AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 109–672

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (BATFE) MODERNIZATION AND REFORM ACT OF 2006

SEPTEMBER 21, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5092]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5092) to modernize and reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Modernization and Reform Act of 2006".

SEC. 2. GRADUATED PENALTIES FOR CIVIL VIOLATIONS BY FEDERAL FIREARMS LICENSEES.

(a) IN GENERAL.—Section 923 of title 18, United States Code, is amended by striking subsections (e) and (f) and inserting the following:

"(e)(1)(A) If the Attorney General determines that a licensee under this section has willfully violated any provision of this chapter or any regulation prescribed under this chapter, the Attorney General may—

"(i) if the violation is of a minor nature, or if the violation is that the licensee has failed to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except because of theft, casualty loss, consumer sales, back orders from a manufacturer, or any other similar reason beyond the control of the licensee)—

"(I) impose on the licensee a civil money penalty of not more than $1,000 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for violations arising from a single inspection or examination shall not exceed $5,000; or

"(II) suspend the license for not more than 30 days, and specify the circumstances under which the suspension is to be terminated, if, in the period for which the license is in effect, there have been at least 2 prior occasions on which the licensee has been determined to have violated this chapter; or

"(ii) if the violation is of a serious nature—

"(I) impose on the licensee a civil money penalty of not more than $2,500 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for a violations arising from a single inspection or examination shall not exceed $15,000;

"(II) suspend the license for not more than 90 days, and specify the circumstances under which the suspension is to be terminated;

"(III) revoke the license; or

"(IV) take the actions described in subclauses (I) and (II), or subclauses (I) and (III).

"(B)(i)(I) In determining the amount of a civil money penalty to impose under subparagraph (A) on a licensee, the nature and severity of the violation involved, the size of the firearms business operated by the licensee, and the prior record of the licensee shall be considered.

"(II) On request of the licensee, the Attorney General may consider the ability of the licensee to pay a civil money penalty, and may allow the licensee to submit documents and information to establish the ability of the licensee to pay. The Attorney General shall not make part of any public record any document or information so submitted, and shall return to the licensee any such document or information.

"(III) The total amount of penalties imposed on a licensee under subparagraph (A) with respect to violations of a minor nature and of a serious nature arising from a single inspection or examination shall not exceed $15,000.

"(ii) For purposes of subparagraph (A), violation of a provision of this chapter with respect to 2 or more firearms during a single transaction shall be considered a single violation of the provision.

"(iii) The Attorney General may defer, or suspend, in whole or in part, the imposition of a civil money penalty on a licensee whose license is suspended under this paragraph.

"(C) For purposes of subparagraph (A):

"(i) A violation of this chapter shall be considered to be of a serious nature if the violation—

"(I) results in or could have resulted in the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition under this chapter or under State or local law;

"(II) obstructs or could have obstructed a bona fide criminal investigation or prosecution, or an inspection or examination under this chapter; or

"(III) prevents or could have prevented a licensee from complying with subsection (a)(7), (a)(8), (b)(1), (b)(3), (b)(4), (j), (k), (o), or (p) of section 922, subsection (g)(7) of this section, or subsection (b) or (h) of section 924.

"(ii) A violation of this chapter shall be considered to be of a minor nature if the violation is not of a serious nature.

"(D) The Attorney General may not commence an enforcement action under subparagraph (A) with respect to a violation, after the 5-year period that begins with—

"(i) the date the violation occurred; or

"(ii) if the licensee intentionally obstructed discovery of the violation, the date the violation is discovered.

"(2)(A) Not less than 30 days before the effective date of any penalty imposed on a licensee by reason of a determination made under paragraph (1), the Attorney General shall send the licensee a written notice—

"(i) of the determination, and the grounds on which the determination was made;

"(ii) of the nature of the penalty; and

"(iii) that the licensee may, within 30 days after receipt of the notice, request a hearing to review the determination.

"(B) A hearing to review a determination made under paragraph (1) with respect to a licensee shall not be held unless the licensee requests such a hearing within 30 days after receiving the notice of the determination sent pursuant to subparagraph (A).

"(C) On timely receipt from the licensee of a request for such a review, the Attorney General shall stay the imposition under paragraph (1) of any penalty involved,

pending resolution of the review, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that—

"(i) the licensee or the principal owner of the business subject to the license has been indicted and charged with a criminal violation of this chapter; and

"(ii) the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

"(3)(A) Within 90 days after timely receipt from a licensee of a request to review a determination made under paragraph (1) (or at such later time as is agreed to by the Attorney General and the licensee), an administrative law judge shall hold a hearing, at a location convenient to the licensee, to review the determination.

"(B) Not less than 30 days before the hearing, the Attorney General shall deliver to the licensee—

"(i) a document identifying each person whom the Attorney General intends to call as a witness during the hearing;

"(ii) a copy of each document which will be introduced as evidence at the hearing; and

"(iii) copies of all documents on which the determination is based.

"(C) Within 90 days after the hearing, the administrative law judge shall issue a written decision setting forth findings of fact and conclusions of law, and a decision as to whether to affirm, modify, or reverse the determination.

"(D) On request of the licensee, the Attorney General shall stay the effective date of any penalty, suspension, or revocation until there has been a final, nonreviewable judgment with respect to the determination involved, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that—

"(i) the licensee or the principal owner of the business subject to the license has been indicted and charged with a criminal violation of this chapter; and

"(ii) the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

"(E) The action of an administrative law judge under this subsection shall be considered final agency action for all purposes, and may be reviewed only as provided in subsection (f).

"(4) This subsection shall not be interpreted to affect the authority of the Attorney General under section 922(t)(5).

"(f)(1) Within 60 days after a party receives a notice issued under subsection (d)(3) of a decision to deny a license, or a notice issued under subsection (e)(3)(C) of a determination to impose a civil money penalty or to suspend or revoke a license, the party may file a petition with the United States district court for the district in which the party resides or has a principal place of business for a de novo review of the decision or determination.

"(2) In a proceeding conducted under this paragraph, the court shall, on application of a party, consider any evidence submitted by the parties to the proceeding whether or not the evidence was considered at the hearing held under subsection (d)(3) or (e)(3).

"(3) If the court decides that the decision or determination was not authorized, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

"(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of a regulation prescribed under this chapter, and the licensee is acquitted of the charges, or the proceedings are terminated, other than upon motion of the Government before trial on the charges, the Attorney General shall be absolutely barred from denying a license under this chapter, suspending or revoking a license granted under this chapter, or imposing a civil money penalty under subsection (e), if the action would be based in whole or in part on the facts which form the basis of the criminal charges.

"(5) The Attorney General may not institute a proceeding to suspend or revoke a license granted under this chapter, or to impose a civil money penalty under subsection (e), more than 1 year after the filing of the indictment or information.".

(b) CONFORMING AMENDMENTS.—

(1) PROCEDURE APPLICABLE TO DENIAL OF APPLICATION FOR LICENSE.—Section 923(d) of such title is amended by adding at the end the following:

"(3) If the Attorney General denies an application for a license, an administrative law judge of the Department of Justice shall, on request by the aggrieved party, promptly hold a hearing to review the denial, at a location convenient to the aggrieved party. If, after the hearing, the administrative law judge decides not to reverse the denial, the administrative law judge shall give notice of the final denial decision to the aggrieved party.".

(2) ELIMINATION OF REDUNDANT PENALTY.—Section 924 of such title is amended by striking subsection (p).

SEC. 3. CONSIDERATION OF FEDERAL FIREARMS LICENSE APPLICATIONS.

(a) IN GENERAL.—Section 923(d) of title 18, United States Code, as amended by section 2(b) of this Act, is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and inserting after paragraph (1) the following:

"(2) The Attorney General shall make a preliminary determination as to whether to approve or deny an application submitted under subsection (a) or (b). If the preliminary determination is to deny the application, the Attorney General shall notify the applicant in writing of the preliminary determination and the reasons for the preliminary determination, and shall afford the applicant an opportunity to supplement the application with additional information and to request a hearing on the application. If the applicant, in a timely manner, requests such a hearing, the Attorney General shall hold the hearing at a location convenient to the applicant, and shall notify the applicant in writing of the time and place of the hearing.".

(b) CONFORMING AMENDMENT.—Section 923(f) of such title, as amended by section 2(a) of this Act, is amended by striking "(d)(3)" each place it appears and inserting "(d)(4)".

SEC. 4. DEFINITION OF WILLFULLY.

Section 923(e) of title 18, United States Code, as amended by section 2(a) of this Act, is amended by adding at the end the following:

"(5) For purposes of this subsection, the term 'willfully' means, with respect to conduct of a person, that the person knew of a legal duty, and engaged in the conduct knowingly and in intentional disregard of the duty.".

SEC. 5. ESTABLISHMENT OF FORMAL INSPECTION, EXAMINATION, AND INVESTIGATIVE GUIDELINES.

The Attorney General shall establish guidelines for how the Bureau of Alcohol, Tobacco, Firearms, and Explosives is to conduct inspections, examinations, or investigations of possible violations of chapters 40 and 44 of title 18, United States Code.

SEC. 6. REVIEW BY THE INSPECTOR GENERAL OF THE DEPARTMENT OF JUSTICE OF THE GUN SHOW ENFORCEMENT PROGRAM; REPORT.

(a) REVIEW.—The Inspector General of the Department of Justice shall conduct a review of the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, for the purpose of assessing the manner in which the Bureau conducts the gun show enforcement program and blanket residency checks of prospective and actual firearms purchasers.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a written report that contains the findings of the review required by subsection (a), and includes such recommendations as may be appropriate.

SEC. 7. LIMITATIONS ON USE OF FIREARMS PURCHASER INFORMATION.

Section 923(g)(1)(D) of title 18, United States Code, is amended in the last sentence by inserting ", except that information identifying a person who has purchased or received firearms or ammunition and who is not prohibited from doing so may not be so made available or so provided unless the agency involved has certified that the agency will not disclose the information to any entity other than a court, federal, State or local law enforcement agency, or prosecutor" before the period.

SEC. 8. LIQUIDATION OF INVENTORY IN FEDERAL FIREARMS LICENSE EXPIRATION, SURRENDER, OR REVOCATION CASES.

Section 923 of title 18, United States Code, is amended by adding at the end the following:

"(m) A person whose license issued under this chapter is expired, surrendered, or revoked shall be afforded 60 days from the effective date of the expiration, surrender, or revocation to liquidate the firearms inventory of the person, which time may be extended upon a showing of reasonable cause. During such 60-day period (including any extension of the period), the license involved shall continue to be considered valid.".

SEC. 9. OPPORTUNITY TO CURE VIOLATIONS AFTER ACQUISITION OF FIREARMS BUSINESS.

Section 923 of title 18, United States Code, is further amended by adding at the end the following:

"(n) If the Attorney General is made aware that a business licensed under this chapter has transferred to a surviving spouse or child of the licensee, to an executor, administrator, or other legal representative of a deceased licensee; or to a receiver or trustee in bankruptcy, or an assignee for benefit of creditors, and, before the

transfer, or on the first inspection or examination by the Attorney General of the records of the licensee after the transfer, the licensee is found to be operating the business in violation of this chapter, the Attorney General—

"(1) shall notify the transferee of the violation by the transferor; and

"(2) shall not presume that the transferee is committing the violation.".

SEC. 10. STANDARDS FOR CRIMINAL VIOLATIONS OF RECORDKEEPING REQUIREMENTS.

Section 922(m) of title 18, United States Code, is amended—

(1) by striking "any false entry" and inserting "a materially false entry";

(2) by striking "appropriate entry" and inserting "a materially significant entry"; and

(3) by striking "properly maintain" and inserting "retain custody of".

SEC. 11. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect at the end of the 180-day period that begins with the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 5092 reforms and modernizes the Bureau of Alcohol, Tobacco, Firearms and Explosives' ("BATFE") enforcement authority. In the 109th Congress, the Subcommittee on Crime, Terrorism and Homeland Security conducted extensive oversight hearings on BATFE's management and enforcement activities. Such oversight has been long overdue given BATFE's mixed enforcement record. In response to specific concerns identified during the oversight hearings, Subcommittee Chairman Coble and Ranking Member Scott crafted a comprehensive reform measure which includes: (1) authorization of graduated penalties and civil penalties (e.g. fines and suspensions); (2) creation of independent administrative law judges to hear enforcement cases; (3) a clarification on the definition of the requisite state of mind for civil violations; (4) the establishment of investigative guidelines; (5) request that the Department of Justice Inspector General investigate BATFE's gun show enforcement practices; and (6) clarification of several enforcement regulations.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 5092 was introduced on April 5, 2006, by Subcommittee Chairman Coble and Ranking Member Scott as a bipartisan attempt to address issues raised during the BATFE oversight hearings. Earlier this year, the Subcommittee on Crime, Terrorism and Homeland Security conducted three oversight hearings regarding the BATFE's investigation and enforcement activities. This legislation addresses concerns raised at those hearings. The Subcommittee, by voice vote, reported the bill favorably to the full Committee on May 3, 2006.

The oversight hearings held by the Subcommittee raised serious concerns relating to the BATFE's: allocation of resources; BATFE's licensing procedure and enforcement of regulations against licensees; criminal investigation techniques, including questionable stops, searches and seizures of firearm purchasers and Federal firearm licensees ("FFL"); and the lack of consistent law enforcement policies and procedures among the BATFE's field offices and central management.

The Subcommittee's oversight hearings revealed the need for: (1) a graduated penalty system in title 18 U.S.C. § 923, which includes civil penalties, based on the degree of risk of harm that the FFL's violation poses to others; (2) establishing a system of neutral administrative law judges to review the licensing decisions of the

BATFE; (3) establishing investigative guidelines similar to those of the Federal Bureau of Investigation and Drug Enforcement Agency; and (4) other modifications to Federal law to ensure that American citizens receive due process of law.

CIVIL PENALTIES

Section 2 of H.R. 5092 establishes a graduated penalty system under 18 U.S.C. § 923, which includes civil penalties, based on the degree of risk of harm that the FFL's violation poses to others. For too many years BATFE has labored under a restrictive enforcement scheme which forces BATFE to either revoke a license or do nothing at all. This bill provides the BATFE with graduated sanctions so that FFLs will face a full range of possible sanctions, including civil penalties, suspensions and the ultimate penalty—revocation of their licenses. Any sanction is based on whether the violation is "serious," those that pose a risk to the public, or are "minor violations," those that do not pose a risk of harm to the public. No longer will BATFE have to cajole licensees to comply or threaten them with heavy-handed revocation proceedings; instead, the BATFE will be able to seek a penalty that reflects the infraction. The bill also sets reasonable penalty caps: $5,000 for minor violations, and $15,000 for serious violations. Further, repeat offenders who commit minor violations can eventually have their license revoked. Serious violations will also result in revocation.

FIVE YEAR STATUTE OF LIMITATIONS ON VIOLATIONS

Section 2 of the bill sets out a five year statute of limitations for enforcement of violations, but extends that period if a licensee obstructs discovery of the violation. If the licensee has not violated the law for five years, there is no need to subject the licensee to enforcement action. The Federal criminal code imposes a five year statute of limitations for criminal offenses and the tax code imposes a three year statute of limitation for felonies and six years set for serious felonies, all from the date of occurrence of the violation.

REQUIREMENT OF DE NOVO JUDICIAL REVIEW

Section 3 clarifies congressional intent with respect to *de novo* judicial review. As there has been some uncertainty among the courts in reenacting this provision, the Committee approves the interpretation in *Willingham Sports, Inc.* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives,* 348 F.Supp.2d 1299, 1306, n.12 (S.D. Ala. 2004) ("no deference must be accorded to the administrative proceedings . . . To the extent that the BATFE argues that the Federal court must uphold the agency decision as long as there is substantial evidence to support it, the Court cannot agree, as such a formulation would contravene the '*de novo*' statutory language").

NEED TO DEFINE "WILLFULLY"

The Committee discovered examples of the BATFE, revoking FFL licenses based on minuscule clerical errors. This demonstrates the need to require the BATFE to prove that the licensee knowingly and intentionally violated the Gun Control Act.

In *Article II Gun Shop, Inc.* v. *Gonzales,* 441 F.3d 492 (7th Cir. 2006), (Gun World is the trade name for the FFL at issue in this

case), the Court of Appeals upheld the revocation of Gun World's license by the BATFE based on clerical errors contained in 12 out of the 880 BATFE 4473 Forms. Whenever a firearm is sold, a dealer is required by law to fill out a "Form 4473." Gun World's 4473 documents were maintained as follows:

> On six forms, Gun World omitted the type of identification used by the buyer (although the type of identification was known from another document); on two forms, Gun World's salesperson omitted his signature and the date of the transfer (although the information was on another document); on two forms the buyer did not state whether he had ever been adjudicated mentally defective or been committed to a mental institution (although in both instances he was not, and that was known to Gun World); on one form, Gun World omitted the initial NICS response (although the form also indicated an approval number); and on one form, the firearm manufacturer was not expressly stated (although it was known by the serial number and model).

Gun World prepared approximately 880 "Forms 4473", and only 12 of those documents contained alleged errors or omissions. Thus, there were omissions on 1.4 percent of Gun World's Forms.

In the period from January, 1999 through February, 2000, Form 4473 contained 39 blocks for recording 58 items of information (legal alien purchasers, are required to provide an additional four items of information). Thus, for approximately 880 Form 4473s, there were approximately 34,320 blocks to be completed or approximately 51,240 items of information to be provided.

On the 12 Forms on which BATFE found omissions, Gun World failed to complete, or to ensure that the purchaser completed, 16 blocks; i.e., to provide 19 items of information. Accordingly, there were omissions on a minuscule .05 percent (5/100 percent) of the blocks or .04 percent (4/100 percent) of the items of information on Gun World's Form 4473s. The experience of Gun World demonstrates why Congress needs to establish a "willfully" standard for civil actions against FFLs.

Section 4 establishes a definition of the term "willfully" for purposes of 18 U.S.C. § 923(e). The purpose of the definition is to clarify and codify Congress' intent when it enacted the Firearms Owners Protection Act of 1986 ("FOPA"), i.e., to ensure that licenses are not revoked for inadvertent or unintentional errors, but only for knowing, intentional actions by a licensee. It's entirely reasonable to require the government to prove bad intent (knowledge of the law, and the intent to violate it) before putting a dealer out of business or under this legislation imposing stiff fines or a license suspension. However, a dealer cannot evade its responsibilities by intentionally ignoring the law, or simply stating that he or she was unaware of the requirements of the law. The doctrine of "willful blindness" would still apply under this new definition of "willful." A FFL's signing of a certification that he or she has read and is familiar with the rules applicable to his or her license issuance, is prima facie evidence that he or she knows and understands his or her licensee duties.

The Committee recognizes that, despite the best efforts of a law-abiding business person, errors will occur and the Committee believes that mere human error should not deprive a licensee of his or her livelihood.[1] This definition is intended to reverse court decisions that have interpreted "willfully" (as enacted by the FOPA) not to require proof that the licensee knew of his legal duty and intentionally disregarded that duty: see e.g., *Appalachian Resources Dev. Corp.* v. *McCabe,* 387 F.3d 461 (6th Cir. 2004); *Stein's Inc.* v. *Blumenthal,* 649 F.2d 463 (7th Cir. 1980); *Article II Gun Shop, Inc.* v. *Gonzales,* 441 F.3d 492 (7th Cir. 2006); *Lewin* v. *Blumenthal,* 590 F.2d 268 (8th Cir. 1979); *Perri* v. *Dep't of Treasury,* 637 F.2d 1332 (9th Cir. 1981); *Cucchiara* v. *Secretary of the Treasury*, 652 F.2d 28 (9th Cir. 1981); and *Willingham Sports, Inc.* v. *BATFE*, 415 F.3d 1274 (11th Cir. 2005).

The Subcommittee received testimony that the BATFE treats virtually all errors in dealers records, no matter how few or how minor, as willful violations. Any error may result in license revocation. For example, a witness cited the fact that a licensee received a revocation notice for a "Y" or an "N" instead of writing out "Yes" or "No" on a firearms transaction form. Another revocation notice cited the failure of a firearms purchaser to identify the county of residence, although the purchaser listed the city of residence. The Committee also received testimony that BATFE cited violations from 10 or 20 years earlier as supporting a revocation notice.

These acts do not constitute the "willful" standard Congress adopted in the FOPA. The Senate Judiciary Committee Report stated, the purpose of adding "willfully" to the license revocation procedure "is to ensure that licenses are not revoked for inadvertent errors or technical mistakes."[2] But BATFE continues to refute this interpretation. In fact, in one case, BATFE argued to the court that Congress' addition of the word "willfully" to the license revocation statute was "without practical significance."

GUN SHOW INSPECTOR GENERAL REPORT

The Subcommittee on Crime's oversight hearings reviewed the BATFE's activities related to Richmond, Virginia gun show operations. The testimony showed that between May of 2004 and August of 2005, BATFE conducted a series of eight gun show enforcement operations in the Richmond area. BATFE's enforcement activity had such a chilling effect on lawful purchases by legitimate customers exercising their Second amendment rights, that many potential purchasers simply walked away from the transaction as a result of the wait time.

During these gun shows, BATFE admitted to stopping and interviewing approximately 206 individuals as a result of their attendance or purchase of a firearm at the gun show. Additionally, 50 individuals had their firearms seized by BATFE and were provided with a letter indicating that these individuals may have knowingly made a false statement to a firearms dealer, a crime punishable by

[1] As Kennedy, J. has noted:

We all tend toward myopia when looking for our own erros. Every lawyer and every judge can recite examples of documents that they wrote, checked, and doublechecked, but that still contained glaring errors.

Groh v. *Ramirez,* 540 U.S. 551, 568 (2004) (Kennedy, J., disenting).

[2] S. Rep. No. 98–583 at 88.

imprisonment for up to five years. These 50 individuals were ordered to appear at the local BATFE office to discuss their transactions and were warned that failure to appear could result in a warrant for arrest.

BATFE's allocation of resources; its gun enforcement program in Richmond and other cities has raised serious questions that the Inspector General needs to review. Section 6 of H.R. 5092 contains a provision requiring the Inspector General to conduct an oversight report on BATFE's operations. The Inspector General's report will help us to examine other critical issues and ensure that BATFE remains focused on its mission.

LIQUIDATION OF INVENTORY

Section 8 of the bill allows a licensee whose license was terminated or revoked 60 days to liquidate his or her inventory—dispose, sell or otherwise legally transfer inventory to purchasers. This provision simply allows a dealer to close down the business in an orderly manner. The licensee must still comply with all applicable law and regulations, including the normal background check and record-keeping requirements. If the licensee does not, he or she is subject to graduated sanctions as set out in section 2 of the bill.

HEARINGS

The Committee on the Judiciary held no hearings specifically on H.R. 5092. However, prior to H.R. 5092 being introduced, the Subcommittee on Crime, Terrorism and Homeland Security conducted three oversight hearings regarding BATFE's actions.

The first hearing was held on February 15, 2006, and the following witnesses appeared: Annette Gelles, Owner, Showmaster Gun Shows; James Lalime, Gun Salesman; John White, Owner, The Gunsmith; and Suzanne McComas, Licensed Field Investigator in the State of New York. The second hearing was held on February 28, 2006, and received testimony from three witnesses: Michael R. Bouchard, Assistant Director (Field Operations), Bureau of Alcohol, Tobacco, Firearms and Explosives; Lt. Col. D.A. Middleton, Deputy Chief of Police, Henrico County Police Department; and Major David McCoy, City of Richmond Police Department. The final hearing took place on March 28, 2006, at which the following witnesses testified: Audrey Stucko, Deputy Assistant Director for Enforcement Programs & Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives; Richard Gardiner, Attorney at Law in Virginia; Lt. Michael Lara, Officer, City of Tucson Police Department: and M. Kristen Rand, Legislative Director, Violence Policy Center.

H.R. 5092 addresses concerns that were raised at each of those hearings.

COMMITTEE CONSIDERATION

On May 3, 2006, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 5092, by voice vote, a quorum being present. On September 7, 2006, the Committee met in open session and ordered the bill H.R. 5092 favorably reported by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were the following roll call votes occurred during the committee's consideration of H.R. 5092.

Date: 9–7–06

Rollcall No. 2

Subject: Roll to record presence of Members to consider amendments to H.R. 5092—there were 14 Members present.

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble			X
Mr. Smith			X
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot			
Mr. Lungren			
Mr. Jenkins			X
Mr. Cannon			X
Mr. Bachus			
Mr. Inglis			X
Mr. Hostettler			
Mr. Green			
Mr. Keller			X
Mr. Issa			
Mr. Flake			
Mr. Pence			
Mr. Forbes			
Mr. King			X
Mr. Feeney			X
Mr. Franks			
Mr. Gohmert			
Mr. Conyers			X
Mr. Berman			
Mr. Boucher			X
Mr. Nadler			
Mr. Scott			X
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner			X
Mr. Schiff			
Ms. Sanchez			
Mr. Van Hollen			
Mrs. Wasserman Schultz			X
Mr. Sensenbrenner, Chairman			X
Total			14

Rollcall No. 3

Subject: Weiner amendment (#313) to the Coble amendment in the nature of a substitute to H.R. 5092, to strike lanaguage that provides a Federal firearm licensee 60 days to liquidate its inventory after going out of business, was not agreed to by a rollcall vote of 4 ayes to 18 nays.

	Ayes	Nays	Present
Mr. Hyde			

	Ayes	Nays	Present
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegley			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostlettler		X	
Mr. Green			
Mr. Keller		X	
Mr. Issa			
Mr. Flake			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher		X	
Mr. Nadler			
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez			
Mr. Van Hollen			
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	4	18	

Date: 9–7–06

Rollcall No. 4

Subject: Weiner amendment (#314) to the Coble amendment in the nature of a substitute to H.R. 5092, to strike language regarding the Attorney General's pursuing civil sanctions against a licensee which has also been a defendant in a criminal action, was not agreed to by a roll call vote of 9 ayes to 16 nays.

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler			
Mr. Green			
Mr. Keller		X	

	Ayes	Nays	Present
Mr. Issa			
Mr. Flake			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher		X	
Mr. Nadler			
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez			
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	9	16	

Date: 9–7–06
Rollcall No. 5
Subject: Weiner amendment (#317) to the Coble amendment in the nature of a substitute to H.R. 5092, to amend the maximum amount of fines a Federal firearm licensee would be subject to if it violated section 923 of title 18, U.S.C., which was not agreed to by a roll call vote of 8 ayes to 20 nays.

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher		X	
Mr. Nadler			
Mr. Scott		X	

	Ayes	Nays	Present
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez			
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	8	20	

Date: 9–7–06

Rollcall No. 6

Subject: Jackson Lee amendment to the Coble amendment in the nature of a substitute to H.R. 5092, to strike the definition of "willfully", which was not agreed to by a roll call vote of 9 ayes to 17 nays.

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green			
Mr. Keller			
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher		X	
Mr. Nadler			
Mr. Scott	X		
Mr. Watt			
Mr. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez			
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	

	Ayes	Nays	Present
Total	9	17	

Date: 9–7–06
Rollcall No. 7
Subject: Weiner amendment in the nature of a substitute to H.R. 5092, to amend the Attorney General's ability to sanction licensed dealers that violate Section 923 of title 18, U.S.C., which was not agreed to by a roll call vote of 10 ayes to 16 nays.

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green			
Mr. Keller			
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence			
Mr. Forbes	X		
Mr. King			
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher		X	
Mr. Nadler			
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez			
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman		X	
Total	10	16	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5092, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

H.R. 5092—Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Modernization and Reform Act of 2006

Summary: H.R. 5092 would authorize the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) to impose civil fines for violations of firearms laws. It also would change the procedures BATFE uses to approve applications for firearms licenses and how the agency prosecutes license violations. Finally, the bill would require administrative law judges to review certain BATFE actions.

CBO estimates that implementing H.R. 5092 would cost about $50 million over the 2007–2011 period, assuming appropriation of the necessary amounts. Enacting the bill could affect revenues, but CBO estimates that any such effects would not be significant. H.R. 5092 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5092 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	7	10	11	12	12
Estimated Outlays	7	10	11	12	12

Basis of estimate

CBO estimates that implementing H.R. 5092 would cost about $50 million over the 2007–2011 period. For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that spending will follow historical patterns for similar activities. In addition, CBO estimates that enacting the bill would have an insignificant effect on revenues.

Spending Subject to Appropriation

H.R. 5092 would require administrative law judges to review BATFE actions that are disputed by firearms licensees and applicants, including suspensions and revocations of licenses, denials of applications, and fines. BATFE has 23 field divisions in the United States and the agency expects it would need to hire 20 judges to review actions in these divisions. Based on information from

BATFE, CBO expects that annual costs for each administrative law judge would total about $325,000, including salaries, benefits, and support expenses. Thus, we estimate that costs relating to administrative law judges would total $6.5 million a year when fully implemented in 2008.

BATFE also expects that it would need to hire one attorney for each field division, mostly to prepare for hearings before administrative law judges. Based on a cost of about $160,000 per attorney, including salaries, benefits, and support expenses, CBO estimates that it would cost nearly $4 million annually for the additional attorneys when fully implemented in 2008. In addition, we expect that BATFE would spend about $2 million in 2007 for enhanced computer systems, mostly to record the new civil fines and implement the new administrative procedures that would be established by H.R. 5092.

Revenues

BATFE currently lacks the authority to impose civil fines on violators of firearms laws. Under the provisions of H.R. 5092, such violators could be subject to civil fines, so the federal government might collect additional fines if the legislation is enacted. Civil fines are recorded as revenues and deposited in the Treasury. CBO expects that any additional revenues would not be significant because the bill would limit the amount of penalties that could be imposed on violators.

Intergovernmental and private-sector impact: H.R. 5092 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Mark Grabowicz; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title

This section cites the short title of the bill as the "Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Modernization and Reform Act of 2006."

Sec. 2. Graduated penalties for civil violations by federal firearms licensees

This section provides ATF with the ability to impose graduated civil penalties against persons who violate any statute or regulation in ATF's jurisdiction. The penalties are graduated based on

whether the violation is a "serious" or "non-serious" violation. A "serious" violation is defined as one that; (1) results in, or could have resulted in, the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition under chapter 44; (2) obstructs or could have obstructed a bona fide civil or criminal investigation; or (3) prevents or could have prevented a licensee from complying with subsection (g)(7). A "non-serious" violation is one that is not covered by the definition for "serious" violation.

For a serious violation, ATF may impose a civil penalty of not more than $2,500 for each violation, up to a maximum of $15,000, suspend the license for up to 90 days, or revoke the license. For a "non-serious" violation, ATF may impose a civil penalty of not more than $1,000 for each violation, up to a maximum of $5,000, and may suspend a license for not more than 30 days if the licensee has at least 2 prior violations (serious or non-serious). The violation-specific limitation is designed to operate as a cap. ATF would have discretion to set a graduated scale of penalties up to that maximum ($1,000 and $2,500 per non-serious and serious violation, respectively) to reflect the nature and severity of the violation, the size of the firearms business operated by the licensee, and the prior record of the licensee.

The section also bars ATF from initiating a civil enforcement action after five years from the date of the violation, except if the licensee intentionally obstructed discovery of the violation. This section also reforms existing law on due process hearings to permit a licensee subject to an enforcement order to seek a hearing before an Administrative Law Judge (ALJ) and sets deadlines for the completion of such a hearing. by streamlining the hearing process and requiring an independent Administrative Law Judge to conduct such a hearing, the intent is to expedite resolution of enforcement matters and to ensure a fair and consistent review of potential violations. Any enforcement order would be stayed pending review. The ALJ's determination would be subject to court review as provided in existing law and would retain the de novo standard for district court and appellate review.

Sec. 3. Consideration of federal firearms license applications

This section provides procedures for preliminary consideration of license applications, and affords applicants with an opportunity to supplement the application with additional information and with the ability to request a hearing before an ALJ.

Sec. 4. Definition of willfully

This section clarifies the definition of "willfully" when establishing the intent for a violation. The intent standard, as applied to licensees, would reflect the fact that licensees are provided with extensive education and notice of all legal and regulatory obligations. Thus, a violation of a known legal obligation would require ATF to establish that the licensee was aware of the obligation and intentionally or purposely violated such an obligation.

Sec. 5. Establishment of formal inspection, examination, and investigative guidelines

This section requires that ATF establish formal investigative guidelines similar to those already applicable to the Drug Enforcement Administration and the Federal Bureau of Investigation.

Sec. 6. Review by the Inspector General of the Department of Justice of the Gun Show Enforcement Program; Report

This section requires the Inspector General to conduct a review of ATF's operation in order to assess the manner in which ATF conducts its gun show enforcement program and blanket residency checks of prospective and actual firearms purchasers. Within one year of enactment, the IG is required to submit to the House and Senate Judiciary Committees a report as to its findings in its review.

Sec. 7. Limitations on use of firearms purchaser information

This section amends 18 U.S.C. section 923(g)(1)(D) to ensure that AFT only shares information about individuals gathered in its enforcement programs with other law enforcement agencies when such agency certifies that the agency will not disclose such information to any nongovernmental entity. The intent in this provision is to endure that sharing of information among law enforcement agencies does not result in disclosures of private information to non-governmental entities which are not involved in law enforcement efforts. Such a prohibition would not extend to private contractors who work for law enforcement agencies (e.g. intelligence support or other law enforcement activities)

Sec. 8. Liquidation of inventory in federal firearms license expiration, surrender or revocation cases

This section amends section 923 of title 18 to ensure that a person has 60 days to liquidate the firearms inventory of a business, which shall be extended for reasonable cause.

Sec. 10. Opportunity to cure violations after acquisition of firearms business

This section amends section 923 of title 18 to provide a purchaser of a firearms business with an opportunity to cure any violations and limits ATF's ability to impose penalties for violations that may have existed prior to a transferee assuming control of the business.

Sec. 11. Standards or criminal violations of record-keeping requirements

This section amends section 922(m) of title 18 to require that any criminal violation of the record-keeping requirements involve "materially" false entries, and "materially" significant entry. The punishment for such a violation is a one year misdemeanor.

Sec. 12. Effective date

This section provides that the effective date of the Act is to be 180 days after enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 44—FIREARMS

* * * * * * *

§ 922. Unlawful acts

(a) * * *

* * * * * * *

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make [any false entry] *a materially false entry* in, to fail to make [appropriate entry] *a materially significant entry* in, or to fail to [properly maintain] *retain custody of*, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

* * * * * * *

§ 923. Licensing

(a) * * *

* * * * * * *

(d)(1) * * *

(2) The Attorney General shall make a preliminary determination as to whether to approve or deny an application submitted under subsection (a) or (b). If the preliminary determination is to deny the application, the Attorney General shall notify the applicant in writing of the preliminary determination and the reasons for the preliminary determination, and shall afford the applicant an opportunity to supplement the application with additional information and to request a hearing on the application. If the applicant, in a timely manner, requests such a hearing, the Attorney General shall hold the hearing at a location convenient to the applicant, and shall notify the applicant in writing of the time and place of the hearing.

[(2)] *(3)* The Attorney General must approve or deny an application for a license within the 60-day period beginning on the date it is received. If the Attorney General fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Attorney General to act. If the Attorney General ap-

proves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(4) If the Attorney General denies an application for a license, an administrative law judge of the Department of Justice shall, on request by the aggrieved party, promptly hold a hearing to review the denial, at a location convenient to the aggrieved party. If, after the hearing, the administrative law judge decides not to reverse the denial, the administrative law judge shall give notice of the final denial decision to the aggrieved party.

[(e) The Attorney General may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement to make available such a device). The Attorney General may, after notice and opportunity for hearing, revoke the license of a dealer who willfully transfers armor piercing ammunition. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

[(f)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Attorney General stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

[(2) If the Attorney General denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Attorney General shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

[(3) If after a hearing held under paragraph (2) the Attorney General decides not to reverse his decision to deny an application or revoke a license, the Attorney General shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the hearing held under paragraph (2). If the court decides that the Attorney General was not authorized to deny the application or to revoke the license, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

[(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Attorney General shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Attorney General more than one year after the filing of the indictment or information.]

(e)(1)(A) If the Attorney General determines that a licensee under this section has willfully violated any provision of this chapter or any regulation prescribed under this chapter, the Attorney General may—

(i) if the violation is of a minor nature, or if the violation is that the licensee has failed to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except because of theft, casualty loss, consumer sales, back orders from a manufacturer, or any other similar reason beyond the control of the licensee)—

(I) impose on the licensee a civil money penalty of not more than $1,000 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for violations arising from a single inspection or examination shall not exceed $5,000; or

(II) suspend the license for not more than 30 days, and specify the circumstances under which the suspension is to be terminated, if, in the period for which the license is in effect, there have been at least 2 prior occasions on which the licensee has been determined to have violated this chapter; or

(ii) if the violation is of a serious nature—

(I) impose on the licensee a civil money penalty of not more than $2,500 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for a violations arising from a single inspection or examination shall not exceed $15,000;

(II) suspend the license for not more than 90 days, and specify the circumstances under which the suspension is to be terminated;

(III) revoke the license; or

(IV) take the actions described in subclauses (I) and (II), or subclauses (I) and (III).

(B)(i)(I) In determining the amount of a civil money penalty to impose under subparagraph (A) on a licensee, the nature and severity of the violation involved, the size of the firearms business operated by the licensee, and the prior record of the licensee shall be considered.

(II) On request of the licensee, the Attorney General may consider the ability of the licensee to pay a civil money penalty, and may allow the licensee to submit documents and information to establish the ability of the licensee to pay. The Attorney General shall not make part of any public record any document or information so sub-

mitted, and shall return to the licensee any such document or information.

(III) The total amount of penalties imposed on a licensee under subparagraph (A) with respect to violations of a minor nature and of a serious nature arising from a single inspection or examination shall not exceed $15,000.

(ii) For purposes of subparagraph (A), violation of a provision of this chapter with respect to 2 or more firearms during a single transaction shall be considered a single violation of the provision.

(iii) The Attorney General may defer, or suspend, in whole or in part, the imposition of a civil money penalty on a licensee whose license is suspended under this paragraph.

(C) For purposes of subparagraph (A):

(i) A violation of this chapter shall be considered to be of a serious nature if the violation—

(I) results in or could have resulted in the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition under this chapter or under State or local law;

(II) obstructs or could have obstructedμaμbona fide criminal investigation or prosecution, or an inspection or examination under this chapter; or

(III) prevents or could have prevented a licensee from complying with subsection (a)(7), (a)(8), (b)(1), (b)(3), (b)(4), (j), (k), (o), or (p) of section 922, subsection (g)(7) of this section, or subsection (b) or (h) of section 924.

(ii) A violation of this chapter shall be considered to be of a minor nature if the violation is not of a serious nature.

(D) The Attorney General may not commence an enforcement action under subparagraph (A) with respect to a violation, after the 5-year period that begins with—

(i) the date the violation occurred; or

(ii) if the licensee intentionally obstructed discovery of the violation, the date the violation is discovered.

(2)(A) Not less than 30 days before the effective date of any penalty imposed on a licensee by reason of a determination made under paragraph (1), the Attorney General shall send the licensee a written notice—

(i) of the determination, and the grounds on which the determination was made;

(ii) of the nature of the penalty; and

(iii) that the licensee may, within 30 days after receipt of the notice, request a hearing to review the determination.

(B) A hearing to review a determination made under paragraph (1) with respect to a licensee shall not be held unless the licensee requests such a hearing within 30 days after receiving the notice of the determination sent pursuant to subparagraph (A).

(C) On timely receipt from the licensee of a request for such a review, the Attorney General shall stay the imposition under paragraph (1) of any penalty involved, pending resolution of the review, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that—

(i) the licensee or the principal owner of the business subject to the license has been indicted and charged with a criminal violation of this chapter; and

(ii) the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

(3)(A) Within 90 days after timely receipt from a licensee of a request to review a determination made under paragraph (1) (or at such later time as is agreed to by the Attorney General and the licensee), an administrative law judge shall hold a hearing, at a location convenient to the licensee, to review the determination.

(B) Not less than 30 days before the hearing, the Attorney General shall deliver to the licensee—

(i) a document identifying each person whom the Attorney General intends to call as a witness during the hearing;

(ii) a copy of each document which will be introduced as evidence at the hearing; and

(iii) copies of all documents on which the determination is based.

(C) Within 90 days after the hearing, the administrative law judge shall issue a written decision setting forth findings of fact and conclusions of law, and a decision as to whether to affirm, modify, or reverse the determination.

(D) On request of the licensee, the Attorney General shall stay the effective date of any penalty, suspension, or revocation until there has been a final, nonreviewable judgment with respect to the determination involved, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that—

(i) the licensee or the principal owner of the business subject to the license has been indicted and charged with a criminal violation of this chapter; and

(ii) the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

(E) The action of an administrative law judge under this subsection shall be considered final agency action for all purposes, and may be reviewed only as provided in subsection (f).

(4) This subsection shall not be interpreted to affect the authority of the Attorney General under section 922(t)(5).

(5) For purposes of this subsection, the term "willfully" means, with respect to conduct of a person, that the person knew of a legal duty, and engaged in the conduct knowingly and in intentional disregard of the duty.

(f)(1) Within 60 days after a party receives a notice issued under subsection (d)(4) of a decision to deny a license, or a notice issued under subsection (e)(3)(C) of a determination to impose a civil money penalty or to suspend or revoke a license, the party may file a petition with the United States district court for the district in which the party resides or has a principal place of business for a de novo review of the decision or determination.

(2) In a proceeding conducted under this paragraph, the court shall, on application of a party, consider any evidence submitted by the parties to the proceeding whether or not the evidence was considered at the hearing held under subsection (d)(4) or (e)(3).

(3) If the court decides that the decision or determination was not authorized, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of a regulation prescribed under this chapter, and the licensee is acquitted of the charges, or the proceedings are terminated, other than upon motion of the Government before trial on the charges, the Attorney General shall be absolutely barred from denying a license under this chapter, suspending or revoking a license granted under this chapter, or imposing a civil money penalty under subsection (e), if the action would be based in whole or in part on the facts which form the basis of the criminal charges.

(5) The Attorney General may not institute a proceeding to suspend or revoke a license granted under this chapter, or to impose a civil money penalty under subsection (e), more than 1 year after the filing of the indictment or information.

(g)(1)(A) * * *

* * * * * * *

(D) At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Attorney General designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this paragraph shall not be construed as authorizing the Attorney General to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Attorney General seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Attorney General may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition, and he may provide information to the extent such information may be contained in the records required to be maintained by this chapter, when so requested by any Federal, State, or local law enforcement agency*, except that information identifying a person who has purchased or received firearms or ammunition and who is not prohibited from doing so may not be so made available or so provided unless the agency involved has certified that the agency will not disclose the information to any entity other than a court, federal, State or local law enforcement agency, or prosecutor*.

* * * * * * *

(m) A person whose license issued under this chapter is expired, surrendered, or revoked shall be afforded 60 days from the effective date of the expiration, surrender, or revocation to liquidate the firearms inventory of the person, which time may be extended upon a showing of reasonable cause. During such 60-day period (including any extension of the period), the license involved shall continue to be considered valid.

(n) If the Attorney General is made aware that a business licensed under this chapter has transferred to a surviving spouse or child of the licensee, to an executor, administrator, or other legal representative of a deceased licensee; or to a receiver or trustee in bankruptcy, or an assignee for benefit of creditors, and, before the transfer, or on the first inspection or examination by the Attorney General of the records of the licensee after the transfer, the licensee is found to be operating the business in violation of this chapter, the Attorney General—

(1) shall notify the transferee of the violation by the transferor; and

(2) shall not presume that the transferee is committing the violation.

§ 924. Penalties

(a) * * *

* * * * * * *

[(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

[(1) IN GENERAL.—

[(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

[(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

[(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

[(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

[(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.]

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, SEPTEMBER 7, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is the adoption of H.R. 5092, the "Bureau of Alcohol, Tobacco, Firearms and Explosives Modernization Reform Act."

[The bill, H.R. 5092, follows:]

I

109TH CONGRESS
2D SESSION

H. R. 5092

To modernize and reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2006

Mr. COBLE (for himself and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To modernize and reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Modernization and Reform Act of 2006''.

SEC. 2. GRADUATED PENALTIES FOR CIVIL VIOLATIONS BY FEDERAL FIREARMS LICENSEES.

(a) IN GENERAL.—Section 923 of title 18, United States Code, is amended by striking subsections (e) and (f) and inserting the following:

''(e)(1)(A) If the Attorney General determines that a licensee under this section has willfully violated any provision of this chapter or any regulation prescribed under this chapter, or has failed to have secure gun sotrage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee), the Attorney General may—

''(i) if the violation is not of a serious nature—

''(I) impose on the licensee a civil money penalty of not more than $1,000 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for violations arising from a single inspection or examination shall not exceed $5,000; or

''(II) suspend the license for not more than 30 days, and specify the circumstances under which the suspension is to be terminated, if, in

the period for which the license is in effect, there have been at least 2 prior occasions on which the licensee has been determined to have violated this chapter; or

''(ii) if the violation is of a serious nature—

''(I) impose on the licensee a civil money penalty of not more than $2,500 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for a violations arising from a single inspection or examination shall not exceed $15,000;

''(II) suspend the license for not more than 90 days, and specify the circumstances under which the suspension is to be terminated;

''(III) revoke the license; or

''(IV) take the actions described in subclauses (I) and (II), or subclauses (I) and (III).

''(B)(i) In determining the amount of a civil money penalty to impose under subparagraph (A) on a licensee, the nature and severity of the violation involved, the size of the firearms business operated by the licensee, and the prior record of the licensee shall be considered.

''(ii) For purposes of subparagraph (A), violation of a provision of this chapter with respect to 2 or more fire-

arms during a single transaction shall be considered a single violation of the provision.

