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BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (BATFE): GUN SHOW ENFORCEMENT (PART I AND II)

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (BATFE): GUN SHOW ENFORCEMENT

(Part I)

WEDNESDAY, FEBRUARY 15, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 4:04 p.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chair of the Subcommittee) presiding.

Mr. COBLE. If our witnesses could please take their positions at the witness table.

Good afternoon, ladies and gentlemen. This is a bit irregular procedurally. So we'll all know where we are, Mr. Scott and I had planned to mark up our Second Chance bill, but there is not a working quorum nor a reporting quorum here. In the event that the requisite number does appear, we will suspend hearings very briefly on this matter, and then we will mark up the Second Chance—well, we've got a working quorum. We don't have a reporting quorum.

We don't have a reporting quorum yet, so we will suspend hearing on this, and then mark up our Second Chance, and then resume this.

Now, for the information of everybody here, there are votes scheduled at 5:30. If we are not able to complete this hearing at the 5:30—when the 5:30 bell rings, we will go vote and return and complete the business, hopefully before too late.

Today, ladies and gentlemen, on Crime, Terrorism, and Homeland Security, we convene a first in a series of oversight hearings on the enforcement operations of the Bureau of Alcohol, Tobacco, Firearms—popularly known as "ATF"—and Explosives at gun shows. Today's hearing will focus on ATF's operation in the Richmond, VA, area between May of 2004 and August of 2005. Testimony from today's hearing will detail allegations that these operations may have overstepped ATF's core mission.

Now, I want to make it clear, we're not here to hang anybody today, but in all candor, as I have read some of these allegations, it does appear that maybe the ATF activity may have risen to the threshold of being heavy-handed. Don't know that for a fact. We

will hear from them subsequently after the President's work period is—President's Day work period is concluded.

The operations in question covered eight gun shows and were conducted in conjunction with the Virginia State Police, the Henrico County Police Department, and the Richmond Police Department. According to the Virginia State Police, these operations were intended to reduce the number of firearms being purchased and transferred to prohibited persons who may have been involved in criminal and/or gang-related activities.

While we support these efforts, ATF reports that 206 participants were stopped and interviewed while it confiscated firearms from another 50 participants. Although most of the firearms were ultimately returned, the purchasers were notified via official letter from ATF that a person may have knowingly made a false statement to a firearms dealer, a crime which is punishable by imprisonment for up to 5 years, and were ordered to appear at a local ATF office to discuss their transactions. In addition, the letter explained that failure to appear could result in a Federal arrest warrant being issued for the alleged charges.

A copy of this letter is on display in the hearing room and will be made a part of the record.

In addition to stop-and-seizure operations, ATF also implemented full-scale residency checks. Although ordinary residency checks simply require a driver's license and another form of matching identification, residency checks for these shows, it appears, were much more extensive. Full-scale residency checks required uniformed law enforcement to visit the address of every purchaser from Richmond or Henrico County attempting to purchase a gun and ask for a full description of the individual attempting to purchase the firearm, where he or she worked, how many firearms the potential purchaser owned, and in some instances, if there were any concerns about the person in question purchasing a firearm. If no one was at the listed address, a neighbor was interviewed.

In order to conduct full-scale residency checks, 49 offices and agents were assigned to one show alone, which may constitute an excessive law enforcement presence. These operations netted 10 firearm violation convictions, six other pending charges, and an additional 16 convictions for other criminal violations.

Today's witnesses will testify with firsthand and expert experience about the impact of the ATF's operation so that we may evaluate their efficiency and effectiveness. Today's hearing, I repeat, folks, is not an indictment of the ATF, and we support the ATF's efforts to keep illegal guns off the streets and out of the hands of criminals.

In addition, the hearings are not an attempt to impugn or diminish the reputation or dedication of the ATF nor its agents. These allegations, however, are very serious and merit the scrutiny of this Subcommittee.

I look forward to hearing our witnesses' testimony and hope that it can shed some light on the allegations we have heard concerning ATF's gun show operations in Richmond. For many law-abiding gun purchasers, this was, I am told, not a pleasant experience, impacting friends, families, and in some cases, professional reputations.

Now, I notice, before I recognize my good friend from Virginia, the Ranking Member, that we do have a reporting quorum. Do we not, Mr. Parliamentarian? So let us suspend momentarily, and then we will mark up the Second Chance bill.

[Whereupon, at 4:12 p.m., the Subcommittee proceeded to other business and reconvened the hearing at 4:14 p.m.]

Mr. COBLE. I am now pleased to recognize the Ranking Member, the gentleman from Virginia, Mr. Bobby Scott, for his opening statement.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I want to express my appreciation to you for holding this hearing, due, at least in part, I believe, to my request that you do so. I was contacted by a constituent who expressed his concern about media and other reports of excessive and abusive investigative tactics by the ATF and other law enforcement agencies during a gun show held near Richmond, VA. He asked that I look into the matter because I was a Member of the Judiciary Committee which had oversight responsibilities of ATF and other federally funded activities of law enforcement officials involved, and we requested this hearing.

As we are likely to hear from witnesses today, there are serious allegations about abusive practices, including racial profiling, coercive interrogation tactics, actions tantamount to arrest without probable cause, failure to apprise rights against self-incrimination, and more. Clearly, the ATF form letter that has been displayed raises serious questions about the agency's enforcement tactics in cases connected with the Richmond Gun Show and other enforcement actions in which it was used.

And, Mr. Chairman, has this letter been entered into the record? It has? Okay.

Mr. Chairman, this issue is not about gun control. You and I have different views about that issue, but there are serious allegations about the right of law-abiding citizens exercising their rights. Some obviously want to change the law, and with gun shows I think a lot can be done. But until the law is changed, the law is the law. And so we have to look at these allegations as they affect law-abiding citizens.

Reports indicate that there was a large number of law enforcement officials—some accounts suggesting there may have been as many as 450, others suggesting 50 to 70—devoted to an effort to address illegal straw purchases of guns. Preliminary reports indicate that 13 arrests related to straw purchase allegations. It is not clear exactly how many have been convicted or what happened with those arrests, but there is a way to have a sting operation that's legal. This dragnet, apparent dragnet effort is not the way it ought to be done.

My interest is to investigate this matter to determine whether or not there's evidence of abusive investigatory or other enforcement tactics, and if so, to work with ATF and other agencies involved to see how the practices can be stopped and that proper procedures can be implemented to prevent occurrences in the future.

We know how to run sting operations legally. You have to show probable cause, and it can be done. But you ought not just stop people without probable cause and without an indication of guilt.

If, on the other hand, there are no problems, I will be pleased to see that the actions of the ATF and other agencies have been vindicated and that the allegations turned out not to be true. However, from media reports and the concerns expressed by persons attending or hearing about the Richmond Gun Show enforcement activities, even if the actions are found not to be improper, we certainly have a problem with appearances that need to be worked on relative to how ATF and other law enforcement officials carry out their responsibilities.

So, Mr. Chairman, I look forward to the testimony of our witnesses and working with you and the ATF on addressing the problem on how to avoid the appearances of impropriety and how to enforce the laws that need to be enforced in a way that's consistent with our Constitution.

Mr. COBLE. I thank the gentleman from Virginia, and I say to each of the Members, I appreciate you all being here, and all Members' opening statements will be made a part of the record.

Permit me to revert to the markup momentarily. I think I failed to note that there was, in fact, the presence of a reporting quorum. There were at least 10 Members here at the time we did that.

It's the practice of the Subcommittee to swear in all witnesses appearing before it, so if you witnesses would please stand and raise your right hands.

[Witnesses sworn.]

Mr. COBLE. Let the record show that each of the witnesses answered in the affirmative, and you may be seated.

In addition to the witnesses, we also welcome those in the audience indicating, obviously, your interest in this matter.

We have four distinguished witnesses with us today. Our first witness is Ms. Annette—is it pronounced "jealous"? Gelles, hard "G"—Annette Gelles, owner of Showmasters Gun Shows, a family-operated business. Ms. Gelles has successfully managed the company for the past 10 years, averaging approximately 15 shows per year. Ms. Gelles has a reputation for running a reputable business for the legal sale of firearms as well as educational, historic, and rare related items. She was the operator of the Richmond Gun Show under consideration today at this hearing. Ms. Gelles received her Bachelor of Science in biology from the University of Pittsburgh at Johnstown.

Our second witness today is Mr. James Lalime—is that the correct pronunciation, Mr. Lalime?—a gun salesman from Colonial Heights, VA. Mr. Lalime has been working for a gun dealer for the past year. He is a frequent attendee of gun shows and was present at last year's Richmond Gun Show, when he was questioned by ATF agents and a Virginia State trooper.

Our third witness is Mr. John White, who is the owner of The GunSmith in Lyndhurst, VA. He also participated in the Richmond Gun Show being examined by today's hearing. Mr. White is a retired law enforcement officer with nearly 30 years of service in the Commonwealth of Virginia. He served as a sergeant with the Albemarle County Police Department, Patrol and Investigations Division. Previously, he served on the Federal Organized Crime and Drug Enforcement Task Force as a Special Deputy U.S. Marshal.

Mr. White received his law enforcement certification in 1980 from the Central Shenandoah Criminal Justice Training Center.

Our final witness today is Ms. Suzanne McComas, a licensed private investigator. Previously, she worked as an on-air consultant for Fox News, Court TV, and MTV. Additionally, Ms. McComas worked as a cold case homicide investigator for "America's Most Wanted."

Now, I noticed—is Mr. Forbes—I think he was here. Mr. Scott, I say to you there is a bevy of Virginia citizens in the hearing room today, so you need to be on your best behavior. I don't know whether in your district or not.

Mr. SCOTT. That's hard to do, Mr. Chairman.

Mr. COBLE. But it's good to have you all here, folks. Let me reiterate what I said earlier. There is with certainty a vote that will come down at 5:30. If you all could comply with the red light that appears before you, when that red light appears, the ice on which you are skating is thin. That means your 5 minutes have expired. There will be an amber light that will appear, illuminate, telling you you have 1 minute to wrap up. So if you all could comply with that, we would be appreciative.

And, Ms. Gelles, we will start with you. If you will activate your mike, yes, and pull it closer to you.

TESTIMONY OF ANNETTE GELLES, OWNER, SHOWMASTERS GUN SHOWS

Ms. GELLES. All right. Mr. Chairman, my name is Annette Gelles of Showmaster Gun Shows. I would like to provide a brief statement concerning the events surrounding the Richmond Gun Show August 13-14, 2005, at the Richmond International Raceway.

By way of background, I have been the sole manager and proprietor of Showmasters for 10 years. Showmasters is a family-owned business that began as Old Dominion Shows in 1971. My father and mother began the Roanoke Valley Gun Show and Old Dominion Gun Collectors Society 34 years ago. Over the years, we have produced thousands of shows in Virginia, West Virginia, and Maryland.

We are a family-oriented business with a conservative customer base. We allow no profanity, pornography, explosive or smoke devices so that the show is appropriate for families with children. Many of the exhibitors are retired or active-duty military or law enforcement. Many are just average citizens—hobbyists, knife collectors, coin collectors, holster manufacturers, booksellers, and police suppliers.

To ensure the public and exhibitors are safe, we check the guns at the door to make sure that they are inoperable, and we tie them. We also make all exhibitors tie their guns. We provide security for 24 hours.

Mr. COBLE. If you will suspend, Ms. Gelles, you say "tied the guns"?

Ms. GELLES. Yeah, we have cables that we provide, that I give to my security, and we check all the guns to make sure they're unloaded and then tie them so they don't work.

Mr. COBLE. I see. I'm with you.

Ms. GELLES. And we make all the exhibitors do that, too.

ATF and other law enforcement personnel have always attended the shows. Not in great numbers like in the August show, but we would recognize them, one or two walking through as customers, and sometimes, I'm sure, as investigators on official business. They are usually friendly, professional, and not aggressive toward the public or exhibitors.

However, at the Richmond Gun Show on August 13 and 14, 2005, at least 45 law enforcement officers including ATF, Virginia State Police, Henrico County Police, and Richmond City Police were assigned to the show. These officers were acting under ATF's direction and were present in the building on Saturday, August 13, 2005. According to Brian Swann, the Acting Resident Agent in Charge with the ATF Richmond area office at the time, and Donna Tate, who's the Virginia State Police in charge of the gun show's background checks, this was an ATF/Virginia State Police Task Force. I was told by two uniformed Henrico County Police officers that there were at least 14 other Henrico County Police that were present on Saturday in plain clothes.

This enormous law enforcement presence was reflected throughout the weekend. Sixty-six marked and unmarked law enforcement vehicles were on the lot at 10 a.m. on Sunday morning. The numbers of Henrico County Police at the main entrance before the fence fluctuated all day, but on average there were two or three vehicles at all times. Four hundred Henrico County Police and Richmond City Police were assigned "in the field" to assist at the show. I was told that there were a total of 475 Henrico County and Richmond City Police officers.

Mr. Chairman, you might ask the purpose for this operation. Was it explained to me as the show promoter? It was not. Instead, here is what I observed: People were approached and discouraged from purchasing guns. Before attempting to purchase, they were interrogated and accused of being in the business without a license, detained in police vehicles, and gun buyer's homes were visited by police, and much more.

An example of what happened is as follows: One individual was simply pulled aside from the table in the middle of a purchase—he actually was standing at the table doing the paperwork, and an ATF agent came up to him and said, "What do you want to buy that gun for?" And then the gentleman tried to ignore him, and the agent said, "You need to step over here." And he said, you know, "I'm an ATF agent. You need to step away from the table. What do you want to buy that gun for? You have no business with that gun."

All weekend long people were interrogated in a similar manner at the table in the concession area just outside the ATF Command Post exit door.

Every person who tried to buy a gun at the gun show had a residency check done, according to Special Agent Swann. The residency check consisted of having a marked police vehicle sent to the purchaser's home to check if the person trying to buy a gun actually lived where their identification indicated, usually a Virginia driver's license and/or another form of identification with a matching address. At this point, the purchaser had not yet been run through the background check and, therefore, there was no evidence—there

was no evidence present that would indicate the identification presented was correct or incorrect, and no way to ascertain if the individual had a criminal background check or a criminal record.

As for any real evidence of lawbreakers at the show, here is what we know so far. Two persons with warrants were arrested—I'm sorry. Two persons with warrants for arrest were identified by NICS, just as they would have been if BATF had not been there. Normally, Virginia State Police are assigned to the show and they'll arrest the individuals. This time, only one got arrested, and the other one left because of the delay of the residency check.

Mr. COBLE. Now, your time has expired. If you could wrap up, Ms. Gelles.

Ms. GELLES. All right. What was achieved at the show was it devastated my public attendance. Normally I'll have 4,000 people; 2,000 people came, which cost me about 14,000 that show. The next show, again, I only had about—I had less than 2,000—1,800 at that show and it cost me another 14,000. And we believe it's because of all the publicity of this event.

So it's had a great impact on me. It also had a large impact on our exhibitors, at least 300,000, because people didn't want to bring in guns, and people didn't want to come in with all the police in the parking lot. And basically what I would like to know is what's—how is it going to be prevented again.

Thank you.

[The prepared statement of Ms. Gelles follows:]

PREPARED STATEMENT OF ANNETTE GELLES

Mr. Chairman my name is Annette Gelles of Showmasters Gun Shows. I would like to provide a brief statement concerning the events surrounding the Richmond Gun Show held on August 13–14, 2005 at the Richmond International Raceway.

By way of background, I have been the sole manager and proprietor of Showmasters for 10 years. Showmasters is a family owned business that began as Old Dominion Shows in 1971. My father and mother began the Roanoke Valley Gun Show and Old Dominion Gun Collectors Society 34 years ago. Over the years, we have produced thousands of shows in Virginia, West Virginia, and Maryland.

We are a family oriented business with a conservative customer base. We allow no profanity, pornography, explosive or smoke devices so that the show is appropriate for families with children. Many of the exhibitors are retired or active duty military or law enforcement personnel. Many are just average citizens—hobbyists, knife collectors, coin collectors, holster manufacturers, booksellers, and those offering police supplies and accessories.

To ensure the public and exhibitors are safe we check guns at the door to make sure none are loaded and the guns are tied so they are inoperative as they enter the show. We also have exhibitors tie their guns so they are inoperative. We provide security during public hours and through the night.

ATF and other law enforcement personnel have always attended the shows. Not in great numbers like the August, show but we would recognize one or two walking through the shows, usually as customers, but I am sure sometimes conducting official business. They are usually friendly, professional, and not aggressive towards the public or exhibitors.

However, at the Richmond Gun Show on August 13–14, 2005, at least 45 law enforcement officers including ATF, Virginia State Police, Henrico County Police and Richmond City Police were assigned to the Show. These officers were acting under ATF's direction and were present in the building on Saturday August 13, 2005. According to Brian Swann, Acting Resident Agent in Charge (A/RAC) with the ATF Richmond area office at the time, and Donna Tate, Virginia State Police (VSP) this was an ATF/Virginia State Police Task Force. I was told by two uniformed Henrico County police officers that at least fourteen Henrico County Police were present on Saturday in plain clothes.

This enormous law enforcement presence was reflected throughout the weekend. 66 marked and unmarked law enforcement vehicles were on the lot at 10:00 AM

on Sunday morning. The numbers of Henrico County Police at the main entrance before the fence fluctuated all day, but on average there were two to three vehicles at all times. 400 Henrico County Police and Richmond City Police were assigned "in the field" to assist officers at the show. I understand that there are a total of 475 Henrico County and Richmond City officers. Mr. Chairman, you might ask if the purpose for this operation was explained to me as the show promoter. It was not. Instead, here is what I observed. People were approached and discouraged from purchasing guns, before attempting to purchase they were interrogated and accused of being in the gun business without a license, detained in police vehicles, and gun buyer's homes visited by police and much more.

An example of what happened is as follows: One individual was simply pulled aside from a table in the middle of a purchase and asked by an ATF agent, "What do you want to buy that gun for?" All weekend long people were interrogated in a similar manner at a table in the concession area just outside the ATF Command Post exit door.

Every person who tried to buy a gun at the show had a residency check done, according to Special Agent Swann. The residency check consisted of having a marked police vehicle sent to the purchaser's home to check if the person trying to buy a gun actually lived where their identification indicated (usually a Virginia Drivers License and one other form of identification with a matching address). At this point, the purchaser had not yet been run through the background check and therefore no evidence was present that would indicate the identification presented was incorrect and there was also no way to ascertain if the individual had a criminal record.

As for any real evidence of lawbreakers at the show, here is what we know so far. Two persons with warrants for arrest were identified using NICS, just as they would have been if BATFE had not been there. Normally, the Virginia State Police that are assigned to the show arrest these individuals. One was arrested and one left the building before he could be arrested because of the delay created by the ATF's residency check procedure. We have filed a FOIA request with ATF for more information, but they have yet to release anything substantive to us.

What ATF did achieve was to devastate attendance at the show. Average public attendance is 4,000 persons at the Richmond Gun Show at Richmond International Raceway. I had less than 2,000 in public attendance during August 13–14, 2005. We charge $7.00 for admission and that means we lost about $14,000 in admission charges. The November show also had less than 2,000 in public attendance, we strongly believe due to the fears of law-abiding citizens being unnecessarily monitored by their government. The November show usually has 4,500 to 5,000 in public attendance.

The impact on exhibitors was much greater. It is difficult to put a dollar amount on the losses experienced by exhibitors because some sales are as much as $70,000 for one gun or $500 for another. However, we estimate their losses well above $300,000. The good will that exhibitors had established with the community as a safe and responsible way for citizens to sell their guns was destroyed that weekend by the overt police and undercover law enforcement presence. Many exhibitors told me that if this were to happen again that they would not be back.

The ATF / Virginia State Police operation was methodical, systematic, prolonged, and vast. Scrutiny should be placed on why these officers were sent out in imposing numbers to do an operation that was of questionable legality, and certainly offensive to our constitutional freedoms. I want to say that well prior to this chain of events, I personally met with the Special Agent in Charge of the Washington Field Division, and offered, along with my colleague, Steve Elliott of C&E Shows, to work with ATF in a mutually respectful and professional way. To ATF's credit, they followed up on some of our positive suggestions. We believed that we were on the right track to an appropriate and harmonious relationship with the Bureau. I would still like that relationship Mr. Chairman. I am not interested in interfering with their lawful enforcement duties. I respect and honor the sacrifices that many law enforcement officers make on a daily basis for our citizens. However, I found that growing up in a relatively small community that the law enforcement officers that were most honored and highly regarded are those who respect and honor the privacy, constitutional, and property rights of the citizens they are serving. ATF needs to account for what happened, explain to this committee why it will not be repeated, and commit itself to working with the trade for the mutually shared goal of safer communities.

Mr. COBLE. Thank you, Ms. Gelles. And, incidentally, folks, when we're cutting you off at the red light, we have examined your writ-

ten statements. We're thoroughly familiar with them. They will be re-examined. So don't think we're shucking you aside.

Mr. Lalime?

TESTIMONY OF JAMES LALIME, GUN SALESMAN, COLONIAL HEIGHTS, VA

Mr. LALIME. Yes, sir, thank you. Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is James Lalime, and I live in Colonial Heights, VA. It is a great honor for me to be here today at this oversight hearing on the gun show enforcement. I am currently employed by a Virginia gun dealer as a salesman and was present at the Richmond Gun Show August 13 through 14, 2005. As an avid gun enthusiast and shooter, I usually attend as many gun shows as I possibly can. I decided to attend the Richmond Gun Show to see if I could sell a couple of firearms and some parts that I had. Had I known what was going to transpire, I would not have attended the show.

I had been at the gun show for a few hours after selling one antique rifle, one handgun, and a rifle stock. I was looking over some rifle parts at one of the tables when I was approached by a man who claimed he was an ATF agent, who I later found out was Agent Jerad McComas, and a Virginia State trooper, who was Trooper Ingram. At no time did Agent McComas show me any identification. Agent McComas said he wished to talk to me and stated that I wasn't being charged with anything and that he didn't want to make a scene. Myself, Agent McComas, and Trooper Ingram proceeded to walk over to a side by the entrance in the building where the show was being held. Agent McComas again stated I was not being charged with anything, but began interrogating me.

The first question Agent McComas asked me was, "We see you at a lot of gun shows. Are you in the business of buying and selling firearms?" To which I answered, "No, sir. These are my personal firearms." Again Agent McComas said, "Well, we see you at every gun show. Are you sure you're not buying and selling guns as a business?" Again I told him that these were out of my personal collection. To which Agent McComas replied, "Well, because we see you at all the gun shows, we think you are, and you should get a business license to do so. It is not that hard."

When I tried to explain to Agent McComas the reason they see me at all the gun shows might be because I work for an FFL dealer and work at those shows, Agent McComas replied, "Are you walking around at gun shows buying and selling guns for the dealer you work for?" I told him no, that I was there for myself and that I had some guns I didn't shoot and wanted to sell.

Again, Agent McComas insisted that they saw me at "all the gun shows," and again I told him that I worked for an FFL dealer at gun shows and maybe that's why they see me at every show. Agent McComas again asked if I was working for the FFL dealer, and again I told him I was there for myself. This type of round and round and pointless questioning went on for about another 15 to 20 minutes. At some point I cut off Agent McComas and asked Trooper Ingram what he needed me for. He told me that my driv-

er's license had been suspended and that he needed to issue me a notification of suspension.

Trooper Ingram, Agent McComas, and myself went to my car so I could put a firearm I was carrying into its case, then went with Trooper Ingram to his patrol car. I sat in the front seat of the patrol car as Trooper Ingram wrote up the notification. As he was writing the notification, I asked him what my license had been suspended for. He told me it came up on the computer as a non-traffic suspension and couldn't give me anymore information. This took approximately 30 to 40 minutes. During this time Agent McComas was continuing his line of interrogation, asking me how many guns I owned, when was the last time I purchased a gun, et cetera, et cetera, et cetera. It had gotten to the point where Trooper Ingram asked Agent McComas if he would stop so that he could finish.

