charged with selling firearms at various flea markets in Virginia, Maryland and North Carolina and were arrested under violation of Title 18 USC 922(a)(1)—"It shall be unlawful for any person other than a licensed importer, manufacturer, or dealer to engage in the business of importing, manufacturing or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce".

Hypes had never received a warning from anyone that his activities were unlawful or in violation of any State or Federal Code.

On November 17, 1976, agents of the AT&F Regional Office arrested Lowell T. Hypes at his home in Radford, Virginia, and confiscated approximately twenty-six firearms (old guns, rifles and shotguns), some belonging to his wife and others to his son, and charged him with violation of the above set forth statute.

On February 14, 1977, Lowell T. Hypes plead nolo contendere to the charges against him, was found guilty, placed on probation for one year and assessed a fine of \$500.00.

Lowell T. Hypes has, at all times, been an honest and law abiding citizen. He has never been convicted of any crime other than the charges of selling firearms at a flea market in Roanoke and Hillsville, Virginia. He is a respected and trustworthy citizen and enjoys the highest reputation in his employment and among his personal acquaintances.

His lifetime hobby of quail and pheasant hunting has now been terminated by reason of the fact that he is unable to carry a firearm.

Lowell T. Hypes is a good and trusted citizen of the Commonwealth of Virginia and should be relieved of this burden and stigma.

Respectfully,

RICHARD W. DAVIS,  
Counsel of Record for Lowell T. Hypes.



United States of America vs. **United States District Court for**  
**WESTERN DISTRICT OF VIRGINIA - DANVILLE**  
**DEFENDANT** **LOWELL THOMAS HYPES** DOCKET NO. **77-00016**

**JUDGMENT AND PROBATION/COMMITMENT ORDER** AO 245 (8/74)

In the presence of the attorney for the government the defendant appeared in person on this date **February 14, 1977**

**COUNSEL** ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.  
☒ WITH COUNSEL **Richard Davis, Esq.** (Name of counsel)

**PLEA** ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☒ NOLLO CONTENDERE, ☐ NOT GUILTY

**FINDING & JUDGMENT** There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged.  
☒ GUILTY.  
 Defendant has been convicted as charged of the offense(s) of violation of 18 USC 922(a)(1); 923; and 924(a)

**SENTENCE OR PROBATION ORDER** The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that ~~the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~  
 Imposition of sentence is suspended and the defendant is placed on probation for a period of ONE (1) YEAR and fined the sum of \$500.00.

**SPECIAL CONDITIONS OF PROBATION**

**ADDITIONAL CONDITIONS OF PROBATION** In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT RECOMMENDATION** The court orders commitment to the custody of the Attorney General and recommends,  
 It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

**SIGNED BY** ☒ U.S. District Judge **Ted Dalton**  
☐ U.S. Magistrate

**CERTIFIED AS A TRUE COPY ON**  
 THIS DATE **2/14/77**  
 By **B. Gibson** ( ) CLERK ( ) DEPUTY  
 Date **Feb. 14, 1977**

DAVIS & STONE, ATTORNEYS, INC.,  
 Radford, Va., March 9, 1979.

Re: U.S. v. Hypes, U.S. v. Cox  
 Mr. LOWELL T. HYPES,  
 Radford, Va.

Mr. STEWART S. COX,  
 Christiansburg, Va.

DEAR TOMMY AND STEWART: Although Judge Turk has indicated to me that he is reluctant to change the prior convictions, I have an appointment with him and the District Attorney on April 6 in Roanoke. I will let you know the outcome of this conference shortly thereafter.

Very truly yours,

RICHARD W. DAVIS.

U.S. DEPARTMENT OF JUSTICE,  
 U.S. ATTORNEY,  
 Roanoke, Va., February 7, 1979.

HON. JAMES C. TURK,  
 Chief District Judge, U.S. District Court,  
 Western District of Virginia, Roanoke, Va.

DEAR JUDGE TURK: Thank you for your recent letter concerning Lowell J. Hypes and Stewart S. Cox. This appears to be an inquiry from Dick Davis in the nature of a Rule 35 Motion to Reduce with an additional twist in that rather than merely seeking to modify the sentence of these two persons, Mr. Davis is requesting that the crimes of which they were convicted, that is, from felony to misdemeanor.

This is an impossible remedy under Rule 35. Case law particularly *Gray v. United States*, 438 F.2d 1160 (9th Cir. 1971) stands firmly for the proposition that while the court may fashion a sentence it cannot *sua sponte* reduce the charge which is a function of the Executive branch of government. Further, the pleas of these two individuals were directed toward specific felonies not misdemeanors, and were rendered pursuant to an agreement between this office and Mr. Davis and were carried out in good faith in consideration of the backgrounds and records of the two individuals. Therefore, this office must object to any change in the nature of the charges to which these defendants entered their pleas of nolo contendere nearly two years ago.

Sincerely,

PAUL R. THOMSON, Jr.,  
 U.S. Attorney.

DAVIS & STONE, ATTORNEYS, INC.,  
 Radford, Va., October 9, 1979.

Mr. LOWELL T. HYPES,  
 Radford, Va.

DEAR TOMMY: Enclosed herewith is a copy of a letter I recently received from the United States District Court.

Very truly yours,

RICHARD W. DAVIS.

Enclosure.

U.S. DISTRICT COURT,  
 OFFICE OF THE PROBATION OFFICER,  
 September 27, 1979.

Re: Lowell T. Hypes.

HON. TED DALTON,  
 Judge, U.S. District Court, Western District of Virginia,  
 Roanoke, Va.

DEAR JUDGE DALTON: Mr. Hypes successfully completed the one year probationary period on February 13, 1979. He complied with all conditions of probation and was very cooperative throughout the year. As far as can be determined from personal knowledge and file information, Mr. Hypes is an honest, industrious and respected citizen and is not considered a threat to society. There would be no objections from this office if he was given relief from disabilities and was again permitted to possess firearms.



The above statement is made with knowledge that Title I-18 U.S.C., Chapter 44, Section 925(c) restricts his privilege to submit an application for relief from firearms disabilities. It appears that the only recourse is to apply for a presidential pardon.

Respectfully,

JAMES T. WOOLWINE,  
Chief Probation Officer.

Honorable Birch Bayh  
363 Russell Senate Bld.  
Washington, D.C. 20510  
Sept. 10, 1980  
Jackson, Ky.

Re: BATF abuses entrapment scam

Dear Sir:

My name is Ronald J. Ungers, 3 yrs. ago I was a victim of a scam orchestrated by the BATF. I am a Korean War Vet, with an honorable discharge, never before been arrested for any reason. A large part of my time is spent involved in community services, such as; Optimist International, Masonic Bodies, Shrine, Crippled Children Hospitals and a board member on the Council of Aging RSVP program.

On Sept. 21, 1977, I was arrested by agents of the BATF, not knowing the charge. I was booked, fingerprinted and photographed.

As to the charge, it involved a straw man purchase, with an informant and agent from BATF. A trial date was set, Judge Fry, a Federal Judge would not admit

the tape recordings of the firearms transaction as evidence, due to the distorted and intelligible conversations of all persons involved.

He then took time before setting the jury, to give the BATF agents an opportunity to prove to him the validity of the tapes, after 3 hrs. of questioning by prosecutor and defense attorneys, his ruling was case dismissed. The government then appealed his decision to the 9th Circuit Court, where they in turn dismissed it.

Then after all of this I received a notice of intent to revoke my firearms license based on the same charges. After spending many dollars and frivolous amount of time with administrative hearings, were no due process prevailed to my case. I learned from my last evidentiary hearing that a ruling was made by Judge Richey to revoke the license.

Our business is a small family owned corporation, dealing in primarily jewelry and related items.

To this day the only thing we are guilty of is trying to scratch out a living.

Sir, in conclusion of this matter, it appears to me that these agents of the BATF, would have more serious matters to look after, instead of wasting tax-payers money on orchestrated scams of entrapment directed at small business, thru out the country. At this point and time I fail to understand our justice system and the mechanisms that have spawned widespread civil liberties abuses.

After having spent four years in the U.S. Navy in defense of this country and return to civilian life to have an agency (BATF) of the Federal Government ruin your life is more than I can handle.

Sincerely;

Ronald J. Virgino  
2128 So. 6th Ave  
Tucson, Az. 85713

Senator Birch Bayh.

363 Russell Senate Bldg.

Washington D.C. 20510

Sept. 10, 1980  
Tucson, ARIZ.

Re: Hearings on Abuse of Use of Power  
By BATF

Dear Sir.

I would like to relate a series of incidents  
concocted, orchestrated and perpetrated upon our family  
owned corporation and my son.

On or about Sept 21, 1977 we were invaded by  
approximately 10 Agents of the BATF. And my son  
was placed under arrest by Agent Tom Gerrity  
approx 9:00 AM. I asked the Agent what my son  
was being arrested for - He said he couldn't tell me  
he then immediately turned around and told my  
son we are not going to arrest your father at this  
time, I again asked what he was being arrested for  
he repeated the same answer as before with the  
additional words that he was going to take him  
down town and that my son would be back in  
about an hour. In the mean time all these Agents  
were pawing through everything it was necessary  
for me to admonish several of them to the fact the  
merchandise & personal property did not belong to them.  
And that I would not tolerate any of them damaging  
or destroying anything. My son was arrested, mugged,  
printed, jailed and approx 2 hrs later found out what  
he was charged with. I.E. 2 Count of Selling a Gun  
to a Felon 2 Counts of Causing False Information  
to be entered into our Records. Our Corporation

was charged with the same.

These charges are that my son sold  
a gun on two different occasions to a felon  
through a straw man.

My son sold a gun on two different occasions  
to a man who identified himself as Jose R. Martinez  
ARIZONA DRIVERS # L 72 7568 who later proved to be  
a county strike force Agent by the name of Morris  
Regina. There was another individual with Jose R.  
Martinez who looked & wanted the first gun in question  
but he said he couldn't sign the form but Regina said  
why. Mr Martinez (Regina) answered the questions  
and signed the 4473. As far as my son was concerned  
Mr Martinez (Regina) bought the guns. As I had been  
informed by Agent Nagy that who ever signed the forms  
for purchase was responsible and if they had misstated, misused  
or caused to be entered false information it was the  
function of B.A.T.F. to straighten out or prosecute if  
necessary - As we were not policemen but businessmen.

My son & our Corporation was brought to Court  
before Federal Judge William Frey on these charges -  
The B.A.T.F. attempted to introduce as evidence some  
tape recorded conversations and numerous editions of  
~~some~~ transcripts of these conversations. These tape  
recordings are so garbled and unintelligible that Judge  
Frey refused to admit them as evidence. B.A.T.F. by their  
own admission does not possess the original tapes who  
knows how many games were played with those tapes.

Judge Frey dismissed the charges against my  
son & our Corporation. The B.A.T.F. then appealed

DEH

JAN 12 1981

to the Ninth Circuit and the Case was again Dismissed. The B.A.T.F. Contends that ~~the~~ My Son ~~was~~ And Our Corporation was never Proven Innocent in A Court of Law. So therefore they Proceeded to Revoke our Fire Arms License under the Same, Manufacture ~~of~~ Erroneous information and purported Evidence. This was done by what they Call Administrative Procedure - we went through a Hearing Before a Hearing Officers (A B.A.T.F. Employee) and He upheld the Revocation, we then went through another Hearing Before a Law Judge (A B.A.T.F. Employee) (who is no more a Judge than I am a Chinese Aviator but infact is An Individual Set up by the Various Govt Bureaus to Protect themselves ~~from~~ ~~me~~ ~~from~~ Whos Bread I Eat His Song I Sing.) This Law Judge for B.A.T.F. HEARD the Case And He Said that He was Not Going to Admit the tapes or transcripts All the Various Editions but was Going to use them for His own use as an Aid in the preparation of His own. - He then Proceeded to Admit the tapes & transcripts As Evidence - our Legal Counsel was unable to question this. So there fore we were denied due process and by this our Civil Rights were denied. Action was filed in federal Court Before Judge Richey, & The Govt present A Small Portion of the Supposed tapes that were As Clear As A Bell. I Don't know how they came this As our tapes are unintelligible Judge Richey Ruled in B.A.T.F. FAVOR by upholding LAW Judge TEAVIS This is now Being Appealed.

Sinopsis:

1. The Switch Anthony J. DEMARA is a Convicted Felon and Drug Addict.
2. DEMARA WAS Paid for his Services By B.A.T.F.,
3. DEMARA WAS Promised Bonus in the Amount of \$2,000 Per Case Resulting in Convictions of Gun Owners.
4. Bonus to DEMARA WAS Not Paid because He WAS Arrested By B.A.T.F Agent GARNITY for Possession of Fire Arms.
5. DEMARA did Not inform My Son or Any other Co. Agent that He WAS A Convicted Felon He Just Said He Couldn't Sign. Maybe He Couldn't Write, I don't Know
6. A County Strike force Agent Jose R. MARTINEZ (MORRIS ~~REYNOLDS~~ REYNOLDS) Purchased A 380 TANGA on Feb 4, 1977 Model 195RW on Feb 8, 1977
7. On Feb 4, 1977 & Feb 8, 1977 Agent REYNOLDS, A A County Strike force Agent Purchased 2 Hand Guns, Using Fictitious Identity and GAVE FREEDOMERS information to My Son on the Required Questions to be Answered on B.A.T.F Form 4473 Agent REYNOLDS Under oath on Both Occasions State that the Information and Answers were true when in fact All WAS False. Agent REYNOLDS did Sign the forms. Falsely of Course.
8. My Son NOE Incorporated Agent of our Corp. did Not Knowingly or willfully File or Fill out A False 4473 on Either of the dates

- on which the sales took place or at any other time. Nor have we ever sold a gun to a known felon at any time knowing.
9. All Record Keeping Errors, if any, which B.A.T.F. complained about were corrected and subsequent licenses were issued without any reprimand or comment concerning those clerical errors.
  10. The record does reflect the ineptness of the B.A.T.F. with regards to its own clerical abilities, in the first change the wrong party was named as the purported offender. Subsequently the wrong forms were used by the B.A.T.F. Seems as though don't do as I do but do as I tell you prevails. They can't keep their own records straight or forms for that matter.
  11. The entire scheme & mode of operation was conceived or orchestrated by B.A.T.F. to induce legitimate fire arms dealers to sell fire arms to a maybe felon or nonresident. This was done to justify their jobs - they arrest a whole batch of small business people like Barron with most on these Mickey Mouse charges and tell the Congress what a fine job they are doing - I.E. the conviction rate vs arrest rate - seems as though they never tackle a chain outfit or large sporting goods complex.
  12. Money used for the purchases was supplied by the B.A.T.F. who in turn received it from Congressional approved budget which

- in turn was collected from the American Tax Payer. So actually the American Tax Payer owns the guns - seems like a long way to go for the Gov't to buy a gun. I want my piece out of this.
13. A County strike force Agent and the Agents of B.A.T.F. knew that Jemara was a convicted felon and did not communicate this information to my son or any other Agent of our Corporation.
  14. At no time did the B.A.T.F. or any of its Agents by word of mouth or specific instruction or by their own rules or regulation advise my son or any other Agent of our Corp that it was illegal to sell to a strawman. Quite to the contrary I had been informed that whoever signed the form was the purchaser and responsible.
  15. The tapes & various editions of transcripts and possibly various editions of tapes were not admitted as evidence by Judge Travis but for his use only in preparation of his own transcript and later he admitted them as evidence even though they had been disallowed in previous Federal Court proceedings concerning the same party and same matters.
  16. In one of the editions of the transcripts the B.A.T.F. has me in the transaction however that is impossible as I was in a doctor's office. - B.A.T.F. has a warped imagination.

17. We were precluded from impeaching or discrediting the tapes & transcripts due to the fact they were not admitted as evidence at the hearing before Judge Travis and later admitted. thereby denied due process and total disregard for civil rights. B.A.T.F. Does not have the original tape, the switch could control the recorder, B.A.T.F. contends they made a copy from the original with the number of transcripts its suspect that there would be more than one edition of tape.
18. We are very careful & cautious and demand proof of identity and oversee filling out the forms required by B.A.T.F., we are aware of most of the laws, rules & regulations. we are not however aware of every minute portion of the laws, rules, regulations as these are constantly being changed by the B.A.T.F. Not even their own agents know let alone the lawyers & judges. Confusion reigns supreme.
19. Dumara was not only paid by the B.A.T.F. he was given immunity and B.A.T.F. helped arrange plea bargain to dismiss 10 firearm violations which occurred before, and after helping B.A.T.F.
20. I hear that Reyna was rewarded for his work by being hired by B.A.T.F.
21. I believe that the only person that broke the law knowingly was Morris Reyna when he filled out the 4473. Section 178.161

Mr Reyna was not a Federal Agent of any kind at the time of transaction, and the B.A.T.F. as the facts clearly show entrapment as a matter of law.

Arizona Attorney General Ruled 4 County State force now known as the Arizona Jury Control District are not law enforcement officers newspaper clipping attached.

22. Our business reputation as well as my sons personal reputation was excellent and above reproach and well respected in the community before B.A.T.F.'s flagrant invasion & ridiculous charges - Our business and my son has suffered a great deal.
23. we are still being harassed & still in court if it wasn't so serious 20 years in jail 20,000 fine loss of license & costly to defend so far approx 18,000 plus another 5-7000 Court of Appeals. this would be one big joke.

Senator Bayh. My son has been raised by & believes in brotherly love, relief, truth, brotherhood of ~~the~~ man & fatherhood of God and we conduct our business on these tenants as such we have no defense against a liar or thief. The B.A.T.F. is both. First they have lied about my son & our cooperation & stolen my sons and our corporations good name. Its a shame that nothing can be done to control the acts against the American people by B.A.T.F. as they have set themselves above God, Congress, Federal & State Courts and



Answerable to no one except themselves.

Yours for A Quick Demise  
of the Bureau of Abuse, Terrorism & Falsehoods.

Wiley W. Morris II  
K.A. TRADERS INC.

JBA

ARIZONA TRADERS.

2128 So 6th Ave

Scottsdale, Ariz. 85713.

P.S.

To Save a lot of time

The Stock Holders Are My wife, My Son, & My 4 Minor  
Grandchildren. Nora, Don, Dino, GENE, DONA & ROGER  
And my self

CC. - Galtwater. Sen.  
De Concan, Sen.  
Utah Rep.  
Volkmer Rep  
Domeici Sen.  
McClure Sen.  
NRA  
File.

## Drug force 'not officers'

By JOHN RAWLINSON  
Citizen Staff Writer

The state attorney general's office has written an opinion stating that members of the Arizona Drug Control District are not law enforcement officers and do not qualify for state retirement benefits.

The opinion has not been issued publicly and it is not known whether it ever will be. As a result, its possible effect cannot yet be determined.

Terry Grimbale, who runs the day-to-day operations of the district, also known as the Strike Force, apparently is attempting to prevent release of the opinion.

Attorney General Bob Corbin today confirmed that his legal staff has written three opinions about the district, the agency that led the investigation that resulted in the arrest and recent conviction of reputed Mafia boss Joe Bonanno for obstruction of justice.

Corbin declined to discuss the opinions or the legal reasoning behind them, although he did say they address the question of whether the district employees are peace officers.

history of the United States has done what we did to Joe Bonanno.

Other state agencies were "jealous" of the district, he said.

Corbin was asked if his opinions that members of the district aren't law officers could affect drug and organized crime investigations the district has done in the past.

"I don't think so," Corbin said. "But you never know."

Grimbale said he didn't think past investigations

would be affected because other law enforcement agencies assisted in the cases.

"We've never publicly maintained that we're peace officers," Grimbale said. "What we need is secondary police power status for our men, to protect them when they're in the field during investigations with law enforcement agencies."

Grimbale said he would work with the state Legislature next session to accomplish that.

He also said the opinions examine whether members of the district are in the state public law enforcement retirement system and whether they can receive funding from the state's Arizona Law Enforcement Officers Advisory Council, a state system set up to train state, city and county law enforcement officers.

The opinions apparently were requested in the last two or three years by other state agencies.

Corbin today said that a month ago he gave the three opinions to Grimbale to study.

He said he was supposed to meet with Grimbale yesterday but that the meeting fell through.

Grimbale today said he was meeting with representatives of the attorney general's office to discuss the opinions.

Grimbale said before that meeting today that 40 former law officers now working for the district expect to get their retirement benefits from the state under the 20-year retirement system other law officers enjoy.

Grimbale said if these employees don't receive their benefits, it will create havoc throughout the district.

For example, one district employee was a former Tucson police officer who agreed to join the district after receiving assurances that his time with the district would be computed for use in the state retirement plan. He was a nine-year veteran of the police department when he joined the district.

One district employee said of the opinions: "They're going to drive a lot of good people out of state government. No other agency in the

Wednesday, September 10, 1980

Tucson Citizen

## Opinion denies retirement benefits

### Drug Control men lose ruling

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Citizen Staff Writer

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AMMUNITION SALES COMPANY,  
Pensacola, Fla., September 11, 1980.

HON. SENATOR BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SIR: My wife and I, for the last ten years have run a small Gun Shop. We are both responsible, tax paying, citizens, who have never had any problems with the law or police in our entire lives. We have an excellent reputation and an enviable Dunn & Bradstreet rating. Our gross sales was just under \$70,000.00. Much of this merchandise was sold to law enforcement officers at just slightly above cost. We had hoped in the last couple of years to make a small profit. An unexpected flood in March 4, 1979 wiped out what little profit we might have made that year. The profit that we may have made in 1980, \$2500.00 had to be spent in Attorneys Fees to protect ourselves from the ATF and their tactics.

On April 23, 1980 the ATF seized all our records and acquisition books by Warrant: Said Warrant only allowed the ATF to seize 5 sales records for a possible technical violation of 5 day sales rule promulgated by the ATF. This makes it extremely difficult to keep the type of records which the ATF demands. They have used our records to question and otherwise bother many of our customers both at work and at home. My customers have called me very upset. The average person does not appreciate Federal Snoops, when they are guilty of nothing more than purchasing a weapon for home defense. The ATF methods have been very successful in cutting our business to almost nothing. My wife and I are both over 65 and drawing Social Security, both with a serious heart condition, and Diabetes, under a Doctors care, with constant medication. This continuous cloud over our lives for the past 6 months has not helped our health at all and was not necessary.

I would like to point out at this time that I have sealed sales packages of purchased pistol ammunition from KMart, and TG&Y, both large sales chains, which did not require any identification. This is strictly against the 1968 Gun Act and I have reported this on many occasions to the ATF, as far back as 2 years, and as far as my knowledge, they have done nothing about it. Could it be that they won't do anything because they are large stores. The history of the ATF indicates that they will always persecute the small dealer, because he does not have the clout or money to defend himself. It seems to me that it makes no sense or difference whether the pistol or pistol ammunition comes first, as it takes both to function. In our 10 years of business we have had less than a dozen calls from Washington, D.C. to trace a fire arm. We have satisfied the bureau on each instance, except one where the Border Patrol, FBI, and ATF all swore up and down that a pistol, which we had sold and had received it from a wholesaler in California, direct, was involved in some border crime in California. This gun was sold new, in box to a local friend and customer and proper records entered. One of the local ATF agents insisted that I have customer come in to my place of business and show him same, which I did, which proved that these Government Agents had all goofed again, as the serial number on the gun proved us right and the agents wrong.

The local FBI Agents have on two occasions complimented us and stated that we had the best records in the area.

Further in order to raise the \$2500.00 in Attorney Fees to protect ourselves, it was necessary to whole sale some, out of production, Colt Revolvers at a loss. We intend to claim this loss on our tax return for 1980.

We wish further to relate about our Black Powder Inspection of 9-10-80: which was the worse, and most severe of our 10 years in business. One of our Out buildings which we store Black Powder in, approved and disapproved 3 different times by different inspectors until we do not know what they want and doubt if they know what they want. Now they tell us for the first time and it is the printed regulations that we must enter inventory of Black Powder on hand as Inspector stated 365 days per year, even though we are closed on Sundays and holidays. This makes no sense what so ever, as a signed separate sheet is required for each B.P. sale. We shall hope that some reasonableness, fairness, and consideration for Black Powder and the shooting sports will come out of these hearings. My wife and I are of the opinion that nit picking efforts could be better directed at our National Drug problem.

Thanking you for any consideration, I am,  
Yours truly,

BYRON C. MELVIN.

Senator BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SENATOR BAYH: My husband and I recently heard that you might be interested in investigating the Bureau of Alcohol, Tobacco and Firearms. Since our lives have been ruined by this Bureau—which made its most recent harassment only a few weeks ago—I thought I would write to tell you what they did to us.

I don't really know where to begin so I guess I will tell you a little about ourselves first. We have been married since 1967 and have been blessed with three children, 8, 10, and 11 years of age. We have lived in the same area for most of our lives. My husband, Gary, is 34 and I am 31. In 1972 we opened a Sporting Goods business and are active in many local community affairs. My husband has been President of our Chamber of Commerce twice, once in 1976 and again in 1979. Our children are avid swimmers and on the local swim team, of which Gary also served as president in 1978-1979 season. We were also just elected as finance directors of the same association.

We have had many struggling times trying to keep our business going through many hardships. My parents had put up their home as collateral for our business. And Gary's parents also co-signed a note for us at a time when we were down. The financial status of our business has been to a point where we were told by friends, bankers, attorneys, accountants and others that we should go bankrupt, but because there were so many other people involved, I have seen my husband struggle day and night to keep it going.

We both have our faults as does everyone, but we have tried to do what's right and prior to having dealing with the Government have had no problems with the law. Gary's lifelong dream was to get into politics and I have seen that dream shattered.

There are so many things I could say but I guess I should get on with why I am writing. As I said we are in the sporting goods (hardware also) business where we have been in the same location since 1972. In January of 1976 my husband was asked to help the U.S. Customs in a matter concerning a local man they were trying to catch, I believe sending guns and ammo across the Mexican border. Gary met with agents several times and was doing as they wished. Gary had late night calls and visits from them and at the time I was not aware of what was happening because they had told Gary not to say anything. At some point when this was happening Gary was told by the customer they were watching that he had better never do anything to harm him. Then Gary was asked by the Customs to let the man make a mistake or something of that nature. Well the man came in the store and with a false green card tried to buy a pistol. We went ahead and filled out the State Dealer of Record form, but kept the gun because of the required waiting period. Gary immediately called the customs agent to advise him and at that point he told us we would have to call ATF because of the gun matter, so Gary did this. We were then visited by an agent from Sacramento who told Gary to go ahead and sell him the gun. Gary at that time told the agent that if he could have some sort of document saying it was okay that he would because it is a federal offense to sell the gun to him under the circumstances. The agent told Gary he would be acting as an agent when he did this but Gary said he must have some assurance. (You must know that he also was more concerned for the safety of myself and my children because of the person whom was committing the crime.) The agent then got very angry and told Gary, "I am going to get you", well that was just the beginning of many more happenings.

Within a short period of time this agent along with others came into our store (when we were out of town) closed (locked) the doors and that's when the horror all began. When we returned home that evening (the day before fathers day which used to be our most profitable) we called to make sure everything was okay. That was when we were told the agents were there. Gary immediately went down to find our employees scared and the agents with them. They had taken our controller, who had been doing our books, upstairs put a chair in the middle of the room and demanded he stay there and not move. (I believe he was also read his rights) then he was told that Gary was a criminal and was convicted and was going to go to prison along with a few other remarks.

Gary immediately upon getting to the store and seeing what was happening called an attorney we knew in Hayward. He then made some calls for us and we finally reached an attorney from Washington, DC. who could help us in the mat-

ter. At this time the agents took our records many guns and left the store. Within a period of time Gary then was served papers to appear in Sacramento on charges against him, at this time there was three names on our federal firearms license, but Gary was the only one served. They had found a lot of bookkeeping type errors and a case in which an employee had sold a gun to a reserve police officer who was under 21, which we know is against the law. Because of the error of that employee who we are responsible for, Gary was told to plead guilty by the attorney we had gotten during the investigation. We originally had a local attorney of a friend trying to represent us, but he was not at all familiar with federal laws.

I also must say that during the years prior to this we were always checked by ATF as is their procedure to make sure that we are doing things okay, and was never told of the wrong type of records we were keeping. (The papers were correct. It was the way we had them in a binder that we later found out was wrong after four years.)

Since this we have had perhaps the hardest struggle ever to keep our business going. The agent had talked to our suppliers during all this and told them we would be going out of business, so we had a hard time buying merchandise. Everything was put on a C.O.D. Cash basis and the loan package we were working on that had been verbally approved was then denied.

We have gotten the proper books for keeping our records in and I make checks of our guns and books every month or two to make sure we are not making any more errors. The Gun license was put in my name because of Gary's conviction. He was no longer actively daily involved in the gun department. We have 12,000 sq. feet and have hardware and other items also.

In January of 1980 we became partners in a light store which was moved into a portion of our business and Gary has been extremely involved in it along with other outside affairs.

In April of 1979 agent Palmer from ATF came in and said he had a warrant to take our records from 1977-1979. I gave him these without hassle and asked him what it was about. He just said it was a congressional investigation and when I asked about what he couldn't say.

Gary had not been directly dealing in guns for some time and we found out through our attorney that it had to do with Gary being in the department behind the counter. We do sell fishing equipment, trophies, and other sporting goods. Our attorney had been communicating with the director of ATF in San Francisco and was told just several months ago that they were convinced Gary was no longer involved and was spending his time in the office and in other areas.

(I forgot to say that Gary was put on three years probation and fined \$250.00. He was released from probation after 18 months.)

At this time our attorney said he was going to try to get a waiver for Gary which we had talked about before. Approximately one and a half months ago he started his procedure.

Then on August 7, 1980, after I had received a call from my youngest daughter that she was not feeling well we were getting ready to go home for lunch when Mr. Palmer (the ATF agent) came in. I was downstairs in our warehouse and he asked me where Gary was. I said upstairs in the office. He immediately went up there with one of the men that was with him while the other stayed with me. He told me he was a U.S. Marshal and he had a warrant for my arrest. I had him repeat this because of my shock from what he had said. He said he had a warrant for mine, Gary's, and an employees arrest. We then went upstairs where Gary was being frisked. They then brought our other employee up and said they would have to take us to the local P.D. and then to Fresno. I asked where the warrant was they said at the Ceres Police Department. Then I asked if I could contact my children. They said I would have to wait until I got to the Police Department.

We were then led through the store out the front door and put in the Marshal's car. Mr. Palmer getting in his own. Upon getting to the local police department we were given what I believe was the warrant and the list of charges. (After being through what we had several years ago, I never thought there would be anything worse. Well I was wrong.) They took our pictures with numbers around our necks, fingerprinted us and had us fill out some other papers. Then we were handcuffed and put back in the marshal's cars to go to Fresno.

I must backtrack for just a moment at our stay at the Police Department we were allowed to call our home, which I was unable to reach to start with because it was busy. We then called our store and talked to one of our employees who we asked to call our attorney and Gary's parents. My mother and sister work

for us and were there when this happened. I finally reached my home and told my son who is 10 that we had to go out of town and his grandpa would come and get him and his sisters, which I was not sure of because we were only able to have our employee call him to make the arrangements.

We were able to get to Fresno by 4:00 because of the marshal's hurrying and we thanked them for this. We were brought before a Magistrate after we were put in cells and talked to by a public defender. The magistrate went through our rights and I guess the rest of the things he had to. The bail was originally set at \$100,000.00 on Gary and \$50,000.00 each on Ray (our employee) and myself. The Magistrate waived this after talking to us and we had to sign an agreement to appear or pay what I believe was a total of \$150,000.00. After a few more minutes of what I believe is normal procedure we were released and told we could leave.

I had only brought about \$20.00 that I had in my purse. Gary had about \$15.00 and Ray only had \$1.00 or \$2.00. We didn't really know what to do so we called a cab and took it to the nearest car rental so we could rent a car to get back to our home some 150 miles away.

The humility of these events was what I thought the worst I could ever have. But upon returning home, Gary and I decided we had better tell our children what had happened before they heard it from someone else.

To listen to and watch my husband tell our children both of their parents had been arrested was I think the hardest thing I have ever had to do. The pain in Gary's eyes was unbearable, but he was strong and handled himself extremely well.

I don't even know what I expect this letter to achieve, but I had to write it. I cannot understand how people who are trying to do right and who obey the laws can be put through what we have. We, of course, are not perfect as no one is but we try to do what's right for ourselves, our family and the United States, along with our own community.

Because of the legal expenses and effects of this we are going to have to sell our business and home and hope to be able to start all over. I just hope this experience will not ruin our children's hopes and dreams and that Gary is strong enough to make it until this is over.

Sincerely,

LINDA LEE BALL.

ATWOOD HALL,  
Lewington, Ky., September 16, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SENATOR BAYH: I understand that you are making enquiries into the enforcement activities of BATF. I have had numerous encounters with BATF over the years, and I would like very much to discuss anything in my experience with them that might be of interest to you.

I am currently serving a six month sentence for violation of the Gun Control Act of 1968. I did own a gun shop, and I was the "68th" target (no pun intended) of Robert Lee Chamberlain, one of their agent provocateurs that drives a Greyhound bus for a Broadway touring company throughout the country. I was charged in March of 1978, but I wasn't incarcerated until July of this year. I have had two fairly prominent gun collectors and enthusiasts in the Memphis area seek me out over the last 8-10 years and relate "deals" that they were offered to set me up. I could go on and on, but I don't really know what type of information you are seeking or if you are interested. I was referred to you by Attorney Richard Gardiner who works with ILA of the NRA.

If I can be of service to you in the course of your hearings or any future investigations, please do not hesitate to contact me.

Sincerely,

LARRY Z. SHORT.

OZONE GUNS & GRAIN,  
Slidell, La., September 17, 1980.

Senator BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SENATOR: My name is Warren Daniels. I own and operate the Ozone Guns & Grain.

ment for 11 of these 12 years; am a law abiding person; have never given cause that would implicate anything else. I am married and have two children. I own property in St. Tammany Parish and am trying to build a home, and provide for my family by operating the gun shop, also a feed store, and doing air condition and refrigeration repairs in the summer. I developed an interest in guns while in the Army in 1962.

I am writing this letter to inform you of, what I feel, is a Hitler-styled law enforcement agency, which is called the Bureau of Alcohol, Tobacco and Firearms (ATF). During the past fourteen years that I have been in the firearms business, most of the people I have dealt with throughout this department have been very nice, with the exception of an encounter with ATF agents Nick Fatta and Paul Darby, which occurred on June 17, 1977, when, in the presence of several customers, I was arrested by the above named ATF agents and was treated worse than a common street thug.

I have owned and operated a combination feed store and gun shop, which is located on the outskirts of a small and growing town, for the past fourteen years. Over this time I have become a well known member of this community and have established a reputation for handling name brand firearms, offering qualified appraisals, and offering a reputable gunsmithing service. I have never dealt in any type of inexpensive firearms. You can imagine the shock and reactions that occurred throughout the community after I was accosted by ten ATF and local law enforcement agents. I was actually handcuffed in my gun shop, in front of customers. The agents also went into my home, in front of my children, and examined my private gun collection. The gun shop portion of my business was searched completely, including the inventory of all firearms, all closed boxes, some unopened mail, and personal possessions. This was done after I was removed from the shop and was being transported to New Orleans.