"(C) For purposes of subparagraph (A), a violation of this chapter shall be considered to be of a serious nature if the violation—

"(i) results in or could have resulted in the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition under this chapter;

"(ii) obstructs or could have obstructed a bona fide civil or criminal investigation or prosecution; or

"(iii) prevents or could have prevented a licensee from complying with subsection (g)(7).

"(D) The Attorney General may not commence an enforcement action under subparagraph (A) with respect to a violation after the 5-year period that begins with—

"(i) the date of the violation; or

"(ii) if the licensee involved intentionally obstructed discovery of the violation, the date of discovery of the violation.

"(2)(A) Not less than 30 days before the effective date of any penalty imposed on a licensee by reason of a determination made under paragraph (1), the Attorney General shall send the licensee a written notice of—

"(i) the determination, and the grounds on which the determination was made;

"(ii) the nature of the penalty; and

"(iii) how, and by when, the licensee may request a hearing to review the determination.

"(B) A hearing to review a determination made under paragraph (1) with respect to a licensee shall not be held unless the licensee requests such a hearing within 30 days after receiving the notice of the determination sent pursuant to subparagraph (A).

"(C) On timely receipt from the licensee of a request for such a review, the Attorney General shall stay the imposition under paragraph (1) of any penalty involved, pending resolution of the review.

"(3)(A) Within 90 days after timely receipt from a licensee of a request to review a determination made under paragraph (1) (or at such later time as is agreed to by the Attorney General and the licensee), an administrative law judge shall hold a hearing, at a location convenient to the licensee, to review the determination.

"(B) Not less than 30 days before the hearing, the Attorney General shall deliver to the licensee a copy of each document which will be introduced as evidence at the hearing, and copies of all documents on which the determination is based.

"(C) Within 90 days after the hearing, the administrative law judge shall issue a written decision setting forth findings of fact and conclusions of law, and a decision as to whether to affirm, modify, or reverse the determination.

"(D) On request of the licensee, the Attorney General shall stay the effective date of any penalty, suspension, or revocation until there has been a final, nonreviewable judgment with respect to the determination involved.

"(E) The action of an administrative law judge under this subsection shall be considered final agency action for all purposes, and may be reviewed only as provided in subsection (f).

"(4) This subsection shall not be interpreted to affect the authority of the Attorney General under section 922(t)(5).

"(f)(1) Within 60 days after a party receives a notice issued under subsection (d)(3) of a decision to deny a license, or a notice issued under subsection (e)(3)(C) of a determination to impose a civil money penalty or to suspend or revoke a license, the party may file a petition with the United States district court for the district in which the party resides or has a principal place of business for a de novo review of the decision or determination.

"(2) In a proceeding conducted under this paragraph, the court shall, on application of a party, consider any evidence submitted by the parties to the proceeding whether or not the evidence was considered at the hearing held under subsection (d)(3) or (e)(3).

"(3) If the court decides that the decision or determination was not authorized, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

"(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of a regulation prescribed under this chapter, and the licensee is acquitted of the charges, or the proceedings are terminated, other than upon motion of the Government before trial on the charges, the Attorney General shall be absolutely barred from denying a license under this chapter, suspending or revoking a license granted under this chapter, or imposing a civil money penalty under subsection (e), if the action would be based in whole or in part on the facts which form the basis of the criminal charges.

"(5) The Attorney General may not institute a proceeding to suspend or revoke a license granted under this chapter, or to impose a civil money penalty under subsection (e), more than 1 year after the filing of the indictment or information.".

(b) CONFORMING AMENDMENT.—Section 923(d) of such title is amended by adding at the end the following:

"(3) If the Attorney General denies an application for a license, an administrative law judge of the Department of Justice shall, on request by the aggrieved party, promptly hold a hearing to review the denial, at a location convenient to the aggrieved party. If, after the hearing, the administrative law judge decides not to reverse the denial, the administrative law judge shall give notice of the final denial decision to the aggrieved party.".

SEC. 3. CONSIDERATION OF FEDERAL FIREARMS LICENSE APPLICATIONS.

(a) IN GENERAL.—Section 923(d) of title 18, United States Code, as amended by section 2(b) of this Act, is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and inserting after paragraph (1) the following:

"(2) The Attorney General shall make a preliminary determination as to whether to approve or deny an application submitted under subsection (a) or (b). If the preliminary determination is to deny the application, the Attorney General shall notify the applicant in writing of the preliminary determination and the reasons for the preliminary determination, and shall afford the applicant an opportunity to supplement the application with additional in-

formation and to request a hearing on the application. If the applicant, in a timely manner, requests such a hearing, the Attorney General shall hold the hearing at a location convenient to the applicant, and shall notify the applicant in writing of the time and place of the hearing.''.

(b) CONFORMING AMENDMENT.—Section 923(f)(1) of such title, as amended by section 2(a) of this Act, is amended by striking ''(d)(3)'' each place it appears and inserting ''(d)(4)''.

SEC. 4. DEFINITION OF WILLFULLY.

Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(36) The term 'willfully' means intentionally, purposely, and with the intent to act in violation of a known legal duty.''.

SEC. 5. ESTABLISHMENT OF FORMAL INVESTIGATIVE GUIDELINES.

The Attorney General shall establish guidelines for how the Bureau of Alcohol, Tobacco, Firearms, and Explosives is to conduct investigations of possible violations of chapter 44 of title 18, United States Code.

SEC. 6. REVIEW BY THE INSPECTOR GENERAL OF THE DEPARTMENT OF JUSTICE OF THE GUN SHOW ENFORCEMENT PROGRAM; REPORT.

(a) REVIEW.—The Inspector General of the Department of Justice shall conduct a review of the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, for the purpose of assessing the manner in which the Bureau conducts the gun show enforcement program and blanket residency checks of prospective and actual firearms purchasers.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a written report that contains the findings of the review required by subsection (a), and includes such recommendations as may be appropriate.

SEC. 7. LIMITATIONS ON USE OF FIREARMS PURCHASER INFORMATION.

Section 923(g)(1)(D) of title 18, United States Code, is amended in the last sentence by inserting ", except that information about the conduct of a named individual with respect to a firearm or ammunition may not be so made available or so provided unless the agency involved has certified that the agency will not disclose the information to

any entity other than a court, Federal, State, or local law enforcement agency, or prosecutor'' before the period.

SEC. 8. CLARIFICATION OF RESPONSIBILITIES.

Section 1111(b) of the Homeland Security Act of 2002 (6 U.S.C. 531(b)) is amended—

(1) by adding ''and'' at the end of paragraph (1);

(2) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(3) by striking paragraph (3).

SEC. 9. LIQUIDATION OF INVENTORY IN FEDERAL FIREARMS LICENSE EXPIRATION, SURRENDER, OR REVOCATION CASES.

Section 923 of title 18, United States Code, is amended by adding at the end the following:

''(m) A person whose license issued under this chapter is expired, surrendered, or revoked shall be afforded 60 days from the effective date of the expiration, surrender, or revocation to liquidate the firearms inventory of the person, which time may be extended upon a showing of reasonable cause.''.

SEC. 10. OPPORTUNITY TO CURE VIOLATIONS AFTER ACQUISITION OF FIREARMS BUSINESS.

Section 923 of title 18, United States Code, is further amended by adding at the end the following:

"(n) If the Attorney General is made aware that a person licensed under this chapter has transferred to another person an entire firearms business subject to license under this chapter and, before the transfer, the transferor was found to be operating the business in violation of this chapter, the Attorney General—

"(1) shall notify the transferee of the violation by the transferor;

"(2) shall not presume that the transferee is committing the violation; and

"(3) if the Attorney General finds that the transferee is committing the violation—

"(A) shall notify the transferee of the violation;

"(B) shall afford the transferee a reasonable amount of time after receipt of the notice to cure the violation; and

"(C) shall not impose a sanction on the transferee with respect to the violation, unless the transferee has not cured the violation with the reasonable amount of time referred to in subparagraph (B).".

SEC. 11. STANDARDS FOR CRIMINAL VIOLATIONS OF RECORDKEEPING REQUIREMENTS.

Section 922(m) of title 18, United States Code, is amended—

(1) by striking ''any false entry'' and inserting ''a materially false entry'';

(2) by striking ''appropriate entry'' and inserting ''a materially significant entry''; and

(3) by striking ''properly maintain'' and inserting ''retain custody of''.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect at the end of the 180-day period that begins with the date of the enactment of this Act.

○

Chairman SENSENBRENNER. The chair recognizes the gentleman from North Carolina, Mr. Coble, the chair of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill, H.R. 5092, and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, H.R. 5092 will be considered as read and open for amendment at any point.

The chair recognizes the gentleman from North Carolina to strike the last word.

Mr. COBLE. I thank the Chairman.

Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill, H.R. 5092, the "Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) Modernization and Reform Act of 2006," which was introduced by the gentleman from Virginia, Representative Scott, and me.

The Subcommittee on Crime, Terrorism, and Homeland Security conducted a series of three oversight hearings regarding the BATFE's investigation and enforcement activities. These hearings raised concerns over the BATFE's allocation of resources, investigation techniques, and lack of consistent law enforcement policies and procedures among the BATFE's field offices and central management.

The hearings, furthermore, revealed the need for, one, a graduated penalty system in Title 18, U.S. Code Section 923, including civil penalties, based on the degree of risk or harm that the dealer's violation posed to others; two, establish a system of neutral administrative law judges to review the license and the decisions of BATFE; three, establish investigative guidelines similar to those of the Federal Bureau of Investigation and the Drug Enforcement Agency; and, finally, other modifications to the Federal laws to ensure that American citizens receive due process of the law.

H.R. 5092 is a bipartisan attempt to address issues raised during the BATFE oversight hearings.

The bill authorizes civil penalties, including fines and suspensions, for dealers who violate the Gun Control Act, creates independent administrative law judges to hear enforcement cases, defines serious and non-serious violations, clarifies the requisite intent for civil violations, establishes BATFE investigative guidelines, requires the DOJ inspector general to investigate the BATFE gun show enforcement program, and limits the BATFE's authority and clarifies several enforcement regulations.

On May 3, 2006, the Subcommittee favorably reported the bill, without amendment, and I hope my colleagues in the full Committee will support this important bill.

I would yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, thank you for holding this markup on H.R. 5092, the "Bureau of Alcohol, Tobacco, Firearms and Explosives Mod-

ernization and Reform Act." I am pleased to join Chairman Coble in presenting the substitute for markup by this Committee.

And I want to express my appreciation for the bipartisan and open process under which Chairman Coble and the chief counsel, Michael Volkov, and my counsel, Bobby Vassar, conducted consideration and development of the bill.

I understand from my counsel that they have met with other Judiciary Committee Members and staff, ATF and the Department of Justice staff, handgun safety group representatives and with representatives of offices of mayors of New York and Boston, as well as with the National Rifle Association and other gun rights advocates, and they have exchanged information and ideas with all on a bipartisan basis.

There have been well over a dozen redrafts of the original substitute before us. And while no participant got all he or she wanted in the bill, all of the interests and concerns were considered and the bill represents a reflection of the impact of many of those considerations.

Mr. Chairman, I joined Chairman Coble in developing the bill based on his representation to me that it would focus on improving due process and effectiveness of the ATF enforcement of Federal gun laws and regulations.

Currently, there are complaints, on the one hand, that the enforcement system treats firearm licensees unfairly by focusing too much on minor technical violations, with the threat of revocation on each one. And if a violation citation is challenged, the system perpetuates a further appearance of unfairness by using ATF employees, responsible to their supervisors, to decide challenges ultimately subject to the discretion of the director of ATF.

On the other hand, there are complaints that ATF is unable to effectively impact licensees because its only effective sanction is revocation and licensees know that they will not be revoked for anything other than the most serious violations, so they can be fairly loose with lesser violations.

Most of these violations receive only warnings or conferences with ATF officials. And where a dealer's license is revoked for what is perceived to be a relatively minor violation, even if it is the ATF's only way of showing that it is willing to revoke for such violations, it generates perceptions of unfairness and breeds disrespect for the regulatory process.

Moreover, with the limited resources to cover the large number of licensees, there are complaints that most violators only get a slap on the wrist or nothing at all, because ATF is unable to conduct a sufficient number of inspections.

So bad dealers often are able to operate with relative impunity, endangering the public and giving the ATF and industry a bad name.

H.R. 5092 seeks to address these problems with a system of intermediate sanctions, applied on a graduated basis, for violations the ATF designates as minor through its regulations and in addition to current sanctions, such as warnings and required conferences, the bill makes available to the ATF fines up to a $1,000 each, with a cumulative total of $5,000 per inspection process.

In addition to such fines, after two minor violations, suspensions of up to 30 days are available.

For violations designated as serious by the ATF, by ATF regulations in compliance with this act, fines up to $2,500 per violation may be applied, up to a cumulative amount of up to $15,000 per inspection process. In addition to such fines, suspensions of up to 90 days or revocation are available.

To address the issues of due process in the context of substantially heightened penalties for most violations, the bill revamps the hearing process by requiring that hearings be conducted by detached administrative law judges, with penalties stayed during appeals, unless the attorney general establishes that such a stay would pose an immediate and gave danger to the public.

The bill redefines the term "willfully" to raise the burden of proof for a violation in an effort to limit the findings of guilt to knowing and intentional violations.

All of this is subject to the regulatory process, as well, which should serve to further clarify what reflects knowing and intentional acts or omissions.

In one area in the bill, we have agreed to revamp, in this section, the section allowing for the liquidation of inventory after revocation. In order to hold a business accountable to Federal requirements during this period, the business will have to be in at least provisional or, in other regulatory context, legal and we have agreed to address this as the bill moves forward.

The bill is a total revamp of the licensing and regulatory system and I believe it will better ensure fairness, as well as accountability and, ultimately, better assure public safety.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. SCOTT. Mr. Chairman, if I could just have 30 more seconds.

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT. Accordingly, while I am open to proposals for further improvement, I believe the bill is worthy of our support in its current form.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this time.

[The opening statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

Mr. Chairman, I move to strike the last word.

Thank you, Mr. Chairman and members of the Committee. I appreciate this opportunity to explain my concerns with the bill, H.R. 5092. My primary concern with the bill is that it hampers the ability of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) to put corrupt gun dealers out of business, and thus help reduce the carnage taking place in many of the nation's major urban centers, by striking § 4 of the bill.

H.R. 5092 was introduced by Chairman Coble and the Ranking Member, Mr. Scott as a bipartisan attempt to address enforcement issues raised during ATF oversight hearings conducted by the Subcommittee. Specifically, those hearings focused on ATF's Richmond gun show enforcement program and generally on ATF's licensing and revocation authority over federal Firearms Licensees.

The bill addresses a number of issues relating to ATF's enforcement authority, including authorization of civil penalties (e.g. fines and suspensions); creation of independent Administrative law Judges to hear enforcement cases; definition of serious and non-serious violations; DOJ Inspector General investigation of ATF gun show enforcement program; limitation on ATF authorities; clarification of several enforce-

ment regulations; *and, most significantly, modification of the requisite intent for violations.*

The bill provides in Sec. 4, entitled "Definition of Willfully," that "willfully" is defined as:

> *"intentionally, purposely, and with the intent to act in violation of a known legal duty."*

My concern with this provision of the bill is that it defines "willfully" to impose a much higher standard of proof upon law enforcement officials than currently. There does not appear to be any compelling reason for increasing the government's evidentiary burden at this time. The definition of willfullness is well-settled in the law and means that defendant knew his conduct was unlawful; not that he knew of the specific statute he is accused of violating or had the specific intent to violate that precise provision.

Mr. Chairman, changing the evidentiary standards governing elements of penal offenses should be done sparingly and with the utmost care. This is particularly true where, as here, we do not have the benefit of the considered views of thoughtful criminal law scholars, experienced prosecutors and police officers with front-line experience, or the Department of Justice.

The redefinition of "willfully" contained in the bill illustrates my concern. As I noted, the bill defines willfully as "intentionally, purposely, and with the intent to act in violation of a known legal duty." This definition, however, has been repeatedly rejected by the federal courts. *Bryan v. U.S.,* 524 U.S. 184 (1998); *U.S. v. Andrade,* 135 F.3d 104 (1st Cir. 1998); *U.S. v. Allah,* 130 F.3d 33 (2d Cir. 1997); *U.S. v. Collins,* 957 F.2d 72 (2d. 1992)

In the Bryan case, the defendant was convicted of willfully dealing in firearms without a federal license. Specifically, the defendant did not have a federal firearms license; he used "so-called "straw purchasers" in Ohio to acquired pistols he could not have bought himself; that he knew the straw purchasers made false statements when purchasing the guns; that defendant assured the straw purchasers that he would file off the serial numbers; and that defendant resold the guns on Brooklyn street corners known for drug dealing. Despite this conduct, defendant claimed that he could not be convicted under the federal firearms laws unless the government proved he knew of the federal licensing requirement. The Supreme Court rejected this claim, stating:

> "the willfulness requirement . . . does not carve out an exception to the traditional rule that ignorance of the law is no excuse; knowledge that the conduct is unlawful is all that is required." 524 U.S. at 193.

Similarly, in another case, U.S. v. Collins, the Second Circuit rejected the argument that willfully requires proof that defendant had specific knowledge of the federal firearms license requirements, stating:

> *[T]he element of willfulness not contained in § 922(a)(1) was meant to be read broadly to require only that the government prove that defendant's conduct was knowing and purposeful and that the defendant intended to commit an act which the law forbids."* 957 F.2d at 76.

According to the court, the government was not required to prove more than just the defendant's general knowledge that he or she is violating the law." *Id. at 75.*

Other courts have reached similar conclusions and I list them in my statement. The point, Mr. Chairman, is that the federal firearms license statute is and has been an important tool for law enforcement to crack down on the illegal trafficking in firearms and the wanton violence this conduct exacerbates. I do not believe that a compelling case has been made on this record to take this tool away from law enforcement. Therefore, I would urge my colleagues to vote against the bill.

Thank you. I yield the balance of my time.

Chairman SENSENBRENNER. Are there any amendments?

The chair recognizes the gentleman from North Carolina, Mr. Coble, for purposes of offering an amendment in the nature of a substitute.

Mr. COBLE. And I so offer that, Mr. Chairman.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "Amendment in the nature of a substitute to H.R. 5092——

[The amendment offered by Mr. Coble and Mr. Scott follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5092 OFFERED BY MR. COBLE OF NORTH CAROLINA

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Modernization and Reform Act of 2006''.

SEC. 2. GRADUATED PENALTIES FOR CIVIL VIOLATIONS BY FEDERAL FIREARMS LICENSEES.

(a) IN GENERAL.—Section 923 of title 18, United States Code, is amended by striking subsections (e) and (f) and inserting the following:

''(e)(1)(A) If the Attorney General determines that a licensee under this section has willfully violated any provision of this chapter or any regulation prescribed under this chapter, the Attorney General may—

''(i) if the violation is of a minor nature, or if the violation is that the licensee has failed to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except because of

theft, casualty loss, consumer sales, back orders from a manufacturer, or any other similar reason beyond the control of the licensee)—

"(I) impose on the licensee a civil money penalty of not more than $1,000 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for violations arising from a single inspection or examination shall not exceed $5,000; or

"(II) suspend the license for not more than 30 days, and specify the circumstances under which the suspension is to be terminated, if, in the period for which the license is in effect, there have been at least 2 prior occasions on which the licensee has been determined to have violated this chapter; or

"(ii) if the violation is of a serious nature—

"(I) impose on the licensee a civil money penalty of not more than $2,500 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for a violations aris-

ing from a single inspection or examination shall not exceed $15,000;

"(II) suspend the license for not more than 90 days, and specify the circumstances under which the suspension is to be terminated;

"(III) revoke the license; or

"(IV) take the actions described in subclauses (I) and (II), or subclauses (I) and (III).

"(B)(i)(I) In determining the amount of a civil money penalty to impose under subparagraph (A) on a licensee, the nature and severity of the violation involved, the size of the firearms business operated by the licensee, and the prior record of the licensee shall be considered.

"(II) On request of the licensee, the Attorney General may consider the ability of the licensee to pay a civil money penalty, and may allow the licensee to submit documents and information to establish the ability of the licensee to pay. The Attorney General shall not make part of any public record any document or information so submitted, and shall return to the licensee any such document or information.

"(III) The total amount of penalties imposed on a licensee under subparagraph (A) with respect to violations

of a minor nature and of a serious nature arising from a single inspection or examination shall not exceed $15,000.

"(ii) For purposes of subparagraph (A), violation of a provision of this chapter with respect to 2 or more firearms during a single transaction shall be considered a single violation of the provision.

"(iii) The Attorney General may defer, or suspend, in whole or in part, the imposition of a civil money penalty on a licensee whose license is suspended under this paragraph.

"(C) For purposes of subparagraph (A):

"(i) A violation of this chapter shall be considered to be of a serious nature if the violation—

"(I) results in or could have resulted in the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition under this chapter, or under State or local law;

"(II) obstructs or could have obstructed a bona fide criminal investigation or prosecution, or an inspection or examination under this chapter; or

"(III) prevents or could have prevented a licensee from complying with subsection (a)(7),

(a)(8), (b)(1), (b)(3), (b)(4), (j), (k), (o), or (p) of section 922, subsection (g)(7) of this section, or subsection (b) or (h) of section 924.

''(ii) A violation of this chapter shall be considered to be of a minor nature if the violation is not of a serious nature.

''(D) The Attorney General may not commence an enforcement action under subparagraph (A) with respect to a violation, after the 5-year period that begins with—

''(i) the date the violation occurred; or

''(ii) if the licensee intentionally obstructed discovery of the violation, the date the violation is discovered.

''(2)(A) Not less than 30 days before the effective date of any penalty imposed on a licensee by reason of a determination made under paragraph (1), the Attorney General shall send the licensee a written notice of—

''(i) of the determination, and the grounds on which the determination was made;

''(ii) of the nature of the penalty; and

''(iii) that the licensee may, within 30 days after receipt of the notice, request a hearing to review the determination.

''(B) A hearing to review a determination made under paragraph (1) with respect to a licensee shall not be held

unless the licensee requests such a hearing within 30 days after receiving the notice of the determination sent pursuant to subparagraph (A).

"(C) On timely receipt from the licensee of a request for such a review, the Attorney General shall stay the imposition under paragraph (1) of any penalty involved, pending resolution of the review, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that—

"(i) the licensee or the principal owner of the business subject to the license has been indicted and charged with a criminal violation of this chapter; and

"(ii) the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

"(3)(A) Within 90 days after timely receipt from a licensee of a request to review a determination made under paragraph (1) (or at such later time as is agreed to by the Attorney General and the licensee), an administrative law judge shall hold a hearing, at a location convenient to the licensee, to review the determination.

"(B) Not less than 30 days before the hearing, the Attorney General shall deliver to the licensee—

"(i) a document identifying each person whom the Attorney General intends to call as a witness during the hearing;

"(ii) a copy of each document which will be introduced as evidence at the hearing; and

"(iii) copies of all documents on which the determination is based.

"(C) Within 90 days after the hearing, the administrative law judge shall issue a written decision setting forth findings of fact and conclusions of law, and a decision as to whether to affirm, modify, or reverse the determination.

"(D) On request of the licensee, the Attorney General shall stay the effective date of any penalty, suspension, or revocation until there has been a final, nonreviewable judgment with respect to the determination involved, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that—

"(i) the licensee or the principal owner of the business subject to the license has been indicted and charged with a criminal violation of this chapter; and

"(ii) the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

"(E) The action of an administrative law judge under this subsection shall be considered final agency action for all purposes, and may be reviewed only as provided in subsection (f).

"(4) This subsection shall not be interpreted to affect the authority of the Attorney General under section 922(t)(5).

"(f)(1) Within 60 days after a party receives a notice issued under subsection (d)(3) of a decision to deny a license, or a notice issued under subsection (e)(3)(C) of a determination to impose a civil money penalty or to suspend or revoke a license, the party may file a petition with the United States district court for the district in which the party resides or has a principal place of business for a de novo review of the decision or determination.

"(2) In a proceeding conducted under this paragraph, the court shall, on application of a party, consider any evidence submitted by the parties to the proceeding whether or not the evidence was considered at the hearing held under subsection (d)(3) or (e)(3).

"(3) If the court decides that the decision or determination was not authorized, the court shall order the At-

1 torney General to take such action as may be necessary
2 to comply with the judgment of the court.
3 "(4) If criminal proceedings are instituted against a
4 licensee alleging any violation of this chapter or of a regu-
5 lation prescribed under this chapter, and the licensee is
6 acquitted of the charges, or the proceedings are termi-
7 nated, other than upon motion of the Government before
8 trial on the charges, the Attorney General shall be abso-
9 lutely barred from denying a license under this chapter,
10 suspending or revoking a license granted under this chap-
11 ter, or imposing a civil money penalty under subsection
12 (e), if the action would be based in whole or in part on
13 the facts which form the basis of the criminal charges.
14 "(5) The Attorney General may not institute a pro-
15 ceeding to suspend or revoke a license granted under this
16 chapter, or to impose a civil money penalty under sub-
17 section (e), more than 1 year after the filing of the indict-
18 ment or information.".
19 (b) CONFORMING AMENDMENTS.—
20 (1) PROCEDURE APPLICABLE TO DENIAL OF
21 APPLICATION FOR LICENSE.—Section 923(d) of such
22 title is amended by adding at the end the following:
23 "(3) If the Attorney General denies an application
24 for a license, an administrative law judge of the Depart-
25 ment of Justice shall, on request by the aggrieved party,

promptly hold a hearing to review the denial, at a location convenient to the aggrieved party. If, after the hearing, the administrative law judge decides not to reverse the denial, the administrative law judge shall give notice of the final denial decision to the aggrieved party.''.

(2) ELIMINATION OF REDUNDANT PENALTY.—Section 924 of such title is amended by striking subsection (p).

SEC. 3. CONSIDERATION OF FEDERAL FIREARMS LICENSE APPLICATIONS.

(a) IN GENERAL.—Section 923(d) of title 18, United States Code, as amended by section 2(b) of this Act, is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and inserting after paragraph (1) the following:

''(2) The Attorney General shall make a preliminary determination as to whether to approve or deny an application submitted under subsection (a) or (b). If the preliminary determination is to deny the application, the Attorney General shall notify the applicant in writing of the preliminary determination and the reasons for the preliminary determination, and shall afford the applicant an opportunity to supplement the application with additional information and to request a hearing on the application. If the applicant, in a timely manner, requests such a hearing,

the Attorney General shall hold the hearing at a location convenient to the applicant, and shall notify the applicant in writing of the time and place of the hearing.''.

(b) CONFORMING AMENDMENT.—Section 923(f)(1) of such title, as amended by section 2(a) of this Act, is amended by striking ''(d)(3)'' each place it appears and inserting ''(d)(4)''.

SEC. 4. DEFINITION OF WILLFULLY.

Section 923(e) of title 18, United States Code, as amended by sections 2(a) of this Act, is amended by adding at the end the following:

''(5) For purposes of this subsection, the term 'willfully' means, with respect to conduct of a person, that the person knew of a legal duty, and engaged in the conduct knowingly and in intentional disregard of the duty.''.

SEC. 5. ESTABLISHMENT OF FORMAL INSPECTION, EXAMINATION, AND INVESTIGATIVE GUIDELINES.

The Attorney General shall establish guidelines for how the Bureau of Alcohol, Tobacco, Firearms, and Explosives is to conduct inspections, examinations, or investigations of possible violations of chapters 40 and 44 of title 18, United States Code.

SEC. 6. REVIEW BY THE INSPECTOR GENERAL OF THE DEPARTMENT OF JUSTICE OF THE GUN SHOW ENFORCEMENT PROGRAM; REPORT.

(a) REVIEW.—The Inspector General of the Department of Justice shall conduct a review of the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, for the purpose of assessing the manner in which the Bureau conducts the gun show enforcement program and blanket residency checks of prospective and actual firearms purchasers.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a written report that contains the findings of the review required by subsection (a), and includes such recommendations as may be appropriate.

SEC. 7. LIMITATIONS ON USE OF FIREARMS PURCHASER INFORMATION.

Section 923(g)(1)(D) of title 18, United States Code, is amended in the last sentence by inserting ‘‘, except that information identifying a person who has purchased or received firearms or ammunition and who is not prohibited from doing so may not be so made available or so provided unless the agency involved has certified that the agency

will not disclose the information to any entity other than a court, federal, State or local law enforcement agency, or prosecutor'' before the period.

SEC. 8. LIQUIDATION OF INVENTORY IN FEDERAL FIREARMS LICENSE EXPIRATION, SURRENDER, OR REVOCATION CASES.

Section 923 of title 18, United States Code, is amended by adding at the end the following:

''(m) A person whose license issued under this chapter is expired, surrendered, or revoked shall be afforded 60 days from the effective date of the expiration, surrender, or revocation to liquidate the firearms inventory of the person, which time may be extended upon a showing of reasonable cause. During such 60-day period (including any extension of the period), the license involved shall continue to be considered valid.''.

SEC. 9. OPPORTUNITY TO CURE VIOLATIONS AFTER ACQUISITION OF FIREARMS BUSINESS.

Section 923 of title 18, United States Code, is further amended by adding at the end the following:

''(n) If the Attorney General is made aware that a business licensed under this chapter has transferred to a surviving spouse or child of the licensee, to an executor, administrator, or other legal representative of a deceased licensee; or to a receiver or trustee in bankruptcy, or an

assignee for benefit of creditors, and, before the transfer, or on the first inspection or examination by the Attorney General of the records of the licensee after the transfer, the licensee is found to be operating the business in violation of this chapter, the Attorney General—

"(1) shall notify the transferee of the violation by the transferor; and

"(2) shall not presume that the transferee is committing the violation.".

SEC. 10. STANDARDS FOR CRIMINAL VIOLATIONS OF RECORDKEEPING REQUIREMENTS.

Section 922(m) of title 18, United States Code, is amended—

(1) by striking "any false entry" and inserting "a materially false entry";

(2) by striking "appropriate entry" and inserting "a materially significant entry"; and

(3) by striking "properly maintain" and inserting "retain custody of".

SEC. 11. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect at the end of the 180-day period that begins with the date of the enactment of this Act.

Mr. COBLE. I ask unanimous consent, Mr. Chairman, that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

And the gentleman is recognized for 5 minutes.

Mr. COBLE. Well, I failed to do that. Mr. Scott, I failed to express my appreciation to you earlier, and Mr. Vassar, as well, and to Mr. Volkov, on our side. This was a bipartisan effort that was thoroughly and deliberately examined. As I said, there were three hearings conducted.

Very briefly, let me tell you what appears in the amendment in the nature of a substitute.

It modifies section 2 regarding graduated penalties by expanding the list of possible violations that are serious, changes existing law to allow governments to force licensees to cease operations pending review of the administrative law judge (ALJ) decision to revoke a license or suspend operations, criminal indictment and where continued operation poses grave risk to community safety.

It authorizes the ALJ to consider the size of the business when setting a civil penalty, clarifies that gun storage or safety device requirements are minor violations, as under existing law.

Section 4 revises the definition of "willful" to ensure that enforcement actions are directed against knowing and intentional violations by a licensee and do not include good faith mistakes or ministerial or administrative mistakes.

Section 5 expands investigative guidelines to address non-firearms inspections and examinations.

Section 8 clarifies the 60-day limit within which a licensee may continue to sell firearms.

Section E deletes former section 8, which would have restricted the ATF authorities to prevent ATF from enforcement of other criminal and civil laws beyond the Tobacco, Alcohol, Firearms and Explosives venue.

And that, pretty clearly, I think, Mr. Chairman, explains the amendment in the nature of a substitute.

And I yield back.

Chairman SENSENBRENNER. Before continuing, the chair will interrupt the proceedings to announce the presence in the room of a number of members of the parliament of the Islamic Republic of Afghanistan. And I will introduce them one by one and apologize in advance if I am mispronouncing anybody's name.

Dr. Mohammad Salih Saljoqi, Mr. Noorolhaq Olomi, Mr. Zalmay Mujadidi, Dr. Kabir Ranjbar, Mr. Bidar Zazai, Mr. Mohammad Shaker Kargar, Mr. Ahmad Ali Jebraili, and Mr. Din Mohammad Azimi.

This includes the second secretary of the parliament and the chairs of the armed services, internal security, government relations, and budget committee, the deputy chair of the international relations committee, a member of the government affairs committee, and the secretary of the religious affairs and education committee.

[Applause.]

There are three staff Members who are accompanying them, a program escort from the House Democracy Assistance Commission, which is an arm of the U.S. House of Representatives, and three interpreters.

We welcome you here, and we hope that you find that the way American democracy works is open and transparent. We debate vigorously. And we wish you well as you are establishing your democracy in your country.

Thank you.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan?

Mr. CONYERS. I rise in opposition of the substitute amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. I am opposed to the amendment for the same reasons that I am opposed to the text of the underlying bill, namely, because the amendment, as introduced, would largely eliminate BATFE's current revocation powers, replace them with minimal fines and temporary license suspensions.

And, additionally, this substitute fails to improve upon the bill's current definition of serious versus minor offenses. And, finally, the amendment fails to address the problem that would require the bureau to automatically stay or postpone the imposition of a fine or a suspension or revocation, pending completion of an administrative hearing, no matter how egregious the violation.

Now, what we have before us is one of the most amazing pieces of work that this Committee has brought forward yet. We all but eliminate the bureau's current authority to revoke the Federal firearms licenses of corrupt dealers and would make it virtually impossible for the bureau to shut down rogue gun dealers who repeatedly violate the law.

It creates two serious new classifications of Federal gun laws, the serious ones and the non-serious ones. And the definitions are so vague that it would make enforcement, it seems to me, extremely rare and would require the bureau to automatically stay or postpone the imposition of a fine, suspension or revocation, pending completion of an administrative hearing, no matter how serious the violation.

The problem that this raises, for me, is that dangerous firearms in the hands of violent criminals and, may I also add, terrorists continue to be one of the most pressing concerns facing our nation.

In the last year that it was recorded, 3,012 children and teens were killed by gunfire in the United States, which comes to about a child every 3 hours, eight children every day, 50 more every week.

In addition, American children are often at greater risk for firearm related injuries and fatalities. Firearms were reportedly used to kill 19 children in Great Britain, 57 in Germany, 109 in France, 153 in Canada, but 5,285 in the United States.

And so this substitute only compounds the problem that is found in the original measure. I hope that we can see some kind of a concern here about the incredible amount of deaths that are taking place because of inadequate enforcement and I think we are moving in the wrong direction.

I ask unanimous consent to have *The Washington Post* Sunday, July 23rd, article by Amit Paley included in my comments.

And I return the balance of my time.

Chairman SENSENBRENNER. Without objection, the extraneous material will be included.

[The article follows:]

washingtonpost.com

Gun Seller's Case Reveals Hurdles Of Enforcement

Md. Shop's Decade of Lapses Brings Scrutiny to House Bill

By Amit R. Paley
Washington Post Staff Writer
Sunday, July 23, 2006; A01

Advertisement

Social Security

Health Care Reform

Retirement Security

Medicare

Long-Term Care

PARKVILLE, Md. -- Sanford M. Abrams began selling guns from his shop in Baltimore County in 1996 and almost immediately started losing track of them.

In 1997, he couldn't account for 45. In 2001, it was 133. In 2003, there were 422 firearms missing -- more than a quarter of his inventory -- including semiautomatic assault rifles, 12-gauge shotguns and Glock 9mm pistols, according to federal investigators.

This year, a decade after he started losing track of guns, Abrams's store lost its firearms license. But he still intends to sell guns.

The tale of Abrams and his Valley Gun Shop -- which regulators describe in court records as "a serial violator" that has "endangered the public" -- illustrates the difficulty government regulators face in shutting down even those dealers found to have persistently flouted the nation's gun laws. The controversy is the subject of fierce debate in Congress.

Abrams, a member of the National Rifle Association's board of directors, did not dispute the substance of more than 900 violations of federal gun laws filed against his store. But he called them unintentional recordkeeping errors that posed no threat to public safety and said it is impossible for anyone to comply with all firearms regulations.

The dispute has heightened scrutiny of new federal legislation, strongly backed by the NRA, that federal officials said would cripple their ability to revoke gun licenses. The bill, which would make it more difficult to close down gun shops without evidence of criminal intent, also could allow Valley Gun to resume sales of firearms, the lawmaker sponsoring the measure said.

Even if the bill is defeated, Abrams plans to use a provision in existing law to sell 700 guns left over from his shop's inventory at a soon-to-be-opened store called Just Guns, which will sell them on consignment. Its location? Next door to Valley Gun, on property owned by his family.

"What do people want me to do? Grind them up into itty-bitty pieces and make manhole covers out of them? Sorry, I don't think so," Abrams said. "The Second Amendment gives me the right to own and sell guns, and that's what I'm going to do."

Abrams, 57, peppers his conversation with obscenities, many of them directed at the Bureau of Alcohol, Tobacco, Firearms and Explosives, and styles himself as one of the most outspoken gun store owners in

the country. He has sued ATF three times and claims it has a vendetta against him.

Most days, from opening at 10 a.m. to closing at 6 p.m., he can be found behind the counter, selling unregulated guns and accessories at Valley Gun, a tiny white-brick store in this largely working-class Baltimore suburb. A signed thank-you note from President Bush for campaign work hangs in the store.

The business has been owned by his family since 1954, but its problems with ATF didn't begin until Abrams became president after his father died in 1996.

The decade-long battle between Abrams and ATF has centered on strict federal laws that require dealers to keep detailed records on their inventory and customers who buy firearms so law enforcement officials can trace guns found in criminal investigations to their original purchasers and prevent guns from falling into the hands of criminals.

When inspectors arrived at Valley Gun in 1997, they discovered incomplete sales records and dozens of guns listed in store inventory records that could not be located. Officials were alarmed and sent a warning letter threatening to revoke the store's license. They returned two years later and found more instances of improper sales and unaccounted-for guns. Revocation was threatened again in a warning conference.

"If the dealer can't account for the guns, how did they get out of the store?" asked Michael D. Campbell, spokesman for ATF's Washington field division. "Were they being sold off the books? Are they being given to criminals? That's always a concern."

By 2000, ATF had identified Valley Gun as one of the 41 most "uncooperative" dealers in the country in responding to requests for information needed to trace guns linked to crime. Abrams sued the agency after it asked him to turn over records, but the courts eventually ruled against him.

An inspection the next year revealed more than 100 missing guns, failures to perform proper background checks and improper sales records on 419 of 933 transactions examined. Under normal circumstances, the agency would move to revoke his license. But because of Abrams's position on the NRA board and his previous lawsuit against ATF, agency officials chose to hold a highly unusual second warning conference, according to two senior ATF officials who spoke on condition of anonymity because of the sensitivity of the case.

"We were actually bending over backwards to be fair to him," said Jeffrey A. Cohen, assistant chief counsel for ATF.

Then a 2003 audit found that several machine guns had been sold without proper records; a gun had been sold without a proper background check; and 422 guns -- 28 percent of the 1,524 that should have been in his inventory -- were missing. Some of the guns were later found to have been sold but not properly accounted for.

Valley Gun was then ranked 37th of 80,000 dealers in the country for firearms linked to crime, according to a 2004 study by Americans for Gun Safety. Almost 500 guns associated with crime were traced back to the store, the study found.

ATF decided in 2004 to revoke Valley Gun's license. But Abrams, who has not been charged with any crime, filed a federal lawsuit to challenge the agency's decision. ATF officials allowed him to continue selling guns as the case was heard.

In two hour-long interviews at his store, Abrams repeatedly attacked ATF officials as deceitful sloths who want to put honest gun dealers out of business. "If they remove all the licensees," he said, "they don't have to worry about working anymore."

He said it is impossible not to make mistakes when filling out the nine forms required for the sale of a firearm, some of which have 37 sections. "And some of the forms are going to go missing," he said. "Forms fall behind the counter. Or maybe someone throws it away."

Abrams said "mathematics and logic tells you you're going to have to make errors." He added: "I just screwed up paperwork. . . . There is no crime here."

When asked how it is possible to lose track of hundreds of guns, Abrams responded angrily that law enforcement officials constantly lose firearms. "When the police are perfect," he said, "then you have the right to ask that question."

In court, Abrams's attorneys argued that the government should have to prove not only that the company violated the law but that it did so "with the bad purpose to disobey or to disregard the law." The judge disagreed.

"The undisputed fact is that because of [Valley Gun's] lapses, scores of firearms are unaccounted for," U.S. District Judge William M. Nickerson in Baltimore wrote in a Feb. 23 ruling against Abrams.

The next day, almost exactly 10 years after Abrams took over Valley Gun, his firearms license was revoked.

The fight then shifted to Congress. One of Abrams's attorneys, Richard E. Gardiner, testified in March before the House subcommittee that oversees ATF about the need to change the laws that govern revocations of gun licenses.

One week later, Rep. Howard Coble (R-N.C.), the subcommittee chairman, introduced a bill that would, among other things, allow a gun store whose license has been revoked to remain open during any appeal. It also would require a much higher burden of proof -- almost the same one Abrams proposed in his court case -- before ATF could revoke a license.

"It could be crippling," said David DiBetta, an 18-year veteran of ATF who is president of the Federal Law Enforcement Officers Association's ATF division.

"That bill would make it virtually impossible to enforce the nation's gun laws," said Joseph J. Vince Jr., former chief of ATF's firearms division.

Coble, who received about $13,000 in campaign contributions from the NRA between 1999 and 2005, said the legislation would prevent ATF from abusing its power. The bill, HR 5092, gained momentum last month when House Republicans added it to the American Values Agenda, their list of high-priority legislation aimed at energizing social conservatives.

"I am not anti-ATF, but I am anti-heavy-handed law enforcement," Coble said. "I don't see that this is going to emasculate, or even weaken, in any way, the ATF. That's certainly not the intent."

When asked whether Abrams, who has appealed his case, could continue selling guns if the bill passes, Coble said: "I think he probably could." He said the impetus for the bill was not Abrams but ATF

behavior at a gun show in Richmond, although he could not recall details about the incident.

Two days before the legislation was introduced, incorporation papers were filed for Just Guns, a store that will open next door to Valley Gun in a property owned by Abrams's 80-year-old mother.

Abrams, who has sold some of the store's inventory after transferring it to his personal collection, plans to sell about 700 firearms through consignment at Just Guns, which will open this week and sell only firearms. Valley Guns may carry only unregulated merchandise.

Acting as an agent for his mother, Abrams signed the lease with the new shop's owner, James D. Morganthall Jr., and the two have a no-compete clause. But each said he had no financial stake in the other's business. The goal is for every customer to visit both stores in one trip.

"This is probably the first time this type of situation is occurring," Abrams said. "It's a new solution for an old problem."

ATF officials said they approved the arrangement because Morganthall, who also owns Jim's O.C. Outdoors, a Baltimore County firearms dealer, has what Cohen called "a blemishless compliance history." Morganthall said the store has not lost a single gun because his wife, a CPA and former bank auditor, constantly monitors the inventory.

"It's not impossible to keep up with the paperwork," he said. "It just takes a lot of time and money to do it correctly."

On a recent weekday morning, a twentysomething man with curly hair walked into Valley Gun, filled with cartridges, fireproof safes and shotgun scopes. He briefly glanced at the weapons on display -- black-powder rifles, antebellum muskets and BB guns -- all unregulated by the federal government.

"Do you have regular handguns?" he asked the man at the counter.

"Next week," Abrams replied. "We'll be right next door."

© 2006 The Washington Post Company

Chairman SENSENBRENNER. Are there any second-degree amendments to the amendment in the nature of a substitute offered by the gentleman from North Carolina?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. WEINER. First, I would like to strike the last word on the amendment being offered by Mr. Coble.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. Mr. Chairman, it is puzzling to me what the problem is that the Coble substitute or the base bill seeks to resolve. It is certainly not that there have been an enormous number of gun dealers that have had their license revoked.

According to the ATF, the last numbers we have in 2003, they only sought to revoke 54 licenses in the entire country, which represented about 2 percent of those that they inspected.

The ATF says that even the president system that is being reformed, theoretically, because there is widespread and very subjective enforcement going on by the ATF, ATF says that the present system already makes it very, very difficult for them to actually repeal anyone's license.

They say that the inspector general said that if they proceeded on the present pace to do all of their revocations they would like to do, it would take them 19 years to do them.

There are gun shops that are presently under the process to be suspended that have been on appeal for years. You know, there is one in San Laredo, California, where an ATF audit found that 7,477 firearms had gone missing. Now, when I say "gone missing," I mean that the paperwork that is required under the law that we could say you don't want to keep anymore, maybe that is the way we should go, had been lost.

That is under a process for suspension that has been going on since 2004 and still the gun dealer continues to operate.

Now, I should point out that under the Coble substitute and the base bill, that would be considered, in the words of the bill, a minor offense, 7,400 missing or off-the-book transactions would be redefined in this legislation as a minor offense.

Which brings me to the second rationale for the bill, which is that we have one bucket that we put all infractions in and we should give the ATF more flexibility to actually be able to decide what is the wheat and what is the chaff. And I think that that is fair, but the way that the Coble bill does it is by saying that everything is essentially a minor infraction.

Well, I would ask you if failure to do a background check should be considered minor. Is failure to do 50 background checks minor, failure to do a 100, failure to do any?

They all would be, under the Coble substitute, considered a minor infraction. In fact, it is very interesting, in the Coble substitute, you might be saying, "Well, what does he consider serious under the bill?"

If a dealer colludes with a gun trafficker. But if he says, "I am not going to collude with anyone. I am just not going to do any paperwork. I am not going to do any paperwork. Let anyone who comes in here who wants—I am not going to do a single one. I am

not going to intentionally sell or collude with someone, but I am not going to do any paperwork."

Thousands and thousands and thousands of lost guns, which, by the way, is how we track down terrorists, how we track down criminals. Those would be considered minor infractions.