Trooper Ingram was then able to answer all of my questions as best he could, and then told me it was okay to get out of the patrol car. As I was stepping out of the patrol car, Agent McComas immediately continued with his interrogation, with the same line of questioning as before, over and over. As soon as I received notification for the suspension form—from Trooper Ingram, I told Agent McComas if I wasn't being charged with anything then I must be free to go. I later learned that the suspension of my driver's license was due to an error.

When I got over the initial shock of what had just happened, I went to—I had spoken with Ms. Gelles, and then I went to speak with Mr. Brian Swann, who was the lead agent. When I asked him if I could speak with Agent McComas, I was quite rudely asked, "What for?" When I told him that I was considering seeking legal counsel, he responded in a very loud tone, "What for? We see you at all the gun shows." I told him that I thought my rights had been violated and that I might seek legal action.

I had been waiting approximately 10 minutes when both Agent McComas and Agent Swann walked up to me. I asked Agent McComas for his badge number, to which he responded, "We don't have badges." I then asked for contact information from him at the ATF and told him that I may be seeking legal counsel. After some talking between Agent McComas and Agent Swann, they agreed to write down some contact information for themselves. It was about this time that I noticed the shirt Agent McComas was wearing had profanity emblazoned across the back and asked if it was customary for ATF agents to wear profanity while in public where women and children could see it, to which Agent McComas replied, "It is customary for the ATF to wear anything they want to when they are undercover." I told him that I was offended and was sure that there were others who attended the show who were offended also.

I found this whole incident to be disheartening and rather humiliating. Never in my life have I been made to feel so violated, and this is not a feeling that I will soon forget. I am a law-abiding citizen that has gone through background checks that were approved to be able to work on military installations, a background check that was approved for a Concealed Carry Weapons permit in the State of Virginia, a background check that was approved by the ATF itself to be able to sell firearms for an FFL in the State of Vir-

ginia. I am as far from the criminal element as a person can be, and yet I was singled out for harassment by ATF Agent McComas and ATF Agent Swann, who was the lead agent.

Mr. COBLE. If you could wrap up, Mr. Lalime.

Mr. LALIME. I feel that these two agents went far beyond the limitations of their jobs and that they should be under investigation.

[The prepared statement of Mr. Lalime follows:]

PREPARED STATEMENT OF JAMES LALIME

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is James Lalime of Colonial Heights, Virginia. It is a great honor for me to be here today at this oversight hearing on the Gun Show Enforcement. I am currently employed by a National gun dealer as a salesman and was present at the Richmond Gun Show August 13 thru the 14th, 2005. As an avid gun enthusiast and shooter, I usually attend as many gun shows as I possibly can. I decided to attend the Richmond gun show to see if I could sell a couple of firearms and parts. Had I known what was going to transpire, I would not have attended the show.

I had been at the gun show for a few hours after selling one antique rifle, a handgun, and a rifle stock. I was looking over some rifle parts at one of the tables, when I was approached by a man who claimed he was an ATF agent, who I later found out was agent Jerad McComas, and a Virginia State Trooper Ingram. At no time did agent McComas show me an identification. Agent McComas said he wished to talk to me and stated that I wasn't being charged with anything, and that he didn't want to make a scene. We, agent McComas, Trooper Ingram, and myself proceeded to walk over to a side by the entrance in the building where the show was being held. Agent McComas again stated that I

was not being charged with anything, but began interrogating me.

The first question agent McComas asked me was, "We see you at a lot of gun shows, are you in the business of buying and selling firearms?" To which I answered, "No sir, these are my personal firearms." Again agent McComas said, "well we see you at every gunshow, are you sure you're not buying and selling guns as a business?" And again I told him that these were out of my personal collection. To which agent McComas replied, "Well, because we see you at all the gunshows we think you are, and you should get a business license to do so, it's not that hard!" When I tried to explain to agent McComas the reason they see me at all the shows, might be because I work for a FFL dealer and work at those shows. Agent McComas replied, "Are you walking around at gunshows buying and selling guns for the dealer you work for?' I told him no, that I was there for myself, that I had some guns I didn't shoot and wanted to sell. Again agent McComas insisted that they saw me at, "ALL the gunshows" And again I told him that I worked for an FFL dealer, at gunshows and maybe that's why they see me at every show. Agent McComas again asked if I was there working for the FFL dealer, and again I told him that I was there for myself. This type of round, and round questioning went on for about another 15–20 minutes. At some point, I cut off agent McComas and asked trooper Ingram what he needed me for. He told me that my drivers license had been suspended, and that he needed to issue me a notification of suspension.

Trooper Ingram, agent McComas, and myself, went to my car so I could put a firearm I was carrying into it's case, then went with trooper Ingram to his patrol car. I sat in the front seat of the patrol car as Trooper Ingram wrote up the notification. As he was writing the notification, I asked him what my license had been suspended for. He told me it came up on the computer, as a non-traffic suspension, and couldn't give me any more information. This took approximately 30–40 minutes, during this time agent McComas was continuing his line of interrogation. Asking me how many guns I owned, when was the last time I purchased a gun etc., etc., etc. It got to the point where Trooper Ingram asked agent McComas if he would stop for a moment so he could finish. Trooper Ingram was then able to answer all of my question the best he could, then told me it was okay to get out of the patrol car. As I was stepping out of the Patrol car agent McComas immediately continued with his interrogation, with the same line of questioning as before, over and over. As soon as I received the notification of suspension form Trooper Ingram, I told agent McComas if I wasn't being charged with anything then I must be free to go, and left. I later learned that the suspension of my drivers license, was due to a state employees error.

After I got over the initial shock of all that had happened and had time to think about it, I felt my rights had been violated, and was rather perturbed. I spoke brief-

ly with Annette Gelles, then decided to get some information about the agent who interrogated me (agent McComas). I walked back into the gunshow to try and find him without success. I found another ATF agent that I had seen at some other shows, and asked him where I could find someone to speak with. He pointed out his supervisor (agent Brian Swan), and I proceeded to walk over to him. When I got to where agent Swan was standing, he was talking to some other ATF agents, so I waited off to the side for him to finish. When agent Swan was done he asked if he could help me, I told agent Swan I wished to speak to agent McComas. I considered his response of "What for!". in a loud tone, to be quite rude. When I told agent Swan I wanted agent McComas' badge number, and contact information, agent Swan again responded in a loud tone, "What for, we see you at ALL the gunshows!" I told him that I thought my rights had been violated, and that I might seek legal action. I then told agent Swan that I would wait up at the front entrance, where agent McComas' had interrogated me.

I had been waiting approximately 10 minutes when both agent McComas, and agent Swan walked up. I then asked agent McComas for his badge number, to which he responded, "We don't have badges." I then asked for contact information from him at the ATF and told him I may be seeking legal counsel. After some talking between agent McComas and agent Swan, they agreed to write down contact information for themselves. It was at about this time I noticed that the shirt agent McComas was wearing had profanity emblazoned across the back, and asked if it was customary for ATF agents to wear profanity in public, where women and children could see it. To which agent McComas replied, "It's customary for the ATF to wear anything they want to, when they are under-cover." I told him that I was offended and was sure that there were others who attended the show who were offended also. Agent McComas' sarcastic response to that was, "Why don't you have a list!" I told him I could probably get one, with signatures, in about 20 minutes. Agent McComas then got about an inch from my face and said in a very threatening tone, "You're really making a big deal out of nothing!" I then said, "No sir, I am not." He then got closer and said in an even more threatening tone, "You're really making a big mess out of nothing!" Again I replied, "No sir, I am not." Agent McComas started to say something else, but agent Swan took agent McComas by the arm, and pulled him away. The last thing agent McComas said to me, was when I was leaving. I had received a call from my wife letting me know she was in the parking lot to drive my car home. As I was walking out, agent McComas was walking in. With a smug look on his face, and in a very sarcastic tone he said, "Have a nice day."

I found this whole incident to be disheartening, and rather humiliating. Never in my life have I been made to feel so violated, and this is not a feeling that I'll soon forget. I am a law abiding citizen that has gone through background checks that were approved, to be able to work on military installations. A background check that was approved, for a Concealed Carry Weapon permit. A background check that was approved by the ATF itself, to be able to sell firearms for an FFL in the state of Virginia. I am as far from the criminal element as a person can be, and yet I was singled out for harassment by ATF agent McComas, and ATF agent Swan who was the lead agent. I feel these two agent went far beyond the limitations of their jobs, and should be under investigation.

Thank you once again for the opportunity to testify.

Mr. COBLE. Thank you, Mr. Lalime.

Ms. McComas, my curiosity prompts this question.

Ms. MCCOMAS. No, no, no. [Laughter.]

Mr. COBLE. I assume that the agent is not known to you, Ms. McComas?

Ms. MCCOMAS. No, sir.

Mr. COBLE. Very well. I breathe easier now.

Ms. MCCOMAS. It's just really bad luck on my part.

Mr. COBLE. I beg your pardon?

Ms. MCCOMAS. It's just really bad luck on my part. [Laughter.]

Mr. COBLE. Mr. White, you are recognized for 5 minutes.

TESTIMONY OF JOHN WHITE, JOHN WHITE, OWNER, THE GUNSMITH

Mr. WHITE. Yes, sir. I'm John White. My wife and I own and operate the GunSmith, which is a Federal firearms licensed dealership. We value the ATF being available to us at the gun shows to quickly answer any firearms law questions that come up at the shows. We appreciate the ability to have access to the ATF at the shows and point out suspicious situations as they arise so these situations can immediately and appropriately be investigated.

We have personally enjoyed benefits of the ATF presence at the gun shows because prior to the strong ATF presence, there was a large gang presence at the Richmond shows. We don't want to return to the days where the gangs felt free to mingle with legitimate purchasers, and we credit the ATF with bringing the current business atmosphere to the shows in the Richmond area.

Early activity at the shows was entirely appropriate and within the law. However, it appeared that as time went on, the ATF joined—was joined by personnel from other law enforcement agencies who were outside their span of control. As resources were added, both financial and personnel, the mission and activities seemed to continually expand to try and keep everyone busy.

We think it would be a mistake to remove the ATF presence from the gun shows, especially over this one lapse. We and most of the licensed dealers would much rather be able to work with the ATF than be forced to work around the more unreasonable methods. We would like to see a cooperative relationship with the ATF on criminal history checks and address verifications.

What we would specifically recommend is:

A detailed action plan for the ATF at each show and a clearer division of labor for outside agencies so that the ATF is not held accountable for the actions of officers over whom they have no control. This plan of action should include that an experienced supervising agent always be present at the show.

There should be more scrutiny and attention given to the parking lots at these gun shows where many gun transactions take place outside of the scrutiny of the gun show and without any criminal history checks or address verification requirements.

There should be greater scrutiny of "private collection" dealers within the show who do not have a Federal firearms license. These dealers are also exempt from the criminal background checks/verification and do no paperwork. These private collectors often have suspiciously large revolving stock for a true private collection. Any thinking criminal or straw purchaser is going to buy a gun in a parking lot or from these dealers rather than go through the paperwork.

All the law enforcement agencies should respect the rights and privacy of the majority of the customers who are at the shows for honest purposes. Honest citizens should not be punished for the actions of the few. There should be greater attention paid to enforcing laws without abridging the rights of the many legitimate attendees at the gun shows.

[The prepared statement of Mr. White follows:]

PREPARED STATEMENT OF JOHN WHITE

Dear Committee Members,

At the Gunsmith, we are fortunate that our livelihood does not depend on gun sales. Our sales philosophy is not to sell at all costs but to provide a quality product for gun collectors, for self-protection and for competition shooters. Typically, the cost of the products we sell prevents our firearms from being attractive to individuals intending to make illegal or illicit purchases. We also spend time talking with our customers about their reasons for purchasing a firearm to make sure that the firearm we sell will suit the intended purchase, ensure they understand how to safely handle their firearm and to offer opportunity for further customization. We rely on repeat business and referrals because we normally cannot compete on price with larger gun dealers who can buy in quantity. What we can offer is quality, a guarantee that what we sell works and the extra customer service that a trained firearms instructor and experienced gunsmith can offer.

We know well the danger of firearms and that the lives we save by not selling for illegal purposes may be our families or our many friends in law enforcement agencies across the country. In 2004, our son was confronted by a burglar in his Richmond rental home. The burglar held in his hand what we think he imagined was a gun that he was stealing from our son's room. What he actually had was a customized paintball gun. Our son chased the burglar until the guidance he received from his many law enforcement relatives kicked in and he stopped and called the Richmond Police Department. Ironically, the first two officers to respond had been co-workers of his parents when they worked at the Richmond Police Department. The officers had seen our son's early years and were now responding to protect him as an adult. Preventing the illegal use of firearms and criminal activity, especially in the Richmond area, is always personal to The GunSmith.

The GunSmith is owned and operated by two former police officers who value the participation of the ATF in preventing firearms from getting into the hands of criminals. We value the ATF being available to us at the gun shows to quickly answer any firearms law questions that come up at the show. We appreciate the ability to have access to the ATF at the shows to point out suspicious situations as they arise so that these situations can be immediately and appropriately investigated. We have personally enjoyed the benefits of the ATF presence at the gun shows because prior to the strong ATF presence there was a large gang presence at the shows in Richmond. A fellow dealer, with whom we work closely, had two guns stolen as his attention was deliberately distracted with a mock word battle between gang members. Our lives were also threatened by an unhappy customer who threatened that he was "going to get his posse and come back for us." These open displays of gang activity have largely ceased as word has gotten out of the strong ATF presence at the Richmond Gun Shows. We applaud the efforts and intent of the ATF program at the gun shows in the Richmond area and would agree that they could serve as models for other similar programs with a few exceptions.

Early activity at the gun shows was entirely appropriate and within the law, however, it appeared that as time went on, the ATF was joined by personnel from other law enforcement agencies who were outside their span of control. As more resources were added, both financial and personnel, the mission and activities seemed to continually expand to try to keep everyone busy. For example, in the early gun shows, the ATF would observe and interview when activity seemed suspicious. Then home checks were added as more local officers participated with the ATF. Then instead of just address verifications, our customers told us that the officers would interview neighbors and family members about how they felt about this person buying a gun.

Computerized criminal history check wait times went from 20 minutes to 2–4 hours to overnight or longer. There was a clear pattern that checks on Richmond area gun buyers received the longer wait times while purchasers from out of the area were cleared much more quickly. Yes, sometimes sales were lost because of the long waits and even more sales were lost when neighbors and family members were informed of the buyer's intentions. Our income, fortunately, isn't dependent on gun sales but most of our customers know that we are involved with law enforcement and wanted us to explain why their legal behavior was being reported to their neighbors and family members creating unwanted attention and difficulties.

Our customers questioned the fact that they were subjected to the additional scrutiny and address verification procedures only at gun shows when they could make the same purchase at a gun shop without the additional attention. This might seem reasonable if there was additional probable cause but it is hard to justify when we were making sales to Richmond Police Officers, Federal Prison Guards, US Marshals, military personnel home on leave, local judges, etc. who unfortunately seemed to share one additional characteristic, their ethnicity.

We don't know if the ATF was ever aware of this circumstance but due to the backlogs created by these long waits, many dealers began calling in criminal history checks rather than delivering the paperwork to the on-site State Police personnel. Called-in checks had a much shorter wait time and quickly became the preferred method with many dealers.

We and most of the licensed dealers would much rather be able to work with the ATF than be forced to work around the more unreasonable methods. We would like to see the cooperative relationship with the ATF on criminal history checks and address verifications restored because there is no advantage for any licensed dealer to make an illicit sale. Licensed dealers are subject to additional scrutiny by the ATF both at the shows and at their place of business. An improper sale means a loss of income while a licensed dealer does the mandatory ATF firearms trace and spends time in court testifying because of the improper use of a sold firearm.

We would also like to see the inordinate attention on purchasers of firearms who happen to be female stopped. Times have changed and the world has changed. As more women have become head of households, entered law enforcement and the military and learned of their many advantages as competition shooters, more women are interested in firearms for the same reason as male purchasers. Unfortunately, many women are not very knowledgeable about firearms and The Gunsmith is somewhat rare at the show because we will take the time to talk to people and counsel them about their firearm choices whether or not they make a purchase from us. Not all women, however, know that we provide this service and rely on others to help them make the best choice and not get taken on price. This is no different than a woman taking a friend to buy a car or get car repairs on any other activity for which they are unsure of their expertise or believe they will be treated more fairly if they are there with a man. The truth is that not just women buy firearms for more than they are worth at a gun show. Gun shows are a business operation and caveat emptor applies. It seems, however, to be the prevailing opinion for law enforcement at the gun show that any woman who brings a male friend for advice or support must be making a straw purchase.

This probably was happening more often when the ATF first began attending the gun shows but the ATF must have missed how successful they have been in shutting down this practice by their presence. The "profile" has continued long after the problem, for the most part, has gone. For the Richmond Raceway Show that sparked this hearing, the problem was magnified by the fact that, on Sunday, there were probably almost as many law enforcement officers as customers at the show. If a woman approached a gun table, she was quickly surrounded by undercover officers closely observing her every move. A women was almost guaranteed to rate an interview if she actually purchased or attempted to purchase a gun at that show on Sunday.

Our observation was that there seemed to be a large group of very young, relatively inexperienced and very energetic law enforcement officers at this show on Sunday who wanted to make a good showing for their supervisors. Having supervised young, enthusiastic officers, we know that, although their intent is good, sometimes when they have too many resources and too much undesignated time, they tend to create things to do and often deviate from action plans. Our impression that this was the case on this fateful August Sunday is further supported by the fact that, according to the information that we received, records and notes from their temporary office at the show were left in a trashcan. Experienced officers would have been far too paranoid to leave records behind and far more polished and discreet in their observation skills. It seemed that on this one day, there was plenty of youthful energy and enthusiasm but adult supervision at the show was lacking.

That being said, we think it would be a mistake to remove the ATF presence from the gun shows especially over this one lapse. We do not want to return to the days where gangs felt free to mingle with legitimate purchasers and we credit the ATF with bringing the current business atmosphere to the shows in the Richmond area.

What we would specifically recommend is:

- A detailed action plan for the ATF at each show and a clearer division of labor for outside agencies so that the ATF is not held accountable for the actions of officers over whom they have no control. This action plan should include that an experienced supervising agent is always present at the show.
- There should be more scrutiny and more attention given to the parking lots at these gun shows where many gun transactions take place outside the scrutiny of the gun show and without any criminal history check or address verification requirement.
- There should be greater scrutiny of "private collection" dealers within the show who do not have a firearms dealer license. These dealers are also ex-

empt from the criminal history or address verification requirement for their sales and these "private collection" dealers often have suspiciously large revolving stock for a true private collection. Any thinking criminal or straw purchaser is going to buy a gun in the parking lot or from these dealers and avoid the issue of criminal history checks and address verification all together.

- All the law enforcement agencies should respect the rights and privacy of the majority of customers who are at gun shows for honest purposes. Honest citizens should not be punished for the actions of the few. There should be greater attention paid to enforcing the law without abridging the rights of the many legitimate attendees at the gun show.

We know that what we are suggesting are more difficult investigations and cases to pursue but since the ATF has been so successful in eliminating most of the obvious violations from the shows and has access to additional resources and outside agencies willing to help, this would be a major step forward in shutting down any illicit gun sales and purchases occurring at the gun shows and we would greatly appreciate and support their efforts. We look forward to the continuing presence of the ATF at the gun shows and our continued mutual support.

Mr. COBLE. I commend you, Mr. White. You finished well ahead of time.

Mr. WHITE. Thank you, sir.

Mr. COBLE. Ms. McComas, you are recognized for 5 minutes.

TESTIMONY OF SUZANNE McCOMAS, LICENSED PRIVATE INVESTIGATOR, NEW YORK, NY

Ms. MCCOMAS. Thank you, sir. I am Suzanne McComas, a private investigator licensed in New York State. I work on contract for the National Rifle Association——

Mr. COBLE. Is your mike on?

Ms. MCCOMAS. Yes, sir.

Mr. COBLE. Pull it closer.

Ms. MCCOMAS. I'm sorry. I work on contract for the National Rifle Association doing field investigations in cases where they feel there is an issue of an individual's second amendment rights being infringed. To date, I have done over 120 cases for the organization.

The NRA sent me to Richmond, VA, in November to investigate the dozens of complaints they'd received from members who had attended, the dealers at the show, as well as the organizers of the August gun show at the Richmond Raceway. There were complaints about massive law enforcement presence, residency checks, and minority buyers being followed, pulled over, and their legally purchased guns seized without any due process.

In the particular case of Ikaya Parker and Marcus Holland, Ikaya is a 27-year-old African American lady, a single mother, who works as a mortgage processor. She went to the gun show in December 2004 to buy a small handgun for personal protection. Marcus Holland was a 24-year-old African American young man who's also employed full-time and has a valid Concealed Carry permit from the State of Virginia. So she took him along because he was a knowledgeable gun owner.

After her purchase, during which she did pass a background check, they left the show and were immediately being followed by a police car until they turned on to I-95, where they were pulled over by no less than four police vehicles. They were held on the side of the road for over an hour. The ATF agent told them he had enough evidence to arrest them right then and there for a straw

purchase violation, even though both of them were legal gun owners.

Both Ikaya and Marcus had their guns confiscated and were ordered to appear at the ATF office in Richmond the next day.

On Monday, they were there for over an hour of interrogation. They were never read their rights at any point. And they were finally let go and their weapons returned when the agent decided he could not pursue the case.

Ikaya was humiliated and absolutely terrified by what she was accused of, as it could cost her her career in the financial industry and financial stability for she and her daughter.

I also found four other minority individuals who had similar experiences but, quite frankly, out of fear of retaliation, they cannot bring themselves to go public to this body or anyone else about their treatment by the ATF. No amount of coaxing is going to bring them public.

Just off my written statement, I'd also like to say that they initially did have arrests at the shows that they went to early on, and any good law enforcement officer would know, just as the traffic cop doesn't set up the speed trap at the same place on the same road at the same time day after day, all the speeders know where it is. You need to move your trap. And instead of that, they just stayed in the same place. They had no arrests, no convictions that I'm aware of. Even though we've asked them to produce their conviction rates, we have yet to see evidence of a single conviction from any of the arrests at these shows. Instead, they impacted financially on the organizers. They terrified people. They went to their neighbors and asked them if they knew their next-door neighbor was at the gun show buying a gun. They held up the NICS system in doing background checks, which is a clear violation of the FBI guidelines. They are not to cross over into DOJ work at all.

That didn't seem to deter them whatsoever, and I don't think they would have stopped to this day if somebody hadn't complained to Mr. Scott's office.

During my investigations, we did check gun shows across the country, and we found that in Pittsburgh the Firearms Task Force there that's also implemented by the ATF, instead of doing residency checks immediately, they're collecting the 4473 with the purchaser's address on it, and they go knock at the door about a week later and ask you to produce the gun that you bought. There's absolutely no process involved, there's no reason for them to do it. If you cannot produce the gun, they ask you for the sale paperwork. If you refuse to produce the paperwork, they put you under arrest for straw purchase.

When I asked them what their criteria—I'm sorry. And when I asked them what their criteria was for the people that they collected the 4473s on at the Pittsburgh show, the answer I got back was, "If it walks like a duck and quacks like a duck, it's a duck. That's all we need." Translation: "Under 30 and Black." Period. That's all they're looking for. Anyone that meets that criteria, they're doing a follow-up on them. There's absolutely no other rhyme or reason in place for what they're doing.

Thank you.

[The prepared statement of Ms. McComas follows:]

PREPARED STATEMENT OF SUZANNE MCCOMAS

I am Suzanne McComas, a private investigator licensed from New York State. I work on contract for the National Rifle Association (NRA) doing field investigations in cases where there is an issue of an individuals 2nd Amendment rights being infringed, or someone has been charged with a firearms violation. To date I have done over 120 cases for the organization.

The NRA sent me to Richmond, Virginia to investigate the dozens of complaints they received from members who attended, the dealers at the show, as well as the organizers of the August gun show at the Richmond Raceway. Complaints about massive law enforcement presence, residence checks, and minority buyers being followed, pulled over and their legally purchased guns seized.

The results of my investigation did validate all the complaints we received, and I appreciate the committee looking into this issue.