Over the following three week period, friends and customers were contacted by the same ATF agents in regards to my personal character, some actually being told that I was in a lot of trouble and would be going to jail. They were also told that I had sold illegal firearms to felons (a fact which was disproven in Federal Court November 10, 1977).

My employee, a young impressionable girl, was questioned intensely by the ATF agents and also local law enforcement agents. During these sessions she was promised a car, home, and a place to live anywhere in the world, if she would give them the information they wanted. The agents had scared her into believing that I was definitely guilty and dangerous. They accused me of being a member of the Klu Klux Klan, and of possessing as many as five hundred stolen firearms at one time. After she had time to calm down, she realized that the agents had been using scare tactics on her.

I will try to describe to you in the following paragraphs the incidents that occurred prior to my arrest. I will be mentioning two persons, Nick Fatta, an ATF agent, and John Heard, a known felon. At the time I first met these two men, I had no idea of their background. Heard presented himself as a man interested in buying a firearm, and Nick Fatta implied that he was John Heard's brother. I now know that the Bureau of Alcohol, Tobacco, and Firearms offered John Heard, a known felon, immunity to a sentence of several years jail term, if he would assist the ATF in making a case against me. What makes it even worse, is that the ATF agents had to resolve to lying and thievery to try and substantiate their case so they could bring it before the Federal Grand Jury. I will discuss details of this later.

John Heard initially came into my gun shop to purchase a pistol, which was valued at approximately two hundred-fifty dollars. At that time he offered me five hundred dollars to sell him the gun without papers, which, of course, I declined. He made light of the offer and then showed interest in a used double-barrel shotgun for the sum of one hundred, twenty-nine dollars. After filling out the required 4473 Federal Firearms form and purchasing the gun, he asked for the gun to be cut down as short as it could be cut. I questioned his request, telling him that it would ruin the resale value of the gun. Heard, in turn, explained to me that he needed it short as he could hunt better off on his bike in Texas. I sent the gun to my gunsmith who was located in New Orleans, Louisiana. He cut the gun to 26½ inches overall, required length is 26 inches overall. Heard stopped in to pick up the shotgun, and at that time requested the gun be cut off another four inches. I told him that it would make the gun illegal and could cost him as much as \$10,000 fine if he were found with an illegal length

gun. He again explained to me that he needed the gun shorter so he could hunt on his motorcycle.

When the ATF thug, John Heard, came in the shop to pick up the shotgun days later, June 16, he was accompanied by another man, who was not introduced to me. (I later found out, after my arrest, that he was Nick Fatta, an ATF agent.) Heard said that the gun was not short enough. I told him that if it was to be any shorter that he would have to do it himself, and that he would be stupid to do it because he would be breaking the law and asking for a lot of unnecessary trouble. (You would think that at that time the agent, Nick Fatta, would have realized that I had no criminal leanings and would have dropped the attempted entrapment.) Heard then said that he didn't want the shotgun in his name and would rather have it put in his brother's name, referring to Agent Fatta. I agreed to do so, retrieved the original 4473 form, filled out the description on the shotgun on a new form 4473 and handed it to Nick Fatta to fill out and sign. Fatta and Heard seemed to be having some kind of dispute, passing the new 4473 back and forth, saying to one another, "Here, you sign it." I was tired and it was way past closing time, and I had had about all of this situation that I wanted. Impatiently, I made the comment, "Horseshit", slammed down the lid on my sales ticket machine, and told them that it would stay in Heard's name. I then collected the seventy-nine dollar gunsmith charges and Heard and Fatta left.

I was arrested the following day. Ironically, the afternoon of the seventeenth, when I was arrested, after I had been hauled off to New Orleans at a high rate of speed (90 mph), a customer came racing into the feed store wanting to see me. He then told my mother, who works in the feed store, that he had heard a man, named Heard, in a bar the night before bragging that he was "setting up" the man who ran the Ozone Gunshop, and that he would be arrested today.

As I mentioned earlier, the ATF agents had to resort to lying and thievery to support their supposed case, as I had not fallen to their entrapment attempts.

Number one, John Heard stated that he told me he was a felon. The idea that I would risk my means of support, my business of fourteen years, to sell a gun to a felon is absolutely ridiculous. I deal with a very high inventory and a large turnover, I do not depend upon a gun sale of \$129.00 to make or break me. I have a high respect for the present regulations and have never had any desire to do other than to follow the law concerning any gun sales.

Number two, Nick Fatta, on his police report, states that I tore up and threw away the original form 4473 that Heard had made out when he bought the shotgun. In fact, one of the two, Fatta or Heard, had stolen the original form 4473 the evening they picked up the gun, because the next day, approximately at 2:00 P.M., when the army of agents came to arrest me, and the agent was reading me my rights, I saw a white photo copy of the yellow 4473, the one I was supposed to have torn up and discarded. Right then I knew that I had been set up. The agents later claimed, at the trial, that the 4473 form was picked up the day I was arrested. The fact remains that they had stated that I had torn up the form, and that they had a copy of the form the day I was arrested, which draws a positive conclusion that the agents involved with my case are lying thieves.

Number three, the newspaper article which was printed the day following my indictment implied that I had sold guns illegally to two felons. The name of John Heard was given and also the name of a customer and a very good friend of mine, who at the time was the Vice-President of a bank. My friend, now dead, went through a period of distress and his reputation as a reliable trustworthy person was put into question. The agents had simply made up charges to have me indicted. The reputation of my friend, Paul Hasperue, was of no concern to them.

Number four, Because I had all the proper documents backing up my legal status, which proved my innocence, the agents then charged that I had falsified my records. This also was a move of desperation, I think, because they had no evidence against me.

The weeks following my arrest were filled with episodes of harassment by the ATF and local law enforcement agencies. I was accused of falsification and forgery of police gun orders. I was accused of improper handling of stolen guns by local law authorities. In each instance personal confrontations with law agents took place, which included confiscation of my typewriter, handwriting samples, etc. These incidents only added to my feeling of frustration and helplessness.

During the pre-trial months, my life and the lives of my family were desperate, unable to eat well or carry on normal family activities. Plans for building a home were forgotten, my air conditioning repair business was ignored as self survival



and my family's future were my only concern. Sure, I knew I was not guilty, but who would have ever believed I would ever be in a situation such as this one was. I know I will never forget the feeling deep inside me when I read the words on the arresting documents, "The United States of America versus Warren Daniels \* \* \*". They will always stick to my gut, what a bitter piece of pie to swallow.

I had been thrown into a world of lawyers, Federal laws, politics, and needless to say, financial stress. Decisions of which lawyer would be able to capably represent my case, yet, that I could afford, had to be made. My future had been turned over to people I did not even know, but now was forced to trust.

Being a man who has taken care of himself since childhood, I began doing my own legwork on gathering evidence to defend myself. I gathered dozens of legal depositions verifying the attempted entrapment. The depositions represented a lot of time and money. I gathered in desperation to save myself and my family. None of the depositions were ever used at the trial. They were not necessary, ATF had no case.

I was brought to trial on two of the original five indictments, (three had fallen through the floor for want of evidence). Finally, after several trial cancellations, after the most nerve racking months I have ever experienced, and after a seven minute jury deliberations, the decision of "not guilty" was rendered on November 10, 1977. One juror stated it took seven minutes because they were trying to figure out why I had been brought to trial in the first place.

I am thankful to James McPherson, my trustworthy and capable lawyer who handled my case and to my friends who gave me continuous support.

As I am closing this letter I would like to say that I have suffered a severe loss of my business and a complete loss of police trade. There have been several negative statements about me and my business that have originated from police departments in this area. I am currently filing a suit against a police department of a neighboring town due to untrue statements issued about me and my business.

When I was indicted I received a lot of bad publicity through local and neighboring (including New Orleans) newspapers, radio, and television. They all did quite a number on my name and business. After I was found "not guilty", no one was interested in printing the outcome of my trial, even upon request. I was told that "good news is no news".

Now the IRS is harassing me, seeking information on the two years surrounding this incidence, wanting all personal and business records. The one item which makes me question their intentions is that they have summoned my gun registration which have no bearing, what so ever, on my finances. These records would only be of interest to an ATF agent. Explain that one?

I have all documents pertaining to my case and remember it as if it were yesterday. It will live with me forever; knowing that a person can live by the law, struggle to get ahead in this supposedly free nation, and can be shot down strictly to put a feather in the cap of an ATF agent. It saddens and sickens me to know so much power goes on without being checked.

I have only skimmed the incidents which occurred to me in the summer and fall of 1977. I only hope that my letter may expose some of the wrongs being done to the American citizens. I do not feel that I am the only one this has happened to—I feel that others have gone through the same harassments that I have endeavored.

Sincerely,

WARREN DANIELS.

CERES, CALIF.

Hon. BIRCH BAYH,  
U.S. Senator,  
Russell Senate Office Building, Washington, D.C.

YOUR HONOR: It is my understanding that you will in the very near future be holding hearings on the BATF and I am interested and deeply concerned about a matter I am sure you will find of interest and useful in the process of your hearings in this matter. I shall endeavor to give you all of the information with which I am familiar in the matter and invite your inquiry if you find it to be incomplete or need further clarification. First I would like to tell you that I am a Life Member of the National Rifle Association and have been for a number of years and have given of my time and resources in the battle that we have regarding the right of every American to keep and bear arms. (Criminals ex-

cluded of course.) I have very deep feelings and concern about this matter and shall continue to support our position insofar as I am able to do so.

Very recently on a weekday afternoon one of our town's young Citizens and Business man Mr. Gary Ball, his wife Linda, and Employee Ray Bell were arrested by two United States Marshals and an employee of the United States Government Agency charged with enforcement of sale of firearms etc. in their Store (Building Supply and Sporting Goods Business). (The only such store in our town). They were informed that they had been indicted by a Federal Grand Jury on (15) counts of violation of the Federal Firearms laws. At no time prior to the arrest had they been questioned by anyone, nor did they have the slightest idea of any irregularities whatsoever in any transactions or the keeping of incomplete records or in any manner violating any code or regulation State or Federal in connection with the sale of firearms, ammunition or any other offense. After the arrest they were taken to the local police station and fingerprinted as common criminals and then taken to Fresno, Calif. before the Federal Court for arraignment and were placed under \$50,000.00 bail each. They were released after posting bail and forced to secure transportation home a distance of about 100 miles. They have since appeared again in Court with Counsel to defend them and a trial date has been set for sometime in October, 1980.

Mr. and Mrs. Ball have been life long residents of this area and have been engaged in a successful business and have established their home and are raising their family here. I have known them personally for a lot of years and have been a customer of their's in the purchase of guns, ammunition, reloading components etc. I know them to be honest and reputable people in all their dealings and in so far as I have knowledge they are well liked and respected by all who have contact with them. I do not believe that any of them knowingly or intentionally violated any law or regulation to effect a sale in the store. Mr. Ball has been president of the local Chamber of Commerce and other Civic organizations and has done a great deal for the good of the community. He presents himself well and is a very capable public speaker and would in my opinion make a credible witness before your Committee.

I do not believe that any employee of any Government agency State or Federal has the right to usurp the power and position of the Lord Himself in the enforcement of any law or regulation of our land, such action as that which I have outlined above is completely uncalled for under any circumstances.

Respectfully yours,

OWEN K. METZ.

KILGORE, TEX., September 22, 1980.

Re Bureau of Alcohol, Tobacco and Firearms, Cliff Carpenter, Jr., Special Agent.  
Sen. BIRCH BAYH,  
Russell Senate Office Building,  
Washington, D.C.

DEAR SENATOR: Sen. DeConcini's staff advised me that your Judiciary Committee was interested in various aspects of the Bureau of Alcohol, Tobacco and Firearms. I am enclosing a copy of a letter, with attachments, which was sent to Sen. DeConcini. The situation outlined therein, and evidenced by the attachments thereto, would merit, I think, your committee's attention.

I would appreciate any assistance.

Kindest personal regards.

Sincerely,

CLIFTON "SCRAPPY" HOLMES.

Enclosure.

KILGORE, TEX., September 22, 1980.

Re Bureau of Alcohol, Tobacco and Firearms Cliff Carpenter, Jr., Special Agent.  
Senator DENNIS DECONCINI,  
Dirksen Senate Office Building,  
Washington, D.C.

DEAR SENATOR: I appreciate the kindness of your staff in visiting with me regarding the above matter. In accordance with my conversation with Mrs. Green, I am enclosing several documents which should be of interest to you and the committee regarding ATF.

To summarize the situation, Mr. Carpenter is a special agent with ATF, having been in their employ for sixteen (16) years. His difficulties began as a result of his filing an application for disability retirement. ATF personnel requested that he identify in writing all job connected areas which had resulted in his disability (indigenous anxiety). In response to this, Mr. Carpenter detailed the kinds of problems with which he has been forced to deal and submitted them to ATF personnel (see attached). Almost immediately on submission of this document, ATF notified Mr. Carpenter of their intention to separate him from the service for good cause. Appeals were perfected according to personnel regulations in the Civil Service, and ATF, ostensibly, began to investigate the allegations made in Mr. Carpenter's memorandum. Of course, what happened was something quite different, and very similar to the circumstances uncovered and brought to light by your committee. The ATF "investigation" of Mr. Carpenter's allegations was in fact, a "hatchet job" on Mr. Carpenter, and pre-planned, pre-conceived whitewashes of all allegations made by Mr. Carpenter (see statement of Donald Briggs attached).

Mr. Carpenter is still in the process of attempting to vindicate his rights through the Civil Service processes. In the meantime, I think it proper that these actions by ATF be looked at very closely by those of you who can have some effect on their course of action. I do think it just as important that ATF internal investigations be as honest and legitimate when they involve ATF personnel whom ATF desires to reprimand as they are when ATF desires to defend an employee.

A lengthy hearing was held before the Merit Systems Protection Board in which most of these matters were discussed, and the pre-planned course of the "investigation" made apparent. Those records are available to your committee.

I would appreciate very much your taking an interest in, and, perhaps, having an effect on these kinds of activities by ATF.

If there is any other way I can assist, please advise me of same.

Kindest personal regards.

Sincerely,

CLIFTON "SCRAPPY" HOLMES.

#### NARRATIVE REPORT SIGNED BY CLIFF CARPENTER, JR.

On May 16, 1977, I accidentally met my immediate supervisor, Special Agent in Charge (SAIC) James A. Carey, on Commerce Street between 1200 Main Tower and the Earl Cabell Federal Building. This was Mr. Carey's first day to return to the position of SAIC since his temporary removal from office for incompetencies about January 15, 1977. During Mr. Carey's absence, Mr. James Harmon had performed the acting SAIC duties although his official post of duty of record was in Bureau Headquarters in Washington, D.C. Needless to say, I had nothing to do with any of those personnel actions: they were made from far above my level, and my only concern—other than wishing the best for both Mr. Carey and Mr. Harmon, regardless of their respective assignments—was for the efficient operation of my area of responsibility and the welfare of those assigned under my supervision. Prior to these dates (1-15-77 & 5-16-77) I had worked under the supervision of both men with what I believed to be good results. I knew of no substantial difficulties or conflicts.

On this date, I initiated a conversation with Mr. Carey as I had been asked to deliver a message to him by a mutual friend. I also needed to discuss some proposed personnel action I had been directed to initiate by Mr. Harmon and the assistant Special Agent in Charge Joe Shaw. (Mr. Shaw served as assistant to both Mr. Harmon and Mr. Carey.) The proposed personnel action was adverse and directed against a female trainee. I had spoken against such action, but I was overruled by my supervisors. (We all agreed as to the trainee's deficiencies but disagreed as to whether she should be given an official documentation of these deficiencies. I said "No"—that the documentation would severely upset her and interfere with the progress I hoped she would make under the guidance of her new training officer, Special Agent Gary Clifton, as he was a very capable individual. As previously stated, I was overruled, which I have no quarrel with, as that is the prerogative of the SAIC—to overrule me, the Group Supervisor.) Later however on this date—5-12-77—I received advance confidential information that Jim Carey would return as SAIC of the Dallas District on 5-16-77. I was almost positive Mr. Carey would oppose such action and I was purposely delaying any official action until I talked with him.

Unaware of any animosities, I opened the conversation on a casual personal note as we had been (I believed) personal friends for over 12 years with something like, "Hi, Jim. Bob Gillispie called and left a message for me to ask you to call him in D.C. He's sorry he didn't get to visit with you up there last week." I received in return a hateful glare and a curt reply, "It's damn funny a lot of people want to be my friend this week that didn't last week." My first thought was "How could he be mad at Bob Gillispie?" but his continued spiteful stare and that he was going to make "some people sorry for the way he was treated while he was gone (the temporary removal) left no doubt in my mind the threat was intended for me. (I was surprised, shocked, and puzzled over what had happened but optimistic that whatever the problem, it could soon be overcome.) Mr. Carey did agree we should discuss the female trainee, Doris Jefferies, the following day.

Mr. Carey then began what was to be a long and continuing series of malicious and vindictive acts which individually may be in some instances seem petty but cumulatively over a period of time have had a devastating effect. These acts are in my opinion the product of a sick alcoholic mind with the intended purpose of hurting another person(s) as he himself feels he has been hurt. These acts of retribution against subordinates constitute serious abuses of office and trust.

Before this initial, brief, but eventful meeting on Commerce Street concluded, Carey chewed me out in a totally unnecessary manner for some corrective action I had taken—and concurred with—at the direction of SAIC Harmon—without so much as ever attempting to ascertain the facts or my point of view. (I had seen Carey drinking with the agent concerned in the recent past.)

Two items of particular interest about this phase of this first of many confrontations are:

1. I'm going to be adjudged "guilty" by Carey regardless of the facts because that's the way he (Carey) wants it to be, and

2. The referenced corrective action was taken against Bob McCool, a part-time beer drinking, motorcycle riding buddy of Jim Carey.

From this date (5-16-77) forward, Carey, to the best of my knowledge, made no attempt to conceal his contemptuous feelings toward me. Until approximately one month ago, I had not disclosed Carey's threat of May 16, 1977, for I had still maintained some small hope there could be a reconciliation. I know Carey rapidly made his contemptuous feelings known because it was shortly thereafter that a very new trainee questioned my judgment by asking if Mr. Carey had approved of my decision yet. When I asked why he had said that, he explained, "Everyone knows Carey doesn't like you." He also said something to the effect of if you don't clear it with Carey first, he'll take the opposite viewpoint. The trainee was just being honest and, to him, practical.

Also, from May 16, 1977, I received no appreciable support from the Dallas District Office. I will cite a number of both specific and general instances of non-support, vindictiveness, dishonesty, slanted views, and petty actions which should be beneath the dignity of a Special Agent in Charge.

As to the alcoholism, it is a well-known fact that Mr. Carey suffers from a severe drinking problem. It is a joke among the special agents and they laugh at many of the really pathetic instances where he has created embarrassing situations such as playing with the legs of the wife of a guest of honor at a dinner. I have even seen a cartoon of him drawn depicting a turtle with a can of Budweiser Beer on his shell asking, "Can anyone direct me to the Casino?" The Casino is one of the taverns near the office where Mr. Carey is known to drink frequently. It is my understanding that his secretary keeps the number(s) of this(these) bar(s) so she can call him during working hours if emergencies arise. On one occasion a former Group Supervisor and I had to semi-physically remove him from the ATF offices after he had had too much to drink and was creating a problem with some of the secretaries. This included his loud statement to a black secretary, "I'm gonna f--- me a nigger." After we had him in a car and were enroute to his home, but while still in downtown Dallas, he jumped out of the car and started running/staggering back toward the office. At this point, I had to physically restrain him, lift him on my shoulder, and put him back in the car so we could get him home without further incidences. I do not know the psychological aspects of an alcoholic's reasoning and actions, but I'm sure Carey's drinking problem contributed significantly to the problems I encountered. I now realize he tries to surround himself with persons like himself.



On May 17, 1977, Mr. Carey called and told me the conference we had scheduled for this date would have to be put off until May 18, 1977. On May 18, 1977 Carey called and said he was again resetting the scheduled conference and that it would be May 19, 1977.

By May 18, 1977, conference or not, I had to discuss with the female trainee some assignments she had not completed. She was very difficult to talk to from the beginning and finally stated that she knew that I had gone to the District Office and had tried to get Harmon and Shaw to fire her. She stated someone from the District Office had called her and told her this. I told her that this was untrue and asked her to identify the caller. She refused. I did not tell her who had attempted to initiate the action.

On May 19, 1977, I went to the District Office to confer with Carey and Shaw. Carey was vindictive from the beginning and let me know how upset he was with me. He insinuated that I had fractured the Dallas Post of Duty into two groups: (There are two groups, each with about 8-10 Special Agents, with one supervisor for each group. Each group is assigned to the same area, housed in the same offices, and assigned to the same duties. There exists no real division of responsibilities. This makes it very difficult for each Group Supervisor to manage. Organizationally it is impractical.) That there was no practical organization of the division of duties and territories was immediately recognized by Harmon and he had started plans to correct the problem. This was done by Harmon in the presence of and with the assistance of Shaw.

On May 19, 1977, Shaw was not wanting Carey to put any blame on him—he was perfectly willing for me to “fade the heat”. According to reliable sources, Shaw was “sick” when he heard Carey was returning. I believe this to be true because Shaw is a career-oriented person who has moved a very large family several times for promotions to stay on the career ladder. This has aided in causing him to regularly be over his head in debt. It is my opinion that Shaw's career-oriented ego and financial problems coupled with his knowledge and fear of Carey's vindictive personality caused him to do things he would not normally do.

I told Carey how and why there had been a move to begin a division of responsibilities at the Dallas Post of Duty. Shaw tried to slant what I said and misquote me to avoid any blame, but after he saw I wasn't yielding, he quit. (Carey was obviously getting information from his Special Agent drinking companions which was self-serving to them and not necessarily true. One of his drinking companions, J. R. Alexander, I have known since 1971. Alexander has always been a beer hall backstabber with a driving Napoleonic Complex. He has caused trouble everywhere he's ever been with ATF. This is the second time I've seen him ally with an alcoholic SAIC to try to better himself to the detriment of others. Mr. Alexander became very hostile toward me while we were both stationed in Arkansas after I witnessed him exhibit cowardice during a confrontation in which shots were fired. This individual habitually says negative things about others—especially those in positions he desires—and was a joke around the office for whispering to people in the office and while talking on the telephone like everything was a big secret. Fellow agents also laughed about how he followed Carey around, drinking with him, etc. I'm sure Carey received false self-serving information from this source, but a person in Carey's position should not put himself in a predicament where he cannot—or will not—separate truth from fiction.)

Finally on May 19, 1977, we discussed the problems about the female trainee. Carey and Shaw acted as though they couldn't believe someone from their District Office had called her. Carey continued to be hateful and Shaw was uneasy because I told exactly how the whole mess had started—by Shaw quizzing Mickey Dean about Jeffries without me present. During this conversation, I observed a note on Carey's desk about the Jeffries situation written in such a fashion as to indicate I had initiated the controversy. I asked who had written the note and Carey said Shaw had. By his actions, Shaw was trying to avoid the wrath of Carey's vindictiveness by doing anything necessary. (Such actions are not uncommon. Other Special Agents in the Dallas Post of Duty have told me that they hated Carey but were afraid to tell what all they had seen him do because they were so afraid of his vindictive acts—that they would lie first, if asked.)

Carey said that he wanted to talk to Jeffries that afternoon at 2:00 and I said O.K., I'll tell her and we'll be over at 2:00. Carey said, “No, I'll talk to her alone.” Right then, I knew more trouble was ahead. Carey stated that he would call me as soon as he finished talking to her.

At 3:30 PM the trainee returned from the conference and departed at 3:50 PM without talking to me. She did “huddle” with Alexander. [Alexander, although married, was in what appeared to be at least the preliminary stages of dating Ann Feisler, a married secretary on Carey's Staff. Since then, an agent told about seeing them along with the other Dallas Group Supervisor Dave Andrews and another secretary Betty Simmons (single) out nightclubbing. I believe this to be true because I've answered numerous telephone calls from the girls mentioned asking for either Alexander or Andrews (once even on a Saturday morning when no one is normally in the office). On another day as I was walking on Commerce Street in the afternoon, I saw Andrews walk out of the Casino Lounge and moments later Betty Simmons ran out and hollered at him, “Baby, you're not leaving yet, are you?”]

Carey did call me at 4:25 PM and he said that Jefferies had denied telling me a girl from the District Office had called her. I reminded Carey that she had only told me someone called from the District Office. Based upon what Carey accused me of, the trainee had told several lies about me and her training officer. The telephone call concluded after about ten minutes with Carey wanting a “face to face” talk tomorrow.

As I noted in my diary, there were “inconsistencies and trouble ahead sure as hell”. I then began experiencing increasing headaches, a burning sensation in my stomach, and restless nights.

On May 20, 1977, Carey called to delay the “face to face” discussion until May 23, 1977 when Alexander could be here. I objected to Alexander having anything to do with the discussion regarding Jefferies. (Alexander was acting for the Group Supervisor who had been transferred to other duties by Harmon.)

On May 23, 1977, I went to the District Office at the time requested but Carey was unwilling to discuss anything but generalities and totally avoided the Jefferies problem and allegations. (I wanted to discuss her false allegations against me, and those against her training officer Gary Clifton, because I could tell Carey was accepting far too much of what she said.) Incidentally, Alexander was not there.

On May 26, 1977, I went back to the District Office for the conference which was held in its entirety in the presence of Shaw and Alexander. (It was now obvious Carey wanted Alexander to hear what was said.) Carey admitted Jefferies had lied but Carey backed her for telling the lies. He said he didn't blame her. Alexander related some story about how Gary Clifton had told him I was conspiring to get Jefferies fired, but that if I ever told it outside that room he would deny telling it.

During the meeting Carey states that McCool is very unhappy with me as a supervisor and insinuates that I must be doing McCool wrong. I told Carey that I didn't believe McCool was unhappy, and Alexander hummed or sighed, trying to show that I really didn't know what I was talking about. I later asked McCool if he was unhappy and he replied “No”, but that during his recent marital problems, his “don't give a shit factor had been way up”, but he was now OK.

Carey alleged that I was conducting secret meetings. I really don't know what he had reference to, as at any meeting—other than one where I was going to take up something personal with a subordinate—anyone in ATF was welcome. Members of the other group sometimes attended our group meetings. (Alexander was the one who was always whispering with one or two particular confederates.)

At this same meeting, Carey gave Special Agent Gary Clifton undue harsh criticism—referring to him as crazy, etc. Clifton had been doing an excellent job and had even received a cash award for superior performance while Harmon was SAIC. At that time, Clifton was the best agent in my group. Carey alleged how he had mistreated the female trainee Jefferies. When I took up for Clifton, Carey alleged it was because Clifton and I “played ball together every night.” (Clifton and I had played ball together one time that year. We both stay active through sports, but only rarely play softball together as we generally compete in different sports.) (Was this another example of Carey's vindictiveness toward people who had worked hard—or been rewarded by—Harmon?)

Carey stated that he was putting Jefferies under Alexander for her benefit and development. Although I didn't agree with the reason, I didn't object, because I was glad she'd now be someone else's liability.

During the meeting, Shaw and Carey used poor language and hateful mannerisms when addressing me. (Carey was getting even and showing off

in front of Alexander. Alexander would, of course, whisper it around the office in obvious attempts to discredit me, create turmoil from which he might benefit, and in general try to make my job more difficult.)

There is no doubt in my mind Carey purposely handled the matter of the female trainee in this manner to discredit me by making the agents at the Dallas Post of Duty think I had been unduly and excessively hard on her by trying to fire her without proper cause or preliminary action. He also wanted the agents to think that he (Carey) and Alexander had come to her rescue. I am of the opinion Carey led Jefferies to believe this in their "private" meeting. I know she came back convinced I had tried to fire her, because if the truth had come out, even the most ungrateful individual would have "thanked me for going to bat for them" like I had done for her. To further corroborate this opinion, a Dallas Special Agent came to me months later and, almost verbatim, said, "I thought you were chicken shit when you tried to fire Doris (Jefferies) but now I can see where that mother f----- should have been run off". Thus, Carey had falsely given me the reputation of being one who tried to be overly harsh on subordinates. A person with this reputation has put himself in an almost impossible situation. That's what Carey wanted for me.

To more clearly depict Mr. Carey's vindictive, malicious intent, which had to be purely personal and not in the best interest of the Bureau, I will recap his first week back in his SAIC position:

1. He states he'll make me sorry for what I did while he was gone.
2. He chews me out on the street for complying with his replacement's orders.
3. He automatically sides with drinking buddies—people he believes to be "friends".
4. With his vindictive personality and through a combination of other reasons, he causes the ASAC (Shaw) to abandon his prior positions/projects and side with him in his endeavors.
5. He conducts private meetings with a female trainee and then backs her for lying. From all appearances, he lied to her also, or certainly caused her to believe a lie.
6. He shows disrespect for me in the presence of a person he knows will spread the seeds of dissent.
7. He criticizes me in front of subordinates to ensure his feelings toward me will be known. (This, in effect, divides the local ATF organization into those who—for selfish, weak-kneed, or other reasons—follow him and those who know him for what he really is and have "guts" enough to say so.)
8. He deliberately manipulates a sensitive situation to make me look like a villain to Special Agents I must work with to try to make it so I'll be unable to "get along with them".

On June 9, 1977, I forwarded a handout listing names and telephone numbers of area law enforcement offices to the District Office. The handout was a simple booklet—one of thousands, I'm sure—made up by some group to aid in locating law enforcement agencies. The handout contained an error in reference to ATF, so I marked my copy to point out the error and forwarded it to the District Office. At 3:10 PM Shaw called in what cannot be described as anything less than a temper tantrum. He was making wild accusations that I was guilty of defacing an official document. Shaw was rude, loud, disrespectful, and ridiculous. How can you deface an official document when it's one of thousands?

August 9, 1977, I noted that the harassment continues and absolutely nothing I do suits Carey. He picks on and belittles everything. To him, my latest catastrophic error was buying flashlights for each Special Agent to keep in his enforcement vehicle. I explained that I inventoried the enforcement vehicles as required by ATF Orders and found only two had working flashlights. (As I recall at least one of these was the Kel flashlight especially designed for law enforcement work.) Most of the flashlights were the cheap two or three cell GSA store purchases which are totally unreliable. From my enforcement experiences I knew Special Agents needed sturdy dependable flashlights for night work and even during the day for searching in dark areas. Either an officer or a citizen's safety could depend on the difference between the cheap GSA purchases and the dependable Kel models. As the Special Agent's immediate supervisor I am responsible for the conditions under which they work and I have always insisted they have and maintain the best equipment possible, within reason.

I sent one of the Special Agents to get Kel flashlights for all those who didn't have one. I later found out a former Group Supervisor had purchased some Kel

flashlights but had given them out on the "buddy basis" with several Special Agents not getting a suitable flashlight. There were also new men who did not have the lights either.

Carey belittled my Special Agents when I said they needed good flashlights and belittled me when I defended them. He made statements that my Special Agents didn't work at night: that they did not get out unless called out after they went home; and other similar demeaning remarks. (My group worked when there was work to be done and continued to work until the job was completed. To the best of my knowledge they never failed to respond when asked to do so or when they themselves saw the need to work. I insisted upon this. I also insisted that they not drink alcoholic beverages while on duty after I went to a planned surveillance one night and observed most of the other group drinking or already drunk along with their supervisor. At this time, they were waiting for a suspected load of machine guns at a narcotics handout. Maybe I'm old fashioned, but I am very safety conscious with those under my supervision. I also encourage them to be responsible, family-oriented individuals by taking part in civic or charitable functions and youth and/or adult recreations with their communities. If a man wanted to stop and have a drink somewhere before going home, I have no moral objections, but I never left any doubt about my priorities. In my opinion, the majority of the Special Agents shared the same priorities as I.)

Carey stated I was going to have to pay for the Kel flashlights out of my own pocket.

On August 15, 1977, I returned to work from vacation with my family and I was summoned to the District Office by Carey. Carey made the following accusations:

1. "I was working against the District office." I asked that he be specific and he could give only broad generalities that really did not apply. This is obviously something in his mind that he wants to be true and/or it's something some of his drinking companions (referred to by Dave Andrews, the other Dallas Group Supervisor as the "ATF Drinking Society") keep agitating him with for their own possible benefit.
  2. "I was sorry he got the job back from Harmon." I had previously told Carey that I had nothing to do with who was the SAIC, that I wished both of them the best, and that I thought each had his good points. I didn't agree with everything either of them did, and when I didn't, I'd give my opinion for their consideration and then work to support their decision; and I wanted no part of any conflict. My stand of the subject remained the same, but Carey had it in his mind that I was sorry to see him return to the SAIC position, and that's the way he was going to have it, no matter what I said or did.
  3. Carey told me again that he was responsible for my being a Group Supervisor in Dallas. I.e.s told me this again and again. The indirect accusation is that I should be more grateful and subservient to him. (How? By staying downtown and getting drunk with him every afternoon? By lowering my standards to those of his friends—the "drinking society"? By dating one of his secretaries?) I explained that I was grateful to be in the Dallas office and I was trying to do the best job. I could for the District. As I recall, he made some remark about my not doing a very good job then.
  4. Carey brought up the flashlights again. He had sent a curt note to me—so all could read it—that now we have flashlights, "now you can buy."
  5. He complained about where we had had some car repairs done (Dave Markley Ford) although the repairs had been approved by his own office. This was just harassment. Markley Ford was doing a good job of repairing our vehicles at reasonable prices because of a personal friend working there. ("Repairs" at premium prices obtained by many special agents at a filling station operated by a friend of some of Carey's "drinking society" were not questioned however.)
- At 3:30 PM this same day, Carey called me "mad as hell", making allegations I wouldn't let Post or Duty Clerk Mickey Dean give Toni (a District Office clerk who is a real trouble maker) information that she needed for a teletype message. According to Carey, Toni had told him that was the reason she couldn't do her work. I checked into the matter and found out that our clerk could not find the information needed because the original request from Toni contained erroneous data (numbers) needed to find the information. (This is an example of how certain others would pick up on Carey's vendetta and join in for their own reasons—plus, Carey's automatic "guilty" verdict.)

Also Toni would not make criminal record checks requested by my group, claiming she did not have time; yet, criminal record checks submitted by other groups after ours had been submitted were completed. This was brought to the attention of both Carey and Shaw, but nothing was done. This obviously had an adverse effect on my special agents and their performance. This is an example of how Carey was more concerned with his vendetta than he was with the efficient operation of the Bureau.

On August 19, 1977, I called the District Office and asked for Carey—Not in; I then asked for Shaw—Not in; I then asked for Briggs—Not in. This had happened several times lately and I just happened to note it in a reference notebook.

On August 31, 1977, I tried to talk to Carey about fixing territorial responsibility for the upcoming national office review. Carey was seemingly uninterested. Also on three occasions on this date I knew of Carey calling directly to agents under my supervision and giving the instructions without advising me. I know at least two of the calls regarded operational matters about which I should have been advised.