So it is not that the ATF is doing a lot of these proceedings. They are doing very few. I gave you the statistics. What this is really about is gutting the way the ATF, as Mr. Conyers said, the ATF does its job.

Now, if you really wanted to clarify or modernize or reform, would you put in language that repeals the penalties enacted in 2005 for failure to provide gun safety locks with your handgun? No. You are not trying to reform the ATF. You are trying to gut handgun laws.

And you might disagree that we should provide safety locks, that is fine, we can have that debate again, but let's call it what it is. If you really are trying to reform the process, then you would give the ATF some guidelines about penalties that you think are more fair rather than saying wholesale numbers of violations would be wiped off the books and be something that the ATF can't pursue.

No one would ever accuse the ATF and the Bush administration of being a ferocious tiger of enforcement.

You can look at some of the dealers that have been allowed to proceed. You can look at the positions they have taken on issues we are going to take up later, where they even stop cities and States from trying to protect their citizens.

But, certainly, the ATF activities so far have not demonstrated that they need this type of reform. If anything, they need to be bolstered. But if we are going to have this debate, let's have it in the context of a little more honesty here.

This is not about reforming the ATF. This is about gutting the gun laws.

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

Chairman SENSENBRENNER. The bell has now rung, and, without objection, the Committee will recess until 15 minutes after the conclusion of the vote on the rule on the horse slaughter bill.

Members will please return promptly. We will be going from the time we come back until about 1:30 or the completion of at least this bill and the next bill. So we will be here until we get this bill and the next bill out, whether it is 1:30 or later.

The Committee stands recessed.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order.

When the Committee recessed for the vote, pending was an amendment in the nature of a substitute offered by the gentleman from North Carolina, Mr. Coble.

Are there any second-degree amendments to the Coble substitute amendment?

For what purpose does the gentleman from Tennessee seek recognition?

Mr. JENKINS. Thank you, Mr. Chairman. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. JENKINS. And I yield to the gentleman from North Carolina.

Mr. COBLE. I thank the gentleman from Tennessee for yielding.

Mr. Chairman, I won't take 5 minutes, but I just want to respond to some of the problems that have been voiced.

As you all know, reasonable men and women can differ on various issues, as we do often times in this Committee, and there is nothing wrong with that. In fact, it is healthy.

But, Mr. Weiner, I hope I understood you correctly. If I didn't, I will apologize. But I think you indicated that a dealer who could not account for a gun would result in a minor violation. This is incorrect. That would be a serious violation.

Furthermore, you indicated, as I best recall, that if a dealer did not conduct a background check, that, too, would be classified as a minor violation. In truth, it would be a serious violation.

And most importantly, ATF will define, in the regulation, serious vs. non-serious violations.

And, finally, regarding the gun safety locks and storage, the distinguished gentleman from Virginia, Mr. Scott, and I agreed at the last markup to fix this issue and retain existing penalties.

So, Mr. Chairman and colleagues, I think a lot that has been said today is subject to interpretation. It is my belief that the ATF has not been emasculated in any way by this bill and to corroborate that, no one from the ATF has complained to me about the bill. So apparently they don't feel that they have been emasculated as a result thereof.

And as an aside, Mr. Chairman, this, in and of itself, does not make a bill good, but now we have a 137 cosponsors, Democrats and Republicans. So that indicates feel for the Congress at-large.

And I thank the gentleman from Tennessee for yielding to me.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. JENKINS. Yes.

Chairman SENSENBRENNER. Are there any amendments in the second degree to the amendment in the nature of a substitute by the gentleman from North Carolina?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, seek recognition?

Mr. WEINER. Mr. Chairman, I would make a point of order.

Is there a quorum present to consider amendments at this point?

Chairman SENSENBRENNER. The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

Mr. Coble?

Mr. COBLE. Present.

The CLERK. Mr. Coble, present.

Mr. Smith?

Mr. SMITH. Present.

The CLERK. Mr. Smith, present.

Mr. Gallegly?

[No response.]

Mr. Goodlatte?

[No response.]

Mr. Chabot?

[No response.]

Mr. Lundgren?

[No response.]

Mr. Jenkins?

Mr. JENKINS. Present.
The CLERK. Mr. Jenkins, present.
Mr. Cannon?
[No response.]
Mr. Bachus?
[No response.]
Mr. Inglis?
Mr. INGLIS. Present.
The CLERK. Mr. Inglis, present.
Mr. Hostettler?
[No response.]
Mr. Green?
[No response.]
Mr. Keller?
Mr. KELLER. Present.
The CLERK. Mr. Keller, present.
Mr. Issa?
[No response.]
Mr. Flake?
[No response.]
Mr. Pence?
[No response.]
Mr. Forbes?
[No response.]
Mr. King?
[No response.]
Mr. Feeney?
Mr. FEENEY. Present.
The CLERK. Mr. Feeney, present.
Mr. Franks?
[No response.]
Mr. Gohmert?
[No response.]
Mr. Conyers?
Mr. CONYERS. Present.
The CLERK. Mr. Conyers, present.
Mr. Berman?
[No response.]
Mr. Boucher?
Mr. BOUCHER. Present.
The CLERK. Mr. Boucher, present.
Mr. Nadler?
[No response.]
Mr. Scott?
Mr. SCOTT. Present.
The CLERK. Mr. Scott, present.
Mr. Watt?
[No response.]
Ms. Lofgren?
[No response.]
Ms. Jackson Lee?
[No response.]
Ms. Waters?
[No response.]
Mr. Meehan?

[No response.]
Mr. Delahunt?
[No response.]
Mr. Wexler?
[No response.]
Mr. Weiner?
Mr. WEINER. Present.
The CLERK. Mr. Weiner, present.
Mr. Schiff?
[No response.]
Ms. Sánchez?
[No response.]
Mr. Van Hollen?
[No response.]
Mrs. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Present.
The CLERK. Mrs. Wasserman Schultz, present.
Mr. Chairman?
Chairman SENSENBRENNER. Present.
The CLERK. Mr. Chairman, present.
Chairman SENSENBRENNER. Are there Members in the chamber who wish to record their presence?
The gentleman from Iowa, Mr. King?
Mr. KING. Present.
The CLERK. Mr. King, present.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?
Mr. CANNON. Present.
The CLERK. Mr. Cannon, present.
Chairman SENSENBRENNER. Further Members in the chamber who wish to record their presence?
The clerk will report.
The CLERK. Mr. Chairman, there are 14 Members present.
Chairman SENSENBRENNER. A reporting quorum is present—excuse me, a working quorum is present.
For what purpose does the gentleman from New York, Mr. Weiner, seek recognition?
Mr. WEINER. Mr. Chairman, just a point of clarification. So that means that a sufficient number aren't here to vote on an amendment, but just to discuss the amendments?
Chairman SENSENBRENNER. No, a sufficient number are here to discuss and vote on amendments, but not to report the bill.
Mr. WEINER. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. WEINER. Weiner 313.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. "Amendment to the amendment in the nature of a substitute to H.R. 5092, offered by Mr. Weiner of New York. Strike section 8"——
[The amendment offered by Mr. Weiner follows:]

AMENDMENT TO H.R. 5092
OFFERED BY MR. WEINER OF NEW YORK

Strike section 8.

In section 9, strike ''further''.

Redesignate the subsection proposed to be added by section 9, as subsection (m).

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. Mr. Chairman, in my remarks about the Coble substitute, I listed some of the things that lay bare the notion that this is not an effort to reform the ATF, this is an effort to gut their authority.

There are a few examples that make that more clear than section 8. When the ATF goes in and takes action against a dealer and says, "We are going to take away your license to operate," it says that you have got to say that they have a period of time where they can dispense of their firearms in their stock.

But, obviously, you still have to do the necessary disclosures and the necessary recordkeeping.

What this section 8 does, if you read it carefully, is it says that for 60 days after a license is revoked, 60 days after you have fallen into that 1 percent category, you have gone through these years of appeals and you have been whittled down to—you are one of the very worst actors, by almost any definition, you are one of the very worst actors, you have lost—your license has been taken away, what section 8 of the Coble substitute says is you can continue selling guns for 60 days thereafter, even if there is a risk to the public that the ATF has determined by continuing to do that.

And this amendment would simply strike that. It would allow the ATF to do what the ATF should be doing, which is deciding who should be able to sell guns and who should not. And particularly in this case, to have a 60-day fire sale of weapons essentially being dumped by someone who we have already concluded, by definition of the gentleman from North Carolina, the gentleman from here in New York, all of us agree that once you have gone through this process, however we are going to define it, once you have gone through this process and had your license revoked, it means you are a bad guy.

I believe you are a bad guy presently, you are a bad player presently. Under the Coble bill, it would be changed. So you still have a process that you go through that would be much more lenient, much, much more lenient.

But even by his definition, you are the worst of the worst player. You are someone that sells guns to terrorists. You are someone that has repeatedly willfully showed, under any definition, that you are not going to comply.

What this amendment does is allow the ATF to end that fire sale, to not include this 60-day period where guns can be dumped onto the marketplace.

Think about what would happen. You have already lost whatever enforcement mechanism you have against that dealer. What incentive is there on him then not to just, to anyone who pulls up in a U-Haul, to sell off his wares, because then what are they going to do to me?

You have already taken away my license. You have already taken away my shop. I am already such a scurrilous player that I have lost my right to sell.

At the very least, once that Damocles sword falls, we should make sure that we don't have the 60-day period.

My amendment would strike section 8, and I urge a "yes" vote.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. I rise in opposition to the Weiner amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. During that 60-day period to which the gentleman from New York referred, the licensee must comply with appropriate rules and regulations during that time.

So indictments can be forthcoming. Further violations can be forthcoming, if that were the case.

So I see no need for the amendment and oppose it.

Mr. SCOTT. Would the gentleman yield?

Mr. COBLE. Yes, sir.

Mr. SCOTT. Will the gentleman agree that we could make this a little clearer? Because it says, on line 15, "The license involved shall continue to be considered valid," to make it clear that you have to be in compliance with rules and regulations?

And I think there is a provision elsewhere in the law that allows the attorney general to eliminate the stay for safety reasons.

Would the gentleman agree that we could look at this, in case the amendment is defeated?

Mr. COBLE. I would have no problem with that, Mr. Scott.

Mr. WEINER. Would the gentleman further yield?

Mr. COBLE. I will.

Mr. WEINER. I would just ask, Mr. Coble, we are talking about gun shops that have already run so far afoul to the law that they have had their license repealed. They have gone through the appeals.

Under your bill, it is now a much more lenient process. They have still been targeted. They have still lost their license. This is a player who is already shown utter disregard for the rules of the road.

Why do you think they are suddenly, in their last 60 days, when they have no chance of being a gun dealer ever again, why would they suddenly comply? I am curious. What would motivate them to suddenly see the light and say, "Okay, with this last 60 days of stock, I am going to start following the letter of the law," because it is written on line 15 of some obscure bill that they don't care about or else they wouldn't be a criminal.

Mr. COBLE. If I shared the concern that my friend from New York shares, I would probably agree with you. But they are still in the target. The ATF is not sleeping during this 60-day period.

And, furthermore, it affords the licensee a chance to at least salvage some money from his inventory before——

Mr. WEINER. But, Mr. Chairman, why is that an objective we want for such a bad player? Why are we trying to protect his interests here?

He has already been shown to be such a heinous player, he is in the 1 percent that lost the license. Why are we showing concern for salvaging anything?

Mr. COBLE. Well, we are, obviously, in disagreement on this one and I stand by what I said earlier.

Chairman SENSENBRENNER. The question is on the Weiner amendment.

Those in favor will say "aye."

Those opposed, "no."

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. WEINER. Mr. Chairman, I would like to request a recorded vote.

Chairman SENSENBRENNER. A recorded vote is requested.

Those in favor of the Weiner amendment in the second degree to the amendment in the nature of a substitute offered by the gentleman from North Carolina, Mr. Coble, will, as your names are called, answer "aye," those opposed, "no."

And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

Mr. Goodlatte?

[No response.]

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Lundgren?

[No response.]

Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Mr. Bachus?

[No response.]

Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no.

Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Mr. Green?

[No response.]

Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Mr. Issa?

[No response.]

Mr. Flake?

[No response.]

Mr. Pence?

[No response.]

Mr. Forbes?

Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers?
[No response.]
Mr. Berman?
[No response.]
Mr. Boucher?
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no.
Mr. Nadler?
[No response.]
Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt?
[No response.]
Ms. Lofgren?
[No response.]
Ms. Jackson Lee?
[No response.]
Ms. Waters?
[No response.]
Mr. Meehan?
[No response.]
Mr. Delahunt?
[No response.]
Mr. Wexler?
[No response.]
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sánchez?
[No response.]
Mr. Van Hollen?
[No response.]
Mrs. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Mrs. Wasserman Schultz, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there Members in the chamber who wish to cast or change their vote?

The gentleman from Alabama, Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no.

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye.

Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote?

If not, the clerk will report.

The CLERK. Mr. Chairman, there are four "ayes" and 18 "nays."

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments in the second degree to the Coble amendment in the nature of a substitute?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. WEINER. I have an amendment at the desk, Weiner 314.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "Amendment to the amendment in the nature of a substitute to H.R. 5092, offered by Mr. Weiner of New York. Page 9, strike lines 3 through 13. Page 9, line 12, strike '5' and insert '4'."

[The amendment offered by Mr. Weiner follows:]

AMENDMENT TO H.R. 5092

OFFERED BY MR. WEINER OF NEW YORK

Page 9, strike lines 3 through 13.

Page 9, line 14, strike "(5)" and insert "(4)".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. Thank you, Mr. Chairman.

The hits keep coming. This is something else that I didn't have an opportunity to address in the spare 5 minutes that I had to address the Coble substitute.

The ATF proceedings against gun dealers are, by and large, administrative proceedings. There are times when they rise to a level of criminal offenses and there are also proceedings that way.

Among the many things tucked into this reform legislation is language that says that if you have a gun dealer that is going through an administrative proceeding that we have already learned can be quite long and lengthy and prosecutors, also, at the same time, decide that this charge rises to the level of criminality, which, as you know, is a much higher standard, if these proceedings are going along at the same time and the prosecution fails to make the burden of proof and fails to convict the person on the criminal charge, the language in this bill, in section 3, I believe it is, section 3, says that when that acquittal comes down, it stops in its track any ATF proceedings on any related matter.

So to tell you what that means, let's assume for a moment that the ATF is doing an investigation of a gun dealer for selling undocumented or willfully selling, under the new standard, if this were to become the law, the new standard, a prosecution is also going forward on the criminal side, not the administrative side.

What the effect of this language would be in this section would be to really render the administrative side either completely moot, because the standard there is now going to be irrelevant, because you are going to have the higher criminal standard at all times.

It is a way of sneaking a new higher standard in to, again, burden the ATF, making administrative changes.

The other thing that it is going to do is the ATF is going to have to have conversations with prosecutors and say, "Yes, this is pretty serious. Yes, we think this rises to criminality," which is nothing that Mr. Coble or any of the sponsors of this legislation, I assume, want to eliminate with this law.

They don't want to not do criminal prosecutions. But the effect of doing criminal prosecutions under this language would be to say if you do a criminal prosecution and you fall shy of the standard necessary there, but you far exceed the standard for administrative sanctions, still the administrative proceedings die.

Now, the question has to be why do this. What is the problem that the sponsors seek to stop? Is it that they are concerned about someone who is violating the law administratively, but can't be held to a criminal standard, that that proceeding should be squashed? The answer is, yes, that is what they want.

Secondarily, they want there to be fewer criminal prosecutions. They don't want any criminal prosecutor to say, "Boy, oh, boy, not only do I have a burden of persuading the jury of the high criminal standard, but if I fail, I am also killing this administrative proceeding.

There is no other place in the United States Code that we do this. We don't say, "If you are not guilty"—now, later on in the afternoon, you are going to see this go one step further.

You are going to say not only that, you can't even bring a civil action. We are going to go from the sublime to the ridiculous a little later in the afternoon.

But in this section, this, once again, lays bare the idea that this is an attempt to reform the ATF. This is a way to stop the ATF from doing even the small number of enforcement actions that they do.

And I refer the Committee back to the statistics I quoted earlier. The number of license revocations that were done in ATF in 2003 was 54 out of 1,800 inspections and the ATF said that if they just did the worst 1 percent, it would take them 19 years to revoke them.

So this isn't a matter that there are thousands and thousands of abuse put upon dealers out there. In fact, there are thousands and thousands of dealers who are following the rules of the road every single day. And if you don't, the ATF comes and does an enforcement action.

Under this section that we seek to strike here today, if you are so bad that you are being challenged both on the criminal side and in the administrative side and the criminal side falls, this quashes an investigation that is going on by the ATF on the administrative side.

It is a way to either chill criminal or eliminate administrative. Either way, this is a wolf in sheep's clothing, and I ask for a "yes" vote.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from New York, Mr. Weiner.

Those in favor will say "aye."

Opposed, "no."

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. WEINER. Mr. Chairman, I would like a roll-call vote.

Chairman SENSENBRENNER. A rollcall will be ordered.

The question is on the Weiner amendment in the second degree to an amendment in the nature of a substitute offered by the gentleman from North Carolina, Mr. Coble.

Those in favor of the Weiner amendment to the Coble amendment will, as your names are called, answer "aye," those opposed, "no."

And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

Mr. Goodlatte?

[No response.]

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.
Mr. Lungren?
[No response.]
Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no.
Mr. Hostettler?
[No response.]
Mr. Green?
[No response.]
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
[No response.]
Mr. Flake?
[No response.]
Mr. Pence?
[No response.]
Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney?
[No response.]
Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman?
[No response.]
Mr. Boucher?
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no.
Mr. Nadler?
[No response.]
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.

Mr. Watt?
[No response.]
Ms. Lofgren?
[No response.]
Ms. Jackson Lee?
[No response.]
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
Mr. Delahunt?
[No response.]
Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sánchez?
[No response.]
Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Mrs. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Mrs. Wasserman Schultz, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there Members who wish to cast or change their vote?
The gentleman from California, Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Chairman SENSENBRENNER. The gentleman from Florida, Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are nine "ayes" and 16 "nays."
Chairman SENSENBRENNER. And the amendment to the substitute amendment is not agreed to.
Are there further amendments?
If there are no further amendments, the question is on——
Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

Mr. WEINER. Mr. Chairman, I have an amendment at the desk, Weiner 317.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "Amendment to the amendment in the nature of a substitute to H.R. 5092, offered by Mr. Weiner of New York. Page 2, beginning on line 5, strike '$1,000' and all that follows through '$5,000.' On line 10 and insert——

[The amendment offered by Mr. Weiner follows:]

F:\M9\WEINER\WEINER_317.XML H.L.C.

AMENDMENT TO H.R. 5092

OFFERED BY MR. WEINER OF NEW YORK

Page 2, beginning on line 5, strike "$1,000" and all that follows through "$5,000" on line 10 and insert "$10,000 for each such violation".

Page 2, beginning on line 21, strike "$2,500" and all that follows through "$15,000" on page 3, line 2, and insert "$10,000 for each such violation".

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

The gentleman from New York is recognized for 5 minutes.

Mr. WEINER. Mr. Chairman, we have had some discussion here about the disagreement about what the Coble substitute does vis-a-vis the distinction between serious and minor violations.

And I think it is an important distinction that we need to clarify, because I think that Mr. Coble left the Committee with the wrong impression.

As I said in my remarks, that what we have done here is allowed off-the-book transactions. And for those of you who are unfamiliar with the process, right now, when the gun manufacturer transfers the gun to the dealer, he inscribes the registration and has to keep track of the first person that purchases that gun.

That is often used as a way we track guns from crime scenes, from terrorist scenes, to at least know where the gun traveled from. There are bookkeeping requirements.

Now, I happen to think the bookkeeping requirements are not sufficient. Many Members on the other side, many of the people who support the gun lobby think there probably should be none. But there are some that we agree upon that should be kept.

In this legislation, the Coble amendment says, on page 4, line 13, "A violation shall be considered serious in nature if the violation," and then lays out some things, okay. And if it is not in those sections, they are not considered major violations.

Therefore, they are considered minor violations, which is where I extrapolated my conclusion, and Mr. Coble can point to the section that disputes this, that if someone has a bookkeeping violation, 10 bookkeeping violations, 50 bookkeeping violations, a 1,000 of them, you will be in a minor situation and the ATF will be restricted from having the greatest sanctions available, because they are going to say, essentially, a dozen or two dozen or five dozen minor violations does not, in the Coble substitute, a major violation make.

Now, Mr. Coble said I misunderstood or I misspoke, but unless he can point to me a section where it says—now, you could say that the attorney general could commend an action or the ATF could theoretically come back and, I guess, do some rulemaking.

I would be surprised if they would in the light of congressional action, defining what major and minor would be. But what this amendment does, at the very least, is it takes off the cap on fines.

What we do is we take off the cap on fines, putting it for minor violations to make it the same as what it would be for major violations.

So at the very least, what the ATF would be able to do, if my amendment were adopted, is it doesn't change the minor-major thing, but it does say that the fines would be higher. So if someone thinks they can get away, which they clearly can, it is a loophole the size of a truck, if they can get away with just having a whole bunch of minor violations, at the very least, the sanctions for them can rise if the ATF sees that that is appropriate.

And I ask for a "yes" vote.

Ms. WATERS. Will the gentleman yield for a question?

Mr. WEINER. I certainly will.

Ms. WATERS. Mr. Weiner, as you describe, what is major and what is minor, is there any consideration given to whether or not this is a handgun or an assault weapon? Could this be major weapons that could be involved with 1,000 minor violations?

I can't tell from looking at this.

Mr. WEINER. Well, frankly, the way the Coble amendment, the substitute reads, is that it is things like collusion. If you collude with a gun dealer, with someone who is trafficking in guns, that you can't do.

But if you lost his paperwork for his order of a 1,000 guns, that is not so bad. That falls into minor. And to make matters worse, the fines that you are eligible for under this bill, under the Coble amendment, would be limited at $1,000.

Ms. WATERS. But this could be to any kind of weapons that you could sell, if you lost the paperwork. This could be for handguns or assault weapons.

Mr. WEINER. Any weapon, this covers any weapon under the enforcement domain of the ATF.

Ms. WATERS. So it could be assault weapons.

Mr. WEINER. And, frankly, and we are going to talk about this later, you know, this doesn't make—if you have someone come up to you and say—and if you have reason to know that he is a Member of Al Qaida, for example, I believe that is right, if you have reason to know.

But if you are not willfully, under the new definition, if you just do it over and over and over again, just because you just lose bookkeeping, you lose records over and over again, you are considered to have committed a series of minor violations which you could not lose your license for.

Ms. WATERS. Well, since you mentioned willful, if you don't mind, since you are taking a very close look at this, the standards that are changed by this legislation from should have known to willful, under should have known, that would have taken in if you were under an orange or red alert or something is going on, particularly as it relates to this war on terrorism.

And if we change that standard and weaken that standard, you could have had an orange or a red alert or some description or a profile or what have you, but unless it is deemed to be willful, then we have weakened the standard substantially and this could be for an assault weapon.

Mr. WEINER. I would say to the gentlelady from California, I am going to be offering a substitute later that changes it to "knowingly," which is pretty bad, too.

But if you know the fact, but you—I mean, you here are setting up what essentially turns out to be the highest possible standard for the worst type of activity.

Ms. WATERS. And that includes for assault weapons that terrorists may use, is that right?

Mr. WEINER. The gentlelady is correct.

Ms. WATERS. Well, what a war on terrorism we have.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the Weiner amendment to the Coble amendment in the nature of a substitute.

Those in favor will say "aye."

Opposed, "no."

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. WEINER. While I gather myself, could I request a roll-call vote on that?

Chairman SENSENBRENNER. Of course.

Mr. WEINER. Thank you.

Chairman SENSENBRENNER. The chair will put the question the same way he has done with the last two amendments. Those in favor will say "aye," those opposed, "no."

And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

Mr. Goodlatte?

[No response.]

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Lungren?

[No response.]

Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no.

Mr. Hostettler?

[No response.]

Mr. Green?

[No response.]

Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no.

Mr. Flake?

[No response.]

Mr. Pence?

[No response.]

Mr. Forbes?

Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney?
[No response.]
Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman?
[No response.]
Mr. Boucher?
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no.
Mr. Nadler?
[No response.]
Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt?
[No response.]
Ms. Lofgren?
[No response.]
Ms. Jackson Lee?
Ms. JACKSON LEE. Pass.
The CLERK. Ms. Jackson Lee, pass.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
Mr. Delahunt?
[No response.]
Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner?
Mr. WEINER. Pass.
The CLERK. Mr. Weiner, pass.
Mr. Schiff?
Mr. SCHIFF. Pass.
The CLERK. Mr. Schiff, pass.
Ms. Sánchez?
[No response.]
Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Mrs. Wasserman Schultz?

[No response.]

Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there further Members in the chamber who wish to cast or change their vote?

The gentleman from California, Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no.

Chairman SENSENBRENNER. Do I see the gentleman from Arizona, Mr. Flake, hiding in the door? The gentleman from Arizona?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no.

Chairman SENSENBRENNER. The gentlewoman from Florida, Mrs. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Mrs. Wasserman Schultz, aye.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye.

Chairman SENSENBRENNER. And, finally, the gentleman from New York, Mr. Weiner?

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye.

Ms. JACKSON LEE. How am I recorded, please?

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Chairman SENSENBRENNER. How is the gentlewoman from Texas recorded?

The CLERK. Mr. Chairman, she is recorded as present.

Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are eight "ayes" and 20 "nays."

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

If there are no further amendments, the question is on agreeing to the amendment in——

Mr. WEINER. Mr. Chairman? Mr. Chairman, I believe the gentlelady from Texas has an amendment.

Chairman SENSENBRENNER. The gentlelady from Texas has never been at a loss for words. If she has an amendment, she can offer it herself. [Laughter.]

Ms. JACKSON LEE. I have an amendment at the desk, Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentlelady from Texas seek recognition?

Ms. JACKSON LEE. I have an amendment at the desk.

And I am so glad that you are reaffirming my right to the First Amendment. Thank you.

Chairman SENSENBRENNER. That has never been abridged.

And the clerk will report the amendment.

Ms. JACKSON LEE. Thank you very much.

The CLERK. "Amendment to the amendment in the nature of a substitute to H.R. 5092, offered by Ms. Jackson Lee of Texas. Strike section 4 and redesignate succeeding sections accordingly."

[The amendment offered by Ms. Jackson Lee follows:]

F:\M9\JACKSO\JACKSO_328.XML H.L.C.

ANS to

AMENDMENT TO H.R. 5092

OFFERED BY MS. JACKSON-LEE OF TEXAS

Strike section 4, and redesignate succeeding sections accordingly.

F:\W9\072506\072506.013 (352339|1)
July 25, 2006 (9:14 AM)

Chairman SENSENBRENNER. And the gentlewoman is recognized for 5 minutes.

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

Just a few blocks from this august building, three of the nation's mayors are sitting on a panel discussing the increase of gun violence in their cities. Frankly, they are present at the Congressional Black Caucus legislative weekend to ask Congress to be more sensitive and responsive to the proliferating gun violence that we have in this nation.

Just a few weeks ago, I had the opportunity to participate in one of the many immigration hearings. At that hearing, there was a discussion of the drug and gun violence in Nuevo Laredo. That is, of course, in Mexico.

But one of the issues had to do with the spillover of that gun violence into Laredo, Texas. And so it is clear that there needs to be a further reinforcement of the responsible legislation necessary to ensure responsible use of guns and the protection of the innocent.

My amendment maintains the ability of the Bureau of Alcohol, Tobacco, Firearms and Explosives to put corrupt gun dealers out of business and, thus, help reduce the carnage taking place in many of the nation's major urban centers, by striking section 4 of the bill.

H.R. 5092 was introduced by Chairman Coble and the Ranking Member, Mr. Scott, as a bipartisan attempt to address enforcement issues raised during ATF oversight hearings conducted by the Subcommittee.

I congratulate their effort. I appreciate their leadership. But those hearings focused on ATF's gun show enforcement program and generally on ATF's licensing and revocation authority over Federal firearms licensees.

The bill addresses a number of issues relating to ATF enforcement authority, including authorization of civil penalties, creation of independent administrative law judges to hear enforcement cases, definitions of serious and non-serious violations, DOJ inspector general investigations, ATF gun show enforcement, and other support provisions.

Most significantly, for purposes of my amendment, modification of the requisite intent for violation. The bill in section 4, entitled "definition of willfully," that "willfully" is defined as "intentionally, purposefully, and with the intent to act in violation of a known legal duty."

My concern with this provision of the bill is that it defines "willfully" to impose a much higher standard of proof upon law enforcement officers than currently.

We have got to give law enforcement officers the right tools to do the right things, but at the same time, we must provide them with the tools to protect the innocent.

There does not appear to be any compelling reason for increasing the government's evidentiary burden is time. My amendment simply restores the restoration of the definition of "willfulness" to its well settled meaning that defendant knew his conduct was unlawful; not that he knew the specific statute he is accused of violating or the specific intent to violate that precise provision.

Mr. Chairman, that determination will be made beyond a reasonable doubt or in civil penalties. It will allow the individual, in a

preponderance of evidence, to prove that they did not intend to break the law.

That is fair enough, because guns kill. And some people say people kill with guns, but guns kill and there are people with criminal intent that will buy guns from gun shows and they will kill.

Mr. Chairman, changing the evidentiary standards governing elements of penal offenses should be done sparingly and with the utmost care. This is particularly true whereas here we do not have the benefit of the considered views of thoughtful criminal law scholars, experienced prosecutors and police officers with front line experience, or the Department of Justice.

Let's help our nation's major mayors and rural communities. The redefinition of "willfully" contained in the bill illustrates my concern. As I noted, the bill defines "willfully" as intentionally, purposely and with the intent to act in violation of a known legal duty.

This definition, however, has been repeatedly rejected by the Federal courts, *Bryan v. U.S.*, 524–184, the *U.S. v. Andre* case, the *U.S. v. Aleck*, and the *U.S. v. Collins.*

In the *Bryan* case, the defendant was convicted of willfully dealing in firearms without a Federal license. Specifically, the defendant did not have a Federal firearms license. He used so-called store purchasers in Ohio to acquire pistols he could not have bought himself; that he knew the store purchasers made false statements when purchasing the guns; that the defendant assured the store purchasers that he would file off the serial numbers; and, that the defendant resold the guns on Brooklyn street corners known for drug dealing.

Despite this conduct, defendant claimed that he could not be convicted under the Federal firearm laws unless the government proved he knew of the Federal licensing requirement.

The Supreme Court soundly rejected this claim, stating, "The willfulness requirement does not carve out an exception to the traditional rule that ignorance of the law is no excuse."

Knowledge that the conduct is unlawful is all that is required.

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. JACKSON LEE. I ask my colleagues to support this amendment.

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina, Mr. Coble, seek recognition?

Mr. COBLE. I will speak in opposition to the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. And I won't take 5 minutes, Mr. Chairman.

This provision, of course, is restricted only to civil matters, not criminal, and it is intended to distinguish between the licensee actions that are knowing and intentional versus good faith or administrative mistakes and recordkeeping.

The Subcommittee heard testimony, Mr. Chairman and colleagues, on this issue that ATF treats virtually all errors in dealers' records, no matter how few or how minor, as willful violations. Any error could result in a license revocation. It just seems that this is not there.

For the benefit of Members of the Committee, Mr. Chairman, I will be brief about this. But we had a witness that appeared before

Mr. Scott and me who cited the fact that a licensee received a revocation notice who wrote the initials "Y" or "N" in lieu of writing out the words "yes" or "no" on a firearms transaction form.

This seems to violate common sense, to me. And in a number of transactions, a revocation notice cited the failure of the firearms purchaser to identify the county of residence, although the purchaser did clearly and notoriously list his city of residence.

So for those reasons, Mr. Chairman, I oppose the amendment.

Mr. GOHMERT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas, Mr. Gohmert, seek recognition?

Mr. GOHMERT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOHMERT. The violence in D.C. is certainly something that we need to be very concerned about and I would humbly submit that one of the things that has concerned me is the fact that guns were prohibited in Washington, D.C.

And there is something to the old bumper stickers that says, "When guns are outlawed, only outlaws have guns." Back in Texas, after a disaster where a gunman came in to a cafeteria and began shooting people, it was realized we need to have guns in the hands of lawful, legal, law-abiding people.

And so we passed a concealed carry and violent crime has been going down ever since. So I would submit that may be a good thing for us to take a look at.

I do recall back in the early 1990's, under President Clinton, the secretary of state, a man from Texas, stood up in front of the country and said, "What we need to do is raise the fees for gun dealers tenfold and that will bring an end to so much of this gun violence in America."

Well, it didn't, because I can tell you, in all my years as a judge, the guns that were constantly used in crimes were not bought from sporting good dealers. I didn't even have them from gun shows. I had them bought out of people's trunks, stolen out of other people's homes, things like that.

And so that kind of thing ended up penalizing law-abiding gun dealers and it did nothing to actually address the real problem, the underlying problem, and that was the criminals that use them and tying the hands of law-abiding folks that could counter that.

And I would just submit, in conclusion and before I yield back my time, that the bumper sticker is quite true that says, "Guns kill people the same way it is spoons that really make people fat."

I yield back.

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner, for what purpose do you seek recognition?

Mr. WEINER. Mr. Chairman, I would like to seek to respond to that erudite presentation.

Chairman SENSENBRENNER. For what purpose do you seek recognition?

Mr. WEINER. Five minutes to strike the last word, please.

Chairman SENSENBRENNER. That is better. The gentleman is recognized for 5 minutes.

Mr. WEINER. I don't know where to start, the spoons or the trunks.

Mr. GOHMERT. I think I resent erudite, I am not sure.

Chairman SENSENBRENNER. The time belongs to the gentleman from New York, all 5 minutes of it.

Mr. WEINER. First, let me just clarify a couple of questions or fact. First of all, what the gentleman from North Carolina said about the knowingly standard is incorrect.

Under the gentlelady's amendment, if you have an inadvertent error, that would not be a basis for sanction. The *Bryan* standard did not say if you put a "Y" or an "N." The *Bryan* standard for willingly said, you know, if you show a pattern again and again and again and again of someone violating the law, that is enough to show willfulness.

Now, I doubt, and who knows, I am surprised in this debate all the time, but I doubt that the gentleman from North Carolina or the gentleman from Texas think that *Bryan* was a good guy and think that there shouldn't have been sanctions brought against him.

The question is, is the standard correct or not and I think the knowingly standard that the gentlelady from Texas is arguing for here is a good one. It says if you know what you are doing, even if you don't know the specific section, if you know what you are doing is wrong, that that should be enough to bring sanctions.

But I can't let the example, as far off point as it was, by the gentleman from Texas, not be responded to. The guy who sells guns illegally in the back of the car is why we need good documentation and good trace data and why we need a strong ATF.

You have got to understand it is the good gun dealer that is protected by these sections. The guy who is following the rules, documenting his actions, they are not the problem. I think the gentleman would agree.

If somehow the gun is going from being legal when it is manufactured to becoming illegal, and what the ATF is asking for and what cities are asking for and what individuals are asking for is give somebody the tools, somebody the tools to be able to do that investigation and get the bad guys.

We are not talking about 50 percent of the gun dealers. I mean, there is a statistic in my notes here somewhere about the relatively tiny percentage of gun dealers that are responsible by this trace data for all of the illegal handguns making their way that way.

If you don't believe in having an ATF, all right, I can it—listen, it is a weird position to have, but that is the direction you are going in with the Coble substitute. You are taking away their ability to put the heaviest sanctions.

You are slowing down a process that is already excruciatingly slow. You are saying if it results in criminal sanctions, you kind of have a weird double-jeopardy situation going on.

You are saying that if you choose not to observe the child lock provision, that we are not going to sanctions you.

You have got all of these things. You have got this new classification of minor, which says you can't lose your license at all, even if there are dozens and dozens and dozens and dozens of them.

I agree with the gentleman from Texas. I don't know, the spoon thing had me a little confused, but I agree with the gentleman from Texas, we need to get criminals.

How do we do it? Well, we have got the ATF to do it. Why gut the few investigations and the few prosecutions that they are doing? If you want to get the guy selling guns out of the back of his car, and I know 99.9 percent of gun dealers want to get him, too, how do you do it?

With a strong, empowered ATF, with a standard that leads to real enforcement. If you say that knowingly violating the law is too strong a standard, you are right. It is too strong a standard for the criminal who is selling it out of the back of his car.

But for the gun dealer who wants to be a good player, it is no challenge. He just knows he can't lose documents. He knows he has to write down the right thing.

Who are we protecting? Who are we protecting, my colleagues, with the Coble substitute? Let's really talk about that.

We are protecting essentially a tiny group of gun dealers who are doing bad things. Don't take it from me. Ask the ATF. They are doing 2 percent of their investigations lead to revocations, 2 percent. They are not getting the best 2, they are not getting—is Wal-Mart on this list, as much as I dislike them, is Target? No. They are getting the rogue guy.

Isn't that who people who support gun rights want to get? Isn't that the people like me who think we need tougher restrictions?

We have agreement. We created the ATF. Why not just say what you mean? Do away with the ATF. Why the death by a thousand nicks here?

So the gentleman is right, that is who we want to get. Now, he didn't speak to the point of knowing and willful, but he is right about the overall point. As far as knowing and willful, knowing is a pretty tough standard. You have got to know that what you are doing is breaking the law every single time you do it, not simply having paperwork errors every once in a while. That person is not going to get stuck.

And I yield what little time I have left to the gentlelady from Texas.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The question is on the Jackson Lee amendment.

Mr. CONYERS. Mr. Chairman, I rise in support of the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. I think this is a very revealing discussion, and I would like the gentlelady from Texas to make any closing comments that she might like. I yield to her at this time.

Ms. JACKSON LEE. I thank the distinguished Ranking Member.

And I am moved by the gentleman's eloquent detailing of where we are going in this debate, both Mr. Conyers' very frank statement, but Mr. Weiner, who has made a very potent point.

I would wish that we could make this a very factual debate and discussion and, frankly, track or efforts toward the NRA that really want absolutely no regulations and provisions whatsoever.

The point that many of us are trying to make with these amendments is the point that the ATF has a duty. It is a civil duty, in some instances, and that is to make sure that the regulations of gun ownership, which are, if you will, consistent with the Second Amendment, which the Second Amendment is not a free-for-all.

It is a constitutional right to be able to bear arms, but it is not a free-for-all. And so most likely you would not like to have a 2-year-old holding a gun. You would not like to have someone who is suffering from some failings of mental health have a gun. You wouldn't want to have a domestic abuser have a gun, as well.

And this is what ultimately happens when you have a reckless, non-supervised and no law enforcement overseeing of the movement of guns in America. We know that there are massive gun dealers coming from countries outside of the United States, making multi, multi millions of dollars and making sure that their guns get in the hands of those who have no intent of doing anything but doing harm.

You now, if you will, emasculate the ATF to the extent that they have to take out a little card and say, "Is this willful?" Now, what is the definition of willful?

Their job on the street is to arrest the bad guys. That means the individual who had people go to Ohio and misuse his identification or not use his identification, buy guns and then, ultimately, the drug dealers on the streets of Houston, Chicago, Kansas City, New York are then able to get their guns without any reprimand whatsoever.

This is, in essence, taking the law away from ATF and simply saying, "Look pretty, wear a uniform, and just let us pay you." And I don't think that that was the intent.

One abuse, one play should be fixed. Obviously, we should find a way for the ATF to be able to supervise legitimate gun shows and be able to be responsible with a responsible gun dealer.

Raiding gun shows recklessly is not what I am advocating for, but to take an incident in one city and, if you will, blindfold the rest of us and cause me in Houston to have to suffer through the thousands of gun shows experience every year, with illegal folks standing outside the gun shows and then trunks open, I think is an outrage.

For you to suggest to me that because we are taking the word "willfully out," a 2-year-old gets a gun and shoots her 4-year-old brother and that is okay, I think is an outrage.

And so I would ask my colleagues to consider spoons and various other anecdotes that have been told and really look at the life or death question that we are talking about.

And that life or death question has to do with removing section 4 that literally guts the responsibility of the ATF and their ability to respond to the need of the American people by ensuring that illegal gun dealers and those who are not attempting to follow the law and those who are attempting to really, if you will, have a cartel of guns on the streets and they don't care who they sell it to, they are not interested in making sure that the guns are sold safely and legally, this is what this amendment is attempting to do.

I ask my colleagues to stand on behalf of the children, families, security and the Second Amendment and vote for my amendment.

I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from California seek recognition?

Mr. ISSA. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. I will take only 1.

In listening to the gentlelady, I have served on this Committee for 6 years, I have never spoken on a gun bill before. But I would ask that all of us throughout the rest of today, on this bill and others, recognize that we may disagree on the fundamentals.

Clearly, this Committee is divided along those who historically have supported the Second Amendment and those who seem to constantly want to limit it, strike it, limit its importation, limit its sale.

Hopefully, we can recognize that we can agree to disagree and do it in a civil way, without using rhetoric that is extreme. We do disagree along recognizable lines on the interpretation of the Second Amendment and people's right to keep and bear arms.

Mr. Chairman, one of my cousins, Richard Issa, is, in fact, an ATF agent and I would not be supporting this if I thought that it gutted Alcohol, Tobacco and Fire's ability to do its job. Just the opposite.

I think that the firearm portion of Alcohol, Tobacco and Firearms will, in fact, be enhanced by us being reasonable in the message that we send to that agency and their enforcement.

And with that, I yield back.

Chairman SENSENBRENNER. The question is on the Jackson Lee amendment.

Those in favor will say "aye."

Opposed, "no."

Ms. JACKSON LEE. rollcall, Mr. Chairman.

Chairman SENSENBRENNER. Okay, first of all, let me state that the noes have it.

Ms. JACKSON LEE. I would like a roll-call vote, please, Mr. Chairman.

Chairman SENSENBRENNER. A rollcall will be ordered.

Those in favor of the Jackson Lee amendment in the second degree to the amendment in the nature of a substitute by Mr. Coble of North Carolina will, as your names are called, answer "aye," those opposed, "no."

And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

Mr. Goodlatte?

[No response.]

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.
Mr. Lungren?
[No response.]
Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Bachus?
[No response.]
Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no.
Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
[No response.]
Mr. Keller?
[No response.]
Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Pence?
[No response.]
Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman?
[No response.]
Mr. Boucher?
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no.
Mr. Nadler?
[No response.]
Mr. Scott?

Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
[No response.]
Ms. Lofgren?
[No response.]
Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
Mr. Delahunt?
[No response.]
Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sánchez?
[No response.]
Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Mrs. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Mrs. Wasserman Schultz, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there Members who wish to cast or change their votes?
The gentleman from California, Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote?
If not, the clerk will report.
Mr. WEINER. Mr. Chairman? Mr. Chairman?
Chairman SENSENBRENNER. Who seeks recognition?
Mr. WEINER. I have my final amendment, which is an amendment in the form of a substitute.
Chairman SENSENBRENNER. Well, the clerk has to report first. I know the gentleman is real eager to offer another amendment, but let's find out what happened to this amendment first.
Will the clerk please report?
The CLERK. Mr. Chairman, there are nine "ayes" and 17 "nays."
Chairman SENSENBRENNER. And the amendment is not agreed to.

Now, for what purpose does the gentleman from New York seek recognition?

Mr. WEINER. Mr. Chairman, would this be an appropriate time to offer an amendment?

Chairman SENSENBRENNER. Are you doing it in person or by proxy this time?

Mr. WEINER. I would like to have an amendment at the desk. It is Weiner JDG-212.

Chairman SENSENBRENNER. The clerk will report that amendment.

The CLERK. "Amendment in the nature of a substitute to H.R. 5092, offered by Mr. Weiner. Strike all after the enacting clause and insert"——

[The amendment offered by Mr. Weiner follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5092

OFFERED BY M__. _____

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''BATFE Modernization and Reform Act''.

SEC. 2. GRADUATED PENALTIES FOR CIVIL VIOLATIONS BY FDERAL FIREARMS LICENSEES.

(a) IN GENERAL.—Section 923 of title 18, United States Code, is amended by striking subsections (e) and (f) and inserting the following:

''(e)(1) If the holder of a license issued under this section knowingly violates any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter, or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensed under this section, or if a licensed dealer knowingly transfers armor piercing ammunition, the Attorney General may, after notice and opportunity for a hearing—

"(A) suspend for not more than 6 months, or revoke, the license issued under this section of the licensee, and

"(B) impose on the licensee a civil money penalty of not more than $10,000 per violation.

"(2) The Attorney General may not, under paragraph (1), revoke a license for failure to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensed under this section if a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee.

"(3) The Attorney General may, after notice and opportunity for a hearing, suspend a license issued under this section if the holder of the license has been indicted for knowingly violating any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter.

"(f)(1) If the Attorney General denies an application for a license under this section, suspends or revokes a license issued under this section, or imposes a civil money penalty on a person under subsection (e), the Attorney General shall provide the person with a written notice which states specifically the grounds on which the applica-

tion was denied, the license was suspended or revoked, or the civil money penalty was imposed, as the case may be. The Attorney General shall provide such a notice of the suspension or revocation of a license to the holder of the license not less than 14 days before the effective date of the suspension or revocation, except that, for good cause, the Attorney General shall provide the notice as soon as is practicable before such effective date.

"(2) If the Attorney General denies an application for a license, suspends or revokes a license, or imposes a civil money penalty, the Attorney General shall, on request by the aggrieved party, promptly hold a hearing to review the denial, suspension, or revocation of the license, or the imposition of the penalty, as the case may be. A hearing under this paragraph shall be held at a location convenient to the aggrieved party and shall be conducted pursuant to chapter 5 of title 5.