Mr. COBLE. Ms. McComas, you referred—you alluded to a "straw purchase." For the record, define a "straw purchase."

Ms. MCCOMAS. A "straw purchase" would be if Mr. White was illegal to own a firearm, he would give me the money—I'm not saying John would do that. He would give me the money, and I would go buy the gun for him, and then give it to him. So I would mark down on the 4473 that it was for my own use——

Mr. COBLE. I got you.

Ms. MCCOMAS. —and then I would give him the handgun and probably make a couple hundred bucks in the deal.

Mr. COBLE. And I knew that, but I wanted the record to reflect it. The Parker person to whom you referred, without objection, a copy of the affidavit will be made a part of the record, as will four additional statements that will be forthcoming.

Folks, thank you for your testimony. Now, as I said before, there will be a 5:30 vote here. We apply the 5-minute rule to us as well. So if you all could keep your answers tersely, and if we can, we can move along here.

Ms. McComas, I think you indicated that your investigation indicated that no rights were read to anyone whose weapons had been seized. Is that correct?

Ms. MCCOMAS. Yes, sir. I couldn't find anyone who said their rights had ever been read to them at any point in the process.

Mr. COBLE. In your investigation, were you able to determine whether or not these kinds of practices about which we have just heard were being used in other regions of the country?

Ms. MCCOMAS. I'm going to say no to that because we haven't—as the ATF was saying while they were at the gun show. This is a pilot program that they're going to apply to the rest of the country. That was what they stated to the organizers and to some of the dealers. So I don't believe they've implemented this program yet, but they certainly plan on it. They're using footage that they video'd, their floor work at the Showplace shows as a training video now for their young agents as how to spot a straw purchase at a gun show.

Mr. COBLE. Thank you.

Mr. White, as a former law enforcement officer, do you think the residency checks are a valuable use of resources to deter or discourage straw purchases, "A"? And, "B," would you expect the police or law enforcement to maintain records of what homes they visited to determine who was eligible to purchase a firearm?

Mr. WHITE. To answer "A," if there's probable cause. If there's no other reason just that I think it's wrong, then, no, I don't agree

with the address verification. And, yes, if you do go and verify an address, you should maintain that for future purchases.

Mr. COBLE. Ms. Gelles, do your gun shows have a history of being connected to straw purchases or a place for a large number of prohibited persons to purchase guns? Is that the sort of reputation you all have?

Ms. GELLES. No, not at all. Actually——

Mr. COBLE. Has the ATF ever furnished you with numbers indicating that firearms purchased at your shows end up or wind up in the use of crime?

Ms. GELLES. Actually, we have asked for those numbers since after the August show, right after it, starting August—September, we started requesting a FOIA presenting those numbers to us, and by our account from the Virginia State Police records, we have four to five arrests a year on average over the last 10 years with 45,000 public, bare minimum, coming in. So it is not a high number of people.

Mr. COBLE. Do you know, Ms. Gelles, whether or not a videotape was made during any of the gun shows?

Ms. GELLES. I know for a fact there was. Cameras placed in the showplace building, Bill Crenshaw, the manager of that building, told us so. We found this out because the ATF sent an agent or somebody from ATF up to the Chantilly building, which is called the Dulles Expo Center, and told that individual that he had the permission of the show promoter, which is C&E Gun Shows, Robert S. Elliot, and he said they had permission, and they absolutely did not have permission. And he said, well, it is—when he was speaking to this manager, he told him that they had already had permission and done it twice at the showplace, at which point we found out that they had actually done it already and had video of the entire public.

Mr. COBLE. Mr. Lalime, how was this experience different from previous gun shows that you have attended?

Mr. LALIME. Never before had that happened to me. I don't think I had seen it happen to anybody else. I definitely know it had a detrimental effect on the attendance of gun shows. I know personally I wouldn't attend gun shows if I knew that was going to happen.

Mr. COBLE. Thank you, sir.

Ms. Gelles, my amber light is showing. I want to yield to Mr. Scott here. Let me conclude with this question. How many fewer weapons were sold that day as a result of the presence of a good number of law enforcement people?

Ms. GELLES. Well, I would have to suppose that if there were half the public there, then half the number of guns, which would have cost the exhibitors a great deal of money. I mean, my losses were 14,000, bare minimum, one show. Theirs were at least 300,000, probably more. Plus people did not bring in guns because they were afraid to.

Mr. COBLE. And let the record show that I beat the red light. I recognize the distinguished gentleman from Virginia for 5 minutes.

Mr. SCOTT. Ms. Gelles, is Virginia's one-gun-a-month law in effect at a gun show?

Ms. GELLES. Yes, it is.

Mr. SCOTT. What paperwork needs to be completed to purchase a firearm at a gun show?

Ms. GELLES. People—you go to a dealer and you fill out a Form 4473 and an SP-65, which is the Virginia State Police background check.

Mr. SCOTT. And is there an instantaneous check right there?

Ms. GELLES. Supposed to be. We've experienced very long delays when this residency check process started up, up to 3 hours for residents, people in Richmond, and minorities, and women also.

Mr. SCOTT. What happened? Say that again?

Ms. GELLES. People that were—that lived in Richmond, those—mostly anybody that lived in Richmond had a 3-hour delay or so at the beginning of the residency checks back in May of 2004, and in July of 2004, it speeded up a little more, I think because they had more personnel. But exhibitors complained that—and we observed also that there was profiling of Blacks and also of women.

Mr. SCOTT. Now, you said the dealers have—if you buy from a dealer, you have a background check. If you buy from someone who is not, quote, a dealer, do you have a background check?

Ms. GELLES. No. There are product sales from individuals to individuals.

Mr. SCOTT. At the gun show?

Ms. GELLES. Right.

Mr. SCOTT. In the gun show, not the parking lot sales.

Ms. GELLES. If I catch one in the parking lot, I run him off or make him come in and buy a table.

Mr. SCOTT. Mr. White, you had indicated that the presence of the ATF has been a positive thing at gun shows. Did I understand you right?

Mr. WHITE. Yes, sir.

Mr. SCOTT. And does it help with the parking lot situation? Are they out in the parking lot, too?

Mr. WHITE. I'm inside, sir. I'm not sure what they do in the parking lot. I will say that we had people come in. I've had my life threatened. I've had people get on the phone and call up their boys, if you will, an unhappy purchase, and he was going to call his guys to come straighten things out. But since ATF has been involved in the law enforcement presence there, we haven't had that sort of clientele. So it has been a positive thing.

Mr. SCOTT. Okay. Ms. McComas, you indicated that many people had a follow-up visit after the gun show and——

Ms. MCCOMAS. In Pittsburgh, that's—yes, sir, they follow up about a week later. In Richmond, they were doing it during the show. They were actually holding the purchase up.

Mr. SCOTT. And you suggested there was racial profiling going on?

Ms. MCCOMAS. Oh, absolutely. Absolutely. Anyone who was a minority, they picked up their tail, if you will, and just literally followed them through the gun show. When they stopped at a table, the agents would literally stack one side or the other and watch what they were doing. If they started to purchase one, they'd ask them why they were buying it, what were they buying it for, what do you need that gun for?

The one young lady said, "You know what? I'm out of here. I'll just come back tomorrow," and the agent smarted off and said, "That's fine. We're going to be here tomorrow, too. Come on. Come on back."

I mean, it was ridiculous. There was absolutely no reason for it except the color of their skin.

Mr. SCOTT. Did you see any Whites subjected to this?

Ms. MCCOMAS. They did do residency checks on Whites, and the one agent said to one of the dealers, "Well, we have to do some or we're going to catch flack for what we're doing." So, you know, they were trying to cover their—cover their tracks, straight, simple.

Mr. SCOTT. Thank you.

Mr. Lalime, did you ever find out what your suspension was for?

Mr. LALIME. Yes, sir. It was supposedly for back child support, but it was an error in their computer.

Mr. SCOTT. So your license was not under suspension?

Mr. LALIME. No, sir. I had to go back to DMV that following Monday, and I got my license.

Mr. SCOTT. Did DMV, in fact, have your license suspended?

Mr. LALIME. No, sir.

Mr. SCOTT. Well, then, let me ask the question again: Did DMV have your license as under suspension?

Mr. LALIME. I got it Monday. It wasn't under suspension. I didn't have to pay any kind of fees. I had to pay a $10 lost license. It was supposed to have been in error at the Department of Social Services.

Mr. SCOTT. But the DMV had your license recorded as suspended, although it shouldn't have been suspended.

Mr. LALIME. I guess so, sir, yes.

Mr. SCOTT. Okay. So when the police said it was suspended, it was, in fact, suspended?

Mr. LALIME. Yes, I guess that's the only good thing that came out of what happened. I found that out and was able to correct it.

Mr. SCOTT. Okay. Thank you, Mr. Chairman.

Mr. COBLE. Thank you, Mr. Scott.

The distinguished gentleman from Florida is recognized for 5 minutes.

Mr. FEENEY. Thank you, Mr. Chairman.

Ms. Gelles, about how many gun shows a year do you participate in?

Ms. GELLES. I produce 14, 15 shows—let's see, I'm at 15 now a year.

Mr. FEENEY. Okay. And this was the first experience you've had where ATF and the State Police in a consistent manner you felt were abusive or harassing customers and clientele.

Ms. GELLES. Right. I mean, ATF agents have for years walked through as customers, and I'm sure doing investigations, those kind of things. Virginia State Police, there are always assigned—in the State of Virginia, it's State law that they have to have one person, one Virginia State trooper at the show in case there's any kind of problem with the background check, they can arrest them. And we have—we provide a room and telephone lines and let the Virginia State Police come in and do background checks on site. At most of the shows we have facilities to do it.

Mr. FEENEY. At any of the shows that you have done, other than helping with background checks, are there other problems that either ATF or State police need to deal with? You know, do you tend to have bar fights or riots or, you know, are they just a normal crowd, business type crowd?

Ms. GELLES. Most of my crowd is very clean. They're families. My main customer is a White male in his—a middle-aged White male that's college educated and they're usually from rural areas and they're wealthier than the average citizen.

Mr. FEENEY. But the reason for State Police and ATF, typically, is the reasons that Mr. White has outlined, the advantages of having them on site.

Ms. GELLES. Right. Now, we don't have gangs congregating in our shows. I am sure anybody who draws 5 to 7,000 people—and one of my shows draws 11,000 people—there are going to be a few people in those shows that are bad apples that need to be policed, no doubt about it, but it's better to do it undercover and do it covertly, than overtly, and scare off the entire public.

Mr. FEENEY. You testified that in your opinion women and minorities were especially profiled by the ATF and State Police.

Ms. GELLES. And that is true. We did observe that, and I had many exhibitors complain about it, and we had public call afterwards and complain about it, and I had e-mails about it. And the racial profiling is certainly important and should be noticed, and also women. I mean, I haven't heard much outcry about that, but the main thinking was that they were purchasing for their felon boyfriend, a straw purchase again.

Mr. FEENEY. The other group that you mentioned being profiled were people in Richmond. I think Mr. White indicated that too. Can you just tell me briefly, is the population at the gun show that day from Richmond disproportionately Black, for example, or women, or other minority, or was this a geographic bias alone, in your opinion?

Ms. GELLES. Some of it was a geographic bias for the Richmond area because I think that's just the way their operation was set up, that they had police to go to those homes——

Mr. COBLE. Would the gentleman suspend? Repeat that. I didn't hear your question.

Mr. FEENEY. Well, Mr. Chairman, my question was, for example, if the Richmond customers had been disproportionately Black, for example, and Richmond customers were being targeted because of their residency, then that could be a racial profiling effort in and of itself. I guess that was my question.

Ms. GELLES. Actually, most of the people that attend the shows are White.

Mr. FEENEY. Including from Richmond?

Ms. GELLES. Including from Richmond. Richmond is 65 percent Black.

Mr. FEENEY. Your Richmond customers that day were similar to the general profile of your other customers, roughly?

Ms. GELLES. Roughly. Most of the customers are White. We have a small percentage of Blacks that attend. Richmond itself is 65 percent Black, but those were——

Mr. FEENEY. And did anybody mention—Mr. Lalime, I know that we probably don't have any lawyers, let alone civil rights lawyers here, but did anybody mention that it is a Federal crime to deny women or minorities their civil rights, and, you know, a lot of people—I got friends in the press that read the first amendment and stop. They think the civil rights are over. They never get to the second amendment, but has anybody ever mentioned to the ATF, Mr. Swann or anybody else at the ATF, that denying civil rights, including the right to bear arms, is a Federal crime, section 1865?

Ms. GELLES. We didn't state it quite that way, but we went for three meetings with John Malone, who was the ASAC for the region, which means over Virginia, Maryland and D.C., and we did just that. We said, you know, they're profiling. They can't do this. And the answer was, the problem is 90 percent Black.

Mr. FEENEY. I trust that any of you that have asked for information, including Ms. McComas, from the ATF, none of your requests have been answered? You haven't been given a profile of the people arrested or detained?

Ms. MCCOMAS. No. We haven't been given a conviction rate, which is actually the most important stat. If they're going to spend all this money and manpower, they should have something at the end of it. They should have some convictions, and they haven't been able to show a single one.

Mr. FEENEY. Well, Mr. Chairman, and, Mr. Scott, I would suggest that perhaps we do a letter to the ATF and request this information, because profiling people on their second amendment rights, whether they're women or Black or another protected minority, and a conspiracy to do that, is a very significant allegation, but it's a mere allegation. It's a bare assertion unless we have some evidence.

And with that, I'll yield back the balance of my time.

Mr. COBLE. If the gentleman will suspend, we have done that, and the ATF will appear before us at the conclusion of the President's Day work period. I thank the gentleman.

We've been joined by the gentlelady from Texas. Good to have you with us, Sheila.

And in order of appearance, the distinguished from Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. I thank the Chairman, and I didn't intend to stay for this hearing, but I find it rather fascinating.

Ms. McComas, these must be the dumbest ATF agents in the entire agency.

Ms. MCCOMAS. You just want to shake them and say, "Go out and get some real criminals."

Mr. DELAHUNT. I mean I'm not saying I disbelieve you, but I am absolutely shocked that they could be that stupid to articulate—you know, it's almost to the point where it's difficult to believe. In my former career I was a prosecutor in the greater Boston area, and my office worked well with the ATF. In fact, we served on a variety of task forces, and let me be very clear, I have never heard of an experience like the one that you recount, but you all seem to be in agreement. It's just mind boggling.

And I just heard the Chairman indicate that we would have testimony from the ATF. I'm only—I should express my disappoint-

ment to the Chair and to the Ranking Member, because what will happen is that your testimony is very, very similar, and I only wish that we had a representative from the ATF here to listen to what you say, and to respond, either to deny, or explain, or have an opportunity, rather than have a bifurcated series of hearings.

But, again, my own experience is such that I would conclude, if I didn't hear you, that this is just a story, it's made up. But, obviously, you're under oath and I accept what you say as being—but this has to be an aberration.

Ms. MCCOMAS. I've worked with some excellent ATF agents. I honestly have. There are some of them that I have genuine respect for. This was not down to the field agents, let's make that clear. Whoever was running the show was overboard.

Mr. DELAHUNT. Are we speaking about one particular incident?

Ms. MCCOMAS. Well, the Richmond Gun Show sting went on for 16 months total, but——

Mr. DELAHUNT. I mean I have no problems with a sting, but I think you, or maybe it was Ms. Gelles that indicated a good sting is going to be done in a way that is covert, that, you know, no one will be aware of it until the end of—till the conclusion of the investigation. I mean this is not a sting. This is—you know, I could also see having presence at a gun show, simply to serve as deterrence to those who might want to circumvent the laws. Having police presence, obviously, does play—can play a positive role if done in such a way with respect for those who are in compliance with the law is demonstrated.

You know, I read the testimony while we were waiting here, from Mr. White, and there seems—let me direct a few questions at Mr. White so I just don't keep rambling on here.

You indicate that there was a display of gang activity that largely seems to have ceased as a result of ATF presence. Am I——

Mr. WHITE. Yes, sir, in the beginning——

Mr. DELAHUNT. So it does have a positive impact.

Mr. WHITE. When it's regulated and when it's done properly with probable cause. The gang problem has pretty much disappeared. The problem of every woman that makes a purchase, every woman that comes to my table to buy a gun is automatically a straw purchaser. I sell custom firearms, target weapons, tactical weapons, and we set and speak with these people, talk to the ladies, and, you know, find what they're actually doing with them, what we need to fit them with. But every woman who shows up is automatically a straw purchase.

That date in August, if a woman showed up at my table, she was surrounded by law enforcement, not just ATF, but other agencies were involved in that too. And if the lady walked off and suddenly stopped, they'd have bumped into each other. I mean their surveillance methods were pitiful.

Mr. DELAHUNT. But what we're talking about here is enforcement. You know, I'm not saying that this is an unimportant issue because there are rights that are at stake here. Yet, at the same time, you know, we have a responsibility on this Committee and on the full Committee that deals with a wide array of issues. You should have been here this morning. It was a rather interesting

discussion about those that, if you will, advocate for aggressive oversight, and those that don't.

I believe in aggressive oversight to ensure individual liberties, but at the same time, I'd like to just know if this is an aberrational situation.

But while I'm here, I come from a different part of the country, the Northeast. I think you can probably guess that we have different State policies in terms of gun issues, and I think that's true of most large urban centers. You know, I want more ATF agents up in Massachusetts. Bring them on, because they can make a difference in terms of our homicide rates, and they have, and we're rather stringent and strict in terms of the issues of guns.

Let me direct this to Mr. White. Again, having read your statement, I would infer that you support the background check rules. You would require them for unlicensed sellers as well. Is that a fair conclusion?

Mr. WHITE. I think there needs to be more scrutiny on the people that come in with a private collection. I've seen private collections grow. These guys are buying guns from individuals and putting them right back out for sale. To me, that's not a private collection. I think there needs to be more scrutiny on that because there is no paperwork done there. As a Federal firearms dealer I'm required to do paperwork, maintain the paperwork, and any time a weapon that I've sold is involved in any sort of crime and ends up in any police evidence room, I get an ATF trace, which I've only had one in the years I've been in business. I get an ATF trace, and I have to say who that gun was sold to.

So we don't want to sell guns to people that they don't belong with. Certainly, I want to keep them out of those hands because my friends and family are out there on the street. I don't want guns getting in the wrong——

Mr. DELAHUNT. See, I have a particular concern about gun shows, not that they can't be run well and done in compliance with the law, but I certainly don't want any of, you know, the criminal element from Massachusetts coming down to Richmond and getting out in the parking lot and buying a gun and coming back up to Boston.

Mr. COBLE. Mr. Delahunt, I don't want to cut you off, but we need to hear from——

Mr. DELAHUNT. I'll yield back, and I know we have some——

Mr. COBLE. We have a vote at 5:30, but, Ms. Jackson Lee, before I recognize you, if I may——

Mr. DELAHUNT. Can I just have one—is there anybody from the ATF here?

[No response.]

Mr. COBLE. Well, before I recognize Ms. Jackson Lee, folks, I want to reiterate what I said at the outset. I don't want anybody to leave here thinking that it's time to disarm or decommission the ATF. The ATF serves a good purpose, and we will hear from them subsequently. We have some of the questions that they asked to be voiced today have been voiced. I want to ask you one more. And if you all have questions you want us to ask the ATF, we'd be glad to hear from you within the next 7 days, during which time this record will remain open.

But I want to urge all of you folks, don't leave this hearing room thinking that the ATF is a bunch of no good so-and-so's because they do serve a good purpose.

Now, what I've heard today in the case is that maybe they went beyond the pale, but we'll hear from them when they have their day before this Subcommittee as well.

I'm now pleased to recognize the gentlelady from Texas, Ms. Jackson Lee.

Mr. Delahunt, if you wait, if we meet the 5:30 deadline, if you want to continue your questioning, you may do so.

Mr. DELAHUNT. [Off microphone comment.]

Mr. COBLE. All right, thank you, sir.

The gentlelady from Texas.

Ms. JACKSON LEE. But he hasn't run out of steam. Thank you, Mr. Chairman.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and to the Ranking Member for an important Committee hearing. I might track Mr. Delahunt's outrage, but also suggest—I know I have a good friend from North Carolina—I might be able to convince him. We were here just a few hours ago talking about the overreach of the Federal Government and the need for oversight and investigation. With this hearing as a backdrop, let's hope that we can secure both a bipartisan effort in making sure that things work, and that we exercise our oversight.

So I want to thank Mr. Scott for bringing this matter to our attention. I know that it occurred in his jurisdiction and he should be complimented and applauded.

I would like to put it, however, in the context that you've come to us, so that we can fix whatever the elements are that take away from Project Exile, which is a project that has been supported by the majority in this Congress, which happen to be my Republican friends, and I think it's important to emphasize that it's the concept, Mr. White, of a joint task force, where, of course, you have local law enforcement inviting the ATF officers in, and I also think it's important to note that the record shows, or my facts are showing me that there were only about 6 to 8 ATF officers and the rest were all local law enforcement.

So the next step that I would like, or at least I would like to add, let us try to make sure that that task force works well, and who am I to tell local law enforcement that they need 40 versus 20, but that may be a reasonable response to draw in the excessiveness or the appearances of such.

Might I also say that race permeates society, and I am as much in consternation over racial profiling on buses and trains and planes and on highways, and I would welcome the support of many of you on some extra work that we have to do, which includes passing hate crimes legislation that may help us on that idea, but certainly I know that we can have sufficient oversight with the ATF, that that would not be the mode of their operation. So I will join you in that concern and work with our Committee to ensure that that happens.

Let me just offer some thoughts, and I would like to pursue a line of questioning that Mr. Delahunt—but let me quickly, Ms. Gelles, you—is it Gelles?

Ms. GELLES. Yes, it is Gelles.

Ms. JACKSON LEE. That having been the gun show operator, I'm sure that you see a lot of different scenes and populations, and so I would ask whether or not you have seen, or do you believe that there is significant criminal activity that occurs at gun shows in the Richmond area?

Ms. GELLES. No, I don't think there's a lot of criminal activity. I know that you'll see some people walk in that will have gang looking clothes on and that kind of things. I actually hire two Henrico County Police to sit at the front to deter this kind of person from coming in. I tell them to follow them through, make them feel unwelcome. The Virginia State Police is there. They also do the background check. There are not a large number of gang people that congregate in these shows, so I don't believe that's the case.

I think that we need some policing. I don't think ATF is all bad at all. I think that we do need them because we can't police ourselves. When we have a problem, we need them there to take care of it. But most of the time, no, it is not a large amount of those people.

Ms. JACKSON LEE. Let me just say that I just came from a Homeland Security hearing where intelligence is very important. And one of the things that we've discovered, that everyone who is in the business of doing wrong doesn't necessarily look that way. And I want to applaud you for, you know, keeping a clean shop.

But let me put this on the record, to say to you that you did say no, but you might be surprised to find out that because of the law enforcement activities of ATF and the Virginia State Police at the Richmond area gun shows, during 2004 and 2005, 25 criminal cases were recommended for prosecution for violations of Federal law. The ATF reports that these cases have resulted in the conviction of 19 defendants so far, and the convictions were such crimes as possession of firearms in relation to a crime of violence or drug trafficking, 18 USC section 922; possession of firearms by a convicted felon and possession with intent to distribute a controlled substance. So ATF has also told this Subcommittee that since May 2004, firearms used in four homicides have been linked to two transactions occurring at Richmond area gun shows.

So my point is, is that I buy into what you're saying, let's help fix it, but this is an effective program. Let's help them not do some of the things that both of us would find outrageous, but there have been notations of criminal activity, and in fact, there have been conditions.

And I'd ask indulgence of an additional minute to ask Mr. White, Mr. Chairman?

Mr. COBLE. Without objection.

Ms. JACKSON LEE. Mr. White, and thank you, Ms. Gelles, very much for your——

With a little bit of humor, Mr. White, this hasn't been a good week for guns. I'm from Texas, so you know we've had some missed shots, and quail, and misidentification of individuals that have unfortunately been at the wrong end of a barrel.

Mr. WHITE. Yes, ma'am.