On September 2, 1977, I called Carey to inquire about the status of a special agent employee and to see if he had found out certain information he had stated he would have researched for me. Carey did not know the answer and became very hateful, curt, and deliberately tried to agitate me.

Later on this same date at 2:06 PM I called the District Office and asked for Carey—"Not in"; Shaw—"Not in"; Briggs—"On duty, but not in, so Linda, the SAIC's Secretary is in charge."

On September 7, 1977, I received a call from Shaw about a matter I knew nothing about since my level of supervision had been circumvented by the District Office.

On September 13, 1977, I received a call from Carey and he immediately jumped me for not cooperating with his District Office Technician by assigning to him some help to transfer some vehicles to Ft. Worth. I tried to explain there was on one available because everyone was already obligated or gone. (I was again automatically assumed guilty by Carey.)

On September 20, 1977, I had two decent telephone conversations with Carey and therefore hoped his anger was finally over. I soon found out that this was a false hope and in my opinion was because a review team from our National Office was scheduled to arrive within a week and Carey was afraid I'd say something about how he had been acting.

On September 27, 1977, I was jumped on by both Carey and Shaw for being so obstinate and disrespectful of the District Office by intentionally trying to embarrass them by sending a dirty car with no gas in it to the National Office review team for their use and local transportation. After determining which car they had reference to, as two vehicles had been sent over, I realized they had been talking about the vehicle sent over by Group Supervisor Andrews. (It was this group under the leadership of Acting Group Supervisor Alexander and then Group Supervisor Andrews that neglected to prepare for the review team. I had been through reviews before and knew what to expect and got my group prepared, corrected any error which due to the "joint" post of duty arrangement could be attributed to either group, and when I came across something for the other group, I'd note this for them. Alexander treated this as a joke and neglected to get prepared even to the extent of ignoring errors pointed out to him. Then, when the errors were pointed out to Carey by the review team, he could not—or would not—admit his "drinking society" buddies were at fault. Even though I pointed out to him whose group received the "gigs", he repeatedly throws it up to me again and again how poor my supervision and group looked during the review and how I caused so many discrepancies to be found. No matter what the truth was, Carey was going to have it that way because that's the way Carey wanted it to be.)

On September 30, 1977, I received a call from Shaw advising me the electronic surveillance had been approved. I knew nothing about a request for any electronic surveillance equipment or authorization as is required by ATF Orders, which to say the least is a sensitive matter. I later found out that District Office Technician Logan and McCool had put the request in without advising me. (Anyone can talk to, visit with, socialize with anyone else, but if your going to hold a first line supervisor responsible for operational matters, he cannot be circumvented like this.)

On September 31, 1977, Carey called in an absolute rage and said I had degraded him by calling Ann (Alexander's alleged dating companion) and asking for "whoever is in charge". I had done this one day when I called over to the District Office in a hurry and instead of going down the list and finally finding out who was there or that everyone was gone, I simply asked for "whoever is in charge" to expedite the call.

Carey then criticized me for not being friendly enough with the girls in his office. I was never rude to any of them and tried to conduct business with them as pleasantly as possible but I was not going to get "as friendly" as others were. Also, according to a post of duty clerk, Mickey Dean, and from what I'd seen from time to time, the girls in the District Office were regularly in squabbles and crying with one "click" fighting another. I was not going to get involved with that either.

It was during this time that a Special Agent told me about Carey's remark during May (I believe) that he was making a list of people who had turned against him and that he was going to get even with them because the "worm could turn."

On November 10, 1977, Carey called and opened with the sarcastic remark, "If Bristow is so good, how come he hasn't got your job?" Carey objected to Bristow's evaluation being higher than some other agent's evaluation. (Bristow is a real good agent who had been passed over by Carey for promotions although Bristow was doing an excellent job. Bristow doesn't drink with the "society," is out spoken but truthful, and is a well educated person from a good family and is apparently disliked by Carey.)

Carey tried to force me to change my evaluation of Bristow by downgrading him. I refused to do so and told Carey that if he disagreed with some point in the evaluation, he would have to change it himself. Carey was furious and said that Bristow had slipped during the year and insinuated his performance had been adversely affected by my supervision.

On November 11, 1977, Carey called and started in on me about this is another example of your going around me and disregarding the District Office. After finally getting to ask what he had reference to, I found out Carey didn't know either. Carey stated that he had some paperwork order for some file cabinets for the Dallas post of duty but that was all he really understood about it. I suggested that he find out what he had and then to call me back because I knew absolutely nothing about what he had reference to. Apparently he found out what the paperwork was for (an order to paint our file cabinets that had been initiated and approved over there without my knowledge or input) and therefore realized his error. Carey never did call me but did tell one of the post of duty clerks our file cabinets were to be painted. (During all of this Carey never acknowledged he made any error nor did he ever apologize for any instances in which he was totally wrong like in this case. I don't think it made any difference to him because his objective was to harass and to get even.)

On this date, November 11, 1977, one of the agents under my supervision told me about how some of the District Office people had told him about how they had heard Carey's loud cursing at me on November 10, 1977. That was when he was trying to force me to downgrade Bristow.

On November 16, 1977, I went to the District Office with Bristow, at Bristow's request, for Bristow to discuss with Carey why he was so low in Carey's opinion. Although we had an appointment, Carey arrogantly made us wait one and one half hours past the appointed time. Carey maintains the "open door" policy for some—this for others.

On December 3, 1977, Carey called my residence and complained about the telephone answering service and jumped me because the Dallas Special Agent assigned to duty for that weekend wasn't answering his telephone. When I checked into who was duty agent for that weekend I learned it was an agent from the other group.

Although not listed in any chronological order or dated, the following had, was, or did occur:

Choice assignments were going to the other group. In fact, and over my objection, Alexander's alleged girlfriend at the District Office, was in charge of making assignments from the District Office. Choice work and/or pleasure trips such as the one to New Mexico for several days, went to members of the "society" group. (I do not know who picked the particular agents for the trip but I was not consulted or asked to supply any agents for this "choice" assignment.)



The District's Special Agent of the Year Award went to a member of the other group who was, for all practical purposes, selected prior to all nominations being received by the District Office. I was told by some of my Special Agents not to bother writing up our nomination because they had knowledge of a conversation during which Carey had stated Dodd would be his selection. I had no objection to Dodd or anyone else being picked by the District for the honor, but when it was a preselection, that caused concern. (The receipt of our group's nomination was not even acknowledged by the SAIC. Just a short letter of appreciation to the Special Agent for his good work would have been appreciated, appropriate, and in my opinion, professional.)

Office with the exception of McCool. Mr. Ben Dupree, who is in charge of grade classification for the entire region told me one day that I should raise my ratings as my group was being rated the lowest in the entire region. To the best of my knowledge, Mr. Dupree did not know the reason for the low ratings, that is we were being suppressed by SAIC Carey.

As previously stated our annual ratings were being suppressed and Carey stated no one deserved 1's or few 2's (high marks). I was told by two Special Agents in my group that an agent from the "Society" group was carrying around his evaluation and bragging about how he had received ALL 1's and 2's. I did not see the evaluation but I did ask Carey if this was true and he did not deny that it had happened. (This agent's work is fairly well known to me and in my opinion the quality of his work is less than that of some agents in my group who had to settle for lower marks.)

Some of the District Office secretaries talk "down" to me, my group, and especially to our group secretary to the extent of upsetting her so bad she cried and almost quit because of their unnecessary cutting remarks and backstabbing tactics. Carey and Shaw have belittled her and threatened action against my group for one of us driving her to work one day in a government vehicle (on that day the roads were very bad and we were in great need of a typist and secretary to get some work out for us. Darlynn, being a good employee, said she would gladly work but that she just could not get there without someone bringing her. The other group's secretary was not at work.) Now on the other side of the coin, Mickey Dean, the other group's secretary is allowed to park her personal car in the government parking garage which is rented by our agency at government expense for our enforcement vehicles; I was told how Carey had ordered Special Agents to drive Mickey Dean to work and back in the past but I have

"girlfriends" of the two "drinking society" agents somewhere in his government vehicle after working hours. (What I have reference to here is equity, simply letting us do our job without constant harassment. How can our getting our secretary to work one day over icy roads be so much worse than the other cited incidents? I do not believe it is.)

Requests to travel in order to further cases by our group was almost categorically denied by the District Office. A variety of reasons was used, including we don't have any travel money, however, during the same time, the other group was getting travel approval, the District Office was spending hundreds of dollars on District Office related travel, and the District Office secretary previously mentioned was sent to Albuquerque, New Mexico, on a three weeks detail I believe to assist with their clerical duties. (When in the past my requests for a District Office clerk for one day or less just to answer the telephone and help with some typing had been denied although our post of duty had 3 or 4 times the number of Special Agents and related workload as Albuquerque and was located only across Commerce Street in Dallas from the District Office). Later, if a case did not turn out to total possible potential, Carey was quick to criticize me.

At a Special Agent's request I approved the closing of an investigation without recommending criminal prosecution because there was insufficient evidence to prove the crime although we knew who the subject was. The Special Agent and I were called to the District Office to discuss the investigation with Shaw and Briggs and Shaw ordered the case to be recommended for criminal prosecution and for us to prepare it for formal presentation. I knew this was wrong in that the guiding court decisions would not support—or be supported by—our evidence and that this was going to be a big waste of time. I tried to explain this but Shaw overruled me and ordered the case to be prepared for criminal prosecution.

ution. Prior to the report being completed, Carey had switched Briggs and my duties "temporarily". According to my information and I am sure it is accurate, Briggs called Shaw and requested that the agent not have to complete the investigation/criminal case report because of insufficient evidence and Shaw agreed. The facts of the case had not changed. (Incompetence or harassment or both?)

Carey complained about our group's purchase of one pistol from a felon gun dealer to put him out of business, yet I have noticed investigations conducted by the other groups where much more time and money was spent with no greater results.

When I called Shaw for needed emergency assistance to seize the contents of a gunstore being operated by a person now indicted for aiding and abetting in bank robberies, Shaw explained it was Friday afternoon (about 1:00 p.m.) and that he would be unable to find us any assistance. A Special Agent and myself did the job by ourselves although it took us until late that night to complete the task. (Shaw, the ASAC, cannot or will not get us much needed help; but later note how he participates in taking adverse action against me for even less—the allegations were true—which they were not.)

Please note the inequities and consider how those I was supervising would consider them. Then consider how increasingly difficult this would make my job.

At this point I will again recap Carey's activities and tactics being used to carry out his vendetta which was done with total disregard to the efficient operation of our Bureau.

1. Carey is trying to get me through the people I supervise. The "Dirty Trick" is to get at a supervisor and cause him to be unable to supervise efficiently by creating unrest and discord among those he supervises. This was being done by giving other agents special favors, by undue criticism or harsh treatment, and by letting them know the SAIC does not like their supervisor. Then if the supervisor cannot control his group, corrective action must be taken—one of Carey's objectives.

2. Carey is going to automatically adjudge me "guilty" because that is the way he wants it to be—regardless of the facts.

3. Carey gives additional clues as to what is bothering him when he alleged "I was working against the District Office because I was sorry to see him get his job back from Harmon."

4. The District Office often circumvents my level of authority by giving direct orders to the Special Agents without ever advising me. They could be trying to show their distrust, disrespect, or incompetency.

5. Additional evidence of Carey believing certain people have turned against him is learned.

6. Carey continued to make sure other people knew how negatively he felt about me.

[I just received official notice on this date (1-17-78) that as of January 15, 1978, Special Agent in Charge James A. Carey had taken steps and recommended that my salary be reduced by over \$168.00 every two weeks. At the same time however the CA-2 that I turned in to his office on January 8, 1978 has not been completed so that I may further the subject claim.]

On January 19, 1977, the roads in the Dallas area were extremely hazardous and almost impossible to travel. I left my residence at 6:00 a.m. and as requested picked up Shaw to take him to work. First we tried to help two of Shaw's neighbors get their car out of a snow drift and then we had to turn around again on Greenville Ave. because of wrecked/stuck cars and buses. After considerable difficulty we finally got to work. Few people got to work that day and those who did mostly left early.

At 3:30 pm on this date I received a call from Shaw that was a result of a call from Oklahoma. Shaw began the conversation in a very hateful accusatory manner indicating I did sloppy work by not having a gun picked up in Oklahoma. (The gun was actually in Arkansas and I had told the agents in Tulsa about what had happened and it was clearly their responsibility but they stated due to their other workload and the long continued icy conditions they simply had not had time to get the gun. They explained that they had other work which was taking priority over them picking up the gun.) Shaw stated that I was to write a report and then he started hollering and being abusive when I tried to explain some facts I thought he must surely not be aware of. Shaw was apparently doing this in front of the SAIC because Carey got on another

extension and started "raising hell" with me because of my attitude and how I was talking to Shaw. (That was false as Shaw was the only person being abusive and hollering. Later Carey twisted the facts of the entire matter to suit his vindictive needs, and, as can be witnessed on an evaluation of me being done at that time by Carey, made untrue statements. Although required, I was not given a chance to review the evaluation before it was submitted to Bureau Headquarters in Washington, D.C. Several weeks/months thereafter the District Office tried to get me to sign an acknowledgment that I had been given the opportunity to read and discuss the evaluation prior to its being submitted. I did not sign it.)

On January 20, 1978, I went to the District Office to continue the conversation from January 19, 1978. The conference was delayed while two District Office clerks had a big word fight. As I expected my conversation with Carey was a one-sided affair—I was automatically wrong.

After I returned to the post of duty I spent a great amount of time with the two post of duty secretaries looking up material to respond to "Second Request" notices from the District Office. We had been getting an awful lot of these at the post of duty lately. Looking up the information was often time consuming and at least a lot of the material had already been forwarded to the District Office at least once. The two secretaries and I were trying to figure out whether the mail was being lost, misrouted before it got to the District Office, or misfiled at the District Office. Anyway, we looked up all of the material and sent it over again.

At 4:00 pm on this date Carey came into my office obviously very mad, wild-eyed, scary looking and smoked one cigarette after another. (I do not know whether he had been drinking or not but he was acting unusually strange.) Carey made statements including the following (list is incomplete although I wrote down everything I could remember just as soon as he left):

1. Carey again accused me of being loud with Shaw the previous day. He did not however admit that he was hearing only one side of the conversation and since Shaw was loud, etc., he had to assume I was being loud and abusive also. (An example of how he wants to believe something is true so he says it again and again.)

2. Carey said that I had made a scene of resisting Shaw the day before "in front of the whole office". (Remember the road conditions 1-19-78? I was the only person at the post of duty when the conversation took place.)

3. Carey accused me of plotting against the District Office with the two post of duty secretaries. (Plotting what? I have no idea where this came from unless it was during some "gossip" swapping by the two groups of secretaries as they regularly do. I've heard our secretaries laughing at the things that they hear about but as I tried to explain to Carey, you cannot believe everything that you hear.) For the record, this accusation was false.

4. Carey said that I had tried to demean him by addressing a remark to him "Dear Sir". Even if it had been demeaning or even intended to be, the remark was sealed inside a pink confidential envelope to be opened by addressee only therefore no one else would have seen it. (The "Dear Sir" remark was in reference to what I thought was a mutual problem in that too much time was being expended duplicating what had already been done and lost somewhere unknown to me. I was later told that a lot of the misplaced material was found inside a secretary's desk. Carey then stated that he was not my pink envelope opener. (The inference was that he was too good to open envelopes from me.)

5. Carey alleged that all of the girls in the District Office disliked me and the way I treated them. I knew this to be a lie so I started asking about specific girls. I asked what have I done to Lois? Carey's reply was "nothing". I asked what have I done to Linda? Carey's reply was "nothing". I asked what have I done to Ann? (I knew that I had not done anything to her but I also knew that she and Betty Simmons had been hanging around our post of duty office a lot more than normal and I knew of the other allegations and associations. Please note how Carey seizes upon this opportunity to back up his allegation that is being refuted.) Carey now alleges that I had offended Ann the day I called and asked to speak to whoever was in charge. Carey kept bringing this incident up several times during the meeting and at one point he got loud, stood up quivering and pointed to himself half shouting, "I'm back! I'm the SAIC! Harmon is not the SAIC! I'm the SAIC! You'd better realize I'm the SAIC!" And I really don't know what triggered that particular outburst.

6. Carey stated that he wasn't satisfied with the way I did my job. I ask him to be more specific and he couldn't name anything.

7. Carey stated that the National Office review team found me and my group to be the worst. (This was not true as we got two "gigs" vs. many for the other group.) Also remember Carey's insisting the post of duty have no division—Now that the review team has cited this as being poor in that there was no fixed responsibilities, Carey is twisting it around to blame me any way he can.

8. Carey continually brought up the non support of the District Office. This particular allegation was directed at the wrong group of people unless his definition for "non support" is our not drinking with him. Ann, a secretary in his own office etc., calls the post of duty to warn everyone to watch out that Mr. Carey is on his way over there. (I feel like the post of duty clerk who said she wishes she'd quit calling because who cares if he comes over here, I've got nothing to hide.) The District Office secretary's call generally caused a joke to go around among the Special Agents because rarely would Carey actually come to our office and they would joke about how he had made a left turn again and gone to the Casino Lounge.

If Carey had reference to getting ready for the review team, our group worked much harder than the other group getting prepared. (In my opinion it is that the other Group Supervisor and some of his agents who refer to themselves as the "ATF Drinking Society" who were at fault and therefore Carey must make someone else shoulder any blame. I also couldn't help but think that this was probably an attempt to make a vacancy for a promotion for one of their "Society" members.)

9. Carey cursed a former Special Agent/Supervisor Bruce Ligon, who I believed to be a mutual friend. Carey then said I was trying to pattern myself after him. (Incidentally, Ligon has helped me carry Carey out of the office drunk and get him home.)

10. Carey alleged that I caused all of the negative feelings at the post of duty toward the District Office. Just about everyone at the post of duty laugh and joke about Carey's drunken antics such as playing with the legs of the wife of an assistant to the Undersecretary of the Treasury or a variety of other things. I don't make these jokes but I admit I couldn't help but laugh along with the Special Agents. The agents actually witnessed these things themselves and I'd look like a fool saying that they did not happen.

Now, as to the negative feeling—would you have a positive feeling about such a person as I have described? I had not caused the negative feeling though.

11. Carey said that he hadn't said a decent word to me since he came back (5-16-78) because I hadn't deserved one. (Leadership? No, Carey was just determined I wasn't going to do anything right as far as he was concerned because in my opinion that did not fit his vindictive purposes.)

On January 24, 1978, I received a note from the District Office advising me that I had sent in two forms without the required information on them. I called Shaw and explained to him where our reports were correct. He agreed. I then asked Shaw about a similar report Carey had ranted and raved about the week before saying how I was showing contempt for his office by sending in "blank" reports. Shaw remembered enough about the incident to identify the investigation Carey had had reference to. (Carey could not identify the report when he was chewing me out about it.) I pulled the file and discovered I had been correct and that Carey hadn't known how to read what was sent to him although it was on a frequently used ATF form. Carey later refused to discuss the incident.

On January 25, 1978, I was summoned to the District Office where Carey and Shaw quizzed me with several questions about some recent evaluations. The prior week Carey had said that I rated everyone too high and this week he says that I am too low. Then the reason for all of this surfaces in that Carey didn't like the way I'd rated the one agent from my group who was a beer drinking motorcycle riding buddy of his. Carey was trying to force me to make substantial changes in my evaluation but I refused and told Carey I was not going to rate a man who had not made a federal case in at least 16 months over those who had been working hard and perfecting cases. (The average agent had been making about 5 cases every 12 months.)

Carey began belittling my abilities and said that I was to blame for McCool's lack of productive work. I then reminded Carey that he was the one who had put McCool on a do nothing type detail for several weeks over my objection when I was making a concerted effort to get him involved in criminal work. The agent

in question has good investigative abilities but he was trying to get his promotion by the wrong method and it was well recognized by his fellow agents. To have promoted him for being a beer drinking buddy only, would have caused the rest of the agents to resent him and one cannot function under those conditions.

Carey told me to concentrate on improving McCool's work and I happily agreed to do so but cautioned Carey the effort would take me away from other duties. (McCool and I did work close together during the next several months and his work did significantly improve and he was responsible for some good cases.)

On February 2, 1978, Carey advised me that he had raised McCool's evaluation.

On February 10, 1978, I conferred with both Shaw and Briggs after District Office clerk Toni started trouble by first offering our group secretary, Darlynn Young, her new typewriter. Darlynn has heavy typing demands and Toni does not. Then, Toni goes back to the District Office and according to what either Briggs or Shaw said, stated, "The nerve of that new girl coming in and wanting my typewriter". The controversy also included Darlynn asking Toni something about some compensatory leave for some after hours work she had done trying to get our work backlog caught up. (To me this is a perfect example of the District Office purposely and intentionally starting trouble. This also upset Darlynn who is a very efficient secretary and a fine person.)

On February 14, 1978, I received a copy of the National Office review teams report. Carey had blamed me for the bad report, said I was the worst of all, and had insinuated that I had deliberately caused the bad review. After reviewing the report, I found my group had far fewer errors than the other groups. Further, that the review correctly pointed out the organizationally poor arrangement at the Dallas post of duty in direct contrast to Carey's orders when he had previously jumped me for "dividing the post of duty" on May 19, 1977.

For weeks Carey regularly chewed me out for causing the bad review, sometimes in front of others in a belittling manner like the time he was again blaming me for certain questionable statements made to the review team when another supervisor stated that he had been the person who had made those statements.

On April 3, 1978, Carey called and immediately began criticizing me for overworking Special Agent Clifton. I knew this was not true and I ask Clifton about this and he stated that it must have come from a comment that he had made to a District Office person about how come he couldn't do a particular report because he had another one due. The assignment that I had given Clifton had been assigned for several weeks but was now "due". Special Agent Clifton stated that he had not been overworked.

On April 19, 1978, I went to the District Office to discuss my annual evaluation with Carey. I thought that it was unusually poor—the worst that I'd ever received in 14 years with ATF—but since it was marked "satisfactory", I did not question anything in the interest of trying to get along.

On May 12, 1978, I noted we were looking up more information for "second request" notes. I knew that this information had already been forwarded once from our office but I didn't discuss the problem with Carey.

On May 25, 1978, I received a tremendous amount of what I believed to be reliable criminal intelligence. I advised Carey of this via telephone.

On May 26, 1978, I personally advised Carey and Shaw of this information and requested to go to California to introduce the informer and give a short assist in getting everything started off on the right track. Carey denied my request, the informer had to fly to California anyway, and I made the "introduction" by telephone. (Note when the complete investigation does not turn out to potential and some problems arise, Carey belittles me and the case so much in front of Briggs and McCool that McCool refuses to have anything to do with it.)

On June 28, 1978, I tried to confer with Carey regarding a major case, but I was told that he was too busy. This was not the first time lately that he was "in conference" or "too busy" to talk.

On July 3, 1978, I called Carey to get clarification on a memorandum that he had written that directly contradicted itself. I then tried to discuss a closing report with Carey but he said that he didn't know enough about the facts to discuss the matter.

On July 5, 1978, I went to the District Office to discuss post of duty supervision, training needs, plans, and the closing report referenced 7-3-78. Shaw stated that the action he had demanded in returning the closing report would be unsuccessful

999 times out of 1,000 but that he (Shaw) was a "hardheaded asshole", therefore right or wrong I'd do what he said. Carey joined the discussion and I tried to explain that since it would be a failure 999 times out of 1,000 (at least) and since I was trying to get this particular trainee to quit wasting time on unproductive work, we were working against what was, or should be, our long range goal since the case had not a chance in a million.

Carey began his belittling tactics and kept saying again and again, "I don't follow your thinking" or "I don't understand". He acted like he was in a fog. He kept repeating inaccurate statements again and again as though at his insistence, I would have to accept them as the truth.

Before the meeting was over both Carey and Shaw got totally unrealistic in my opinion. Carey said that I was not doing my job unless I totally reviewed every open investigation every 2 or 3 days. (This is impossible and impractical plus remember the request to spend the extra time with McCool.) Shaw said there was 24 hours in a day and Special Agents get paid overtime as though we should work 24 hours a day to meet the above ridiculous demands.

On July 12, 1978, Carey again declined out-of-district travel requests by my group to go to San Antonio.

On August 3, 1978, I was called in from field duties for a scheduled meeting at the District Office. (This was the first time that I had been advised of the meeting.)

When I got to the District Office, I was advised the meeting would have to be put off since the District Office Technician had forgotten and left the office. (Shaw laughed and thought this was funny and I couldn't help but think of the hell I would have caught if I had been the one that left.)

On August 30, 1978, for the second time in about a week, I had to get our undercover telephone forwarding device taken off so all calls would not be forwarded to a criminal type informer of the other group. Unknown to me, for the second time, members of the other group had caused all telephone calls to be forwarded to one of their informers whose reliability I am unsure of.

I called the other Group Supervisor who was in the District Office and told him what had happened. Andrews gave their clerk the "smart" reply and told her to fix the telephone "before Carpenter has a heart attack". (To me this is an example of how they think because of their "society" connections with Carey, they can do whatever they please without thought or concern for anyone else. From a standpoint of investigative security and possible agent safety, they were totally wrong.)

On September 5, 1978, I found out that Carey had downgraded an investigation made by one of my agents without even reading the investigation. During a subsequent conversation with Carey, it became obvious to me that he had not read the report because he did not know the elements of the investigation that were contained in the report.

On September 26, 1978, Carey called to complain about and belittle my supervision because I had let a Special Agent close an investigation on a 70 year old man with no criminal record who when warned that he was violating the law, quit selling guns until he got a license.

On October 16, 1978, Carey came to the post of duty and was friendly but I noted that he was asking me about Special Agents in the other group who did not regularly drink with the "society". From past experiences I do not believe Carey knew who was in what group with the exception of the "drinkers". That night I got a telephone call at my home and an agent inquired about what Carey was mad about. I replied that he was not mad. The agent cautioned me to watch out because Carey never has that much friendly to say without other motives.

On October 17, 1978, the other group's secretary was gone, their group's supervisor was gone—or not in the office with no one acting in his absence. I was the only one present when Brooks Griffin, who is in the other group, called and stated that he needed an emergency favor done. (Griffin is noted for wanting favors done but to my knowledge it is rare when he returns favors. This is just his personality and the other agents have learned this about him.) I told him that I was the only person in the office and unless someone came in to do the favor, that he would have to do it himself because the office had to stay open. This was fairly early in the morning when the office usually receives a lot of business calls. Before I could get off of the telephone with other calls etc., some other agents had arrived, including two from the same group that Griffin was in.

As soon as I got off of the telephone I went to the back of the offices where the agents were talking and told them that Brooks needed a quick favor. Without



me saying anything else one of the agents from Andrew's group looked up and said almost these exact words, "If it is taking some documents out to some document examiner, f--- him". The agent then explained how Griffin had smarted off the day before about how Harry Koch (an Assistant United States Attorney who prosecutes most of our cases) was wanting him to take some evidence out to be looked at by a document examiner but that he was not going to be Harry Koch's fetch. Brooks was bragging about how he was not going to do his work or as he put it be Koch's fetch. (In other words Griffin knew the day before that this was going to have to be done and it was not a sudden emergency and he was just trying to "snooker" someone else into doing it.) If someone from Andrew's own group wasn't going to do their own group's work, then I wasn't going to force the issue.

I called Brooks Griffin and told him that he would have to do his own work. (He was only across the street attending an optional defensive driving school that was going to be repeated many times during the next few weeks. And, although I am not sure, I don't believe Griffin even bothered to attend any more of the classes.)

Admittedly this incident aggravated me and I had been in the office by myself answering one telephone call after another and then someone try to pull this type of petty flim flam stunt. I told someone who had just arrived to answer the telephones for a while and then Danny Curtis and I walked to the Commerce Street Newsstand where I purchased a weekly horse race publication that I normally bought. I wanted to talk to Curtis and tell him to tell a mutual ATF Special Agent friend to get some activity going because I had been asked by both Briggs and Shaw if Ray was doing any work. I just wanted to prevent trouble and I figured this was the best thing to do.

I then returned to the office where I remained working through the lunch break to keep the office open as no one from the other group was present to assist. During the afternoon I turned my duties over to someone acting for me from my group and I went to the driving school.

On October 18, 1978, I noticed that Brooks Griffin acted strange and as I recall something was said about how I would be hearing from the District Office. About 10:00 am I did hear from Carey and he asked that I come over to the District Office. Once I saw the look on Carey and Shaw's faces, I knew something was wrong. The three of us went into Carey's office and they immediately began the classic two on one questioning routine. Before giving me a chance to explain my position on the Griffin matter from the day before, I was advised by Shaw that my actions had embarrassed us in front of the U.S. Attorney's office and that there would be adverse action taken against me and that the least I could expect would be an official letter of admonishment. I asked what the most could be and before Shaw could answer Carey started hollering and cussing. I was caused at; hollered at and called a liar. (Later when discussing this confrontation Carey had "conveniently" forgot how Shaw called me a liar. Such is the advantage of their two on one sessions.)

Most of the facts they brought up were wrong, incomplete or inaccurate (they apparently and conveniently had not been told about Brooks' prior knowledge and bragging), one sided in that apparently the case against me had been presented by Griffin and/or Andrews, and were being used by Carey toward his "other" objectives.

I was accused of telling Tom Ray, a member of the other group, that Carey was on his ass or that Carey was going to get his ass. I tried to tell them that this was wrong but that I had told Tom and Danny Curtis that Briggs and Carey had asked about what they were doing and that they should make sure they had something going. One of the agents from my group even offered to give Ray a potential case if he needed any assistance.

I explained that nothing was done or said by me with any evil or malicious intent and my only intention was to prevent any trouble. I told them that I realized in the strict sense of managerial policies I could have been wrong in telling the agent instead of saying nothing. I explained that both Ray and Curtis had been real good about helping anytime they were asked and that I just wanted to help them and that if someone helped one of my agents like that, that I would certainly have appreciated it. Shaw called me a liar.

I apologized for any embarrassment that these actions could have possibly caused. (How many times has Carey ever apologized for his actions? Never to me. How many times has the District Office ignored managerial courtesy and gone directly to the Special Agent and circumvented the Group Supervisor?)

Carey brought up the fact, in an unfavorable manner, that I had not taken a telephone call from him a few days before but had asked the secretary to ask if I could call right back. He acted as though he thought I was putting on a show in front of the agents. (Actually I was collecting for the United Fund from them and trying to get 100 percent participation from them because Carey had recently pressured me to get more money from my group. I didn't like the pressure tactics from him but at least I was trying as diplomatically as possible to get whatever I could and still not offend the people under my supervision.)

In closing I asked that Carey and Shaw check their facts and see if they didn't get a little different set of circumstances and then advise me. I knew the facts should come out a lot different. I was never advised.

On October 20, 1978, Carey called and asked that I come over to the District Office for a conference. When walking up to Carey's office door I observed the other Dallas Group Supervisor Dave Andrews to be coming out of Carey's offices. Andrews flashed a "V" (victory sign) with a smirk look on his face but said nothing.

Carey advised me that he was switching jobs between Briggs and me for the next 30 days. Briggs is the District Office Operations Officer. I told Carey that I objected due to the timing of the switch in that it looked like I was being punished for the Griffin deal. Carey said that he was not happy with my work and that he wanted to have a closer look at me for the next 30 days. Shaw had stated in a belittling manner that I'd shown what to expect from me for the last two and one half years. I don't know what he had reference to but he had recently made fun of me for stating that I would tell the truth.

On this date Carey stated to me that he was doing me like Keathley had done him. This is an obvious reference to the action Bureau of Alcohol, Tobacco, and Firearms Assistant Director in Charge of Criminal Enforcement Miles Keathley took against Carey when he was temporarily removed from office about January 15, 1978 and in my opinion positively reflects the continued vendetta.

That afternoon I attended my final session at the driving school.

Unknown to me until later, Carey and/or Shaw chose to select Alexander's going away coffee to make the announcement of the switch between Briggs and I. (A little going away present for a "society" member?) I do not think it is a mere coincidence that the same people are almost always present when these adverse charges come up. However, I fault Carey for taking action on these unfounded allegations that are obviously made with devious motives. That is the root of my problems.

On October 23, 1978, I began my detail to the District Office as Operations Officer as requested. Jackie Neal, an Inspector from Washington, D.C. stationed in Dallas walked through the office and asked what I was doing. I told him and he replied that "It sounds like a bust to me". (I didn't tell Neal that I was worried that that was what Carey was leading up to also.) I never received any documentation from Carey reflecting this detail.

On October 24, 1978, I received a call from the post of duty asking me what had happened. I was advised the agents at the Dallas post of duty were saying "Cliff who?" The caller advised that this was just a Carey type demotion and that he was just running a 30 day flim flam before making the assignment permanent. (I was afraid the caller was right but I was determined to do the best job that I could under the circumstances and wait and see.)

On October 27, 1978, I received a call from the Eastern Judicial District of Texas Asst. U.S. Attorney Jeff Baynham in reference to some court hearings the next week and some witnesses that would be required to be there. I began advising the witnesses.

When Carey found out that McCool was one of the witnesses, he threw a fit. Carey called Mr. Baynham and tried to get McCool excused although McCool was a key government witness. (Remember Carey had wanted McCool to be involved in criminal work—well I had gotten him involved) Carey was mad because this would conflict with a big drinking, partying a bunch of them had planned for the next week. I heard Carey pressure Baynham to excuse McCool or try to get along without him or to get the hearing postponed—almost anything. I had tried to explain to Carey that Judge Fischer had set the time and date and that Baynham wasn't even sure what all would be taken up by the Judge at that time. I knew that they had a real crowded docket and the Judge was having a 4:30 session to work in all of the cases that he could.

Carey cursed the judge, calling him an inconsiderate son of a bitch, etc., who cared nothing about other people's plans. He also cursed Baynham—calling him a weak-kneed coward who was afraid to confront judges.

On November 1, 1978, I received a call from Mr. Baynham asking if ATF witnesses were going to be at Texarkana. At this time, he further stated that he was damned tired of being bothered by repeated telephone calls trying to get McCool excused. I told Baynham that Crawford, the informer, and I were set to be there. Baynham said he had received no less than 7 or 8 calls from someone named Andrews who had identified himself as McCool's temporary supervisor, and others still trying to get him to excuse McCool.

Now, based upon lies and half truths, I am being harassed and busted for my acts on 10-17-78 and even forbidden to talk to Harry Koch (no telling what he has been told) and Carey and his selected ones can pull the above and endanger relations, respect, etc., because of their planned Terlingua drunk? Also all during the detail, I noted errors from the other posts of duty that I could not believe, especially Dallas. There became no doubt in my mind that our group was far ahead of the rest of the district, even though we were continually harassed, detailed to unproductive duties, and held back by the District Office.

On November 20, 1978, while trying to locate the witness to reimburse him for the court trip to Texarkana, I found additional evidence of GCA violations by a proposed defendant by accident through conversation with a respected Denton County citizen.