"(3) If, after a hearing held under paragraph (2), the Attorney General decides not to reverse the decision to deny an application, to suspend or revoke a license, or to impose a civil money penalty, as the case may be, the Attorney General shall give notice of the decision to the aggrieved party. The aggrieved party may, within 30 days after the date notice is so given, file a petition with the United States district court for the district in which the

party resides or in which the party's principal place of business is located for judicial review of the denial, suspension, or revocation of the license, or the imposition of the penalty, as the case may be. The judicial review shall be conducted pursuant to chapter 7 of title 5. If the court decides that the Attorney General was not authorized to deny the application, to suspend or revoke the license, or to impose the civil money penalty, as the case may be, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 925(b) of such title is amended by inserting '', unless the license is suspended pursuant to section 923(e)(3)'' before the period.

(2) Section 923(d)(1)(C) of such title is amended by striking ''willfully'' and inserting ''knowingly''.

(3) Section 923(d)(1)(D) of such title is amended by striking ''willfully'' and inserting ''knowingly''.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. And the gentleman from New York will be recognized for 5 minutes.

Mr. WEINER. I thank the Chairman. This is a substitute that seeks to address some of the concerns that have been raised and some we haven't gotten to yet.

But I want to thank the gentleman from California, Mr. Issa, for striking a tone that I think is important here. If the gentleman perceives that there is a certain level of passion to this issue, it is because in cities like mine, these are not academic rule-making things.

In cities like mine, they are not constitutional debates in the abstract about the correct interpretation of a Second Amendment that was written a couple of hundred years ago.

This is about illegally sold guns that are coming to cities like mine and killing children and killing police officers and killing people just about every single day, that we are trying to stop.

Now, I don't know how you do it except by having an empowered ATF, with an empowered ability to do everything we can to track guns from that moment they are legal to when they are used in that crime.

And if you believe that we should approach this issue with perhaps a little less passion and heat, I am sorry. It is not going to happen, because people are burying their relatives, police officers, children are getting shot.

We heard the testimony from the mayor of the city of New York, a Republican, talking about part of his job is having to go to funerals where people are being killed with illegal guns that start out somewhere, and we know where they are starting.

The ATF knows where they are and what you are saying with this bill is don't punish them. And if you think that is hyperbole, let me tell you about some other cases.

You know, the Bull's Eye Shooter Supply in Tacoma, Washington shot Bushmaster rifles to the D.C. snipers, even though both were on the prohibited list. Perhaps the most high profile case maybe in American history dealing with the gun, or at least in recent memory.

And 238 guns in the inventory of that shop had disappeared over a 3-year period. The owner has had the revocation of his license on appeal since 2003. He is selling guns to this day.

Now, if you believe that that is an okay state of affairs, then keep the existing law. If you believe that is still too liberal, too generous, pass the Coble amendment and keep him selling guns for years to come.

Trader Sports in San Laredo, California, in 2003, an ATF audit found, as I said earlier, 7,477 firearms had no documentation. They essentially were missing. Now, are they in the back of some guy's truck that he is selling to criminals, that the gentleman from Texas articulated in his example? Maybe.

He had his license revoked in 2004 and was selling guns after that audit for two additional years of appeals, until June 2006.

If you think this is a steel-jaw trap of enforcement, these are two high profile cases.

Perhaps the highest-profile case is one that returns to this exact bill. I am going to read you the description of a gun dealer who,

under this Coble bill, would be considered a minor offender, under this bill.

In 2001, an audit found improper paperwork on 419 of 903 transactions examined and a 133 lost guns, this dealer. In 2003, an audit found 422 of 1,524 guns that should have been in inventory were missing. That was a 2001 audit and then a 2003 audit.

Ranked 37th of 80,000 dealers in the number of guns linked to crime, 500 crime guns in 2004 came from this one dealer. The license was revoked, but under 5092, every single one of those things would be considered a minor offense. The name of this dealer is Sanford Abrams, and he is a board member of the National Rifle Association and the owner of the Valley Gun Shop outside of Baltimore.

Now, if you think that record is a list of minor offenses and that we were too tough on that guy, remember, it started in 2001, it wasn't until last year that it was revoked.

If you think the process is too strong, if you think the process is too vigorous, if you think the process is too onerous, vote for the Coble bill. And maybe go even further and do what the Coble bill is on the way to doing, which is taking firearms enforcement out of the ATF.

But if you think that some of these things can be done in a more reasonable way, having the burden of proof be knowingly rather than willful, saying the ATF can revoke the gun license who knowingly break the law, allow fines of up to $10,000 per violation, doesn't take this carve-out that allows them—that prevents enforcement on gun safety——

Chairman SENSENBRENNER. The time of the gentleman has expired.

The question is——

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. WATERS. I move to strike the last word. And I yield to the gentleman from New York.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Mr. WEINER. And I thank the gentlelady for yielding, as I continue to explain that this—one of the sections of the bill repeals the separate penalties for not having child safety locks on handguns. That is one of the things we are doing today.

My substitute would also take away this terrible disincentive to bring criminal cases against the worst offenders by having this notion that if you fail in the criminal case, you lose the administrative bite at the apple.

My colleagues, I agree with the gentleman from California, we do have some ideological differences here. I do believe that one of them has never been should we have an ATF that does its job.

If you don't believe in this recordkeeping thing, just say it. If you believe that the 95 percent of the gun dealers who are not responsible for not keeping records and who do fine when the ATF comes and visits, they are more than helpful when government officials visit, then, frankly, we do have a difference that goes beyond philosophy.

Ms. WATERS. Would the gentleman yield for a moment?

Mr. WEINER. I certainly will. It is your time.

Ms. WATERS. I am sorry. I missed what you said about the child safety locks.

Mr. WEINER. If the gentlelady would yield me the time.

Ms. WATERS. I yield back.

Mr. WEINER. There are separate penalties under the law that were enacted in 2005 for failure to provide for a child safety lock for handguns. This language in this bill, unwittingly, accordingly to the gentleman from Virginia, I am not so sure, listening to some of the debate here today, strikes those separate provisions.

Now, we can re-argue the child safety lock debate, if that is what my colleagues want. But I say to the gentlelady from California this is really a surrogate debate for something else.

This is not about whether we are going to get the bad guys, because that is what the ATF wants to do. They are only doing it in a relatively tiny percentage, as the statistics show.

This is about an entirely different discussion, a whole new frontier beyond where the gentleman from California described debates up to now.

What they are essentially doing with this modernization and reform act, and I say that with sarcasm, is they are taking away the ATF's last remaining arrows in their quiver.

When you have someone like a gun show that ranks 37 among 80,000 dealers and he can still be considered a minor offender under this bill, it is clear what they are doing.

When you say that the ATF is working too hard, when the shopkeeper that sold the Bushmaster rifle to D.C. snipers, even though both were on the list that they are required to check of prohibited people. Imagine if, God willing, they would have said, "You know what? We are not going to sell and we are going to call someone and say 'Someone is coming around here trying to buy who is on the list,'" it prevents the ATF from shutting down people like this.

That is who my colleagues are defending here. We shouldn't be. Your brother deserves to be honored by giving him the tools he needs to do his job. We dishonor him by saying, "You know what? You are doing too much," saying 1 percent or 2 percent, saying that we should keep the guy who is the 37th ranked out of 80,000 should be considered a minor offender.

Does that honor the work of people who are trying to enforce the law, let alone the memories of those that are lost to these guns?

Look, I believe in doing away with the pretense here. Let's have a discussion whether you should have the ATF. It would be a tough vote for you guys. You know what? Prepare that amendment, Josh.

Let's see if we should even have an ATF. Isn't that what this is about? Is this about doing the bidding, because you have a board member who found, in an audit in 2001, he lost guns, in 2003 he lost guns, has 500 guns linked to crime? Isn't that what this is about, doing the bidding of a special interest here in Washington, when that special interest is responsible for more guns being on the street that are killing the citizens of our country?

Isn't that what this is about? This isn't about a broad philosophical debate anymore. This is about protecting the very, very, very worst.

And let me conclude with this, 99 percent of the gun dealers probably are watching this on television and saying, "Boy, I am

glad my dues for the NRA are paying off." But they are also saying, "This doesn't affect me. I keep my records. I don't sell to rogue guys. By the way, I probably know who the 5 percent are, but I am not doing it."

We are trying to protect them, as well. What this bill is doing is neutering the ATF and I hope you vote for the substitute, which gives them a flexibility, takes out some of the highest standard, takes out some of the clerical things that Mr. Scott says was a mistake, like the child safety lock thing, prevents a fire sale of guns 60 days after you have lost your license.

And then the answer is, "Oh, but they are going to want to follow the law." They lost their license. They are like the worst you can imagine. It takes that provision out.

And I urge my colleagues, in a spirit of comity and also in a spirit of understanding that we all believe, I would hope that there is a need for a strong ATF.

And I yield back the time to the gentlelady from California.

Chairman SENSENBRENNER. And the time of the gentlewoman from California has expired.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. SCOTT. And if I can get the attention of the gentleman from North Carolina, Mr. Coble.

The gentleman from New York has indicated concern about the child safety lock provision. It is my understanding that the language in the bill does, in fact, change the present law.

Is it the intention of the sponsor of the bill to make sure that when the bill is presented to the floor, that we correct that oversight and reinstate the present law on child safety locks?

Mr. COBLE. If the gentlewoman would yield to me. If you will yield, Mr. Scott.

Mr. SCOTT. I will yield.

Mr. COBLE. I said earlier that you and I had agreed to do that, and I made that clear previously.

Mr. SCOTT. I yield to the gentleman from New York.

Mr. WEINER. Would the two gentleman who helped craft this bill, if we are able to craft an amendment now to do that, would you vote in favor of it?

Mr. COBLE. Well, I don't know that it is necessary.

Mr. WEINER. We are in the process of marking up legislation. It is generally where that kind of thing is done.

Mr. COBLE. We can look at it and work with you as we go along. I want to be sure it is done technically correct. But Mr. Scott and I, I think, are as good as our word.

Mr. WEINER. I thank you.

Mr. SCOTT. Reclaiming my time. I yield back.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. COBLE. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. COBLE. And, Mr. Chairman and colleagues, I will not take the full 5 minutes, but I want to say this to you.

I think I have implied it before, but the response to this bill, Mr. Scott's and my bill and a 137 cosponsors, the response from the ATF in opposition, the silence has been deafening.

Now, that tells me that the ATF is not all that upset about this. Usually, the way matters are transacted on this Hill, if I embrace a piece of proposed legislation and X, Y and Z are opposed to it, oftentimes they will knock my door down, at least knock on the door and sometimes knock it down, expressing their opposition.

I have not heard from the ATF in opposition.

And, finally, as to Mr. Weiner's amendment, he retains ATF employees as administrative law judges. Mr. Scott and I designate neutral ALJs, which I think would afford more objectivity.

Mr. Weiner does not distinguish between minor and serious violations, thereby still permitting revocations as a result of innocuous clerical errors.

Finally, suspension after indictment is usually not practical, because generally civil proceedings are routinely stayed pending the disposition of criminal matters.

So with that in mind, Mr. Chairman, I oppose the amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. COBLE. I yield back.

Chairman SENSENBRENNER. The gentleman from Maryland, for what purpose do you seek recognition? And the gentleman is recognized for 5 minutes.

Mr. VAN HOLLEN. I thank you, Mr. Chairman.

Whenever we have this debate on gun safety bills, gun control bills, we often hear from the other side, "We don't need any new legislation, we don't need any new gun safety laws. Let's just enforce the existing laws that are on the books."

And now we have a piece of legislation that seeks to undo the existing laws on the books, that seeks to undermine the ATF and seeks to make it much more difficult for them to go after the bad apples.

Now, Mr. Weiner has made the point that a very small percentage of gun dealers are responsible for selling the great majority of guns that are used in crimes. In fact, 1 percent of licensed dealers account for over 60 percent of the guns used in crimes.

And under existing law, forget the changes in Mr. Coble's bill, under existing law, the ATF has had a very difficult time going after them and now we have a piece of legislation to make it even more difficult to go after the bad apples.

You have got to ask yourself the question why. Now, Mr. Coble raised the point that he hasn't heard from anyone in the existing ATF. Well, as I understand this Bush administration's position, I don't even know if they have a position, but I am not at all surprised to hear that somebody at the ATF isn't coming down and telling us what they think about this bill.

Unfortunately, you have to retire from the ATF these days to be able to speak your mind and it is what you believe. And if you look at people who are retired from the ATF, you will see that they have come out against this bill.

In fact, the bill is opposed by former ATF members, including former director Stephen Higgins and Rex Davis. And, Mr. Chair-

man, I would like to submit for the record a letter to the Congress, dated June 29, 2006, from a number of former officials at the ATF in opposition to this bill.

Chairman SENSENBRENNER. Without objection, the letter will be put in the record.

[The letter follows:]

June 29, 2006

Dear Members of Congress:

As former officials of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), we write to urge you to oppose H.R. 5092, the so-called ATF "Modernization and Reform Act." Far from "modernizing" ATF, this legislation would severely undermine the Bureau and protect corrupt gun dealers and gun traffickers. If passed, this bill would make it extremely difficult for ATF to successfully prosecute gun traffickers and dealers who break the law or to revoke dealers' licenses.

Federal law already impedes ATF's law enforcement powers by requiring it to meet a heightened burden of proving a "willful" violation of federal law to prosecute gun dealers or gun traffickers or revoke the licenses of dealers who blatantly break the law. This "willfulness" standard was imposed by Congress in 1986 and for criminal prosecutions requires ATF to prove that a criminal not only violated the law but also "acted with knowledge that his conduct was unlawful." *Bryan v. U.S.*, 524 U.S. 184, 193 (1998). For license revocations, ATF must show that a dealer was plainly indifferent to known legal obligations, for example, by proving that the dealer repeatedly broke the law. *See, e.g., Willingham Sports, Inc. v. ATF*, 415 F.3d 1274, 1276 (11th Cir. 2005). H.R. 5092 would redefine the definition of "willful" in all federal gun laws, overriding the U.S. Supreme Court's determination of the meaning of this burden of proof. H.R. 5092 would instead require that ATF prove a lawbreaker's specific mental state and purpose, namely that he or she acted "intentionally, purposely, and with the intent to act in violation of a known legal duty." This requirement that ATF prove that a gun trafficker or corrupt gun dealer not only broke the law but also specifically intended to break the law would make it virtually impossible for ATF to successfully enforce our nation's gun laws. There is no reason to protect lawbreakers, at the expense of public safety, by requiring such an extraordinary burden of proof.

H.R. 5092 also redefines most violations of federal gun laws as "not of a serious nature." It prohibits license revocations for such so-called non-serious violations, no matter how egregious the violations. It limits "serious" violations to rare events, such as when a gun dealer specifically intends to break the law and the violation "obstructs or could have obstructed a bona fide civil or criminal investigation or prosecution." It excludes from so-called "serious" violations the most common and serious record keeping violations for which ATF is able to produce evidence to prosecute or revoke the licenses of rogue dealers. Such record keeping violations include the failure to account for weapons missing from inventory, a dangerous practice that may be used by a federally licensed dealer to mask illegal sales or gun trafficking. A dealer may claim that hundreds of thousands of weapons have been "lost," preventing ATF from completing a trace of any such guns recovered at crime scenes. H.R. 5092 would remove ATF's power to revoke the licenses of such gun dealers, greatly jeopardizing ATF's ability to enforce federal gun laws and protect our communities from illegal guns.

H.R. 5092 also grants ATF the ability to impose fines and temporary license suspensions, although it then places such severe impediments on ATF's ability to impose these sanctions as to make them nearly meaningless. For example, it caps damages at $15,000 for all "serious" violations uncovered by an ATF inspection, rewarding dealers with the most severe violations.

Under H.R. 5092, if ATF uncovered 5,000 violations at one inspection because of massive numbers of "lost" guns with no record of sale, it would still be limited to a $15,000 cap in fines, or an average of only a meager $3 fine per violation. It also requires mandatory stays of fines and temporary license suspensions through all administrative hearings and court appeals. This means that an ATF attempt to impose a few thousand dollars in fines or suspend a license for a month could be delayed through years of litigation. It also requires courts to review ATF administrative findings *de novo*, requiring courts to reconsider a case without giving any weight to the findings of an administrative hearing and allowing a dealer to introduce new evidence in court that was not submitted at the agency hearing. These procedures simply encourage prolonged litigation as a guaranteed way of delaying fines or license suspension through years of court battles. Instead of these illogical limits and procedures, ATF should be allowed to impose real fines and license suspensions without automatic stays for egregious violators.

H.R. 5092 also contains other unreasonable restrictions on ATF that favor lawbreakers. It allows even the most dangerous violators of federal law to temporarily continue selling guns after they have had their licenses revoked or if their licenses expire. ATF should have the discretion to limit such sales where they pose a risk to the community and the nation's law enforcement officers. Additionally, the bill protects gun dealers who violate federal law by allowing them to transfer their business to a friend or family member – a tool used by gun dealers whose licenses are revoked, in an attempt to evade such sanctions – and then protects the new owner if he or she continues the old owner's violations of federal law. H.R. 5092 even restricts ATF's ability to investigate many acts of "violent crime or domestic terrorism," a foolhardy provision that would limit federal law enforcement's emergency response to dangerous terror attacks.

The bill also redefines record keeping requirements by making it more difficult to sanction dealers who fail to keep proper records of their firearms. For example, it would end the requirement that dealers keep their records organized according to long-standing regulations, instead requiring them simply to keep "custody" of such records, in any manner or method chosen by the dealer. This would shield rogue dealers by requiring ATF inspections to sort through records kept in disarray, greatly increasing the cost and length of inspections and the likelihood that record keeping violations will not be discovered. H.R. 5092 also shields the identities of gun traffickers and criminals from disclosure to family members of crime victims or the public, a measure with no law enforcement purpose that could deny justice and closure to families seeking information about their loved ones' killers.

ATF already faces severe constraints in its ability to crack down on gun dealers who violate the law. H.R. 5092 would further jeopardize ATF's ability to enforce the law against these rogue elements. Instead of enacting H.R. 5092, Congress should support legislation that gives ATF the power to impose fines and license suspensions on gun dealers who violate the law without extraordinarily high burdens of proof, automatic stays, and unreasonably low maximum fines.

Stephen Higgins, Director (Ret.) ATF
1982 – 1993

Rex Davis, Director (Ret.) ATF
1970-1978

Joseph J. Vince, Jr.
Chief (Ret.), Crime Gun Analysis Branch, ATF

William Vizzard
Special Agent in Charge (Ret.), ATF

Gerald Nunziato
Special Agent in Charge (Ret.),
National Tracing Center, ATF

Julius Wachtel
Resident Agent in Charge (Ret.),
ATF, Long Beach Field Office

Frank Wandell
Special Agent & District Senior
Operations Officer (Ret.), ATF

Gerald C. Benedict
Special Agent in Charge,
Louisville District (Ret.), ATF

Mr. VAN HOLLEN. And I would just like to read the first paragraph, since Mr. Coble raised this issue. Again, it is signed by a number of former ATF officials.

"As former officials of the Bureau of Alcohol, Tobacco, Firearms and Explosives, we write to urge you to oppose H.R. 5092. Far from modernizing ATF, this legislation would severely undermine the bureau and protect corrupt gun dealers and gun traffickers. If passed, this bill would make it extremely difficult for ATF to successfully prosecute gun traffickers and dealers who break the law or revoke dealers' licenses."

So these are the people that worked at ATF. These are the people who now are free to speak their minds from the ATF and they clearly see this as undermining our ability to go after the bad apples.

I would also say that this legislation is opposed by the Major City Chiefs Association, the International Association of Chiefs of Police, and the International Brotherhood of Police Officers.

Now, Mr. Weiner mentioned a couple of cases. He mentioned the case of the gun shop in Tacoma, Washington, that had a record of losing guns, of gross negligence, and he mentioned Sanford Adams, who is a dealer in Maryland.

Both these cases have had a direct impact on my State of Maryland. Sanford Abrams is a gun dealer in the State. As you can see, he is one of the worst offenders. The ATF has said in court documents that he is one of the most reckless sellers of guns and they said, and I quote from the documents, "a serial violator who has endangered the public."

And, yet, under existing law, they have not been successful yet in revoking his license. And now we want to say, "Let's change the law and make it even harder."

Mr. Weiner went through some of the statistics with respect to Mr. Sanford's sales. The fact of the matter is, and he has not disputed the substance of these, he had more than 900 violations of Federal gun laws, 900.

In 2003, the audit found that several machines guns had been sold without proper records. A gun had been sold without proper background check and 422 guns, and get this, 28 percent of his inventory were missing, 28 percent of his inventory were missing.

And under existing law, they haven't been able to revoke his license. We want to make it even harder.

Now, with respect to the sales out of the gun shop in Washington State, the victims were here in the Washington area. I don't know how many people were here back in October 2002, but this whole area was essentially under siege.

Many of my constituents were killed in those sniper shootings. Other people in Washington, D.C., and Virginia were killed. The owner of that gun shop in Washington State had a record of losing his inventory.

And under this legislation, there would be absolutely no recourse in going after him, except for his violations, which would be considered petty, minor violations.

I just want to close with this, Mr. Chairman. I don't understand why we were passing legislation——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. VAN HOLLEN.—those who are the worst wrongdoers.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The question is on the Weiner——

Mr. MEEHAN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. MEEHAN. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. MEEHAN. I would like to yield to the gentleman.

Mr. VAN HOLLEN. I thank my colleague, Mr. Meehan.

I just want to go back to the fundamental question here, which is under existing law, the ATF has found it difficult to revoke the licenses of the worst abusers, a small percentage of gun dealers responsible for the great percentage of guns used in gun violence, under existing law.

And now we have to ask ourselves the question why are we going to make it even more difficult for them to do it.

Let's listen to the folks from the ATF, who now have the freedom to speak their mind, who aren't under the gag rule of this Administration, people who have served the ATF in Republican and Democratic administrations alike.

Why don't we listen to the folks in law enforcement and why don't we look them in the eye and tell them why we are making it more difficult for them to go after the people most responsible for selling guns negligently and gross negligently that find their way into the hands of——

Ms. WATERS. Would the gentleman yield?

Mr. VAN HOLLEN. Yes, I would be happy to yield.

Ms. WATERS. I am sorry. Did you say that the guns that were sold to Lee Malvo and John Muhammad, the snipers that killed all of those people, were directly traceable to one of these bad dealers that has been identified by ATF as a problem?

Were you alluding to them or talking about them?

Mr. VAN HOLLEN. I was, indeed, a gun shop in the State of Washington. And, in fact, the ATF has found a whole slew of violations with respect—in fact, the guns that were sold to Malvo and Muhammad were, in fact, sold illegally.

They were ineligible to buy guns and it turned out, when the gun shop was asked about those particular guns, they had no record of the sales. They just had disappeared. They had no record of the sales.

Ms. WATERS. And this bill would make it even easier for this gun dealer to do that kind of thing?

Mr. VAN HOLLEN. It would make it even more difficult for the ATF to try and take away their license for the kind of violations that they engaged in, yes.

Ms. WATERS. Wow. Thank you. I yield back.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, I listened to my good friend just a few minutes ago from California that mentioned the story that—Mr. Issa is not here, but mentioned his relationship to an ATF officer and suggested that comments might have been strident.

As I am reminded of the arguments that I gave in support of an amendment previously before this Committee, the arguments and debate was based upon constitutional premise or Federal court decision.

I stand by the representation that guns kill, bullets kill. Different types of bullets create even more destructive violence than others. Gun dealers not only sell guns, but they sell bullets.

Therefore, this is a life or death question. And listen to any of the major mayors of major cities and they will tell you how difficult it is to fight the war on drugs and other violent activities with the proliferation of guns on their streets.

We rely upon local law enforcement, but, as well, we rely upon Federal authority. The ATF has been an effective tool in breaking the gun cartels and the misuse and illegal selling of guns across the country.

I, too, agree with my colleague, Mr. Van Hollen, that we should listen to these former ATF officers, who have no axe to grind whatsoever, and they have indicated in a letter to this Committee that H.R. 5092 redefines most violations of Federal laws as not of a serious nature.

It prohibits license revocations for such so-called non-serious violations, no matter how egregious the violation. And it limits serious violations to rare events.

That impedes the work of the ATF and it opens the doors to the example that I utilized of the 2-year-old, because of someone not responsible having a gun in their home and that person not responsible may be someone with a record who has been able to secure a gun through some misuse of the process of gun dealers, who then have the guns going from one hand to the next.

That gun dealer or that gun purchaser, even into their home, puts the gun in an illegal place. It may be under a bed and a child finds it.

This chain of violations does not end at the point of purchase. This chain of violations then becomes a chain, one illegal act to the next. A person who is not supposed to legally be able to secure a gun misusing it, someone loses their life or is severe injured, some law enforcement officer doing their job is shot by a gun illegally secured, because the ATF officer was not able to use a basic premise that the gun dealer knew the infractions that they were perpetrating were illegal and they were violating the law.

According to these ATF officers, H.R. 5092 also grants ATF the ability to impose fines and temporary license suspension, also then places such severe impediments on ATF's ability to impose these sanctions and to make them nearly meaningless.

So H.R. 5092 may be well meaning to fix one problem with one gun show in one city in one State, but, frankly, what it does is causes dutiful law enforcement officers, taking an oath of office, confined to doing their job right and who I believe, if infracting or

not doing their job right, certainly should have their own internal reprimand.

But what we are doing now is playing in a handicap that they cannot win. We are giving them the ninth inning, we are giving them two-and-a-half outs, and we have no one on base and we have someone coming that literally plays, if you will, kindergarten softball to come hit the ball.

This is the wrong direction for us to take and the strident nature of any one discussion is because it is a life and death matter.

I certainly hope my colleagues would consider this as H.R. 5092 is continued to be debated.

And I yield back.

Chairman SENSENBRENNER. The time of the gentlewoman has expired. The question is on the substitute amendment offered by the gentleman from New York, Mr. Weiner.

Anybody else want to say anything about it?

Okay, all those in favor of the Weiner substitute will say "aye."

Opposed, "no."

The noes appear to have it, and the noes have it, and the Weiner substitute is not agreed to.

Mr. WEINER. Mr. Chairman, may I request a recorded vote?

Chairman SENSENBRENNER. A record vote is requested.

Those in favor of the Weiner substitute will, as your names are called, answer "aye," those opposed, "no."

And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

Mr. Coble?

[No response.]

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

Mr. Goodlatte?

[No response.]

Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Lungren?

[No response.]

Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Mr. Bachus?

[No response.]

Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no.

Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

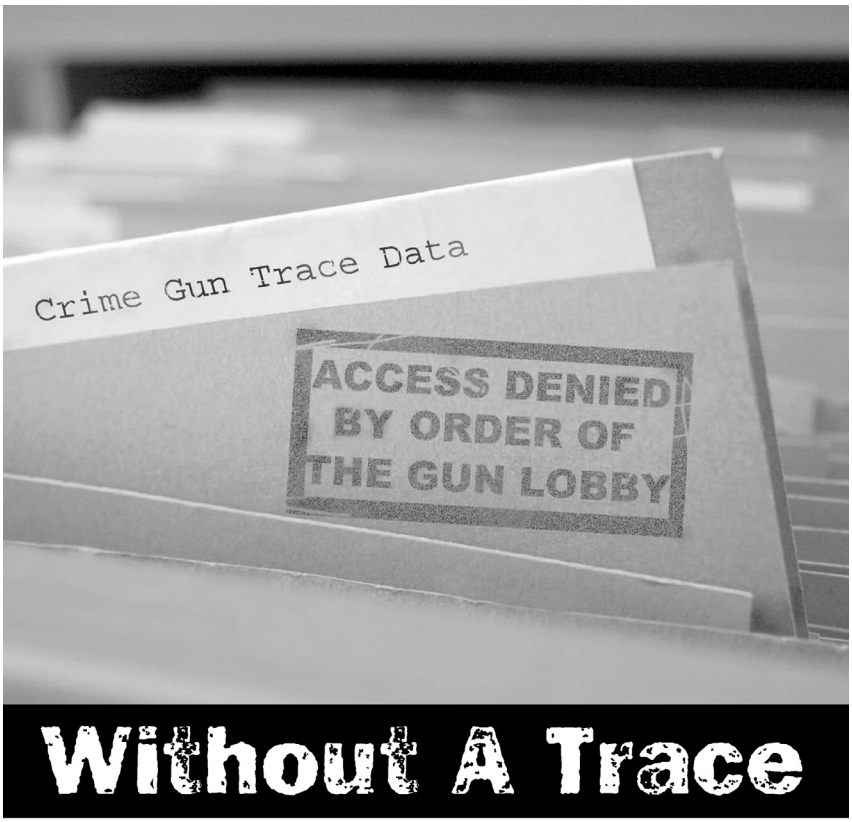
Mr. Green?
[No response.]
Mr. Keller?
[No response.]
Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Pence?
[No response.]
Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King?
[No response.]
Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman?
[No response.]
Mr. Boucher?
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no.
Mr. Nadler?
[No response.]
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
[No response.]
Ms. Lofgren?
[No response.]
Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Mr. Delahunt?
[No response.]
Mr. Wexler?

Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sánchez?
[No response.]
Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Mrs. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Mrs. Wasserman Schultz, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote?
The gentleman from North Carolina, Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Lungren.
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no.
Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are 10 "ayes" and 16 "nays."
Chairman SENSENBRENNER. And the amendment in the nature of a substitute is not agreed to.
Are there further amendments?
Mr. WEINER. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Is there an amendment at the desk?
Mr. WEINER. Actually, Mr. Chairman, I will hold on that.
Chairman SENSENBRENNER. Are there further amendments?
If there are no further amendments, the question is on the amendment in the nature of a substitute offered by the gentleman from North Carolina, Mr. Coble.
Those in favor will say "aye."
Opposed, "no."
The ayes appear to have it. The ayes have it. The amendment in the nature of a substitute is agreed to.
A reporting quorum is present. The question is on the motion to report the bill H.R. 5092 favorably, as amended.
All those in favor will say "aye."
Opposed, "no."
The ayes appear to have it. The ayes have it, and the bill is ordered reported favorably, as amended.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the staff is directed to make any technical and conforming changes. And all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental or minority views.

[Additional material submitted by Mr. Conyers follows:]



How the Gun Lobby and the Government Suppress the Truth About Guns and Crime

Brady Center to
Prevent Gun Violence

Without A Trace

How the Gun Lobby and the Government Suppress the Truth About Guns and Crime

A Project of
the Brady Center to Prevent Gun Violence

April 2006

Acknowledgements

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project *Gun Industry Watch*, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organizations the Brady Campaign to Prevent Gun Violence and the Million Mom March.

Without a Trace was written by Elizabeth S. Haile. Thanks goes to Dennis A. Henigan, Brian Siebel, Kristen Comer, Tony Orza, and Steve Groeninger for their assistance in preparing the report.

If you have questions about any part of this report, or would like a copy, please write to *Gun Industry Watch*, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Washington D.C. 20005. The report is also available at www.bradycenter.org.

Copyright © 2006 by Brady Center to Prevent Gun Violence
No part of this publication may be reproduced without prior permission.

Table Of Contents

Executive Summary iv

Part One – American Gun Regulation: A History of Secrecy Undermining Law Enforcement 1

The Gun Lobby's Paranoia 2

Keeping Government Records from the Government 2

The Short Life of Gun Records 3

Part Two – The Curtain of Secrecy Begins to Lift: Crime Gun Traces and What They Mean 5

The Crime Gun Tracing Process 5

- Early History of the Crime Gun Tracing System 6
- Crime Gun Tracing is Expanded During the Clinton Administration 8

What Crime Gun Trace Data Has Taught Us 10

- Crime Guns Don't Grow on Trees 10
- A Few Bad Apples 12
- Gun Laws Work 13
- Not All Guns Are Equal 15

Why Crime Gun Trace Data Is So Threatening To the Gun Lobby 17

Part Three – The Curtain Falls on the Truth: Hiding Crime Gun Trace Data From the Public 20

ATF Falls Silent About Crime Gun Traces 20

ATF Makes Excuses for the Gun Industry 21

Congress Acts to Block the Release of Crime Gun Trace Data – The Story of the "Tiahrt Amendment" 25

- The Effect of the Tiahrt Amendment on ATF 30
- The Effect of the Tiahrt Amendment on Law Enforcement 31
- The Effect of the Tiahrt Amendment on Congress 33
- The Effect of the Tiahrt Amendment on the Use of Trace Data in Research 33

Conclusion 34

Endnotes 36

Appendix 43

EXECUTIVE SUMMARY

Over the last ten years, law enforcement agencies nationwide have recovered more than two million crime guns. In an effort to identify who sold those illegal guns and to help solve gun crimes, the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) traces these firearms from the gun manufacturer down through distributors and dealers until it identifies the sale of the gun to a member of the public. At the same time that it tracks the individual sales history of each crime gun, ATF records the information it learns through the crime gun tracing process in a massive computer database.

As ATF developed its database of more than two million crime guns, it released to law enforcement agencies, scholars, the press, local and state governments, and the public, numerous reports analyzing the patterns of crime gun sales, as well as portions of the trace database itself. Reports on crime gun trace data revolutionized our understanding of the illegal gun market and how it is supplied – establishing that strong gun laws have a profound impact on access to guns by criminals in the illegal market, and identifying the gun manufacturers, distributors, and dealers most responsible for supplying crime guns.

Crime gun trace data has provided powerful evidence of the gun industry's complicity in fueling the illegal market, showing that *thousands of guns move quickly from a relatively small number of licensed gun dealers into the illegal market.* Indeed, almost 60% of the crime guns traced in a given year were sold by only 1% of the licensed firearms dealers, while about 85% of gun dealers had no traces at all. The gun industry knows who the high-trace dealers are, but has refused to stop selling them guns or force them to reform. As a result, felons and other prohibited purchasers have been supplied the tools of violence – aided and abetted by careless or corrupt dealers. Our nation suffers from the violent gun crime that ensues.

The gun industry has argued that ATF trace data is meaningless or insignificant. For example, gun industry spokespeople continuously claim that the concentration of crime guns originating from a relatively few dealers may indicate only that they sell a lot of guns. ATF's own investigations have disproved this argument, however, as have academic studies.

Unfortunately, rather than taking the gun industry to task for its blatant misrepresentation of trace data, under the Bush Administration, ATF has instead

helped to defend the industry. ATF shielded from release under the Freedom of Information Act portions of its own *Report to the Secretary of the Treasury on Firearms Initiatives* disproving the industry's claims. It also issued a press release supporting the industry that directly contradicted the findings in ATF's own *Report*, while at the same time turning over the document, in unredacted form, to the gun industry itself. ATF has also stopped releasing to the public any data or reports discussing the sources of illegal guns, thereby helping the gun industry cover up its participation in supplying the illegal gun market.

Even more disturbing, once the gun industry realized that its excuses were not enough to blunt growing public criticism of its sales practices, starting in 2003 the industry and the National Rifle Association worked quietly behind the scenes to attach riders to federal appropriations bills in order to prevent ATF from releasing crime gun trace data to anyone. The legislation, known as the "Tiahrt Amendment," after sponsor Congressman Todd Tiahrt (R-KS), prevents ATF from disclosing to the public crime gun trace data that has long been gathered by ATF and released – data that has been used in countless studies and public reports to evaluate the effectiveness of legislative proposals and of the ATF's enforcement efforts. The gun lobby is currently attempting to make these riders permanent in H.R. 5005, a bill introduced in the U.S. House of Representatives on March 16, 2006.

The more the public understands about crime guns, the more it also understands the integral role of reckless licensed gun dealers in supplying the illegal market. The gun lobby, and particularly the gun industry, feel threatened by this knowledge because it supports the need for tighter federal regulation of gun dealers and gun sales to curb the flow of guns into criminal hands. The Tiahrt Amendment is a transparent attempt by the gun lobby, and its wholly owned friends in Congress, to shield the public, as well as government and law enforcement agencies, from the truth about guns and crime.

Part One

AMERICAN GUN REGULATION: A HISTORY OF SECRECY UNDERMINING LAW ENFORCEMENT

It is hard to believe that in today's world, where technologically stunning crime scene investigations are featured in some of the most popular shows on television, that federal, state, and local law enforcement agencies have to operate without basic information that would allow them to quickly determine the origin of crime guns. Yet, thanks to a powerful gun lobby obsessed with secrecy, vital records held by the gun industry are either shielded from law enforcement's eyes or destroyed altogether.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the federal agency charged with regulating the industry, has been hampered from taking effective enforcement actions against corrupt gun sellers by a series of laws enacted at the urging of the National Rifle Association (NRA) – a lobby long obsessed with secrecy. Consequently, ATF is forced to rely mainly upon voluntary compliance with federal law by members of the gun industry, and operations of the industry are shielded from public view.

The NRA has worked tirelessly to either block or weaken laws that would strengthen law enforcement's capability to regulate corrupt gun sellers and fight gun crime. The gun lobby has opposed federal laws designed to prevent the sale of guns to criminals, including: the Gun Control Act of 1968, which made it illegal to sell guns to minors and felons, established a

licensing system for gun dealers, and banned the interstate sale of firearms to unlicensed persons; the 1993 Brady Law, which put in place criminal background checks for gun purchases at licensed dealers, first for handguns, then for all guns; and the 1994 Assault Weapons Act which, until its expiration in 2004, banned the sale and possession of military-style semiautomatic assault weapons.

One piece of legislation the gun lobby did support was the Firearm Owners Protection Act (FOPA), a roll-back of portions of the Gun Control Act. The FOPA limited ATF's ability to investigate corrupt gun dealers and revoke dealer licenses and exempted federally licensed dealers from certain recordkeeping requirements.

The Gun Lobby's Paranoia

The gun lobby repeatedly claims that any sort of regulation of gun ownership will eventually lead to the complete confiscation of all firearms. "Registration leads to confiscation," is the NRA's mantra.[1] Under the NRA's theory, if any governmental records are kept on firearm sales, it would inevitably lead to registration of firearms, which would lead to the confiscation of all firearms by "jack-booted government thugs"[2] raiding people's homes.

Typical NRA advertisements hammer home the fanciful link between keeping track of firearm sales in order to prevent and solve gun crimes and the creation of a "total police state:"

> "We all know their Master Plan. First, outlaw all handguns. Then register all rifles and shotguns. Finally, confiscate and destroy all rifles and shotguns. Make no mistake, these anti-gun and anti-hunting forces are working feverishly for the day when they can gather up your rifles, handguns, and shotguns and ship them off to gun-melting furnaces."[3]

> "Gun prohibition is the inevitable harbinger of oppression."[4]

Of course there is no truth to the NRA's shrill claims, as no federal gun law has ever prevented law abiding citizens from buying a legal firearm, and state registration laws have not led to confiscation. Yet, the gun lobby's paranoia about anything related to government firearm records has led to a system of federal laws riddled with nonsensical prohibitions on state and federal law enforcement's ability to track firearm-related crime and investigate corrupt gun sellers.

Keeping Government Records From the Government

Federal law requires individuals who are "in the business" of selling firearms to obtain a license from ATF and keep records of all firearm purchases and sales.[5] These transactions are required to be recorded in what is known as an "A&D" book (for Acquisition and Disposition) or computer system.[6] A customer purchasing a firearm must also fill out and sign a Firearms Transaction Record, ATF Form 4473.[7] This form records the buyer's name and address and type of identification shown to the gun dealer. It also requires gun buyers to answer a series of questions to determine whether the purchaser is prohibited by law from buying the gun. The information in Form 4473 is of obvious value to law enforcement if the gun in question is ever connected to criminal activity. However, these records simply sit in the dealers' shops, unless, of course, the

dealer loses or misplaces them. Records containing information about particular gun sales are transmitted to the government only in limited circumstances, such as after a dealer goes out of business, or if a dealer sells more than one handgun to the same purchaser within five business days.[8]

At the urging of the NRA, in 1979 Congress put in place restrictions in an appropriations bill prohibiting ATF from obtaining sales records from gun dealers and centralizing them. These restrictions have persisted in every appropriations bill thereafter.[9] And in the FOPA, Congress explicitly prevented ATF from establishing any database of firearms sales.[10] Consequently, the federal government does not have any record of the thousands of gun sales taking place at retail dealers every day. While the IRS maintains records on all business and individual incomes the federal government is barred from maintaining records on the purchase and whereabouts of millions of firearms.

Moreover, the ATF is constrained from organizing even those records that ATF is allowed to obtain from dealers. Federal law requires a dealer who goes out of business to send all sales records required to be kept by law to the ATF within 30 days.[11] However, the NRA succeeded in having Congress attach another rider to ATF appropriations legislation that prevents ATF from organizing the records in an easily accessible manner.[12] ATF is prevented from searching the data by the purchaser's name, making it useless for law enforcement trying to research the gun purchase histories of suspects or convicted felons, or suspects who may pose a danger to the community.

These nonsensical restrictions prevent ATF from maintaining the records it needs to quickly and effectively investigate corrupt dealers or track down law enforcement leads. Because records of gun sales remain with the tens of thousands of licensed dealers and not in a centralized federal database, every time local law enforcement needs information about the origin of a gun recovered in crime, ATF must painstakingly track the gun's path through the records of the manufacturer, distributor, and (often multiple) retailers. Irresponsible sellers also frequently lose gun sales records, making complete traces of those guns impossible. The cumbersome process slows law enforcement investigations and endangers public safety.

The Short Life of Gun Records

Since passage of the Brady Law in 1993, licensed dealers must conduct criminal history background checks utilizing the Federal Bureau of Investigation's National Instant Check System (NICS), to ensure that prospective gun buyers are not prohibited purchasers. If the background check determines that the purchaser is not prohibited, a record of the check, consisting solely of an identifier number assigned to the inquiry, is kept by the Department of Justice (DOJ). But the gun lobby's obsession with secrecy is even reflected in the legislative compromises which are part of the Brady Law – the statute requires all other information on the approved purchaser and the gun purchase to be destroyed, although it does not specify that the record destruction occur immediately after the sale is approved.[13] The record destruction requirement does not apply if the background check reveals that the purchaser is prohibited by law from buying a firearm.

Following implementation of NICS in 1998, DOJ kept the background check records on approved purchasers for six months to ensure that NICS was working properly and that felons and other prohibited purchasers were not mistakenly being approved.[14] In July 2000, the legality of the six-month policy was affirmed by a federal court of appeals against a legal challenge brought by the National Rifle Association.[15] In January 2001, DOJ issued a final rule shortening the record retention period to 90 days to take effect on March 1, 2001.[16] After various postponements, the 90-day rule finally went into effect on July 3, 2001.

Three days later, DOJ, under new Attorney General John Ashcroft (a recipient of strong NRA support in his Senate campaigns), issued a new proposed rule to shorten the period further from 90 days to 24 hours, citing the need to protect "the privacy interests of law-abiding citizens."[17] While the proposed rule was still pending, the gun lobby's allies in Congress attached a rider to an ATF appropriations bill that requires destruction of the records within 24 hours.[18] DOJ then issued a final rule implementing the 24-hour retention period effective July 20, 2004.

In a 2002 study, the General Accounting Office noted the dangers of requiring that NICS records be destroyed within 24 hours, concluding that such quick destruction would endanger public safety. GAO found that within one six-month period, "the FBI used retained records to initiate 235 firearm-retrieval actions, of which 228 (97 percent) could not have been initiated under the proposed next-day destruction policy."[19] Yet, DOJ argued that the "privacy interests of law-abiding firearms purchasers" required that NICS records be destroyed.[20] The gun lobby's allies in Congress agreed, acting to put the priorities of the secrecy-loving NRA above the needs of law enforcement.

Secrecy also triumphed over law enforcement on the issue of multiple handgun sales records. It has long been recognized that multiple sales of handguns – defined in federal law as the sale of two or more handguns to the same buyer within a five business-day period – is a strong indicator that the purchaser intends to traffic the guns to the illegal market.[21] For this reason, federal law requires federally-licensed dealers to notify ATF of every multiple handgun sale they make.[22] Multiple sale reports are often starting points for investigations of gun trafficking.

Until the Brady Law was enacted, gun dealers were required to send multiple-sale reports only to ATF. The Brady Law imposed a new requirement that the dealer also send a copy of the report to state or local law enforcement authorities. In theory, this should allow state and local law enforcement to assist ATF or commence its own investigation. Incredibly though, the Brady Law also required the police to destroy the form and its contents within 20 days, a provision pushed by the gun lobby.[23] In short, although the state or local police may get notice of suspicious gun sales, they have only 20 days to act before they must destroy any information relating to it. **Once again, the gun lobby's friends in Congress ensured that secrecy would trump the need for valuable information that the police could use to stop the flow of guns to criminals**.

Part Two

THE CURTAIN OF SECRECY BEGINS TO LIFT: CRIME GUN TRACES AND WHAT THEY MEAN

Over the last decade, in particular, the curtain of secrecy over the gun industry began to lift on one issue of great consequence for public policy on firearms and crime. Through the gathering and dissemination of crime gun trace data, the close connection between the gun industry and the illegal gun market became clear for all to see. The trace data made it equally apparent that stronger regulation of the legal gun market would stem the flow of guns into the illegal market.

The Crime Gun Tracing Process

One of ATF's responsibilities is to trace firearms recovered by local law enforcement at crime scenes – a service that provides a valuable investigative tool for law enforcement. Analysis of crime gun traces allows ATF and state and local law enforcement not only to investigate specific gun crimes but also to identify the sources of guns used in crime.

The tracing process is the systematic tracking of a gun recovered in crime from its manufacture to the first purchase from a federally-licensed firearms dealer using records maintained by firearms manufacturers and sellers. Contrary to the gun lobby's frequent assertions that ATF often traces guns with no connection to crime, the Bureau itself defines the

universe of traced "crime guns" as "any firearm that is illegally possessed, used in a crime, or suspected by enforcement officials of being used in a crime."[24] As the former Chief of ATF's Crime Gun Analysis Branch has explained, "ATF only traces crime guns."[25]

ATF also explains that:

> **"Virtually every crime gun in the United States starts off as a legal firearm. Unlike narcotics or other contraband, the criminals' supply of guns does not begin in clandestine factories or with illegal smuggling. Crime guns, at least initially, start out in the legal market, identified by a serial number and required documentation. This means that virtually every crime gun leaves some paper trail."**[26]

The tracing process begins when law enforcement recovers a gun in the course of a criminal investigation and then contacts ATF's National Tracing Center with a trace request, including information on the crime being investigated, the name of the gun's manufacturer, the caliber, and its serial number, which is stamped on every gun when it is manufactured. (See Appendix I for copy of National Tracing Center Trace Request Form 3312.1). If the serial number on the gun has worn away or been damaged, so it is no longer legible, the gun cannot be traced. Also, guns manufactured before 1969 do not always have serial numbers and therefore ATF does not typically trace them.