Ms. JACKSON LEE. But I do understand the value of business and doing things the right way. You have made a point that I think is

very important in pursuing because it's the gun show loophole, and you have the Federal documentation, Federal paperwork. I assume you're still in business.

Mr. WHITE. Yes, ma'am.

Ms. JACKSON LEE. So why don't you just expand on this question of, do you think that all gun buyers at gun shows should undergo background checks regardless of whether they're buying from licensed or unlicensed sellers, and would you support legislation requiring such checks at gun shows? Now, you know, legislation is a heady word, so why don't I just focus you on the value of undergoing it, and you could put in a personal experience, that you are still functioning, you're still standing, you're still selling, I hope, and you're still doing it the legal way. Mr. White.

Mr. WHITE. You know, there is—there are dealers there that are not dealers. There are people there that sell their private collections. There are no—they don't even get a driver's license number. They don't know who they sold the gun to. Once the gun's gone, it's gone. You don't know where it went.

We do the paperwork. Yes, our business does very well. You know, I've had many young men, Black men and whatever, come in dressed like gang members, and I sit there and talk to them. I'm not in such a hurry to make money. My income doesn't depend on my business. And I sit there and talk to the young man and find out that one these guys was military. The kid just got home from Iraq. He just wanted to dress like the rest of the guys and fit in. He didn't want to be the military guy. He wanted to look like everybody else. And in talking with him, I felt very comfortable selling this young man a gun. There are others that have come in that I've felt very uncomfortable and said, "No, thank you. Leave. I'm not going to sell you a gun. I don't have to."

But I do feel like there should be more scrutiny paid to these, you know, things that take place in the parking lot, which is—that's out of the promoter's control, and inside, I really think there should be some at least identification as to what firearm you sold and where it went.

Ms. JACKSON LEE. So if we took your good advice and designed some legislation that closes that loophole, that would be a credible approach to take to include the guys, if you will, out in the parking lot and elsewhere that may not have the scrutiny, intent that you have, the good intent that you have?

Mr. WHITE. I'm not exactly sure how you'd do that, but, yes, ma'am, I think it would made a difference.

Ms. JACKSON LEE. And my final point is that you found that the ATF can work comfortably in these situations, but any oversight we give to them would be welcome as well.

Mr. WHITE. Yes, ma'am. I think that—and I put in my statement—that there needs to be a clear plan of action. There needs to be a operational plan, and the operational plan needs to include what the outside agencies are going to do. I've supervised young police officers, and I know how they get. You get a whole bunch of them, they want—they're busy. They want something to do, so they begin to expand outside of the operational plan. This supervisor's paying attention to this group, and you've got all these other guys

doing other things. When you have 60 guys to supervise, and there's six ATF agents, that's a little impossible.

Mr. COBLE. The gentlelady's time has expired.

Ms. JACKSON LEE. I thank Mr. White, and I thank you for your indulgence, Mr. Chairman.

Mr. COBLE. Mr. White, finally, since you did not consume all of your 5 minutes, I'm going to extend what Ms. Jackson Lee was pursuing, and I think you may have already answered it, and my question to you is, in your opinion, as a former law enforcement officer, is it your belief that there was adequate supervision over the agents who were at the show?

Mr. WHITE. At the one at the raceway, the one in August? Is that the——

Mr. COBLE. Yeah.

Mr. WHITE. No, sir. I think there was a lack of supervision. There were a lot of young officers there, and I don't think there was enough supervision. That's why they got in the trouble they were in.

Mr. COBLE. What I suggest to you all, if you have questions to for us to put to ATF, let us know in the 7-day period.

Now, here is another question, the final question that was requested that I put to you all by the ATF, and I want to direct it to Ms. Gelles. Ms. Gelles, I am told that you and other gun show promoters recently participated in what was a productive meeting, I'm told, with senior ATF officials. If you will, share with us some of those agreements that were reached with the ATF, and about any initiatives on which you and your colleagues will be partnering with ATF in the future.

Ms. GELLES. We discussed the residency check, and Michael Bouchard, in that meeting, said that they would continue residency checks with probable cause. That's my understanding, that they are not going to continue the residency check as a blanket kind of effort at the shows. In other words, every individual that comes in the show is not going to have a residency check performed on him. Also, I guess that's all we actually covered in that meeting.

Mr. COBLE. Do you feel that it was productive?

Ms. GELLES. It was somewhat productive. I would like to see the conviction rates from May of 2004 till now. Ms. Jackson brought up that there were 56 arrests or 56 charges, I believe. We'd like to see how many convictions actually came out of that, and we'd like you all to get the FOIA or that information the best you can from ATF. 56 out of—since May of 2004, we pulled 45,000 people through that. That would be—56 charges would be .001 percent, so that's not really good use of money and law enforcement's valuable resources. I don't think you need 450 law enforcement assigned to a single little show like that.

Mr. COBLE. I think this has been a productive hearing. Mr. Scott, again, I thank you for working with our staff on this. As I said to you all earlier, the ATF will be before us on February the 28th, so that's for your information.

And I want to repeat again, folks, we're not here to buggy whip the ATF, but we want to examine all relevant evidence, which I think we've done at least partially today, and we will await the ATF's appearance.

Ms. JACKSON LEE. Mr. Chairman?

Mr. COBLE. Yes?

Ms. JACKSON LEE. I'd ask unanimous consent to put the rest of my questions, written questions into the record, and ask for the ability of the witnesses to provide answers.

Mr. COBLE. Without objection, that will be done.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. COBLE. And we want to thank the witnesses, and those in the audience as well, for your attendance today and for the testimony presented. In order to ensure a full record and adequate consideration of this important issue, the record will remain open for additional submissions for a 7-day period. Any written questions from any Member of the Subcommittee to submit to you all, must also be submitted within that 7-day period.

This concludes the oversight hearing on the Bureau of Alcohol, Tobacco, Firearms and Explosives: Gun Show Enforcement (Part I).

Thank you for your cooperation, and the Subcommittee stands adjourned.

[Whereupon, at 5:24 p.m., the Subcommittee was adjourned.]

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (BATFE): GUN SHOW ENFORCEMENT

(Part II)

TUESDAY, FEBRUARY 28, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:31 p.m., in Room 2237, Rayburn House Office Building, the Honorable Tom Feeney (acting Chair of the Subcommittee) presiding.

Mr. FEENEY. The hearing will come to order. If the witnesses can take their seats, please. Thank you for being with us today. We will hope that we're joined by some of our colleagues. Chairman Coble will be here briefly, but in the meantime Congressman Scott and I will proceed, and again we thank you for your participation.

Today the Subcommittee on Crime, Terrorism, and Homeland Security is conducting a follow-up oversight hearing on the Bureau of Alcohol, Tobacco and Firearms and Explosives operations at gun shows near Richmond, VA, between May 20, 2004, and August 2005. Prior to the President's Day work period a similar hearing provided eye-opening firsthand testimony about the ATF's operation, which appears to have been heavy-handed.

Today we will hear from ATF representatives and other law enforcement involved in the operations in question. During the previous hearing we heard from four witnesses; Mrs. Annette Gelles, one of the gun show promoters, who stated excessive law enforcement presence reduced attendance by 50 percent and cost her company some $14,000 in admissions receipts and cost exhibitors a great deal more. According to her, ATF agents approached and dissuaded attendees from purchasing a firearm, which probably intimidated others from even considering purchasing a firearm. She explained that residency checks were far more detailed and lengthy than what is required or ordinarily performed.

Mr. James Lalime, who attended one of the shows, said he was unnecessarily harassed, and ATF agents tried to intimidate him and were wearing offensive clothing.

Mr. John White, an exhibitor from the show, detailed complaints from customers about residency checks that involved law enforcement agents contacting neighbors and family members. According to Mr. White, this had an enormous impact on his business.

The final witness, Mrs. Suzanne Macommis, a private investigator, testified that while some of the shows' attendees were randomly stopped and questioned, the ATF confiscated firearms from many others, confiscations including a notice that the person may have committed a felony punishable by imprisonment for up to 5 years and ordered to appear at the local ATF office the following day. Failure to appear could have resulted in a Federal arrest warrant.

As Chairman Coble indicated at the previous hearing, and it bears repeating today, these hearings are in no way an attempt to impugn or diminish the reputation and dedication the fine ATF and its agents. This statement applies equally to the officers of the Henrico and Richmond police departments. We appreciate your dedication and sacrifice to keep our communities safe; nevertheless, we are puzzled by the allegations about the manner in which private property was confiscated, individuals were falsely alleged to have committed offenses, required to report to the local ATF office, and generally mistreated by agents during these shows.

I look forward to your testimony and hope we can shed some light on the concerns that the Members of the Committee have.

Before introducing the witnesses, I would be honored to recognize the Ranking Member of the Subcommittee, the distinguished gentleman from Virginia, Mr. Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman, and thank you for holding a second hearing on issues relating to law enforcement activities in the Richmond area in August of 2005. The last hearing we heard from witnesses who had criticisms of the activities of the ATF and other law enforcement operations during the show. While noting that the gun show enforcement activities have generally been conducted well within expected limits and totally appropriate and commendable, and are, in fact, welcomed at the gun shows, witnesses made very serious allegations about the things that went on in August of 2005. Newspapers across the State reported these allegations following the gun show.

Today we will hear from the ATF regarding their response to those criticisms and their involvement with respect to regarding enforcement activities at that gun show. We'll also hear from representatives from Richmond and Richmond City and Henrico County regarding their involvement and perspectives on gun show enforcement activities.

Mr. Chairman, as I pointed out at the last hearing, we have different views on gun control and what the laws should be for gun shows. However, until the current laws are changed, we are stuck with the laws as they are, particularly the egregious gun show loophole.

Mr. Chairman, I look forward to the testimony of our witnesses today to gain further insight as to what happened and how we might avoid even the appearance of impropriety in enforcing our Nation's laws. Thank you, Mr. Chairman.

Mr. FEENEY. Thank you, Congressman Scott.

Gentlemen, it is the practice of the Subcommittee to swear in all witnesses that appear before us. If you would please stand and raise your right hand.

[Witnesses sworn.]

Mr. FEENEY. Thank you. Let the record show that each of the witnesses answered in the affirmative.

Again, thank you for being here today. We are honored to have you three gentlemen. I'm going to introduce the first, and Congressman Scott is going to introduce two of his neighbors and constituents subsequently.

Our first witness is Michael Bouchard, Assistant Director of Field Operations at the Bureau of Alcohol, Tobacco, and Firearms. In his capacity Mr. Bouchard conducts oversight of all field operations, encompassing regulatory and criminal enforcement. Previously he served as resident agent in charge of the Springfield, Massachusetts office, and is Deputy Assistant Director for the Office of Strategic Intelligence and Information. He received his B.S. From the University of New Haven and an M.S. Degree from the National War College.

With that, I'd like to recognize Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, we have two distinguished law enforcement officials from the Richmond area. From Henrico County, we have Colonel D.A. Middleton, who has been on the force for over 30 years and promoted through the ranks with the police division to his current position where he serves as deputy chief of police. He grew up in Henrico, has an associates of science degree in criminal justice and a bachelor of science degree in organizational management. He has additional studies at the University of Louisville in Kentucky, the Jefferson School of Leadership at the University of Richmond, and Senior Management Institute For Police at Harvard University. Prior to his employment as a police officer, he was a highly decorated Vietnam Army war veteran.

We also have with us from the Richmond area, David M. McCoy, who is a major in the Richmond City Police Department. He covers operations area 2. Prior to that he was the major in field services; prior to that, a field captain. He has obviously extensive police background. His professional educational background is a B.A. from Canisius College in Buffalo, and Virginia Commonwealth University he has a master of science in criminal justice; additional studies at VCU, University of Richmond, and the Police Foundation Fellow at the Police Foundation, Washington, DC

He's also an adjunct professor at Virginia Commonwealth University. He has a ton of recognitions and awards, but one of the two community service activities that I think are noteworthy, he's a board member of the Police Athletic League in Richmond and also a board member of Richmond Weed and Seed, which shows that he's not only enforcing the law, he's preventing crimes from occurring in the first place by working with our youth.

I commend both of our law enforcement officials from the Richmond area.

Mr. FEENEY. Thank you, Mr. Scott.

Mr. Delahunt, you're welcome to make an opening statement if you'd like.

Mr. DELAHUNT. No. It's Canisius. Great basketball there at one point in time.

Mr. FEENEY. Gentlemen, we are going to ask each of you, we've got your written remarks in full, and we would like you to summa-

rize those remarks and take up to 5 minutes to do so. We have some lights in front of you. There's no severe penalty for going a little bit over, but we'd ask you to wind things up when we get to the red.

With that, we'd like to welcome all of you. Mr. Bouchard, you're recognized.

TESTIMONY OF MICHAEL R. BOUCHARD, ASSISTANT DIRECTOR FIELD OPERATIONS, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (BATFE)

Mr. BOUCHARD. Thank you. Good afternoon, Mr. Chairman, Congressman Scott, Congressman Delahunt and Members of the Committee. Thank you for the opportunity to appear before you today to discuss ATF's significant contributions relating to our enforcement——

Mr. FEENEY. Can you—we have to record this for our Congressional Record.

Mr. BOUCHARD. Specifically we'd appreciate the opportunity to outline our law enforcement efforts related to eight gun shows in and around the Richmond, Virginia, area between 2004 and 2005.

I'd like to begin by recognizing my colleagues for their appearance here today as well as their support on a daily basis.

We acknowledge some techniques used in our Richmond operations were not implemented in a manner consistent with ATF's best practices. In this isolated incident we have determined that we could have done better by having the law enforcement command post and briefings offsite of the gun show, by not utilizing a letter to convey possible violations of law when guns were taken into custody, and by more thoroughly explaining the parameters for conducting for residence checks. However, we, along with our law enforcement partners, feel very strongly that our efforts at Richmond gun shows have reduced violent crime and made the streets of Virginia and America safer.

ATF's presence was necessary because criminals have been using Richmond gun shows as a source of firearms for years. Through the President's Project Safe Neighborhood initiative and the ATF-led Violent Crime Impact initiative, law enforcement, prosecutors, and community leaders work together to prevent violent crime. As a result of our efforts, gun prosecutions are up 73 percent, and violent crime is at a 30-year low.

ATF conducts investigative operations at gun shows across the country for various reasons. To put things in perspective, more than 5,000 gun shows are held each year in the United States, and we conduct investigations at approximately 2 percent of these shows.

ATF's presence at gun shows provides a valuable service to the community. Except for the issues surrounding the Richmond gun show operations on August 13 and 14, 2005, we have not received any complaints regarding this important element of our firearms enforcement program.

I listened to the allegations of racial profiling leveled against ATF, and I can assure you they have no basis in fact. Our focus is on disrupting criminal activity without regard to the race or gender of those who appear to be engaged in unlawful acts.

Between 2002 and 2005, more than 400 firearms sold by federally licensed dealers, also known as FFLs, at Richmond gun shows were recovered in connection with criminal activity, including homicides. Of this total, more than 300 were recovered in the Richmond area alone.

To confront this problem, ATF and our State and local partners initiated a cooperative effort focused on the source of crime guns in the Richmond area, including gun shows. Again, the goal was to reduce violent crime by preventing illegal diversion of firearms and to investigate those who violate Federal firearms laws.

Let me share an example of the outstanding police work done at these gun shows. On October 17th, 2004, at the Showplace Gun Show in Richmond, officers observed the straw purchase of a firearm by two males. After the firearm was purchased by one man and provided to the other, officers approached and conducted separate interviews. The purchaser admitted to having been paid by the other man to complete the paperwork and buy a handgun. He also admitted to having straw-purchased an AK-47 rifle for this same man in an earlier Richmond gun show.

Further investigation revealed that the primary subject, that second gentleman, was a ringleader in a Blue Ridge Crew street gang, and the suspect in a murder that occurred on July 19, 2004, in Richmond. Agents and officers determined the murder weapon was the AK-47 rifle obtained at the earlier gun show just 9 days before the crime.

The law enforcement presence at the show in October 2004 caught these two criminals in the act and prevented another potential murder weapon from hitting the street. Our involvement led to a guilty plea by the gang leader, and he's been sentenced to 40 years in prison for murder.

This is just one of the many countless examples. I hope I can share more later today.

Between May 2004 and August 2005, law enforcement conducted a total of 302 residence checks. Of those, 47, or 16 percent, proved to be addresses where the purchaser did not reside. It should be noted that the residence checks were conducted on only 8 percent of the total guns purchased at these shows.

Despite the concerns surrounding the operation on the weekend of August 13 and 14, the joint enforcement activity at eight Richmond gun shows prevented unlawful sales and uncovered criminal acts. We referred 25 individuals for prosecution. And also in the May and August 2005 show, we deterred at least 48 blatant straw purchases from occurring.

Statistics reflect that no firearm sold by FFLs in the August show in 2005 have been recovered in any crimes to date. In contrast, seven guns sold by the FFLs at the very next show in October have already been recovered in crimes. ATF has not worked at a Richmond gun show since August 2005.

Just a few sentences left.

Internal review has shown no evidence of misconduct nor any concerns reflecting negatively on the integrity of our agents and our partners.

With regard to the concerns raised before the Committee, I have issued guidance to ATF personnel on policy and best practices re-

lated to gun show investigations, to include establishing guidelines for residence checks. Although our efforts at gun shows are only a small part of our overall firearms enforcement activity, they are a valuable tool in protecting our communities. Like everyone in the room, we're committed to reducing the violent crime that confronts America today. We're working diligently to enforce existing laws to keep firearms out of the hands of terrorists and criminals while remaining sensitive to the rights of law-abiding citizens to engage in firearms-related commerce.

Mr. Chairman, ATF and our partners have made a difference through our efforts at Richmond gun shows. We all have a vested interest in making our community safer, and we take that responsibility seriously. I look forward to answering any questions that the Committee may have.

Mr. FEENEY. Thank you, Mr. Bouchard.

[The prepared statement of Mr. Bouchard follows:]

PREPARED STATEMENT OF MICHAEL BOUCHARD

STATEMENT
OF
MICHAEL BOUCHARD
ASSISTANT DIRECTOR/FIELD OPERATIONS
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

OVERSIGHT OF THE BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES,
PART 2: GUN SHOW ENFORCEMENT

FEBRUARY 28, 2006

Good afternoon Chairman Coble, Congressman Scott and members of the Subcommittee. Thank you for the opportunity to appear before you to discuss the significant contributions of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) relating to our enforcement of Federal firearms laws. Specifically, we appreciate this opportunity to outline for the Subcommittee our law enforcement efforts related to gun shows in and around Richmond, Virginia, between May 2004 and August 2005.

We acknowledge that some techniques used in our Richmond operations were not implemented in a manner consistent with ATF's best practices. We have determined that we could have done better by maintaining the law enforcement command post off the premises of the gun show, by conducting law enforcement briefings away from the site of the gun show, by not utilizing a letter to convey possible violations to attendees, and by more thoroughly

explaining the parameters for conducting residence checks. However, we, along with our law enforcement partners, feel very strongly that our operations at Richmond area gun shows have reduced violent crime and made the streets of Virginia and America safer consistent with our agency's mission.

ATF enforces Federal firearms laws and provides extensive support to Federal, State, and local law enforcement officials in their fight against crime and violence. Our agents investigate a broad range of firearms violations that can be generally divided into three categories:

1. Investigations of persons who are prohibited by law from possessing firearms, such as felons, illegal aliens, and drug traffickers;

2. Investigations of persons possessing prohibited firearms, such as post-1986 machineguns and sawed-off shotguns; and

3. Investigations of firearms trafficking.

From these types of investigations, ATF agents concentrate on firearms traffickers who are diverting firearms out of lawful commerce into the hands of criminals. Firearms trafficking investigations can be complex and time-consuming. They can involve illegal straw purchases of firearms by one person on behalf of another person who may be unable legally to possess firearms, illegal dealing by unlicensed firearms sellers at gun shows or other locations, robberies of gun stores, and thefts from interstate shipments.

Through the Administration's Project Safe Neighborhoods (PSN) initiative, which began in 2001, and the ATF-led Violent Crime Impact Team (VCIT) initiative beginning in 2004, law enforcement, prosecutors, and community leaders work together to deter and prevent violent crime. Congress has appropriated money for these initiatives and we are using it to reduce violent crime. In support of these initiatives, ATF and its law enforcement partners have developed focused enforcement strategies to investigate, arrest, and prosecute violent offenders, prohibited possessors of firearms, domestic and international firearms traffickers, and others who illegally attempt to acquire firearms. ATF firearms investigations resulted in over 8,300 convictions in fiscal year 2005. Additionally, we have developed expertise in working against criminal organizations, particularly gangs. As a result of our investigations, more than 3,000 gang members have been convicted of firearms offenses in the past five years. In the past two fiscal years, more than 12,000 firearms have been linked to gang activity.

I can tell you that our programs are working. According to data from the most recent Uniform Crime Report (2004), the 15 VCIT pilot cities, which include Richmond, endured 180 fewer homicides as compared to the previous year (2003), which represents 46 % of the overall decrease in homicides nationwide. As a result of ATF's efforts and contributions, as the Attorney General recently announced, gun prosecutions are up 73% from fiscal year 2000 to fiscal year 2005. The Attorney General also has reported that violent crime is at a 30 year low.

As you can see, ATF enforcement activities at gun shows are a piece of the big picture for the national firearms enforcement strategy. We conduct numerous investigative operations at

gun shows across the country in any given year for various reasons. To put things in perspective, more than 5,000 gun shows are held annually in the United States, and on average, we conduct investigations at approximately 2% of these shows. This statistic clearly demonstrates that we are focusing in on key information and working with the specific needs of our State and local law enforcement partners to surgically impact problem areas. ATF's presence at gun shows can provide an invaluable service to the community. Except for the issues surrounding the Richmond gun show operation on August 13th and 14th, 2005, we have not received any complaints regarding this important element of our firearms enforcement program.

I would like to provide you with some information about why we, along with our State and local law enforcement partners, believed it was important to commit our resources to conducting operations at gun shows in Richmond. Between 2002 and 2005, more than 400 firearms sold by federally licensed firearms dealers at Richmond area gun shows were recovered in connection with criminal activity. Of this total, more than 300 of the total number of guns sold at these gun shows by federally licensed firearms dealers were recovered in the Richmond metropolitan area. These figures do not take into account firearms that may have been sold at Richmond area gun shows by unlicensed sellers, as these transactions are more difficult to track. To confront these issues, ATF and State and local law enforcement officials initiated a cooperative effort focused on the source of guns used in crimes committed in the Richmond area, including those sold at gun shows. The goal was to reduce violent crime by preventing the illegal diversion of firearms and to investigate persons who violate Federal firearms laws.

Richmond is one of the most violent cities in America according to the most recent Uniform Crime Report data available (2004), which indicates that Richmond's violent crime rate is nearly 3 times the national average. In advance of our operations between May 2004 and August 2005, ATF special agents and detectives from the Richmond Police Department analyzed information to determine the sources of crime guns and illegal firearms trafficking patterns in and around Richmond, and determined that a number of guns used in crimes had connections to Richmond area gun shows. Among other things, we found that many of the guns recovered by the Richmond Police Department after being used in connection with violent criminal acts had been purchased illegally at local gun shows. Our investigations also demonstrated that individuals who purchase firearms illegally at Richmond area gun shows, such as straw purchasers and prohibited persons, do not always provide accurate residence information at the time of purchase, as required by law. We briefed leaders from both the Richmond Police Department and Henrico County Division of Police on the initiative and they fully supported the plan to conduct enforcement operations at Richmond gun shows. In keeping with our longstanding partnership with the firearms industry, ATF also advised gun show promoters and owners/managers of the premises where the gun shows were held of the law enforcement presence and of our goals.

Between May 2004 and August 2005, ATF and our State and local law enforcement partners attended eight gun shows in the Richmond area.