On November 21, 1978, I advised Carey of what I had found regarding the additional violations and he went into one fit after another. Since a case was pending with Mr. Baynham, I called him and told him of the additional evidence. Carey threw a fit because I would call the US Attorney and as Carey stated, "Why did you have to tell him all of the truth—everything?" Carey was very belittling and vindictive all day.

Carey, Briggs, McCool and I had a meeting in Carey's office that afternoon. Carey mostly quizzed me and tried to cross me up or catch me in a lie, but he couldn't do so since I had been entirely truthful. Carey was demeaning toward me during the meeting—a fact later acknowledged by Briggs—and was so critical of my efforts, with remarks such as "Your work is why we have this mess we're in now", that McCool stated he would have nothing else to do with the investigation. Carey made it a point to make it clear that he didn't trust me.

Again, as he has so often done in the past, Carey had taken an inaccurate fact and continually repeated it again and again. (It looks to me like if he wants something to be true or a fact, that he just keeps saying it again and again until he, or everyone, believes or accepts it as fact. I myself will not accept a lie as fact, and I correct him each time he tries to do this.) Carey tried to insist that I had made an illegal deal with the defendant and that the citizen was dishonest and shady. (Carey doesn't even know the citizen, but he realized that the man and I were friends.)

Carey kept complaining about the amount of time spent on the investigation, running down the subsequent investigations, and making fun of us for being "conned". In a sarcastic tone, Carey said that he was removing my confidential informer from the approved file". Carey made no attempt to be decent.

With Carey only present, he referred to me as not having the respect of McCool and pointed out that McCool wouldn't even help his ex-RAIC. I then informed Carey that my 30 day detail was up and as of in the morning, I was to be back at my regular job. Carey disagreed and even though I never received a written notice of the detail, I had maintained a continual log of the days and knew that I was correct. I also asked Carey what he meant by ex-RAIC and he stammered around without ever answering the question. I asked Carey exactly what his plans were and again he would not answer. I told Carey that the uncertainty was bothering me and that I would appreciate knowing before Thanksgiving. He promised a definite answer the next day. Then in response to an inaccurate statement he made, I told him that he was basing a judgment upon something that was not the truth. Carey got mad and in a loud tone stated sarcastically, "Piss on the truth!" I soon departed.

I was unable to sleep at all this night. I had been sleeping sparingly, lately, anyway, because of having indigestion, chest pains, and headaches. The next morning, November 22, 1978, I asked Carey for his decision and he said that he was extending the detail for 15 more days. I then asked to confer with one

of his supervisors, Mr. Keathley or Mr. Welch. When I asked this, Carey got really mad and said/shouted, "I'll just go ahead and make the action final today—I'll just move you effective right now" I stated that I still wanted to talk to Keathley or Welch. He tried to get me to leave, but I wouldn't until he called and I was informed by Carey that Mr. Welch would be in Dallas to confer with me sometime the next week.

On November 29, 1978, Carey advised me that there would be no special trip made to confer with me, and that if I still wanted to talk with someone that they would grant me an audience on their next regular trip to Dallas. He then jumped on to me about pouting" and made some half threat. (Note: My car has been in the shop and I have been riding with others as available.)

In recapping Carey's actions during 1978 he did in my opinion:

1. Clearly display his instability by standing in front of me and saying "I'm the SAIC, I'm back, Harmon is not the SAIC, etc. "and by doing so in such a manner also clearly indicating that he was still, for some reason, holding me responsible.

2. Left no doubt that he was going "to make me sorry" one way or another and that he would find sufficient fault for him to "do me like Keathley had done him".

3. Accurately depicted his personal credibility by stating to me on November 21, 1978, "Piss on the truth", after I caught him in two lies and told him that he was basing his actions on false facts.

Regardless of what Carey might allege, I knew and everyone else knew, that he was taking adverse action against me by removing me from my Group Supervisor position to that of Operation's Officer, although there was no loss in pay at that time. The manner in which the move was made and his continued belittling actions toward me while I was Acting Operations Officer left me no doubt as to his continued malicious intent. I realized that there was nothing ahead but more and more of the same: my hope for some help from our Bureau Headquarters was gone; I was exhausted and felt terrible; and that's when I went to the doctor on 12-7-78.

There are numerous other examples of related incidents committed by Carey, his office, or his companions; however, I believe these are sufficient to show Carey's

1. Malicious vindictive intent
2. Drinking problem
3. Lack of respect for the truth.

The documentation of the alcoholism, misconduct, and incompetencies are intend for the purpose of depicting as clearly as possible the work conditions under which I functioned for over one and one half years and to thereby more clearly reflect how someone attempting to maintain efficiency, honesty, integrity, self respect and a family would be subject to extreme pressure and stressful conditions.

Names are named herein for the purpose of making the report as clear as possible. The "ATF Drinking Society" and the male and female members are identified to show Carey's relationship with this type person and activity as well as his obvious reliance upon them and how this "reliance" is utilized. I'll make no further inference toward this group, their association, or activity.

Initially, although I was concerned with whatever the unidentified problem was between Carey and I, I could still forget what was going on at the office once I got home. This is not to say it was not troubling me because it was. I would often lay awake at night worrying about the situation or wake up during the night thinking about how to solve the problem.

The problem got progressively worse and I slept less and less until it got to the point where some nights I did not sleep at all. I was conscious of a constant headache, nervousness, and a burning, rolling stomach. During November 1978 these conditions got worse and on several occasions, I had very sharp chest pains, became nauseated, and felt as if a balloon was being inflated inside my chest/stomach. This scared me, and since I was physically and mentally exhausted, on December 7, 1978, I had a physical examination by a qualified physician. I was told I was suffering from disabling stress symptoms.

Another combination type effect I have noted is that I cannot get what has happened off my mind. I cannot think about anything else other than the anger, hate, and sadness that I feel for what has happened to an otherwise excellent career. For instance, where I once regularly read books, newspapers, and mis-

cellaneous publications, I have found that after I pick them up and begin to read, my mind rapidly drifts away from the article and back to the problems. I even had to ask my wife to take care of all the household and financial affairs because I couldn't take care of them for thinking about the work-related problems. By the end of November 1978, I found it impossible at work to read reports, orders, etc. I would just be reading the words but thinking about Carey's actions and what they had caused. This is what I mean by not being able to read, comprehend, or concentrate. No matter how hard I've tried, I cannot get away from what has been needlessly and maliciously done to me, my career, and my family by a vindictive, alcoholic supervisor who I had always only tried to help, even long after May 16, 1977, when he made his first threat toward me.

In reply to my ever suffering any similar conditions, my answer to the overall combination is No; however, my answer needs additional clarification.

As to the stress of working as a first line supervisor directly under a vindictive alcoholic liar, I had a short but very similar experience in Little Rock, Arkansas. Special Agent in Charge Bill Johnson was sent to Little Rock, Arkansas, from Bureau Headquarters, and I immediately saw him to have the same above faults. When he tried to order me to sneak around and spy on agents under my supervision and then report their inappropriate actions to him, I refused. Shortly thereafter, I had to be gone for about ten days to assist with a critically ill relative. When I returned, I was advised by Mr. Johnson that he had decided to unofficially promote Earl Hill to be his assistant. I knew there was going to be lots of trouble and that some good agents would be in jeopardy. I was worrying about what to do because I knew this was a "powder keg" situation. Luckily it soon ended when SAIC Bill Johnson was discreetly and swiftly removed from Arkansas. Shortly thereafter, Mr. Johnson retired from ATF. During the above situation, I had some of the same preliminary feelings as those I had during the initial stages of this incident herein described. As to the headaches, I have never been conscious of the continued ache as I have been for the past eighteen months. (My wife even expressed concern over the quantity of aspirin, Vanquish, and other similar pain killers being taken.) During the past, however, I have sustained two injuries which have caused prolonged, intense headaches.

The first occurred in 1966 shortly after I transferred to Oklahoma City, Oklahoma. I was assisting several agents in destroying a large illicit distillery. As a trainee, I was not permitted to handle the C-4 explosives being used, but I was interested in learning how they were being used. As the explosive handler and I re-entered the barn containing the distillery being destroyed, a large charge went off only a few feet in front of me. I was standing in the doorway and was blown backwards. I was dazed for a few minutes and bled from several exposed places such as my hands and nose. The other agent was in shock, had some other injuries, and was taken to a hospital. I declined medical treatment and soon rejoined the other agents in completing the job. The only lasting effect I noted was a severe headache for several days.

The second incident occurred during the winter of 1968 (I think) when two other agents and I were hit by a freight train at a rural crossing in Lincoln County, Oklahoma, en route to check an illicit distillery for activity. I was riding in the right rear seat of the government car when the train hit the vehicle about one foot behind my head. I was not unconscious in that I got out of the wreck "on my feet", but I didn't know what was happening. I had bruises along the right side of my body and head injuries requiring several stitches to close. The rural Oklahoma doctor I was taken to stitched my head up, without even cleaning the wound, gave me some pain killer, and sent me home. Within 48 hours, my head hurt so bad I couldn't stand the pain. I went to a clinic where the doctor there was shocked by the treatment I had—or had not—received. He immediately removed the original stitches and provided other medical treatment for infection, etc.

Since that last incident, I have noticed more frequent severe headaches than ever before. They were just something I had learned to live with and not be conscious of, or at least not be troubled by, until recently.

CC  
Special Agents complemented by Cliff.  
They knew Carey after him.

1. cc. 76 =

Gaunt - RD

Hamm - ARD

Carl Gorth - action  
cc - Mr. H. H. H. H. H.

Carpenter - Reg. Analyst

Dave Hogan - GS

Carey - SAC

Joe Shaw - ARIC

Then: Cliff to GS in Dallas.

Hamm - on paper to D.C.

in effect: became SAC from Jan. 15 to May 15

Cliff in D.C. - Carey said look up Cliff. no.

St. showed Cliff Teletype msg. signed by

Good. - relieving Carey as SAC & putting

Hamm in as SAC. Carey very displeased

Carey detailed to O. Inspection.

CC saw him occasionally until he retired as SAC

CC known Carey for 13 yrs. knew

Hamm more strict than Carey.

JC & B. McCall good friends. JC jumped

him about M.C. Cool on the st.

CC brought up girl - Boris Teniers (Jackson)

~~at~~

- 3 points: 1. CC told him about Bob Alloggi  
 2. Then CC told him about Chris T.  
 3. Then JC told CC didn't appreciate  
 way CC had treated B. or Cool.

JC also said he was going to make  
 some people sorry for what they had treated  
 him while he was gone - He didn't want  
 any charges. No doubt <sup>CC</sup> in mind that  
 CC was the one he was referring to.

CC asked JC specifically, a couple times,  
 what JC made about. CC trying to solve  
 problem + get into open. Wouldn't mind, way.

JC said I might have had to a lot of  
 people or about a lot of people.

CC knew hadn't done anything.

CC caring bulk of administrative duties  
 for P.D.

(While Harman still sitting, he went to Tyler one  
 day. Hogan also there. Neither of them knew  
 the other was there. Harman ran into Hogan.  
 CC knew Harman was when he left. He's

Asst U.S. atty. Jeff Baynham <sup>in Tyler</sup> - said a hell about

**CONTINUED**

**7 OF 8**

3

some testimony (questionable) that Dave Logan  
had presented in Ct. when Harnum told  
he met w. cc. He then met w. Logan & agreed  
to move to D.O. as Tech. man. (April or May '77)

Then several SAs started acting.

Then Dave Andrews from Ft. Worth was  
named by Casey.

Logan & Casey close for a while. days.

Reputation that Casey takes care of Logan. Feel  
that Harnum's actions would prevent JC.

Harnum not satisfied w. division of duties.

said has to be division of duties. Told

cc to come up with plan. cc feels that

Harnum was going to make Dallas a one-man  
post of duty. (1 GS).

Don Briggs = came here as chief analyst in R.D.

Then Briggs became D.O. - Mrs. 177.

(Betty Smith - went ST. Agent but detailed as

Jr. Mrs. 177. as Reno retired.)

(Carl Roth - went to GS 12 ST. agent - retired).

Don in D.O. until Oct. 8 '78 when he

relieved CC. At first supposed to be 30 dr. detail.

Joe Shaw told me had advise action & would  
expect at least letter of admonishment.



CC feels that Carey getting back at CC for things that Harmon did. Taking frustrations out on CC because couldn't against Harmon.

Then over here have great dis. trust for supervisor in general. Here's what they thought to Supervisor's dis.  
spent hours in group meeting, trying to trace this thought.

From 5/16 on not getting appreciative report.

That big thing: JC treatment of Davis situation. Davis needed help w. writing reports. Larry Arnold was her training officer - but he having problems w. case report writes. Talked with him about problem. Joe Shaw not happy w. Larry's rpt. Clifton ~~has~~ could write good, so put Davis w. him.

Had to call her in about a couple of things but she didn't ob. - (1) requested update of closing rpt. on invest - stop project. CC couldn't communicate with her. She crying & he gave her handkerchief. She said someone in D.O. had called her & said Helen over here trying to get

her fired. ~~She would not say who.~~ CC doesn't know. JC thinks she is telling truth. Prior to this, she had no communication problems. She was convinced CC trying to get her fired. Not true. CC had not done that. Harmon & Shaw will verify.

Word got out at P.O. that CC kept trying to get her fired. CC asked Carey to get into support.

Harmon, Shaw & CC had a meeting about Davis. Agreed that CC would write letter of warning to improve performance. Same afternoon this meeting occurred. Not morning - Not afternoon learned that JC coming back.

(JC started Adverse Action in Oct. 78. Many told said Carey told her that CC had a lot of trouble at getting along w. people at P.O.).

JC had P.O. meeting Jan. (Tue. 1/16/79). JC made statement that going to get rid of CC. made off-color remarks about CC & what going to do. After an affair of JC, when ~~last~~ <sup>came</sup> ~~voluntarily~~ <sup>voluntarily</sup> left, unless can be protected by oath or subpoena to tell truth.

6

3/2/79 - rec'd letter & proposed dismissal  
That's when retained attorney.

Jimmy Bivens - hearing office in Dallas  
Roger Allen, Steve Hollimon, attorney.  
Conducted fair hearing.  
This on Tues 6/5/79.

Penny McCracken B/F  
Sec: to Legal Counsel US Dept. of Labor  
767-4902

Bruce Huggett

Carl Scott -

C.C.

Statement made in Court's office.  
She in off. Bivens in and out.  
JC had been to Christian party.  
She handled it well - went directly  
out of door.

JC didn't want to leave - was drunk.  
When drunk JC, loses reasoning.

CC heard that Bivens had gone to CC &  
complained about JC's drinking & tried to  
have transferred.)

7

Break 12:20  
Fil 12:55 P-4

6-25-79

Briggs - re: Shaw being sick when he  
learned that Carey was returning.

JC drinking buddies:

J.K. Alexander - constantly w  
JC - after work.

Men: Andrews, Dodd, Dwight,  
Gossman (when he was here).

McCord didn't really drink but  
frequently w them. He was sort of  
an outcast w these ones. They  
usually get together on trips.

Alexander in '71 or '72. Displayed  
Cowardice - just been on job.

Potter drunk - incident was whiskey still.

Jock Ray - disappeared soon. Think home body in S.

CC } in no ground  
Alexander } in no ground

NO witnesses (ATF) to incident.

CC told that Alex - refused endorsement

assault in N.D. & Bivens & Men let  
him get by w it. Alex is no friend.  
BCC but did good work. Nothing.

8.

wrong w/ his ability as an inv. Bad  
about bad mouthed people. Hogan was his  
superior at one time.

Think guys get their digs in to when  
they are drinking w/ J.C.

Darlene Young. Ex. Sec. P.O. - Dallas.

SA Larry Arnold - told C.C. paid to  
keep all they have seen J.C. do.

- Statement pretty well accurate. Told  
C.C. would lie first.

Linda Cager - Sec. w/ J.C.

Betty Simmon - Dave Andrews.

Aimee Beisler - Bob Alexander.

These four together - Don't know  
whether there was any party-party.

Never actually saw them later.

Have seen them at Casino lounge

drinking. Assumption on C.C.'s part of  
wrong doing.

Carey - made issue out statement  
about J.C. getting Ray's ass.

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4- Shaw: Briggs & Shaw - stopped the STOP  
program. Force in starting procedure  
to fire Davis; went along w/ Harmon to  
change P.O.D.; then he side w/ Carey.

After meeting between Davis & J.C. - she  
came back to P.O. to her office & stayed  
a few minutes; talked to Alexander &  
left at about 3:20 P.M. J.C. called C.C.  
at 4:25 P.M. talked about Davis. -  
C.C. wanted face to face w/ C.C.

1-20-76 - C.C. never question who

C.C. filed grievance in Jan. 1977.

"Incompetence" refers to TT msg. that  
J.C. had rec'd from Keatchley. This msg.  
was sent about Jan. 15, 1977.

3 reasons Carey down on C.C.:

1. Taking J.C. out of office (K.D.) drunk.
2. Treating J.C. like a kid.
3. Baseball Bullshit. C.C. stopped drinking.
4. Getting back at Harmon than C.C.  
as on C.C. because of Harmon &  
decisions to make.

10

5- Moving CC from POD to DO. JC said  
"I'm doing you like Kestley did me."  
CC objected to move.

\* CC's objection to going from POD to DO:  
1- Lies on truth  
2- Integrity questioned  
3- Called liar  
4- Think done as adversarial &  
felt a continuing vendetta &  
felt couldn't be effective in doing  
his job.

Reasons for JC wanting CC in DO  
according to CC:

- 1- Never told me in furtherance of  
my career & he knew JC didn't  
care about betterment of career.  
Had sent a letter requesting removal  
from career ladder. Requested  
to stay in Dallas even as a ST. SN.  
(Not holding him against JC).
- 2- Said having trouble but not a CC  
concern. Thought CC would do a  
better job as Op. Off. Man & S.  
CC didn't believe this because  
of way he was treated.

11

3- Don't think He & Briggs get along that well.  
(When JC called CC over here - said "don't  
know what I'm going to do w CC. Can't  
get along w people").  
CC knew would be a continuing thing  
if he went over. Objected to ~~some~~ Op. Off.  
position as a whipping post. Have to  
have get along with everybody in that  
position.

McCool - moved to Dallas 75 or '76 - about  
time CC left. (Aug. 75 CC to Dallas.)  
Feel like most of JC's problems  
comes from McCool. McCool was  
afraid of Harmon.

Uncle buried & death in Malheur, Ore.  
Not wanted to go up & work in fine  
murder case. Raised hell w Briggs  
who refused then to Joe Shaw who  
refused - conversation re: Roy Telleys  
working case in Tex. where his  
sister was killed. Tom's way was  
preferred.

Took keys to DO/POD garage in Nov.  
while CC on detail in DO. no repairs  
came by and asked for his keys. Don't re-

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member he said: "I need your keys"  
 Don't know why & cc didn't ask. Still  
 don't have keys. Petty thing on J.C.'s part  
 Don't know whether changed locks or not  
 Don't know any combinations to locks -  
 Have to come in when somebody is here  
 and leave here same. Still on 25%  
 was off AHO for one week.

Deals w show in DO. Carey doesn't  
 say anything

71-191 1214

F

Other

1. Regarding your job, do you and your group receive support from SAIC Carey?
2. Have you had or do you now have any problems with Carpenter?
3. Do you get along with Carpenter?
4. Do the other P.O. Special Agents get along with Carpenter?  
 as far as you know,
5. Has Carpenter ever conducted secret meetings for you or other Special Agents?
6. Has James Alexander ever whispered or said things to you that would discredit Carpenter?
7. Was Carpenter overly harsh to you?  
 Regarding your duties,
8. Do you know of Carpenter working against the D.C.?
9. Do you know of record checks not being done for <sup>you or</sup> Carpenter's group by personnel in the District Office?
10. Do you know of SAIC Carey authorizing preferred or choice-type assignments to be given to the group not supervised by Carpenter?
11. Do you know of Carpenter doing anything to fracture or disrupt the unity of the two Dallas P.O. groups?

2

Other

12. Has Ann Geisler ever <sup>personally</sup> given you an assignment?
13. Do you know if Geisler was at all in charge of making assignments to special agents?
14. Do you know of a conspiracy on the part of Carpenter to get SA Doris (Jeppie) Jackson fired <sup>Do you know of any mistreatment by Carpenter of SA Doris Jackson?</sup>
15. Have you ever heard SAIC Carey say that he was responsible for Carpenter being the Group Supervisor at Dallas P.D.?
- ✓ 16. Regarding the Special Agent award for 1977, did you hear, prior to the award being presented, which Special Agent would receive it?
17. Have your performance evaluations or grade analysis been lowered by SAIC Carey?
18. Do the P.D. secretaries talk down to you?
- ✓ 19. Do you know anything about SAIC Carey ordering Special Agents to drive Mickey Dean, the P.D. secretary, to work?
- ✓ 20. Do you know of SAIC Carey denying requests to travel for the furtherance of investigations to Carpenter's group while allowing the other Dallas P.D. group to travel for the same reason?
21. Does SAIC Carey or anyone in the P.D. cause you problems when you file a <sup>domestic</sup> Criminal Case report?
- ✓ 22. Do you know of SAIC Carey or other P.D. personnel making second and third requests for reports that had previously submitted?

3

Other

23. Has Carpenter overworked you?
24. Do you know of Carpenter interfering with <sup>other</sup> Dallas P.D. group's activities?
25. Do you know of SAIC Carey or other P.D. personnel detailing unproductive duties to Carpenter's group?
26. During a P.D. meeting on January 16, 1979, did you hear SAIC Carey say that he was going to get rid of Carpenter?
27. Do you know the reason(s) for SAIC Carey recommending that Carpenter be dismissed from the Bureau?

71-191 1217



ALCOHOL

1. Do you know whether SAIC James Carey is an alcoholic or has a severe drinking problem?
2. Do you know whether SAIC Carey <sup>regularly</sup> drinks alcoholic beverages while on duty?
- \* 3. Have you joked about SAIC Carey's drinking?
- \* 4. Have you heard other Special Agents or ATF employees joke about SAIC Carey's drinking?
5. Have you ever drunk alcoholic beverages with SAIC Carey?  
Are you and SAIC drinking companions?
6. Were you on duty?
- \* 7. Do you know of a so-called "Drinking Society" within the Dallas District?
8. Have you ever seen SAIC Carey at the P.O. after he had been drinking or drunk?
9. Have you received any instructions regarding drinking while on duty since being assigned to the Dallas P.O.?
10. Cartoon?
11. Do you know if the D.O. Secretaries keep telephone numbers of bars where they can call SAIC Carey during work hours?
12. Have you made or heard any Special Agent make a remark about SAIC Carey "making a left turn and going to the Casino" when he was enroute from the P.O. to the P.O.?

TRUTHFULNESS

1. Do you have any knowledge of SAIC Carey ever lying?
2. Have you ever heard SAIC Carey say, "Piss on the truth"?
3. Have you heard SAIC Carey say that he berated SA Doris (Officer) Jackson for telling lies, knowing that she had lied?

71-191 1219

# VINDICTIVENESS

1. Do you know of SAIC Carey acting in a vindictive manner towards Cliff Carpenter, Jr.?
2. Have you ever seen SAIC Carey display contemptuous feelings towards Carpenter?
3. Have you ever heard SAIC Carey curse Carpenter?
4. Have you ever heard SAIC Carey belittle or utter demeaning remarks about Carpenter?
5. Do you know if SAIC Carey dislikes Carpenter?
6. Have you ever heard SAIC Carey criticize Carpenter in front of subordinates?
7. Have you ever heard SAIC Carey voice criticism about Carpenter?
8. Do you know of any threats made by SAIC Carey towards Carpenter?
9. Have you ever heard SAIC Carey say that he was going to make some people sorry for the way they had treated him while he was gone?
10. Has SAIC Carey ever dealt with you directly, by-passing Carpenter or your immediate supervisor?
11. Do you know of SAIC Carey causing an embarrassing situation at a function in which an ATF representative(s) would ordinarily attend?
12. Do you know or have you heard about SAIC Carey making a list of people who had turned against him that he was going to get even with because "he worm could turn"?

# NOTES

Mon.

- 6/25 - 8:40 AM - 12:20 PM } interview in O.E. H. W.  
 12:15 PM - 5:15 PM } Carpenter.  
 Prior to the interview, Carpenter put under oath 9:10 AM  
 Attorney: Roger Allen. 3838 Santa Bryan Tower  
 Tele: 651-1888  
 At 9:25 A.M. - Carpenter called Allen re: our interview.

Tues.

- 6/26 - 10:35 AM - I called Carey and met him. He wanted to give. Tell him about it.  
 - 11:15 AM - I called Penny McEwen at 767-4902. She was in 7659 about 12:15 PM for interview. Her office: 535 Griffin St.  
 1:35 PM - met McEwen in her office, room 501 and obtained affidavit.  
 3:40 PM - I rec'd a call from Carey - said he had called Keathley who told him that Brewer wanted me to get a sworn statement from Carpenter. Keathley told him that he would not make a decision concerning Carpenter until after the report is in. I affirmed that I was to interview CC first and get a sworn affidavit as per Brewer's instructions. I told him it was my understanding, from Brewer, that Keathley was to have notified him on Mon. re: the investigation being initiated.

Wed.

- 6/27 - 7:15 AM - ran into Carey on ST. said expecting a call from Keathley. Keathley had told him that he would not make a decision re: CC until after ST int. He said he sent his report in to Keathley 1st wk. of March. Didn't like

## NOTES

6/27 - it became known that he waited so long to do anything & now would be another delay - possibly 90 days. Needed to get CC out of office.

1:10 PM - mailed copy of allegations to Hall via express mail.

Thurs.  
6/28 - 10:20 AM - 10:45 AM - met w SAC Carey and obtained comments re: Carpenter.

11:05 AM - 12:25 PM - in my office w Carpenter.  
1:05 PM - resume interview.

1:55 PM - Carey called - cc and me in conf.

3:00 PM - I recd. msg. to call Carey from Sec. Called and Carey said SA suspect about inv. and want to make complaint to L.B. Think suspension after hear report based on CC letter. Andrews saw CC driving sport car. to attorney's office on 6/28/29. Told Carey I would report it to Mike Hall but he or one of them would have to make formal complaint to Hall or Brewer.

3:05 PM - I called Hall & explained circumstances and facts. Said tell Carey if they have complaint to lodge - free free to call him or Brewer.

3:08 PM - I called Carey and told him this.

3:45 PM - I called w Andrews.  
3:50 PM - met w Carey re: above.

5:14 PM - recd a call from Mary Dodd. Told her Secretary, Mickey Dean, had called and wanted advice re: obtaining a lawyer before I talk to her. Dean is aware of the letter and inv. of Carey. Also, Mary Andrews had called re: obtaining a lawyer to sue Cliff Carpenter. I told her to have Dean call me.

## NOTES

Fri.

6/29 - 7:15 AM - called Hall and informed him of call from Dodd.

8:00 AM to 9:05 AM - with Carpenter.

10:20 AM to 12:25 PM - interviewing Carpenter.

1:15 PM to 5:50 PM - "

Mon.

7/2 - 9:00 AM - 11 AM - met w Carpenter in my office and conducted interview.

Tues.

7/3 - 8 AM - 3:30 PM - in office w Carpenter re: interview.

Thurs.

7/5 - 8:25 AM - 4:00 PM - in office w Carpenter re: interview.

Fri.

7/6 - 7:10 AM - 3:30 PM - " " " " " "

7/13 - 9:30 AM - 4:15 PM - " " " " " "

7/16 - 1:30 PM - 7:30 PM - " " " " " "

7/17 - 7:00 AM - 3:00 PM - " " " " " "

wrote affidavit - would not sign w/o Attorney reviewing and approving.

3 PM - 4 PM - met w SAC Carey.

7/18 - 7:50 AM - 10:15 AM - met w SAC Carey/Asst Shaw - general discussion.

3 PM - called Carpenter and pointed out error on page 35 of

his 46-pg. memo about horse racing publication. He

explained to me diff. between publication and horse

racing form as noted in Carey's proposal for dismissal.

7/19 - 7:30 AM - 3 PM - interview with G.S. Donald Briggs.

7/20 - 7:45 AM - met with Briggs and signed affidavit.

8:30 AM - recd call from Carey - one not in.

9:00 AM - I recd call to Carey. He asked if I had

requested Carpenter to cancel his A-leave. I told him no, we had his usual 10 days.

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7/20/79 - 2:30 A.M. - 4 P. met w SA Robert Post in Arlington and obtained affidavit.

7/23/79 - 12:25 P.M. - called CC re: who agent was not going home inf. re: Ann Geisler/Alaf.

1:30 P.M. - 2:50 P.M. met w CC (my request) to answer several (5) questions. > WHAT QUESTIONS, WHERE DID YOU GET FROM.

7/24/79 - 9:15 A.M. - 9:30 A.M. - conferred w SAIC Casey re: inv. and talking w certain employees.

10:05 A.M. - 11:01 P.M. I went to CE PD and met w Brooks Griffin - then to my office for interview and affidavit.

1:45 - 3:45 P.M. - met w SA R. McCort in office re: affidavit.

7/25/79 - 10:50 A.M. - 11:20 A.M. - met w Benjamin Byrnes and obtained affidavit.

12:05 P.M. - 1:30 P.M. - met w Larry Arnold and obtained affidavit.

2:05 P.M. - 4:05 P.M. met w Ann Geisler and obtained affidavit.

4:10 P.M. - 6:20 P.M. met w Laron Richardson and obtained affidavit.

7/26/79 - 8:55 A.M. - 12:05 P.M. - met w Mickey Dean.

1:00 A.M. - 2:15 P.M. - obtained affidavit.

2:25 P.M. - 4:40 P.M. - obtained affidavit from Tom Kay.

7/27/79 - 9:00 A.M. - 9:15 A.M. - interview w RICH Hillman.

9:20 A.M. - 10:30 A.M. - interview and affidavit from Juan Mestay.

10:45 A.M. - 11:15 A.M. - interview - affidavit from Kay Powers.

10:35 - 10:40 A.M. - Report interview w SAC J. Hamm by telephone.

5

7/27/79 - 1:55 P.M. - 2:20 P.M. - obtained supplemental statement from FS Don Briggs.

2:30 P.M. - 2:55 P.M. - obtained affidavit from Robert Mitchell, Office Services.

Tues.

7/31/79 - 9:25 A.M. - 10:37 A.M. - met w Mike Dohd and obtained affidavit.

11:00 A.M. - 1:25 P.M. - met w Pat McKinley and obtained affidavit.

Wed.

8/1/79 - 9:00 A.M. - 3:45 P.M. - met w SA Doris Jackson and obtained affidavit.

Thurs.

8/2/79 - 8:25 A.M. - 8:45 A.M. - met w SA Hal Campbell - never saw Carter; know nothing about it. No affidavit.

8:57 A.M. - 2:00 P.M. - met w SA Mike Guster and obtained affidavit.

2:05 P.M. - 4:50 P.M. - Panny Lurie - rec'd affidavit.

Fri.

8/3/79 - 8:55 A.M. - 3:15 P.M. - Gary Clifton - interview and affidavit.

8/6/79 - 9:35 A.M. - 2:10 P.M. - W.M. Panny Wright - interview and affidavit.

8/7/79 - 7:30 A.M. - 9:40 A.M. - 11:05 P.M. - 2:55 P.M. M.G. H. - affidavit - to be cont'd.

6

8/9/79 - 8:05 AM - 11:40 AM - obtained affidavit from  
SA Kay Taylor.

12:57 PM - 4:15 PM - obtaining affidavit from M.E. Corl.

FBI.

8/10/79 - 8:30 AM - 11:50 AM - obtained affidavit from Albert Chang.

1:10 PM - 3 PM - interviewing M.E. Corl.

man.

8/13/79 - 10:10 AM - 3:50 PM - interviewing M.E. Corl and  
obtained affidavit.

8/14/79 - 8:30 AM - 9:35 AM - M.E. Corl review and sign affidavit.

10:45 AM - 11:30 AM - Tom Ray - supplemental affidavit.

1 PM - 3:50 PM - interviewing Toni Gould, TX to court.

8/15/79 - 7:15 AM - 9 AM - w Toni Gould - complete affidavit.

9:30 AM - 12 M - w Dave Anderson

1 PM - 6:15 PM - w " "

8/16/79 - 8:15 AM - 4:40 PM - w Dave Anderson - obtained  
affidavit.

8/20/79 - 7:15 AM - 11 AM - } obtaining affidavit from SA  
11:45 AM - 1:25 PM - } James Little.

1:00 PM - 1:40 PM - Affidavit - Joyce Miller - RE

1:40 PM - 2:25 PM - " - Betty Simmons

7

8/21/79 - 8:20 AM - 9:40 AM - affidavit from Lois Smith  
9:50 AM - 11 AM - " " " " Paullette Barnette  
12:30 PM - 4:00 PM - " " " "

8/22/79 - 7:45 AM - 10:15 AM - conferred w S. C. Carey/Shaw  
11 AM - 12 M - affidavit from Robert Logan at his  
residence.

1:35 PM - 4 PM - Conferencing w Dave Logan -

4 PM - 4:30 PM - Supplemental affidavit from L. Richardson

4:30 PM - 6:25 PM - affidavit from D. Logan

8/23/79 - 10:10 AM - 10:25 AM - Report interview w Jim Ruff,  
Chief, Criminal Division, USA, AF-1.

10:45 - 11:15 AM - met w Carey/Shaw

1:20 PM - 1:45 PM - " " " " Gary K. - HUSA  
NO STATEMENT

8/24/79 - 1 PM - 3:15 PM - At Austin, TX - site visit/affidavit w  
SA Robert Calvert.

8/27/79 - 2:15 PM - 6 PM - In Tyler, TX - interview w HUSA  
Jeff Baynham.

8/28/79 - 1:15 PM - 5 PM - Affidavit from Tom Huggins.

8/29/79 - 9 AM - 10:15 AM - Supplemental Affidavit - James Little.

10:20 AM - 10:55 AM - met w D. Briggs - 201-780-239

11:25 AM - 4 PM - affidavit from SA Steve Spies.

8

8/30/79 8:15 AM - 9:15 AM - Supplemental affidavit L. Arnold.  
 9:15 AM - 4:24 PM - interviewing James Alexander -  
 8-31-79 (12:40 AM - 1:30 AM) - interview w/ Cliff Carpenter re:  
 accusation about Bill Johnson SAIC.  
 8-31-79 8:30 AM - 2:15 PM - continuing interview w/  
 Alexander.

9/4/79 2:10 PM - 3:25 PM - at La Quinta Hotel in  
 Azusa, CA. Mike Hall - met w/ Carpenter re:  
 790239.

9/6/79 - 10:30 AM - 3 PM - at P.O. - interview and  
 affidavit from SAs Carey, ASAC Shaver.  
 9/7/79 - 1:30 PM - 3 PM - affidavit from Carolyn Young.  
 9/11/79 - 7:52 AM - 8:07 AM - called Carl North - report of  
 interview.

9:23 AM - 9:45 AM - met w/ P. Logan in my office  
 re: possible supplemental affidavit.