In a typical trace, ATF will first check its records of out-of-business dealers and its multiple sales records. If the traced gun is not found in the out-of-business files or multiple sales records (about 90% of the time),[27] ATF will then contact the manufacturer, asking for the name of the dealer or distributor to which the manufacturer first sold the gun. ATF then contacts that gun dealer or distributor and asks for records on to whom the gun was sold next, and on through the first retail sale by a licensed dealer.[28] Because there is no federal requirement that individuals or non-licensed dealers keep records of firearms sales, ATF usually cannot trace a gun past its first retail sale. The whole tracing process typically takes about ten days.

If ATF is able to find the last retail seller and identify the person who originally purchased the gun, this is a successful trace and the information is relayed back to local law enforcement. About 50% of attempted traces are not successful in identifying the first retail purchaser, for a variety of reasons, including the age of the gun, problems with the serial number, errors in the submission form, or the absence of proper record keeping by manufacturers, distributors or dealers.[29]

Early History of the Crime Gun Tracing System

Shortly after passage of the 1968 Gun Control Act, the ATF established a system to respond to requests for traces of firearms. The system has been updated and improved over time through additions to the National Tracing Center facility, increased numbers of employees, and technological advances.

Until the last decade, law enforcement agencies did not routinely trace guns recovered in crime unless they needed the information to solve a particular crime. For example, when John Hinckley attempted to assassinate President Reagan on March 30, 1981, shooting the

President and his Press Secretary Jim Brady, and two law enforcement officers, the gun recovered at the scene was immediately traced through ATF's National Trace Center.

Analysis of crime gun traces also allows ATF and state and local law enforcement to understand the structure of, and identify patterns in, the illegal firearms market.[30] Tracing, for instance, can reveal that a purchaser is repeatedly buying firearms from a dealer, possibly indicating that the purchaser is illegally trafficking the guns, or that crime guns in one area are frequently coming from a particular dealer.[31] ATF has explained:

> "Crime gun trace information is used for three purposes: (1) to link a suspect to a firearm in a criminal investigation; (2) to identify potential traffickers, whether licensed or unlicensed sellers; and (3) when a sufficiently comprehensive tracing is undertaken by a given community, to detect in-state and interstate patterns in the sources and kinds of crime guns."[32]

However, ATF did not routinely use its database of trace requests to accomplish the third objective – discovering the sources of crime guns – in this early era.

The first time ATF used information on crime guns to study the broader issues of how and where criminals were obtaining guns was in 1973, in a study called "Project Identification." Project Identification sought to collect data on guns recovered in crime in sixteen major cities.[33] Each city's police department kept track of all handguns recovered in crime from July to December 1973. ATF received 10,617 crime guns for tracing and successfully traced 7,815. ATF used the statistics to develop a set of data that ATF and local law enforcement could use to discover the sources of crime guns.[34]

Among other conclusions in Project Identification, ATF found that "the percentage of crime handguns purchased interstate was directly proportional to the degree of local handgun control."[35]

In New York City, for instance, only four percent of the handguns recovered in crime had been purchased from retailers in New York State. The rest had been trafficked from states with weaker gun laws. Almost 50 percent of the guns traced in New York City came from just four southern states – Florida, Georgia, South Carolina, and Virginia. The four states had few or no restrictions on handgun purchases in 1973.[36]

Another one of ATF's early efforts to study traces to identify patterns in crime guns was called "ATF's Project Detroit" – a joint firearms tracing project conducted with the Detroit Police Department in 1989.[37] The Detroit Police Department attempted to submit trace requests for every gun recovered in crime, which were then analyzed. The Project found that the majority of crime guns traced in Detroit were cheap, low-quality guns known as "Saturday Night Specials," and also included many assault weapons. Thirteen dealers in Detroit were identified as suppliers to the illegal market.[38]

In 1991, the field division office of ATF in Boston embarked on a project similar to Project Identification. In this remarkable collaboration, known as the "Boston Gun

Project," ATF worked with academic researchers, the Boston Police Department and other Massachusetts law enforcement agencies.[39] Boston law enforcement traced all firearms recovered in crime starting in January 1991. The data was analyzed to find strategies to reduce youth gun violence in Boston. The interagency task force identified ways to impede Boston's illegal gun market and thereby reduce youth gun violence in Boston by attacking the supply of guns.[40] The task force identified several law enforcement strategies, many of which were implemented in later years, including: flagging for active investigation every trace that showed a time-to-crime of less than thirty months, using trace data to find patterns involving dealers, and flagging dealers for further investigation if they were associated with multiple crime gun traces.[41]

As a result of these projects, federal and state law enforcement, and the public, began to learn the value of crime gun trace data. During the Clinton Administration, the tracing of crime guns by ATF began to rise to an unprecedented level, as did our understanding of the illegal gun market.

Crime Gun Tracing is Expanded During the Clinton Administration

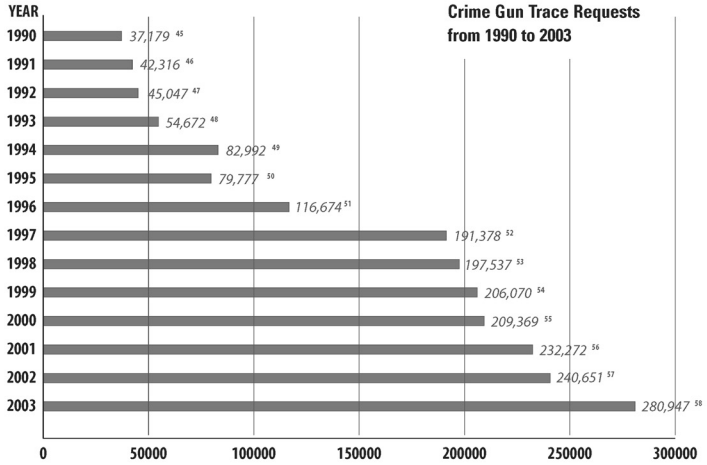
Before 1994, gun manufacturers and sellers were not required by law to respond to ATF trace requests. The 1994 Violent Crime Control and Law Enforcement Act required all licensees to respond to trace requests within 24 hours and imposed sanctions if they were uncooperative.[42] For the first time, assisting ATF with trace requests became a legal duty of the gun industry.

In 1994, ATF also embarked on an effort to encourage law enforcement authorities to conduct "comprehensive tracing," that is, to submit trace requests for all recovered crime guns. Under President Clinton, ATF began a concerted effort to not only increase the amount of crime gun tracing, but to improve the quality of trace data and educate law enforcement on the benefits of tracing. ATF conducted training seminars in 15 cities to educate police on the benefits of comprehensive tracing to identify patterns and trends in the illegal gun market. These efforts were part of the Administration's emphasis on the prevention of illegal gun trafficking through increased investigative resources and regulation of gun dealers.[43]

In January 1994, ATF and governors and mayors from 14 southern and eastern states and the District of Columbia entered into a *Memorandum of Understanding to Combat Illegal Firearms Trafficking*. Each participating entity to the MOU agreed to comprehensively trace all firearms, establish communication and procedures for interagency cooperation, and develop a detailed strategy to thwart the illegal distribution and possession of firearms. The ATF Field Divisions in the various states each produced a report on the trace studies done in the first year.[44]

Also starting in 1994, ATF began using computers to help in the tracing process. Consequently, in 1994, the number of trace requests for crime guns began to increase significantly.

On July 8, 1996, comprehensive crime gun tracing received White House-level support as President Clinton announced ATF's new *Youth Crime Gun Interdiction Initiative* (YCGII) in a press conference in the East Room of the White House:



"[ATF] has developed a pilot program that will trace all guns used in crime that are seized by Federal, State and local law enforcement officers, and work with trace information to help identify illegal gun traffickers . . . . By analyzing patterns of gun trafficking that exist in an area, we are developing more effective law enforcement strategies to target illegal gun traffickers for prosecution, particularly those who put guns into the hand of our Nation's young people."[59]

Seventeen cities initially agreed to trace all recovered crime guns and ATF assigned a special agent in each city to implement the program.[60] By 2000, 47 cities were participating.

Crime gun traces quickly rose to over 100,000 a year and soon thereafter to over 200,000 a year. The resulting database has become a rich source of information for guiding public policy and law enforcement efforts.

ATF was able to use the sizeable database of crime gun traces to make several findings on the source and diversion of illegal crime guns. ATF released this information to the public in a

series of annual YCGII reports from 1997 through 2002. (Although in 2002, ATF announced that 66 cities would be participating,[61] ATF has not released another report since July 2002, based on year 2000 trace data.) In 2000, the Secretary of the Treasury (of which ATF was a part at the time), explained the importance of the YCGII reports:

> "The reports are a tool for law enforcement and prosecutors to identify local, regional, and national crime gun trends, and develop enforcement strategies tailored to the needs of specific areas. They are also useful to federally licensed firearms dealers who can use the information in the reports to develop sounder and safer business practices. The reports' findings also inform the public about the crime gun problem and the enforcement activities addressing it."[62]

Each report included a breakdown of results of crime gun tracing for the year for each participating city, including the number, type, and source state of crime guns recovered, the crimes associated with the traces, and information on how quickly the traced guns moved from sale to use in crime. The reports also drew conclusions from combined data nationwide.

Since the implementation of the initiative, several states have adopted laws requiring statewide comprehensive crime gun tracing, including California, Connecticut, Illinois, Maryland, New Jersey, and North Carolina.[63] Increased crime gun tracing has resulted in a database of over 2 million crime guns. This huge database of information has been of historic value in painting a picture of the sources of illegal guns.

What Crime Gun Trace Data Has Taught Us

The rapid expansion of comprehensive crime gun tracing and the resulting trace database made possible an explosion of new learning about how the illegal gun market is supplied, with important implications for public policies to keep guns out of criminal hands.

Crime Guns Don't Grow on Trees

The gun lobby has long argued that because criminals get access to guns either by stealing them from legal gun owners or obtaining them on the "black market," laws regulating sales of guns by licensed dealers can do nothing to curb the use of guns in crime. Crime gun trace data, however, has disproved these arguments. The data revealed that there is a rapid and continuous movement of large numbers of guns from licensed gun dealers into the illegal market. As ATF reported in its first report issued under the YCGII:

> "**Many recovered firearms are rapidly diverted from first retail sales at Federally licensed gun dealers to an illegal market that supplies juveniles, youth and adults.** This is indicated by the proportion of guns recovered by law enforcement officials that are new, that is, bought less than three years before recovery by enforcement officials. Experienced trafficking investigators have found that recovery of crime guns within three years is a significant trafficking indicator. New guns

> in juvenile or criminal hands signal direct diversion, by illegal firearms trafficking – for instance through straw purchases or off the book sales by corrupt FFLs [federally licensed dealers]."[64]

ATF later determined that approximately 31% of traced crime guns fit this category of "new" guns that likely were trafficked out of licensed dealers into the criminal market.[65] The trace data also revealed that 15% of crime guns were recovered within only one year of their last retail sale.[66] This short "time to crime" is particularly significant since guns may actually be used in crime long before they are recovered by police and traced. ATF trafficking investigations had long established the importance of corrupt gun dealers in aiding and abetting gun trafficking.[67] However, the trace data revealed, for the first time, that the trafficking of guns from licensed gun dealers was massive in scope. As Philip Cook of Duke University and Anthony Braga of Harvard University have written, the YCGII findings provide "indirect but quite compelling" evidence that "links sales by FFLs to criminal use" of guns, suggesting that "FFLs, straw purchasers, and traffickers play important roles in diverting guns to crime."[68]

In February 2000, ATF issued its landmark report *Commerce in Firearms in the United States*, the most extensive ATF discussion of gun regulation in the Bureau's modern history. *Commerce in Firearms* explained that ATF was using firearms tracing to identify licensed dealers "associated with diversion of firearms to the illegal market on a nationwide basis. . . ."[69] The report identified a series of "trafficking indicators," including several involving crime gun traces:[70]

- multiple crime guns traced to a dealer or first retail purchaser;
- short time-to-crime for crime guns traced to a dealer or first retail purchaser;
- incomplete trace results, due to an unresponsive dealer or other causes; and
- frequent multiple sales of handguns by a dealer, combined with crime gun traces.

The expansion of ATF's crime gun tracing program also measured, for the first time, the impact of multiple handgun sales by gun dealers on the illegal market. Frequent multiple sales historically had been cited by ATF as an "indicator" of gun trafficking from a dealer.[71]

" Many recovered firearms are rapidly diverted from first retail sales at Federally licensed gun dealers to an illegal market that supplies juveniles, youth and adults..."

— ATF, Crime Gun Trace Reports (2000)

Crime gun tracing under the YCGII established that 20% of crime guns traced in the year 2000 originated with multiple sales by licensed dealers.[72] According to Professors Cook and Braga, "[t]race results suggest that handguns that were first sold as part of a reportable multiple sale are much more likely than others to move quickly into criminal use."[73] This finding strongly suggests that preventing multiple sales should be a key component of a sound anti-trafficking strategy.

A Few Bad Apples

Analysis of trace data by ATF and independent researchers has consistently yielded the startling finding that a tiny percentage of the Nation's licensed gun dealers contribute the vast majority of the Nation's crime guns.

This finding was first revealed in a 1995 report produced for ATF by a team of researchers at Northeastern University led by Dr. Glenn Pierce.[74] Their study used trace data to identify patterns of firearms trafficking. The report concluded that "[a]n extremely small number of FFLs [federal firearms licensees] are involved with a large, disparate number of firearms recovered at crime scenes."[75] Indeed, the Northeastern study found that less than 1% of licensed gun dealers account for almost half of traced crime guns.[76]

Later analyses, using far more extensive trace data, confirmed these early findings. A report published by Senator Charles Schumer (D-NY) used 1998 trace data to identify 137 dealers nationwide that had sold more than 50 guns traced to crime. The 13 worst dealers were the source of 13,000 traced crime guns in that year.[77]

In the *Commerce in Firearms* report released in February 2000, ATF included an analysis of crime guns traced in 1998 which showed that **only 1.2% of dealers** – at that time 1,020 dealers[78] – **accounted for 57% of crime guns** in that year. A smaller subset of only 330 dealers – a fraction of 1% of the dealer population – accounted for about 40% of crime guns. Of equal significance, ATF found that **85% of licensed dealers had no crime gun traces** in 1998.[79] The trace data showed that a relatively small number of gun dealers was responsible for the diversion of a huge number of guns into the illegal market.

As a result of this evidence, ATF announced that it would conduct intensive inspections of the 1,020 retail dealers who contributed the majority of crime guns.[80] Each of those dealers had 10 or more annual traces. As discussed in greater detail in Part 3, according to internal ATF documents, these focused inspections revealed frequent violations of federal firearms laws by these "high-trace" dealers.

Upon the release of the *Commerce in Firearms* report in February 2000, ATF also, for the first time, publicly recognized that its trace data should be used by manufacturers of firearms to ensure retail sellers act responsibly to prevent the diversion of guns to the illegal market. The Bureau announced it would provide firearms manufacturers and importers, upon request, with a list by serial number of the firearms they sold that were traced as crime guns during the previous year. ATF stated that the list of crime guns "will enable the manufacturers and importers to police the distribution of the firearms they sell."[81] In its annual reports issued as part of the YCGII, ATF repeatedly explained that one of the primary purposes of crime gun trace data is to "inform federal licensed firearms dealers of crime gun patterns, allowing them to build sounder and safer businesses."

In 2001, as the Clinton Administration was leaving office, the Department of Justice released a detailed report that discussed the Administration's strategies to reduce gun violence.[82] One of DOJ's strategies to enforce laws that "keep guns out of the wrong hands" was to call on gun manufacturers to "self-police" their distribution chain, stating they "could substantially reduce the illegal supply of guns" by instituting controls on downstream sellers.[83] Specifically, DOJ reiterated its offer to manufacturers and importers for ATF to

supply them with crime gun trace data, to be used to identify and refuse to supply dealers and distributors that have a pattern of selling guns to criminals and straw purchasers.[84]

> "The firearm industry can make a significant contribution to public safety by adopting measures to police its own distribution chain. In many industries, such as the fertilizer and explosives industries, manufacturers impose extensive controls on their dealers and distributors. Gun manufacturers and importers could substantially reduce the illegal supply of guns by taking similar steps to control the distribution of firearms.
>
> ***
>
> **"To assist industry efforts to keep guns from falling into the wrong hands, ATF will supply manufacturers and importers that request it with information about crime gun traces of the manufacturer's or importer's firearms."**[85]

As detailed in the Brady Center's 2003 report, *Smoking Guns: Exposing the Gun Industry's Complicity in the Illegal Market*, gun makers declined ATF's offer to share trace data to ensure safer distribution of firearms.[86]

In 2004, the advocacy group Americans for Gun Safety Foundation released a report, based on trace data introduced into evidence in a lawsuit brought against the gun industry by the NAACP, that named the gun dealers who sold the most guns traced to crime.[87] Dealers that had sold 200 or more crime guns from 1996 to 2000, were listed by name and location in the report. The report noted that most of these high crime gun stores remained open and were rarely inspected by ATF. The publication of the report not only allowed local communities to know where high trace gun dealers were operating, but also handed the gun industry a specific list of dealers who were contributing the most guns to the illegal market.

Guns Laws Work

Analysis of the crime gun trace data has also demonstrated that guns are diverted from licensed dealers in states with weak gun laws to the illegal market in states with strong gun laws. This pattern of interstate movement of crime guns is powerful evidence that strong state gun laws tend to deprive criminals of local sources of guns, requiring them to resort to out of state suppliers.

This pattern of interstate movement has been known since at least 1973 when, as noted above, it was identified by ATF's analysis of trace data in Project Identification. The same pattern was revealed by the YCGII reports. For example, 84% of the crime guns recovered in New York City were first purchased from gun dealers outside New York State, primarily dealers in Southern states with weak laws.[88]

At the same time, crime guns in states with weak gun laws tend to be "homegrown," that is, to originate with dealers in those states. Thus, over 80% of the crime guns in Atlanta, Gary, and Houston, for example, originated with gun dealers in their home states.[89]

ATF's YCGII reports revealed that there were two significant interstate gun trafficking patterns: 1) many crime guns recovered in northeastern cities such as New York, Philadelphia, Baltimore, and Washington D.C.,

were first purchased from federally licensed gun dealers in southern states; and 2) many crime guns recovered in St. Louis and Chicago were also first sold in southern states.[90]

These patterns clearly indicate that strong state gun laws have an impact on the illegal gun market. If New York criminals could access local New York state sources of crime guns, they obviously would do so. The fact that their guns tend to originate from out-of-state gun dealers indicates that New York's strong laws are working to prevent the diversion of guns from New York gun dealers to the local criminal market. Although it is illegal under federal law for a New York resident to buy a handgun from a licensed dealer in another state, it is common for gun traffickers to recruit straw buyers in "source" states who can establish in-state residency to purchase handguns. The interstate crime gun pattern also contradicts the gun lobby's theory that the illegal gun market is supplied almost entirely by guns stolen from legal owners. If New York criminals obtained their guns by stealing them from that state's gun owners, the trace data would show that New York crime guns originated with the New York gun dealers from which law-abiding New Yorkers legally purchased their guns.

Using crime gun trace data, scholars Daniel Webster, Jon Vernick, & Lisa Hepburn of Johns Hopkins University determined that states with mandatory registration and licensing systems pushed criminals to obtain guns from states without such systems.[91] Their study showed that cities in states with registration and licensing laws had proportionally fewer guns recovered in crime originally purchased in that state. State laws requiring firearms purchasers to obtain a permit, or other license, or where guns must be registered, thereby making it easier for gun crimes to be investigated, make it significantly more difficult for criminals to obtain guns within the state. The study also confirmed that states with weak guns laws serve as sources for crime guns in other states – if a city is near a state with weak gun laws, the study found it was more likely that its crime guns came from the weak-gun-law state.

One of the study's conclusions was that gun control policies work by forcing criminals to obtain guns where gun laws are weaker.

A later study by scholars Glenn Pierce, Anthony Braga, and Chris Koper similarly established that crime guns recovered in cities located in states with tight legal controls are more likely to be have been purchased first in other states.[92] **One of the study's conclusions was that gun control policies work by forcing criminals to obtain guns elsewhere where gun laws are weaker.**

Crime gun trace data also has been crucial in establishing the effectiveness of gun laws designed to curb interstate gun trafficking by curbing the large-volume handgun purchases that commonly supply trafficking operations.

Gun traffickers keep costs down and maximize profits by buying large numbers of guns, usually handguns, from licensed dealers. As discussed above, federal law imposes a special multiple sale reporting requirement because a multiple sale of handguns is a strong indicator of gun trafficking. Virginia, Maryland, and

California have passed legislation barring multiple sales by making it illegal for anyone to purchase more than one handgun in any 30-day period.[93] By preventing gun traffickers from obtaining many handguns at one time these laws are intended to reduce the profitability, and incidence, of gun trafficking.

Crime gun trace data was used to test the effectiveness of Virginia's legislation banning multiple sales in a study published in the Journal of the American Medical Association, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759 (1996), by Dr. Douglas Weil & Rebecca Knox, researchers at the Center to Prevent Handgun Violence (now the Brady Center).

In 1993, Virginia passed its law in response to the State's growing reputation as a principal source of guns to the illegal market in the northeastern United States. Using trace data released by ATF under the Freedom of Information Act, the Weil/Knox study showed that prior to the law, 38% of all guns originating in the southeast and traced in the northeastern United States (New York, New Jersey, Connecticut, Rhode Island, and Massachusetts) were purchased from Virginia gun dealers. After the law was passed, Virginia's share dropped to only 15.5%. This use of crime gun trace data provided hard evidence that preventing large-volume handgun sales can disrupt illegal gun trafficking.

A second trace data study by Dr. Weil of the Brady Center demonstrated the effectiveness of the Brady Law in reducing gun trafficking.[94] Prior to the enactment of the Brady Law, most states did not require background checks of gun purchasers from licensed dealers, making it easy for gun traffickers, even those with criminal records, to buy guns by lying on the federal Firearms Transaction Record completed for every gun purchase. The Brady Law's requirement of a criminal background check made life more difficult for traffickers. The trace data revealed that after the Brady Law went into effect, there was a significant decline in gun trafficking out of states that had no background check requirement before the Brady Law.[95]

For example, Ohio gun dealers (a state without required background checks before the Brady Law) were two-thirds less likely to be the source of crime guns recovered in Michigan after the Brady Law took effect compared to crime guns purchased before its implementation. Similarly, Ohio guns were less likely to end up in crime in states as diverse as Missouri, New York and Maryland. Other traditional crime gun source states (e.g., Georgia, Kentucky, and Mississippi) also were shown to be supplying fewer crime guns following enactment of the Brady Law.[96]

A separate study by Professors Cook and Braga of guns traced to crime in Chicago similarly found that "the Brady Act made interstate gun running from lax-control states to Chicago less profitable by making it more difficult for traffickers to buy handguns from FFLs in those states."[97]

There is, therefore, no question that crime gun trace data has been invaluable in showing that strong state and federal laws regulating guns can reduce the flow of guns into the illegal market.

Not All Guns Are Equal

One of the earliest, and most influential, uses of crime gun trace data by researchers established the frequent use by criminals of American-made "Saturday Night Special"

handguns – small, easily-concealable, low-quality, pistols and revolvers, also known as "junk guns."

By analyzing crime gun trace data, ATF is able to identify which guns are most frequently recovered in crime – information that ATF regularly has released to the public. Starting in the early 1990s, ATF released data showing that Saturday Night Special-type handguns were repeatedly the most popular guns used in crime.[98] At least five out of the top ten guns recovered in crime every year from 1995 to 2000 were Saturday Night Specials.[99] Saturday Night Special-type handguns were also traced to crime much faster than other types of guns – an indicator that they were more popular with illegal gun traffickers.[100]

The ATF data established that Saturday Night Specials were disproportionately used in crime, when compared to the total numbers manufactured. In his seminal 1994 study, *Ring of Fire: the Handgun Makers of Southern California,* Dr. Garen Wintemute of the University of California at Davis examined trace data for the handguns produced by the cluster of California companies accounting for the majority of Saturday Night Special handguns. He found that the "Ring of Fire" guns were 3.4 times as likely to be involved in a crime as other types of handguns.

These studies helped propel bans on Saturday Night Specials in 34 California communities and eventually led to state legislation establishing safety and quality standards for handguns sold in California that effectively banned the California production of Saturday Night Specials.[101]

In the late 1980s and early 1990s, crime gun trace data also alerted the public to the growing threat posed by military-style semiautomatic assault weapons in the hands of criminals. In 1989, Cox Newspapers reporters James Stewart and Andrew Alexander, assisted by former ATF official Robert Barnes, conducted a computer analysis of 43,000 crime gun trace requests for the years 1987-1988.[102] They found that assault weapons were far more likely to be traced to crime than conventional firearms and that the use of assault weapons in crime had increased more than 78% from 1987 to 1988. This study, following closely the use of an assault rifle to kill five children and wound 30 others on a Stockton, California schoolyard, ignited a national debate about the easy availability of these military-style guns.

ATF also relied on crime gun trace data in supporting a federal ban on assault weapons, eventually enacted into law as part of the 1994 Violent Crime Control and Law Enforcement Act. The Bureau released crime gun trace data to the public through reports, interviews, and testimony before Congress showing that assault weapons were used disproportionately by criminals and should be banned.

The ATF described these weapons as:

> "large capacity, semi-automatic firearms designed and configured for rapid fire, combat use . . . . Most are patterned after machine guns used by military forces. They have distinct features which separate them from sporting firearms."[103]

ATF's report, *Assault Weapons Profile* (1994), revealed the total numbers of traces for each assault weapon that would be banned by name in proposed legislation. ATF also determined that, while assault weapons made up

only 1% of the guns in circulation in the United States at the time, they accounted for up to 8% of the guns traced to crime – making them "preferred by criminals over law-abiding citizens 8 to 1."[104]

ATF data showing that assault weapons were disproportionately traced to crime was repeatedly cited during the debate on assault weapon legislation. ATF's Director, John Magaw, testifying before the Subcommittee on Crime and Criminal Justice of the House Judiciary Committee, stated crime gun traces established that many of the top firearms traced to crime were assault weapons.[105]

A Congressional committee also relied on crime gun trace data when it reported that assault weapons "accounted for nearly thirty percent of all the firearms traced to organized crime, gun trafficking and terrorist crimes during all of 1988 and the first quarter of 1989."[106] Further Congressional reports referred to trace data in finding the "escalating use of semiautomatic assault weapons, the difficulties such weapons cause state police officers and the disproportionate link between such weapons and drug-trafficking and violent crime."[107]

Crime gun trace data answers the question the gun lobby does not want to be asked: Where do illegal guns come from?

Following enactment of the Federal Assault Weapons Act in 1994, the DOJ National Institute of Justice conducted a study, mandated by Congress, of the short-term impact of the statute. The study found that the ban had "clear short-term effects on the gun market," leading to weapons "becom[ing] less accessible to criminals" in the U.S. The study, based on crime gun trace data, found that crime gun traces for assault weapons dropped 20% in the year following enactment of the ban.[108]

The impact of the assault weapon ban ten years after its enactment was evaluated in *On Target: The Impact of the 1994 Federal Assault Weapons Act*, released by the Brady Center to Prevent Gun Violence. The former Chief of ATF's Crime Gun Analysis Branch and the former Director of the ATF National Tracing Center were asked by the Brady Center to analyze crime gun trace data for the years 1990-1994 before the ban and for the years following the ban. They found that crime gun traces for assault weapons banned by name in the Act dropped 66% as a percentage of overall crime gun traces since the statute was enacted.[109] The study concluded that the assault weapons ban contributed to a substantial reduction in the use of assault weapons in crime.[110]

These findings were cited prominently by supporters of the ban in Congress, who sought legislation to re-authorize the ban beyond the 10-year lifespan provided in the original statute. Even though Congress failed to re-authorize the assault weapons ban before it expired in September 2004, crime gun trace data continues to be cited in the ongoing national debate over the use of assault weapons in crime.

Why Crime Gun Trace Data Is So Threatening to the Gun Lobby

Dr. Garen Wintemute of the University of California at Davis has written that, "trace data are an unsurpassed way of studying guns used in crime." [111] The use of crime gun trace data by

scholars, advocacy groups, Members of Congress, the press, and ATF itself, has revolutionized our understanding of the illegal gun market and how it is supplied. For this reason, its release to the public has been a substantial threat to the National Rifle Association and the gun industry.

First, crime gun trace data directly challenges the gun lobby's claim that gun laws can have no effect on criminal access to guns because criminals either steal guns from legal owners or obtain them on the "black market." Trace data shows that the "black market" itself is largely the product of the continuous and massive diversion of guns from licensed dealers. **Crime gun trace data answers the question the gun lobby does not want to be asked: Where do illegal guns come from?**

Second, crime gun trace data directly challenges the gun lobby's longstanding mantra that gun laws can't work because they only affect law-abiding citizens, not criminals. Crime gun tracing studies show that gun laws, by regulating the behavior of gun sellers and buyers in the legal market, have a profound impact on access to guns by criminals in the illegal market.

Third, crime gun trace data shows that some classes of firearms, including "Saturday Night Special" handguns and semi-automatic assault weapons, have a special appeal to the criminal market. By continuing to manufacture and sell such weapons to the general public, the gun industry reveals that it is prepared to exploit the highly-profitable illegal market by designing and selling products that are disproportionately used in crime.

Finally, the trace data has provided powerful evidence of the gun industry's complicity in fueling the illegal market. It is now clear that a relatively small number of readily identifiable licensed gun dealers are the source of most guns used by criminals. This raises the obvious question: Why are gun manufacturers and distributors continuing to use these high-risk dealers to sell their guns? The answer appears obvious. Every gun sold to a gun trafficker is as profitable as a gun sold to a law-abiding sportsman. The industry has a vested financial interest in the continued flow of guns from its licensed dealers into the criminal market.

Perhaps most threatening to the gun industry is the risk that its choice to use high-risk dealers, as revealed by crime gun trace analysis, may expose it to legal liability to those injured by guns trafficked into the illegal market.

In 2003, a federal judge found that the gun industry had contributed to a public nuisance in New York City by ignoring the glaring results of crime gun trace data studies. The court's opinion, in a case brought by the NAACP against numerous gun manufactures and distributors, relied on trace data in its finding that the industry could shut down the flow of guns to high-risk retailers.[112]

> "If defendants had studied available trace request data and acted upon it to better control its downstream customers, they could have used the information to prevent fear and injury to the NAACP and its members and potential members in New York. This information was and is available to defendants."[113]

The court condemned the gun industry for its practices, but found that the NAACP could not recover for its injuries because it had not

suffered special injuries different from those of the general public. The writing on the wall for the industry was clear – if future plaintiffs were able to rely on the crime gun trace studies, a court may very well rule that the gun industry had to take responsibility for its actions.

The NRA and the gun industry responded to the threat in two ways. First, for six years they lobbied Congress for special interest legislation exempting the gun industry from civil liability rules applicable to every other industry. This effort finally succeeded when President George W. Bush signed into law the misnamed "Protection of Lawful Commerce in Arms Act (CAA)" in October 2005. Second, they pushed to shut down public access to crime gun trace data. The gun lobby knew that the proposed CAA would limit, but not completely preclude, liability actions against the industry. It also knew that the threat to its interests posed by public access to the trace data was not limited to potential legal liability. The trace data exposed the gun industry as part of the problem of illegal guns. This was too much truth for the gun lobby to bear.

Part Three

THE CURTAIN FALLS ON THE TRUTH - HIDING CRIME GUN TRACE DATA FROM THE PUBLIC

As of the end of the Clinton Administration, it was obvious that the continued release of crime gun trace data by ATF was a clear and present danger to the NRA and the gun industry. The NRA had boasted that if George W. Bush became President, it would be "working out of their [White House] office."[114] In hindsight, that boast hardly seems exaggerated. On gun policy, the Bush Administration has consistently done the gun lobby's bidding. Beginning with the 2000 election, and continuing to the present day, the Bush Administration and the gun lobby's allies in Congress have drawn the curtain down on ATF trace data and, with it, the truth about guns and crime.

ATF Falls Silent About Crime Gun Traces

When George W. Bush became President, ATF ceased its release of valuable crime gun trace information. The landmark *Commerce in Firearms* report from February 2000 was originally intended as the first in an annual series "that will present and analyze data collected by ATF and other Federal agencies relating to the firearms industry and its regulation."[115] ATF has released only one such report since then - *Firearms Commerce in the United States (2001-2002)* - containing no trace data or analysis whatsoever.

The 2000 version of the report had explained that analysis of the trace data had "allowed

ATF to strengthen both its criminal and regulatory enforcement programs."[116] The report included extensive discussions of "New Methods of Keeping Firearms Out of the Hands of Criminals and Others Not Legally Entitled to Possess Them," and "Ensuring Compliance by Licensed Retail Dealers." These sections included "The Illegal Market in Firearms," "The Growth of the Firearms Tracing System," "Trace Analysis and the Identification of Firearms Traffickers," and "Crime Gun Traces as Indicators of Illegal Trafficking."

None of these subjects were even mentioned in the 2001-2002 report. There was no discussion of attempting to identify firearms traffickers or the sources of illegal firearms, or even of ATF's largest firearms task – inspecting firearms dealers. The Bush Administration ATF was careful to exclude anything that could possibly be viewed as threatening to the gun industry, instead noting the ATF's feel-good efforts of "reaching out to strengthen and develop new working relationships with the firearms industry and consumers."[117]

Of the approximately 1,000 dealers with 10 or more traces in 1999, 75% were found by ATF to have violated the Gun Control Act

Both versions of this report have since been taken down from ATF's website, while other publications from as far back as 1995 remain posted.[118] In contrast, ATF's Arson and Explosives programs has continued to release annual reports through 2006.[119]

In addition, the annual reports issued by ATF under its historic YCGII program have come to a halt. The last YCGII report to the public was issued in July 2002, and was based on trace data from 2000. The YCGII reports – covering traces completed during the years 1997-2000 – quantified, for the first time, the massive and rapid movement of guns from licensed dealers into crime in major American cities. ATF has now fallen silent on the close connection between licensed gun dealers, gun trafficking and the illegal market.

ATF Makes Excuses for the Gun Industry

Under the Bush Administration, ATF has applied a starkly revisionist meaning to crime gun trace data.

As discussed above, when ATF issued its February 2000 report, *Commerce in Firearms*, the Bureau announced to the public the striking finding that only 1.2% of federally licensed firearms dealers, or approximately 1,000 dealers, accounted for 57% of crime gun traces by ATF in 1998. Those 1,000 dealers had 10 or more crime gun traces in 1998, while 85% of licensed dealers typically have no traces during a given year. These findings strongly suggested that a relatively small group of identifiable dealers are engaged in business practices that facilitate gun trafficking into the illegal market. They also suggested that gun manufacturers, by using crime gun trace information, can easily identify, and discipline, their retail dealers who are contributing disproportionately to the illegal market.

But gun makers have instead made a conscious business decision to turn a blind eye

"Sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers."

– ATF, Report to the Secretary on Firearms Initiatives (2000)

to these high-risk dealers, enabling the entire industry to continue to profit from the supply of guns to the illegal market. The industry's excuse is its insistence that a high number of crime gun traces is not an indicator of gun trafficking because large volume dealers "often have more guns traced to them simply because they sell more guns than smaller FFLs."[120]

In its allocation of enforcement resources, ATF had, of course, taken the view that a high number of crime gun traces was significant, without regard to dealer sales volume. In February 2000, upon release of *Commerce in Firearms,* the Bureau announced that dealers with ten or more traces to them in 1999 would be subject to intensive inspections, no matter what their level of sales volume.[121]

ATF's Report to the Secretary on Firearms Initiatives, November 2000

Among the redacted text ATF withheld from the public was data about the relationship between traces and sales volume:

The Appendix is a table summarizing the results of the focused inspection initiative. The most significant findings from the inspections are set forth below.

- *Large number of missing guns.* [redacted] ATF will compare information about each of these missing firearms to data in the Firearms Tracing System to see if we can develop any investigatory leads.
- *Significant problems in complying with recordkeeping requirements.* [redacted]
- *Sales to potential traffickers and potentially prohibited persons.* [redacted]
- *Completion of previously unsuccessful crime gun traces.* [redacted]
- *Adverse administrative proceedings.* As a result of the focused inspections, 45 percent of the inspected dealers were recommended for follow-up administrative action, including 2 percent for license revocation. It should be noted that 60 percent of the uncooperative dealers were recommended for follow-up action, including 17 percent for whom license revocation was recommended. [redacted]

Demand Letter Initiative

The demand letter initiative entailed the issuance, to FFLs who had been uncooperative in response to trace requests, of letters requiring the submission of all their firearms transaction records for the previous 3 years, with monthly reports to be made thereafter. Additionally, demand letters requiring the submission of records concerning the acquisition of used guns were

- ii -

The Appendix is a table summarizing the results of the focused inspection initiative. The most significant findings from the inspections are set forth below.

- *Large number of missing guns.* Nearly half (47 percent) of the dealers had at least one inventory discrepancy. While the majority of discrepancies were resolved through the inspection process, approximately 13,271 missing guns could not be accounted for by 202 licensees. Further, 16 licensees each had more than 200 missing guns. ATF will compare information about each of these missing firearms to data in the Firearms Tracing System to see if we can develop any investigatory leads.
- *Significant problems in complying with recordkeeping requirements.* More than 57 percent of the inspected dealers had at least one violation relating to a failure to properly execute the required ATF Form 4473, and 54 percent of the dealers failed to maintain a complete and accurate acquisition and disposition record. In addition, 22 percent of the dealers had violations of the multiple handgun sales reporting requirement and 15 percent of the dealers had recordkeeping violations relating to the required background check under the Brady Act.
- *Sales to potential traffickers and potentially prohibited persons.* Inspections identified sales to more than 400 potential firearms traffickers and nearly 300 potentially prohibited individuals, resulting in 691 referrals being sent to ATF special agents for further investigation. The overall ratio of trafficking referrals to licensees was more than 3 times higher in the group of licensees with 10 or more firearms traces with a short time-to-crime than in the group of licensees who did not have at least 10 traces with a short time-to-crime.
- *Completion of previously unsuccessful crime gun traces.* Inspectors were able to resolve 76 percent of the previous year's unsuccessful traces associated with the inspected dealers, for a total of 1,336 completed traces.
- *Adverse administrative proceedings.* As a result of the focused inspections, 45 percent of the inspected dealers were recommended for follow-up administrative action, including 2 percent for license revocation. It should be noted that 60 percent of the uncooperative dealers were recommended for follow-up action, including 17 percent for whom license revocation was recommended. By comparison, 47 percent of the dealers with 10 or more short time-to-crime traces and 43 percent of the remaining dealers with 10 or more traces were recommended for some sort of follow-up administrative action, with less than 2 percent of the dealers in these two groups recommended for revocation.

Demand Letter Initiative

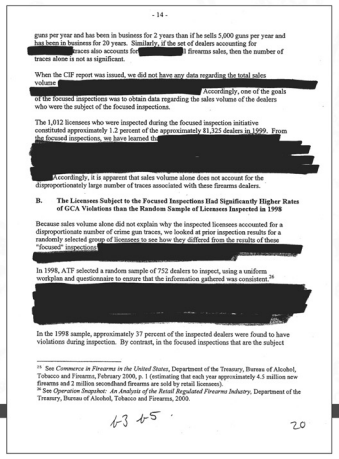
The demand letter initiative entailed the issuance, to FFLs who had been uncooperative in response to trace requests, of letters requiring the submission of all their firearms transaction records for the previous 3 years, with monthly reports to be made thereafter. Additionally, demand letters requiring the submission of records concerning the acquisition of used guns were

- ii -

SAAMI 003771

In a lawsuit against the gun industry in which Brady Center lawyers represent the City of New York, pretrial discovery unearthed an internal ATF report about the results of these intensive inspections of high-trace dealers. *Report to the Secretary of the Treasury on Firearms Initiatives*, issued in November 2000, concluded that "**sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.**" Although they accounted for more than 50% of crime gun traces in 1999, these high-trace dealers accounted for less than 20% of the guns sold in that year.[122]

ATF's study also confirmed a strong association between a high number of crime gun traces and dealer violations of federal gun laws. **Of the approximately 1,000 dealers with 10 or more traces in 1999, 75% were found by ATF to have had violations of the Gun Control Act**, including large numbers of missing guns, "significant" recordkeeping problems, and sales to potential gun traffickers and prohibited persons.[123] By way of contrast, in 1998, ATF inspected a random sample of dealers (without regard to number of traces) and found that only 37% had violated federal law. The ATF also found that dealers with 10 or more traces had "a substantial likelihood that the used guns they sell are also being used in crime."[124]



- 14 -

guns per year and has been in business for 2 years than if he sells 5,000 guns per year and has been in business for 20 years. Similarly, if the set of dealers accounting for [redacted] traces also accounts for [redacted] firearms sales, then the number of traces alone is not as significant.

When the CIF report was issued, we did not have any data regarding the total sales volume [redacted] Accordingly, one of the goals of the focused inspections was to obtain data regarding the sales volume of the dealers who were the subject of the focused inspections.

The 1,012 licensees who were inspected during the focused inspection initiative constituted approximately 1.2 percent of the approximately 81,325 dealers in 1999. From the focused inspections, we have learned that [redacted] Accordingly, it is apparent that sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.

B. The Licensees Subject to the Focused Inspections Had Significantly Higher Rates of GCA Violations than the Random Sample of Licensees Inspected in 1998

Because sales volume alone did not explain why the inspected licensees accounted for a disproportionate number of crime gun traces, we looked at prior inspection results for a randomly selected group of licensees to see how they differed from the results of these "focused" inspections. [redacted]

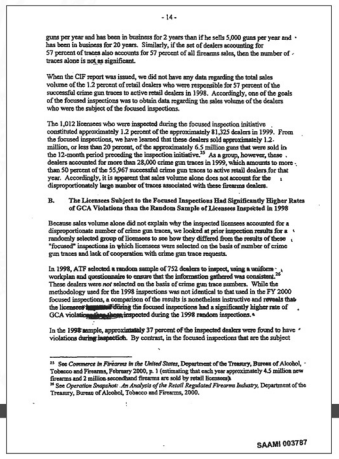
In 1998, ATF selected a random sample of 752 dealers to inspect, using a uniform workplan and questionnaire to ensure that the information gathered was consistent.[26] [redacted]

In the 1998 sample, approximately 37 percent of the inspected dealers were found to have violations during inspection. By contrast, in the focused inspections that are the subject

[25] See *Commerce in Firearms in the United States*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, February 2000, p. 1 (estimating that each year approximately 4.5 million new firearms and 2 million secondhand firearms are sold by retail licensees).
[26] See *Operation Snapshot: An Analysis of the Retail Regulated Firearms Industry*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 2000.

1-3 4-5

20



- 14 -

guns per year and has been in business for 2 years than if he sells 5,000 guns per year and has been in business for 20 years. Similarly, if the set of dealers accounting for 57 percent of traces also accounts for 57 percent of all firearms sales, then the number of traces alone is not as significant.

When the CIF report was issued, we did not have any data regarding the total sales volume of the 1.2 percent of retail dealers who were responsible for 57 percent of the successful crime gun traces to active retail dealers in 1998. Accordingly, one of the goals of the focused inspections was to obtain data regarding the sales volume of the dealers who were the subject of the focused inspections.

The 1,012 licensees who were inspected during the focused inspection initiative constituted approximately 1.2 percent of the approximately 81,325 dealers in 1999. From the focused inspections, we have learned that these dealers sold approximately 1.2 million, or less than 20 percent, of the approximately 6.5 million guns that were sold in the 12-month period preceding the inspection initiative.[25] As a group, however, these dealers accounted for more than 28,000 crime gun traces in 1999, which amounts to more than 50 percent of the 55,967 successful crime gun traces to active retail dealers for that year. Accordingly, it is apparent that sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.

B. The Licensees Subject to the Focused Inspections Had Significantly Higher Rates of GCA Violations than the Random Sample of Licensees Inspected in 1998

Because sales volume alone did not explain why the inspected licensees accounted for a disproportionate number of crime gun traces, we looked at prior inspection results for a randomly selected group of licensees to see how they differed from the results of these "focused" inspections in which licensees were selected on the basis of number of crime gun traces and lack of cooperation with crime gun trace requests.

In 1998, ATF selected a random sample of 752 dealers to inspect, using a uniform workplan and questionnaire to ensure that the information gathered was consistent.[26] These dealers were *not* selected on the basis of crime gun trace numbers. While the methodology used for the 1998 inspections was not identical to that used in the FY 2000 focused inspections, a comparison of the results is nonetheless instructive and reveals that the licensees inspected during the focused inspections had a significantly higher rate of GCA violations than those inspected during the 1998 random inspections.

In the 1998 sample, approximately 37 percent of the inspected dealers were found to have violations during inspection. By contrast, in the focused inspections that are the subject

[25] See *Commerce in Firearms in the United States*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, February 2000, p. 1 (estimating that each year approximately 4.5 million new firearms and 2 million secondhand firearms are sold by retail licensees).
[26] See *Operation Snapshot: An Analysis of the Retail Regulated Firearms Industry*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 2000.