Let me share a significant example of the outstanding police work that came out of these partnerships. On October 17, 2004 at the Showplace Gun Show in Richmond, Virginia, officers observed a straw purchase of a firearm by two male individuals. The term "straw purchase" refers to a transaction in which the actual buyer of a firearm uses another person, the "straw purchaser," to execute the paperwork necessary to purchase a firearm. Law enforcement personnel observed obvious signs of a straw purchase during the interaction between these two subjects. Therefore, after a firearm was purchased by one man and provided to the other, officers approached them and conducted separate interviews. The purchaser admitted to being paid $100 by the other man to complete the paperwork and buy a handgun. He also admitted to having "straw purchased" an AK-47 rifle for the same man during the Showplace Gun Show in Richmond on July 10, 2004. Further investigation over the course of the next six months revealed that the primary subject was a ringleader in the "Blue Ridge Crew" street gang and that he was the primary suspect in a murder that had occurred on July 19, 2004 in the city of Richmond.

Ultimately, agents and officers determined that the murder weapon used in the July 19th murder was the straw-purchased AK-47 rifle obtained at the gun show just 9 days before the crime. While law enforcement was present at the July 10, 2004 gun show, we did not prevent the illegal sale of that AK-47 rifle; however, we were present at a subsequent show on October 17, 2004, and through our joint law enforcement efforts, caught these criminals in the act and prevented another potential murder weapon from hitting the streets. Our involvement in this

investigation eventually led to a guilty plea to murder by the gang member who was acquiring firearms illegally at Richmond area gun shows. He has been sentenced to serve 40 years in prison.

Our focus at the Richmond-area gun shows was on indicators of criminal activity, not on the color of skin or the gender of potential suspects. I listened to the allegations of "racial profiling" that were leveled against ATF by some of the witnesses who testified before this Subcommittee on February 15, and I can tell you, having conducted a thorough review of our activities at these gun shows, that those allegations have no basis in fact. ATF does not condone or engage in racial profiling of any sort and we adhere strictly to the Attorney General's guidelines in this regard. Our agents' focus, and the focus of the State and local partners who serve on our task forces, is on disrupting criminal activity, without regard to the race or gender of those who appear to be engaged in criminal acts. That being said, I do recognize that concerns have been raised about the manner in which certain aspects of our operation were conducted. We have listened closely to those concerns and have taken steps to adapt our operations for the future.

First, we recognize that it was not a "best practice" to have maintained the task-force command post on-site, nor to have conducted a briefing for our State and local partners at the site of the gun show, as these actions may have contributed to the perception of an overly large law enforcement presence at the show. During each event, a command post was established to coordinate activities and to facilitate communication between law enforcement personnel. The

command post staff included supervisors from each agency as well as agents and detectives. For the first seven gun shows in Richmond, the command posts were established away from the site of the gun show. For the August 13-14, 2005 gun show, the manager of the complex and the promoter identified a room in the building as vacant and available for law enforcement use as needed. We established a command post in that space. It is clear in hindsight that unnecessary attention was drawn to the law enforcement operation by utilizing this space so close to the activities of the gun show.

Additionally, briefings were conducted prior to the beginning of each show to advise Federal, State, and local law enforcement personnel of the initiative, to discuss the relevant investigative techniques, and to review each officer's or agent's assignment, including command post responsibilities, surveillance duties and residence checks. Each gun show operation was staffed with between 24 and 50 agents and officers. For the first seven shows, this briefing was held at a location other than the gun show premises. At the eighth show, on the weekend of August 13-14, 2005, the briefing was conducted on-site, and we recognize that this also was not a good decision. In hindsight, the gathering of that many uniformed officers with marked patrol units clearly brought unnecessary attention to our operation. Since the plans called for covert activity at the gun show, it did not serve the operation well to conduct the briefing on-site.

As for the actual enforcement operation, surveillance by plainclothes officers and agents was conducted at the gun shows to observe potential straw purchases or related illegal activity. Additionally, there were occasions when Federal firearms licensees made contact with law

enforcement personnel, pointed out suspicious behavior and requested that agents watch the activities of particular individuals. If a firearms transaction was completed and there was probable cause to believe that a violation had occurred, the parties were kept under surveillance for as long as practicable. In some cases, purchasers were stopped by law enforcement and questioned about the firearms transaction. In all cases where firearms were taken into custody by law enforcement, there was probable cause to believe that a criminal violation had occurred.

Although our review of enforcement activities revealed that, in every case in which a firearm was taken into custody, there existed probable cause to believe that a criminal violation had occurred, we recognize that a form letter issued to some of those from whom firearms were seized was not in keeping with ATF's best practices. Use of this letter was discontinued before the seventh gun show operation in May 2005. I can assure you that this letter will not be used again.

We also recognize the concerns surrounding our conduct of residence checks on firearms purchasers on the weekend of August 13-14, 2005. By way of background, and as we have previously relayed to the Subcommittee, prior investigations had revealed that some purchasers at gun shows had not provided accurate address information at the time of purchase. Federal law prohibits knowingly giving false information to a federally licensed firearms dealer in connection with the purchase of a firearm and prohibits the sale of a firearm by a federally licensed firearms dealer to a person where possession by such person would violate any State law or published

ordinance. Furthermore, the information provided by purchasers is particularly important because it is used to initiate the background check process required by the GCA.

Confirmation of residence addresses through residence checks has proven to be an important and useful tool to ensure the lawfulness of firearms transactions and to prevent straw purchases. ATF personnel working in the command post received residence information from firearms transaction paperwork and relayed the information to uniformed officers in the field who would confirm the addresses of purchasers. The results from the officers were conveyed to the command post. If the residence information was valid, all notes and paperwork utilized by the officers were destroyed at the end of the day. If an address was not valid, the officer submitted his notes and/or paperwork to the case agent. The goal of the residence checks was simple: to verify an address by going to the residence and confirming that a certain individual actually lived at that location. Ideally, this would be accomplished by speaking to someone at the cited address. If, and only if, no one was available at the address, a neighbor would then be located and asked to confirm, if they could, that an individual lived at the address in question.

It bears noting that throughout the initiative, between May 2004 and August 2005, law enforcement conducted a total of 302 residence checks. Of those, 47, or 16%, proved to be addresses where the purchaser did not reside. It should be noted also that residence checks were conducted on only 8% of the total number of people that completed firearms transactions through federally licensed firearms dealers during the initiative.

Despite the concerns surrounding our operation on the weekend of August 13-14, the joint law enforcement presence and enforcement activity at the Richmond area gun shows resulted in the prevention of unlawful sales and the detection of criminal activity. Cases were perfected against 25 defendants on various Federal charges and all cases submitted were prosecuted. Some defendants' gun show related charges were combined with other charges that were developed as the investigation progressed, as was the case in the example I shared earlier.

ATF policy regarding gun shows provides guidance as to investigative practices applicable to dealers and other persons involved in firearms transactions at gun shows, and this policy has not changed significantly since 1989. Our internal review has shown that to the extent that certain decisions regarding implementation of various techniques were not reflective of ATF's best practices, there was no evidence of misconduct, nor was there any indication of concerns reflecting negatively upon the integrity of our agents or our State and local partners. I have issued a memorandum to ATF Field Operations reminding employees of both policy and best practices related to gun show investigations. In this memorandum, and in other communications with our leadership in the field, I have specifically highlighted the key areas discussed here today.

In addition to the investigative efforts outlined above, I would like to point out that, in cooperation with certain gun show promoters, ATF has staffed booths at various shows to provide guidance on firearms issues and to answer questions for gun show attendees. As a result of the attention directed at ATF's involvement at gun shows in Richmond, we have made an

increased effort to meet with industry members, particularly gun show promoters, on a number of occasions. Most recently, ATF met with gun show promoters and offered to assist dealers and buyers at shows in understanding their obligations under Federal law by providing written publications and on-site advice. I personally explained to the promoters that residence checks, done appropriately, serve a valid law enforcement purpose. The open dialogue proved beneficial, and I believe that the meeting went far toward fostering a partnership that will ultimately assist agents and officers in their efforts to ensure that felons and other "prohibited persons" do not obtain firearms at gun shows. This partnership is particularly important because it will take cooperation between the law enforcement community and persons involved in the firearms industry to ensure that we are doing all we can to take guns out of the hands of criminals who might use them to promote violence and chaos on our streets.

As I stated earlier, although our efforts at gun shows are only a small part of ATF's overall firearms enforcement activities, they are a valuable tool in protecting our communities. Like everyone in this room, we are committed to reducing the gun crime that confronts America today. ATF works side-by-side with our partners in both the law enforcement community and the firearms industry every day. We continue to work diligently to enforce existing laws to keep firearms out of the hands of terrorists and criminals while remaining sensitive to the rights of law-abiding citizens to engage in lawful firearms-related commerce. As reflected in recent crime statistics compiled by the Department of Justice, our efforts are having a positive impact in the fight against violent crime.

We hope this information will assist the Subcommittee in its oversight efforts. I look forward to answering any questions the Subcommittee may have.

Mr. FEENEY. Lieutenant Colonel Middleton, you're recognized.

TESTIMONY OF D.A. MIDDLETON, DEPUTY CHIEF OF POLICE, HENRICO COUNTY POLICE DEPARTMENT

Mr. MIDDLETON. Mr. Chairman, Members of the Committee, on behalf of Colonel Stanley, thank you for the opportunity to appear here today and describe to you the participation in the gun shows that occurred on August 13 and 14, 2005, in Henrico County.

The Division of Police assisted the Bureau of Alcohol, Tobacco, and Firearms with an operation at the Great Southern Weapons Fair at the Richmond International Raceway Complex, which is located in our county. ATF orchestrated and coordinated the operation with the assistance of Henrico County's Division of Police, Richmond Police Department and the Virginia State Police. Organization for this operation began on June 27, 2005, with a meeting at the Richmond Police Academy, and in attendance were agents from ATF along with representatives from the Richmond Police Department and Henrico County Police Department.

At this meeting ATF provided information concerning the after-action report for the May 21 through 25, 2005 Dixie Classic Gun and Knife Show at the Showplace in Henrico County. We were advised that 17 sales had been discouraged and 14 denied by VSP instant background checks.

In addition, the Richmond Police Department conducted 44 residence verifications at the request of ATF. Nine individuals provided false information on their State police form about their residency, if the address did not exist or a subject indicated that the buyer did not reside there. Thirteen addresses were unverified because no contact was made at the residence. ATF advised there would be follow-up investigation to determine if the residency was valid.

The question of the legality of the residency checks was directed to ATF representatives during the meeting. ATF agents advised that they were checking with their attorneys. The Richmond Police Department also indicated that they had participated in residency verification checks at the request of ATF at previous gun shows without incident.

The next meeting occurred for the Richmond International Raceway Gun Show on July 29, 2005, at the Richmond Police Academy. Again, similar individuals were in attendance at this meeting representing the various agencies. Prior to the meeting, ATF Special Agent Curtis Marshall inquired via electronic mail about Henrico's participation. He further advised that a legal opinion concerning these checks would be forthcoming. Prior to this meeting, Curtis Marshall suggested using an 8-mile radius around Richmond to determine which Henrico gun buyers would be subject to residence verification checks.

Representatives from the Henrico Police Department agreed to participate in these checks based on information previously provided by ATF concerning straw purchases and invalid residences from the May after-action report.

Further, Henrico officials decided to verify residency on all purchases conducted by Henrico residents so as to avoid any appearance that any resident's verifications were arbitrary in nature.

On Wednesday, August 3, 2005, ATF Special Agent Curtis Marshall forwarded an electronic mail message with two attachments to Henrico Police Investigator Richard Howser. The first attachment was the residence check sheet. Henrico Police Department and the Richmond Police Department officers, when confirming residency of the gun buyer, use this form. ATF Special Agent Curtis Marshall indicated he wanted a uniform document to capture the residency information.

The second attachment was the ATF operational plan for the August 2005 gun show. This operational plan outlined the use of the residence checks and staffing issues.

On Saturday, August 13 and 14, 2005, ATF Special Agents Brian Swann and Curtis Marshall conducted briefings of all assigned personnel at 10 a.m. on each day. ATF Special Agent Brian Swann reiterated the mission objectives of prevention, education and enforcement from the ATF operational plan.

During the gun show Henrico personnel conducted six residence checks on Saturday, August 13th, and four on Sunday, August 14th. Each officer conducting residence verification was provided the residence check sheet from ATF. These officers were given 20 minutes from dispatch to reply with residency verification to the command post. No Henrico County purchases were denied or delayed due to the checks. Protocol indicated that the sale would be allowed to proceed if the residence verification was incomplete.

In addition to officers assigned to conduct the residence verification, plain-clothes members of the Henrico Police Department assisted ATF, the Richmond Police Department, and the Virginia State Police inside the venue to monitor firearms transactions.

We appreciate the opportunity to present these facts on our participation in this particular gun show, and thank you for the time that you have provided us to explain our participation.

[The prepared statement of Mr. Middleton follows:]

PREPARED STATEMENT OF D.A. MIDDLETON

February 27, 2006

The Honorable F. James Sensenbrenner, Jr.
Congress of the United States
House of Representatives
Chairman, Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Congressman Sensenbrenner:

Colonel H. W. Stanley, Jr., Chief of Police in Henrico County, Virginia, received a letter inviting him to speak before your Committee on Tuesday, February 28, 2006 at 2:00 p.m. regarding operations of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) at Richmond, Virginia area gun shows. While the Division of Police has had a working relationship with BATFE on law enforcement initiatives, our participation with them regarding gun shows involved one activity in recent history, which occurred on August 13 and 14, 2005 at the Richmond International Raceway. This operation involved BATFE and several local agencies, as well as the Virginia State Police. Our participation was primarily focused on residence checks, which were conducted at the request of BATFE.

On August 13 and 14, 2005, members of the Henrico County Division of Police assisted the Bureau of Alcohol, Tobacco, and Firearms (ATF), with an operation at the Great Southern Weapons Fair at the Richmond International Raceway (RIR) Complex, in Henrico County, Virginia. ATF orchestrated and coordinated this operation with the assistance of the Henrico County Division of Police (HPD), Richmond Police Department (RPD), and the Virginia State Police (VSP).

Organization for this operation began on June 27, 2005 with a meeting at the Richmond Police Academy. In attendance were ATF Special Agents Brian Swann and Curtis Marshall, Richmond Police Lieutenant Gary Ladin, and Henrico Investigator Richard Hausler. At this meeting, ATF provided information concerning the After-Action Report for the May 21-22, 2005 Dixie Classic Gun and Knife Show at the Showplace, in Henrico County. ATF advised that there were 17 sales discouraged and 14 denied by VSP instant background checks. In addition, RPD conducted 44 residence verifications at the request of ATF. Nine (9) individuals provided false information on the VSP SP-65 form about their residency. Either the address did not exist or a subject at the address indicated that

the buyer did not reside there. Thirteen (13) addresses were unverified because no contact was made at the residence. ATF advised that there would be follow-up investigation to determine if the residency was valid. The question of the legality of the residency checks was directed to ATF representatives during the meeting. ATF Special Agent Brian Swann advised that he was checking with ATF attorneys. Richmond Police Lieutenant Gary Ladin also indicated that RPD had participated in residency verification checks at the request of ATF at previous gun shows without incident.

The next organizational meeting for the August 13-14, 2005 gun show at RIR occurred on July 29, 2005 at the Richmond Police Academy. In attendance were ATF Special Agents Brian Swann and Curtis Marshall, Richmond Police Lieutenant Gary Ladin, and Henrico Police representatives: Captain Christopher Alberta, Lieutenant C. Denny Williams, Sergeant Mark Thompson, and Investigator Richard Hausler. Prior to the meeting, ATF Special Agent Curtis Marshall inquired via electronic mail about the Henrico participation. He further advised that a legal opinion concerning these checks would be forthcoming. Also prior to this meeting ATF Special Agent Curtis Marshall suggested using an 8-mile radius around Richmond to determine which Henrico gun buyers would be subject to residence verification checks. Representatives from HPD agreed to participate in the residence verification checks of gun buyers, based on the information previously provided by ATF concerning straw purchases and invalid residences from the May 21-22, 2005 After Action Report. Further, Henrico officials decided to verify residency on all purchases conducted by Henrico residents, as to avoid the appearance that the residency verifications were arbitrary in nature.

On Wednesday, August 3, 2005, ATF Special Agent Curtis Marshall forwarded an electronic mail message with 2 attachments to Henrico Investigator Richard Hausler. The first attachment was the Residence Check Sheet. HPD and RPD officers when confirming residency of the gun buyer used this form. ATF Special Agent Curtis Marshall indicated that he wanted a uniform document to capture the residency information. The second attachment was the ATF Operational Plan for the August 2005 gun show. This operational plan outlined the use of the residence checks and staffing issues.

On Saturday, August 13 and August 14, 2005, ATF Special Agents Brian Swann and Curtis Marshall conducted briefings of all assigned personnel at 10:00 a.m. each day. ATF Special Agent Brian Swann reiterated the mission objectives of "prevention, education, and enforcement" from the ATF Operational Plan. During the gun show, Henrico personnel conducted 6 residence checks on Saturday, August 13 and 4 residence checks on Sunday, August 14. Each officer conducting residence verification was provided the Residence Check Sheet from ATF. These officers were given 20 minutes from dispatch to reply with residency verification to the command post. No Henrico County purchases were denied or delayed due to the residence verification checks. Protocol indicated that the sale would be allowed to proceed if the residence verification was incomplete. In addition to officers assigned to conduct the residence verification,

plain-clothes members of HPD assisted ATF, RPD, and VSP personnel inside the venue to monitor firearms transactions.

Chief Stanley is out of town attending a meeting with the Federal Bureau of Investigation's Criminal Justice Information System Division in Dallas, Texas and cannot attend the hearing. He has asked that I represent him, should there be an interest in hearing from our agency regarding our participation in the gun show described above. I will be in attendance at the committee meeting on February 28, 2006 at 2:00 p.m. in room 2141 of the Rayburn House Office Building. Please know that it will be my pleasure to discuss any of the facts described above with you and members of the committee.

Sincerely,

D. A. Middleton, Lieutenant Colonel
Deputy Chief of Police

Mr. COBLE. [presiding.] I want to apologize to my friends on the Subcommittee. I want to thank you, Mr. Feeney, for taking the gavel. And, for the record, folks, airports are becoming rapidly my least favorite places to be. But I apologize to all of you for my delay.

Thank you, Colonel Middleton.

Now, Mr. McCoy, we'll hear from you.

TESTIMONY OF DAVID McCOY, CITY OF RICHMOND POLICE DEPARTMENT

Mr. MCCOY. Mr. Chairman, Members of the Committee, the city of Richmond values our partnership with our Federal agencies, in particular our strong working relationship with the ATF. Richmond has been plagued with issues surrounding violent crime and use of firearms associated with those crimes. Under our current leadership, we believe we are on the right track to success that will move us from a city of statistics to a city where major crime will not be an issue. Part of that effort involves enforcement of firearm offenses.

In 1997, Richmond launched Project EXILE that is designed to remove those persons who are prohibited by law from possessing firearms and those who use firearms to further an illegal trade. This program has universal support because it focuses on a specific problem. This gun show enforcement was supported because information led us to believe that there were illegal transactions occurring at local gun shows, and if we can incorporate the same philosophy of enforcing existing firearms statutes, then we felt we could make an impact on those firearms that are being used for illegal purposes prior to them being used as an act.

At no point was the intent to deny any citizen the ability to purchase a firearm, but rather prevent the acquisition of a firearm in an illegal manner which would relate to the use of that firearm in a commission of crime in the city of Richmond.

We look forward to even stronger partnerships because we know at a local level in order to be completely successful we need the support of our Federal and regional jurisdictional support. Just as crime fails to recognize jurisdictional boundaries, good law enforcement practices recognize this issue as well.

Thank you for allowing me to speak.

[The prepared statement of Mr. McCoy follows:]

PREPARED STATEMENT OF DAVID M. MCCOY

The City of Richmond values our partnership with our federal agencies, in particular our strong working relationship with the BATF. Richmond has been plagued with issues surrounding violent crime and the use of firearms associated with those crimes. Under our current leadership we believe we are on the right track to success that will move Richmond from a city of statistics to a city where major crime will not be an issue.

Part of that effort involves the enforcement of firearm offenses. In 1997, Richmond launched Project EXILE that is designed to remove those persons who are prohibited by law from possessing firearms, and those who use firearms to further an illegal trade.

This program has universal support because it focuses on a specific problem.

This gun show enforcement was supported because information led us to believe that there were illegal transactions occurring at local gun shows. And if we could incorporate the same philosophy of enforcing existing firearm statutes, then we felt

we could make an impact on those firearms that were being used for illegal purposes.

At no point was the intent ever to deny any citizen the ability to purchase a firearm but rather prevent the acquisition of a firearm in an illegal manner which would relate to the use of that firearm in a commission of a crime in the City of Richmond.

We look forward to even stronger partnerships because we know at a local level, that in order to be completely successful, we need the support of our federal and regional jurisdictional support. Just as crime fails to recognize jurisdictional boundaries, good L.E practices recognize this issue as well.

Mr. COBLE. Mr. McCoy, you established some sort of time record. We don't have folks finish before the red light illuminates.

I appreciate you all being here. Folks, I think I'll depart from our normal procedure. I'm going to let Mr. Scott commence the questioning and let me play catch up. Again, I hope you have not been too badly inconvenienced by my delay.

Before I recognize Mr. Scott, Mr. Bouchard, I'm approaching this with an open mind, but at our last hearing the testimony that was given, and I have talked to Mr. Scott and others about this, it appears that the ATF came down in a heavy-handed way. Now, if I'm 180 degrees off course, you bring me back on course before the day is over. But it appears to me it was awfully heavy-handed, and I missed much of the testimony today, but I will play catch up here.

But at this time let me—and, by the way, I appreciate what ATF does. I don't mean to be condemning ATF, and I made that clear at the last hearing. I said I don't want anybody leaving here trashing ATF. And I may be wrong, maybe it wasn't heavy-handed, but the burden may well be on you, Mr. Bouchard, to convince me otherwise.

I'm now pleased to recognize the distinguished gentleman from Virginia Mr. Scott for his line of questioning.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, let me first say how proud we are that our Federal and local law enforcement officers are working together, particularly in Henrico and Richmond. The criminals don't recognize the city-county line, and so we need to make sure that Henrico knows what's going on in Richmond and vice versa. The fact that they are cooperating, I think, is extremely helpful.

Mr. COBLE. I concur with that.

Mr. SCOTT. Let me ask a question first to Mr. Bouchard. Is it Bouchard?

Mr. BOUCHARD. Bouchard.

Mr. SCOTT. The Federal law allows holding up the sale until a background check is completed. What is the statutory authority to hold up things while a residency is verified?

Mr. BOUCHARD. ATF is not involved in doing the background checks before gun sales are made. As far as the residence checks here, we had a 20-minute time limit, which is typically how long it takes to do background checks by the Virginia State Police, before the handgun is sold.

Mr. SCOTT. Is there any specific authority to do a residency check that you are aware of?

Mr. BOUCHARD. That's an investigative tool, a general investigative tool. There's no specific authority to do that.

Mr. SCOTT. The letter that people get when you take their firearm, it says that an investigation has revealed that an individual may have made false statements. Is that—do you do an individualized assessment on that that you believe that that individual person has done something for which there is articulable suspicion?

Mr. BOUCHARD. Sir, that letter was used for the first six gun shows, and only used when probable cause existed to seize a gun.

Mr. SCOTT. Individualized probable cause.

Mr. BOUCHARD. Yes, sir. When the gun was seized, that letter, which ATF does not condone, and I have never seen it used before, nor will it ever be used again, basically means nothing. It has no effect on anyone.

Mr. SCOTT. If they're not used in the future, no need to go over it again.

I was going to ask if people had been Mirandized when they were given that letter.

Mr. BOUCHARD. I don't know for sure, but in that situation it was not a custodial arrest, so they most likely would not have been Mirandized.

Mr. SCOTT. Colonel Middleton or Mr. McCoy, we have background checks when people go in to buy a firearm except for this loophole with gun shows. Can you explain whether or not that creates a problem for law enforcement?

Mr. MCCOY. As far as the background checks in the State of Virginia, I don't see an issue in regards to that. How it related to the gun show element, we thought 20 minutes is a reasonable accommodating amount of time for any reasonable person.