Alcohol - severe drinking problem.  
 Tameness.  
 Vividness.  
 Contemplative feelings by Carey towards Carpenter.  
 Threats by Carey against Carpenter.  
 Everyone knows Carey doesn't like you (Carpenter).  
 Receive support from Carey.  
 Making joke among agents.  
 Created embarrassing situations, such as  
 playing with legs of wife of guest of honor.  
 Cartoon of Carey.  
 Secretary keeps minutes where can reach Carey  
 during day.  
 Jaffries knew Carpenter tried to get her fired.  
 Carpenter fractured Dallas P.O.  
 Division of P.O. responsibilities.  
 Drinking companions.  
 Places drink.  
 When drink.  
 Agents don't like Carpenter.  
 Carpenter can't get along with agents.  
 Carpenter conducting secret meetings.  
 Alexander whispers things around office to discredit Cliff.  
 Carpenter overly harsh on subordinates.  
 Criticizes Carpenter in front of subordinates.  
 Flashlight situation.  
 Drinking on duty.  
 Anything to indicate Carpenter working against P.O.  
 Drinking society.  
 Secretaries taking SAs.  
 Car repairs.  
 Criminal record checks not done for Carpenter's group.  
 Being friendly w/ girls in P.O.  
 Other individuals disliked by Carey.  
 Carey cursing Carpenter.  
 Carey come to P.O. drinking.  
 Cliff Carpenter, Jr. gave me  
 This affidavit was given under oath.  
 Cliff Carpenter, Jr. gave me affidavit under oath, he said it  
 was true - He but declined to sign it.



2

Choice assignments going to other groups.  
 Ann in charge of making assignments.  
 Choice work/trips going to "society" groups.  
 - Special agent 7 years around - 1977.  
 Evaluation / grade analysis lowered by DO.  
 DO Secretaries talking down to Carpenter and SAs.  
 Carey / show threatened action against group for doing Sec. work.  
 Carey ordered SAs to drive them to / from work.  
 Request to travel to further inv denied by DO over other group.  
 Closing criminal reports - any problems.  
 Carey trying to get Carpenter down people CC supervisor.  
 Carpenter working against DO because going to see Carey back.  
 - Carey or DO circumvents Carpenter and deals directly w SA.  
 Carey making known his negative feeling toward Carpenter.  
 Second request by DO for reports.  
 Carpenter make demeaning remarks about Carey.  
 Remark about Carey making left turn and going to Casino.  
 Carey belittle Carpenter's abilities.  
 Overworking Agents (Carpenter).  
 Undercover telephone transfer to an informant.  
 Refusing to do work for SA Brooks Griffin - NSA Harry Koch.  
 Carpenter interfering w other groups.  
 Going away party for Alameda to make known with Briggs / Cliff.  
 SAs asking "Cliff who?"  
 Carey type derogation of Cliff to Ops. Officer.  
 USA Jeff Baynham - trying to get MC Carl to Ct. when Carey wanted  
 him to go on a trip.  
 Detailed unproductive duties for Cliff's group.  
 Carey liar.  
 SAs drinking on duty.

Devotion - meadow -

- Faking -  
 - DO Sec. - no problems -  
 - Don't know of any incidents since coming on to work.  
 - Intimidation of inv.  
 - Carey - circumvent - no x to go to govt -  
 - Open door policy - yes  
 - Carey - does not visit DO frequently - Linda Ryan has  
 sometimes come call - called -  
 - one always about on terminal duty.  
 - No problem with reports or second report notice.  
 - Have gotten them - nothing to come per Cliff.  
 - - Carew a joke about "Cliff Who?" - Training Griffin about  
 to be a supervisor within.  
 - "Casino crowd" -  
 - Harry heard Carey say "this is no fuck" never heard  
 permission cases - but no problems in closing.  
 - Carey and Calvert - warned me to be careful of CC.  
 - Been to several Christmas parties - could have been someone  
 there saw JC Carey drinking.  
 - No favour treatment to MC Carl & Alf -  
 - Never talked to anyone about drinking on duty - haven't  
 experienced while on duty.  
 - Never heard any joking or no comment - "breaking a leg"  
 funny and joking to "congratulate" the absent with a gift  
 much.  
 - embarrassing - I was -

Jeff. Baynham 2/27/79  
AUSA

10/27/78-

re: court hearings pg. 38/39

→ m= Carl one of the witnesses.

11/1/78- cc said call from J.B. pg. 39.

Did carpenter arrange with Baynham  
to have the hearing to inconvenience m= Carl.

12/7/78 - 1st letter by Dr.

1/22/79 - 2nd <sup>re: Carl</sup> letter by "

4/23/79 - 4th letter

Dr. Plans 75 South St. 635 and East.

Doctor to Garland Rd. and South St. (3 mi)  
on ea. side of rd.

Excluded him as a witness.  
No sign of it which is referred.

coffee shop on 11th floor - when CC said  
nothing for documentation and accept to find all  
female agents in P. in.

Harry Arnold - CC C. refused to let him  
assist U.S. Marshall.

Cliff & Booth took Ann G. home in 64 to  
take ann husband's resp.

Halms - detail } go in detail -> Clint Peoples  
Pat - detail

Did Cliff tell agents during 1st meeting that they  
would be no drinking on duty - 1st meeting on  
3/9 - and 14/77?  
CC said not have electronic surveillance?

Marshall - on 16 -

meeting w. C.C.S. Marshall -  
Cliff had row -

(Sabbie)

McCully -

Did Cary say he was vindictive and drunk?

Richardson -

Did Cary say he was vindictive and drunk?

MISS

Arnold

Did Carpenter expect to allow to assist Marshall in detail?  
opinion on who initiated trouble - CC or JC.

Ray

Conversation between M=Cole + Carpenter re liability  
retirement.

Ray listening on telephone re remote - about -

(Pat M. - re Marshall detail)

houses of property  
reason C wanted  
to go to San Antonio

Rec'd 6/75/79  
 10:00 AM  
 From: Denise from Mr. Brewer  
 1- See Carpenter first  
 Clifton - found out as per review  
 & Mrs. Latelligene  
 Ret. B. Gault  
 Mr. Brewer's review  
 Houston A. Supervisor  
 Clifton had 18-20 people under supervision  
 Review 3/73 by Mr. Brewer  
 Don came from office &  
 1244 Z combine

STATEMENT OF MAURICE H. FLOYD, INSPECTOR, OFFICE OF INSPECTION, BUREAU OF  
 ALCOHOL, TOBACCO AND FIREARMS

On June 25, 1979, at 8:40 a.m., I met in my office with Cliff Carpenter, Jr., concerning a 46-page memorandum that he wrote, in which he alleges that James A. Carey, Special Agent in Charge, Dallas District Office was a "vindictive alcoholic liar."

Carpenter said he wrote the memorandum in support of a Form CA-2, documenting "disabling stress symptoms" from which he was suffering.

At 9:25 a.m., Carpenter called Roger Allen, his attorney, and told him that he was meeting with me and the purpose of the meeting. After their conversation, Carpenter told me that Allen approved of our meeting and that he (Allen) did not see the necessity of being present.

At 9:30 a.m., I placed Carpenter under oath. I told him that he would remain under oath until the interview was terminated, at which time I would inform him. The interview continued intermittently until July 17, 1979, at 3:00 p.m. During that period, Carpenter and I met 10 times. I reminded him at each of these sessions that he was under oath.

At the conclusion of the interview, I prepared a 4-page handwritten affidavit, as dictated by Carpenter. In the affidavit and during the interview, Carpenter said that he could not prove that Carey or any other person named or unnamed in the memorandum, had violated any federal/state statute or rule of conduct.

Carpenter said he felt that Carey's treatment and actions towards him was not in keeping with good managerial practices or consistent with protection afforded ATF employees with Civil Service status.

After completing the affidavit, I gave it to Carpenter, and he read it. I asked him if it was true and correct. Carpenter replied, "yes." I asked him to sign it, and he refused. Carpenter said that he was not going to sign any documents pertaining to this investigation.

On July 13, 1979, during one of our interview sessions, Carpenter showed me a handdrawn "cartoon" depicting a turtle (according to him). On top of the turtle's shell was a "Budweiser" beer can. Also shown was the comment, "Can someone tell me where the Casino is?" Carpenter said that this drawing was supposed to represent Carey asking directions to the Casino. The Casino is a local restaurant, located in the block adjacent to the Dallas District Office. Carpenter told me that he could not remember the date or time, but one day while in his office, one of the special agents came in and handed him the drawing. He did not remember who the special agent was.

I showed each of the special agents at the Dallas Post of Duty this drawing. Each special agent said that he/she did not draw the "cartoon", had never seen it, had not heard about it, knew nothing about it, and did not give it to Carpenter.

Carpenter stated that once during a RAC meeting at the district office, he commented to Ann Geisler and Kay Powers, "You two girls would put a pimp on Cedar Springs Street on food stamps." When Powers responded to his comment, Carpenter said, "Excuse me Kay, I meant that for Ann." Carpenter said he was wrong in making the comment.

Carpenter told me that he did not like James "Bob" Alexander. He said they had problems in Arkansas, and that he had helped Alexander to transfer from Arkansas with him and Alexander, in which a shot was fired, when they worked together in Arkansas. The same circumstances are reiterated by Alexander and are contained, in detail, in his affidavit.

Carpenter stated that he advocated and worked to try and establish a complete separation of the two Dallas Post of Duty groups. He felt there should be a complete division in their area of responsibility. He even wanted the two groups in separate offices.

Carpenter said that he was at fault for telling Special Agent William "Tom" Ray that Donald Briggs had said that he was "flim-flam artist". Carpenter also said that, while it was true, he should not have told Special Agent Danny Curtis to tell Ray that he "needed to watch his ass; that Carey was down on him; and that he needed to get off his ass and do more work." Carpenter said that he felt that Ray, who was not in his group, was not performing his duties to the best of his ability. He felt that by saying what he did, it would prod Ray, to greater activity.

In another incident, Carpenter told me that he refused to get some evidence for Special Agent H. Brooks Griffin, because in his opinion Griffin was shirking his duty, and he was going to teach him a lesson.

Regarding the relationship between David Andrews and Betty Simmons; and, James Alexander and Ann Geisler, Carpenter said that he had no proof, other than hearsay, that these four had engaged in an extra-martial affair.

Carpenter said that in a discussion with Special Agent Robert McCool and William Ray in the GSA parking lot, that jokingly, he told McCool that "they were not going to screw him any more because he was filling out his retirement papers for a 75 percent disability." Carpenter said he told McCool that if he were smart, he would get out also and told McCool that he could borrow his paperwork to use as a guide.

On August 29, 1979, at 10:08 a.m., I spoke, by telephone, to an individual, who did not give me a name or address, about some remarks Carpenter had made concerning his disability. This person said that another person had stated that Carpenter had said he was "trying to go out on disability; that James Carey was an alcoholic who had caused him working problems, and it was hard to work under those conditions; and, that Carpenter plans, after retirement, to go to east Texas and set up a private investigative service."

In a subsequent interview with Carpenter on September 4, 1979, at 2:10 P.M., in the presence of Mike Hall, Acting Regional Inspector, Carpenter repeated that his problems with SAC Carey were managerial in nature and did not involve violations of the rules of conduct or any statutes that he was aware of.

Carpenter told us that he did not agree with Carey's managerial practices or philosophy. Carpenter said that he believes that Carey was vindictive towards him and did not treat him fairly when he (Carey) re-assigned him from Group Supervisor to Senior Operations Officer.

In this meeting, Carpenter also said that he did not have any proof that any other ATF employee had violated any of the rules of conduct. Carpenter said that he had no complaints to make against any ATF employees. He reiterated that his complaint was against Carey's management practices which he didn't agree with.

#### AFFIDAVIT

I, Cliff Carpenter, Jr., state that on January 8, 1979, I prepared my portion of a Form CA-2 (Federal Employee's Notice of Occupational Disease and Claim for Compensation). On this form, I outlined my disability as disabling stress as diagnosed by my personal physician, Doctor Bernard Schnitzer. I don't remember who I left the Form CA-2 with. I think, though, that I left it with Joseph Shaw, ASAIC, or Sue Cloniger, Personnel Specialist.

From January 8, 1979 until sometime in February 1979, I prepared a 46-page statement setting forth in detail documentation in support of the Form CA-2. I mailed this statement to the U.S. Department of Labor, Office of Worker's Compensation Program, 555 Griffin Square, Dallas, Texas.

At the time I prepared this statement, I was under the care of Dr. Schnitzer. I was taking valium, a strong tranquilizer, for my condition, as prescribed by Dr. Schnitzer.

I believed that this statement was privileged communication between me and OWCP just like the privileged communication between the doctor and me. I later learned, in a letter from Mary Dodd, Personnel Officer, that she had received a copy of the statement and had given a copy of it to James Carey, Special Agent in Charge. I don't remember the date I received her letter.

In the statement, I tried to give as clear a picture as possible of the work environment in which I worked. I intended for this to show inter-office cliques and associations which I believed had, in a unique and unusual fashion, adversely affected me, my health and work.

I did not intend for the information in the statement to be taken as allegations of misconduct or violations of law against individual special agents, secretaries or clerks who I named in the statement. I have no personal knowledge of any violations(s) of law or rules of conduct, of which I'm familiar, having been committed by these individuals.

Regarding SAIC Carey, I personally know of no violation(s) of Federal statutes or rules of conduct that I can prove, that I mentioned in my 46-page statement.

However, I felt and still feel that his treatment and actions towards me was not in keeping with good managerial practices or consistent with protection afforded ATF employees with Civil Service status.

It was not until I received a copy of SAIC Carey's proposal, dated March 2, 1979, to remove me from the position of Senior Operations Officer and my separation from the Bureau that I had documentation to support my prior belief that SAIC Carey intended to fire me regardless of the truth.

I refer specifically to SAIC Carey's proposal for dismissal on page 7, Reason 2, first paragraph in which he states, "you are attempting to defraud the Government by filing a job related Workman's Compensation claim for "disabling stress symptoms". Further, in paragraph 4 of the same pages, he states, "you have further damaged your reputation in the eyes of the agents by filing a fraudulent claim and encouraging other agents to do likewise."

These statements about me are not true. The only thing I have filed is a Form CA-2, reporting and documenting disabling stress symptoms and the 46-page statement supporting it. I have not filed for disability retirement. Based on Dr. Schnitzer's diagnosis, I have considered the possibility of disability retirement, but I have not prepared or submitted any documentation to that effect. I have not told anybody that I was going to retire on disability.

I have never encouraged or told anyone to submit a fraudulent claim of any kind to the Government for whatever reason.

Cliff Carpenter, Jr., gave me this affidavit under oath. Said it was true but declined to sign it.

MAURICE H. FLOYD, *Inspector.*

#### AFFIDAVIT

I, James A. Carey, state that I reside at 2011 Betsy Lane, Irving, Texas.

I have read the 46-page memorandum dated February 26, 1979, written by Cliff Carpenter, Jr., to support a CA-2 (Federal Employee's Notice of Occupational Disease and Claim for Compensation) dated January 8, 1979, and prepared by Carpenter, documenting his alleged mental and emotional stress.

All of the allegations of misconduct that Carpenter allege I have committed are false.

I have read the foregoing statement consisting of 1 page, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

JAMES A. CAREY.

Subscribed and sworn to before me this 6th day of September 1979, at Dallas, Texas.

MAURICE H. FLOYD, *Inspector.*

#### AFFIDAVIT

I, Joseph M. Shaw, state that I reside at 2108 Mistletree Dr., Richardson, Texas.

I have read the 46-page memorandum written by former group supervisor Cliff Carpenter, Jr., which was forwarded to OWCP by him in support of his claim of job-related emotional stress.

I am not guilty of any misconduct, either expressed or implied in his memo. All my dealings with Carpenter were conducted in the interest of proper and efficient management of the Dallas District.

I have read the foregoing statement consisting of 1 page, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

JOSEPH M. SHAW.

Subscribed and sworn to before me this 6th day of September 1979, at Dallas, Texas.

MAURICE H. FLOYD,  
*Office of Internal Affairs, Inspector.*

## REPORT OF INTERVIEW WITH JAMES E. HARMON, SPECIAL AGENT IN CHARGE

SAC Harmon said that he hired Special Agent Doris Jefferies (now Doris Jackson) on July 6, 1976, and assigned her to the Dallas Post of Duty. At one point during his tenure as Special Agent in Charge for the Dallas District, he began to review the performance of each Special Agent to denote any work deficiencies. If any were found, then that Special Agent would be counseled in order to improve that deficiency.

SAC Harmon said that he was impressed with the street performance of SA Jackson but had noted a deficiency in her report writing. He and Joseph Shaw, Assistant Special Agent in Charge, inquired of Cliff Carpenter, Jr., her Group Supervisor, about her report writing. They agreed that Carpenter was to counsel Jackson in this facet of her work in order to improve her writing ability.

SAC Harmon said that he nor Shaw never had any intentions of firing Jackson; they weren't documenting her activity to fire her and hadn't asked Carpenter to do so; nor, was the firing of her ever mentioned, by him, to Carpenter.

MAURICE H. FLOYD.

## AFFIDAVIT

I, Doris Jefferies Jackson, state that I am a Special Agent assigned to the Dallas Post of Duty. My group supervisor is David Andrews. I'm in Group II. I was hired in July of 1976, in Dallas. My first group supervisor was Carl Booth, since retired. There were some special agents acting as group supervisors after Booth retired, until Cliff Carpenter was assigned as a group supervisor. My first training officer was Mike Bristow. Then I was assigned I think by Carpenter, to work with Larry Arnold. Next, I was assigned to work with Gary Clifton. Carpenter made this change also.

Up until I went to work with Clifton, I had not experienced any problems, other than normal corrections, with my job, training officers or group supervisor.

While I was working with Arnold, Carpenter was, in my opinion, treating Special Agent Robert McCool in a disrespectful, degrading manner. I don't know the particulars other than I know from observing Carpenter's demeanor towards McCool and McCool being upset with Carpenter, that Carpenter wasn't treating him right.

At the time I was assigned to Clifton, then Carpenter directed his wrath towards me instead of McCool. After I was transferred to Group II, then Carpenter zeroed in on Larry Arnold. I heard comments from the agents saying that, "Larry, it looks like you're next." I don't remember which agents said this.

It was common knowledge that Carpenter would pick one agent at a time to, in my view, to mistreat. In Arnold's case, he stood up to Carpenter. After several incidents with Arnold, Carpenter then picked out Special Agent Pat McKinley. I don't know why he chose McKinley. McKinley didn't buck Carpenter like Arnold did. For one reason, he was new on the job and I don't think knew exactly how to deal with Carpenter. As I recall, it was about this time that Carpenter was transferred to the district office.

Nobody in the district office told me that Carpenter was trying to fire me. I felt that Carpenter was working towards this end because he had told me that he had requested a copy of documentation that was used when a female agent was fired in Houston; also, Carpenter had told me that he was considering requesting that a 30 or 90 day letter (I don't remember which) be written on me. I didn't know what he was talking about and he didn't explain it to me.

Later, Clifton told me that Carpenter had been across the street (meaning the district office) talking about me and was trying to get a 30 or 90 day letter written about my work performance. I interpreted this to mean that Carpenter was going to try to get me fired.

After the female agent in Houston was fired, several of us were in the coffee shop one day, when Carpenter said that he had sent for the documentation they had used. He also said that they ought to fire all female agents in the District. I was the only one female in the District.

Prior to this happening (The letter incident) I had received a letter of commendation from SAC James Harmon commending me on my work performance. This was when I was assigned to Arnold. In another case (Brookshire Bombing) which I worked with Special Agent James Alexander, I received letters of commendation from both SAC Carey and SAC James Harmon.

I was having a problem with report writing because I was in a training status, and had not yet become an accomplished report writer. From all indications, this was the only work deficiency that I had, and I was aware of it.

To my knowledge, the warning letter was never written.

I disagreed with the method that Carpenter used in correcting my reports. Part of his corrections were pure nit-picking. I would ask other agents how to write a report, and I used other reports that had been approved as a guide. Carpenter would tell me that he wanted certain things worded differently. For example, he would direct me to make a change. I would make the change and Mickey Dean, the secretary, would type it. Carpenter would lead me to believe that this would be the only change needed.

After getting the report a second time or after the change had been made, then he would call me in and tell me that another change would have to be made. Carpenter would do this as many as four or five times with the same report.

I felt like it was obvious what he was doing and if I had said anything then I would have been playing right into his hands. In other words, I would have been giving him reasons to document me so that he could recommend that I be fired.

However, it did reach the point where I began to object to him, to the way he was treating me. I remember once when he told me that I couldn't be a good agent. I told him that I felt like I was a good agent. This was the first time I had stood up to him and he got mad.

Regarding the reports, on one occasion he called me into his office, held up a report that I had written and tore it in two. He took those two pieces, put them together and tore the report again. Then he threw the pieces into the trash can. Carpenter told me to go and do it over. I don't remember the report.

In one of the last meetings I had with Carpenter, he told me that I had better start listening to the agents when they tease me because they might say things in a teasing manner when they really meant them. I told him I didn't think that was true. I felt that the teasing they did was in fun. I had observed that if the agents didn't like somebody, (another one of the agents) they just left that agent alone.

In my conversations with SAC James Carey, I have never lied to him about anything. I don't recall ever calling Carey directly or him calling me directly.

I did not attend the called POD by Mr. Carey back in the early part of this year. After the meeting one of the agents told me that Mr. Carey had said that Carpenter said that Mr. Carey was a vindictive liar and alcoholic; that Carey had told everybody not to worry about it that the only one Carpenter was making allegations about was him and that we were not to let it affect our work. The agent also told me that Carey had said that he could promise us that Carpenter wouldn't be back as a supervisor.

I have seen SAC Carey drinking and I have drank with him socially. I have never seen him drunk nor have I ever seen him drinking while working. There is some joking about him and his drinking among the agents. But, we joke about each other and the things that we do. He is somewhat a target for jokes sometimes, not because of his drinking, but because he is the SAC.

During my contacts with SAC Carey, I have never heard him curse or belittle Carpenter or anybody else. He once asked me about the agents cursing around me and Mickey Dean. He said he would caution the agents about their language around Mickey and me because he didn't want them cursing in our presence.

As far as I can determine, SAC Carey has treated both Dallas groups equally. I never noticed any favoritism by him.

It has been my observation that the problems that existed between SAC Carey and Carpenter were initiated by Carpenter. Carpenter would blow things way out of proportion and then go to SAC Carey with it. When Carpenter would return from seeing SAC Carey and/or ASAC Shaw on occasions, he would be mad and pout in the office. It was usually Carpenter going to the District Office on his own, rather than being called over there.

One incident that I remember occurred when the POD office was sent a booklet listing federal enforcement agency telephone numbers. It was apparently a mistake that ATF's number was left out. Carpenter got extremely mad, marked up the book and carried it to ASAC Shaw. Carpenter made some disparaging remarks about it, but I don't remember all of them except, one about that was how the (our) enforcement branch rated. I think the booklet was printed and issued by the Government.

I never heard Carpenter curse that much but he seemed to be constantly mad about something. For example, he tore the agents names off a bulletin board that



is in the office. It got to be a common joke about the "secret file". This referred to Carpenter setting up a locked file cabinet for notes to the agents in his group. In order to get to the bulletin board, a person would have to go through a locked or controlled gate, pass two secretaries and the two group supervisors. The board is not easily accessible to the public. Since Carpenter left, the agents in his group are now receiving their notes from the board.

I have heard and seen Carpenter dial the District Office. He would not greet whoever answered the telephone but would merely say the name of the individual to whom he wanted to speak. I can remember him saying "Shaw." This was one of the many times he was chewing me out when he called Shaw. Carpenter was trying to get me to tell him who had told me that he was trying to fire me.

I remember once when Carpenter got mad with Toni Gould. She had called Mickey Dean to get information about Gary Clifton's leave. Mickey was called into Carpenter's office by him. When Mickey came out, she was upset. I don't remember whether she was crying. Mickey said that Carpenter had told her that she could not give information to anyone in the District Office anymore, that everything had to go through Carpenter.

The situation got to the point that the agents in general were commenting that SAC Carey was going to get tired of Carpenter running to him with everything. Some of the agents even told Carpenter this.

In my opinion, Carpenter was overly harsh and did not treat Special Agents Robert McCool, Larry Arnold, Pat McKinley or me in a professional manner.

I have heard some of the other agents joke about Carpenter being a Senior Group Supervisor. I understood them to mean that Carpenter had referred to himself as the Senior Group Supervisor. In my opinion, Carpenter tried to portray this image to the other group supervisors. I'm referring to Brooks Griffin, James Alexander and David Andrews.

Once, after I had been assigned to Group II, Carpenter told Brooks Griffin, who was acting, not to let Special Agent Steve Spies and me assist the U.S. Deputy Marshal's with a security detail during a federal trial, after we had already been notified to do so. Carpenter refused to let Larry Arnold participate in the detail. Griffin did allow us to participate and assist the Deputy Marshals.

In my opinion, based on some remarks that Carpenter had made about Spies, which I can't specifically recall, Carpenter didn't like Spies. The fact that he singled out Spies, me and Arnold re-enforced my opinion about what he thought of us.

Carpenter told Griffin that the reason he didn't want us on the detail was because we were late for a meeting with the Deputy Marshals prior to the detail beginning. This was entirely untrue. Just about the whole POD was assigned to the detail. About five of us went to the meeting at the same time. Arnold was late because as we were leaving the office, he received a telephone call. We were not late for the meeting.

Another example of his treatment towards me pertains to the Schedule A test which I had to take. Prior to me coming to work, I took the Treasury Enforcement Entrance Exam and made 83, I think, on it. I took the test with Curtis Williams who is a Special Agent in New Orleans.

About February or March, as I recall, of 1977, I received a letter from Personnel, in Dallas, notifying me that I would have to take the TEA test over on a competitive basis before I could go on career status with ATF. There was a form with the memo that I was to fill out and send to the Civil Service Commission in Houston.

Carpenter had added a note to see him about it before I did anything. Carpenter was sitting in the office space occupied by Special Agents Bristow and Alvarez. I asked "Cliff did you want me to see you about this." He replied, "You don't need that." Carpenter took the memo and blank form out of my hand and said, "You don't need that." He crumpled it up and threw it in the trash can. I asked, "Are you sure?" He said, "Yes." I assumed he knew what he was talking about and returned to my desk. This occurred before I started having problems with him.

Later on, Jim Coffee in Personnel, inquired about it. I also discussed it with Don Briggs, who at that time was the Senior Operations Officer. Either Coffee or Briggs told me that not taking the test at that particular time had hurt me because not too many people had signed up to take the test and they were doing some hiring. One of them told me that Carpenter was incompetent in the way he had handled it.

Earlier in this statement, I said that I had never called SAC Carey directly. I did call him one day last week regarding the Schedule A. This was after I had received a letter from personnel saying that Schedule A employees could not go higher than Grade 11. He told me that this was in the process of being changed and for me not to worry about it.

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

Signed: DORIS JEFFERIES JACKSON.

Subscribed and Sworn to before me this 1st Day of August, 1979 at Dallas, Texas.

Signed: MAURICE H. FLOYD,  
Inspector, Office of Internal Affairs.

#### AFFIDAVIT

I, H. Brooks Griffin, am a Special Agent assigned to the Dallas, Texas Post of Duty. I have been at this POD since the middle of 1971.

In February of 1978, I initiated an investigation involving [deleted]. This was a Form 4473-Felon in possession of a firearm case.

In preparation for [deleted] trial, in the Northern Judicial District of Texas, Assistant United States Attorney Harry Koch discussed the case with me several times prior to October 17, 1978. Mr. Koch told me that he anticipated the defense counsel filing a discovery motion for the Form 4473, so that the defense's questioned documents expert would compare the signature on the Form 4473 with the defendant's signature.

I don't remember the exact number of days that had passed, but it had been several, prior to October 17, 1978, since I had discussed the [deleted] case with Mr. Koch. We did not, as I recall, discuss the case on October 16, 1978.

On October 17, 1978, I was attending an ATF sponsored defensive driving class on the second floor of 1200 Main Tower, Dallas, Texas. This room is the District Office conference room. The District Office and the Post of Duty office are located across from each other.

The class started about 9:00 A.M. At approximately 10:00 A.M., one of the District Office secretary's Linda Boyer, got me out of class to call Mr. Koch at his office. His office is in the same building as the POD office.

I called Mr. Koch and he said that he had a defense subpoena for the Form 4473 in the [deleted] case. Mr. Koch gave me the address of the questioned documents expert. He told me that he would like for the document to be delivered before noon because the examiner was waiting. I told him that I would take care of it. It was my impression that he had just received the subpoena. This was the first notice that I had received that the subpoena had been issued.

After talking with Mr. Koch, I immediately called the Dallas Post of Duty and talked to Group Supervisor Cliff Carpenter. I told Carpenter that I had just received a call from Mr. Koch to answer a defense subpoena in the [deleted] case. I asked Carpenter to do two things for me since I was in the class. I asked him first to remove the document from the vault, and second to see if there was anyone in the office who could take the document to the examiner.

During my conversation with Mr. Koch, he specifically mentioned that whoever took the document out to be analyzed would have to remain with it and bring the document back.

In my conversation with Carpenter, I told him that someone would have to stay with the document and return it to the POD. This was to be done in order to maintain the chain of custody of the document.

I then told Carpenter to call me back in fifteen minutes if nobody was available to help me out. Carpenter said he would do it. The reason I said fifteen minutes is because I knew that if nobody was available, then I would take the document to the examiner and have time to get it there by noon.

I returned to the driving class. About fifteen minutes later, Linda got me out of class again. She told me that Carpenter had called and said that nobody was available to help me. I went directly to the POD office. In my estimation, the walk took about five minutes. When I entered the office, I did not see Carpenter at his desk. I asked Darlynn Young, a POD secretary, if he was in. As I recall, she said that Carpenter had just left with Curtis. She was referring to Special Agent Danny Curtis. I asked her if he had left a document for me. She said, "no". If I remember, I questioned her further and she didn't know anything about the document or subpoena. I went into Carpenter's office, looked for the document on top of his desk and didn't find it.

Then I walked to the vault to see if he had, by chance, left it open for me or to see if possibly he was in the vault. The vault was locked. At this time, I also saw several special agents in the office, I don't remember which ones or their names. I asked them about Carpenter. I don't remember, at this time, what their replies were.

I walked back to Darlynn Young's desk. I called the District Office and spoke with one of the secretaries. I don't remember which one. I told her that Group Supervisor David Andrews would have to come and get a document out of the vault for me. I asked her to get him out of the driving class.

Shortly, Andrews arrived at the POD office. I told him what I needed. He and I went to the vault and he gave me the document. We didn't have much conversation at this time.

Almost as soon as Andrews gave me the document, I received a call from Mr. Koch. He said that he was going out to the area where the questioned documents expert was located and was willing to take the document out there himself. Mr. Koch came right in the POD office moments later. I gave him the document but I don't remember the time.

I did not return to the driving class. A short time later Special Agent Larry Arnold and I went to lunch. When we returned, Carpenter was sitting in his office. I went in and Arnold followed me.

I asked Carpenter why he did not remove the document from the vault since he was the only one in the office with a key to the vault. I explained to him what I had had to do in order to get the document. I questioned him in great detail about why he had not helped me.

Carpenter was mostly smiling and not responsive to my first questions. He said that he had asked some of the agents in the office if they were willing to help me and that they had responded in the negative. Carpenter then accused me of knowing that the subpoena was being issued that morning and that I was just trying to put it off on someone else.

I told Carpenter that I did know at some point in the prosecution of the [deleted] case that ATF would have to show the defense the document, but that I had no way of knowing when it would be subpoenaed. I told him that I didn't know about the subpoena until I was called out of class. I told Carpenter that I was disappointed in his lack of cooperation. I had explained to him that I didn't have any way of knowing when the defense counsel would issue the subpoena. Our discussion of the subject ended at that point. I don't remember Arnold saying anything.

During my telephone conversation with Carpenter, that morning, he did not tell me that I would have to do my own work. He did not call me and say that either. Carpenter did tell me that he would do what I had requested.

The day before this, October 16, 1978, I did not "smart off" and say to other special agents at the POD that I was not going to be "Koch's fetch".

On October 18, 1978, nor at any other time did I say to Carpenter that he would be hearing from the District Office.

I had dismissed it from my mind until several days later when Andrews asked me to answer questions based on a statement which I presumed was made by Carpenter. The questions were, had I told Carpenter that I knew that the subpoena was going to be issued that morning and had I also told Carpenter that I was deliberately trying to slough work off on my fellow agents.

I told Andrews that I had made no such statements to Carpenter and that Special Agent Arnold was witness to the conversation between Carpenter and myself.

I never discussed this situation with SAC Carey.

I have read the foregoing statement consisting of 7 pages, each of which I have signed. I fully understand this statement and it is true, accurate and

complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

H. BROOKS GRIFFIN.

Subscribed and sworn to before me this 24th day of July, 1979, at Dallas, Tex.

Maurice H. Floyd,  
Inspector, Office of Inspection.

#### AFFIDAVIT

I, Gary Clifton, state that I am a Special Agent of ATF, assigned to the Dallas Post of Duty. I was transferred to Dallas from Houston in November or December 1973. I was assigned to Group I under the supervision of Cliff Carpenter during the entire time he was a supervisor in the Dallas POD. That would be from about the beginning of 1977 until about October 1978.

I don't recall Carpenter ever saying to me that SAC Jas Carey had said that I was crazy. Carpenter did advise me on several occasions that I was not "in favor" with Carey, although I don't recall a specific quote attributed to Carey.

During the summer of 1977, Carpenter assigned me to work double with SA Doris Jefferies—in other words to act as her training officer. SA Larry Arnold was working with her when I was routinely assigned to take over her training. Carpenter specifically that Jefferies was weak in report writing and that I should pay particular attention to that area. I worked with Jefferies for about four or five weeks. During that time, Carpenter asked me several times how Doris was progressing. I replied each time that she was progressing favorably. I told Carpenter that I was still uncertain as to her ability, but that I thought that she would eventually fit in.

Carpenter mentioned to me several times that he saw Doris as being habitually tardy—both in reporting to work and in completing assignments. He also said that he thought that she talked on the phone too much. I began to see myself in the middle of a situation in which I wanted no part. I told Carpenter that I didn't think she was any more tardy or more prone to talk on the phone than numerous other ATF employees.

Finally Carpenter called Doris into his office one afternoon, closed the door and he and Doris had about a one-hour shouting session. I waited around for her until about 6 p.m., because she was my assigned partner and I felt an obligation to stay with her.

She came out of the meeting in tears and very distraught. I suggested that we go get a cup of coffee, but I think she declined. She said that Cliff was trying to "run her off." She said that Carpenter had said that she was a poor report writer; that she was late frequently; and that she talked on the phone too much. I said that all three factors were essentially true but they were true of many people and that she shouldn't "get an ulcer over it." I told her that the thing to do was certainly never argue with a supervisor over such matters because to do so put him "in the corner" and forced him to feel that he should prove and verify his comments. I suggested that we show up early at the office that I have a lot of input in writing her reports and that she limit her telephone time, or at least talk on the phone out of Carpenter's line of sight.