SAAMI 003787

Although the *Report to the Secretary* was an internal ATF document, it was obtained by the Brady Center through a subpoena in New York City's lawsuit issued to the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI), an industry trade association. The presence of this internal government document in SAAMI's files is significant for two reasons. First, it means that at the same time that the gun industry was arguing that high dealer traces could be explained by high sales volume, it had in its possession an ATF study proving the opposite. Yet, the gun industry has never wavered from its insistence that high numbers of traces mean nothing, arguing in court documents that trace requests "depend on the volume of the retailer's business – the more sales made, the mores traces received."[125]

Second, the presence of the ATF report in the files of SAAMI obviously suggests that ATF shared it with the gun industry. ATF's willingness to share this particular report on trace data was, however, selective. When the Brady Center obtained a copy of the same *Report to the Secretary* in 2005 pursuant to a request under the Freedom of Information Act, the report was heavily redacted. **Among the redactions was the data about the relationship between traces and sales volume**. Apparently ATF, under the Bush Administration, was willing to share this sensitive data with the gun industry, but not with the general public.

Was the Bush Administration ATF trying to keep this information from the public to protect the gun industry? By hiding this report from the public, ATF would avoid publicly contradicting the gun industry's line that high trace numbers might simply mean high sales volume.

Ten Worst Bad Apple Gun Dealers in America

(based on crime gun trace data from 1989 to 1996)

1. Badger Outdoors, Inc. West Milwaukee, WI	554 guns traced to crime.
2. Realco Guns, Inc., Forestville, MD	518 guns traced to crime.
3. Southern Police Equipment Co. Inc., Richmond, VA	447 guns traced to crime.
4. Atlantic Gun & Tackle, Bedford Heights, OH	426 guns traced to crime.
5. Colosimo's Inc., Philadelphia, PA	425 guns traced to crime.
6. Don's Guns and Galleries Inc., Indianapolis, IN	393 guns traced to crime.
7. Breit & Johnson Sporting Goods Inc., Elmwood, IL	347 guns traced to crime.
8. Trader Sports Inc., San Leandro, CA	337 guns traced to crime.
9. Miller's Dealers Outlet, Tucson, AZ	297 guns traced to crime.
10. Turner's Outdoorsman, Chino, CA	251 guns traced to crime.

In 2003, the ATF went a step further in publicly adopting the industry's line, by stating the very opposite of what ATF's own *Report to the Secretary* had found. The statement was made in an ATF press release attacking the Brady Center. In July 2003, the Brady Center released a list of the "Ten Worst Bad Apple Gun Dealers in America." These were the ten dealers with the highest number of crime gun traces during the period 1989-1996, the most recent years the crime gun trace database was made available to the public under FOIA.

In response to the Brady Center's report, ATF issued an extraordinary press release attacking the Center's use of crime gun trace data. ATF's release stated the Center's use of the data was "misleading" because "other factors including high volume of sales" could contribute to a dealer's high crime gun trace count. ATF's release further stated that "large volume gun dealers will by their very frequency of sales have more guns come to the attention of law enforcement than a dealer who sells relatively few firearms." Of course, ATF released no information showing that the dealers with the highest trace numbers were also the highest volume gun sellers, because its own data showed the opposite.

Not only did ATF have its own hard evidence that the concentration of crime gun traces in a small number of dealers could not be explained by the sales volume of those dealers, but long before ATF issued its 2003 press release attacking the Brady Center, independent research confirmed it.

An article in the Journal of the American Medical Association by Dr. Garen Wintemute at the University of California at Davis in 2000 found that a dealer's volume of total guns sales could not account for the differences in the number of handguns traced to crime.[126] The study compared crime gun trace data to data from the California Department of Justice on handgun sales for all licensees from 1996 to 1998, and found that the number of traced guns varied substantially among dealers with similar sales volumes. The study showed that a small minority of firearms dealers are associated with more handgun traces than would be predicted by their sales volume, and those dealers accounted for a substantial majority of all traced handguns.[127]

A later study by Wintemute and Philip Cook of Duke University used ATF trace data to make similar findings. Using ATF crime gun trace data and handgun sales data from the California Department of Justice from 1996 to 2000, they determined predictors to identify high-risk dealers, including a high number of failed background checks for potential purchasers, and whether the dealer is a pawnbroker.[128] The researchers also confirmed that "among licensed retailers of handguns in California, the number of guns sold was an inadequate predictor of the number of guns subsequently linked to violent and firearm related crimes."

Yet, despite the evidence, in 2003 ATF publicly supported the industry's insupportable contention that high trace numbers reflect only high sales volume and are not an indicator of a dealer's use of business practices that facilitate trafficking to the illegal market.

Congress Acts to Block Release of Crime Gun Trace Data – The Story of the Tiahrt Amendment

ATF has historically released raw crime gun trace data to the public through the Freedom of Information Act (FOIA). The purpose of

FOIA is to allow the public to act as a watchdog – shedding light on an agency's performance of its statutory duties. ATF is required to release requested records to the public unless the records meet certain narrow exemptions. As discussed above, ATF produced raw crime gun trace data to, for instance, researchers Douglas Weil and Rebecca Knox for their study on the effect of Virginia's one-handgun-a-month law,[129] and to Cox Newspapers for its study on the use of assault weapons in crime.[130]

However, ATF also has declined to release certain parts of the trace database, arguing that the redacted data fits under FOIA's narrow exemptions. In one such case, involving trace data sought by the City of Chicago to support its public nuisance lawsuit against the gun industry,[131] ATF's unjustified withholding of certain data led to a successful court challenge against ATF, and then to Congressional action that effectively has shut down public access to crime gun trace data.[132]

In March 2000, the City of Chicago made a request to ATF under FOIA seeking records on firearms traces and multiple sales both nationwide and in Chicago from 1992 to the present. The City sought the information to gain information on local and nationwide crime gun trafficking patterns and to support a lawsuit it had filed against the gun industry in November of 1998. The suit had charged various gun manufacturers, distributors, and suburban Chicago dealers with creating a public nuisance by marketing firearms to City residents where their possession would be unlawful.

Before bringing suit, Chicago law enforcement ran a "sting" of a dozen suburban Chicago dealers and found that they were willing to sell guns openly to straw buyers who were seeking to buy guns for criminals in Chicago.

ATF produced part of the data requested, but withheld dealer names, purchaser names, serial numbers of the guns recovered, and the recovery locations. The redactions made the data useless for Chicago's investigation purposes. Even though Chicago needed the data to assist law enforcement, and even though the City did not request any records that had been coded by ATF as "highly sensitive," ATF still argued that it was allowed to block the release of data because it "could reasonably interfere with enforcement proceedings."[133]

Chicago was forced to file suit against ATF in June 2000 to require ATF to turn over all the documents requested. The case lasted for over five years, including an appeal to the United States Supreme Court, and three separate rulings by the United States Court of Appeals for the Seventh Circuit.

In all of the rulings, the trial court and the appeals court rejected ATF's arguments that releasing the records would hinder law enforcement efforts. In a 2002 ruling the Seventh Circuit found that ATF's arguments were "based solely on speculation:"

> "ATF has provided us with only far-fetched hypothetical scenarios; without a more substantial, realistic risk of interference, we cannot allow ATF to rely on this FOIA exemption to withhold these requested records."[134]

In particular, the Court found that the data "reveals *nothing* about any potential or ongoing investigation," and "it is highly improbable that any revelation of this information could endanger an investigation."[135]

The Court of Appeals also found that there was no privacy interest in the requested records and that, as had been shown time and time again, "there is strong public policy in facilitating the analysis of national patterns of gun trafficking."[136] The Court ruled that the ATF was required to produce all the information requested.

ATF appealed the Seventh Circuit's ruling to the United States Supreme Court and the Court granted *certiorari*.[137] While the appeal to the Supreme Court was pending, Congress stepped in at the urging of the gun lobby. Rep. Ernest Istook Jr. (R-OK), a repeated recipient of NRA political contributions, inserted into ATF's 2003 appropriations bill[138] a provision designed to prohibit ATF from using any appropriated funds "to take any action based upon any provision [of FOIA]" for requests from the trace database and multiple sales database.[139]

The technique of inserting substantive provisions into appropriations legislation is a favorite tool of special interest lobbyists.[140] Because of its incredible length, 544 pages for the Consolidated Appropriations Act of 2003, for example, Members of Congress cannot possibly know the details of every line of an appropriations statute. Unlike other legislation, riders to appropriations bills also do not regularly undergo scrutiny in congressional committees or have full floor debate. Appropriations bills are also often acted on quickly, out of necessity to put funding in place for the next year, which provides little opportunity for true deliberation. All of this allows significant changes in policy to be made without public input or legislative accountability.[141]

The appropriations process is a perfect vehicle for passing special interest legislation that would not survive as a stand-alone bill.[142] Consequently, the gun lobby's allies in Congress have historically used the appropriations process as an opportunity to slip in amendments restricting ATF's enforcement activities. As noted, they have used this technique to prevent ATF from obtaining records from gun dealers,[143] or maintaining criminal background check records beyond 24 hours.[144] Even though riders in appropriations bills can change or be removed in subsequent fiscal years, frequently they become entrenched in the legislation and survive year after year; some riders restricting ATF have been in place since the 1970s.

Rather than attempting to actually amend the Freedom of Information Act, the gun lobby chose the easier route of quietly slipping in a rider without having to explain its actions. The gun lobby could get around the pesky FOIA statute, which demands public disclosure, without any committee hearings or reports and without the public noticing that the worst actors in the gun industry were being helped at the expense of the public's right to know.

"I wanted to make sure I was fulfilling the needs of my friends who are firearms dealers. NRA officials were helpful in making sure I had my bases covered."

— Rep. Todd Tiahrt (R-KS)

The 2003 Istook rider was written to allow ATF to continue giving out only the trace and multiple sale data that it was previously willing to disclose under FOIA. The

rider was intended to bar disclosure of, for example, the names of gun dealers that had sold guns traced to crime, as well as other information about those crime guns. The purpose was to weaken the City of Chicago's suit and the public's right to know the source of crime guns.

Following enactment of the 2003 rider, the Supreme Court remanded the Chicago FOIA case back to the Seventh Circuit to determine the effect of the rider on the Chicago FOIA request. But before the appeals court was able to rule on the effect of the 2003 legislation, Congress acted again.

In July 2003, Rep. Todd Tiahrt (R-KS), a long-time ally of the NRA, added an amendment to the 2004 ATF appropriations bill. The Tiahrt Amendment, as it and its succeeding versions are now known, was drafted to prevent ATF from spending any money to release any crime gun trace data or multiple sales data requested under FOIA, even if ATF previously had disclosed that type of data.[145] Even though ATF had always made some portion of the crime gun trace data available to the public, as shown by the numerous public uses of the data described above, the 2004 amendment barred ATF from further releasing trace or multiple sale data under FOIA.

Rep. Tiahrt's colleagues on the House Appropriations Subcommittee on Commerce, Justice, and State expressed "surprise" at the way the amendment was being offered.[146] The chair of the Subcommittee, Rep. Frank Wolf (R-VA), objected to the amendment, saying he had not had time to review it.[147] Yet, Rep. Tiahrt refused to withdraw the amendment and won passage on a 31 to 30 vote in the House Appropriations Committee. The Washington Post reported that, "before the vote, Tiahrt assured colleagues the NRA had reviewed the language." Tiahrt was quoted as saying, **"I wanted to make sure I was fulfilling the needs of my friends who are firearms dealers. NRA officials were helpful in making sure I had my bases covered."**[148]

The legislation was indeed an attempt to help the NRA and the gun lobby, by not only thwarting Chicago's case, but by preventing anyone from obtaining trace data through FOIA. The threat of more public reports, based on analysis of trace data, linking the gun industry to supply of the illegal market of guns, was too great.

Despite the Tiahrt Amendment, Chicago's lawsuit survived, at least temporarily. In September 2004, the Seventh Circuit considered the Tiahrt language and ruled that while the rider precluded the use of appropriated funds to disclose trace and multiple sale data to Chicago, it had not substantively changed the FOIA standards for disclosure. Since Chicago had offered to pay the costs associated with disclosure, thus making the use of appropriated funds *de minimis*, the Court of Appeals again held that ATF must provide the City access to the databases.[149]

Just two months after the court's September 2004 ruling, the gun lobby tried again. Rep. Tiahrt inserted another rider, this time in ATF's 2005 appropriations bill. Congress expanded the scope of the amendment in the Consolidated Appropriations Act of 2005, by making it impossible to get the crime gun trace data even if a court has ordered its production. This rider stated that "all such data shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court. . . ."[150] This prevents crime gun trace data and multiple sales data from being obtained under FOIA, or through a court subpoena. The provision was also

expanded to be retroactive – meaning that subpoenas which had already been issued before the amendment was passed were to be unenforceable. In addition, whereas the two previous riders barred the use of appropriated monies by ATF to release trace or multiple sale data in response to FOIA requests, the language in the 2005 version arguably reached any use of appropriated monies by ATF to disclose the data *even in its own public reports.*

The City, and the public, never obtained the data they were entitled to under FOIA.

The gun lobby went even further in the 2006 ATF funding bill.[152] This version of the Tiahrt Amendment still includes the restriction on ATF releasing any crime gun trace data to anyone, even under court subpoena, but now also attempts to prevent crime gun trace data from being used in court or relied on by plaintiffs in lawsuits against the gun industry.

" The flow of guns into criminal hands in New York would substantially decrease if manufacturers and distributors insisted that retail dealers who sell their guns be responsible . . ."

— Judge Jack B. Weinstein, U.S. District Court, Eastern District of New York

As a result of the 2005 legislation, the Seventh Circuit reheard Chicago's FOIA case yet again, in light of the 2005 rider, and found in favor of ATF. The Court found that there was nothing it could do to require ATF to turn over the data to which the public was entitled – the 2005 appropriations legislation not only prevents ATF from acting on FOIA requests, but also prevents the public from turning to the courts for help. The Court wrote:

> "Prior to the rider, a requesting party could obtain the information through ATF or the courts. In the 2005 rider, Congress blocked both avenues of relief by stripping ATF and the courts of the ability to act on the public's requests, effectively exempting the information from disclosure."[151]

This language would bar a court from admitting trace data and multiple sale data as evidence in a civil proceeding, even if a court has determined that they meet the generally applicable rules of evidence regarding admissibility in that court. The legislation purports to bar expert witnesses from relying on the data to formulate and support their expert opinions in civil proceedings, even if a court has determined that the expert's reliance on the data conforms to the generally applicable evidentiary requirements for expert testimony. In short, the 2006 appropriations rider attempts to forbid the use of crime gun trace and multiple sale data in civil actions, even if the data is probative of the issues in the case and necessary to ensure a fair hearing.

The legislation is an extraordinary attempt by Congress to intervene in judicial proceedings for the purpose of "stacking the deck" in favor of gun industry defendants, and it may well be unconstitutional for that and other reasons. The

gun industry was threatened not only by Chicago's suit, but by conclusions made in 2003 by another federal court in *NAACP v. Accusport*.[153]

In its ruling in that case, the court relied extensively on evidence from the crime gun trace database, and related expert testimony, in finding that the gun industry's distribution practices contribute to the public nuisance of illegal guns in New York City. The court found that "[c]areless practices and lack of appropriate precautions on the part of some retailers lead to the diversion of a large number of handguns from the legal primary market into a substantial illegal secondary market." It further found that "**[t]he flow of guns into criminal hands in New York would substantially decrease if manufacturers and distributors insisted that retail dealers who sell their guns be responsible. . . .**"[154]

The expanded 2006 legislation was clearly an attempt to ensure that no other court has the benefit of evidence that is so damning to the gun industry.

On March 16, 2006, a bill was introduced in Congress that would make the Tiahrt Amendment permanent. H.R. 5005, misleadingly named "The Firearms Corrections and Improvements Act," was introduced by Rep. Lamar Smith (R-TX). Among other provisions weakening federal enforcement of gun laws,[155] it would prohibit the disclosure of crime gun trace and multiple sale information "to any entity" except to a law enforcement agency or prosecutor in connection with a bona fide criminal investigation or prosecution. There is, of course, no doubt that Rep. Smith is carrying the NRA's water – an email sent to Congressional members directed them to call the NRA's Federal Affairs office, rather than Rep. Smith's office, with questions about the legislation.[156]

The Tiahrt Amendment, and proposed legislation to make its provisions permanent, have the purpose and effect of legislating ignorance about crime and guns.

The Effect of the Tiahrt Amendment on ATF

Since the 2005 Tiahrt Amendment, ATF has been prohibited from releasing any more crime gun trace data to the public. No longer can ATF issue its own reports based on the trace data or reports discussing the data.

The Tiahrt Amendment has had an immediate chilling effect on ATF's activities. According to the Bureau, it is prevented from releasing even aggregate information about crime gun traces to the public in the form of raw trace data or reports.[157] According to a spokesman for ATF, the agency is forbidden from "releasing to the public 'any information *derived from* tracing of firearms.'"[158]

For example, if the Tiahrt Amendment had been law in 1996, ATF could not have issued the reports under the Youth Crime Gun Interdiction Initiative that provided individual cities, their law enforcement authorities, and the general public, valuable information about the guns traced to crime in their communities.

It will also prevent ATF from disclosing crime gun trace data to gun manufacturers and distributors to enable them to better ensure that their retailers use responsible business practices, despite the fact that ATF publicly announced that it would provide trace data to gun manufacturers to enable them "to police the distribution of the firearms they sell."[159] Since ATF can no longer furnish trace data to the industry, gun makers finally have an excuse for their failure to use the data, as ATF had advised in 2000, "to build sounder and safer businesses."[160]

Since 2004, the Tiahrt Amendment has even required ATF to publicly disavow its longstanding conclusions about the value of crime gun trace data. Although the Amendment permits limited disclosure of trace and multiple sale information to law enforcement agencies in connection with bona fide criminal investigations, a separate part of the appropriations legislation requires that in any release of trace data, ATF must include language "that would make it clear that trace data cannot be used to draw broad conclusions about firearms-related crime." Of course, going back as far as Project Identification in 1973, ATF had used trace data to "draw broad conclusions about firearms-related crime." As described in detail in Part 2, researchers have also used trace data in this way. Not only does the Tiahrt Amendment severely limit ATF's use and disclosure of trace data, it actually commands ATF to make statements about the data the Bureau knows to be untrue. This particularly Orwellian feature of the Tiahrt language underscores the gun lobby's determination to ensure that the public no longer knows the truth about guns and crime.

"I would not expect that I would need to remind Congress of the horrific consequences that this country, and particularly New York City, suffered as a result of the federal government's failure to share information ..."

— Mayor Michael Bloomberg

The Effect of the Tiahrt Amendment on Law Enforcement

As demonstrated by the numerous reports discussed in Part II, analysis of crime gun trace data and multiple sales reports allows law enforcement to investigate patterns of gun trafficking on a nationwide basis and identify sources of crime guns. These efforts will be crippled by the Tiahrt Amendment.

Although the Amendment provides for limited disclosure of crime gun trace data to law enforcement agencies, the data can only be "for use in a bona fide criminal investigation or prosecution" and, even then, the disclosure must be limited to information that "pertains to the geographic jurisdiction of the law enforcement agency or prosecutor requesting the disclosure."[161]

In the past, ATF has released information from its crime gun trace database to local and state governments, and law enforcement agencies, without the requirement that the data relate to a specific criminal investigation or that the data disclosed be limited to crime guns pertaining to the requesting jurisdiction. For example, if a local law enforcement agency wanted information to allow it to know which gun dealers in its community exhibit "trafficking indicators" as specified by ATF (such as multiple crime gun traces, short "time-to-crime" for traced crime guns, or frequent multiple sales), the Tiahrt Amendment presumably would block ATF from sharing that information. Law enforcement agencies may want the information to craft effective enforcement strategies against those dealers, long before a specific criminal investigation has begun. Law enforcement agencies may also need such data to propose legislative or policy initiatives to protect the community from the risk of diversion of crime

guns from such dealers. As ATF itself has recognized, its public dissemination of crime gun trace data provides "crime gun information to the *Federal, State, and local law enforcement agencies* that submit trace requests, boosting their information resources for arresting gun criminals, responding to gun violence, and establishing a benchmark for crime gun measurements."[162]

The gun lobby claims that disclosure of crime gun trace data threatens to reveal undercover and other law enforcement operations against gun traffickers and corrupt dealers. On the contrary, by barring ATF from disclosing crime gun trace and multiple sale data to law enforcement agencies, the bill adversely affects law enforcement's ability to help ATF to combat gun trafficking and the reckless dealers who aid and abet it. As Mayor Michael R. Bloomberg of New York City testified, in opposing H.R. 5005 and its codification of the Tiahrt language:

> "**I would not expect that I would need to remind Congress of the horrific consequences that this country, and particularly New York City, suffered as a result of the federal government's failure to share information** among law enforcement agencies, and to work together to 'connect the dots' in order to establish patterns of criminality and threats of danger."[163]

The argument that the Tiahrt Amendment is needed to protect law enforcement operations is entirely false. "I was just thinking of the safety of police," Rep. Tiahrt told the *Denver Post*. "Some of these undercover officers have been involved in transactions that could be disclosed by the release of trace data." The *Post* noted, however, that he could not name a single instance when an officer's safety had been compromised by a previous release of ATF gun trace data.[164] As noted above, for many years ATF has disclosed crime gun trace information to the public, while redacting any data it felt could compromise law enforcement investigations. The Tiahrt Amendment, on the other hand, is a far broader prohibition of disclosure than necessary to protect law enforcement investigations. As explained above, it would bar ATF itself from referring to aggregate trace data in its own reports providing the public, along with government and law enforcement officials, valuable information about guns and crime. There is no evidence that the reports issued by ATF containing crime gun trace data have compromised a single law enforcement investigation. Likewise, there is no evidence that the studies and reports based on ATF crime gun trace data previously published by scholars, advocacy groups, the press, and government agencies have revealed confidential ATF sources or adversely affected law enforcement activities. To the contrary, these studies and reports have highlighted law enforcement techniques that can work to stop gun trafficking.

The Law Enforcement Steering Committee (LESC), composed of major national law enforcement groups, including the Federal Law Enforcement Officers Association, the Major Cities Chiefs, and the International Brotherhood of Police Officers, has expressed concerns about legislative restrictions on ATF's disclosure of trace data. In a letter to the Senate concerning provisions in the 2004 appropriations bill, the LESC stated that its members "are concerned by a provision included in the omnibus bill which will prohibit the Bureau of Alcohol, Tobacco, Firearms and Explosives from publicly disclosing or sharing gun trace data with local law enforcement."[165] Of course, the 2004 rider

restricted only disclosure of trace data pursuant to FOIA requests, and thus was far more narrow in scope than the more draconian version in place now.

The Effect of the Tiahrt Amendment on Congress

By blindly passing an NRA-drafted piece of legislation, Congress has effectively prevented itself from gaining access to data needed to draft effective legislation and perform its responsibility for oversight of federal gun enforcement efforts. Under the current law, **ATF will not even be able to disclose crime gun trace data pursuant to a request from Congress**.

Trace data has been used by Members of Congress, for example, to establish that most guns traced to crime originate with a small percentage of licensed gun dealers.[166] Members will no longer be able to obtain such data.

Nor will ATF be allowed to testify before Congress concerning any details on, for instance, its enforcement activities related to dealers with high numbers of crime gun traces. The Government Accountability Office will not be allowed to review crime gun trace data to evaluate the effectiveness of ATF's National Trace Center or the effectiveness of ATF's enforcement activities. Evaluation of ATF's success or failure in working to reduce gun violence by preventing diversion of guns to the illegal market will be severely hampered.

The Effect of the Tiahrt Amendment on the Use of Trace Data in Research

Under the Tiahrt Amendment, ATF is also prevented from disclosing valuable crime gun data to the press, advocacy organizations, and scholars who are studying the problem of guns and crime. As noted, trace data has been used in studies showing, for example, that:

> (1) the illegal market is largely supplied by the rapid diversion of guns from a relatively few licensed gun dealers;
>
> (2) illegal guns in states with strong gun laws largely originate in states with weak laws, while illegal guns in states with weak laws come from in-state dealers;
>
> (3) laws regulating the legal market can help stem the flow of guns into the illegal market; and
>
> (4) certain kinds of guns are disproportionately associated with criminal activity.

Under the Tiahrt Amendment, independent researchers no longer will have access to the data that made these studies possible.

Noted academic researchers have already found their work stymied. Voicing their horror with the effect of the Tiahrt Amendment on scientific research, one professor commented: "If you want to advance science and understanding about a problem, you use the scientific peer review process, not a political or legal filter. It [the Tiahrt Amendment] is a hindrance to science and the formation of good policy."[167] Another professor, discussing how valuable crime gun trace data has been, lamented the effect of the Tiahrt Amendment as "consciously making ourselves stupid."[168]

CONCLUSION

Slowly the curtain has fallen on the truth about guns and crime. After an unprecedented explosion of new learning from the use of trace data by ATF and others during the Clinton years, the release of crime gun trace information from ATF quickly slowed to a trickle following President Bush's Inauguration. No longer did ATF release data and analyses showing the close connection between the gun industry and the illegal gun market. Instead the Bureau now publicly excuses high-trace gun dealers by asserting that they may simply have high sales volume, while withholding from the public (but not the gun industry) a crucial internal report showing that gun dealers with the highest numbers of crime gun traces do not have the highest sales volume and are frequent violators of federal gun laws.

As the gun lobby, and particularly the gun industry, realized the danger to its interests from release of crime gun trace data, it turned to its friends in Congress for help. Starting in 2003, each year the gun lobby quietly attached riders to ATF appropriations legislation – first through Rep. Istook and then through Rep. Tiahrt – placing greater and greater limits on disclosure of trace and multiple sale data.

The more the public understands about crime guns, the more it also understands the integral role of reckless licensed dealers in supplying the illegal market and the need for tighter federal regulation of gun dealers and gun sales to curb the flow of guns into criminal hands. For the gun lobby, the public had started to "know too much." The Tiahrt Amendment has solved that problem for the NRA and the gun industry. The tradition of secrecy in federal gun regulation has been restored. The truth about guns and crime no longer threatens the gun industry with accountability for its conduct and the NRA can continue to market the mythology that gun laws can do nothing to keep guns out of criminal hands.

End Notes

[1] *See, e.g.*, NRA-ILA Fact Sheet, "Licensing and Registration" accessed at http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=28.

[2] Wayne LaPierre, Executive Vice President, NRA, as quoted in NRA fundraising letter (April 1995).

[3] NRA membership letter, as quoted in Washington Monthly (June 1983).

[4] Davidson, *Under Fire: The NRA and the Battle for Gun Control* (1993) at 46.

[5] *See* 18 U.S.C. 922(a), 922(b)(5) and 923(g)(1)(A).

[6] *See* 27 C.F.R. § 478.125(e).

[7] *See* 27 C.F.R. § 478.124.

[8] *See* 18 U.S.C. 923(g)(3).

[9] *See* Pub. L. 95-429, 92 Stat. 1002 (Oct. 10, 1978).

[10] *See* 18 U.S.C. § 926(a).

[11] *See* 18 U.S.C. § 923(g)(4).

[12] *See* Pub. L. 104-208, 110 Stat. 3009-319 (Sept. 30, 1996).

[13] *See* 18 U.S.C. § 922(t)(2)(C).

[14] National Instant Criminal Background Check System Regulation, 63 Fed. Reg. 58,303 (Oct. 30, 1998).

[15] *National Rifle Association of America, Inc. v. Reno*, 216 F.3d 122 (D.C. Cir. 2000).

[16] National Instant Criminal Background Check System Regulation, 66 Fed. Reg. 6471 (Jan. 22, 2001).

[17] National Instant Criminal Background Check System, 66 Fed. Reg. 35,567 (Jul. 6, 2001).

[18] *See* Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 615, 118 Stat. 2809, 2915 (Dec. 8, 2004).

[19] Gen. Accounting Office, Report to the Chairman, Subcomm. on Oversight of Gov't Mgmt, Restructuring and the District of Columbia, Comm. on Governmental Affairs, United States Senate, *Potential Effects of Next Day Destruction of NICS Background Check Records* at 4 (July 2002).

[20] *Id*. at 2.

[21] *See, e.g.*, Franklin Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. Legal Studies 133, 192 ("More than half of all multiple firearm purchases involving handguns appeared to violate the Act, compared with one-percent estimated violation rate of transactions selected at random. From all appearances, regulatory audits should concentrate on multiple handgun transactions, and the criminal enforcement branch has a special stake in acquiring information on the number and pattern of such transactions."); Firearms Legislation: Hearings before the Subcomm. On Crime, House Judiciary Committee, 94th Cong. (1975) (extensive testimony by ATF on association between multiple sales and gun trafficking); Steven Brill; Police Foundation, *Firearms Abuse: A Research and Policy Report* (1977) at 127 (proper enforcement and follow-up investigation of multiple sales reporting requirement has "great potential for curbing illegal trafficking in handguns").

[22] *See* 18 U.S.C. 923(g)(3)(A).

[23] *See* 18 U.S.C. § 922(s)(6)(B)(i).

[24] *See*, *e.g.*, ATF, *The Illegal Youth Firearms Market in 17 Communities* (1997) at 3.

[25] *See* Declaration of Gerald Nunziato filed in *California v. Arcadia Machine & Tool, Inc.,* No. 4095 (Superior Court of California) at paragraph 9 (Mar. 7, 2003).

[26] ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (2000) at iii.

[27] *See* Philip Cook & Anthony Braga, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 Ariz. L. Rev. 277, 281 (2001).

[28] In 1997, ATF began a pilot program to speed the response time to law enforcement for trace request results. "Access 2000," as it is now known, involved electronically searching three participating firearms manufacturers' records. By using a computer terminal in the National Tracing Center that is linked to manufacturers' internal computer systems, ATF is able to

automatically check records to find what distributor a manufacturer sold a particular traced gun to, and can do so 24 hours a day, seven days a week. This avoids ATF having to take the step of telephoning or faxing the manufacturers and having the manufacturers manually check the records. As of 2003, 39 manufacturers and distributors were participating in the program. *See* ATF *2003 Performance and Accountability Report*.

The manufacturers and distributors have been told by ATF that they can use the Access 2000 program to monitor guns traced to crime. *See* Letter from Forest Webb, ATF Special Agent in Charge, Nat'l Tracing Ctr., to Simon Bloom, Taurus Int'l Mfg., Inc., at 2, Mar. 23, 2000.

[29] *See supra* note 27.

[30] *See* ATF, *The Illegal Youth Firearms Market in 27 Communities*, at 14 (Oct. 1998).

[31] *See* ATF, *Commerce in Firearms in the United States* at 2 (Feb. 2000) ("*Commerce in Firearms*").

[32] *Id.* at 19.

[33] *See* ATF, *Project Identification: A Study of Handguns Used in Crime* (1973).

[34] *Id*.

[35] *Id*. at 2.

[36] *Id*. at 13-14.

[37] *See ATF/DPD Firearms Trace Project Detroit* (April 1990).

[38] *Id*.

[39] *See* David M. Kennedy, Anne M. Piehl, & Anthony A. Braga, *Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy*, 59 Law & Contemp. Probs. 147 (1996).

[40] *Id*. at 170.

[41] *Id*. at 179.

[42] *See* 18 U.S.C. sec. 923(g)(7).

[43] *See Commerce in Firearms* at 2 ; Cook & Braga, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 Ariz. L. Rev. 277 (2001).

[44] *See* ATF, *1994 Baltimore Trace Study* (1994); Chicago Field Division, ATF, Memorandum to Chief, *Implementation of Secretary Bentsen's Anti-Gun, Anti-Violence Initiatives,* Nov. 29, 1994; Dallas Field Division, ATF, *Final Report and Recommendations on Anti-Gun, Anti-Violence Trace Study,* Nov. 30, 1994; Los Angeles Field Division, ATF, *Firearms Trace Studies*, Nov. 28, 1994; Los Angeles Field Division, ATF, *Sources of Crime Guns in Southern California* (1995); Miami Field Division, ATF, *Secretary Bentsen's Anti-Gun, Anti-Violence Initiative Gun Trace Study,* Nov. 21, 1994; New York Field Division, ATF, *Secretary Benson's* [sic] *Anti-Gun, Anti-Violence Initiatives,* Dec. 9, 1994; Phoenix Field Division, ATF, *A Study of Firearms Involved in Crimes in the Phoenix Metropolitan Area, June 1994 through February 1995;* Washington, DC Field Division, ATF, *Project Lead, January 1 through December 31, 1994*.

[45] ATF National Trace database. Trace counts provided by Crime Gun Solutions, LLC.

[46] *Id*.

[47] *Id*.

[48] *Id*.

[49] *Id*.

[50] U.S. Department of Treasury, *1996 Highlights of the Bureau of Alcohol, Tobacco and Firearms* at 15.

[51] *ATF Annual Report 1997* at 18.

[52] *Id*.

[53] ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999*), *National Report* at 51 (Nov. 2000) ("*Crime Gun Trace Reports (1999)*").

[54] *Id*.

End Notes

[55] U.S. Department of Treasury, *ATF Accountability Report 2000* at 10.

[56] U.S. Department of Justice, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* at 24 (July 2004).

[57] *Id*.

[58] *Id*.

[59] Presidential Memo on Youth Crime Gun Interdiction (July 8, 1996), *available at* http://www.clintonfoundation.org/legacy/070896-presidential-memo-on-youth-crime-gun-interdiction-initiative.htm.

[60] *See* ATF, *The Illegal Youth Firearms Market in 17 Communities* (1997).

[61] *See* ATF Press Release,"Youth Crime Gun Interdiction Initiative Expansion for Fiscal Year 2003," (July 25, 2002).

[62] *See* U.S. Treasury Press Release, "Treasury Releases Report on 1999 Crime Gun Traces," (Nov. 30, 2000).

[63] *See Crime Gun Trace Reports (1999)* at 51.

[64] ATF, *The Illegal Youth Firearms Market in 27 Communities* (1998) at 14 (emphasis in original).

[65] ATF, *Youth Crime Gun Interdiction Initiative*, *Crime Gun Trace Reports (2000)* National Report at ix (July 2002) ("*Crime Gun Trace Reports (2000)*").

[66] *Id*.

[67] *See, e.g*., ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (2000) at 11 (although federally licensed dealers were involved in the smallest proportion of 1,530 trafficking investigations from 1996 to 1998, they accounted for nearly 80% of diverted firearms).

[68] *Supra* note 27 at 293-4.

[69] *Commerce in Firearms* at 21.

[70] *Id*.

[71] *See supra* note 21.

[72] *See Crime Gun Trace Reports (2000)* at ix.

[73] *Supra* note 27 at 300.

[74] *See* Glenn L. Pierce, et al., *The Identification of Patterns of Firearms Trafficking: Implications for Focused Enforcement Strategies*, Northeastern University (1995).

[75] *Id*. at ii.

[76] *Id*. at Table 5.

[77] *See* Report of Sen. Charles Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes* (June 1999).

[78] Pawnbrokers, as well as retail dealers, are included in this figure.

[79] *See Commerce In Firearms* at 2.

[80] ATF Press Release, "Treasury, ATF Release Firearms Report, Gun Trafficking Actions," (Feb. 4, 2000).

[81] *Id*.

[82] *See* DOJ, *Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy* (2001).

[83] *Id.* at 34.

[84] *Id*.

[85] *Id*.

[86] Accessible at http://www.gunlawsuits.org/features/reports/index.php#sg.

[87] *See* Americans for Gun Safety, *Selling Crime* (2004).

[88] *See* ATF, *YCGII, Crime Gun Trace Reports* (New York) (2000) at 7 (July 2002).

[89] *See* ATF, *The Illegal Youth Firearms Market in 27 Communities,* Part II (Oct. 1998).

[90] *See Crime Gun Trace Reports (1999)* at 37.

[91] *See* Daniel Webster, et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 Injury Prevention 184 at 184 (2001).

[92] *See* Glenn Pierce, et al., *The Characteristics and Dynamic of Crime Gun Markets: Implications for Supply-Side Focused Enforcement Strategies* (Sept. 2003) at 19.

[93] In 2004, Virginia amended the legislation to, among other things, allow holders of Virginia concealed-handgun permits to purchase more than one handgun a month. *See* Va. Code Ann. § 18.2-308.2:2(P)(2)(h).

[94] *See* Douglas Weil & Rebecca Knox, *Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking* at 2 (1997).

[95] *Id*.

[96] *Id*. at 9.

[97] *Supra* note 27 at 306.

[98] *See* A. Freedman, *Fire Power: Behind the Cheap Guns Flooding the Cities Is A California Family*, Wall Street Journal, Feb. 28, 1992.

[99] *See Crime Gun Trace Reports (2000)* at x.

[100] *Id*. at xii.

[101] *See Cal. Penal Code* § § 12125-33.

[102] *See Firepower: Assault Weapons in America*, Cox Newspapers, 1989.

[103] ATF, *Assault Weapons Profile* at 19 (1994).

[104] *Id*. at 19.

[105] *See* Legislative Hearing on the "Public Safety and Recreational Firearms Use Protection Act," U.S. House of Representatives Judiciary Subcomm. on Crime and Criminal Justice, 103rd Cong. (Apr. 25, 1994) (statement of John W. Magaw, Director, ATF).

[106] H.R. Rep. No. 102242, at 203 (1991).

[107] H.R. Rep. No. 103-489, at 12 (1994).

[108] Jeffrey Roth and Christopher Koper, *Impacts of the 1994 Assault Weapons Ban: 1994-1996* (U.S. Dep't of Justice National Institute of Justice 1999) at 1, 6.

In 2004, Koper submitted to the Justice Department an updated study of the ban which assessed its impact during the years 1994-2003. The study found that assault weapons, as a percentage of total crime gun traces, fell 70% from 1992-93 to 2001-02, while the number of total guns traced to crime increased almost 200% during that same period. Christopher Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence*, 1994-2003 (July 2004) at 44.

[109] *See* Brady Center to Prevent Gun Violence, *On Target: The Impact of the 1994 Federal Assault Weapons Act* at 7 (2004).

[110] *Id.* at 7-9.

[111] David Olinger, *Crime-gun records barred*, The Denver Post, July 19, 2004

[112] *See N.A.A.C.P. v. AccuSport, Inc.*, 271 F.Supp.2d 435, 504 (2003).

[113] *Id*. at 510.

[114] *See* Laura Meckler, *Gore Highlights NRA Tape; Bush Downplays It*, Philadelphia Inquirer, May 5, 2000 (quoting Kayne Robinson, NRA First Vice President "If we win we'll have a president . . . where we work out of their office.").

[115] *Commerce in Firearms* at 3.

[116] *Id.* at 2.

[117] *Firearms Commerce in the United States (2001-2002)* at 7.

End Notes

[118] *See* http://www.atf.gov/pub/index.htm#Firearms, accessed Feb. 24, 2006.

[119] *See* http://www.atf.gov/pub/index.htm#arson, accessed Feb. 24, 2006.

[120] *See, e.g.*, California Rifle and Pistol Association, Inc., press release, Sept. 2, 2004.

[121] ATF, Regulatory Actions – *Report to the Secretary on Firearms Initiatives* at i (Nov. 2, 2000).

[122] *Id.* at iii.

[123] *Id.* at 7.

[124] *Id.* at 10.

[125] *See, e.g.*, Trader Sports' Response to Opposition to Motion for Summary Judgment, *California v. Arcadia Machine & Tool, Inc.,* No. 4095 (Superior Court of California) (Feb. 18, 2003).

[126] *See* Garen J. Wintemute, *Relationship Between Illegal Use of Handguns and Handgun Sales Volume*, 284 JAMA 566 (2000).

[127] *Id*.

[128] *See* Wintemute, et al., *Risk Factors Among Handgun Retailers for Frequent and Disproportionate Sales of Guns used in Crime*, 11 Injury Prevention 357 (2005).

[129] *See* Weil & Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759 (1996).

[130] Cox Newspapers, *Firepower: Assault Weapons in America* (1989).

[131] Chicago was one of 33 cities and counties that filed civil lawsuits against the gun industry during the period 1998-2002. For detailed reports on these cases, *see* www.gunlawsuits.org.

[132] In one other notable instance, a federal court found that ATF had unjustifiably withheld multiple handgun sale information under FOIA. In 1995, the Center to Prevent Handgun Violence (now the Brady Center) submitted a FOIA request for reports on multiple handgun sales made by gun dealers in four Southern states for the years 1993 and 1994. ATF produced some of the reports, but withheld the serial numbers of the guns involved and the identities of the dealers who had made the sales. ATF argued that release of dealers' identities could subject them "to unwarranted criticism and harassment." ATF's Memorandum in Support of Its Motion for Summary Judgment, *Center to Prevent Handgun Violence v. Treasury*, No. 96-1590 D.D.C. (Dec. 23. 1996). The court rejected this argument, finding that "gun sellers have no privacy interest in the contents of multiple sales reports. . . ." *Center to Prevent Handgun Violence v. U.S. Dept. of Treasury*, 981 F. Supp. 20, 23 (D.D.C. 1997). In October 1997, the court ordered that the data be released. It later ordered ATF to pay the plaintiff $180,266 in attorneys fees. *See Center to Prevent Handgun Violence v. U.S. Dept. of Treasury*, 49 F. Supp. 2d 3 (D.D.C. 1999).

[133] 5 U.S.C. § 552(b)(7)(A).

[134] *City of Chicago v. U.S. Dept. of Treasury*, 297 F.3d 672 (7th Cir. 2002).

[135] *City of Chicago v. U.S. Dept. of Treasury*, 287 F.3d 628, 635 (7th Cir. 2002).

[136] *Id*. at 637.

[137] *U.S. Dept. of Treasury v. Chicago*, 537 U.S. 1018 (2002).

[138] *Istook Goes Down Cheap for the NRA*, July 10, 2002, accessed at www.buzzflash.com/editorial/2002/01/10_Istook.html.

[139] *See* Pub. L. No. 108-7, 117 Stat. 11, 473 (2003).

> No funds appropriated under this Act or any other Act with respect to any fiscal years shall be available to take any action based upon any provision of 5 U.S.C. 552 [FOIA] with respect to records collected or maintained pursuant to 18 U.S.C. 846(b), 923(g)(3) [multiple sales data] or 923(g)(7) [crime gun trace data] or provided by Federal, State, local or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing or a firearm, except that such records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed under 5 U.S.C. 552 prior to the date of the enactment of this Act.

[140] *See, e.g., Sacrificing Legislative Integrity at the Altar of Appropriations Riders: A Constitutional Crisis*, 21 Harv. Envtl. L. Rev. 457 (1997).

[141] *Id.*

[142] *Id.*

[143] *See* Pub. L. 95-429, 92 Stat. 1002 (Oct. 10, 1978).

[144] *See* Pub. L. No. 108-447, § 615, 118 Stat. 2809, 2915 (Dec. 8, 2004).

[145] Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 53 (Jan. 23, 2004).

> No funds appropriated under this or any other Act may be used to disclose to the public the contents of any portion thereof any information required to be kept by licensees pursuant to section 923(g) of title 18, or required to be reported pursuant to paragraphs (3) and (7) of section 923(g) of title 18, except that this provision shall apply to any request for information made by any person or entity after January 1, 1998.

The reference to requests made after January 1, 1998, was meant to ensure that it would prohibit Chicago's request specifically.

[146] *See* Juliet Eilperin, *Firearms Measure Surprises Some in GOP*, The Washington Post at A19 (July 21, 2003).

[147] *Id.*

[148] *Id.*

[149] *City of Chicago v. U.S. Dept. of Treasury,* 384 F. 3d 429 (2004).

[150] *See* Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2859, 2859-60 (Dec. 8, 2004).

> No funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), to anyone other than a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure and not for use in any civil action or proceeding other than an action or proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or a review of such an action or proceeding, to enforce the provisions of chapter 44 of such title, *and all such data shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding* other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the provisions of that chapter, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title).

(emphasis added).

[151] *City of Chicago v. U.S. Dept. of Treasury,* 423 F. 3d 777, 782 (2005).

[152] *See* Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, 119 Stat. 2290, 2295-06 (Nov. 22, 2005).

> No funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), to anyone other than a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure and not for use in any civil action or proceeding other than an action or proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or a review of such an action or proceeding, to enforce the provisions of chapter 44 of such title, and all such data shall be immune from legal process and shall not be subject to subpoena or other discovery, *shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other*

End Notes

> *evidence be permitted based upon such data*, in any civil action pending on or filed after the effective date of this Act in any State (including the District of Columbia) or Federal court or in any administrative proceeding other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the provisions of that chapter, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title).

(emphasis added).

153 271 F. Supp. 2d 435 (E.D.N.Y. 2003).

154 *Id*. at 450.

155 For example, H.R. 5005 also would repeal the provision of the Brady Act requiring notice of multiple sales be sent to state or local police. As noted earlier, this provision both requires notice to be sent and that the records be destroyed by the state or local authorities within 20 days. Instead of making the notice requirement meaningful by deleting the record destruction requirement, H.R. 5005 would repeal the notice requirement altogether.

156 E-mail to congressional staff enclosing NRA Federal Affairs Office "talking points" and "section-by-section summary" on H.R. 5005, Mar. 2006.

157 *See, e.g,* Bonnie Pfister, *Lawmakers Call On Feds To Release Gun Data*, AP, March 27, 2006.

158 Gregory Hladky, *Funding hampers gun control,* New Britain Herald, Feb. 22, 2006.

159 Treasury/ATF Press Release, Firearms Report, Gun Trafficking Actions, Feb. 4, 2000.

160 ATF, *YCGII, Crime Gun Trace Reports, National Report* (2000) at 1.

161 *See* Appropriations Act, 2006 at 2296.

162 *Crime Gun Trace Reports (2000)* at 1 (emphasis in original).

163 Legislative Hearing on the "Firearms Corrections and Improvements Act," H.R. 5005, U.S. House of Representatives Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, 109th Cong. (Mar. 28, 2006) (statement of Michael R. Bloomberg, Mayor of New York City).