Mr. SCOTT. That's for the regular background check. If you're 2002 and FFL, you don't have to do a background check, you just hand the person the firearm. For those—not the regular background checks, but for those which there is no background check, does that cause a problem for law enforcement?

Mr. MCCOY. Well, because you don't know where that gun is going or where it's been, it could, yes. Yes, it would pose a problem.

Mr. SCOTT. Would you recommend we close that loophole?

Mr. MCCOY. I would recommend.

Mr. SCOTT. Colonel Middleton?

Mr. MIDDLETON. I would concur with that.

Mr. SCOTT. Thank you, Mr. Chairman. No further questions.

Mr. COBLE. Thank you, Mr. Scott.

The distinguished gentleman from Florida Mr. Feeney.

Mr. FEENEY. Thank you, Mr. Chairman.

Mr. Bouchard, throughout your testimony that you provided us, you referred to best practices. Can you elaborate a little bit on what best practices are in this regard at gun shows and then follow up? Are they in writing or available to all agents; have they been reviewed by the Justice Department or lawyers?

Mr. BOUCHARD. We have a gun show policy that ATF has, and it gives each field division some discretion on how they operate at gun shows. Most of the gun shows across the country we don't find are a source of crime guns. In pockets of the country it is, and there are different ways the criminals use in different parts of the country, so we give each field discretion.

Mr. FEENEY. So you only target about 2 percent of gun shows for extra surveillance and activity, and they are targeted because you have reason to believe or there's a history of gangs or other criminals accessing those gun shows in a way they don't do the other 98 percent?

Mr. BOUCHARD. Before we work a gun show, there has to be some type of information it is a source of crime guns, or you may have information from an informant that a number of people are going to buy guns at a gun show. We don't just randomly work gun shows for the sake of working gun shows. There are a lot of other viable sources of guns out there that we spend our time on. When we do work a gun show, we do have some basic information or some justification for being there.

Mr. FEENEY. One of the more nefarious allegations—and I pointed out these were bare allegations at the last hearing because nobody had any evidence or statistics. You can't prove these things unless you know, A, the statistics; what was, for example, the entire population of the gun show, and certain people because of their race or ethnicity or gender overselected, and maybe there were even justifications for the overselection, but until you know the intention and the statistics, you can't prove these things. I pointed that out to the witnesses, who were very convinced that there was profiling.

But having said that, the only way to ensure ourselves that the bare allegations are not true is to—is to get behind and look at the back-up information for the cases that were involved here. There were some 50 people singled out for residency checks, for example, the folks that were set aside for special questioning. Have you provided to the Committee unredacted records and documents that show exactly which individuals were subject to the special scrutiny?

Mr. BOUCHARD. No, sir. We recommended 25 individuals for prosecution. We seized 50 guns; we gave 15 back.

Mr. FEENEY. My question is have you provided the Committee with the documents about the 50 people that were initially profiled?

Mr. BOUCHARD. No, sir. I think some of them have been convicted, but some are still pending in court. We could supply those if you'd like.

Mr. FEENEY. Have we requested those, Mr. Chairman? I think if it's appropriate, if they are not secure because of reasons of prosecution or other exemptions, I think it would be very helpful.

I don't think any of us want those allegations floating around. In my view, the second amendment rights are as important as any other rights, and we've got special protections for people in the United States.

Turning your attention to tab 2, which is the residency check sheet or check form, was it local police only that were used to go do the residency checks, or were ATF agents involved as well?

Mr. McCoy, do you know?

Mr. MCCOY. We used the expertise of the local law enforcement agencies. Because of staffing issues, it may have been an ATF agent, but there was always a local law enforcement officer avail-

able because they knew the street and area, and, again, we worked in a 20-minute time frame. If they couldn't do it, it didn't get done.

Mr. FEENEY. Mr. Bouchard, how was that document created?

Mr. BOUCHARD. That's not a standard ATF form, that's a worksheet that the investigators use so when they do check a residence, they at least had some basic information. If anyone was going to check on a residence, they were asking the same questions. If you'd like, I can go through the form if that's what your intent is.

Mr. FEENEY. I'm more interested in knowing how it was prepared, whether any attorneys or anybody from the Justice Department was involved or advised you as to its appropriateness.

Mr. BOUCHARD. No attorneys. It's a basic worksheet, just like notes an investigator would have. Instead, we tried to standardize what notes an investigator should take.

Mr. FEENEY. There were roughly 50 people selected for these residency checks?

Mr. BOUCHARD. Three hundred two over the course of all the gun shows were checked; 47 gave bad addresses, then another 101 that we could not verify that they live there, but the sale went through. We did not stop that sale.

Mr. FEENEY. So a little over half the cases you were able to verify that the people lived where they claim they did when they purchased the weapon.

Mr. BOUCHARD. Just about that, yes, sir.

Mr. FEENEY. One hundred one plus forty-seven. It's just about a little over 50 percent.

Turning to the flow chart, tab 3, did the ATF create this chart?

Mr. BOUCHARD. Not that I know of, sir. I don't know where that form, that flow chart came from.

Mr. FEENEY. How was the 4473 form utilized with respect to this chart? Was it provided to local law enforcement?

Mr. BOUCHARD. As far as I know, the Virginia State Police were using that and the Virginia firearms sale sheet to verify and do record checks.

Mr. FEENEY. My time is closing. I guess the thing—I appreciate the candor in admitting maybe best practices were stretched or violated here. I think it's important that we go forward and have appropriate access. All of us want to have secure weapons sales. We don't want weapons in the hands of the certifiably crazy or the certifiable criminal class. But having said that, I guess the most concerning allegations are those about ethnic or racial or gender profiling, and the only way to really alleviate and dismiss those allegations is to provide the names and the addresses of the 302 people that were visited and the 50-some people that were ultimately—well, actually anybody that was targeted either at the show or afterwards. And then candidly we need to have some general comparison to the population as a whole. There may be reasons; if the statistics are distorted, they may be justified, but if there is a distortion, there are further questions to ask, in my view. Thank you.

Mr. BOUCHARD. If I can respond, I hope we can spend some time on the racial and those allegations because they're totally false, but we may not be able to provide you too much of that information because if someone—if we verify their address, that sheet and all

the records were destroyed because there is no reason to keep a record of that firearms sale. If someone—if the 47——

Mr. FEENEY. Surely the dispatchers at the local level have a record of where your officers were for 20 minutes on any given day.

Mr. MCCOY. Not at this time frame. Those tapes get reviewed and reworked after a specific amount of time. But if I may just make a comment. Going into this initiative it was very important that the Richmond Police Department and ATF—is that when we did these residency checks, it was either the entire city, or we didn't do them at all. So we were very conscious of this particular point, and we stressed that throughout that if we weren't able to cover all the record checks that were coming in, we did not target, we didn't even think about targeting, a specific community, specific environment. It was if you're a resident of the city of Richmond, that's how we got involved. It was either all or nothing, and we want to keep stressing that point because that was an important pre-thought going into this initiative.

Mr. COBLE. The gentleman's time has expired.

We have been joined by the distinguished gentleman from Florida.

Mr. FEENEY. He wishes he were from Florida. He's from lowly Texas.

Mr. COBLE. I'm sorry.

Mr. GOHMERT. I wasn't going to say anything. I was going to accept Florida.

Mr. COBLE. Mr. Bouchard, before I forget and begin my questioning, I want to make it clear to you, as Mr. Feeney just said, I realize there are some bad people who like to purchase firearms, and I by no means want to give anyone in this room the remotest conclusion that I'm defending those folks. When I said to you—and I didn't conclude that you were heavy-handed, I said it was my opinion that you were heavy-handed. You may be able to convince me I'm wrong about that. But there are bad folks out there, but I think most of the people, at least it appears from our last hearing, probably were not bad people. Anyway, that will be for later on.

Mr. Delahunt, the gentleman from Boston.

Mr. DELAHUNT. To the colonel and the chief, I did not understand the challenges that you have facing you. I think it was Mr. Bouchard's testimony which indicated that Richmond has a violent crime rate that is nearly three times the national average.

Mr. MCCOY. The city of Richmond is averaging about 85 murders a year. We're a population of slightly under 200,000. The Richmond Police Department takes in about 1,280 firearms every year.

Mr. DELAHUNT. That is a shocking statistic. I'm from Boston, and I would say our average is less than 85, and we have a population in excess of 600,000. So, gentlemen, you do have a serious challenge. At the same time obviously there is not a rationale for violating the civil rights and the protections afforded to all of our citizens, and I accept what you say, Director, in terms of racial profiling, gender profiling. There are law-abiding citizens who obviously wish to exercise their rights pursuant to the second amendment, but as a former prosecutor, that is a shocking statistic.

I am pleased to note that ATF, the State police and the local police are working together in a coordinated way to address this problem. Keep it up.

Also, Mr. Bouchard, it's very refreshing here in the United States Congress to hear a representative of a Federal agency acknowledge that best practices were not complied with in every particular case.

Again, just perusing your testimony, I would suspect in the future that there would not be a command post on site, particularly during the course of a covert operation. But having that testimony is reassuring, and I think can account for some of the perception that there was intimidation. Obviously there was a large number of public safety officials there.

It would appear, and you can tell me if I'm wrong, there were seven different gun shows; is that my understanding?

Mr. BOUCHARD. Eight shows that we attended.

Mr. DELAHUNT. It would appear there was one that caused, if you will, the concern that was expressed at the last hearing of the Subcommittee.

Mr. BOUCHARD. I think some of it is getting blended into some of the other hearings. In the May show we only seized one gun. We seized no guns in August. All the other 50 guns that had been seized had been in the first 6 shows that happened earlier on in 2004 and earlier in 2005. We had changed our practices from reacting to straw purchases and blatant straw purchases to a more proactive—that we walked the floor; if we saw blatant straw purchases, we would try to stop those before they occurred.

In fact, there was a big change in the number of guns that had been recovered in crimes. In 2003, 156 guns from these gun shows turned up in crimes; in 2004, 129; in 2005, only 57 guns had been recovered in crimes since that time.

Mr. DELAHUNT. I have to tell you what I also find rather shocking is that given the presence that was obviously exhibited at this particular gun show, that there were some 47 that made an effort to or went ahead and actually utilized a false address. I don't want to misstate that. That shows a level of arrogance, if you will, that doesn't reflect on the—how shall I say it—on the mental prowess of those that would be purchasing these guns illegally. That to me is amazing. Maybe we have a higher quality of criminals in the Boston area, but, boy, how could you be doing that, going in with a false address? From the testimony, obviously, it was a massive police presence there.

Mr. BOUCHARD. Sir, the 47 that did this, they did it because they knew this worked in the past. Many of these same people had bought other guns that turned up in crimes. So the word got around on the street that you could buy a gun, and they couldn't trace it back to you. They are actually pretty smart, and they figured that out. That's why we said it's a problem that we have to figure out. We're seeing a lot of the guns that are bought, go to the address where the person said they lived, there's nobody that lived there.

Mr. DELAHUNT. If the Chair would indulge me.

Mr. COBLE. The Chairman recognizes the gentleman for another minute.

Mr. DELAHUNT. It would seem that the rub here at least partially is the need, and I would concur with the need, to check these residences.

You, Chief, indicated that there was a consensus that 20 minutes was sufficient to verify residence. From where I used to sit, 20 minutes is not a lot of time to dispatch a cruiser to go check a residence. I don't know if you can get it done, particularly you said there was in excess of 100 that you really couldn't verify. Was that because of your self-imposed limit of 20 minutes?

Mr. MCCOY. Yes, absolutely.

Mr. DELAHUNT. That makes me real nervous. There has got to be a way. I don't know if the ATF or State and local police have sat down and attempted to work a protocol with the gun show owners to determine whether there is a common-sense approach, some sort of pre-approval process so that law-abiding citizens don't have their second amendment rights infringed; just to make it expeditious so if you intend to go to a gun show and may purchase a firearm, you can go in, get it done, and without waiting around and going through a check process that I believe is essential. Otherwise, we're going to end up with AK-47s in the hands of gangsters and gang leaders that are going to do damage in the communities. Has that effort been made, or is it feasible, or am I indulging in some wishful thinking?

Mr. BOUCHARD. On behalf of ATF, I can say we can only live within the letter of the law, and basically we are not involved in an approval process to buy a firearm. We may only have to respond after. We work closely with the gun show owners, and I did meet with gun show promoters and their board of directors earlier this month to try and come to some agreement. They don't want these guns to hit the street in the wrong hands either. We all share the same goal. So we are working closely with them to do a better job.

But in most parts of the country the residence issue is not a problem. The word seems to have hit the street in this particular area that that was a way of getting around, much like obliterating the serial number on the gun, that's your way of not having that gun come back to you.

Mr. DELAHUNT. I would hope in terms of the Richmond area, given that violent crime rate there, that a protocol, a memorandum of understanding could be worked out with the gun show owners in an effort to address the needs and the rights of law-abiding citizens, and at the same time ensuring that a residency check is verified so that it doesn't—these firearms don't end up in the hands of those who will use them for criminal purposes.

Mr. COBLE. The gentleman's time has expired. Thank you, Mr. Delahunt.

The gentleman from Texas Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

I am most appreciative of the work of law enforcement, and as a previous prosecutor, like my friend from Massachusetts, who I don't know if I got to answer your question about do you just indulge in wishful thinking, but I'll let that go.

Anyway, with regard to your testimony, Mr. Bouchard, you'd indicated that the Attorney General has reported that violent crime

is at a 30-year low. Is that by percentage of population, or is that by actual number of violent crime incidents?

Mr. BOUCHARD. It's the overall violent crime rates that are reported through the FBI.

Mr. GOHMERT. Crime rate?

Mr. BOUCHARD. By the uniform crime reports, yes, sir.

Mr. GOHMERT. Not by numbers, but by crime rates. That's a percentage of crime to population; is that correct?

Mr. BOUCHARD. I believe so, yes, sir.

Mr. GOHMERT. With regard to this letter that has been referenced and you had indicated won't be used again, you'd indicated that it was only used when the ATF had probable cause. Who made the probable cause determination?

Mr. BOUCHARD. One of the agents or officers. If they saw and had reason to believe a straw purchase had occurred, and I can give you some circumstances of that, they had probable cause to both arrest that person on the spot and seize that gun. What they chose is not to do it on the roadside or in a parking lot; that they would seize the gun, tell the person, here's why we are seizing your gun. You could face arrest. We are asking you to appear at our office. If you can explain this, we are going to give you that opportunity to come in and explain it.

What they should have done is given them a receipt and a business card instead of this letter, because this letter serves no purpose. It's basically telling you when you should come into our office to talk; you're not obligated to. If you don't show up, there is not a darn thing we can do unless we're going to arrest you for the crime for which we seized your gun. So that letter is meaningless. I don't know why it was used, and, again, it stopped after the sixth show, and I can assure you it won't be used anymore.

Mr. GOHMERT. So basically this was a probable cause arrest of the gun.

Mr. BOUCHARD. It was a probable cause stop. Seizure of the gun. Of those 50 guns that we seized, 15 people came in and said, I can justify I can legitimately have this gun, and we gave that gun back, in many cases, the next day or Monday.

Mr. GOHMERT. Then I am curious. I guess I'm curious what caused somebody to believe that it was a straw purchase, and then how was that overborne by those 15 people coming in and showing otherwise?

Mr. BOUCHARD. I can give you a quick example. Three people come into a show. They went up to a gun dealer. Two men are looking at guns, picking out guns. A female is standing behind. The two men walk away. The woman goes up, they give hand signals and eye signals to the lady, she then picks up the gun, knows nothing about the gun. She later buys it after they give her a nod. They go back outside. They get in the car together and leave.

The officers stopped her, asked her if she ever knew how to shoot this gun or ever used this kind of gun, she said no. The two other men in the car also had guns with them, one of whom had a criminal record. We took the gun from her, thinking it was for the other people, because the circumstances showed—led us to believe she was buying it for these other people.

She came in that Monday. She justified, no, I really am buying this gun. I know they had guns with them, one has a record, but I'm really going to buy this for myself. These guys are going to teach me how to shoot it.

We couldn't stop that sale, so we gave the gun back. Instead of having this discussion in the middle of a gun show or in a parking lot, this is the action we took.

Mr. GOHMERT. Is information contained in an application or document for purchase of a gun, is that considered confidential?

Mr. BOUCHARD. No, sir.

Mr. GOHMERT. So that's open to public disclosure. Somebody can fill out here's where I reside, you can take that form and wave it around. We've got the residence. Public information. I mean, you can do that?

Mr. BOUCHARD. I'll just discuss the ATF form 4473 and ask my counterparts to discuss the Virginia form. The 4473, when you buy a gun and purchase a gun, you fill out the form and sign it. It stays with the gun dealer. It's his document that records where that firearm went. It stays with that gun dealer until if he goes out of business, he then submits that as part of his out-of-business records to ATF. It's not available to the media; however, if we arrest someone, we do take that form because it becomes part of evidence if they falsify the form, and it becomes part of our case. The information, it does have the Social Security and your driver's license number and all that. So to the extent it's not secure information, it's not readily available to the public either.

Mr. GOHMERT. How do you all treat that information? If I could be indulged.

Mr. COBLE. The gentleman is recognized for an additional minute.

Mr. MIDDLETON. Sir, the forms that are used in Virginia are created by the Virginia State Police. To the best of my knowledge, those forms are managed in the same way as described for the Federal forms by the gun dealers. None of those come to the local police, I can assure you of that.

Mr. GOHMERT. Within law enforcement, I don't have a problem of that information being transferred. That's one of the problems we've had is that we hadn't communicated very well from Federal to State and local, and even among Federal, worst of all. But what I get to, is it appropriate for an officer doing a residence check to knock on a neighbor's door and say, "your neighbor is buying a gun, and I need to know if they actually live there?" Wouldn't it be more appropriate to say, "we're doing a background check and wondered if these people," without saying they are buying a gun or any other information that may have been gleaned.

Mr. BOUCHARD. That would be the ideal way of doing things, and that's how we did do it in the beginning. The problem is when we went to some of the residences, we just asked, does Mike Bouchard live here? I may have lived there, but the person there may be worried that my name is not on the lease, and they may be evicted because they have people who aren't on their lease living there. That was giving us what we call false positives. They say no, he doesn't live here. We would then stop that sale of the gun. Mike Bouchard would say, really, here's my gas bill, I live there; she didn't want

to say that because she didn't want to get evicted. So we then had to practice telling people this is why we're here. You have no other concerns; we're not looking to do anything else. If no one was home at that address, they would go to a neighbor and ask, does this person live there? And we had the same response: "Why are you asking?" So we made it a standard practice just to tell them they're looking to buy a firearm, and we're trying to verify the residence.

Mr. GOHMERT. I know if you came to my neighbor, he would give a straightforward, honest answer because he happens to be a Federal ATF agent.

Mr. COBLE. Gentlemen, we're going to have another round here because I think this issue is significant enough. We've been joined by the gentleman from California Mr. Lungren. Good to have you with us.

Mr. Bouchard, you indicated none of the suspects, for want of a better word, were Mirandized and therefore did not have to appear at the office. Did I understand you correctly?

Mr. BOUCHARD. If they chose not to appear, they didn't have to.

Mr. COBLE. If they did, in fact, show up, did they have a right to counsel?

Mr. BOUCHARD. If they chose to bring counsel. But it was not going to be arrest or a custodial situation.

Mr. COBLE. If they showed up without counsel, would they be advised that they can have counsel?

Mr. BOUCHARD. Probably not, because it was not a custodial situation, sir.

Mr. COBLE. You may have answered this to the gentleman from Texas, Mr. Bouchard. What disposition did the ATF do with the completed residence checklist?

Mr. BOUCHARD. If the sale was legitimate, and we verified the address, or for those 101 that we couldn't verify, they were destroyed. There was no reason to keep those records. The only ones we kept were the 47 that gave bad addresses for potential future criminal cases.

Mr. COBLE. This may have already been addressed, but let me try if it has not been. How many individuals received the letter, and how many individuals had their firearms seized as a result?

Mr. BOUCHARD. The first part of the question, I tried to verify how many people had been given a letter, and we could not verify that. I know 50 people had guns seized from them; 15 were later returned.

Mr. COBLE. Fifteen of the fifty?

Mr. BOUCHARD. Of the remaining, we recommended 25 people for prosecution. So it was, in essence, 10 other guns that may still be there that people abandoned or they chose I'm not going to push this, "I'm not going back to talk about it."

Mr. COBLE. Mr. Bouchard, define a letter of determination. Would that be applicable to what we're discussing today?

Mr. BOUCHARD. I'm not sure what a letter of determination means, sir.

Mr. COBLE. One of my constituents who's a gun enthusiast asked me to inquire about a letter of determination. We can talk about that later. You're not familiar with that term?

Mr. BOUCHARD. Not that term. I know we use that in a regulatory sense, but I can get an answer.

Mr. COBLE. Colonel Middleton, you indicated in your testimony that your office made inquiries to the ATF agents with regard to the legality of the residency checks, and that you were told that the legality of these checks was being checked out by ATF attorneys. Did the ATF, in fact, provide your office with an answer with regard to the legality of these checks, A, and if so, when and what was the legal basis?

Mr. MIDDLETON. No, sir, I have no record that they provided us with any response that we got. We acted on the assumption that they had cleared all of this and were working with their legal authorities on it.

Mr. COBLE. Major McCoy, we are aware that you conduct residency checks for convicted sex offender registrants. Outside of this function and the gun show operations in question, does your agency conduct residency checks for any other purpose?

Mr. MCCOY. Not that I am aware of, but if it's required to further any type of criminal investigation, it's an acceptable practice to obtain some information that might be used in not even a firearm-type offense.

Mr. COBLE. The reason I asked, I am told that on election day it was discovered that 16 percent—hypothetical. Well, no need to get into that. I think you have already answered the other one.

Did your agency, Major McCoy, receive any complaints concerning these gun shows operations under discussion today?

Mr. MCCOY. Yes, sir. Since the gun shows I have responded via e-mail to numerous people throughout the country with questions that they have regarding the Richmond Police Department's involvement in this issue, and we are a pretty open department, so it is important that we respond back to everybody who has an inquiry about what the Richmond Police Department does. So we've e-mailed numerous people. Last night I had to respond to a gentleman in Dallas, Texas. He had a question about he had heard there was up to 400 or 500 officers involved, and I wrote a lengthy response back, and I got a nice response from him. So there's been inquiries, and we have been able to respond to those the best we can.

Mr. COBLE. Let me get one more question before the red light comes on. In your testimony you indicated ATF suggested you only perform residency checks within an 8-mile radius around Richmond, a suggestion that raised concerns for Henrico officials. It was decided instead that the check should be performed on all residents of Henrico County. What was the reason given, if you know, for having suggested the 8-mile radius, and what were your concerns about the 8-mile radius?

Mr. MIDDLETON. The reason for the 8-mile radius, I'm certain, dealt with the issue of the amount of time it was going to take to conduct the checks; however, we felt like in fairness we needed to apply it across the county in total, not have specific areas that are sorted out. And from our perspective, anyone in Henrico County could have come to the gun show and made application to purchase a firearm.

And we felt like it was appropriate to apply those checks to every resident of the county. This was discussed. ATF concurred with that. The City of Richmond did, and that is how we managed them.

Mr. COBLE. Very well. My time is expired. Let me recognize the gentleman from California, and then we'll start on our second round.

Gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you very much, Mr. Chairman, and thank you for being here. I am sorry, as we all do, we have other meetings that are going on at the very same time. And so we only get a chance to spend partial time here.

Major McCoy, I have got a basic question here, and that is, the program in Richmond, the EXILE program was known all over the country.

Mr. MCCOY. Yes, sir.

Mr. LUNGREN. We knew about it in California. It appeared to be a program similar to what we tried to do in California which was to go after those who are known felons, go after those who were not entitled to have weapons, try and concentrate on those, as opposed to going after law-abiding citizens who happen to own guns, who happen to exercise their right under the Constitution for self protection, for hunting for so forth. And yet, what we have heard in our testimony here, 3 weeks ago?

Mr. COBLE. Two weeks ago, I think. I guess it was 3 weeks ago.