She answered this general comment in specifics, stating that she had only been late "once or twice" and that all of her phone time was business. She said that she was going to "Jim" (SAC Carey). I told her that I was sure that she could obtain as much as SAC Carey's time as necessary, but that I felt that she would be better off taking my advice and that by the next day Carpenter would have minimized the argument. I told her that

A day or two later, Carpenter told me that Carey had spoken to him about Jefferies. He said that Carey had told him that Jefferies was being transferred to Group II, where SA Alexander was acting group supervisor. Carpenter said that Shaw (ASAIC J. Shaw) and SAC J. Harmon had told him earlier that they were unhappy with Jefferies' performance and had asked him to document any deficiencies. He said that Carey, who had replaced Harmon shortly before, had told him that Jefferies had said most of her problems were a result of a con-

spiracy between him (Carpenter) and me to fire Jefferies. He said that Car had said that Jefferies had told him that "all Clifton ever does is hang around other police agencies and do nothing" and that she was afraid to report it Carpenter because he and "I played softball together and were good friends Carpenter said then and several times later that "Carey says Clifton ruined Doris."

I did play softball with Carpenter—so did most of the office at one time—but during summer 1977, I think that I filled in on a team Carpenter played for in Plano about three times when they were short of players. I certainly was never a social acquaintance or associate of Carpenter.

Mr. Floyd has asked me if I ever told acting Supervisor Alexander if Carpenter was trying to fire Jefferies. I don't recollect ever having made any comment to that effect to Alexander which would explain why Alexander was so interested in the comment not being repeated outside the meeting.

Sometime after the inception of the Arson Detail—perhaps 3 months—Carpenter called me to his office and asked me if I had put Tom Hupp (Organized Crime Coordinator) up to telling Carey that I was being assigned an excessive amount of routine work (reliefs, backgrounds, etc.). I reminded Carpenter that we had written orders from Carey that SA's assigned to the Arson Detail were to be temporarily relieved of such assignments. I further reminded Carpenter that I had agreed with his contention that excusing me completely from this type work would cause resentment among other SA's and that I never attempted to avoid such assignments. We had a rather heated argument, which was, incidentally, the only time Carpenter and I had any friction. We later both apologized and Carpenter told me several times in ensuing months that he had received bad information. I mean that he continued to say that Carey had admonished him, but that I had not caused Carey's actions.

To the comment calling SAC Carey a "vindictive, alcoholic liar." As I stated in a written statement requested by ASAIC Shaw in February 1979, mostly by accident, I stopped by Carpenter's residence in Plano one night in January at his request. He showed me a CA 2 he was preparing to job relate his current sick leave status. He also showed me a typewritten statement (on yellow paper) which he was preparing which he said explained

apparently contained the "vindictive, etc." comment. I have regretted on numerous occasions since that I didn't carefully read both documents.

I first heard the "Vindictive, alcoholic liar" comment on the day in January when Carey came to the DDO and announced that "Cliff is the Ops Officer and is not coming back to the Dallas POD." Carey said that Carpenter had reportedly written a multiple page memo wherein he had called Carey a "vindictive, alcoholic liar." SAC Carey then stated that "I am vindictive and maybe I do drink too much, but Cliff is still the Ops Officer." He went on to explain that he didn't want to have a disruption in the office. We also discussed the fact that Carpenter had called some of us at home. I considered Carey's comment about drinking too much and being vindictive as either a spur of the moment comment made in anger or as an effort to pass off the comment good naturedly. Frankly, I didn't think much about it at all.

I felt that, as with most of us, we all tend to be our own worst enemies. Carpenter was not any different. He appeared sometimes to be abrasive to the DDO when a more subtle approach would have been preferable. Carpenter's "problems" of which we speak here were generally the result of friction with the DDO rather than with SA's of the Dallas POD.

I don't recall attending an ATF party in the SW Regional Office in 1975. In fact, I try to avoid ATF social functions in general. I don't recall ever having seen Carey drink while on duty. I have heard some joking in the office about Carey's drinking, but to no greater extent than about a great number of other topics. I never saw the hand drawn cartoon of a turtle shown me by Mr. Floyd before today.

I do not recall either Carpenter or Carey cursing or belittling each other. I have heard Carpenter comment to the effect that he was out of favor with the DDO, but not derogatorily.

I have never had friction with any of the girls in the DDO.

I never experienced problems in closing case reports from the DDO or from Carpenter.

Mr. Floyd has asked if SAC Carey had an "open door" policy which allowed SA's to go directly to the DDO without the Grp Supv. ATF in general has always appeared to discourage that sort of thing. If SAC Carey had an "open door" policy, I certainly was not included in it.

When Carpenter assumed duties in the early part of 1977, he instigated a greater division of the two groups. This coincided, incidentally, with a review team from Bureau Headquarters who visited Dallas and \* \* \*

they didn't see how we operated under two supervisors without a clear-cut division of responsibility. I am not aware of any "favoritism" by the DDO or of a different assignment load. If there was a difference, I would not have known of it. I know of no interference by Carpenter in the activities of Group II. It was well known that there were ill feelings between Carpenter and Alexander. I never heard Carpenter make a derogatory comment, or for that matter mention the ill feelings. I overheard Alexander speak of the problem on many occasions and it was widely spoken by SA's around the office that Alexander was causing "all the heat he could" for Carpenter.

I never overheard any SA advise Carpenter not to carry POD matters to the DDO and cause friction. I did personally tell him on more than one occasion that he might consider waiting a day or two before he presented issues to the DDO—my theory being that a problem slept on sometimes diminishes.

Mr. Floyd has stated that it would be acceptable to include here a comment that I meant to include as the second paragraph of page six: At the conclusion of my assignment with SA Jefferies, it came to my attention that she was circulating the story that I was "conspiring with Carpenter to have her fired." I discussed the matter with her in the presence of SA Richardson, who was acting Grp. Supv. I advised her that she was wrong, but of course, entitled to an opinion. She repeated the conspiracy story and said, "Jim told me that him and my daddy are old friends and that anyone who messes with my job will have him to answer to."

Mr. Floyd has asked me if SA Griffin has a reputation for shirking his duties. Griffin has a reputation for being able to avoid meetings, assignments, and other unfavorable or unproductive assignments, but he is a far cry from the worst I ever saw.

I have read the foregoing statement consisting of 12 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises or reward having been made to me in return for it.

(Signed) GARY L. CLIFTON.

Subscribed and sworn to before me this 3rd day of August 1979 at Dallas, Texas.

(Signed) MAURICE H. FLOYD,  
Inspector, Office of Inspection.

#### AFFIDAVIT

I, LaDon Richardson, state that I am a special agent assigned to the Dallas Post of Duty. I've been here since 1971.

I do not remember calling Cliff Carpenter at the Dallas District Office on October 24, 1978, in which I asked him what had happened. I did not tell Carpenter that the agents at the Dallas Post of Duty were saying, "Cliff who?" I did not say to Carpenter, "that this was just a Carey type demotion and that he was just running a 30 day flem flam before making the assignment permanent."

The first time I remember talking to him about what had happened was when he called me at my residence about 9:00 p.m., in January 1979. We had a general conversation which lasted about an hour.

During the conversation we talked about his absence and transfer to the Dallas District Office. I asked him if he was trying for a disability retirement. He said, "No, that he was filling out papers to have his previous medical trouble and lost job time related because of stress, etc." Carpenter said that he had written on the form that Carey was a vindictive alcoholic liar and that that statement would have to be attested to by Carey when he approved the form. I said some-



thing to the effect, did you really put that in writing, and he said yes, but that he had not used the word liar, but rather a phrase to the effect of a person less than truthful.

Carpenter's disagreements with the Dallas District Office or more specifically SAC Carey, were in my opinion over basically unimportant matters which Carpenter put more importance on than did members of his group. For example, Carpenter would attempt to initiate programs which we had tried in the past and knew to be unproductive.

On one occasion, Carpenter called me into his office and talked to me about a "northern tier" program. This was the northern counties north and east of Dallas in our area. Carpenter wanted us to canvass the police departments for stolen guns moving into Oklahoma. Carpenter asked my opinion about how this program would work and if we could statistically warrant doing this work, i.e. expending time and manpower. I told him that this had not worked in the past and that Carey knew it and wouldn't go for it. He also wanted to know if we could statistically show that we could make cases or show a pattern for the movement of firearms. I told him there just weren't that many guns being seized by the police in these counties.

Later, in a POD meeting, Carpenter mentioned it. I asked him if he had discussed it with Carey. He said that Carey was lukewarm towards it. Nothing was done.

During these POD meetings, we expressed our opinions to him about certain programs that he wanted to do. Carpenter would listen to us. Our opinions didn't necessarily change his mind.

To my knowledge, SAC Carey has not treated our group any different than the other Dallas group or any other group.

I don't know of any agents joking about SAC Carey or his drinking any more than we joke about other individuals.

SAC Carey doesn't call me direct and give me assignments. He will call and ask me about certain things, usually pertaining to a particular program which I am assigned to work. These calls would be very infrequent. My assignments follow the chain of command.

I have never heard SAC Carey curse or belittle Carpenter or anybody else. In my opinion, SAC Carey tolerated Carpenter more than I would have if I had been in his position. It seemed like every week Carpenter had a confrontation with Carey, at least from Carpenter's point. SAC Carey doesn't hold grudges. If you're wrong and tell SAC Carey that you were, then that's the end of it.

SAC Carey attended a POD meeting at the Dallas Post of Duty in the early part of 1979. He told us that Carpenter had written either a letter or memorandum in which he had accused him of being a vindictive alcoholic liar. He wanted to make us aware of this. He said that whatever would happen about the allegations would happen. SAC Carey told us that Don Briggs would be our new group supervisor and that Carpenter would not be coming back. He said the allegations were directed mainly towards him. The meeting with him was only five or ten minutes. SAC Carey didn't belittle or make derogatory remarks about Carpenter.

Special agents in my group, including me, in my opinion have not suffered because of the differences between SAC Carey and Carpenter. I don't recall anybody in my group ever saying anything about being down-graded in performance evaluations because of their differences.

There is no question, in my mind, that Carpenter's problems arose because of him differing with the district office policy rather than vice versa.

I never had any trouble or problems with Toni Gould. She has always done the work that I asked her to do.

I have read the foregoing statement consisting of 5 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made in return for it.

LaDON RICHARDSON.

Subscribed and sworn to before me this 25th day of July 1979.

MAURICE H. FLOYD,  
Inspector, Office of Inspection.

SUPPLEMENTAL AFFIDAVIT

I, LaDon Richardson, Special Agent, state that on one occasion while Cliff Carpenter was a group supervisor, that Clint Peoples, the United States Marshal, requested ATF assistance in a courtroom situation. I do not remember the date.

On the morning of the day in question, a meeting was scheduled, as I recall at 8:30 a.m., in the Marshal's office with Peoples. I arrived a couple of minutes before 8:30, but because most of the people were already there, Peoples had started explaining what the detail was about. The meeting lasted about 10 minutes.

ATF personnel returned to the POD office. Carpenter, who had also attended the meeting told me that I would have to stay in the office with SA Pat McKinley and answer the phones because I was late for meeting in the Marshal's office. I knew this wasn't correct, but I didn't make an issue of it.

I don't recall the specific time but in one of our POD meetings Carpenter mentioned to us that he had observed some agents in the other group drinking while they were on a surveillance and that if it had been his group, he would not have allowed it. He seemed upset over what they had done and made a point about it.

Carpenter has never specifically told me, nor anyone else that I know of, that I/we couldn't use electronic surveillance.

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

LaDON RICHARDSON.

Subscribed and sworn to before me this 22nd day of August 1979 at Dallas, Texas.

MAURICE H. FLOYD,  
Inspector, Office of Inspection.

AFFIDAVIT

I, Robert L. Rash, Special Agent, Ft. Worth, Tex., state that shortly after James Harmon became SAC at the Dallas District Office I was at the Motorola Radio Shop in Dallas, Texas, w/SA McStay for radio repairs. McStay and I were waiting for our Govt. auto when James Carey arrived to have work done on another Govt. auto.

As Carey got out of his car I walked over said hello and ask how things were going and if he had returned from Washington.

As we were talking McStay came over to join in the conversation. When McStay was close enough to hear our conversation I said, "Kim you haven't been out of the saddle for a week and McStay is already out brown nosing the new SAC." Carey replied, directing his conversation at McStay, "Yes, and the worm can turn."

After this statement we all laughed.

The reason I made this statement is because McStay had been assigned the prior night to take James Harmon to some type of meeting and was very reluctant to do so. McStay does not like people to think he wants to go out with any brass. The statement I made was purely in jest and was making fun of G.W., for his reluctance in taking Harmon to the meeting. Also, the statement Carey made was directed at the prank I was pulling on G.W.

After the above statement we often kidded with McStay about the "worm turning" and apparently this cliché is what Carpenter heard.

Sometime in the latter part of 1978, or early 1979, Cliff Carpenter called me and asked me about this statement. I told Carpenter that this statement was made in jest and if he reported it I would say the same.

As I recall I winked at Carey as I made this statement so he would go along with what I was saying.

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and

placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards or promises of reward having been made return for it.

ROBERT L. RASH.

Subscribed and sworn to before me this 20th day of July 1979 at Arlington Texas.

MAURICE H. FLOYD,  
*Inspector, Office of Inspection.*

#### AFFIDAVIT

I, G. W. McStay, state that I am a Special Agent at Ft. Worth POD.

During the transition period, when it appeared Jim Harmon was to be the SAC in Dallas, I had occasion to act as Ft. Worth host to Mr. Harmon and Mr. Briggs at a luncheon where the Director of FBI Kelly was to be the speaker.

Also during this period SA Rash was in Dallas having a change made in our radio system. Mr. Carey and Bobby Smith were at the radio shop at the same time. While the work on the radios was being performed, we four went to motel coffee shop. Rash in a jesting manner, implied to Carey that in such short time, since he had been deposed of his position, that I was already a tempting to ingratiate myself with Harmon. This was humorous because this type activity is not my nature and I had been assigned this host function by Bill Gossman, RAC in Ft. Worth.

Jim Carey's retort, which also appeared to be in a lighthearted manner was something to the effect, "That's alright when the worm turns I'm not going to forget some of you guys." This remark, in the context it was stated, was greeted with laughter at the table.

When Mr. Carey was restored to his position as SAC, the expression, "When the worm turns" was used by Rash and myself at appropriate times around the office. This is the only reason the remark was remembered and where it originated so far as I know.

I have read the foregoing statement consisting of 2 pages, each of which have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

G. W. McSTAY.

Subscribed and sworn to before me this 27th day of July 1979 at Ft. Worth Texas.

MAURICE H. FLOYD,  
*Inspector, Office of Inspection.*

#### AFFIDAVIT

I, Robert C. Calvert state that I am a Special Agent assigned to the Ft. Worth Post of Duty. I've been at this POD since March 6, 1972. I was previously assigned to the Little Rock, Arkansas, Post of Duty, and before that, to the West Memphis POD.

While in Arkansas, Cliff Carpenter was my supervisor for about eight months. It was common knowledge among the law enforcement agencies in Arkansas (state and local police) that they didn't get along with Carpenter. Carpenter voiced an obvious disdain for the state and local officers.

The reason that I moved to Ft. Worth was to get out from under Carpenter's supervision. I paid my way to do it. I experienced total incompatibility with Carpenter. I didn't feel that I could trust him and had no faith in him as a supervisor.

David Andrews was a Special Agent at Ft. Worth. When I learned that he was being promoted to Group Supervisor in Dallas, where Cliff Carpenter was also a Group Supervisor, I talked to Andrews about Carpenter.

I told Andrews that there was no way he could get along with Carpenter; that Carpenter would create problems and friction when there shouldn't be any, just to keep trouble stirred up; that the only man Carpenter wouldn't "bad mouth"

would be the man he was with at the moment—the one he was talking to; and, that he could not be trusted.

The only motive I had in this was to protect Andrews, who has too much going for him, to let somebody like Carpenter undermine him. I didn't tell Andrews this to undermine Carpenter but to make Andrews aware of what his working relationship would be with Carpenter.

What I said here is my opinion based on my relationship with Carpenter while working for him in Arkansas.

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

ROBERT C. CALVERT.

Subscribed and sworn to before me this 24th day of August, 1979 at Hurst, Texas.

MAURICE H. FLOYD,  
*Inspector, Office of Inspection.*

#### AFFIDAVIT

I, Betty J. Simmons, state that I am employed as an Accounting Clerk with ATF Administration in Dallas, Texas. I've been with ATF since November 1975. At that time I met James Carey and Cliff Carpenter. I met David Andrews after he became a group supervisor and was instrumental in collecting money for a TV set for my girl, who was diagnosed as having cancer.

After work, I have infrequently drank alcoholic beverages in the Casino Lounge, located in the block next to the office, with Carey, Andrews, James Alexander and other ATF special agents, and Ann Geisler. It was not a regular meeting. Nothing was planned. We never drank together, all at the same time. There were always different people present. I never saw anybody get drunk or rowdy. These weren't just ATF people.

I have never followed Andrews out of the Casino Lounge and hollered at him, "Baby, you're not leaving yet, are you?" I don't call anybody "baby" but my children.

I am single and have never dated any of these people. We have never been anything but friends.

I have never heard Carey belittle or say anything bad about Carpenter. Carey has always been very nice and gentlemanly in my presence.

Carpenter and I have gotten along well. Once, I helped him get a duplicate per diem check. Afterwards, he carried me to lunch. We drank a "Bloody Mary" drink.

I have also had occasion to assist Andrews with his Permanent Change of Station move and Form 1034's (Reimbursement Voucher). Ernestine Snow and I helped Andrews trace a lost Savings Bond once. My help to ATF Criminal Enforcement is not limited to Andrews or those at Dallas.

I do not recall the date, but once after an ATF function (dinner) at the Dallas Office, Carey drove Ann Geisler and me from the office building parking area in his Government car to my car which was located in the adjoining block behind the Federal Building. We had several crock-pots in which we had brought food. It was raining and this is the reason Carey drove us to my car. I don't remember what kind of dinner it was but these functions were usually retirement type gatherings. It could have been Thanksgiving.

I have read the foregoing statement consisting of 3 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made the statement freely and voluntarily without any threats, or rewards, or promises of reward having been made to me in return for it.

BETTY J. SIMMONS.

Subscribed and sworn to before me this 20th day of August 1979 at Hurst, Texas.

MAURICE H. FLOYD,  
*Inspector, Office of Inspection.*

## REPORT OF INTERVIEW WITH THOMAS J. BAYNHAM, JR., ASSISTANT U.S. ATTORNEY

Mr. Baynham said that in the latter part of October 1978, he requested Cliff Carpenter to tell Special Agent Robert McCool to be present to testify in a pre-trial hearing in the [deleted] case, on November 1, 1978, in Tyler, Texas.

Mr. Baynham said that as he recalls, a day or two before the scheduled hearing, he received a telephone call from SAC James Carey, one from Special Agent Danny Curtis, and several calls from Group Supervisor David Andrews regarding the possibility of him excusing McCool from appearing for the hearing.

Mr. Baynham said that when he told them that it was necessary for McCool to appear, then each of them said that he would be there. Their inquiry had been to determine if it was necessary for McCool to appear. As he recalls, McCool was to go on leave and he told McCool to fly to Tyler, which he did.

Mr. Baynham said that this kind of "stuff" didn't bother him, and he was not upset about being called about it. He said it is not unusual to receive a request from someone for an agent not to appear for a court proceeding. Mr. Baynham said that in this case he made the decision, not Carpenter, for McCool to appear. He said that if a special agent is reluctant to appear for a hearing or trial, he has a subpoena issued for that agent.

Mr. Baynham said that McCool appeared at the hearing on schedule, testified and there were no problems.

MAURICE H. FLOYD.

## EXHIBIT 14

The following statement was given by Mr. Briggs to Lana Johnson, January 31, 1980.

Q. Mr. Briggs how long were you employed by the Bureau of Alcohol, Tobacco, and Firearms?

A. From 1959 to August 31, 1979.

Q. How long were you at the Dallas Office?

A. February 15, 1975 to August 31, 1979.

Q. What was your position after coming to the Dallas Office?

A. I was Senior Analyst in the Regional Office until the Bureau was reorganized in 1976. I remained in the Dallas District Office as Senior Operations Officer from December 1976 to October 1978. In October 1978 I switched positions with Cliff Carpenter. The move was temporary at first, but the real purpose was for it to become permanent.

Q. Were you familiar with the performance of Cliff Carpenter?

A. Cliff worked under my direction from 1975 until December 1976 as Operations Officer. The authorized Group Supervisor's position filed by Cliff in 1976 was one of two positions, vacant for 1 year. Cliff performed well as Operations Officer. I performed a supervisory evaluation on him while he was under my supervision because he was a GS-13 and I recommended against his being made Group Supervisor.

Q. Why?

A. He was immature and wanted to be "one of the boys." However, he was a very good worker.

Mr. Briggs then volunteered the following statement: Transferring Cliff at this point may be okay but busting him was a little vindictive. He could have been transferred as a Field Agent GS-13.

Q. Are you familiar with the problems that Cliff Carpenter had with Doris Jackson?

A. I have heard certain information about those problems, however, I was in the Dallas District Office across the street from the Dallas post of duty. I helped to hire Doris and I have known her since she started working for the Bureau. There seemed to be hostility between Doris and Cliff. However, at one time they seemed to get along well. Cliff was very critical of Doris and maybe over reacted to her faults. It seemed uncalled for.

Q. Did Cliff try to get Doris fired?

A. There was general talk that Cliff was out to get Doris.

Q. Are you aware of problems that Cliff may have had with other agents?

A. Cliff had problems with one or two other agents. He had problems with Mr. McCool. Cliff was hostile towards Pat McKinley or at least Pat felt that way. Pat was a new agent at ATF and Cliff had a paternal attitude. In 1978 the consensus

was that Cliff was his own worst enemy and that Cliff's problems were mainly with the front office.

Q. What series of events precipitated Cliff's reassignment to Operations Officer?

A. Cliff was in the office one day and I was looking at a new computer print out which showed how the agents were spending their time. I showed this to Cliff and tried to explain to him what it meant. As an example, I showed him Tom Rays' print out. The page just happened to be turned to his name. I told Cliff that according to the print out Tom Ray was not spending very much time in criminal work. I also told him that this was just a starting point for an inquiry about how the agent was spending his time. Cliff went back and told Tom Ray that the District Office was down on him and that I was out to get him. This was just a lie. I suppose Cliff was trying to help Tom Ray.

The problems that Cliff had with Doris Jackson also added to the decision to transfer him from Group Supervisor to Operations Officer.

Q. What about the Brooks Griffin incident?

A. \* \* \* tion seemed to be deliberate. He could have been more cooperative. If Cliff was not going to get the evidence out of the vault he should have told them that he was not going to. As a supervisor he should have been even more responsible. If Cliff had refused to get the evidence from the vault and indicated that he refused to do so, Mr. Carey could have ordered him to do so. The Assistant U.S. Attorney involved in the situation was very upset because he called at least two times possibly three. There was certainly bad judgment on the part of Cliff at the very least.

Q. How is the work divided in the Dallas post of duty?

A. This is hearsay, Cliff wanted to be the senior man. But the positions were equal. Cliff seemed to think that because he was senior as to the time he had been with the agency, he should run things. Cliff discouraged intermingling and exchange of information. There was no inter group action at all. Normally the two groups were very congruous. When Cliff left, one of the first things that I did was to assure everyone that it was one bureau and that the division into two groups was for management purposes only. Some of the work was divided geographically. An agent familiar with an area may be given primary jurisdiction in that location. This was a generalization however, and not a hard and fast rule. Each group supervisor was responsible for the work of his agents.

Q. What effect has the incident involving Cliff Carpenter had on the function of the office?

A. It has had a very demoralizing effect on the office. Everyone feels like they are walking on eggshells.

Q. Why?

A. Cliff comes into the office and just sits there, because he is given very little work. Everyone feels the tension between Cliff Carpenter and Mr. Carey. People feel that if they talk to Cliff, the Special Agent in Charge will feel they are siding with Cliff. There is no way of being neutral.

Q. Are you aware that Cliff Carpenter accused Mr. Carey of being an alcoholic?

A. Yes, Mr. Carey is a good drinker, that is common knowledge. But I have never seen him drunk on duty or even intoxicated to the point where he couldn't perform. It's true that people who like to drink hang out together, just as people who like baseball or anything else hang out together. Mr. Carey is a pretty heavy drinker but it did not interfere with his ability to perform his duties.

Q. Is the Fort Worth post of duty under Mr. Carey's command?

A. Fort Worth, Tyler, Dallas, Lubbock and Albuquerque are all under Mr. Carey's jurisdiction.

Q. What do you think would be the best solution to the problems with Cliff?

A. I think they did a hatchet job on Cliff in Washington. Cliff should not have been busted and it may even be unfair to force Cliff to relocate his family. However, all career agents must sign a statement saying they are willing to travel.

Q. Could Cliff be transferred to Fort Worth? Do you think that would work?

A. Yes. Cliff could be transferred to Fort Worth and that would get him out of the Dallas District Office. He could commute to Fort Worth. However, I would say that would be second best as a solution, since he would be under the same SAC.

I, Donald L. Briggs, have read this statement consisting of 5 pages. I fully understand the contents of the entire statement made by me. The statement is true and complete to the best of my knowledge and belief. I have initialed all



corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope or promise of benefit or reward, without threat of punishment, and without coercion. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.

DONALD L. BRIGGS.

Subscribed and sworn before me, a person authorized by law to administer oaths, this 5th day of February 1980, at Rockwell, Texas.

LANA JOHNSON,  
*Signature of person administering oath.*

#### AFFIDAVIT

I, Donald L. Briggs, state that from February 1975 until December 5, 1976, I was the Senior Analyst in the Dallas Regional Office. At this time, the region was abolished and I was assigned to the Dallas District Office as Senior Operations Officer.

I remained in that position until October 1978, when I was assigned as Acting Group Supervisor for Group I in place of Group Supervisor Cliff Carpenter. This assignment became permanent about the middle of January 1979. Carpenter was assigned as Senior Operations Officer in the Dallas District Office.

While in the Regional Office, Carpenter worked as a Regional Analyst under my supervision. I wrote his performance evaluation. In my opinion, he worked satisfactorily, as reflected in his performance evaluation, as analyst. However, I did not think that he possessed, as shown in his supervisor's evaluation report, the ability to perform effectively as a supervisor.

About two months after Carpenter became the Group Supervisor, I began to receive bits of feedback from the special agents under his supervision that they were not satisfied with his technique of supervision.

As time passed, the special agents became more dissatisfied with Carpenter's supervisory ability and his treatment toward them. The feedback about this increased to SAIC James Carey, ASAIC Joseph Shaw and me. While the feedback indicated that most of the agents liked Carpenter as an individual, they realized that he was not a good supervisor.

About a year before Carpenter and I changed positions, his supervision had deteriorated to the point that ASAIC Shaw told me that he had suggested to SAIC Carey that they begin to document Carpenter's deficiencies as a supervisor in order to take corrective measures if it proved to be required or necessary. No action was taken at this time in this regard.

SAIC Carey tried to help Carpenter by counseling and assisting him by pointing out his deficiencies. SAIC Carey gave Carpenter every opportunity to correct those deficiencies.

Finally, SAIC Carey had to do something and asked me if I would voluntarily accept the Group Supervisor's job that Carpenter had. SAIC Carey said that he would assign Carpenter to the District Office as the Senior Operations Officer.

In my judgment, SAIC Carey recognized Carpenter's inability as a supervisor. He did recognize that Carpenter could satisfactorily perform the duties as Senior Operations Officer because of his more direct supervision over him. SAIC Carey was faced with a managerial problem that had to be corrected. He attempted to correct the problem in the least disruptive manner and at no cost to the Bureau.

One time, when we worked in the Regional Office, Carpenter and Bobby Smith, another Regional Analyst, went to lunch and didn't return until about 4:00 P.M. I didn't know whether SAIC Carey was with him. They had obviously been drinking heavily. I didn't like it and told them so. They left the office. I don't remember the date this occurred. It was the only time that I had to admonish Carpenter about drinking while on duty.

I did not tell Carpenter that ASAIC Shaw had said that he was "sick when he learned that SAIC Carey was returning as SAIC". Nor did I say that SAIC James Harmon (who at the time was the SAIC in Dallas) had said that Carey was interfering with the Dallas District Office operations.

To my knowledge, Toni Gould, the Dallas TECS operator has not caused Carpenter or any of the special agents who worked under him any problems. However, the Special Agents in both groups didn't particularly like her attitude.

I felt that they misunderstood her attitude. In my opinion, she is the best TECS operator in the country. She is very good at setting work priorities and volunteers to work above and beyond what is normally expected of her position. To my knowledge, she never deliberately caused any delays in running checks for any of the agents.

Part of Ann Geisler's duties, while I worked in the District Office, was to send collateral and Relief from Disability type investigations to the different Posts of Duty. She maintained a log. In the case of the Dallas POD, she sent these types of investigations to the two groups on a rotating basis. I don't know of her ever directly assigning any kind of investigation to an individual special agent. The District Office secretaries don't, as a rule, know which special agent is in which group.

During my tenure in the District Office, I don't know of SAIC Carey or anyone else there detailing "unproductive" duties or work to Carpenter's group any more so than any other group.

During a POD meeting on January 16, 1979, which SAIC Carey and I attended in Dallas, I did not hear SAIC Carey say that he was going to get rid of Carpenter. SAIC Carey did say that he would do everything he could to prevent Carpenter from returning as a Group Supervisor.

Regarding Special Agent Doris (Jefferies) Jackson, I don't know of SAIC Harmon or ASAIC Shaw trying to fire her. SAIC Harmon and I interviewed her for the job. We were both interested in her progress.

As I recall Doris went to the District Office and talked to both Harmon and Carey, at different times concerning her problems with Carpenter. I didn't sit in on the conferences. The remedy was that SAIC Carey transferred her to Group II under the supervision of David Andrews.

I do not know of SAIC Carey acting in a vindictive manner towards Carpenter. In fact, the reverse occurred in his dealings with Carpenter. SAIC Carey was very patient with Carpenter, more so than I would have been.

I have not heard SAIC Carey curse Carpenter. I have heard him say that he was dissatisfied with the manner in which Carpenter was supervising his group; also, that Carpenter resisted following his instructions.

SAIC Carey has never made any threats, in my presence, about Carpenter. I have never heard SAIC Carey say that he was going to make some people sorry for the way they had treated him while he was gone.

I don't remember the date, but I do recall a meeting in SAIC Carey's office with him, Carpenter, Special Agent Robert McCool and me. The purpose of this meeting was to discuss the [deleted] case. Carpenter had taken possession of, I believe eight firearms, that belonged to [deleted] and released them to a Captain Crawford in the Denton County Sheriff's office without documenting the seizure which is contrary to ATF regulations. After learning the circumstances of the seizure, SAIC Carey criticized Carpenter for his method of handling the firearms in mine and McCool's presence.

This seizure was subsequent to a previous case against [deleted]. The case report had already been submitted. [Deleted] had made a number of calls to SAIC Carey about the case.

During our conversation, I asked Carpenter to physically examine the firearms for complete descriptions and serial numbers to be used in running NCIC checks and firearms tracing to determine, among other things, when [deleted] had acquired them. Carpenter had not done this when he seized the firearms and it would require a trip back to the Denton County Sheriff's office.

Carpenter and McCool had been talking to [deleted] separately. Carpenter was getting cool towards [deleted]. Carpenter and McCool were having problems. Also, since Carpenter had seized the firearms, by himself, I felt it advisable to recommend that McCool not accompany Carpenter. SAIC Carey concurred with this.

Carpenter went on leave and I did the follow-up investigation and got the seizure straightened out.

I would not characterize SAIC Carey as an alcoholic. He does drink and its common knowledge among the special agents. I haven't heard them joke about it as such. We have been to lunch together numerous times at different restaurants, including the Casino, which is located in the next block from the office. Most of the time he would drink milk, sometimes tea, and rarely a beer. I have not seen SAIC Carey drunk while working. I have not seen him drink in the office except on a rare occasion, such as during the holiday season. I am not SAIC Carey's or anybody else's drinking companion.

I have never heard the term or know of a "Drinking Society" composed of SAIC Carey and other ATF employees.

I have heard SAIC Carey say that he selected Carpenter as the Dallas POD Group Supervisor.

I don't know of Carpenter, his group or any other group being curtailed in their request for travel funds for the furtherance of investigations when the funds were available.

I don't remember the date, but I remember that Carpenter once requested permission from SAIC Carey that he be allowed to go to San Antonio in furtherance of an investigation. SAIC Carey denied him permission to go because of the shortage of funds.

At the time Carpenter made this request, the secretary, whose name I don't recall, at the Albuquerque, New Mexico Post of Duty was going on maternity leave. Ann Geisler, a Dallas District Office secretary was detailed there for two or three weeks because of the heavy work load. She was the only one available of two or three considered, who could go for that extended period. Whatever the length of time, it was reduced by a week. Ann is experienced and can do the job.

One reason I remember this is because Carpenter made the statement to the effect that "they" had money to fly secretaries around but not for the agents. On the surface this might appear to be true when in fact it was not. Arrangements had already been made to send her prior to Carpenter's request. The special agents in San Antonio were just as capable of conducting the investigation as Carpenter was.

On August 19, 1977, I worked in the District Office performing my regular duties. I don't remember talking with Carpenter or receiving a note or being told that Carpenter had attempted to contact me. My diary entry for that day doesn't show that I contacted him or vice versa.

On September 2, 1977, according to my diary entry, I was the Acting Special Agent in Charge from 12:30 P.M. until 4:30 P.M. I do not recall having contact with or talking to Carpenter.

I later heard a story, I think from Ann Geisler, that Carpenter had called and asked to speak to whoever was in charge. It got back to Carey. I don't remember who told me but I heard that he got upset about it.

It seemed to me that Carpenter was being sarcastic to Ann, by asking for whoever was in charge, because he believed that she was the one who, on her own, was assigning collaterals, etc. In fact, she had been assigned that responsibility by either SAIC Carey or ASAIC Shaw. She was instructed to alternate the assignments by group and to remind the Group Supervisors and Resident Agents in Charge of due dates for those reports if it became necessary.

After I became Group Supervisor, my POD secretary, Darlynn Young asked me if Mickey Dean, the other POD secretary, was parking her personal car in the government parking area reserved for the special agents. I didn't know anything about it but told her I would look into it and let her know.

I talked to Group Supervisor David Andrews. He told me that SAIC Carey had advised him and Carpenter, at the same time, that unofficially the POD secretaries could park in the garage if it didn't displace a government car.

I told Darlynn what Andrews had told me. She said that Carpenter had never mentioned anything to her about it. I think she parked in one of the spaces one time.

Regarding the Special Agent of the Year Award in 1977, I don't remember who received it. I also don't know anything about a special agent being pre-selected for the award.

I don't know of SAIC Carey ever lying to Carpenter or any other ATF employee.

I have read the foregoing statement consisting of 11 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

DONALD L. BRIGGS.