164 *See supra* note 111

165 Letter from Jerry Flynn, Chair, Law Enforcement Steering Committee, to Congress, January 16, 2004.

166 *See* Report of Sen. Charles Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes* at 1(June 1999).

167 Telephone interview conducted Mar. 15, 2006

168 Telephone interview conducted Apr. 4, 2006.

Appendix

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

OMB No. 1140-0043

National Tracing Center Trace Request

FOR NTC DATA ENTRY ONLY

Note: * - Required Entry Field *(Must be completed for trace processing)*
** - Required Entry With Listed Data Response *(See back for codes and options)*

Part I - Trace Initiation Information

1a. Date of Request | 1b. Priority** Routine ☐ **Urgent** *(Justification required)* ☐ For NTC Data Entry Only ☐

Justification

1c. Special Instructions

Part II - Crime Code Inforamtion

2a. Gang Involved? ☐ Gang Name | 2b. Project Code**: | 2c. NCIC Crime Code**:

Juvenile Involved? ☐ Youth Crime Gun ☐ Entered in NIBIN? ☐ NIBIN No.:

Part III - ATF Agent Requesting Trace

3a. Organization Code* | 3b. Phone Number: Fax Number: | 3c. ATF Special Agent's Name *(Last, first, middle)*

3d. Badge Number | 3e. ATF Case Number | 3f. Field Office

Part IV - Other Agency Requesting Trace

4a. ORI Number* | 4b. Phone Number: Fax Number: | 4c. Other Agency Officer's Name *(Last, first, middle)*

4d. Badge Number | 4e. Other Agency Case Number | 4f. Department/Unit

4g. Mailing Address

Part V - Firearms Information

5a. Serial Number* | Obliterated ☐ Attempt to Raise ☐ | 5b. Firearms Manufacturer*

5c. Type** | 5d. Caliber* | 5e. Model* | 5f. Country of Origin* *(Importer required if other than U.S.)*

5g. Importer* | 5h. Additional Markings*

Part VI - Possessor Information

6a. Name *(Last, First, Middle, Suffix)* | Criminal History ☐

Alias *(AKA) (Last, First, Middle, Suffix)* | AKA Date of Birth

6b. Height | 6c. Weight | 6d. Sex | 6e. Race *(Check one or more boxes)* American Indian or Alaskan Native ☐ Native Hawaiian or Other Pacific Islander ☐ Asian ☐ Black or African American ☐ Hispanic ☐ White ☐ | 6f. Address - Route Number

6g. Apt. Number | 6h. Street No. | 6i. Direction | 6j. Street Name | 6k. City

6l. County | 6m. State | 6n. Zip Code *(Nine Digit Number)* | 6o. Country

6p. Date of Birth | 6q. Place of Birth | 6r. Possessor's ID Number | 6s. ID Type/State

ATF E-Form 3312.1
Revised October 2003

Part VII - Associate Information

7a. Name *(Last, First, Middle, Suffix)*				Criminal History ☐
Alias *(AKA) (Last, First, Middle, Suffix)*				AKA Date of Birth
7b. Height	7c. Weight	7d. Sex	7e. Race *(Check one or more boxes)* Native Hawaiian or Other ☐ American Indian or Alaskan Native ☐ Pacific Islander Asian ☐ Black or African American ☐ Hispanic ☐ White ☐	7f. Address - Route Number
7g. Apt. Number	7h. Street No.	7i. Direction	7j. Street Name	7k. City
7l. County	7m. State	7n. Zip Code *(Nine Digit Number)*	7o. Country	
7p. Date of Birth	7q. Place of Birth	7r. Associates's ID Number	7s. ID Type/State	

Part VIII - Firearm Recovery Information

8a. Recovery Date*	8b. Route Number	8c. Apt. Number	8d. Street Number	8e. Direction	8f. Street Name
8g. City*			8h. State*	8i. Zip Code	
8j. Additional Information					

INSTRUCTIONS FOR COMPLETING ATF FORM 3312.1 - NATIONAL TRACING CENTER TRACE REQUEST

General Instructions - *Required Data Entry Fields And **Available Options/Codes Listed For Reference

The information requested on this form is needed to initiate a trace request. All fields marked with an asterisk (*) indicate required entry data fields. All areas so marked must be completed in order to effectively and expeditiously execute the trace request. Fields marked with a double asterisk (**) indicate areas of required data entry with available options and codes listed for reference *(refer to lists below to determine the appropriate entry and correct nomenclature)*.

REQUIRED ENTRY FIELDS INCLUDE:

Question 1b** - *(Justify Urgent Trace)* See Priorities listed below
Question 2b & 2c**** - Include Project Code and list NCIC Crime Code
Question 3a* - Office Organizational Code *(For Use by ATF Inspector Only)*
Question 4a* - ORI - NCIC Originating Requestor Identifier
Question 5a*, 5b*, 5c, 5d*, 5e*, 5f*, 5g* & 5h*** - Verify Data
Question 8a*, 8g* & 8h* - Confirm Recovery data to be submitted

Question 1B - Trace Priority *(Entered Numbered Qualifier to Justify Urgent Trace Request)*

NOTE: An urgent trace is deemed necessary when the violations are significant and circumstances warrant or require that the firearm be traced without undue delay. Examples of this are: to hold a suspect, provide probable cause, officer and public safety, etc. The following are examples of significant violations.

1 - Assault	**3 - Kidnapping**	**5 - Rape/Sex**	**7 - Terrorist Threat**
2 - Bank Robbery	**4 - Murder/Suicide**	**6 - Terrorist Act**	**8 - Other** *(specify circumstance)*

Question 2B - Project Codes *(Enter all codes that apply)*

AIS	- Adult in School	**OBL**	- Obligated Serial Number	**MUN**	- Murder and Narcotics *(Ages 25 & older)*
GNG	- Gang Related	**ORG**	- Organized Crime	**MIL**	- Militia Related Project
JSS	- Juvenile & School *(Ages 17 & under)*	**SCH**	- School Involvement *(No Possessor)*	**YCG**	- Youth Crime Gun
JVV	- Juvenile & Violence *(Ages 17 & under)*	**SEN**	- Sensitive/Significant	**YIS**	- Juvenile and School *(Ages 18 - 24)*

Question 2C - NCIC Crime Codes *(Enter one code only. For complete listing refer to NCIC Manual)*

0199 Sovereignty	**1311** Aggravated Assault *(Police)*	**2999** Damage Property	**5399** Public Peace
0299 Military	**1399** Assault	**3599** Dangerous Drugs	**5499** Traffic Offense
0399 Immigration	**1499** Abortion	**3699** Sex Offense	**5599** Health - Safekeeping
0907 Homicide *(Police Officer)*	**1602** Threat *(Terroristic)*	**3799** Obscenity	**5699** Civil Rights
0911 Homicide *(Suicide)*	**1702** Material Witness *(Federal)*	**3802** Cruelty Toward Child	**5799** Invade Privacy
0999 Homicide *(Street)*	**2099** Arson	**3803** Cruelty Toward Spouse	**5899** Smuggling *(Customs)*
1099 Kidnapping	**2199** Extortion	**3999** Gambling	**5999** Election Laws
1101 Rape	**2299** Burglary	**4099** Commercial Sex	**6099** Antitrust
1199 Sexual Assault	**2399** Larceny	**4199** Liquor	**6199** Tax Revenue
1201 Robbery *(Business)*	**2411** Unauthorized Use of Auto	**4899** Obstruction Police	**6299** Conservation
1204 Robbery *(Street)*	**2499** Stolen Vehicle	**4999** Flight - Escape	**7099** Crimes Against Person
1211 Bank Robbery	**2599** Counterfeiting	**5099** Obstruct	**7199** Property Crimes
1212 Car Jacking	**2699** Fraud	**5199** Bribery	**7299** Morals
1299 Robbery	**2799** Embezzlement	**5211** Explosives	**7399** Public Order Crimes
1301 Aggravated Assault *(Family)*	**2899** Stolen Property	**5212** Possession of Weapon	**8100** Escape *(Juvenile)*

Question 5C - Type of Firearm

C = Combination - A weapon designed to be fired from the shoulder which is fitted with both a rifled barrel 16" or greater in length and a smooth-bore barrel 18" or greater in length with an overall length of 26" or more.

M = Machine Gun - A weapon of handgun, rifle or shotgun configuration designed to automatically fire more than one shot, without manually reloading, by a single function of the trigger.

P = Pistol - A weapon which includes single shot and both single or double-action semiautomatic handguns fitted with a barrel(s) with an integral chamber design or having a chamber(s) permanently aligned with the barrel.

PR= Pistol/Revolver - A weapon which includes both single and double-action handguns having a breechloading chambered cylinder designed with a repetitive function based on rotation.

PD= Pistol/Derringer - A weapon which includes single barrel, superposed *(over/under)* and multi-barrel configuration handguns based on a hinged or pivoting barrel small frame pistol design.

R = Rifle - A weapon designed to be fired from the shoulder which discharges a single projectile through one or more rifled barrels 16" or greater in length with an overall length of 26" or more.

S = Shotgun - A weapon designed to be fired from the shoulder which discharge a single or multiple projectiles through one or more smooth-bore barrels 18" or greater in length with an overall length of 26" or more.

Paperwork Reduction Act

This request is in accordance with the Paperwork Reduction Act of 1995. The information collection is used by Federal, State and local law enforcement officials to request that the Bureau of Alcohol, Tobacco, Firearms and Explosives trace firearms used or suspected to have been used in crimes.

The estimated average burden associated with this collection of information is 6 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Notes

A Project of
the Brady Center to Prevent Gun Violence

1225 Eye Street NW
Washington DC 20005

Trading in Death

Profile Of A Rogue Gun Dealer:

TRADER SPORTS

San Leandro, California

BRADY CENTER TO PREVENT GUN VIOLENCE
MAY 2006

ACKNOWLEDGEMENTS

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project *Gun Industry Watch*, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

Trading In Death – Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California, was written by Daniel R. Vice. If you have questions about any part of this report, or would like a copy, please write to *Gun Industry Watch*, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Washington D.C. 20005. The report is also available at www.bradycenter.org and www.gunlawsuits.org.

Copyright © 2006 by Brady Center to Prevent Gun Violence
No part of this publication may be reproduced without prior permission.

EXECUTIVE SUMMARY

Trader Sports of San Leandro, California is one of the "worst of the worst" gun dealers in the nation. Law enforcement has traced thousands of crime guns to its store and it has been cited repeatedly for violations of federal law.[1] Trader Sports' owner, Anthony Cucchiara, has been charged with breaking firearms laws regulating gun dealers for almost as long as those laws have existed, with violation citations beginning in 1970, two years after the federal Gun Control Act imposed legal requirements relating to gun sales and record keeping for licensed gun dealers.[2]

The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") first attempted to revoke Cucchiara's license in 1978 after years of warnings to correct hundreds of legal violations of the law.[3] Based on Cucchiara's repeated violations, ATF refused to renew his expiring license in 1978.[4] ATF then spent years fighting off Cucchiara's efforts to get his license back in the courts, successfully defending their actions all the way to the Supreme Court. Then **suddenly and inexplicably, in 1983, the federal government agreed to give him his license back on a promise to obey the law**. Since then, Cucchiara has sold thousands of guns traced to crimes.

After years of inspections revealing a multitude of continuing legal violations, ATF issued a notice of revocation of Trader Sports' federal firearms license in 2004, **citing it for "thousands of violations" of federal law**.[5] License revocations are a rare event. In 2003, for example, ATF inspectors found violations at 1,812 gun dealers, averaging over 80 violations per dealer.[6] Yet ATF issued license revocation notices for only 54 dealers that year, due in part to weak federal gun laws generally requiring years of repeated violations before a license may be revoked.[7] Despite ATF's notice of license revocation, Trader Sports is still operating, due to special provisions in federal gun laws that allow it, and any other gun dealer, to stay open while appealing ATF's notice of license revocation. Trader Sports' license revocation is now scheduled to occur on June 1, 2006.[8]

Cucchiara has repeatedly sued the federal government in an attempt to evade having his license revoked, claiming in a federal lawsuit, for example, that the government was engaged in a conspiracy "to vex, annoy and harass [him] in his sporting goods business and individual capacity."[9] In the latest federal lawsuit brought by Trader Sports against ATF, the gun shop is challenging its license revocation as "an unfair campaign to intimidate firearm purchasers and remove the licenses of dealers based on hyper-technical and inadvertent violations of the federal Gun Control Act," and has asked a federal court to postpone the revocation even longer.[10] The U.S. District Court for the Northern District of California will decide whether to postpone revocation of the store's federal firearms license at a hearing on May 25, 2006.

On March 30, 2006, the Brady Center to Prevent Gun Violence launched a multi-year Campaign Against Illegal Guns to strengthen law enforcement tools to crack down on corrupt gun dealers.[11] **Congress is currently considering legislation, H.R. 5092, that would gut ATF's ability to revoke the licenses of dealers like Trader Sports**. Trader Sports has encouraged Congress to enact H.R. 5092, which could allow the gun shop to continue operating, despite revocation of its license, through years of litigation.[12] Yet, as the Department of Justice

states, "If a decision to revoke a license in this circumstance, on this record, does not justify denial of a stay [requested by Trader Sports to postpone its license revocation], the regulatory scheme will be rendered powerless to stop rogue licensees."[13] Congress should strengthen law enforcement's ability to crack down on rogue dealers, rather than further weakening gun laws. Below are highlights of Trader Sports' crime gun sales and legal violations:

- Trader Sports is the **second largest supplier of crime guns** of any retailer in the nation. In 2005, 447 crime guns were traced to Trader Sports. Only one other dealer, Badger Mountain of West Milwaukee, had more crime guns traced to it in 2005 than Trader Sports.[14]

- In 2005, law enforcement recovered crime guns sold by Trader Sports at an average rate of **more than one per day**.[15]

- Gun dealers like Trader Sports are responsible for most guns recovered in crimes. Just 1.2% of gun dealers account for 57% of all crime guns nationwide.[16]

- In 2000, Trader Sports supplied 46% of crime guns recovered in Oakland.[17]

- Trader Sports had trace requests amounting to approximately 12% of its sales figures from 2003-2005 – meaning an average of **one of every eight guns sold by Trader Sports was recovered in crime**. Gun retailers in California with similar sales volume had far fewer traces than Trader Sports.[18]

- In 2005, law enforcement recovered 279 crime guns in the San Francisco Bay area that had been supplied by Trader Sports. The recovery site of these firearms is shown on a map at Appendix A. In 2004, law enforcement recovered 290 crime guns in the Bay area sold by Trader Sports, and in 2003, law enforcement recovered 252 crime guns in the Bay area sold by Trader Sports.[19]

- From 2003-2005, 235 crime guns moved from Trader Sports to use in crime within three years of sale, a strong indicator that the guns were trafficked directly out of the store.[20]

- In 2003, ATF cited Trader Sports for massive violations of federal law, including failing to account for at least 1,723 guns reported as acquired by Trader Sports but missing from its inventory.[21]

- ATF also, in 2003, uncovered numerous other violations of federal law by Trader Sports, including illegal sales of semi-automatic assault weapons with high-capacity magazines, selling guns to purchasers who identified themselves as under indictment for a felony or who failed to state on a federal firearms purchase form whether they were a fugitive from justice, and failing to properly respond to law enforcement attempts to trace crime guns that originated from the gun shop.[22]

TRADING IN DEATH – PROFILE OF A ROGUE GUN DEALER:
TRADER SPORTS, SAN LEANDRO, CALIFORNIA

Trader Sports, a gun dealer in San Leandro, California, is one of the "worst of the worst" gun dealers in America. In 2005, Trader Sports was the second largest supplier of crime guns of all gun retailers in the nation.[23] That year, 447 crime guns were traced to Trader Sports.[24]

The Brady Center to Prevent Gun Violence has launched a multi-year Campaign Against Illegal Guns to strengthen law enforcement tools to crack down on gun dealers like Trader Sports.[25] Weak federal gun laws have severely hampered ATF's ability to prosecute and revoke the licenses of rogue gun dealers, by requiring proof of repeated "willful" violations of the law over many years before ATF can shut down a corrupt dealer.[26] Congress is currently considering legislation, H.R. 5092, that would gut ATF's ability to revoke the licenses of dealers like Trader Sports. Trader Sports has encouraged Congress to enact H.R. 5092, which could allow the gun shop to continue operating, despite revocation of its license, through years of litigation. Congress should reject the gun lobby's efforts to protect rogue gun dealers like Trader Sports and instead strengthen law enforcement's ability to shut down dealers who violate the law.

History of Anthony Cucchiara and Trader Sports' Thousands of Violations of Federal Law

Trader Sports President Anthony Cucchiara

Anthony Cucchiara is the principal shareholder and president of Trader Sports, Inc., (doing business as "The Traders").[27] The gun shop is located at 685 East 14th Street, San Leandro, California.[28]

Anthony Cucchiara began operating as a gun dealer in 1958, as sole proprietor of "The Traders Sporting Goods."[29] In 1968, Congress enacted the federal Gun Control Act, requiring licensed dealers to keep records of firearm transactions and authorizing federal officials to inspect dealers' records and inventory.[30] Gun dealers are required to keep accurate firearms "acquisition and disposition" records, which track all firearms acquired and sold or disposed of by the dealer.[31] Accurate records are necessary to allow law enforcement to trace firearms that have been recovered in crime from sale by the dealer to a retail purchaser.

By 1970, the federal government had found legal violations at Cucchiara's gun shop and sent him "irregularities statements" reflecting, "in the aggregate, hundreds of violations of legal requirements, including repeated failure to record the acquisition and disposition of firearms and scores of sales of firearms to ineligible purchasers."[32]

> "[I]t's the mother and father, or people on welfare that aren't keeping their guns locked…."
>
> --Trader Sports President Tony Cucchiara, explaining why he thinks his store is linked to high numbers of crime gun sales[33]

Cucchiara Loses His Federal Firearms License

In 1973, the federal government warned Cucchiara that, based on his repeated violations of federal law, any future violations would be considered "willful," subjecting him to possible prosecution and revocation of his federal firearms license.[34] After this warning, a follow-up investigation of Cucchiara's shop uncovered "additional sales to ineligible purchasers, unreported multiple handgun sales [sales of more than one handgun in a five-day period, and a recognized indicator of gun trafficking], repeated failure to record the acquisition and disposition of firearms and a loss without reasonable explanation of 200 firearms."[35] When Cucchiara attempted to renew his federal firearms license despite these repeated violations of the law, on May 2, 1978, the government issued a Notice of Denial of his license renewal application.[36] Cucchiara requested and received a hearing on the denial on June 27, 1978.[37]

On September 14, 1978, ATF Regional Regulatory Administrator Charles D. Foster issued a final Notice of Denial of Cucchiara's license renewal application.[38] Cucchiara responded by seeking *de novo* review of ATF's decision in federal district court.[39] *De novo* review requires a court to reconsider an administrative agency's findings on a new evidentiary record, giving no weight to the findings of the agency.[40] On October 19, 1979, U.S. District Court Judge Samuel Conti rejected Cucchiara's appeal, granting summary judgment to the government.[41] The court ruled:

> After a careful *de novo* review of the entire record, the court finds on the basis of the uncontroverted evidence that plaintiff, since at least 1972, has been fully aware of the legal obligations of federal firearms licensees; that **during the life of his license he failed on many scores of occasions to observe legal requirements***;* that the nature and extent of his noncompliance with legal requirements, especially in the area of sales to ineligible purchasers where the public interest in strict, painstaking compliance is particularly great**, evince gross disregard of or indifference to legal requirements**; and the Secretary's refusal to renew his license was therefore authorized….[42]

Cucchiara asked the court to postpone its judgment pending appeal, but the court denied Cucchiara's request.[43]

Cucchiara Attempts To Evade Sanctions By Transferring Operations to a Friend

Faced with the loss of his federal firearms license due to hundreds of violations showing a "gross disregard of or indifference to legal requirements," Cucchiara attempted to evade the government's sanction by transferring operations of his store to "long time employee, Everett Studley."[44] On December 3, 1979, Studley formed a corporation called Studley Arms and began selling firearms without a federal firearms license, taking over operations of Cucchiara's gun shop.[45] On December 4, 1979, Studley belatedly applied for and obtained a one-year federal firearms license.[46] After a year, the federal government denied Studley's renewal application and Studley responded by seeking a license instead in the name of his corporation, "Studley

Arms, Inc."[47] On March 17, 1981, ATF issued a Notice of Denial to Studley Arms, Inc., refusing to issue a license to the corporation.[48] Studley filed an administrative appeal through ATF challenging that license revocation, and ATF ruled against Studley on June 25, 1981.[49]

> Trader Sports President Tony Cucchiara's attempt to evade sanctions by transferring his shop to a friend after Cucchiara's federal license was revoked was a "*subterfuge to allow Mr. Cucchiara to improperly continue in the firearm business*…."
>
> -- U.S. District Court Judge Eugene Lynch[52]

While attempting to transfer operations of his store to Studley, Cucchiara also appealed to the U.S. Court of Appeals for the Ninth Circuit, asking the court to overturn the federal district court's decision refusing to reinstate his firearms license.[50] On July 30, 1981, the Ninth Circuit upheld the government's refusal to renew Cucchiara's license.[51] In his appeal, instead of "disput[ing] the factual accuracy of the administrative record [describing his violations,] Cucchiara implicitly admit[ted] to hundreds of violations of the Bureau's legal requirements, after multiple warnings."[53] Yet Cucchiara claimed that "he has made costly, good faith efforts to comply with all his obligations as a licensee ... (and) that his noncompliance was excusable, either because it was inevitable, due to the size and nature of his operation, or merely inadvertent."[54] The court rejected Cucchiara's attempt to explain away his repeated violations of the law, noting that he was warned in 1973 that his violations would subject him to sanctions, "[y]et, with this knowledge, he failed to abide by these requirements" of federal law.[55] Having lost in the Ninth Circuit, Cucchiara petitioned the U.S. Supreme Court to hear his case, but the Court refused to consider his appeal.[56]

After Numerous Court Losses, Cucchiara Again Sues ATF, Alleging A Government Conspiracy To Violate His Civil Rights

Faced with ATF's refusal to allow Cucchiara to continue operating and also its refusal to allow him to evade sanctions by transferring operations to Studley, Cucchiara and Studley filed federal lawsuits against ATF.[57] Studley's suit asked the court to overturn ATF's decision to reject firearms license applications for Studley and Studley Arms.[58] United States District Court Judge Eugene Lynch rejected Studley's suit, holding:

> Upon review of the record, this Court finds substantial, if not overwhelming, evidence that Mr. Studley was not acting as the sole proprietor, but rather as a **subterfuge to allow Mr. Cucchiara to improperly continue in the firearm business**.… It is clear that BATF's refusal to renew Mr. Studley's license and its denial of the application of Studley Arms, Inc. were proper.[59]

Cucchiara also filed suit, claiming civil rights violations based on allegations that government officials were engaged in a conspiracy "to vex, annoy and harass plaintiff Cucchiara in his sporting goods business and individual capacity."[60] In response, ATF stated that it would allow Cucchiara to regain his license only if he:

> concedes that his former Federal Firearms License was not renewed in 1979 because of inadequate and improper firearm records; and upon receipt of a Federal Firearms License after April 14, 1983, [agrees that] he will fully comply with all recordkeeping requirements imposed by law and regulation on such licensee.[61]

Both Cucchiara and Studley agreed to these conditions in writing, and in 1983, ATF issued federal firearms licenses to each in exchange for Cucchiara dropping his lawsuit.[62]

Cucchiara Continues Supplying Hundreds Of Guns To Criminals

Following ATF's decision to reissue Cucchiara's federal firearms license in 1983, Trader Sports continued supplying hundreds of guns to criminals.[63] In a civil lawsuit brought by California municipalities against Trader Sports in 1999, a California Superior Court judge analyzed Trader Sports "high risk sales practices" and noted that "the California [crime gun] trace database shows that Traders had at least 710 gun traces between 1995 and 2001, or more than 100 per year."[64] The court also noted that:

> The national ATF [crime gun] database shows that **Traders was linked to 927 national crime gun traces** between 1989 and 1996, or more than 115 per year. **The high numbers of traces linked to Traders in these databases "are overwhelming indicators of gun trafficking"** given that the majority of FFLs [federally licensed firearms dealers] have no gun traces associated with them and that numerous federal reports indicate that the distribution of traces is strikingly disproportionate; a small percentage of dealers, including Traders, account for the majority of traces.[65]

Case Study – A Trader Sports Assault Weapon Kills A Man On His 29th Wedding Anniversary

In 1991, Trader Sports paid $400,000 to settle a suit filed by the widow of a man killed with an assault rifle bought at the store. The suit, *Ellingsen v. Trader Sports* (No. 654015-1, Super. Ct., Alameda Co.), alleged that the gun store violated federal law by selling the assault weapon, along with three ammunition magazine clips and 100 rounds of ammunition to a 19-year-old who could not produce identification required by federal law, and used a "straw purchaser" to complete the federal form. Less than a month later, on December 3, 1988, the buyer fired the rifle on the Nimitz freeway in California to make the car in front of him go faster. Larry Ellingsen, returning with his wife, Sharon, from their 29th wedding anniversary celebration was killed instantly. Sharon Ellingsen's suit against Trader Sports charged that the gun store's illegal gun sale led directly to her husband's death.

Cucchiara's "Thousands of Violations" Of Federal Law

In 2000, ATF conducted a random inspection of Trader Sports, and on June 27, 2000, ATF reported its inspection results to the gun shop.[66] The inspection revealed numerous

violations of federal law.[67] According to ATF, Trader Sports' acquisition and disposition records did not account for the disposition of firearms it sold and did not properly document its electronic records.[68] Trader Sports also failed to properly report multiple handgun sales – sales of more than one handgun in a five-day period, and a recognized indicator of gun trafficking – as required by federal law.[69]

In July and August 2002, ATF again inspected Trader Sports.[70] The inspection revealed numerous violations of federal law.[71] According to ATF inspectors, yet again, Trader Sports' acquisition and disposition records did not account for the disposition of firearms it sold.[72] Trader Sports also did not properly document its electronic acquisition and disposition records and failed to properly report multiple handgun sales as required by law.[73] On November 19, 2002, ATF warned Trader Sports of the consequences of continued illegal acts, stating:

> [Y]ou are reminded that Federal laws and regulations which govern the firearms industry are specific. Your continued operation under your license is contingent upon compliance with all applicable laws and regulations.… This letter serves as a warning to you that these violations are now part of your record and will be considered, should there be other violations in the future, for possible adverse action against your license to operate.[74]

On September 2, 2003, ATF conducted yet another inspection of Trader Sports, this time finding massive violations of federal law.[75] ATF found at least **1,723 firearms missing from Trader Sports' inventory** – not accounted for in either its physical inventory or its firearms disposition records.[76] An additional 141 guns were in Trader Sports' inventory but not accounted for in its acquisition records.[77]

ATF also charged Trader Sports with violating federal law pertaining to "multiple sales," which are sales of more than one handgun to a single buyer in a five-day period.[78] According to ATF, "multiple sales or purchases are a significant trafficking indicator" and "crime guns recovered with obliterated serial numbers [making them impossible to trace] are frequently purchased in multiple sales."[79] ATF inspectors found that Trader Sports sold 39 handguns in multiple sale transactions without alerting ATF and local law enforcement as required by law.[80]

Trader Sports also failed to respond to crime gun trace requests as required by federal law.[81] For example, on September 27, 2002, Trader Sports received a trace request for a Mossberg 12 gauge shotgun and responded that it had no record of receipt or disposition for the shotgun, making it untraceable to a purchaser.[82] Police had seized the shotgun from an accused heroin dealer in August 2002.[83] ATF inspectors searched Trader Sports' records in 2003 and found that the store had in fact acquired the shotgun on April 25, 2002, just months before it was recovered in crime.[84] Yet, Trader Sports evidently could not explain how a gun it acquired in April 2002 made its way to a crime scene in just a few months, apparently with no record of acquisition or sale or any theft report. Likewise, on May 3, 2004, Trader Sports received a trace request for a Bryco 9 mm caliber pistol,[85] a "junk gun" preferred by criminals. Trader Sports responded to the trace request, stating that the pistol was in fact still in its inventory.[86] Yet police had recovered the gun from a 14-year-old junior high school student who illegally

possessed it at a school.[87] Trader Sports' records confirmed that it acquired the pistol on February 23, 1996, yet it apparently had no record of sale and had not filed a theft report for the weapon.[88]

ATF inspectors also found that Trader Sports improperly transferred semi-automatic assault weapons with large capacity ammunition feeding devices to law enforcement officers 110 times without the legally required certification that the weapons were for law enforcement use only.[89] According to ATF, "before transfer of these firearms, the licensee is required to obtain certain information from the purchaser, under penalty of perjury, and a certification from a supervisor in the law enforcement agency on agency letterhead, in order to ensure the weapons are for official law enforcement use only."[90] ATF inspectors found that Trader Sports did not do so in all 110 instances.[91]

Example of a Semi-Automatic Assault Rifle – ATF Charged Trader Sports With Illegally Selling Dozens Of Assault Weapons

Federally licensed gun dealers are required to complete federal forms for every gun sale (on an ATF Form 4473), including verifying the purchaser's identity and certifying that the dealer has initiated a background check of the purchaser.[92] During the 2003 inspection of Trader Sports, ATF found 431 instances where the gun store "did not properly complete and maintain firearm transaction records."[93] For example, between August 2002 and August 2003, Trader Sports failed to verify gun buyers' addresses by checking them against the buyer's identification, as required by law, more than 200 times.[94] Also, in 32 instances the store transferred guns to legal aliens without required documentation showing that they met legal residency requirements.[95] ATF also cited Trader Sports for proceeding with a gun sale even though the purchaser failed to state whether the intended recipient of the gun was a fugitive from justice and for **allowing a sale even though a buyer stated that he was under "indictment or information" for a felony**.[96]

Based on ATF's inspectors finding massive violations of federal law, on July 29, 2004, ATF issued a Notice of Revocation of Trader Sports' federal firearms license.[97] A hearing appealing the notice of revocation was postponed after Trader Sports requested additional time to prepare for the hearing, and it was ultimately held on November 16-17, 2004.[98] ATF presented testimony from several witnesses, while Trader Sports declined to present any witnesses to testify at the hearing.[99] Both parties submitted evidence for consideration by ATF.[100] After considering all of the testimony and physical evidence, on December 23, 2005, ATF Director of Industry Operations Mary Lerch issued a Final Notice of Revocation of Trader Sports' License to Trader, with an effective revocation date of June 1, 2006.[101]

On February 22, 2006, Trader Sports requested that the effective date of the revocation be postponed while it pursued a lawsuit against ATF protesting the revocation in federal district court.[102] ATF declined to stay the revocation date.[103] Trader Sports then petitioned the federal district court for a stay of the license revocation, and the court is scheduled to hear this motion on May 25, 2006.

ATF Reveals Trader Sports As One Of The Nation's Leading Suppliers of Crime Guns

In opposing Trader Sports' request to continue operating despite its "thousands of violations" of federal law, ATF presented the federal district court with evidence showing the overwhelming danger that Trader Sports poses to the public.[104] ATF evidence showed that Trader Sports is the **second largest supplier of crime guns** of any gun retailer in the nation.[105] In 2005, 447 crime guns were traced to Trader Sports.[106] Only one other dealer, Badger Mountain of West Milwaukee, had more crime guns traced to it in 2005 than Trader Sports.[107] In 2005, law enforcement recovered crime guns sold by Trader Sports at an average rate of more than one per day.[108] Trader Sports has supplied 46% of all of the crime guns recovered in the Oakland, California.[109] These figures necessarily understate Trader Sports' contributions to the crime gun market, since not all guns used in crime are recovered, and not all recovered guns are traced by ATF.

ATF crime gun data shows that:

- Trader Sports is the second largest supplier of crime guns of any gun retailer in the nation – only one other gun retailer in the nation has more crime gun traces than Trader Sports
- In 2005, an average of more than one gun traced to Trader Sports was recovered in crime every day of the year

Additionally, ATF found that Trader Sports had trace requests amounting to approximately 12% of its sales figures from 2003-2005 – meaning an average of one of every eight guns sold by Trader Sports was recovered in crime.[110] In comparison, two other California dealers with similar sales volume had far fewer traces.[111] In 2005, law enforcement recovered 279 crime guns in the San Francisco Bay area that had been supplied by Trader Sports.[112] The recovery site of these firearms is shown on a map at Appendix A. In 2004, law enforcement recovered 290 crime guns in the Bay area sold by Trader Sports, and 252 crime guns in 2003.[113] From 2003-2005, 235 crime guns moved from Trader Sports to use in crime within three years of sale, a fast "time to crime" and a strong indicator that the guns were trafficked directly out of the store.[114] From 2003-2005, Trader Sports was unable to successfully respond to 19 crime gun traces initiated by law enforcement, while the largest retailer in California had just one unsuccessful trace in that time.[115]

Cucchiara Seeks Protection From Congress By Supporting H.R. 5092, A Gun Lobby Bill To Severely Weaken ATF

In court papers filed in his federal lawsuit, Cucchiara has claimed that ATF's attempt to revoke his license for repeated violations of federal law is "an unfair campaign to intimidate firearm purchasers and remove the licenses of dealers based on hyper-technical and inadvertent violations of the federal Gun Control Act…."[116] He urges Congress to enact pending legislation, H.R. 5092, which would gut ATF's authority to revoke licenses from federal firearms dealers.[117]

Cucchiara points out that the legislation would "strip [ATF] of any discretion with respect to stays of license revocation," allowing gun shops whose licenses have been revoked to stay in business through years of legal appeals.[118]

Federal law currently places severe restraints on ATF's ability to prosecute gun dealers or traffickers or revoke licenses from dealers who break the law. Even though ATF inspections often reveal scores of illegal acts by gun dealers, ATF rarely is able to revoke a dealer's federal firearms license. In 2003, ATF inspectors found violations at 1,812 gun dealers, averaging *over 80 violations per dealer*.[119] Despite this large number of dealers with multiple violations, ATF issued license revocation notices for only 54 dealers that year.[120] In part, this is due to the overly burdensome requirement that ATF prove a dealer "willfully" violated the law, requiring proof that the dealer not only broke the law but also knew that his or her conduct was unlawful.[121]

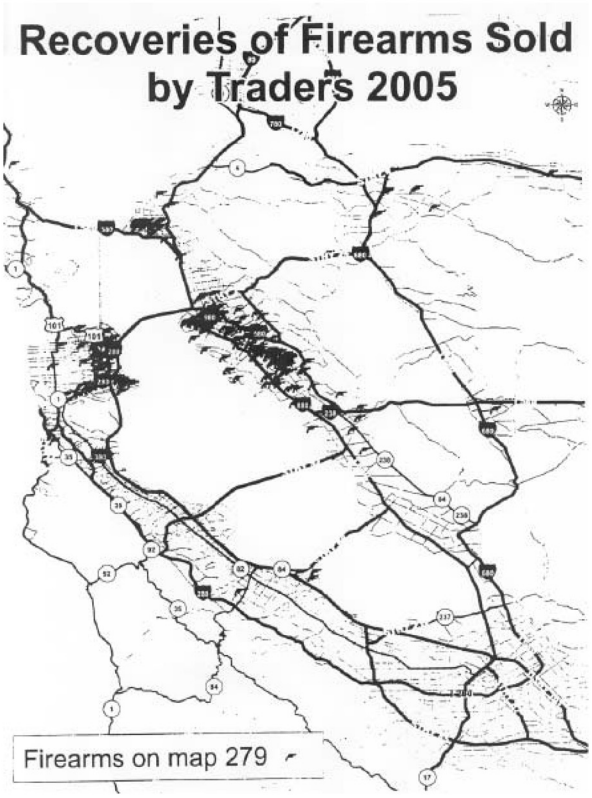
H.R. 5092, currently advancing in Congress, would make it even more difficult to prosecute gun traffickers and rogue dealers or revoke dealer licenses, by requiring that ATF prove that a lawbreaker not only knew of the requirements of the law and broke the law, but also specifically intended to violate the law. H.R. 5092's requirement that ATF prove a lawbreaker's specific mental state and purpose would present a nearly insurmountable burden. This is a dangerous provision that is contrary to Supreme Court precedent and would cripple ATF's ability to enforce firearms laws.[122]

CONCLUSION

ATF data reveals that Trader Sports is one of the "worst of the worst" dealers in the nation, supplying more crime guns than all but one other gun retailer. Its guns are traced to crimes an average of more than once every day of the year. Weak federal gun laws make it extremely difficult for ATF to revoke gun dealer licenses. Worse yet, Congress is currently considering gun-lobby backed legislation, H.R. 5092, that would gut ATF's power to revoke licenses of corrupt gun dealers and require ATF to allow dealers to continue operating after their licenses are revoked, through years of litigation.

The case of Trader Sports makes it clear that ATF's ability to crack down on rogue gun dealers must be strengthened, not weakened. As the U.S. Department of Justice stated in response to Trader Sports' court petition to continue selling guns, "If a decision to revoke a license in this circumstance, on this record, does not justify denial of a stay [requested by Trader Sports to postpone its license revocation], the regulatory scheme will be rendered powerless to stop rogue licensees."

APPENDIX A – MAP OF TRADER SPORTS' FIREARMS TRACED TO CRIME IN SAN FRANCISCO BAY AREA, 2005[123]



ENDNOTES

[1] U.S. Department of Justice, Memorandum of Points and Authorities in Opposition to Motion for Preliminary Injunction filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.), at 1 ("DOJ Memo.").

[2] *Cucchiara v. Secretary of Treasury*, 652 F.2d 28, 29-30 (9th Cir. 1981); DOJ Memo., at 5-6.

[3] *Id.*, at 5-6.

[4] *Id.*

[5] *Id.*, at 2.

[6] United States Department of Justice, *Inspections of Firearms Dealers by [ATF]* vi (2004).

[7] *Id.*; *see also Willingham Sports, Inc. v. ATF*, 415 F.3d 1274, 1276 (11th Cir. 2005).

[8] Trader Sports' Reply Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction and for Stay of License Revocation Pending De Novo Judicial Review, or in the Alternative, for a Temporary Restraining Order and for Issuance of Order to Show Cause Re Preliminary Injunction, filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.) ("Trader's Reply"), at 1.

[9] Declaration of Anthony Cucchiara in Support of Motion for Preliminary Injunction and for Stay of License Revocation Pending De Novo Judicial Review, or in the Alternative, for a Temporary Restraining Order and for Issuance of Order to Show Cause Re Preliminary Injunction, filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.) ("Cucchiara Decl."), at 3.

[10] Trader's Reply, at 1-2.

[11] For more on the Brady Center to Prevent Gun Violence Campaign Against Illegal Guns, see http://www.bradycampaign.org/action/trafficking/.

[12] Trader's Reply, at 2.

[13] DOJ Memo., at 25.

[14] *Id.*, at 23; *see* Declaration of Sania Franken in Opposition to Motion for Preliminary Injunction filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.) ("Franken Decl."), at Exhibit A.

[15] *Id.*

[16] ATF, *Commerce in Firearms in the United States* (2000), at 23.

[17] ATF, *Crime Gun Trace Reports (2000) Oakland* (July 2002), at 6.

[18] Franken Decl., Exh. B. Trader Sports sold 11,364 firearms from 2003-2005 and had 1,424 crime gun traces. In comparison, retailer Martin Redding sold 9,963 firearms but had only 408 crime gun traces and retailer Second Amendment sold 8,616 firearms but had only 10 crime gun traces.

[19] *Id.*, at ¶ 10.

[20] *Id.*, at ¶ 8.

[21] DOJ Memo., at 8-9.

[22] *Id.*

[23] Franken Decl., Exh. A.

[24] *Id.*

[25] For more on the Brady Center to Prevent Gun Violence Campaign Against Illegal Guns, see http://www.bradycampaign.org/action/trafficking/.

[26] *See, e.g., Willingham Sports, Inc. v. ATF*, 415 F.3d 1274, 1276 (11th Cir. 2005).

[27] Cucchiara Decl., at ¶ 1.

[28] *Id.*, at ¶ 2.

[29] *Id.*, at ¶ 3.

[30] 18 U.S.C. § 921-924.

[31] 18 U.S.C. § 923(g).

[32] *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28, 29-30 (9th Cir. 1981).

[33] June 27, 2001, Videotaped Deposition of Anthony Cucchiara taken in *People v. Arcadia Machine & Tool, Inc.*, No. 4095 (Cal. Super. Ct.), at 195.

[34] *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28, 29-30 (9th Cir. 1981).

[35] *Id.*; DOJ Memo., at 6.

[36] DOJ Memo., at 6.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See, e.g., Marshall v. Marshall*, 126 S.Ct. 1735, 1743 (2006).

[41] DOJ Memo., at 6.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*, at 7.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28 (9th Cir. 1981).

[51] *Id.*

[52] DOJ Memo., at 7.

[53] *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28, 29-30 (9th Cir. 1981).

[54] *Id.*

[55] *Id.*

[56] *Cucchiara v. Secretary of Treasury*, 455 U.S. 948 (1982).

[57] DOJ Memo., at 7.

[58] *Id.*

[59] *Id.*

[60] Cucchiara Decl., at ¶ 5.

[61] DOJ Memo., at 7.

[62] *Id.*

[63] *See People v. Arcadia Machine & Tool, Inc.*, 2003 WL 21184117 (Cal. Super. Ct., April 10, 2003).

[64] *Id.*

[65] *Id.*

[66] DOJ Memo., at 8.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*, at 15-16.

[75] *Id.*, at 8.

[76] *Id.*, at 9.

[77] *Id.*, at 9 n.4.

[78] *Id.*, at 10.

[79] ATF, *Commerce in Firearms in the United States* (2000), at 22 n.37.

[80] DOJ Memo., at 10.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*, at 9.

[90] *Id.*

[91] *Id.*

[92] 18 U.S.C. § 923(g); 27 C.F.R. § 478.124.

[93] DOJ Memo., at 9.

[94] *Id.*

[95] *Id.*

[96] DOJ Memo., at 9-10.

[97] *Id.*, at 10.

[98] *Id.*, at 11.

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] *Id.*, at 22-25.

[105] Franken Decl., Exh. A.

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] ATF, *Crime Gun Trace Reports (2000) Oakland* (July 2002), at 6.

[110] Franken Decl., Exh. B.

[111] *Id.*, at ¶ 6 and Exh. B. Trader Sports sold 11,364 firearms from 2003-2005 and had 1,424 crime gun traces. In comparison, retailer Martin Redding sold 9,963 firearms but had only 408 crime gun traces and retailer Second Amendment sold 8,616 firearms but had only 10 crime gun traces.

[112] Franken Decl., at ¶ 10.

[113] *Id.*

[114] *Id.*, at ¶ 8.

[115] DOJ Memo., at 24.

[116] Trader's Reply, at 1-2.

[117] *Id.*

[118] *Id.*, at 2.

[119] United States Department of Justice, *Inspections of Firearms Dealers by [ATF]* vi (2004).

[120] *Id.*

[121] *See Bryan v. U.S.*, 524 U.S. 184 (1998).

[122] In *Bryan v. U.S.*, 524 U.S. 184, 195 n.23 (1998), the Supreme Court stated that a change in federal law in 1986 imposing a "willful" standard for gun law violations was "to protect law-abiding citizens who might inadvertently violate the law." It does not require that ATF show specific intent to break the law, as H.R. 5092 mandates.

[123] Franken Decl., Exh. D-1.

Death Valley

Profile Of A Rogue Gun Dealer:

VALLEY GUN

Baltimore, Maryland

BRADY CENTER TO PREVENT GUN VIOLENCE
JUNE 2006

ACKNOWLEDGEMENTS

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project *Gun Industry Watch*, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

Death Valley – Profile Of A Rogue Gun Dealer: Valley Gun, Baltimore, Maryland, was written by Daniel R. Vice. Thanks to Ericka Hailstocke-Johnson, Doug Pennington, Justin Sacks and Stevi Steines for their assistance in preparing the report. Thanks also to Gerald A. Nunziato and Crime Gun Solutions LLC for their assistance with Bureau of Alcohol, Tobacco, Firearms and Explosives crime gun trace data. *Death Valley* is the second in a series of reports on rogue gun dealers. If you have questions about any part of this report, or would like a copy, please write to *Gun Industry Watch*, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Washington D.C. 20005. The report and other Gun Industry Watch reports are also available at www.bradycenter.org and www.gunlawsuits.org.

The cover photo shows Valley Gun on June 17, 2006, displaying gun manufacturer logos, the National Rifle Association's logo, and a "Blow-Out Sale" sign more than four months after ATF revoked its federal firearms license.

Copyright © 2006 by Brady Center to Prevent Gun Violence
No part of this publication may be reproduced without prior permission.