Mr. LUNGREN. It was a little disturbing. It sounded like heavy-handed operations by law enforcement. And I am sorry I wasn't here to hear your responses to it before.

How do I tell people who are law-abiding citizens, who exercise their constitutional rights and protections to own guns, that a program that appeared to be the model for the rest of the country, that didn't go after law-abiding citizens, at least in the eyes of some, has become distorted such that it puts people at jeopardy in the sense that even psychologically they fear that they are going to be arrested for just exercising their rights?

Mr. MCCOY. Yes, I think that is a very important question. And we ask ourselves and challenge ourselves every single day.

EXILE is another initiative that is designed not to disturb the rightful ownership of any firearm but to really attack those that use it in an illegal manner. As I have stated earlier, we are plagued with violent crime in the City of Richmond. This initiative, the gun show initiative, followed the same philosophy, and this has received a lot of support from all sides of gun-ownership groups, that if you have laws, you need to enforce the laws that currently exist. EXILE was currently predicated on that, and so was this. And the gun checks were kind of a sum, or the residency checks were kind of a sum of that specific ordinance that made it illegal to falsely file information on that form. So the philosophy of EXILE remained the same.

And in Richmond, this is just a part of a practice; we stole Boston's youth program, which is highly successful; Indianapolis' gun reduction, and Milwaukee ceasefire, the elements we bring together and continually build up our efforts to reduce firearms.

Mr. LUNGREN. Help me with this, and Mr. Bouchard, if you can, as well, and that is the issue of probable cause. If in fact my num-

bers are correct, and correct me if they are wrong, there were 206 stops total, 50 weapons confiscated, 25 charges brought with 16 convictions. Is that correct?

Mr. BOUCHARD. I don't know about the 206 stops. I can't attest to that. But the 25 people were recommended for prosecution and 50 guns seized are correct.

Mr. LUNGREN. Well, 50 weapons seized, are those 50 from the 25, or are there weapons seized from those who were not charged ultimately?

Mr. BOUCHARD. The 25 people who were recommended for prosecution, their guns are part of the 50.

Mr. LUNGREN. I know they are part of the 50. But are there also weapons that were seized that were not part of the 25 charges, in other words, people who turned out to be okay?

Mr. BOUCHARD. Fifteen were returned of the 50. People came in the next day and verified and could justify that they lived where they were.

Mr. LUNGREN. Here is what I need you to help me with: When I look at the EXILE program, what we did when I was Attorney General of California, I had a violence suppression unit that we developed, very similar to the same program, but we went after guys who were known felons. We did checks. They are on parole, probation et cetera, you know, you don't need a warrant to do that. We put manpower against those. That is a targeted audience.

And yet this varies from that in that you are going to gun shows, and then you are following up, and you got a number of convictions, and that is good. But what does it say about those people who feel they were kind of jammed by this? They follow the law, they get residency checks. They did what they are supposed to do. Does it ever enter into the thought that those people might feel that—I will use the word oppressed—those people might feel that you are sending a message to them that, even under Virginia laws, you can buy weapons as long as you follow the rules; here they did that, and they feel that they are somehow harassed. You confiscate the weapon. They come back the next day. They get it that is good. But if I had a legal right to have a weapon and you confiscate my weapon and I have to go and prove that I am a good guy even though I followed the rules, isn't that a little bit heavy-handed? Can you understand how people feel?

Mr. BOUCHARD. Certainly I understand that. And we don't want that to happen. We try to avoid that at any cost.

The first part of your question, we do the other part of proactive targeting the bad guys. This gun show is just one small part. We are trying to go through the source of firearms that are turning up on the street. And we found they are at the gun shows.

I gave an earlier example to the Congressman from Texas. I gave him a very specific example of someone that we did take her gun. I can share it again with you, sir, if you like. This person even said, yeah, I understand why you did it, because of the circumstances. Two other men picked out the guns. She went up and paid for it. She admitted she had never handled a gun before, hadn't shot one before. She came in and got her gun back. And when we explained all this to her, she understood where we were coming from.

There were thousands of people that show up at each of those shows. In the August shows alone, we approached only 31 people, 31 of these people that were there and stopped blatant straw purchases of 21 sales. So the numbers that you have been hearing from other people are inaccurate. And the number of officers is 400; we have 52 people working at those gun shows, including the people in the field doing residency checks.

Mr. COBLE. One more.

Mr. LUNGREN. Is this 206 stops out of—is that out of kilter with what you know? I mean, that is the figure we have.

Mr. BOUCHARD. That may be reasonable over the course of the eight shows, 206 stops. Before, the May and August shows, they were doing a reactive type of thing. They would see a straw purchase take place. They would let them leave the parking lot. Then they would stop them. We saw that wasn't the best way of doing it because crime guns were still turning up on the street. We said, let's try and prevent it before they happen, and if we see it occur on the floor of the gun show, let's try to educate the people: If you do go through with this sale, this could possibly be a violation of the law.

Mr. COBLE. I thank the gentleman.

And for the benefit of the suspicious people in the audience, Mr. Lungren and I did not compare notes. I used the words heavy-handed as well, and you used identical words, but we did not compare notes.

Mr. LUNGREN. It is not just a North Carolinian word or expression.

Mr. COBLE. Reclaiming my time. Folks, we will now start a second session.

The distinguished gentleman from Virginia, the Ranking Member, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, Virginia has a limit of one gun a month. And I ask Colonel Middleton and Mr. McCoy, does that apply to gun show purchases?

Mr. MCCOY. It is applicable to handgun purchases.

Mr. SCOTT. At gun shows?

Mr. MIDDLETON. Handgun purchases. Handgun purchases only.

Mr. SCOTT. At gun shows, and everywhere else?

Mr. MCCOY. Yes.

Mr. SCOTT. Do you know if that includes the non-FFL purchaser? Do they have to record the fact that they sold a firearm if they are not a firearm stealer?

Mr. MCCOY. No, they don't. I don't believe they do.

Mr. SCOTT. So that kind of slips under the radar screen, and so you can end up buying more than one gun a month at a gun show if you stop at the right tables?

Mr. MCCOY. That would be correct.

Mr. SCOTT. Okay. Well, that is the only question I had, Mr. Chairman. And I want to thank the witnesses for testifying. I think we kind of agreed that things didn't go the way they should have in Richmond, but they will be better next time.

Mr. COBLE. I feel good about that as a result of this hearing as well. The distinguished gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I have had most of my questions answered. I just want to compliment our witnesses. I want to relate my own experience for the record with the ATF. It is an outstanding service. You need more personnel.

I think it was you, Chief, that alluded to the Boston program. The involvement of the ATF was absolutely critical in terms of reducing the homicide rate and reducing the incidents of violence.

So good luck to the two of you in terms of a real challenge.

One more final observation. It is refreshing to hear people take responsibility when things aren't going well.

Mr. BOUCHARD. Thank you, sir, we appreciate your support.

Mr. COBLE. I thank the gentleman from Massachusetts.

The distinguished gentleman from Texas.

Mr. GOHMERT. I have no questions.

Mr. COBLE. The distinguished gentleman from California.

Mr. Bouchard, let me wrap up here then. Did the ATF direct law enforcement officers to approach potential firearm purchasers and dissuade them from purchasing a weapon? Is that known to you to have happened?

Mr. BOUCHARD. Only if there was reasonable cause to believe an illegal firearms sale was to take place.

Mr. COBLE. Colonel Middleton and Major, let me just, this is seeking your opinion. Do you think it is appropriate to inform someone that his or her neighbor is purchasing a firearm? Do you think that is appropriate? As law enforcement people?

Mr. MCCOY. I think, as a last resort, to further an investigation, it would be appropriate if it is applicable to the specific statute that is a needed element to that crime.

Mr. COBLE. Okay.

Mr. Bouchard, you expressed a desire to be heard on the racial profiling question. And I don't want you to shut you off on that.

Why don't you address that at this time if you want to?

Mr. BOUCHARD. Thank you, sir, and I will be very brief on that. At these gun shows as well as anywhere else in the country, race and gender has nothing to do with how we pursue somebody. If they are violating the law, then they are treated equally.

In this case, some people made allegations that we were only going to certain neighborhoods in Richmond or the surrounding areas. We purposely stayed away from that, and it would have been much easier for us to go after individuals that we thought were involved in crimes. But we wanted to make sure that we weren't segregating any portions of the population or any parts of the city or Henrico County. So, therefore, we took it upon ourselves to go that extra step, put the extra manpower out in the field to go do these checks.

This cost the county, the city, a lot of money to do. But we were committed to ensure we weren't going against any individuals, that everybody was going to be treated the same. All of the same—anyone who bought a gun that lived in those areas was treated exactly the same. And that was only 8 percent of the total gun sales that took place.

Mr. COBLE. Well, I am going to give you a chance to clear that, to clear the air on that issue.

Let me put a final question to you, Mr. Bouchard, and as Mr. Scott said earlier, I think we are applying hindsight now, and hindsight is inevitably 20/20. It is always easy to look back and say, well, we should have done this or we should have done that. It appears some mistakes were made, but hopefully, we are getting there. And if mistakes were, in fact—did, in fact, occur, hopefully they won't be repeated. But let me ask you this, Mr. Bouchard. Some of the tactics, for want of a better way of saying it, were used in these operations. I think you said that the letter, that was really, that had no muscle in its arm, meaningless letter, that would not be repeated again.

Mr. BOUCHARD. Correct. And I have met with all of our special agents at length and went over what is acceptable and not and that that type of thing won't be done.

Mr. COBLE. And future documents are created at the field office level that carry the same sort of legal authority that we have seen today. I assume that you all will have that thoroughly reviewed at the headquarters level, will you not?

Mr. BOUCHARD. Well, there are thousands of letters that go out of field offices on a regular basis. So that would not be something that we could do, to have all of them reviewed in headquarters. And the situations where these arrests take place, it would be much easier to go to the U.S. Attorney's Office and get what we call a target letter that we give to individuals that we want you to come in. That is probably the most appropriate way of handling those situations.

We queried all of our field divisions. No one has ever used a letter like this before. So it is not a common practice. It was a rare isolated incident.

Mr. COBLE. It won't be repeated.

Dave, we are just finishing up, but the distinguished gentleman from Ohio, if you want to be heard, I will recognize you.

Mr. CHABOT. I will be very brief, Mr. Chairman. I appreciate you accommodating me. I want to thank the witnesses for being here, and I apologize because we had a conflict, and I wasn't able to be here. And I will review your testimony.

First of all, let me preface my remarks by saying I did have an opportunity to hear much of the testimony last time, and whereas I do think it's appropriate that we make every effort to pursue those that are actually purchasing weapons on behalf of another person who is under disability and should not have access to that weapon, I think it is appropriate to do that.

The testimony that we heard at the previous hearing was quite disturbing, and I think it is appropriate for this Committee to pursue this matter and to make sure that we are apprised of all the facts so that if there were any indications that people were overstepping their bounds—and I think, from the testimony that we heard, there was certainly evidence of that—that we make every effort to remedy that situation. Because a person's right to have a firearm in this country, unless he or she is under some disability because they have committed a crime and therefore shouldn't have

weapons, people should have the right to have a firearm if they choose to do so.

And as I say, some of the testimony was quite disturbing from the last time. And I know a lot of the questions that we have already been asked. So let me ask this one, if I could.

How often does the ATF perform residency checks? And in what cities and under what circumstances are the residency checks conducted? And why does the ATF conduct residency checks?

Mr. BOUCHARD. In most places, we don't conduct residence checks because it is not a common problem that we find when guns are recovered.

However, in Richmond, we found that it was a common pattern. In fact, 16 percent of the addresses that were given were bogus addresses.

As I explained earlier, I think the criminals caught on that this was a good way—and I liken it to obliterating the serial number on a firearm. If you do that or you give a bad address, and the gun is used in a crime and traced, it can't come back to you.

So the word had gotten out on the street, and the criminals were using the bad addresses or using someone else with another address to straw purchase it from them. So we had to tailor our approach, because we saw that was a significant problem in the area.

It is not a common problem across the country, and I hope it doesn't become one. Most people just come in and buy their guns or just get a straw purchaser to do it. So we don't work a lot of gun shows in this country, 2 percent of the total that are actually held are worked by ATF. So it is a rare occurrence when we work a gun show. It is even more of a rare incidence when we do residence checks.

Mr. CHABOT. Thank you. How much was the total budget for the operation, and what did all the agencies spend for this particular gun show that was at issue here?

Mr. BOUCHARD. I would have to get you the exact numbers. I don't have them. But I know there were only eight ATF agents that worked the August show each day.

Mr. CHABOT. Did you say eight?

Mr. BOUCHARD. Yes, sir.

Mr. CHABOT. What about numbers of other law enforcement agencies?

Mr. BOUCHARD. I think the total number of all law enforcement was 52 each day in August.

Mr. CHABOT. Including the ATF or in addition to?

Mr. BOUCHARD. I have the exact numbers I can get you. It was right around 50; nowhere near the 400. I don't know where those numbers came from.

Mr. CHABOT. Mr. Chairman, if I could ask that we have those numbers.

Mr. COBLE. Sure. The record will be open.

Mr. CHABOT. Because, again, there are an awful lot of real crimes and victims of crimes which occur. We want to make sure that we are focusing on those incidences where we can really have the biggest impact that is going to provide for the most security for the most people in this country.

And, again, I want to make clear that if—there was an article that appeared in the Cincinnati Enquirer, my hometown newspaper, relatively recently where they were showing that there were a number of individuals who had purchased weapons for others. And if there are people that are doing that, we ought to go after them very strenuously, and I think that is appropriate.

However, if there are folks that are legitimate folks, that are just exercising their constitutional rights by deciding that they would like to purchase a weapon or might want to consider it and other people who are exercising their constitutional rights by offering their firearms for sale, we ought not to do anything that is going to infringe upon their rights. Because those second amendment rights are just as important as the first and the fifth and all the other constitutional rights that we enjoy in this country.

Mr. Chairman, I thank you for letting me get those questions.

Mr. COBLE. Thank you, gentlemen. I thank you all, not just the witnesses but those in the audience as well. I know our Virginia folks want to beat this traffic.

Mr. SCOTT. Too late for that.

Mr. COBLE. Too late for that, Mr. Scott said. If my belated arrival inconvenienced you all, hold me harmless and blame the airlines. It is not my fault.

I want to thank you all for your testimony. We very much appreciate your contribution. In order to ensure a full record and adequate consideration of this important issue, the record will be left open for additional submissions of questions for 7 days.

Also, written questions that a Member of the Subcommittee wants to submit to either of you should also be submitted within the 7-day period.

This concludes the oversight hearing of the Bureau of Alcohol, Tobacco, Firearms and Explosives, Part 2: Gun Show Enforcement.

Thank you, again, gentleman, for your cooperation and your attendance. And the Subcommittee stands adjourned.

[Whereupon, at 4 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Statement
By
Congressman Robert C. "Bobby" Scott
Ranking Member
House Judiciary Subcommittee on Crime, Terrorism and Homeland Security
Oversight Hearing of the Bureau of Alcohol, Tobacco, and Firearms (ATF)
Part 1: Gun Show Enforcement
February 15, 2006

Thank you, Mr. Chairman. I want to express to you my appreciation for your holding this hearing due, at least in part, I believe, to my request that you do so. I was contacted by a constituent who expressed his concerns about media and other reports of excessive and abusive investigation tactics by the ATF and other law enforcement agencies during a gun show held near Richmond, Virginia. He asked that I look into the matter from my posture as a member of the Judiciary Committee which has oversight over the ATF and federally funded activities of local law enforcement entities, and I, in turn, asked you, Mr. Chairman, to hold hearings on the matter.

As we will likely hear from witnesses today, there are serious allegations of abusive practices, including racial profiling, coercive interrogation tactics, actions tantamount to arrest without probable cause, failure to apprise of rights against self-incrimination, and more. Clearly, the ATF form letter displayed before us raises serious questions about the agency's enforcement tactics in the cases connected to the Richmond gun show and any other enforcement action in which it was used. Mr. Chairman, you and I have different views on gun control. Many of us want to change the laws on gun shows. But until we do, we have to follow the laws on the books.

Mr. Chairman, reports indicate that there was a large number of law enforcement officers, with some accounts suggesting as many as 450 and other accounts suggesting 50 to 70, devoted to an effort to address illegal straw purchases of guns. Preliminary ATF reports indicate 13 arrests related to straw purchase allegations. It is not clear what the objective of the enforcement effort was, but if it were to address straw purchases these results do not appear to justify that much enforcement power. There is a right way to do a police sting. It requires probable cause and at least a predisposition to commit the crime on the part of the target of the sting.

My interest is to investigate this matter to determine whether there is evidence of abusive investigation or other enforcement tactics, and if so, to work with the ATF and other agencies involved to see to it that such practices are stopped and that proper procedures are implemented to prevent reoccurrence. If there are no problems, then I would be pleased to see the actions of the ATF and other law enforcement agencies vindicated.

However, from the media reports and the concerns expressed by persons attending or hearing about the Richmond gun show enforcement activities, even if the actions are not found to have been improper law enforcement actions, we certainly have a problem with appearances that we need to work on relative to how the ATF and other law enforcement entities carried out these activities. So, Mr. Chairman, I look forward to the testimony of our witnesses and to working with you and the ATF on addressing any problems or avoidable appearances of problems in their gun law enforcement efforts. Thank you.

LETTER FROM THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (BATFE) REGARDING POSSIBLE TITLE 18 U.S.C. VIOLATIONS

[redacted]

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives
Richmond, VA 23219

www.atf.gov

Dear [redacted]:

An investigation has revealed that you may have violated Title 18 U.S.C. Section 924(a)(1)(A), a crime punishable by imprisonment for up to five (5) years. The firearm that you purchased is being taken into ATF custody.

Please appear at the below location, date and time to discuss this matter:

ATF
600 E. Main Street
Suite 1401
Richmond, VA

Date 12/06/2004

Time 1:00 pm

Failure to appear at the above time and place could result in the immediate issuance of a federal arrest warrant for these charges. Any questions regarding this charge will be addressed at the time of your appointment. For directions, please call 804-775-4200.

Sincerely,

RICHMOND GUN SHOW LIST

Richmond Gun Show (S turday

Location	Team #	Agency	
Command Post & VSP		ATF	
		ATF	Int
		ATF	
		RPD	
		RPD	
		VSP	
		VSP	
		HCPD	
		HCPD	
		ATF (RPD)	
		HCPD Off-site	
Inside Surveillance	Team 1 - TL	ATF	
		RPD	
		ATF (RPD)	
		ATF(VSP)	
		HPD	
	Team 2 - TL	ATF	
		RPD	
		ATF	
		ATF (VSP)	
		HPD	
	Team 3 - TL	ATF	
		ATF (VSP)	
		ATF (RPD)	
		ATF (VSP)	
		RPD	
		HPD	
	Team 4 - TL	ATF	
		ATF (RPD)	
		ATF (RPD)	
		HPD	
		VSP	
Residence Checks	RPD Residence 1 (1st)	RPD	
	RPD Residence 2 (2nd-Bottom)	RPD	
	RPD Residence 3 (3rd-West)	RPD	
	RPD Residence 4 (2nd-Annex)	RPD	
	RPD Resident 5 (3rd North)	RPD	
	Henrico 1	HCPD	
	Henrico 2	HCPD	
	Henrico 3	HCPD	
	Henrico 4	HCPD	
Take Down	Take Down 1	VSP	
	Take Down 2	VSP	
	Take Down 3	VSP	
	Take Down 4	VSP	

MEMORANDUM TO LIEUTENANT COLONEL ROBERT B. NORTHERN FROM CAPTAIN ROBERT G. KEMMLER, REGARDING GUN SHOW ACTIVITY ON AUGUST 22, 2005

08/26/2005

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF STATE POLICE

August 22, 2005

TO: Lieutenant Colonel Robert B. Northern

FROM: Captain Robert G. Kemmler

SUBJECT: Gun Show Activity

This is in response to your request for information regarding the past gun show at the Richmond Fairgrounds.

I have attached a summary of the activities involved at the gun show.

If you should have any questions, please contact my office.

RGK

Attachments

C: Lieutenant Colonel Eugene A. Stockton

08/26/2005

Gun Show operations were conducted at the State Fairgrounds during this past weekend, involving the same method of operation as previous gun shows. The Department has participated in numerous Gun Show Operations at the Showplace over the past year. This is the first operation at the fairgrounds and the first operation that included the Henrico Police Department.

The customer would complete the SP-65 and the ATF Federal 4473 in order to purchase the firearm. ATF personnel reviewed their form and determined if the purchaser was located in a certain area of either the City of Richmond or the County of Henrico. ATF personnel would direct either the Richmond PD or Henrico PD Residence Check Team to go by the residence of the individual whose information was contained on the ATF 4473 form to determine if the individual resided at the residence. Upon the completion of the residence check, they would permit the transfer of the firearm or conduct further questions of the perspective purchaser. ATF Task Force personnel, Ed Melton, Andrew Stanley and Ricky Williams participated with operations in the Gun show. This operation involved the interviewing of purchasers and surveillance activities for perspective "straw purchase operations." In addition, Sergeant Gray (A1), Trooper Matthews (A1), Trooper Andrews (A1) and Trooper Gunderson (A1) were involved as "take down teams" if ATF requested the vehicle be stopped. VSP take down teams only conducted the stop and ATF personnel would conduct the interviews of the person suspected of a "straw purchase."

Sworn personnel were available for "take down teams" while on patrol and during "walk-arounds" at the fairgrounds. They were not utilized for any arrests unless the perspective purchase was a convicted felon, protective order or domestic violence violation. No takedowns were conducted during this operation.

The promoter of the show contacted their attorney in Washington D.C., who in turn called the Deputy Assistant Director of the ATF at home. Acting RAC Brian Swann was then contacted within the hour.

One ATF Agent had a T-shirt on, which read "If you can read this, the bitch fell off." A gun show participant objected and notified the show promoter on that date. The show's promoter videotaped ATF operations and attempted to videotape undercover agents, as well as the debriefing session.

Twenty-one individuals were deterred from making purchases due to questioning by Task Force members.

The Acting ATF SAC has immediately suspended participation at all gun shows.

08/26/2005

The Department has initiated an active gang related firearm program to reduce the number of firearms being purchased and transferred to prohibited persons who maybe involved in criminal and gang related activities. One of the major projects is the interdiction of firearms to prohibited persons at a primary firearm show on the border of the City of Richmond. The Department has assigned individuals to work in concert with the City of Richmond - Bureau of Police and the Bureau of Alcohol, Tobacco, Firearms and Explosives. These gun show activities have involved gun shows on the following dates: July 10-11, 2004, October 16-17, 2004, December 4-5, 2004 and January 15-16, 2005. The result of these activities has produced the following enforcement efforts:

FIREARMS ASSIGNMENT WITH ATF

	July 10 & 11 2004	Oct. 16 & 17 2004	Dec. 4 & 5 2004	Jan. 15 & 16 2005	TOTALS
Residence Address Checks	47	85	32	45	189
Interviews	28	17	10	13	68
Charges					
Making False Statements on Form	5	3	3	2	13
Felon In Possession of Firearm	1	0	1	0	2
Conspiracy to Commit Felony (Straw Purchases)	5	3	2	3	13
Possession of Marijuana	2	1	2	0	5
Possession of Cocaine	0	0	1	0	1
Fugitive Apprehended -					
Felony	2	1	0	2	5
Misdemeanor	2	2	0	1	5
Illegal Possession of Ammo (Felon)	0	0	0	1	1
Concealed Weapon	1	0	4	0	5
Guns Confiscated	16	13	9	5	43
Attempted Grand Larceny (Stolen Gun from Show)	0	1	0	0	1

Due to changes in the government of the City of Richmond and the replacement of the Chief of Police, the Department has not had an opportunity to coordinate a combined gang enforcement target program effort.

In addition, to the aforementioned gun show activities, the Department has also assigned an individual to investigate the attempted purchase of firearms by prohibited persons in the City of Richmond.

Upon the re-organization of the City of Richmond – Bureau of Police the Department will coordinate our Gang Enforcement Initiatives.

The next firearm show joint operation is scheduled for March 5-6, 2005.