Subscribed and sworn to before me this 20th day of July, 1979 at Dallas, Texas.

MAURICE H. FLOYD,  
Inspector, Office of Inspection.

AFFIDAVIT

I, Donald L. Briggs, state that one day right after we, at the Dallas District Office, started looking at the printouts reflecting Special Agents time application I had a conversation about the printouts with Cliff Carpenter, who was in the office.

I pointed out to him, at that time, that these reports might be used to trigger other questions concerning where agents were spending their time. At random I selected the top report which just happened to be for Special Agent William T. Ray. I explained that additional questions could be raised because of what appeared on the printout. I also pointed out that these could by no means be considered conclusive results of an agent's activity because of many other possible outside assignments and influences. That was the extent of the conversation.

Later feedback to me indicated that Carpenter had used this conversation in advising Ray that I was after him as well as the SAC.

Subsequently I made it a point to advise Ray as to what was actually said during our conversation about the printouts and that it was not my prerogative to be after him.

I don't recall disparaging Ray in any way to Carpenter. I did not tell Carpenter that in my opinion Ray was not doing as much work as a lot of people thought he did nor, did I say that I thought Ray was a "flim-flam" artist.

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

DONALD L. BRIGGS.

Subscribed and sworn to before me this 27th day of July, 1979 at Dallas, Texas.

MAURICE H. FLOYD,  
Inspector, Office of Internal Affairs.

UNITED STATES OF AMERICA BEFORE THE MERIT SYSTEMS PROTECTION BOARD

No. 120800004 80 43

CLIFF CARPENTER, JR., APPELLANT and  
SPECIAL COUNSEL, INTERVENOR

v.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, RESPONDENT

Appearances: Mr. Roger J. Allen, Counsel for appellant; Mr. Ronald S. Williams, Counsel for respondent.

Answers and deposition of Cliff Carpenter, Jr. taken in the foregoing styled and numbered cause on the 22nd day of February, 1980, before Marie Lancaster, a Certified Shorthand Reporter in and for the State of Texas, at 1200 Main Street, in the City of Dallas, County of Dallas, State of Texas, pursuant to order of the Administrative Law Judge:

Cliff Carpenter, Jr., the witness hereinbefore named, being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

EXAMINATION

By Mr. WILLIAMS:

Q. Would you please state your full name for the record?

A. Cliff Carpenter, Jr.

Q. Who is your employer?

A. Bureau of Alcohol, Tobacco and Firearms.

Q. What is your specific title and grade with the Bureau?

A. In response to the question, the matter is being appealed right now. I am not sure what it is.

Q. Were you interviewed on July 17, 1979, by Inspector Maurice Floyd of the ATF Office of Inspection?

A. Without checking my diary, I can't tell you.

Q. You can't tell me if that was the right date, or have you been interviewed by Inspector Floyd?

A. I have been.

Q. Could it have been on or about July 17, 1979?

A. Without checking my diary, I can't give you a date.

Q. Okay.

A. But I was interviewed by Maurice Floyd.

Q. Were you under oath during that interview?

A. At onetime I was placed under oath.

Q. By Inspector Floyd?

A. Yes.

Q. Okay.

A. I do not know whether you would consider at this time I was under oath or not. I would like to say that whether I am under oath or not, I'm going to tell the truth. An oath is unnecessary.

Q. Have you submitted a form CA-2, Federal Employees Notice of Occupational Disease and Claim for Compensation?

A. In, I believe, 1979.

Q. You don't remember what the specific date was in 1979?

A. No, sir.

Q. Could it have been on or about January 8, 1979, the early part of January?

A. The date should be recorded. It was in that time frame.

Q. To whom did you submit this form CA-2?

A. To the OWCP.

Q. What was the basis for the claim to disability?

A. Would you explain that?

Q. When you submitted the form, did you specify on the form what the basis for submitting the form CA-2 was?

A. Well, the form CA-2, I guess historically, to my knowledge, or in my belief, have been used, or the purpose of them was to document injury, sickness, anything from poison ivy rash on, that was caused as a result of your federal employment.

Q. Okay, and what injury, sickness or other aspects were you documenting or claiming on the form CA-2?

A. It was to document the stress. That is within the correspondence, I believe, from the doctor.

Q. After the submission of the form CA-2, did you submit any other documentation in support of your claim to the OWCP?

A. What do you have reference to?

Q. Well, it's my understanding there was a statement, a forty-six-page statement that was submitted.

A. I think that's part of the CA-2, isn't it?

Q. Was it submitted separately?

A. Yes.

Q. Okay, so you did submit a forty-six-page statement in support of your form CA-2 to the OWCP?

A. Again, I believe to my recollection, without seeing it in front of me, I believe it's all one. However, it was submitted in two parts. I was advised by the local personnel office that I could do it in this fashion, that anything that came through them, they would be duty bound to show to my immediate supervisor. I was instructed that if I would submit this separately, that it would not have to go through them, and, as I said, under instructions from Mary Dodd and did it this way.

Q. So this was sent separately to the OWCP, and not submitted to any personnel, the forty-six-page statement?

A. I'm sorry, I didn't understand you.

Q. The forty-six-page statement was sent directly to the OWCP?

A. Yes, sir.

Q. At the time of this forty-six-page statement, were you under a doctor's care?

A. I believe that is correct.

Q. Do you remember the name of the doctor?

A. Yes, sir.

Q. What was his name?

A. Schnitzer.

Would you spell that?

A. That's what I was afraid you were going to ask.

Q. Or as close as you possibly can.

A. S-c-h-n-i-t-z-e-r, I believe.

Q. Were you taking any medication at the time of the statement that you submitted?

A. I don't recall. I was intermittently taking valium.

Q. Has Dr. Schnitzer at any time during this time frame, from early January, or the first three or four months, placed you under any prescriptions for medication?

A. Yes.

Mr. ALLEN. I might add for the record that Mr. Carpenter was seeing Dr. Schnitzer well in advance of January, 1979. As I recall, he was seeing him in November and December of 1978.

By Mr. WILLIAMS:

Q. Do you recall what medication the doctor had prescribed for you?

A. Yes, partially, at least.

Q. Could you tell me what that would be?

A. Valium, and Bufferin, I believe.

Q. Now, after you submitted the forty-six-page statement to the Office of Workman's Compensation Program, did you have occasion to learn that that statement had been made available to personnel of the Bureau of Alcohol, Tobacco and Firearms?

A. Yes, sir.

Q. And how did you learn that?

A. I was advised by letter from personnel officer Mary Dodd.

Q. Okay, did Ms. Dodd indicate if anyone else with ATF had been made available a copy of this statement?

A. I believe she did.

Q. Did you know who she did indicate received it?

A. I can't say at this time. I believe she indicated that she did disseminate it.

Q. I'm sorry, go ahead.

A. That's all right.

Q. Okay, I was just going to say do you remember if she indicated that Special Agent James Carey had received a copy of this statement in her letter.

A. I don't recall whether it was in her letter or whether she told me she gave it to him.

Q. But she did advise you, either in letter or orally, that it had been made available to him?

A. Yes.

Q. What was the purpose of submitting the forty-six-page statement to the OWCP?

A. It was required in completion of the CA-2 itself. In this I attempted to show the work environment in which I was existing or attempting to function. You know, I don't know whether it was peculiar to Dallas or not, but the way that the management situation was set up within ATF, by local management, by Mr. Carey, and how this had created undue, or what I considered undue stress, a hardship situation, an impossible situation in which to function properly.

Q. This would be functioning as a special agent, you mean?

A. Functioning as a group supervisor, responsible for the operations, safety of the men, their well-being, the efficient operation of the bureau, doing what should be done to operate such an office, and I was the group supervisor at that time responsible for a group of men and their actions.

Q. Did you intend for any of the information in this statement to be taken as allegations of misconduct by any of the special agents named in the statement?

A. I don't understand your question.

Q. I think there were several special agents who were named in the forty-six page statement, and my question would be, did you mean to assert any allegations of misconduct by any of those special agents?

A. I meant to show the work environment that I was working in, that I was functioning within, and the way it was set up, you know, run by Mr. Carey, Mr. Shaw, and to show the interoffice relationship, the things that really I don't think you would say they should exist and how this interrelationship created

an atmosphere to where it was extremely difficult, if not impossible, to function properly, and how working within the rules, or within this atmosphere, within this situation, had over a couple or three years—I don't know exactly how long—had taken its toll on me, and, you know, especially related to the last few months. That was the intent.

Q. So it was the overall work type of atmosphere rather than—I'm not trying to put words in your mouth—rather than trying to make any allegations of any specific activities or misconduct by the special agents named, is that correct?

A. As far as trying to make any allegations against any of the men, that was put in there just to show the interoffice relationships. No, as Ms. Dodd put in one of her letters, I was vehemently opposed to the men being contacted. I had no intention of hurting the men. I intended in no way for them to be hurt because I was afraid that they would, or be contacted. I was afraid not to say or support what I had said. I just thought it was necessary to show the work environment, that this had all been done.

Q. Do you have any personal knowledge of any misconduct by any of the special agents named in your statement?

Mr. ALLEN. Could you provide us with specifics? I think that would be a lot easier than just generalizing what might be in the forty-six pages.

Mr. WILLIAMS. I didn't bring the document with me, so it would be hard.

Mr. ALLEN. Well, my advice to Mr. Carpenter as his lawyer representing him would be if ATF wants to draw out specific examples, then I would ask him, you know, to state his basis for making such statements, and otherwise I think that it's a very broad and generalized question for him to endeavor to answer.

By Mr. WILLIAMS:

Q. Did you intend for any information in the statement to be taken as allegations of misconduct against the secretaries or the clerk-typists named in the statement?

A. No. Again, this is just to show the interoffice working relationship which made it, again, difficult, if not impossible, to function properly.

[Off the record discussion.]

By Mr. WILLIAMS:

Q. Did you have any personal knowledge of any mismanagement of the Dallas Criminal Enforcement Office by your supervisor?

A. I'm sorry, I was looking—

Q. Okay, do you have any personal knowledge of any mismanagement of the Dallas Criminal Enforcement Office by your supervisor?

A. In my opinion, management was not proper.

Q. Is this based on personal knowledge of any specific action or activity?

A. Well, again, in my opinion.

Q. Is this based on secondhand information of some sort? What I'm trying to find out is what your opinion is based on.

A. Well, it would be, of course, based upon personal observations, and knowledge, secondhand information, just all of the knowledge that one might reasonably acquire and have reason to believe. Certainly, you know, you hear things that you may not believe, or you may believe there is basis to it.

Q. Can you give me a specific personal observation that you made that would indicate mismanagement by your supervisor?

A. You are asking me for one specific?

Q. Yes, one, or several, if you have several.

[Off the record discussion.]

Mr. ALLEN. On the record here, let me get a clarification. When you speak of mismanagement, mismanagement as Mr. Carpenter would view it? In other words, what he saw as mismanagement, and are you relating it again back to this forty-six-page statement?

Mr. WILLIAMS. No, I'm not relating it back to the forty-six-page statement, just any mismanagement that Mr. Carpenter alleges.

[Off the record discussion.]

A. To answer your question fully, I think it would be numerous, or should we say too numerous examples to mention at this time. To let an atmosphere be created as I have described, or attempted to describe in the forty-six-page documentation, would be in my opinion mismanagement, as related in there, the actions that were condoned. For instance, the Bill Gossman incident in Fort Worth.

Q. What was that incident?

A. Again, we go back to both personal knowledge and secondhand knowledge, but at one juncture Mr. Carey indicated to me to the effect that I wasn't doing the job, and he used Bill Gossman as one of the examples. Yet, from my own personal knowledge, I had assisted in taking a firearm away from Mr. Gossman and this was known by management, I'm told he pulled knives on people. This had all been done with knowledge of the supervisor. He tried to start a fight when he was drunk, yet I, you know, have seen the supervisor drinking with him, and he had to know how extremely violent he became when drinking; when he would pull knives and guns on people. You know, over in Fort Worth recently, he created some really bad scenes as I understand it. Again, this is secondhand knowledge. Now, this has been reported to the police, and this had to be done before, and ATF management was not doing anything about it, although they were aware of it. You know, this man was set up to me as an example of being good. I am bad? Well, I see this differently.

Q. So you view this incident, just looking at this incident alone, as being mismanagement, in that there was evidence and information available to your supervisor indicating activities by Mr. Gossman that should have been or necessitated action on his part, and he didn't take action, is that right?

A. Yes. As I understand it, Mr. Gossman was on duty, intoxicated, trying to force himself upon people, making remarks to the secretary, that he went from the office to another bar, or not to another bar, excuse me, to a bar, where he pulled a knife, and I was told slashed tires, went to another bar, and even after this, you know, came out, attempts were made to cover it up, as it had been in the past, and yet here is this type action by a person who was in the same position I was in. Bad memorandums, you know, untrue memorandums had been documented and forwarded against me for actions that I did not do, yet here is someone doing this and has been known to do this for years, and it is covered up, and he is protected and all. In all honesty, frankness, I don't see how an agency can operate like this; how that it can command the respect of the people it deals with. You know, it was well-known, his propensity for violence, that I have heard of him trying to start fights with a member of the counsel's office, for instance, and this had to be going on, and then, you know, the men know this, they see this happening, and they talk about it. There is a loss of respect for management when this happens. They know that management have not done their job in correcting it, but instead they have depended upon the Fort Worth Police Department or the agents themselves to correct something that should have been handled by management. You know, that's one example.

Q. All your information on Bill Gossman, was it by secondhand information, or were you personally there and observed him doing this action that you are talking about?

A. Yes, as I stated, I assisted another agent named Melvin Ohlsen in taking a firearm away from Mr. Gossman that he had pointed at point-blank range in the stomach of another agent while he was intoxicated, threatening to kill him. I had to physically—I don't want to use the word "fight." That's a little bit too strong—but restrain the man as he was trying to step on my toes, or stomp on them. I had to get him out of a room where he was cursing everybody, and threatening them to fight. Mr. Carey was there that night, so, you know, it's not all secondhand. A lot of it is firsthand knowledge.

Q. Was this firsthand observation, was this during working hours, or was it after working hours?

A. Well, you know, I don't know what you would consider working hours. We are on twenty-four-hour call.

Q. About what time of day would this have been, at nighttime, or during the day?

Mr. ALLEN. Which incident?

Mr. WILLIAMS. The incident in which he helped Melvin Ohlsen take a firearm away from Mr. Gossman.

A. We were attending a peace officers' convention, so, you know, people were there in the line of duty, I'm sure they came there, seeing that this was their official function, but it was after the normal eight-to-five office hours. Could I be retroactive here just one second?

Q. Yes.

A. I happened to think, I've got my 1979 diary, and I did go back and check, and I did talk to Mr. Floyd on July 17th.



Q. In reference to Special Agent James Carey, do you have any personal knowledge of any misconduct by Special Agent Carey that would be in violation of the ATF rules of conduct?

Mr. ALLEN. Well, is there a copy available of the ATF rules of conduct?

Mr. WILLIAMS. I don't know if Cliff read it all, but it is in the manual.

[Off the record discussion.]

Mr. ALLEN. Ron, in answer to your last question, on my advice, and partly on discussing this with Mr. Carpenter, is that at this time I would allow him to go ahead and answer any specific questions you might have concerning any incidents with Mr. Carey, but for him to characterize whether or not they violate what you handed me as being employees responsibilities in conduct which is ATF Order 2785.1, I don't know. We haven't had a chance to go back and see if certain incidents would fit within enumerated categories of conduct or responsibilities listed in there.

(By Mr. WILLIAMS):

Q. All right, let me ask you this, Cliff; when you made the statements to Inspector Floyd on July 17, 1979, did you at that time indicate that you personally knew of no violations of federal law or the rules of conduct by Special Agent Carey?

A. My answer to that would be the same as Mr. Allen just stated.

Q. Did Inspector Floyd type up a copy of your statement and make it available to you to read, and for you to sign it? That's my understanding. Is that correct?

A. I do not know whether he typed up a statement or not. During January I asked through the Freedom of Information Privacy Act, et cetera, for this information, which I am entitled, in my opinion I'm entitled to it. I should be furnished with it, and I was advised by the bureau for me to simply write a letter, and I told them at this time that the orders requested a form 1200.6, I believe. I'm not sure. I was told to go ahead and write the letter and we could have the information back to you before we can submit the form to you. I waited and didn't hear anything, and then last week, or the week before, I got a letter from bureau headquarters, still without the information, but it had enclosed the form that I had requested, and said that I would have to fill that out, and they would try to get it to me, I believe within twenty days. Well, this is the information that I have requested to see what happened as a result of what I did talk to Mr. Floyd about, so until such time as I get that, I don't believe I can intelligently, you know, answer what happened to it.

Q. So your answer is you don't remember whether you made that type of statement to Inspector Floyd?

A. I sat and talked to Mr. Floyd for several days. Not continuous. Sometimes two or three days continuous, when he had to go somewhere, and as I stated, what I'm going to tell you is the truth, under oath or not under oath. It doesn't make any difference to me. Now, I didn't sign anything. What statements he made or may not have made as a result of this, I do not know.

Q. Did he request you to sign an affidavit?

A. He made a handwritten affidavit, and I advised him that I was not signing anything unless Mr. Allen had read it and approved it.

Q. Did you read the handwritten affidavit he made?

A. I can't recall.

Q. Okay, are you aware that the Bureau of Alcohol, Tobacco and Firearms requires all allegations of misconduct to be reported to the Office of Inspection, Bureau of Alcohol, Tobacco and Firearms?

A. I know that serious misconduct, et cetera, should be reported. Within the framework of ATF, I really don't know how you would go about it. For instance, I attempted to confer with the assistant director of criminal enforcement, Mr. Miles Keithley, during November of 1978. I did not violate, shall we say, the chain of command. I asked Mr. Carey to make the call, and in fact insisted that he did. He called Mr. James L. Welch, who is Mr. Keithley's or was at that time Mr. Keithley's assistant director, at which time I requested to talk to one of these two people, or a representative, or that I would go up there, and I was advised that within a week someone would. However, the following, I believe, Wednesday, Mr. Carey advised me that no one wanted to talk to me, or no one would talk to me, or something to that effect, that no one was coming down. I can't quote it exactly, but it was to that effect.

Q. You are familiar with the fact that the regional office of inspection has a Dallas office?

A. Yes.

Q. Have you attempted to contact any of the inspectors there to inform them of any allegations of misconduct?

[Off the record discussion.]

A. Ron, at the time that this started, you know, I don't think Mr. Floyd was there. You know, I'm not sure of what the—maybe someone was. I conversed with them, but without—

By Mr. WILLIAMS:

Q. Have you ever reported any misconduct by any special agents or any secretary to the office of inspection?

A. I don't think so. You know, I'm not really sure of how all encompassing our question is. Again, I will go back. I talked to Mr. Floyd for several days, and I'm sure that a report was, you know, wrote on it. I just don't know how to answer your question.

Q. Aside from that one conversation with Mr. Floyd, within the last two years have you ever reported any misconduct, any specific misconduct of any special agents or a secretary or clerk of the Dallas area or Dallas regional office, to the office of inspection?

A. Yes.

Q. Could you specify when and what misconduct you are talking about?

A. The one I can think of and be specific on, again, is the Bill Gossman incident. I gave a special agent a statement regarding my knowledge of this. He brought it up.

Q. Who did you give that statement to?

A. Maurice Floyd.

Q. This was the conversation with Mr. Floyd, though, is that right? This was at the July 17th, or during that conversation with Mr. Floyd at that time, or was this a separate incident?

A. Well, it was brought up at this time. He asked about it. The statement was made sometime later.

Q. Aside from that conversation with Mr. Floyd and the statement that arose out of it, have you at any time reported any allegations or activities of misconduct?

A. Another question that was brought up, that he interviewed me on, was regarding a possible, or what I had heard about a homicide by Mr. Carey and others in Mexico.

Q. This again came out of that July 17th conversation?

A. Well, he brought it up. I do not know what the basis for him bringing it up was.

Q. Well, I just wanted to get, Cliff, whether aside from that conversation with Inspector Floyd, have you at any other time within the last two years, yourself, made any reports to the office of inspection on the allegations of misconduct of any special agents, or secretaries or clerks?

A. If you are asking do I run to the office of inspection every time I think something was wrong, every time I hear something secondhand, the answer to that question is no.

Q. I just want to know. I don't mean to make any allegations myself or anything. I just want to know factually have you ever made any reports, and that's all I really want an answer to. I'm not trying to infer anything, or anything like that. That's not my job.

A. Any time, I have cooperated fully with anyone who I believe, you know, has the best interest of ATF and management at heart, and I consider that when Mr. Floyd asked me a question, as I have stated, I answered it honestly and fully, and to the best of my ability. If he says, "Have you heard anything," I tell him, but to go there and say, you know, "I don't like you so I'm going to try to get you in trouble", or something, no, I did not.

Q. So if I may, the answer would be that aside from that conversation with Inspector Floyd, you have not contacted the office of inspection personally within the last two years to report any allegations of misconduct?

A. Not that I can recall. Let me state this, and maybe this is possibly what you are looking for, that if there was any misconduct, et cetera, I would attempt to report it through my chain of command.

Q. So you wouldn't normally go through inspection, even though generally the ATF manual requires allegations of misconduct to go through inspection, you wouldn't normally go that way, or are you familiar with the fact that you are supposed to go through inspection?

A. Ron, honestly, I thought that any misconduct, you should go through your supervisor. Now, maybe I'm wrong. Am I? Do you go directly, or do you go through your supervisor?

Q. Have you reported any misconduct of any supervisors to the ATF Office of Inspection?

A. I think we just answered that question, really.

Q. This would be the conversation with Inspector Floyd you are talking about?

A. Yes. When you say did I support it, no, but, you know, I think it should be clear how it all came about.

Q. Let me ask you, in your forty-six-page statement that was furnished to I believe they call it, the OWCP, there was statements made in reference to some of the secretaries and the clerks employed in the Dallas area office. Specifically, Mrs. Geisler and Miss Simmons. Do you have any personal knowledge of any violation of the ATF rules of conduct by Mrs. Geisler or Miss Simmons?

Mr. ALLEN. Again, my only objection to that type of question is that I think you can ask Mr. Carpenter what it was, if he recalls, was stated in the forty-six-page document as related to Mrs. Geisler and Miss Simmons, but to take a statement and relate it back here to the ATF Order 2735.1, I instruct him not to try and do it, because we have not had an opportunity to review that particular document.

By Mr. WILLIAMS:

Q. Let me ask it this way; are you familiar with the rules of conduct? Are you generally familiar with the rules of conduct the ATF has put out?

A. Some. You know, I'm not an expert on them.

Q. Okay, let me ask you this, then; in making specific reference to the activities of Mrs. Geisler, in the forty-six-page statement that you submitted to OWCP, would you believe those activities you talked of to be in violation of the rules as you know them?

A. The reference to those people was made in an effort to give an overall view to the uninformed reader and reviewer of the situation and atmosphere that was created, that Mr. Carey had set up, or was responsible for, that was causing this undue amount of stress to be placed upon me. And, that the decisions, et cetera, that were being made by Mr. Carey, and Mr. Carey's transmittal of this information, as I later found out, to D.C., this reference was made to all of this to give the reader a view of it, and as I have said in the forty-six pages, that is the intent of it, and the sole intent of it as far as these people are concerned. I did not intend to embarrass them. What they do or don't do is their own business. I don't care. All I do care about is how it has adversely affected me as far as my health, my career, et cetera.

Q. So to your knowledge, these activities that you made reference to were not violations of law or the rules of conduct?

Mr. ALLEN. Let me interject, I think maybe a better way to put your question is when you were writing your forty-six-page document for incorporation into your OWCP claim, did you have a reference of mind concerning the rules of conduct, or was it just statements and observations and thoughts that you had at that time concerning the stressful relationships that you were working under?

A. That's true. It was just the thoughts, the things that I knew. You know, the things that I knew had caused this stress and was bringing this about, and had brought it about. I couldn't sleep, and I can't start to explain the pain that is associated with this, and when you are told, you know, with total disregard for the truth, as I was told by Mr. Carey, this was building up a tremendous amount of pressure inside. I was concerned about myself, about my family, about the job, and I think it's a very legitimate concern, because you can certainly see that Mr. Carey attempted to fire me, and threatened me with transfers, demotions, and, you know, career ruined, so I think you can look back and see where the stress, in addition to the normal work, was very real.

By Mr. WILLIAMS:

Q. So they were just generally statements dealing with atmosphere, and not means as allegations as to these particular individuals, their misconduct?

A. I don't like to see anyone get in trouble, and any statements to the fact that I don't care for people, not warm in my relationships and feelings towards people, is totally in error. I love people. I think that you can look at my personal life, personal dealings with people, my home life, I think if the agents them-

elves are given an opportunity to speak freely without fear of reprisal, that with one exception, every man in my group would speak highly of how I treated them, that I was concerned for them and their families. Now, this concern, this warm feeling towards all of the people and their families extended to even the people that I had reference to. I wish them no ill will, bad tidings, although I may not agree with what they do or don't do. That's their business. And have I tried to get them in trouble or something like that? No. However, my concern, as I have stated in writing, was for myself, my earning capacity, whether I could continue with a job, and I sat and looked at a wife, and a ten year old and an eight year old, and I certainly have financial obligations to my family. I was thinking about them. At that time I didn't know whether I would be able to permanently return to work or not. Again, I can't explain, you know, the nervousness, the stress, and I know that as a result of it, where at onetime a noise behind me made no effect, and now I jump like a cat. I know inside all of those things happen, and I know that this was because of this atmosphere and things that was put on me, that maybe—I hope I haven't rambled. It's just an attempt to describe it.

Q. Let me just pin this down and see if I can get a reasonable answer from you on this; you did not, then, intend for these statements about the secretaries and special agents to be allegations that they were violating the law or doing something wrong themselves, is that correct?

A. No, it was an attempt to show what atmosphere that management had created, and—okay, I think I have answered.

Q. Yes, that's fine. Was it your belief prior to your receipt of the March 2, 1979 letter, from Special Agent James Carey, that he desired to dismiss you from your employment?

A. I have been told prior to then that he had been bragging that he was going to fire me, from statements that he had made to me in the past, and I knew that he was carrying out a vendetta against me.

Q. What statements were those that specified? Could you tell me exactly what statements you mean, to believe that he had a vendetta?

A. Well, it is contained in, you know, all the other stuff.

Q. What stuff? I don't have reference to everything, so I don't know what you're talking about. That's the reason I'm trying to get a specific answer, so if you could, specify for me the statements you have reason to think that he made, if you can remember.

A. Without going back and researching my notes, et cetera, you know, I can't bring them all out.

Q. In other words, you don't personally now remember the statements he made in reference to that?

A. I don't remember all of them.

Q. Could you give me one or two, or any of them that you can remember that he made that give rise to this belief?

A. Yes.

Q. Okay, could you possibly tell me what those are?

A. In November, when I was trying to discuss—

Mr. ALLEN. Give her the year.

A. 1978.

[Thereupon, a recess was taken.]

By Mr. WILLIAMS:

Q. Okay, going back to the last question, I think I had asked if you could give me any specific statements on which you base your belief that Jim Carey had a vendetta.

A. Okay, just one example I can think of real quick, like in November, 1978, I was trying to tell him he was taking actions based upon allegations that he had apparently got against me, or something that was not the truth, that I was trying to tell him that it was not true, and he said, "Piss on the truth." Then I knew that he was going to do whatever he could to me in any way, regardless of whether it was true or not. Prior to then, he had come to my office, and I can't say that he was intoxicated. I had not seen him drink. He was not acting normally. And made statements about me indirectly, accusing me of things like this, and even from the first date that he was back on the job, after he had been temporarily removed, he stated that people were going to be sorry how they acted while he was gone, and was glaring at me in such a fashion that I knew he was talking about me.



Q. What was the time frame of that? Do you remember about when that was?  
 A. May 15, 1977. I believe that's the correct date.  
 Q. Do you believe that anything that Special Agent Carey put in the March 2, 1979 letter, would support or reinforce these beliefs, that he intended to fire you prior to this letter going out?  
 A. Do I believe that anything that he used in this March 2nd letter—  
 Q. Reinforced your beliefs, your prior beliefs.  
 A. Definitely.  
 Q. Could you tell me what specifically you felt reinforced your prior beliefs?  
 A. Just about the whole thing. For instance, the allegations of defrauding the government. That certainly should indicate the man's vindictiveness, that he would do anything to try to get me fired. I think that his allegations I was undermining sound management—what he did, he just kind of turned things around, and I was not undermining sound management. I was providing sound management. Certainly, in my opinion, doing a very good job under the circumstances, whereas when we look at other areas, like Fort Worth, and some more places, where I know that they were not running as good a shop as I was, yet I was catching all of this, you know, and it shows up here, I'm told about. I don't know, but I was told about how the statements came about, you know, the whole thing just reinforced my idea that it was a vendetta being carried out generally by Mr. Carey.

Q. Have you filed for disability retirement?  
 A. No, sir.  
 Q. Have you considered filing for disability retirement?  
 A. Have I considered it?  
 Q. Yes.  
 A. At the time that—yes, and that's a short answer, unless you want an explanation.  
 Q. When had you considered filing disability retirement, when you filed the form CA-2 in January of 1979?  
 A. Yes, I knew that if I didn't get out of the, you know, stress, et cetera, that I couldn't work, I wouldn't attempt to.  
 Q. Have you told anyone that you were going to retire on disability?  
 A. No.  
 Q. Have you told anyone to submit a fraudulent claim of any kind to the government?  
 A. No.  
 Mr. WILLIAMS. That's all I have.

\_\_\_\_\_  
*Signature of Witness.*

State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 Subscribed and sworn to before me by the said witness on this, the \_\_\_\_\_ day of \_\_\_\_\_, 1980.

\_\_\_\_\_  
*Notary Public.*

State of Texas  
 County of Dallas

I, Marie Lancaster, A Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true, that the foregoing answers of the witness, Cliff Carpenter, Jr., to the interrogatories as indicated were made before me by the said witness after being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and the same thereafter was reduced to typewriting by me or under my supervision.

I further certify that the foregoing deposition as set forth in typewriting is a full, true and correct transcription of the proceedings had at the time of taking said deposition.

Given under my hand and seal of office on this the 25th day of February, 1980.

MARIE LANCASTER,  
 Certified Shorthand Reporter.



# THE AGENT

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## A Three Year NATA Battle

### Court Awards Back Pay To Former Agents

The U.S. Court of Claims recently ordered the BATF to reimburse ten special agents who had been denied premium pay prior to the end of a "quarter" certifying period. The case, *Sidney R. Anderson, et al. v The United States*, No. 47-79, originated almost three years ago when NATA presented the claims of former Special Agents James F. Lee of Monroe, Louisiana, and Jim Guess of Jasper, Georgia, to the General Accounting Office. The agents were later joined by eight other plaintiffs.

These agents were typical of scores of others who had been removed from premium pay while on sick leave awaiting retirement. The GAO denied the claims and the Civil Service Commission issued an opinion that agents on sick leave could immediately be denied premium pay.

NATA's General Counsel appealed the administrative decision to the Court and argued the case before Judges Davis, Cowen and Nichols on June 2, 1980, at Washington, D.C. NATA contended that the agents were entitled to receive the extra pay during all periods of paid leave consistent with the statute that designated premium pay "on an annual basis," but that in any event agents could not be removed prior to the end of a "certifying quarter."

Presiding Judge Oscar H. Davis in a four page opinion held that agents could not be removed from premium pay during a quarter year period. Judge Davis said such action had a "retroactive effect" and that the plaintiffs were entitled to "recover for those portions of the time spent on sick leave which were not covered by prospective quarterly determinations."

The Court indicated that if agents remained on sick leave for an extended period in subsequent quarters, they could legally be removed from premium pay if the removal was effective at the beginning of a quarter.

The June 27, 1980, decision remanded the case to the "Trial Division" to determine the amount owing to each plaintiff. It is expected that all of the plaintiffs will receive an award and some will gain enough to improve their "high three" for annuity purposes.

Aside from claiming funds due the former agents, NATA's main motive was to secure a court decision which would require the BATF to treat all employees uniformly throughout the country. The cost of the suit (about \$3,000) will be partially offset by a small percentage of the gain from each plaintiff paid to NATA.

## NATA Honors Burke



Sheriff Berlin and Paul Burke

Paul Burke, formerly a Special Agent with the BATF in California, has been awarded an "Outstanding Service Award" by the National Association of Treasury Agents. The award, NATA's highest, has been awarded to only one other special agent during the history of the association.

In June 1980 the NATA national officers voted to recognize Mr. Burke for outstanding service to his country. The citation award described his service: "During the years 1970 through 1977 former Treasury Special Agent Paul Burke conducted dangerous but successful investigations in the State of California which led to the conviction of nationally important criminals. He was seriously injured on two occasions during the performance of his duties. In 1977 he was nominated for Treasury Agent of the Year."

Mr. Burke left Treasury service in early 1973 and was employed by the Polk County Sheriff's Office in Dallas, Oregon. He received rapid promotions and is currently the Commander of the Investigation Division. The Oregon sheriff's office funded a private pilot's license training for Mr. Burke so that he could use the county plane for investigation travel.

Sheriff William H. Berlin represented NATA in an award ceremony at the Polk County Courthouse on August 5, 1980.

This judgment will not automatically be applied to every former special agent entitled to relief. All persons who believe they are entitled to lost premium pay should communicate with NATA headquarters so that their claims may be filed.

### Second Class Citizens

## Carter Excludes BATF, Secret Service, Customs and CID From Benefits

By Executive Order 12171 signed on November 19, 1979, President Carter excluded all Treasury enforcement bureaus from the benefits of the Federal Labor-Management Relations Program. The exemption closely follows the restrictions placed on these investigators by President Nixon in EO 11491, and enforced by President Carter after he took office in January 1977.

In 1978 NATA sued President Carter contending that the exclusion of investigators from the rights enjoyed by other employees was not grounded on sensible reasons and was unconstitutional. Nixon had declared that each agency head could exempt employees if in his "sole judgment" the rights would endanger the national security.

Before the case could be appealed to the Supreme Court, House leaders assured NATA that the exclusion would be changed by the new Civil Service Reform Act. It was — but not by very much. The Act provided that the President himself would have to make the determination. Carter did just that in November of last year, excluding not only the Treasury bureaus but all intelligence agencies and the Drug Enforcement Administration. (Congress specifically excluded the FBI and the CIA.)

The exclusion prohibits investigators from being "formally" represented by an employee organization and prevents any negotiation between management and the associations. Investigators do not have any opportunity to negotiate a fair grievance system which would allow for impartial arbitration and can not elect to have dues withholding. However, all investigators in all agencies are permitted to belong to any association.

The BATF Office of Regulatory Enforcement is not exempted. These employees are formally represented by the National Treasury Employees Union (NTEU) which has negotiated contracts with BATF management to include dues withholding and arbitration. NTEU can not represent special agents and has been denied the right to legally represent individual agents.

The Treasury bureaus exempted are:

- The U.S. Secret Service.
- The U.S. Secret Service Uniformed Division.
- The Office of Special Assistant to the Secretary (National Security).
- The Office of Intelligence Support (OIS).
- The Office of the Assistant Secretary (Enforcement and Operations) (OEO).
- The Office of Criminal Enforcement, Bureau of Alcohol, Tobacco and Firearms.
- The Office of Investigations, U.S. Customs Service.
- The Criminal Investigation Division, Internal Revenue Service.



WILLIAM M. PACE  
Executive Director  
NATA

## Stress and the Special Agent

Recently, an instructor at the Treasury Special Agent School at Glynnco, Georgia, involved a "refresher" class in designating the factors that cause an enormously high rate of "stress" casualties among agents in the Treasury bureaus. He wrote the job situations down as the agents called them out, and after the blackboard was almost full he noticed that the word "criminals" was not among them — so he wrote it himself.

The experienced agents objected strenuously and argued that "criminals" and the danger associated with them do not cause emotional and anxiety disability cases among agents. Those factors are normal, a part of the job and are considered to be "healthy stress" factors. The agents had filled the blackboard with words and concepts meaning "contradictory instructions from supervisors," "favoritism," "unnecessary paperwork," "unnecessary layers of supervision" and scores of other management practices that Treasury Agents have complained about for years.

Emotional disability cases, and the associated hypertension and gastrointestinal ailments, usually are in direct correlation to the extent of management incompetence in certain districts. NATA has represented a large number of affected agents in the Falls Church, Virginia area during 1975-1978. During one unpleasant era, four out of five agents were discharged for permanent and serious emotional problems at one post of duty in a Southwestern state. NATA has in its files detailed accounts of these management practices amounting to hundreds of pages. Some of these accounts have been furnished to the Department of Labor's Office of Workers' Compensation Programs.

During the period that these agents were being harassed, none of them received any assistance from regional BATF personnel officers. In fact, personnel officers at Dallas and Philadelphia actively participated in driving six of them from the service on permanent disability pensions. The cost of this in dollars is staggering — the cost in human suffering and bitterness is too great to try to count.

We have noticed a definite improvement in recent months in one region (Southwest) and the national office. If attitudes do not improve in other districts and regions, we will tell you about it in detail.

### The Agent Comments

## The Special Counsel— a Continuing Saga

### Campaign Promises



Two of Jimmy Carter's main promises in the 1976 campaign were to reduce the complexity of government agencies by abolishing or consolidating them, and to improve the management of the Federal bureaucracy. Both of these promises appealed to the voters because the people instinctively knew how desperately they were needed, even if the bureaucracy didn't. There were an estimated 1,900 separate agencies when he was elected. (Estimates have to be used — no one could actually count them.) Current estimates place the number at around 2,000; thus, a total failure on that promise.

### Civil Service Reform Act

The "reform" of the bureaucracy appeared to be a different matter — the President's aides and Congressional committees did work hard on this. NATA has recently received the legislative history of the House and Senate work on the Civil Service Reform Act and it has 3,454 pages. Carter had personally mentioned the Fitzgerald case and assured all skeptics that any government employee who pointed out waste and favoritism would not be punished as Fitzgerald had been for ten years by the Air Force.

### The Rise of the Special Counsel

The "centerpiece" of the Reform Act, and Carter's mechanism for protecting honest employees, was the creation of the Office of Special Counsel in the Merit Systems Protection Board. The OSC was charged with guaranteeing protection for those employees who told the truth and to prevent "prohibited personnel practices" by management. He was given special powers to prevent transfers and to recommend sanctions against management personnel who willfully violated employee rights.

In spite of the glaring faults of the CSRA, NATA benignly supported the changes — mainly because of the creation of the Special Counsel. For the first time ever, employees who desired to improve the bureaucracy would have some protection from the entrenched incompetents without spending a fortune in legal fees. (The main fault, of course,

in the Act is the pay system for the Senior Executive Service and supervisory grades of GS-13 through GS-15, who are to receive "bonus" and "merit" raises. Who do you suppose will receive these raises — supervisors who tell the truth or those who don't?)

### The Fall of the Special Counsel

It looked good at first — very good. Patrick Swygert, an energetic, conscientious former prosecutor from Philadelphia was Carter's appointment as the first SC. Congress had appropriated a fair amount of funds to get started. The SC received 2,000 complaints within the first few months. An important case was needed on the front end to strongly assert the role of the SC.

Then a head-on collision occurred between Swygert on one side and the entrenched bureaucracy on the other, supported by Attorney General Bell. Swygert supported some deputy marshals at Atlanta who had been transferred to the boondocks throughout the country after alleging serious corruption and favoritism on the part of the U.S. Marshal. The marshal was a close friend of Bell. There you have it; the outcome was predictable and business as usual. The entire MSPB tucked tail and refused to support Swygert — ordered him to desist and reinstated the transfers. Thus ended a beautiful dream of efficiency and honesty in government. Swygert quit in "disgust" and went back to Philadelphia.

### The Interim

Mary Eastwood was appointed acting SC. The office ran out of money but did manage to staff a few field offices with lawyers and investigators. After the mauling received by Swygert, by this time no one was paying much attention to the SC.

### Enter "Public Integrity"

Tom Henderson, head of the Justice Department's Public Integrity Section, was nominated to replace Swygert. The *Federal Times* and the Senate Judiciary Committee immediately raised questions about Henderson's alleged soft pedaling of criminal wrongdoing charges against high-ranking federal officials, federal judges, and a three-star general. Henderson had been extremely harsh in the prosecutions of some penny-ante Pennsylvania State officials and some ex-Republicans in Maryland, but a federal grand jury foreman said that Henderson badgered and harassed the grand jurors when they asked pointed questions about financier Robert Vesco attempting to buy influence from the White House.

The Senate demanded case investigation files. The Justice Department refused to furnish the files. Question: In a Republic, what is in charge of the country? Answer: The Department of Justice.

Henderson has not been confirmed by the Senate to date.

(continued on page 4)

**The Special Counsel continued****Is the Show Over?**

At this point, several thousand government employees got up and left. This was where they came in. But it may be a double-feature. In July Ms. Eastwood filed disciplinary citations against SBA Administrator Vernon Weaver charging that Weaver and Paul Sullivan, Deputy Administrator, had transferred some old Republican state SBA directors to try to get them to quit so that some good Democrats could replace them. These were the first disciplinary citations filed by the Special Counsel. NATA will follow the SBA cases with a great deal of interest.

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Mileage allowances for private travel by government employees have been set at 20 cents, the maximum allowed by law. The Governmental Operations Subcommittee recently introduced H.R. 7072 to raise the mileage allowance to 25 cents and per diem rates to \$50 per day, \$75 in "high rate areas."

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**The Paper Shuffle**

NATA receives literally scores of complaints every month from members regarding the ever increasing paperwork burden being placed on Special Agents. The specific example from North Carolina requiring agents to send a carbon copy of their diary to the district office is only one example — there are other incidences almost as unnecessary in all districts.

Recently, nationally syndicated writer Jack Anderson described the effect the paper flood was having on the American people:

"Not too long ago, we Americans were distinctive throughout the world as a breed of self-starters, innovators, doers. Now we are becoming bound up in red tape — reduced to a nation of paper-shuffling petitioners, forever waiting for permission from some government office for our next step, continually putting aside the work of the world in order to fill out forms."

Each paper reporting requirement that a government official originates for employees, reduces the time that employee can perform the duties he is being paid to perform by the taxpayers. The official who concocts "good reasons" for paper reports that do not further the mission of the agency, is cheating the taxpayers. Requiring bundles of reports from employees is an ego mechanism for supervisors and a very expensive one that detracts from efficiency.

**NATA  
Litigation  
Report****Fifth Circuit Orders  
Attorney Fees to FBI Agent**

The FBI has "won" an appeal court decision involving the involuntary transfer of Special Agent Louis H. Bullard from Gulfport, Mississippi to Newark, New Jersey, but the Fifth U.S. Court of Appeals at New Orleans ruled that the District Court should "reconsider" its denial of lawyer fees to Agent Bullard.

The Court held that the FBI had a right to transfer Bullard to a "critically understaffed office in Newark," and that "the FBI must have flexibility in making transfer decisions in order to operate the agency efficiently." The opinion, written by Judge Homer Thornberry, held that the courts should do no more than make sure the transferee's "procedural rights are satisfied."

The agent's procedural rights were not fully satisfied and the court indicated to the lower court that all attorney fees should be paid by the government. Mr. Bullard had to hire an attorney to require the FBI to reveal information under the Freedom of Information Act that he needed for his administrative appeal.

In January 1978 Agent Bullard was charged with improprieties in guarding of a juror. The FBI, as part of proposed punishment, ordered his transfer to Newark. U.S. District Judge Harold Cox enjoined the transfer ruling that if a transfer is for punishment purposes, the transferee is entitled to a due process hearing. Agent Bullard remained at Gulfport while the FBI appealed to the Fifth Circuit.

Observers close to the case have notified NATA that FBI officials changed directions in the middle of the case — first contending that the Bureau had a right to transfer an agent solely for disciplinary reasons but later swearing that Agent Bullard was "critically needed" in Newark.

The decision may be appealed to the Supreme Court.

**Summary of NATA Litigation**

Currently NATA is representing members in the following litigation and claims: adverse action, removal from service, *Burke v. United States*; adverse action, suspension without pay for 30 days, MSPB; adverse action, removal from service, MSPB; adverse action and sex discrimination, MSPB, agency and EEOC, West Coast; grade classification appeals, OPM (3); grievance, agency; claims for disability pay or scheduled awards for job related injuries, OWCP (6).

**The Financial Situation****NATA Offers  
Membership Incentives**

NATA national officers, in an effort to increase membership, have voted to offer two attractive incentives to new members joining NATA by November 15, 1980:

\* Each new member paying dues for one year will receive dues credit expiring December 31, 1981. (The remaining time in 1980 will be free.)

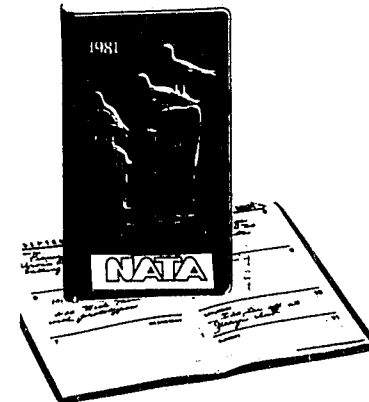
\* Each new member paying one year's dues post-marked by November 15, 1980, will receive a soft "leather" engraved, 128-page pocket organizer, appointment calendar book. Each double-page has a full week in view with plenty of space to record schedules. It is pocket-sized, 3 1/2" x 6 1/4", with a retail value of \$4.00.

**Current members renewing their membership will receive the pocket organizer if their 1981 dues payments are post-marked by November 15, 1980. Current members will be sent the usual dues statement within 30 days and are requested not to send dues payments until they receive a statement.**

W.L. Crumpton, NATA's National Treasurer, said that, "1980 has been a very expensive year for NATA due to the extra heavy litigation load." "Crump" explained that a deficit of about \$3,500 was met by private loans from individuals but that, "this money will have to be repaid and we won't know what the situation is until November or December."

National President Charles Speer said that the Executive Director and General Counsel had promised to represent four or five agents with very worthy causes but who were not members of NATA before the situation arose. He said these cases "have been expensive and will be more so before they are completed." President Speer said that, "each agent should make a personal choice whether or not to support this association and that every agent has been given plenty of opportunities to do that."

Mr. Speer explained the rules that will be strictly adhered to in the future: "We can not afford to prosecute a \$5,000 lawsuit just to gain one new member. It is not fair to the members who have supported NATA for several years to have the Association bankrupted by those who haven't. The Executive Director is authorized to conduct the affairs of the Association and is directed to give expert legal representation to members; he is not authorized to represent agents who were not members of NATA."



Any expenses incurred by the Executive Director in violation of these rules adopted by the National Officers will be declared void and will not be paid from Association funds."

W.M. Pace, NATA's Executive Director said that, "the rules adopted by the national officers will be strictly followed."

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Since the federal pay law in 1971, white collar workers have received ten pay raises totaling 73 percent. During the same time retirees have received 15 COLAs totaling 114 percent.

\*\*\*\*\*

Former BATF Acting Director John Krogman wrote to Senator S.I. Hayakawa that, "ATF recognizes that a licensee may maintain a private collection of firearms independent of the business inventory and dispose of such firearms without entering the transaction in the license records."

**WILLIAM M. PACE, Executive Director**

**Headquarters Secretary: Mrs. Joyce Griffin**

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**Monday through Thursday:**  
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## The Agents' Forum

Dear NATA:

I strongly urge continuation of the current editorial policy in *The Agent*. No degree of the "daylight" policy can be too great for BATF in its current state. Keep up the good work! I would, however, like to make a few comments generated by the article entitled "Internal Affairs" which appeared on page 12 of the June 1980 issue of *The Agent*.

Generally, the article was right on target. Specifically, however, it did not go far enough and missed two crucial points. First, the "new" Internal Affairs Program has a rotten foundation, and second, application of the program will be as biased as the former program (or lack of it) under the old Office of Inspection.

The "new" IA program was cooked up by Director Dickerson as a reactive response to a witch-hunting former state criminal prosecutor turned U.S. Senator who should have known better. The Director promised publicly to discipline Special Agents for "abuses." What is the legal definition, if any, of "abuse?" Is it a violation of law, regulations, manual orders, or current BATF policy? Or, is it as I suspect, whatever the NRA says it is at any given moment?

Like most Special Agents who have worked the streets, I have little compassion for the dishonest employee who with premeditation violates the law or regulations for personal gain. I urge Director Dickerson to vigorously pursue appropriate remedies to rid BATF of such personnel. However, I also call upon Director Dickerson to cease and desist from counter productive and demoralizing tactics of intimidation. Threatening discipline for something as vague as "abuse" insults Special Agents who are trained to reason in terms of concrete law, but, nevertheless, has its intended intimidating effect since those same Agents have little doubt as to what the Director really means.

The foundation of the IA Program is further weakened by regionalization. It is naive to think that the Regional Director of Investigations and his unofficial counterpart, the Regional Director of Internal Affairs, will not have a very cozy relationship, thus fostering biased initiation, conduct, and disposition of certain IA investigations.

Regarding bias in application, the IA is supposed to be free to pursue the big as well as the small. This freedom is needed since the fact of Regional Directors, SAICs, and other top bureaucrats who committed involuntary manslaughter, misuse of government credit cards while on personal travel, misuse of government vehicle for interstate golf outings, are well known by field agents, while incidents of Special Agents receiving thirty days off for a laundry drop enroute to the POD are known as well.

The IA finds itself in roughly the same position as ATF Criminal Enforcement in 1969 immediately after passage of the GCA of 1968. Criminal Enforcement's activities in 1969 did not produce justice for civilian defendants, nor will the "new" IA's activities produce justice for Special Agents in 1980. Any SA questioned by IA must assume that he will be subjected to a criminal prosecution, and should, therefore, respond appropriately.

Finally, it has been publicly announced that the IA will be "Pro-Active." This term defies accurate definition, but from all sources queried is synonymous with "fishing expedition." "Fishing expeditions" are improper in the criminal investigative area, and are even more reprehensible in the civil investigative field. Yet, it appears that insofar as employees of BATF are concerned, this type of heretofore prohibited conduct is now official BATF policy. The NRA while screaming about BATF "fishing expeditions" in the criminal area, will be delighted to learn about the Bureau's new program for its own troops.

To conclude, BATF has shown itself incapable and unwilling to clean its own house in a professional, unbiased manner. The IA should be taken from BATF and dissolved. Perhaps one solution is the creation of a real Office of Inspector General under main Treasury, a truly independent agency, to investigate allegations relating to all of the many agencies within the department.

/s/ Name withheld  
July 20, 1980

**The Agent Response: NATA may have to take some dubious credit for the "new" Internal Affairs system. For years we have insisted that the inspection service should be removed from enforcement management control lower than national headquarters. In fact, we have urged that no system will work efficiently and fairly until the inspection responsibility is removed from all Treasury bureaus and one division formed at Treasury headquarters. The "Treasury Inspection Service" should report directly to the Secretary or to a designated Assistant Secretary.**

**The current system seems to have been intended as a compromise — the Treasury Inspector General is to receive complaints and oversee all bureaus. The BATF Internal Affairs was alleged to be free of intermediate management influences. We have seen Mr. Wigrizer, the IG, be responsive to NATA complaints and in some cases be effective. However, the BATF IA office appears to be in exactly the same biased management controlled posture that the old Office of Inspection was in.**

**NATA is receiving complaints about the IA from every section of the country. NATA has recently filed an information with the Treasury Inspector General and the Attorney General regarding fraudulent claims amounting to several thousand dollars submitted by a BATF enforcement official. If action is**

(continued on page 7)

## The Agents' Forum continued

**not taken on that information, we will declare the current system a total failure and work to dissolve it. We will also file suit on behalf of the United States to recover the money fraudulently obtained.**

**But, we will not concede that our actions haven't improved. They had to.**

Dear NATA:

After reading three articles in your June 1980 issue of *The Agent*, I feel as though I must comment, being that I am an SA and have been a RAC, ASAIC, SAIC and served three years in Headquarters.

The IAS system is a very poor procedure to promote Special Agents. IAS has mostly promoted the younger agents and has discriminated against the older agents. This is because they know the older agents do not want to be supervisors and do not want to relocate their family in their last years with the BATF. It is also true that certain agents have been promoted by fraud and fiction in this system. This system promotes people for not making cases. The IAS is now causing serious problems between the supervisors and the agents. No agent wants to work on an investigation unless he is the case agent and the investigation is of the next higher grade.

I have found that people who set their own policies, with disregard for Headquarters and the agents, either have nothing to do or do not know what their job encompasses.

I also read "Dear Diary" and I am now of the opinion that the persons responsible for this act in North Carolina should report to the nearest mental hospital for a complete examination. I have heard of a lot of stupid acts in the BATF but this tops them all by far. Do the people in North Carolina just make their own rules without consulting Headquarters? My heart bleeds for the agents because I can imagine the problems this must cause. The manifold carbon copies of the diary are a complete breach of security and very possibly could cause the death of an agent, informer, witnesses, and members of their families.

Thanks NATA for a small amount of your time. Use any part of this letter as you wish.

/s/ Agent in the Midwest  
August 1980

Dear NATA:

I would like to see *The Agent* report on ATF enforcement priorities and investigative guidelines. I have been with ATF for ten years, and in that time span I have seen programs, projects and priorities change almost as predictably as the weather.

The big fiasco was the "Interdiction of Illegal Firearms Trafficking," (Interdiction). When one couples Interdiction with the Investigation Analysis System (IAS), you get one of

the biggest governmental boondoggles since the Volstead Act.

We are now getting geared up for the all new ATF National Firearms Enforcement Strategy to Impact on the Criminal Misuse of Firearms! This new snafu comes from the people who brought you Raw Materials, SCAD, SCEP, SEAR, ITAR, DOTAR, OMEGA, OCD, CUE and of course, interdiction.

Why can't ATF seem to get its act together??

I would also like to know more about the new ATF "contract system." It is my understanding that the newly created RDIs required all SAICs under their control to sign "production contracts," which outline how many cases of the various types will be made in each district. That also means that ATF is back in the numbers game. Many RACs that I know of, including my own, is requiring each agent at his POD to "enter into a contract." If you make the number of cases that you estimate that you will in a year's time, then you get a good evaluation. If you fall short of the goal, then the RAC has documentation that the agent didn't accomplish what he said he would.

/s/ Name withheld  
August 1980

**The Agent Responds: The all new program will be ATFNESICMF. That will slay them and appropriately so, because the criminal term "contract" began during Prohibition days. Al Capone issued contracts on some of his best friends — a forerunner of the modern day Internal Affairs program.**

**Seriously, NATA would like to know more about the new "contract" concept. Is it some sort of juvenile word game played by consenting but silly feeling adults; or is it a mock, supposedly serious written contract? We have received complaints about it from four states. Professional law enforcement officers do not make "contracts" concerning their work — they simply do their duty as the need arises but they are not contractually liable to produce defendants.**

**Defense attorneys and the Washington Post will have a field day with that one. When that happens it will be TASWGTHMGWTUTSC (That's All She Wrote and Goodbye to the Mental Giant Who Thought Up That Sort of Crap.)**

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The GAO has opened a nationwide toll free fraud line to receive tips of fraudulent claims by employees or citizens. The number: 800-424-5454. The GAO received 7,100 calls in 5 months.

Stalking the Elusive COLA**COLA "Raise" Up 7.7% ...  
Maybe? White Collar  
Pay Hike Set For 7.8%****Rep. Herbert Harris  
(Va.)**

At press time Congress was still debating whether to withhold the COL raise for annuitants and their survivors which was scheduled to appear in October 1, 1980, checks. The increase, if allowed, will be 7.7%. The Senate voted to kill the October raise but the House voted to delete the raise due next April 1 (1981). House and Senate members have both passed resolutions to make a one COLA raise per year adjustment on a "one time only" basis — thus, restoring the twice a year adjustments in 1982.

For annuitants who are hard put to make ends meet, there are several burning questions: Will the 7.7% adjustment be on October 1 or will there be a larger raise next April? If "twice a year" adjustments are abolished in favor of "once a year," what month will be adjustment be paid?

NATA is predicting that the October 1980 raise will not be withheld just before the November election, but that the April 1, 1981, raise probably will be. In that event the once a year adjustment could be made in mid-1981. Whichever way the coin lands — you lose!

NATA extends thanks to our friends in Congress who are still fighting hard to retain the twice a year adjustments — or to soften the blow to retirees as much as possible. They include Senators Mathias (Md.), Sarbanes (Md.), Stevens (Alaska) and Pryor (Ark.); and Congressmen Harris (Va.), Fisher (Va.) and Mica (Fla.). Representatives Herbert Harris introduced a House resolution calling for the retention of the present semi-annual COLA adjustment.

Meanwhile, White House budget estimates project a 7.8 percent hike in October for active duty white collar employees. Earlier estimates had placed the annual raise at 6.2 percent.

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The OPM has issued directives that no government agency may inquire into the "sex habits" of employees. The Civil Service Reform Act forbids inquiries into the non-job-related activities of federal workers.

OPM Grade Classification Appeals**Panagis Instructs On  
Security and Privacy**

NATA has received several inquiries regarding the dilemma faced by an agent who has appealed his grade classification based on work performed in sensitive investigations. How much can he reveal to the OPM? All of it, according to James J. Panagis, Chief of the headquarters Personnel Division, but within certain important procedural safeguards. NATA supports these procedures as being reasonable.

In a classification appeal from New York State, the Personnel Chief gave these instructions on August 7, 1980:

It is recommended that your classification appeal to the Office of Personnel Management (OPM) be processed in the following manner:

1. Provide OPM with the number of copies they have requested on all closed cases. Request that these copies be returned after review is completed. Copies are not to be retained by OPM.

2. State that all open cases can be reviewed at your office and that notes taken should expunge specifics, i.e., they do not reference names, suspects, organizations, etc. Discussion of the open case is also permissible provided notes taken do not reference specific elements of the case.

In discussing and providing information on investigations, please be advised that this is privileged Bureau information and should be accorded the privacy due such sensitive information. Please contact the Position Management Branch on 566-7311 if further assistance is required.

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The "Christian Voice" rated Congressmen on how they voted on "moral issues." Rep. John Buchanan, A Baptist minister rated only 29%; Rep. Robert Edgar, a Pennsylvania Methodist minister scored only 8%; but Rep. Robert Drinan, a Massachusetts priest scored zero. Guess who rated among the highest? Rep. Richard Kelly, R-Fla., scored 100% — he also admitted taking \$25,000 in the Abscam incident.

**POWER OF ATTORNEY  
DESIGNATION OF REPRESENTATIVE**

I hereby designate \_\_\_\_\_

to represent me in my appeal, complaint, claim, inquiry, or grievance to my own agency, the Office of Personnel Management, the Merit Systems Protection Board, or any other agency, body, group or court. The address of my representative-attorney is:

I hereby waive any Privacy Act or other privileged communications rights and request my representative to inquire, receive reports (including medical reports) and represent me.

I reserve the right to cancel this designation at any time in writing.

DATE \_\_\_\_\_

PRINTED NAME AND JOB TITLE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

HOME ADDRESS AND PHONE NUMBER \_\_\_\_\_

**NOTICE OF NATA POLICIES**

The Agent will be published quarterly. All paid members will receive all copies at their home address. One issue per year will be mailed to all BATF Posts of Duty. The Secretary of Treasury, Treasury Director of Personnel and selected members of Congress routinely receive all issues.

NATA National Officers have directed the Executive Director to be solely responsible for the contents and distribution of The Agent. They do not review the contents of The Agent before publication.

Any BATF official will receive space in the paper for reply or rebuttal of any NATA statement provided the response is written in plain non-gobbledegook English.

NATA can not represent individual members unless they were paid members before the incident arose. The member must submit a Designation of Attorney form. Dues are collected on a calendar year basis (January through December). Appropriate credit may be taken by agents joining late in the year.

The Executive Director will accept personal process and jurisdiction in the U. S. District Court for the Northern District of Mississippi. BATF, or any individual official thereof, will be sued if necessary, in the U.S. District Court at Washington, D.C. or any other District Court more convenient to the parties.

**More Chiefs than Indians: A recent survey in Washington revealed that there were more GS-18s than GS-1s in the Federal government.**

**Annual Dues  
(January - December)**

Active ..... \$25.00

Former or  
Retired ..... \$ 7.50

**Agents Joining Now  
Will Be Paid Up  
Through December 1981.**

**APPLICATION  
NATIONAL ASSOCIATION OF TREASURY AGENTS**

First Name (MI) Last Name  
HOME MAILING ADDRESS: (Mail will be addressed to you at this address) AGENCY AND POST OF DUTY (City)

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Home Telephone No. (AC) \_\_\_\_\_ NATA  
Office Telephone No. (AC) \_\_\_\_\_ P. O. Box 112  
Aberdeen, Miss. 39730



NATA Supports Them

## Congress Adopts Code of Ethics For Government Service

The House of Representatives and the U.S. Senate agreed to a Code of Ethics for government office holders and employees during the 85th Congress. The first paragraph contains a concept that NATA has been promoting for several years. A citizen's loyalty, as General MacArthur said, should be to "duty, honor and country" — not to any particular bureaucrat or any agency.

The Agent has had the unpleasant experience of being acquainted with several BATF officials who insisted on personal loyalty to them rather than to principles. Sometimes there may not be a conflict and in that case the official should be supported with enthusiasm, but if there is, NATA will attempt to stick with MacArthur, truth and integrity.

Legions of government employees have been discharged, demoted, or harassed for supporting the principles in the first paragraph of this new code. Several decades were required to get this concept included in a government service code of ethics but the important question now is: How do we protect the rights of an employee who puts his loyalty in the "highest moral principles" above that of a bureaucrat? A part of the answer is "the daylight process," but only part. A satisfactory solution may be a decade away.

### CODE OF ETHICS FOR GOVERNMENT SERVICE

Any Person in Government Service Should:

**Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.**

Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest efforts and best thought.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances, which might be construed by reasonable persons as influencing the performance of his governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his government duties.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.



National Officers  
CHARLES E. SPEER - President  
SAM TURNBULL, JR. - Vice President  
WILLIAM L. CRUMPTON - Treasurer  
WILLIAM M. PACE  
Executive Director

### THE AGENT

P. O. Box 112  
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Address Correction Requested

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FIRST CLASS MAIL

PITTSBURGH, PA., October 4, 1980.

Subject: 3 October issue of Gun Week, stories therein

DEAR SENATOR BAYH: It appears, from the short piece dealing with still more Senate hearings into BATF operations, that Saint Richard, The Patron Saint of All Lying Bureaucrats is at it again, or shall I say, "Still".

"BATF has changed it's policies", he says. Indeed, are these changed policies the same ones that he previously defended as right, proper, and fully in accord with existing federal law. If so, then why change anything.

Could it be, I suspect that that is exactly the case, that he lied before, his lies are a matter of Congressional Record, and that in this case, he lies still.

How long, I wonder, will The Congress of this country put up with the maudlin ramblings of such "Dirt Bags" as this Davis, for the fiasco has gone on for far too long, and part and parcel of this fiasco is the existence of GCA'68, which as I recall, you were a strong supporter of, that and other examples of the Anti-Gun Syndrome, a syndrome that has, shall we say, come home to roost. As to the continued lies of Richard Davis, and Co., when might The Dept. of Justice be expected to take action against this continuous violation of federal law, in particular, Title 18, U.S. Code, Section 1001. Why also has such action not already been undertaken, and in this regard, where in hell has The Senate Judiciary Committee, and its various sub-committees been, while all this crap was flying about the "Hallowed Halls of The Congress."

The other matter is mention of an amendment by Senator Laxalt concerning funding for BATF "Research" into Chemical Taggants. \$800,000 had been appropriated to those bums, when \$0.80 expresses a monetary value that is considerably greater than the entire agency merits, including the vaunted Saint Richard.

I say sir, let's have an end to this. Let's have the legs cut from under BATF, misbegotten outfit that it is, and let's have the cutting done with a very dull knife. This "Comedy of Errors" has gone on for entirely too long.

In appreciation of your attention.

Yours truly,

ALAN SCHULTZ.

PITTSBURGH, PA., October 11, 1980.

DEAR SENATOR BAYH: As a result of a story in a recent issue of Gun Week, I wrote to you several weeks ago, commenting on the 15 Sept. hearings that your sub-committee held on allegations of BATF abuses. Actually the abuses are much more than "Alleged", they are a matter of historical fact, as you well know. In this letter, no reply has been had as of this date, I also commented on the last remaining of "The Davis Boys", that being Richard, also poor Rex having been conveniently put out to pasture.

Earlier this week, I received the latest copy of NRA/ILA Reports From Washington, which deals with your hearings in greater detail. Suffice it to note that the above mentioned detail is a continuing rendition of something that Mr. Richard Davis, who seems to have overall responsibility for BATF actions and activity has shown great skill at, that being lying. Sure, there is much talk of "Reform", but without the specification of the law, these "Reforms", if they in fact exist at the pleasure of the current director, a political appointee. What will the next guy feel like.

Bad as what both the BATF and let's not forget the fact of Dept. of Justice involvement may be, and without getting bogged down in a discussion of GCA'68 itself, which is a prime example of the consummate failure of congressional wit, courage and common sense, I flatly state that the existence of the present situation is the most serious possible indictment of The Congress (House & Senate). The abuses that were discussed last year, earlier this year, and during your recent hearings are most definitely not something that yesterday sprung full blown as might be the case with some evil genie. They have been an ongoing thing, that by the way started with some low comedy in December 1968, on the date that the most famous of Congresses illegitimate children (GCA'68) went into effect. With the passage of time, the thing has gotten worse, and The Congress (House and Senate), unless they, like our Genie were vacuum packed, were not unaware of the goings-on.



Instead of acting in a responsible and lawful manner, the congress is supposed to pay attention to the actions of the agencies it creates and or funds. The Congress stuck its collective head in the sand, or god knows where, it pontificated, it waxed and waned, it stalled and stammered and stuttered, all while the Gestapo Squads roamed, and while it continued to fund their antics. Finally, at a very late date, The Congress, in what passes for its August Wisdom condescends to take a passing look at what it has been a party to, before, during and after the fact. Hurrah, but what of the lives that have been ruined, and what of the fact that the current inquiries may well turn into the usual Washington White-Wash. I submit sir, that the only reason for any action at all is not due to The Congress having grown some feeling of concern for the rights of the people. I believe that it is worried about the possibility of some power mad bureaucracy (BATF) or the bureaucracy in general completely usurping its powers, and prerogatives. I question if you people give a tinkers damn about the rights and the wrongs. I do submit that you all are a little worried about perpetuating yourselves in office, so you might even be willing to sacrifice some trash bureaucrats. That might help a little, but I wonder if you all really have the guts to face the problem, which is the need for flat repeal of GCA'68, as well as the passage of proper legislation, coupled with the curbing of the bureaucracy. Do you understand, and are you all capable of what is needed. Your answers would prove most interesting, I submit.

ALAN SCHULTZ.

1334 So. Webster St.  
Kokomo In 46901  
October 11, 1980

The Honorable Birch Bayh  
United States Senate

Dear Senator

I appreciate the inquiry into the abuses of authority practiced by the Bureau of Alcohol, Tobacco & Firearms. The "nit picking" harassment of citizens, dealers and collectors bears a striking likeness to the activities of the Gestapo of Nazi Germany.

John W. Kerlin  
JOHN W. KERLIN

JOHN W. KERLIN  
1334 So. WEBSTER  
KOKOMO IN.

CERES CHAMBER OF COMMERCE,  
CERES, CALIF., October 22, 1980.

NATIONAL RIFLE ASSOCIATION OF AMERICA,  
Washington, D.C.

DEAR MR. GARDNER: We are writing to bring your attention to the case of Gary and Linda Ball, merchants and respected citizens of our town, who have been accused by the Federal Bureau of Alcohol, Tobacco and Firearms of violations of gun laws.

As the governing board of the Ceres Chamber of Commerce, we wish to attest to the quality and character of the Balls. Since before the time they began their family business, B.&K. Hardware, with limited resources, their efforts in regard to community betterment have been notable.

Gary Ball has displayed leadership and responsibility in the Chamber of Commerce where he has served twice as president. Besides promoting the usual concerns of business and industry, he has been a prime mover for a number of years in our annual Harvest Festival. This festival entails a year-round coordination of many organizations, government bodies, and volunteer workers of all ages, and provides much benefit to the community.

Above all, Mr. Ball has evidenced a respect for the law and a support of local law agencies. He has, on several occasions, initiated the purchase of needed equipment for the Ceres Police Department and the Ceres Fire Department. He was also the instigator of the Chamber's Merchant Alert program with the local police which has been of great benefit in apprehending shoplifters and bad check "artists".

Both of the Balls have displayed their eagerness to promote wholesome activities for local youth. They have spearheaded an effort requiring many months of steady dedication that has saved the community's swimming program when public funds became unavailable.

These two young people, by their examples in business, family and social life, through ideas, time and labor, and by their basic integrity, are an asset to our community. We feel their arrest and the charges against them are a form of harassment against upstanding citizens and business people, and constitute an injustice. We further feel that they are supremely worthy of our support and hope you will find you can give your attention and assistance to their case.

Yours very truly,

JOHN H. BAILEY, D.D.S.,  
President, Ceres Chamber of Commerce.

### PART III.—BIBLIOGRAPHY

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#### GUN CONTROL AND THE SECOND AMENDMENT

(By Earleen H. Cook, Business and Social Sciences Librarian, The University of Texas at Arlington, and Joseph Lee Cook, Assistant University Librarian, Mary Couts Burnett Library, Texas Christian University)

#### INTRODUCTION

For many years the issue of gun control in the United States has raised the emotional response of the public. Assassinations, both attempted and successful, of the past seventeen years have provoked advocates both of control and non-control to speak out with the same fervor as the pro and anti-abortionists.

This survey of the literature presents a selection of publications since 1960 which, hopefully, will assist the reader in a review of both sides of a most controversial topic in the United States.

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