RESIDENCE CHECK SHEET USED BY THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (BATFE)

Residence Check Sheet

Contact Number _____ Time _____ Date _____

Purchaser Name: _____

Contact Address: _____

- ADVISE RESIDENT OF ACTUAL PURPOSE OF VISIT!

Person contacted: _____
How long lived there: _____
Telephone number: _____

Does Purchaser live at address? Yes No Ever?
Does purchaser "stay" at address? Yes No Ever?
How often does purchaser stay at address?
_____ # days /time(s) each week month

Does contact know the purchaser? Yes No
How (Relationship)? _____

How can we contact the purchaser (girlfriend / boyfriend, purchasers Cellphone/ pager number,etc)? _____

Vehicle (s) parked in driveway / street: _____

Neighbor Contact: _____
Neighbor Address: _____
Info: _____

Officers: _____

Notes: _____

AFFIDAVIT FROM RANDY CLARK, BOUTETOURT COUNTY, VA

AFFIDAVIT

County of Boletourt

State of Virginia

BEFORE me, the undersigned notary, duly commissioned and qualified in and for the aforesaid County and State, personally appeared RANDY CLARK, **who after being duly sworn did depose and say:**

My name is Randy Clark, I am a current FFL holding firearms dealer and have been in or involved in this business since 1965. I have actively participated in most of Show Masters and C&E gun shows since 1980.

One of the better and more respected collector shows is the Richmond, VA. event put on at the Richmond Fairgrounds by Annette Gelles. I have many repeat customers ranging in age from 18 to 85 years of age. These are all hard working folks that all pass the state background check to purchase. All are gun enthusiasts that are common laborers to professionals, but all have a common love of guns.

I am disturbed to say, that at this particular show on August 13 & 14, 2005, we had the BATF try to totally disrupt this event for everyone involved. They were taking federal and state firearms transactions forms on citizens that had already been state approved and sending out a task force to these peoples' homes to verify their addresses. I personally had a customer experience this violation to his rights. He had to wait an additional hour to take possession of his firearm. This gentleman is a respected doctor in the Richmond area and he was NOT happy!

I think that these actions are not only illegal, but that they're also an infringement on free trade in my industry. Please assist all of us involved in not letting this illegal activity and harassment happen again.

Randy Clark
Signature

RANDY CLARK
Print Name

Sworn to and subscribed before this 2nd **day of** December, **2005.**

Lorraine B. Hubbard

Notary Public
EXP 3-31-08
Lorraine B. Hubbard

Signature **Print Name**

Notary I.D. N/A

STAMP

AFFIDAVIT FROM WARREN BRUCE JONES, HENRICO COUNTY, VA

AFFIDAVIT

County of Henrico

Commonwealth of Virginia

BEFORE me, the undersigned notary, duly commissioned and qualified in and for the aforesaid County and State, personally appeared Warren Bruce Jones **, who after being duly sworn did depose and say:**

When I arrived at the gun show that Saturday August 13th, I was impressed by the large number of cars in the parking area. Although I was working at the show as an NRA recruiter, I had to park a long way from the door, a distance I have rarely seen in 4 years.

Having spent thirty years in the auto business, I am afraid that I noticed the cars first, and then started looking over the clientele at the show as a result. There were times when it appeared that we had more BATFE people than customers in the show. Mostly, I noticed a really unusual number of young, fit, men who looked too bright to be ordinary street cops, along with a similar number of cars like the government buys these days, almost new and with equipment well-selected for resale (power windows & locks, stereo radios, cruise control, etc.) I well recall how hard it was to convince the buyers to take that instead of taking the old style "stripper" cars for police work.

I overheard part of a conversation between a man and woman, both black, who were looking at pistols. I believe they were at Patriot Services, Jim Jarrett's outfit. The woman asked the man's advice on which gun to buy, and he gave her such ideas as "How does it fit your hand", "How will it fit in your purse", etc. Later I heard a rumor that they were arrested for "straw purchase", alleging that the woman was only buying the gun for the man. I don't know if the rumor was correct, or for certain that this was the same couple accused.

I also heard show vendors complaining about BATFE interfering with their processing, which may or may not have been true, and about BATFE people hanging about the tables to intimidate potential buyers. I did not hear or see anything at my table I could call intimidation myself, however.

Warren Bruce Jones
Signature

WARREN BRUCE JONES
Print Name

Sworn to and subscribed before this 2 **day of** December, **2005.**

Myra B Smith
Signature

MYRA B Smith
Print Name

AFFIDAVIT FROM IKAYA C. PARKER, CHESTERFIELD COUNTY, VA

AFFIDAVIT

State of **Virginia**

County of Chesterfield

On Feb 13, 2006, I, IKAYA C. PARKER, did make the following statements as a true and accurate account to the best of my recollection. I swear that I am over 18 years old and of sound mind.

I attended the Richmond Gun show in 2005 in which winded up to be a very unpleasant visit. Myself along with my best friend Marcus Holland and cousin Jon Cesson were harrassed by the ATF department. The three of us went to the showplace on on Saturday evening to purchase a gun for myself for protection. I am a single mother of one daughter and wanted a safety weapon for my home. By the time we looked around and found what would be a suitable gun. By this time it was too late the show closed, so we left and came back Sunday. Looked around again purchased a gun and left. While traveling down Mechanisville Hwy I noticed a police officer riding beside me looked over at me and then got behind me and followed me to 95N where I was then pulled over by him and three other vechiles. I was then told to

SIGNED, Ikaya C. Parker
Ikaya C. Parker Ikaya C. Parker

Signed and Sworn before me this date, 2-14, 2006.
I am a Notary Public for the State of Virginia, my commission expires on 8/31/06.

Signed,
Print Name

STAMP

POST-HEARING QUESTIONS TO ANNETTE GELLES, OWNER, SHOWMASTERS GUN SHOWS, FROM THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS [1]

QUESTIONS FOR THE RECORD TO ANNETTE GELLES, OWNER, SHOWMASTERS GUN SHOWS FROM *THE HONORABLE SHEILA JACKSON-LEE*

Oversight Hearing of the Bureau of Alcohol, Tobacco, and Firearms (ATF) Part 1: Gun Show Enforcement

February 15, 2006

1) What is the process for becoming an exhibitor at a gun show produced by Showmasters Gun Shows?

a) Does a prospective exhibitor submit an application or any other paperwork?

b) What records do you keep on exhibitors?

c) For how long do you keep the records on exhibitors?

d) Do exhibitors pay a fee?

e) What is the fee?

2) Do you require that exhibitors have Federal Firearms Licenses if they are going to sell firearms at Showmasters Gun Shows?

3) Do you verify that exhibitors have Federal Firearms Licenses if they are going to sell firearms at Showmasters Gun Shows? If so, how do you verify the authenticity of these licenses?

a) Do you ask to see copies of such licenses?
b) Do you check these licenses with ATF to ensure that they are still valid? If so, how do you check the validity of the licenses? For example, do you check them on ATF's FFL eZ Check website?

4) Are there particular requirements beyond those established under current law for someone seeking to sell guns at a gun show produced by Showmasters Gun Shows?

5) What is the fee for someone seeking to sell firearms at a gun show produced by Showmasters Gun Shows? If the fee varies from show to show, please provide the specific fees charged at all of the shows produced by Showmasters Gun Shows in 2005.

6) Please provide a list of all the exhibitors at the Richmond Gun Show on August 13, 2005.

7) Please provide a list of all the exhibitors at the Richmond Gun Show on August 14, 2005.

8) Please list all the exhibitors who offered firearms for sale at the Richmond Gun Show on August 13, 2005, and indicate whether the exhibitor had a Federal Firearms License.

9) Please list all the exhibitors who offered firearms for sale at the Richmond Gun Show on August 14, 2005, and indicate whether the exhibitor had a Federal Firearms License.

[1] Response to these questions had not been received by the Subcommittee at the time this hearing was printed.

PREPARED STATEMENT OF THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman, for holding this second hearing on the issues relating ATF enforcement activities at the Richmond gun show held in August, 2005. At the last hearing, we heard from witnesses who had criticisms of the activities of ATF and other law enforcement operations during the show. While noting that gun show enforcement activities have generally been conducted well within expected limits and in a totally appropriate or commendable manner, relative the Richmond area gun show conducted on August 14th and 15th, 2005, the witnesses made very serious allegations of abusive practices, including allegations of racial profiling, coercive interrogation tactics, actions tantamount to arrest without probable cause, failures to apprise of rights against self-incrimination, and more. Newspapers across the state reported on these allegations following the gun show.

Today, we will hear from the ATF regarding their response to those criticisms and their involvement and perspectives regarding enforcement activities at the gun show. We will also hear form representatives of Richmond City and Henrico County police regarding their involvement and perspectives on the gun show enforcement activities.

Mr. Chairman, as I stated at the last hearing, we may have different views on gun control and what the laws should be for gun shows. However, unless and until the current laws are changed, we must fully follow the laws now on the books with respect to these issues, in spirit as well as action. There is a right way to enforce the law. It requires probable cause and at least an intent to commit a crime on the part of the target of the enforcement. The allegations suggest at least the appearance that the all the gun show activities were not in keeping with these standards. I look forward to the testimony of our witnesses today to gain further insight into what happened and how we might avoid even th appearance of impropriety in enforcement of our nation's gun laws. Thank you, Mr. Chairman.

RESPONSE TO POST-HEARING QUESTIONS FROM MICHAEL BOUCHARD, ASSISTANT DIRECTOR, FIELD OPERATIONS, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (BATFE)

STATEMENT
OF
MICHAEL BOUCHARD
ASSISTANT DIRECTOR/FIELD OPERATIONS
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

OVERSIGHT OF THE BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES,
PART 2: GUN SHOW ENFORCEMENT

FEBRUARY 28, 2006

Good afternoon Chairman Coble, Congressman Scott and members of the Subcommittee. Thank you for the opportunity to appear before you to discuss the significant contributions of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) relating to our enforcement of Federal firearms laws. Specifically, we appreciate this opportunity to outline for the Subcommittee our law enforcement efforts related to gun shows in and around Richmond, Virginia, between May 2004 and August 2005.

We acknowledge that some techniques used in our Richmond operations were not implemented in a manner consistent with ATF's best practices. We have determined that we could have done better by maintaining the law enforcement command post off the premises of the gun show, by conducting law enforcement briefings away from the site of the gun show, by not utilizing a letter to convey possible violations to attendees, and by more thoroughly

explaining the parameters for conducting residence checks. However, we, along with our law enforcement partners, feel very strongly that our operations at Richmond area gun shows have reduced violent crime and made the streets of Virginia and America safer consistent with our agency's mission.

ATF enforces Federal firearms laws and provides extensive support to Federal, State, and local law enforcement officials in their fight against crime and violence. Our agents investigate a broad range of firearms violations that can be generally divided into three categories:

1. Investigations of persons who are prohibited by law from possessing firearms, such as felons, illegal aliens, and drug traffickers;

2. Investigations of persons possessing prohibited firearms, such as post-1986 machineguns and sawed-off shotguns; and

3. Investigations of firearms trafficking.

From these types of investigations, ATF agents concentrate on firearms traffickers who are diverting firearms out of lawful commerce into the hands of criminals. Firearms trafficking investigations can be complex and time-consuming. They can involve illegal straw purchases of firearms by one person on behalf of another person who may be unable legally to possess firearms, illegal dealing by unlicensed firearms sellers at gun shows or other locations, robberies of gun stores, and thefts from interstate shipments.

Through the Administration's Project Safe Neighborhoods (PSN) initiative, which began in 2001, and the ATF-led Violent Crime Impact Team (VCIT) initiative beginning in 2004, law enforcement, prosecutors, and community leaders work together to deter and prevent violent crime. Congress has appropriated money for these initiatives and we are using it to reduce violent crime. In support of these initiatives, ATF and its law enforcement partners have developed focused enforcement strategies to investigate, arrest, and prosecute violent offenders, prohibited possessors of firearms, domestic and international firearms traffickers, and others who illegally attempt to acquire firearms. ATF firearms investigations resulted in over 8,300 convictions in fiscal year 2005. Additionally, we have developed expertise in working against criminal organizations, particularly gangs. As a result of our investigations, more than 3,000 gang members have been convicted of firearms offenses in the past five years. In the past two fiscal years, more than 12,000 firearms have been linked to gang activity.

I can tell you that our programs are working. According to data from the most recent Uniform Crime Report (2004), the 15 VCIT pilot cities, which include Richmond, endured 180 fewer homicides as compared to the previous year (2003), which represents 46 % of the overall decrease in homicides nationwide. As a result of ATF's efforts and contributions, as the Attorney General recently announced, gun prosecutions are up 73% from fiscal year 2000 to fiscal year 2005. The Attorney General also has reported that violent crime is at a 30 year low.

As you can see, ATF enforcement activities at gun shows are a piece of the big picture for the national firearms enforcement strategy. We conduct numerous investigative operations at

gun shows across the country in any given year for various reasons. To put things in perspective, more than 5,000 gun shows are held annually in the United States, and on average, we conduct investigations at approximately 2% of these shows. This statistic clearly demonstrates that we are focusing in on key information and working with the specific needs of our State and local law enforcement partners to surgically impact problem areas. ATF's presence at gun shows can provide an invaluable service to the community. Except for the issues surrounding the Richmond gun show operation on August 13th and 14th, 2005, we have not received any complaints regarding this important element of our firearms enforcement program.

I would like to provide you with some information about why we, along with our State and local law enforcement partners, believed it was important to commit our resources to conducting operations at gun shows in Richmond. Between 2002 and 2005, more than 400 firearms sold by federally licensed firearms dealers at Richmond area gun shows were recovered in connection with criminal activity. Of this total, more than 300 of the total number of guns sold at these gun shows by federally licensed firearms dealers were recovered in the Richmond metropolitan area. These figures do not take into account firearms that may have been sold at Richmond area gun shows by unlicensed sellers, as these transactions are more difficult to track. To confront these issues, ATF and State and local law enforcement officials initiated a cooperative effort focused on the source of guns used in crimes committed in the Richmond area, including those sold at gun shows. The goal was to reduce violent crime by preventing the illegal diversion of firearms and to investigate persons who violate Federal firearms laws.

Richmond is one of the most violent cities in America according to the most recent Uniform Crime Report data available (2004), which indicates that Richmond's violent crime rate is nearly 3 times the national average. In advance of our operations between May 2004 and August 2005, ATF special agents and detectives from the Richmond Police Department analyzed information to determine the sources of crime guns and illegal firearms trafficking patterns in and around Richmond, and determined that a number of guns used in crimes had connections to Richmond area gun shows. Among other things, we found that many of the guns recovered by the Richmond Police Department after being used in connection with violent criminal acts had been purchased illegally at local gun shows. Our investigations also demonstrated that individuals who purchase firearms illegally at Richmond area gun shows, such as straw purchasers and prohibited persons, do not always provide accurate residence information at the time of purchase, as required by law. We briefed leaders from both the Richmond Police Department and Henrico County Division of Police on the initiative and they fully supported the plan to conduct enforcement operations at Richmond gun shows. In keeping with our longstanding partnership with the firearms industry, ATF also advised gun show promoters and owners/managers of the premises where the gun shows were held of the law enforcement presence and of our goals.

Between May 2004 and August 2005, ATF and our State and local law enforcement partners attended eight gun shows in the Richmond area.

Let me share a significant example of the outstanding police work that came out of these partnerships. On October 17, 2004 at the Showplace Gun Show in Richmond, Virginia, officers observed a straw purchase of a firearm by two male individuals. The term "straw purchase" refers to a transaction in which the actual buyer of a firearm uses another person, the "straw purchaser," to execute the paperwork necessary to purchase a firearm. Law enforcement personnel observed obvious signs of a straw purchase during the interaction between these two subjects. Therefore, after a firearm was purchased by one man and provided to the other, officers approached them and conducted separate interviews. The purchaser admitted to being paid $100 by the other man to complete the paperwork and buy a handgun. He also admitted to having "straw purchased" an AK-47 rifle for the same man during the Showplace Gun Show in Richmond on July 10, 2004. Further investigation over the course of the next six months revealed that the primary subject was a ringleader in the "Blue Ridge Crew" street gang and that he was the primary suspect in a murder that had occurred on July 19, 2004 in the city of Richmond.

Ultimately, agents and officers determined that the murder weapon used in the July 19th murder was the straw-purchased AK-47 rifle obtained at the gun show just 9 days before the crime. While law enforcement was present at the July 10, 2004 gun show, we did not prevent the illegal sale of that AK-47 rifle; however, we were present at a subsequent show on October 17, 2004, and through our joint law enforcement efforts, caught these criminals in the act and prevented another potential murder weapon from hitting the streets. Our involvement in this

investigation eventually led to a guilty plea to murder by the gang member who was acquiring firearms illegally at Richmond area gun shows. He has been sentenced to serve 40 years in prison.

Our focus at the Richmond-area gun shows was on indicators of criminal activity, not on the color of skin or the gender of potential suspects. I listened to the allegations of "racial profiling" that were leveled against ATF by some of the witnesses who testified before this Subcommittee on February 15, and I can tell you, having conducted a thorough review of our activities at these gun shows, that those allegations have no basis in fact. ATF does not condone or engage in racial profiling of any sort and we adhere strictly to the Attorney General's guidelines in this regard. Our agents' focus, and the focus of the State and local partners who serve on our task forces, is on disrupting criminal activity, without regard to the race or gender of those who appear to be engaged in criminal acts. That being said, I do recognize that concerns have been raised about the manner in which certain aspects of our operation were conducted. We have listened closely to those concerns and have taken steps to adapt our operations for the future.

First, we recognize that it was not a "best practice" to have maintained the task-force command post on-site, nor to have conducted a briefing for our State and local partners at the site of the gun show, as these actions may have contributed to the perception of an overly large law enforcement presence at the show. During each event, a command post was established to coordinate activities and to facilitate communication between law enforcement personnel. The

command post staff included supervisors from each agency as well as agents and detectives. For the first seven gun shows in Richmond, the command posts were established away from the site of the gun show. For the August 13-14, 2005 gun show, the manager of the complex and the promoter identified a room in the building as vacant and available for law enforcement use as needed. We established a command post in that space. It is clear in hindsight that unnecessary attention was drawn to the law enforcement operation by utilizing this space so close to the activities of the gun show.

Additionally, briefings were conducted prior to the beginning of each show to advise Federal, State, and local law enforcement personnel of the initiative, to discuss the relevant investigative techniques, and to review each officer's or agent's assignment, including command post responsibilities, surveillance duties and residence checks. Each gun show operation was staffed with between 24 and 50 agents and officers. For the first seven shows, this briefing was held at a location other than the gun show premises. At the eighth show, on the weekend of August 13-14, 2005, the briefing was conducted on-site, and we recognize that this also was not a good decision. In hindsight, the gathering of that many uniformed officers with marked patrol units clearly brought unnecessary attention to our operation. Since the plans called for covert activity at the gun show, it did not serve the operation well to conduct the briefing on-site.

As for the actual enforcement operation, surveillance by plainclothes officers and agents was conducted at the gun shows to observe potential straw purchases or related illegal activity. Additionally, there were occasions when Federal firearms licensees made contact with law

enforcement personnel, pointed out suspicious behavior and requested that agents watch the activities of particular individuals. If a firearms transaction was completed and there was probable cause to believe that a violation had occurred, the parties were kept under surveillance for as long as practicable. In some cases, purchasers were stopped by law enforcement and questioned about the firearms transaction. In all cases where firearms were taken into custody by law enforcement, there was probable cause to believe that a criminal violation had occurred.

Although our review of enforcement activities revealed that, in every case in which a firearm was taken into custody, there existed probable cause to believe that a criminal violation had occurred, we recognize that a form letter issued to some of those from whom firearms were seized was not in keeping with ATF's best practices. Use of this letter was discontinued before the seventh gun show operation in May 2005. I can assure you that this letter will not be used again.

We also recognize the concerns surrounding our conduct of residence checks on firearms purchasers on the weekend of August 13-14, 2005. By way of background, and as we have previously relayed to the Subcommittee, prior investigations had revealed that some purchasers at gun shows had not provided accurate address information at the time of purchase. Federal law prohibits knowingly giving false information to a federally licensed firearms dealer in connection with the purchase of a firearm and prohibits the sale of a firearm by a federally licensed firearms dealer to a person where possession by such person would violate any State law or published

ordinance. Furthermore, the information provided by purchasers is particularly important because it is used to initiate the background check process required by the GCA.

Confirmation of residence addresses through residence checks has proven to be an important and useful tool to ensure the lawfulness of firearms transactions and to prevent straw purchases. ATF personnel working in the command post received residence information from firearms transaction paperwork and relayed the information to uniformed officers in the field who would confirm the addresses of purchasers. The results from the officers were conveyed to the command post. If the residence information was valid, all notes and paperwork utilized by the officers were destroyed at the end of the day. If an address was not valid, the officer submitted his notes and/or paperwork to the case agent. The goal of the residence checks was simple: to verify an address by going to the residence and confirming that a certain individual actually lived at that location. Ideally, this would be accomplished by speaking to someone at the cited address. If, and only if, no one was available at the address, a neighbor would then be located and asked to confirm, if they could, that an individual lived at the address in question.

It bears noting that throughout the initiative, between May 2004 and August 2005, law enforcement conducted a total of 302 residence checks. Of those, 47, or 16%, proved to be addresses where the purchaser did not reside. It should be noted also that residence checks were conducted on only 8% of the total number of people that completed firearms transactions through federally licensed firearms dealers during the initiative.

Despite the concerns surrounding our operation on the weekend of August 13-14, the joint law enforcement presence and enforcement activity at the Richmond area gun shows resulted in the prevention of unlawful sales and the detection of criminal activity. Cases were perfected against 25 defendants on various Federal charges and all cases submitted were prosecuted. Some defendants' gun show related charges were combined with other charges that were developed as the investigation progressed, as was the case in the example I shared earlier.

ATF policy regarding gun shows provides guidance as to investigative practices applicable to dealers and other persons involved in firearms transactions at gun shows, and this policy has not changed significantly since 1989. Our internal review has shown that to the extent that certain decisions regarding implementation of various techniques were not reflective of ATF's best practices, there was no evidence of misconduct, nor was there any indication of concerns reflecting negatively upon the integrity of our agents or our State and local partners. I have issued a memorandum to ATF Field Operations reminding employees of both policy and best practices related to gun show investigations. In this memorandum, and in other communications with our leadership in the field, I have specifically highlighted the key areas discussed here today.

In addition to the investigative efforts outlined above, I would like to point out that, in cooperation with certain gun show promoters, ATF has staffed booths at various shows to provide guidance on firearms issues and to answer questions for gun show attendees. As a result of the attention directed at ATF's involvement at gun shows in Richmond, we have made an

increased effort to meet with industry members, particularly gun show promoters, on a number of occasions. Most recently, ATF met with gun show promoters and offered to assist dealers and buyers at shows in understanding their obligations under Federal law by providing written publications and on-site advice. I personally explained to the promoters that residence checks, done appropriately, serve a valid law enforcement purpose. The open dialogue proved beneficial, and I believe that the meeting went far toward fostering a partnership that will ultimately assist agents and officers in their efforts to ensure that felons and other "prohibited persons" do not obtain firearms at gun shows. This partnership is particularly important because it will take cooperation between the law enforcement community and persons involved in the firearms industry to ensure that we are doing all we can to take guns out of the hands of criminals who might use them to promote violence and chaos on our streets.

As I stated earlier, although our efforts at gun shows are only a small part of ATF's overall firearms enforcement activities, they are a valuable tool in protecting our communities. Like everyone in this room, we are committed to reducing the gun crime that confronts America today. ATF works side-by-side with our partners in both the law enforcement community and the firearms industry every day. We continue to work diligently to enforce existing laws to keep firearms out of the hands of terrorists and criminals while remaining sensitive to the rights of law-abiding citizens to engage in lawful firearms-related commerce. As reflected in recent crime statistics compiled by the Department of Justice, our efforts are having a positive impact in the fight against violent crime.

We hope this information will assist the Subcommittee in its oversight efforts. I look forward to answering any questions the Subcommittee may have.