EXECUTIVE SUMMARY

Valley Gun of Baltimore, Maryland, is one of the top suppliers of crime guns in the nation.[1] Law enforcement has traced hundreds of crime guns to Valley Gun, with **483 firearms traced to crime** from 1996 to 2000 alone.[2] Valley Gun is in the top 0.05% of dealers in total crime guns traced to their stores, ranking 37 out of nearly 80,000 gun dealers nationwide.[3] Valley Gun's firearms have been linked to at least 11 homicides, 41 assaults, 49 drug crimes, and 101 cases of illegal concealed carrying of guns.[4]

- Valley Gun's owner is National Rifle Association Board Member Sanford M. Abrams.[5] He took over operations of Valley Gun in 1996 and was charged with violating federal gun laws less than a year later.[6] By 2003, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) had documented **"over nine hundred" violations of federal law by Valley Gun**.[7] ATF found that more than one-quarter of Valley Gun's entire firearms inventory was unaccounted for, and therefore, untraceable.[8] Valley Gun was caught selling a gun to a buyer who stated that he was prohibited from buying a gun under federal law and to another buyer without conducting a proper Brady background check.[9] On May 5, 2004, ATF issued a Notice of Revocation of the shop's firearms license,[10] although weak federal gun laws allowed Abrams to continue selling guns at the store through February 2006, despite nearly a decade of legal violations.[11]

- Abrams has repeatedly sued the federal government in an effort to continue operating despite his store's massive violations of federal law.[12] In response, the U.S. Department of Justice has called Valley Gun an "irresponsible gun shop" that has engaged in **"dangerous operations"** as a **"serial violator"** of federal gun laws.[13] It has warned that Abrams' store has **"endangered the public by failing to account for hundreds of weapons."**[14] The Justice Department further explained that Valley Gun's repeated violations of the law and "shoddy record keeping" have jeopardized law enforcement's ability to "ensur[e] that firearms used in crimes can be traced and the criminals who use them brought to justice…."[15]

- Abrams has also attempted to evade revocation of his firearms license, announcing that he transferred the inventory of Valley Gun to his personal collection and that he intends to continue selling these guns.[16] Abrams sued the federal government, seeking an order allowing him to continue selling guns despite his shop's license revocation.[17] Although it is a federal crime to engage in the business of selling firearms without a license,[18] in a surprising turn, in June 2006, **the Bush Administration filed legal briefs stating that Abrams could sell Valley Gun's former inventory as his personal gun collection despite revocation of his shop's license**.[19] Where will Abrams be selling guns now that his shop has lost its license? Perhaps next door to Valley Gun, where signs proclaim that a new store, Just Guns, is "coming soon." Property records show that Just Guns will open on property owned by Lucille Abrams, Sandy Abrams' 80-year-old mother.[20]

- In 1999, Abrams was elected to the NRA Board despite his shop's violations of federal gun laws.[21] Although the NRA has repeatedly claimed that the government should "fully enforce existing federal gun laws"[22] and that failure to do so is "evil" and a "moral crime,"[23] it has feverishly worked to prevent the government from sanctioning Abrams and has proudly embraced Abrams as a gun lobby spokesperson. Notwithstanding Valley Gun's continuing legal violations, in 2002, Abrams was re-elected to the NRA Board.[24] **After ATF cited his shop for massive violations of federal law, Abrams was re-elected yet again to the NRA's Board in 2005**.[25] The NRA also has come to Abrams' legal defense. Christopher Conte, the NRA's Legislative Counsel and a registered NRA lobbyist, has served as one of Abrams' lawyers in his many lawsuits against the federal government,[26] assisting this "serial violator"[27] of gun laws in his quest to prevent the loss of Valley Gun's firearms license.

- The NRA has also worked to protect Abrams by lobbying to change federal law to prohibit the revocation of licenses from gun dealers like Abrams.[28] **Congress is considering legislation, H.R. 5092, that would gut ATF's ability to revoke corrupt gun dealers' firearms licenses**.[29] The legislation would require ATF to permit gun dealers with revoked licenses to continue selling guns through years of legal appeals even if a federal district court ordered the store to cease gun sales.[30] It would also make it easier for gun dealers with revoked licenses to evade license revocation by transferring operations to friends or family.[31]

On March 30, 2006, the Brady Center to Prevent Gun Violence, along with its affiliate, the Brady Campaign, launched a multi-year Campaign Against Illegal Guns to strengthen law enforcement tools to crack down on corrupt gun dealers.[32] Illegal guns are a serious problem in America. Over the last ten years, there have been more than 3.7 million violent crimes committed with firearms in this country, an average of about 100 violent gun crimes every day.[33] Almost 60% of the nation's guns traced to crime came from only about 1% of the country's gun dealers.[34] Valley Gun is one of these top 1% of dealers that supply the majority of America's crime guns.[35]

Corrupt gun dealers are the source of the largest number of guns diverted to the illegal market.[36] Rogue dealers frequently have hundreds of guns "disappear" from their stores – firearms that have left the stores' inventories without a record of sale.[37] While most dealers have few guns unaccounted for, corrupt dealers frequently sell guns "off the books" at gun shows and have high numbers of missing guns. For example, in 2005, ATF examined 3,083 gun dealers and found 12,274 "missing" firearms.[38] Yet 95% of these "missing" guns came from just 97 dealers.[39] Like these dealers, Valley Gun frequently sold firearms at gun shows,[40] had hundreds of guns "missing" from its inventory,[41] and has been one of the top 40 retail sources of crime guns in the nation.[42] *Death Valley* is one of a series of Brady Center reports exposing the record of reckless gun dealers who have profited from the supply of firearms to criminals.[43]

DEATH VALLEY – PROFILE OF A ROGUE GUN DEALER:
VALLEY GUN, BALTIMORE, MARYLAND

Valley Gun of Baltimore, Maryland, is one of the leading suppliers of crime guns in the nation.[44] Between 1996 and 2000, 483 crime guns were traced to Valley Gun, ranking it as one of the top 40 crime gun retailers in the nation.[45] Valley Gun's firearms have been traced to at least 11 homicides, 41 assaults, 49 drug crimes, and 101 cases of illegal concealed carrying of firearms.[46]

Valley Gun, owned by NRA Board Member Sandy Abrams,[47] has also been cited for massive violations of federal gun laws. The federal government has documented 900 violations of federal law at Valley Gun, including failing to account for hundreds of weapons that disappeared from the gun shop without any record of sale.[48] On May 5, 2004, ATF issued a Notice of Revocation of Valley Gun's federal firearms license based on these hundreds of violations of federal law.[49] Due to weak federal gun laws, however, Valley Gun was allowed to continue operating nearly two years after being notified that its license would be revoked, until February 24, 2006, when a court ordered the store to cease firearms sales and surrender its license.[50] Despite this court order, Abrams has stated that he intends to continue selling firearms, and in June 2006, the Bush Administration filed legal papers stating that Abrams could continue selling guns from Valley Gun's former inventory as his "personal collection."

The Problem of Rogue Gun Dealers And Illegal Guns

The Brady Center to Prevent Gun Violence, along with its affiliate, the Brady Campaign, has launched a multi-year Campaign Against Illegal Guns to strengthen law enforcement tools to crack down on gun dealers like Valley Gun.[51] Weak federal gun laws have severely hampered ATF's ability to prosecute and revoke rogue gun dealers' licenses, by requiring proof of repeated "willful" violations of the law over many years before ATF can shut down a corrupt dealer.[52] Congress is considering legislation, H.R. 5092, which would gut ATF's ability to revoke the licenses of dealers like Valley Gun.[53] Congress should reject the gun lobby's efforts to protect rogue dealers and instead strengthen law enforcement's ability to shut down lawbreaking dealers.

Illegal guns are a serious problem in America. Over the last ten years, there have been more than 3.7 million violent crimes committed with firearms in this country, an average of about 100 violent gun crimes every day.[54] Almost 60% of the nation's guns traced to crime came from only about 1% of the country's gun dealers.[55] Valley Gun is one of these top 1% of dealers that supply the majority of America's crime guns.[56]

Corrupt gun dealers are the source of the largest number of guns diverted to the illegal market.[57] Rogue dealers frequently have hundreds of guns "disappear" from their stores – firearms that have left the store's inventory without a record of sale.[58] While most dealers have few guns unaccounted for, corrupt dealers frequently sell guns "off the books" at gun shows and have high numbers of missing guns. In 2005, ATF examined 3,083 gun dealers and found 12,274 "missing" firearms.[59] Yet 95% of these "missing" guns came from just 97 dealers.[60] Like these dealers, Valley Gun frequently sold firearms at gun shows,[61] had hundreds of guns "missing" from its inventory,[62] and has been one of the top 40 crime guns dealers in the nation.[63]

History of Valley Gun Owner Sandy Abrams' Ties To The NRA And His Gun Store's Hundreds of Violations of Federal Law

Valley Gun Owner and Longtime NRA Board Member Sandy Abrams

Sanford "Sandy" Abrams is the President, owner and operator of RSM, Inc., doing business as Valley Gun.[64] The store is located at 7719 Harford Road, Baltimore, Maryland, with a prominently displayed NRA logo emblazoned on its door.[65] According to Abrams, the store covers 2,000 square feet and sells about 3,000 firearms per year.[66] Financial reporting service Dun and Bradstreet reports that Valley Gun has had $2 million in sales per year.[67]

Abrams has been a national spokesperson for the gun lobby and is a longtime Board Member of the National Rifle Association.[68] He has been on the NRA Board of Directors since 1999 and has served as Vice President of the Maryland Licensed Firearms Dealers Association.[69] Abrams has also actively supported gun lobby-favored candidates in Maryland, sporting signs in his store windows supporting Bob Ehrlich for Governor of Maryland.[70] When Ehrlich served in the U.S. House of Representatives, he voted to repeal the federal Assault Weapons Ban.[71] Abrams' store also has signs supporting Michael Steele, Maryland Lieutenant Governor and Republican candidate for U.S. Senate.[72]

As a gun lobby spokesperson, Abrams strongly opposed the federal Assault Weapons Ban.[73] After a Bushmaster assault rifle was used in the Washington, D.C.-area sniper shootings of 2002 to kill a dozen innocent people, Abrams stated that he calls the rifle "a homeland defense rifle, not an assault rifle, because it is a semi-automatic version of what our soldiers are using in Iraq."[74] As of June 2006, his store's website still listed a "cash and carry" sale on Bushmaster assault rifles.[75] When assault weapon manufacturers created copycat weapons like the Bushmaster rifle to try to skirt the federal ban, he readily stocked them, bragging, "I'm selling as many as three a day in the shop."[76]

Bushmaster XM-15 assault rifle used in Washington, D.C.-area sniper attacks and sold in Abrams' shop as a "homeland defense" gun

Although the NRA has repeatedly claimed that the government should "fully enforce existing federal gun laws,"[77] it has vigorously defended Abrams despite his store's many legal violations. In 1997, Executive Vice President Wayne LaPierre lambasted the Clinton Administration for allegedly failing to enforce the law, stating, "It's a moral crime for Bill Clinton, Al Gore, Janet Reno and a host of Federal officers and prosecutors to fail to enforce the law. It's evil. And when innocent blood flows, it's on their hands."[78]

LaPierre further asserted that "if a state or county prosecutor knew of widespread, rampant violation of the law and failed to act, he or she could be charged with malfeasance in office – serious crimes in most places. Failure to do one's sworn duty is a terrible violation of

the public trust."[79] In 2000, LaPierre claimed to support ATF efforts to increase prosecutions of gun law violators despite the severe constraints placed on ATF's ability to prosecute violations by the NRA-backed 1986 Firearm Owners Protection Act. He stated:

> We are looking for a 100, 200, 300 percent increase in prosecutions. That is what it is going to take. … It better be more than just a sound bite, but we're for it in a big, big way.[80]

Yet **when the federal government tried to sanction NRA Board Member Abrams for massive violations of federal gun laws, the NRA devoted substantial resources to protect "serial violator" Sandy Abrams** and even rewarded him with a position on its Board of Directors. Abrams was first elected to the NRA Board in 1999, and was re-elected in 2002 and 2005 despite his shop's continuing record of escalating violations of federal gun laws.[81]

The NRA also came to Abrams' legal defense. Abrams has filed multiple lawsuits against the federal government in an attempt to keep his gun shop open despite its legal violations.[82] He has been represented by Christopher Conte, the NRA's Legislative Counsel and a registered lobbyist for the NRA, and Richard E. Gardiner, former director of state and local affairs for the NRA.[83]

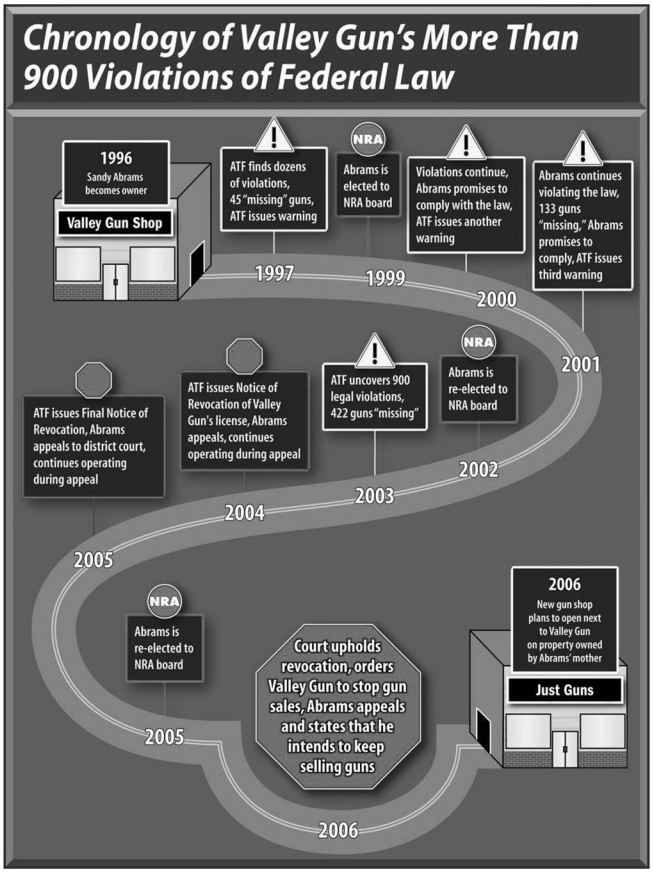
Abrams has run Valley Gun since 1996.[84] Prior to 1996, the store was run by other members of the Abrams family, including Sandy's father, Mel.[85] When Sandy Abrams took over operation of the gun shop in 1996, he made some changes to the store.[86] He cut back on sales of police equipment and instead focused on sales of firearms and shooting-related products to the general public.[87]

- The NRA has claimed that the government should "fully enforce existing federal gun laws," that failing to enforce the law is "evil" and a "moral crime," and that if a "prosecutor knew of widespread, rampant violation of the law and failed to act" it would be a "terrible violation of the public trust."

- Yet when it came to the NRA's own Board Member, Sandy Abrams, it has vigorously defended him despite his shop's 900 violations of federal gun laws and provided him with legal assistance in suing to evade penalties for his legal violations.

Abrams' Shop Is Charged With Violating Federal Law Less Than A Year After He Took Over Ownership of Valley Gun

Less than a year after Abrams took over operations of Valley Gun, ATF conducted a routine inspection of the gun shop and found numerous violations of federal law.[88] On July 21, 1997, ATF issued a warning letter to Abrams for failing to record the acquisition and disposition of firearms as required by federal law.[89] Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.[90]


Chronology of Valley Gun's More Than 900 Violations of Federal Law
1996
Sandy Abrams becomes owner
Valley Gun Shop
ATF finds dozens of violations, 45 "missing" guns, ATF issues warning
NRA
Abrams is elected to NRA board
Violations continue, Abrams promises to comply with the law, ATF issues another warning
Abrams continues violating the law, 133 guns "missing," Abrams promises to comply, ATF issues third warning
1997
1999
2000
2001
NRA
Abrams is re-elected to NRA board
ATF uncovers 900 legal violations, 422 guns "missing"
ATF issues Notice of Revocation of Valley Gun's license, Abrams appeals, continues operating during appeal
ATF issues Final Notice of Revocation, Abrams appeals to district court, continues operating during appeal
2002
2003
2004
2005
NRA
Abrams is re-elected to NRA board
Court upholds revocation, orders Valley Gun to stop gun sales, Abrams appeals and states that he intends to keep selling guns
2006
New gun shop plans to open next to Valley Gun on property owned by Abrams' mother
Just Guns
2005
2006

ATF also cited Valley Gun for failing to properly fill out federal firearms transaction forms (ATF Form 4473).[91] A total of 45 firearms were listed in Valley Gun's records as still in its inventory, but were missing from the store with no record of sale.[92] According to ATF, Abrams' shop sold "numerous firearms" at gun shows in 1997 without recording the sales in its disposition records as required by law.[93] Without a record of sale, any of these guns recovered in crime would be untraceable back to the buyers who purchased them from Valley Gun.[94]

In November 1999, ATF conducted another inspection of Valley Gun.[95] Despite ATF's warning to Abrams in 1997 to correct legal violations at this store, ATF uncovered additional violations of federal law.[96] Valley Gun again had failed to accurately complete federal firearms transaction forms.[97] The store also had firearms listed in its inventory but missing from the shop with no record of sale.[98]

As a result of Abrams' continuing violations of federal law, ATF held a warning conference with Abrams in January 2000.[99] At the warning conference, ATF officials reiterated the importance of complying with federal law.[100] Abrams listened to ATF's plea for him to cease violating the law and he "indicated that he understood the record keeping requirements and stated that he would keep more accurate records in the future."[101] In turn, ATF warned Abrams that continuing legal violations could result in the revocation of his shop's federal firearms license.[102]

> Abrams tried to explain away his legal violations by rationalizing that his shop sometimes fails to record gun sales as required by federal law when he "sell[s] an awful lot of firearms in a short period of time, like at a gun show…."[103]

ATF Calls Valley Gun One Of The Most "Uncooperative" Dealers In America And Demands An Accounting Of The Store's Records – Abrams Refuses And Sues ATF

On February 7, 2000, after finding years of legal violations at Valley Gun, ATF wrote to Abrams, demanding an accounting of his firearms to enable ATF to properly trace crime guns sold by Valley Gun.[104] ATF notified Valley Gun that because its "actions violate the law and hinder ATF's ability to trace firearms, we are requiring you to submit certain records to ATF to enable us to trace firearms that you transferred."[105] Similar notices were only sent to the 0.1% of gun dealers that ATF determined were most "uncooperative" in responding to crime gun trace requests – a total of 41 out of 80,000 dealers nationwide.[106]

Abrams responded that ATF's request for his records, to enable ATF to trace crime guns sold by his shop, was "onerous," "unreasonable," and violated his constitutional rights.[107] Aided by NRA attorney Christopher Conte, Abrams sued the ATF in an attempt to avoid turning over gun records to ATF.[108]

A federal district court found that Valley Gun "did fail to provide timely responses" to crime gun trace requests as required by federal law and that "[t]here is no doubt that [ATF's] having on-site pertinent records of an 'uncooperative' [dealer] could speed firearms tracing."[109] However, the court felt constrained by a federal law, passed in 1986 at the gun lobby's behest, restricting ATF's ability to examine gun dealer records and ruled that ATF could not require Abrams to produce such records.[110] On appeal, however, the Fourth Circuit Court of Appeals

reversed and ruled that federal law does allow ATF access to records of gun dealers "who had violated federal law in failing to comply with firearms trace requests," including Valley Gun.[111] The court also rejected Abrams' claim that requiring him to assist ATF in locating crime guns sold by his store violated his constitutional rights.[112] In June 2001, the court ordered that Abrams turn over his records.[113]

After Two Warnings From ATF Over Three Years, Abrams' Shop Escalates Its Violations Of Federal Law, And Abrams Is Re-Elected To The NRA Board

In September 2001, ATF conducted another follow-up inspection of Valley Gun.[114] This time ATF found many violations of federal gun laws.[115] Yet again, Valley Gun failed to properly account for the disposition of firearms in its records and failed to properly complete federal firearms transaction forms.[116] This time, ATF found 133 firearms missing from the store without any record of sale – 133 untraceable firearms.[117]

Valley Gun violated other federal gun laws as well.[118] It failed to accurately fill out federal firearms forms relating to a silencer, a device that is highly regulated pursuant to the National Firearms Act because of its obvious utility to the criminal element.[119] The store failed to properly record background check information in its records.[120] Valley Gun also failed to complete "numerous" forms for "multiple handgun sales" – sales of more than one handgun in a five-day period – a recognized indicator of gun trafficking.[121]

At the conclusion of ATF's inspection, ATF discussed Valley Gun's many legal violations with Abrams, and he signed ATF's Report of Violations.[122] ATF then held a second warning conference with Abrams, following its earlier 1997 warning letter and 1999 first warning conference, where ATF reiterated to Abrams the importance of complying with federal law.[123] Abrams again "pledged to accurately keep all required records in the future."[124] ATF warned Abrams that he would be inspected in the future and if he continued to violate federal law his shop's firearms license could be revoked.[125]

In April 2002, despite Valley Gun's repeated violations of federal law over the previous five years, Abrams was re-elected to the National Rifle Association's Board of Directors.[126]

Despite Three Warnings From ATF, Abrams Is Caught Committing Hundreds Of Violations Of Federal Law

In May 2003, ATF completed another inspection of Valley Gun and uncovered massive violations of federal law.[127] Abrams' records showed that his store had a total of 1,524 firearms in its inventory, yet only 1,102 were actually in the store or otherwise accounted for.[128] A total of 422 guns were missing, *amounting to more than 27% of the store's firearms inventory*.[129] Valley Gun claimed that 135 of these guns had been sold without recording the sale in its disposition records as required by federal law.[130] As to the remaining 287 missing guns, Abrams reported on August 31, 2003 that all of these firearms were lost or stolen, months after ATF discovered that the firearms were nowhere to be found in Abrams' store.[131] Abrams later claimed that he eventually found 13 of the 287 firearms he reported as lost or stolen in his store and that he then "destroyed" the guns.[132]

ATF also uncovered numerous other violations.[133] In one instance, a purchaser indicated to Valley Gun that the purchaser was prohibited from receiving a firearm under federal law, yet Valley Gun nonetheless made the sale.[134] Valley Gun failed to record the disposition of 456 out of 476 firearms recorded in its repair log, meaning that more than 95% of these guns were unaccounted for.[135] Valley Gun yet again failed to properly complete federal firearms transaction records (Form 4473) for 29 firearms and failed to properly record the disposition of three highly-regulated National Firearms Act weapons.[136] The National Firearms Act regulates fully automatic machine guns, silencers and other destructive devices that pose a grave danger to the public.[137] Valley Gun also transferred a firearm to a buyer without conducting a proper background check as required by federal law.[138]

After Six Years Of Violating Federal Gun Laws, ATF Moves to Revoke Valley Gun's Firearms License

As a result of Valley Gun's continuing and escalating violations of federal gun laws despite repeated warnings over the course of six years, on May 5, 2004, ATF issued Abrams a Notice of Revocation of Valley Gun's federal firearms license.[139] ATF's revocation notice was based on **over 900 violations of federal law**.[140]

Abrams requested a hearing before ATF to reconsider the notice of revocation, and the hearing was conducted on October 6, 2004.[141] Pursuant to the Firearm Owners Protection Act, a federal law first adopted in 1986 at the behest of the gun lobby, ATF is required to allow federal firearms licensees to continue operating if they request a hearing on a notice of license revocation, no matter how many times they have violated the law.[142]

While Abrams continued operating Valley Gun, ATF held a hearing, with testimony presented by Abrams and Valley Gun Sales Associate Bill Frank.[143] ATF presented the testimony of its Baltimore Area Supervisor, Michael Fronczak, and its Industry Operations Inspector, Dean Dickinson.[144] On October 29, 2004, in a 28-page report, the ATF Hearing Officer sustained all of the charges against Valley Gun and upheld ATF's decision that the firearms license should be revoked.[145]

On February 2, 2005, ATF issued a Final Notice of Revocation based on Valley Gun's more than 900 legal violations.[147] Abrams requested that ATF stay

Abrams Testifies Concerning His Violations of Federal Law

ATF: Just to be clear, since 1997 you and your company have been aware that all the information in the acquisition and disposition record, whether it's regular or repair, is to be fully filled out?

Abrams: Correct.

ATF: And you failed to do it in 1997 correct?

Abrams: Yes.

ATF: You failed to do it in 2000?

Abrams: Yes.

ATF: You failed to do it in 2002?

Abrams: Yes.

ATF: And then in 2003?

Abrams: Yes.[146]

the effective date of the revocation while he appealed the revocation notice to federal district court, and ATF agreed.[148]

Abrams Files A Federal Lawsuit To Stop Revocation Of His License And, After Nearly A Decade Of Legal Violations, Is Again Re-Elected To The NRA Board of Directors

On March 29, 2005, Abrams filed a federal lawsuit against ATF, seeking to overturn ATF's revocation of his firearms license.[149] Abrams was represented by Christopher Conte, the National Rifle Association's Legislative Counsel and a registered lobbyist for the NRA, and by former NRA official Richard Gardiner.[150] A few weeks after filing his lawsuit and after eight years of documented violations of federal gun laws, Abrams was re-elected to the NRA's Board of Directors for a third three-year term.[151]

In his lawsuit, Abrams did not dispute that Valley Gun committed the acts that ATF found to be unlawful.[152] Indeed, one of Abrams' attorneys, Richard Gardiner, **conceded that "it's correct that most of the violations are not in dispute,"** and instead argued that the disappearance of hundreds of guns from Abrams' store after six years of repeated warnings amounted to **nine hundred "inadvertent, technical record-keeping error[s]**…."[153] Abrams argued that he did not violate the law "intentionally and purposefully and with the intent to do something the law forbids," so should be allowed to keep his firearms license.[154]

Abrams also attempted to use clever math to try to minimize his violations. Abrams calculated that, according to ATF, he violated federal laws requiring accurate firearms transaction records 29 times on 24 forms.[155] This included one instance in which a purchaser indicated on the firearms transaction form that he or she was prohibited by law from buying a gun, but Valley Gun nevertheless sold the gun to the purchaser.[156] Abrams then looked at 321 other forms where he did not violate federal law, and found that each form has 37 empty boxes or lines that must be filled out.[157] According to Abrams, this meant that he complied with the law 12,736 times (one time for each line or box that he corrected filled out) and only violated the law requiring accurate gun sales records 29 times.[158] He calculated this to be a 99.8% "proper-completion rate" with only "and [sic] error rate of .2%," and argued that this low rate should excuse his legal violations.[159]

> "You're not allowed to make a mistake. That's essentially what they're saying."
>
> -- Abrams' response to a federal court upholding ATF's revocation of his shop's gun license for more than 900 violations of federal law[162]

The Justice Department responded to Abrams' arguments by reminding the court that Abrams violated federal law over 900 times, which is more than sufficient to show "classic willful violations" of the Gun Control Act.[160] Moreover, DOJ pointed out that Abrams' errors on firearms transaction forms were serious violations, because they omitted "a critical component of the certification … that a person is not prohibited from possessing a firearm…."[161] DOJ further explained the importance of revoking Abrams' license:

> [B]y revoking licensees, such as [Valley Gun] who repeatedly fail to account for the disposition of hundreds of missing firearms, ATF is serving the remedial purpose of *ensuring that firearms used in crime can be traced and the criminals who use them brought to justice*. … This remedial action is analogous to the license revocation of a pharmacist who cannot account for the disposition of controlled substances … or an explosives manufacturer who cannot safely store explosives….[163]

Federal district court Judge William M. Nickerson, who was appointed to the court by President George H.W. Bush, rejected all of Abrams' claims and upheld revocation of the store's firearms license.[164] Judge Nickerson's opinion chastised Abrams for his use of clever math in attempting to exonerate Valley Gun (a/k/a RSM) and "downplay the scope of its violations," stressing the danger to the public posed by the many missing and untraceable guns.[165] The judge explained:

> While Mr. Abrams may seek to minimize the significance of RSM's errors or to excuse its non-compliance by citing the busyness of gun shows and hunting seasons, the undisputed fact is that because of RSM's lapses, scores of firearms are unaccounted for, and therefore, untraceable.[166]

The court also rejected Abrams' claim that ATF must prove that he not only repeatedly violated the law, but did so "intentionally and purposefully and with the intent to do something the law forbids," as having been "soundly rejected" by the courts.[167]

Following the court's ruling in favor of ATF, on February 24, 2006, ATF revoked Valley Gun's firearms license.[168] ATF also gave Abrams 30 days to "wind down" his operations, complete any transactions for sales that had already been made or sell all remaining firearms inventory to other gun dealers or to Abrams himself, but prohibited the store from acquiring new firearms.[169]

> Abrams is a "serial violator of the Gun Control Act…." There is "no basis in the law or in conscience for the Court to permit [Valley Gun] to continue its dangerous operations…."
>
> -- U.S. Department of Justice, 2006

After the federal district court upheld ATF's revocation of Valley Gun's firearms license, Abrams petitioned the court to reconsider its ruling and to allow him to continue operating through years of potential appeals.[170] The Department of Justice urged the court to reject Abrams' request, stating that he is a "serial violator of the Gun Control Act" and that there is "no basis in the law or in conscience for the Court to permit [Valley Gun] to continue its dangerous operations for an extended period while it exhausts its Federal appeals."[171] On March 15, 2006, the court rejected Abrams' attempt to continue operations.[172] Abrams then filed an appeal with the Fourth Circuit Court of Appeals on March 20, 2006.[173] The court scheduled oral argument in the case for September 2006.[174]

Abrams Declares That He Intends To Continue Selling Guns And Files Another Lawsuit. The Bush Administration's Response? He May Continue Selling Guns.

Following revocation of Valley Gun's federal firearms license, ATF informed Abrams that he could no longer sell guns to the public, but that he could either sell his store's remaining inventory to another licensed gun dealer or buy the guns for himself.[175] ATF warned Abrams that if he buys his store's inventory he "cannot engage in the repetitive sales of firearms as a regular course of business with the principal objective of profit," because he no longer holds a federal firearms license.[176] According to Abrams, ATF further warned him that if he "were to engage in dealing firearms without a license, the inventory involved in these violations would be subject to seizure and forfeiture and Mr. Abrams could be subject criminal prosecution."[177]

On April 7, 2006, Abrams filed a new federal lawsuit against ATF, asking the court to allow him to continue selling guns despite revocation of Valley Gun's firearms license.[178] Even though he is located in Maryland and previously sued ATF in Maryland, he filed the suit in the District of Columbia.[179] Because the suit was filed in Washington, D.C. instead of Maryland, Abrams was assured that the judge that revoked his license could not be assigned to the case. The U.S. Department of Justice called Abrams' attempt to avoid the court that revoked his license an unwarranted attempt to "forum shop," and on June 15, 2006, asked the court to dismiss Abrams' suit or send it to its proper venue in Maryland.[180]

In his lawsuit, Abrams informed the court that he had already transferred Valley Gun's firearms inventory to himself.[181] Having transferred his store's inventory to himself, Abrams then declared that he "intends to sell such inventory."[182] He asked the court to declare that the sale by Abrams of "firearms which were in Valley Gun's inventory" is not illegal, enjoin ATF from prosecuting Abrams for illegal gun dealing, and require the federal government to pay Abrams' attorney fees.[183] While licensed gun sellers must conduct Brady background checks on gun buyers before selling them a firearm, as a private gun seller in Maryland, Abrams would be able to sell shotguns and rifles without conducting background checks.[184]

Federal law requires that anyone "engaged in the business of selling firearms at wholesale or retail" must have a federal firearms license, but allows hobbyists selling from their personal collection to occasionally sell guns without a license.[185] In his lawsuit, Abrams claims that he will not be engaged in the business of selling firearms when he sells the same firearms inventory that he formerly offered for sale at Valley Gun.[186] In response, the Bush Administration stated that Abrams may indeed continue selling guns despite his shop's license revocation.[187] The government agreed with Abrams and announced in court papers that "when a dealer loses his license he can dispose of his inventory by selling those firearms" without being charged for illegal dealing in firearms.[188]

- After revocation of Valley Gun's firearms license, Abrams sued ATF yet again.
- Abrams declared that he had personally bought Valley Gun's firearms and "intends to sell" the "firearms which were in Valley Gun's inventory" despite the license revocation.
- Abrams is seeking a court order blocking ATF from prosecuting him for illegal gun dealing.

Although the Bush Administration apparently will allow Abrams to continue selling guns, courts have repeatedly rejected similar claims. For example, the U.S. Court of Appeals for the Ninth Circuit recently held that a person who sold "between twenty-three and twenty-five firearms in 2002 and made a profit of approximately $50 per firearm" without a license was illegally engaged in the business of selling firearms.[189]

Likewise, the Sixth Circuit Court of Appeals upheld the conviction of an illegal dealer in firearms where the dealer sold guns at gun shows and engaged in sales of "three different firearms on two different occasions; and that he bought and sold firearms for a profit."[190] Nonetheless, Abrams argued that he should be allowed to continue selling guns despite the hundreds of violations of federal law that led to the revocation of his shop's firearms license, and the Bush Administration has apparently agreed with Abrams.[191] The court is expected to rule on the lawsuit in summer 2006.

A "Blow-Out Sale" At Valley Gun And "Just Guns" Plans To Open Next Door. Who Is Sandy Abrams' Next-Door Neighbor? His 80-Year-Old Mother.

Following Abrams' transfer of Valley Gun's inventory to himself and his declaration that he intends to continue selling firearms despite ATF's license revocation, signs proclaimed a "Blow-Out Sale" at Valley Guns and announced next door, "Coming Soon – Just Guns, Inc."

Valley Gun is located at 7719 Harford Road, Baltimore, and Just Guns will be located in the same building, at 7715 Harford Road.[192] Just Guns was incorporated on April 3, 2006, just over a month after Valley Gun's firearms license was revoked.[193] Property records reveal that Just Guns will be opening on property owned by Lucille Abrams, the 80-year-old mother of Sandy Abrams.[194] Valley Gun's financial records further reveal that the property on which Just Guns will be located has frequently been named as part of Valley Gun itself.[195]

Other gun dealers have attempted to evade license revocation by transferring operations to a friend or family member. For example, San Leandro, California gun dealer Trader Sports lost its federal firearms license in 1978 after committing more than 200 violations of federal law.[196] Trader Sports' owner, Tony Cucchiara, attempted to evade this revocation by transferring operations of the store to "long time employee, Everett Studley."[197] A federal court ruled that this attempt to evade revocation could not go forward, because it was a "subterfuge to allow Mr. Cucchiara to improperly continue in the firearm business…."[198] Unfortunately, ATF then agreed to give Cucchiara another chance to comply with the law and gave him a new federal firearms license.[199] ATF later found that Trader Sports committed thousands of additional violations of federal law, and in 2006 revoked its firearms license.[200]

In another case, gun dealer Brian Borgelt, owner of Bull's Eye Shooter Supply of Tacoma, Washington, lost his federal firearms license in 2003 after the store was unable to account for more than 230 firearms that were missing from its store with no record of sale.[201] One of the missing guns was a Bushmaster XM-15 semiautomatic assault rifle, which was used by John Muhammad and Lee Malvo in the 2002 sniper attacks that killed a dozen people in the Washington, D.C.-area and around the country.[202] Although ATF revoked Borgelt's license, he transferred operations of the shop to longtime friend and Bull's Eye employee, Kris Kindschuh.[203] Brian Borgelt continues to run the shooting range above the gun shop and Bull's Eye Shooter Supply remains open today.[204]

Abrams' Attorney And The NRA Urge Congress To Curtail ATF's Authority To Revoke The Licenses of Gun Dealers Who Break The Law

Just days after a federal district court rejected Abrams' request to continue operating as a gun dealer, on March 28, 2006, Abrams' attorney, Richard Gardiner, testified before Congress in support of NRA-backed bill H.R. 5092.[205] As he unsuccessfully argued to the court in his attempt to prevent Valley Gun's license revocation, he testified that his gun dealer clients were losing their licenses for so-called "trivial, immaterial violations…."[206] He urged Congress to support the bill, which would weaken ATF's authority to revoke gun dealer licenses and help dealers evade license revocation by easily transferring operations to friends or family.[207] The bill would also require that gun dealers like Valley Gun be allowed to continue selling guns, even after ATF has revoked their federal firearms licenses, through years of legal appeals.[208] Current law requires ATF to allow gun dealers to remain open while they appeal license revocation decisions to ATF's Director, but leaves the decision to ATF whether to allow dealers with revoked licenses to continue selling guns through years of appeals in the courts.[209]

Current federal law already places severe restraints on ATF's ability to prosecute gun dealers or traffickers or revoke the licenses of dealers who break the law.[210] Even though ATF

inspections often reveal scores of illegal acts by gun dealers, ATF rarely is able to revoke a dealer's federal firearms license. In 2003, ATF inspectors found violations at 1,812 gun dealers, averaging *over 80 violations per dealer*.[211] Despite this large number of dealers with multiple violations, ATF issued license revocation notices for only 54 dealers that year.[212] In part, this is due to the overly burdensome requirement that ATF prove a dealer "willfully" violated the law, requiring proof that the dealer not only broke the law but also knew that his or her conduct was unlawful.[213]

H.R. 5092, currently advancing in Congress, would make it even more difficult to prosecute gun traffickers and rogue dealers or revoke dealer licenses, by requiring that ATF prove that a lawbreaker not only knew of the requirements of the law and broke the law, but also specifically intended to violate the law.[214] H.R. 5092's requirement that ATF prove a lawbreaker's specific mental state and purpose would present a nearly insurmountable burden. This dangerous provision is contrary to Supreme Court precedent and would cripple ATF's ability to enforce firearms laws.[215]

CONCLUSION

Valley Gun is one of the top suppliers of crime guns in the nation and has been cited for hundreds of violations of federal law. The Department of Justice has chastised the shop as a "serial violator of the Gun Control Act" that has "endangered the public by failing to account for hundreds of weapons." Yet weak federal gun laws make it extremely difficult for ATF to revoke gun dealer licenses. Valley Gun continued selling firearms for nearly nine years despite continuing violations of law before ATF was finally able to revoke its firearms license.

Moreover, Valley Gun's owner, Sandy Abrams, is on the Board of the National Rifle Association and has been a national gun lobby spokesperson. Despite the NRA's public claims that failure to enforce gun laws against violators is "evil" and a "moral crime," the organization has come to Abrams' defense by providing him with an attorney to repeatedly sue the federal government to evade sanctions for his illegal conduct. The NRA is also working in Congress to rewrite federal law to prevent ATF from revoking the licenses of gun dealers who break the law. This legislation, H.R. 5092, would gut ATF's power to revoke the licenses of corrupt gun dealers and require ATF to allow dealers to continue operating after their licenses are revoked, through years of litigation.

Valley Gun's ability to stay in business, despite years of repeated violations of federal law and hundreds of crime gun sales, makes it clear that ATF's ability to crack down on rogue gun dealers must be strengthened, not weakened. As the Department of Justice has stated, there is "no basis in the law or in conscience for the Court to permit [Valley Gun] to continue its dangerous operations…." Yet Abrams continues to try to evade federal law, announcing that he intends to sell guns notwithstanding the revocation of his store's firearms license. In order to protect public safety, ATF must have the ability to shut down corrupt gun dealers without having to wait through years of repeated violations of federal gun laws. Federal gun laws should be strengthened so that rogue dealers like Abrams cannot operate with near-impunity.

ENDNOTES

[1] Americans For Gun Safety Foundation, *Selling Crime: High Crime Gun Stores Fuel Criminals* (Jan. 2004), at 14, *available at* http://www.americansforgunsafety.com/reports/ReportSellingCrime.pdf.

[2] *Id.* at 12.

[3] *Id.* at 14.

[4] ATF Firearms Crime Gun Trace Data, 1993 to 1997.

[5] *NRA Announces New Officers* (Apr. 19, 2005), http://www.nraila.org/News/Read/Releases.aspx?ID=5645 (last visited June 20, 2006); *National Rifle Association: Report of the 2002 Committee on Elections*, http://nrawinningteam.com/bios02/annual/elecrep.html (last visited June 20, 2006); *National Rifle Association: Report of the 1999 Committee on Elections*, http://nrawinningteam.com/meeting99/99elec.html (last visited June 20, 2006).

[6] *RSM, Inc. (d/b/a Valley Gun) v. Herbert*, No. 1:05-cv-00847, slip op. at 2-3 (D. Md. Feb. 23, 2006); Valley Gun website, http://www.valleygun.net/Baltimore_Gun_Shop_About.html (last visited June 6, 2006).

[7] U.S. Department of Justice, Respondent's Memorandum Of Law In Support Of Motion For Summary Judgment at 3, filed in *RSM, Inc. (d/b/a Valley Gun) v. Herbert*, No. 1:05-cv-00847 [hereinafter *DOJ Summary Judgment Brief*].

[8] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847, slip op. at 4 (D. Md. Feb. 23, 2006).

[9] DOJ Summary Judgment Brief at 29; *RSM v. Herbert*, No. 1:05-cv-00847, slip op. at 4 (D. Md. Feb. 23, 2006).

[10] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847, slip op. at 4 (D. Md. Feb. 23, 2006).

[11] Federal law mandates that ATF must allow gun dealers to continue operating after ATF issues a Notice of Revocation of a federal firearms license while the dealer appeals the revocation determination to the Attorney General. *See* 18 U.S.C. § 923(f)(2).

[12] *See RSM, Inc. v. Buckles*, 94 F. Supp.2d 692 (D. Md. 2000); *RSM, Inc. v. Herbert*, No. 1:05-cv-00847 slip op. (D. Md. Feb. 23, 2006); *Abrams v. Truscott*, No. 1:06-cv-00643-CKK slip op. (D.D.C. Apr. 7, 2006).

[13] U.S. Department of Justice, Opposition to Motion to Continue to Operate at 7, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847 (D. Md. March 7, 2005).

[14] *Id.*

[15] U.S. Department of Justice, Respondent's Reply Memorandum at 20-21, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847 (D. Md. Sep. 9, 2005) [hereinafter *DOJ Reply Mem.*].

[16] Complaint at 4, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. Apr. 7, 2006) [hereinafter *Truscott Complaint*].

[17] *Id.*

[18] *See* 18 U.S.C. § 923(a).

[19] U.S. Department of Justice, Motion To Dismiss Or In The Alternative To Transfer at 6-7, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. June 15, 2006).

[20] Baltimore Property Tax Assessor Record, Parcel Number 081-02-00685-000-00000-001 (sale to Lucille Abrams recorded on Sept. 30, 1976 with Md. Dept. of Assessment and Taxation; Book 5681, Page 489).

[21] *National Rifle Association of America: Report of the 1999 Committee on Elections*, http://nrawinningteam.com/meeting99/99elec.html (last visited June 9, 2006).

[22] Remarks By Charlton Heston, President of the National Rifle Association, Monday, January 25, 1999, http://www.nraila.org/News/Read/Releases.aspx?ID=693 (last visited June 23, 2006).

[23] Wayne LaPierre, *American Rifleman: Official Journal of the National Rifle Association*, May 1997, at 11.

[24] *National Rifle Association: Report of the 2002 Committee on Elections*, http://nrawinningteam.com/bios02/annual/elecrep.html (last visited June 20, 2006).

[25] *NRA Announces New Officers* (Apr. 19, 2005), http://www.nraila.org/News/Read/Releases.aspx?ID=5645 (last visited June 20, 2006).

[26] *See* Complaint at 10, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Mar. 29, 2005); Complaint, *RSM, Inc. v. Buckles*, No. 1:00-cv-00759-MJG (D. Md. Mar. 17, 2000); New York City Lobbyist Search, http://www.nyc.gov/lobbyistsearch/search?lobbyist= Chris+Conte (last visited June 9, 2006); NRA-ILA Current Legislation, letter by Christopher A. Conte, http://www.nraila.org/CurrentLegislation/Read.aspx?ITNDrop=1374-N (last visited June 9, 2006).

[27] U.S. Department of Justice, Opposition to Motion to Continue to Operate at 7, *RSM, Inc. v. Herbert,* No. 1:05-cv-00847-WMN (D. Md. March 7, 2006).

[28] *See* H.R. 5092, 109th Cong. (2d Sess. 2006); *NRA-ILA Grassroots Alert*, Vol. 13, No. 23 06/09/06, http://www.nraila.org/CurrentLegislation/ActionAlerts/Read.aspx?ID=341 (last visited June 22, 2006).

[29] *See* H.R. 5092, at §§ 2, 4.

[30] *Id.*

[31] *Id.* § 10.

[32] For more on the Brady Center to Prevent Gun Violence's Campaign Against Illegal Guns, *see* http://www.bradycenter.org/gunindustrywatch/. For the Brady Center report, *Trading In Death – Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California*, *see* http://www.bradycenter.org/xshare/pdf/reports/trading-in-death.pdf.

[33] *See* National Crime Victimization Surveys 1996-2003; FBI Uniform Crime Reports 1996-2003. Estimates applied for the years 2004-05.

[34] ATF, *Commerce in Firearms in the United States* (Feb. 2000), at 2, *available at* http://permanent.access.gpo.gov/lps4006/020400report.pdf.

[35] Americans for Gun Safety, *Selling Crime*: *High Crime Gun Stores Fuel Criminals* (Jan. 2004), at 4, 14, 20, *available at* http://www.americansforgunsafety.com/reports/ReportSellingCrime.pdf.

[36] ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (June 2000), at 41, *available at* http://www.atf.gov/pub/fire-explo_pub/pdf/followingthegun_internet.pdf.

[37] *See, e.g.,* Mike Carter, Steve Miletich and Justin Mayo, *Errant Gun Dealer, Wary Agents Paved Way for Beltway Sniper Tragedy*, Seattle Times (April 20, 2003) (describing Tacoma, Washington gun dealer Bull's Eye Shooter Supply, source of the Washington, D.C.-area snipers' assault weapon, one of 238 firearms "missing" from the store's inventory); Brady Center to Prevent Gun Violence, *Trading In Death – Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California*, *available at* http://www.bradycenter.org/xshare/pdf/reports/trading-in-death.pdf (describing gun dealer Trader Sports' 1,723 "missing" guns).

[38] ATF, 2005 Annual Report (2006), at 17, *available at* http://www.atf.gov/pub/gen_pub/2005annual_report.pdf.

[39] *Id.*

[40] DOJ Reply Mem. at 20-21, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Sep. 9, 2005).

[41] DOJ Summary Judgment Brief at 5, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[42] Americans for Gun Safety, *Selling Crime*: *High Crime Gun Stores Fuel Criminals* (Jan. 2004), at 14, *available at* http://www.americansforgunsafety.com/reports/ReportSellingCrime.pdf.

[43] *See*, Brady Center to Prevent Gun Violence, *Trading In Death – Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California*, *available at* http://www.bradycenter.org/xshare/pdf/reports/trading-in-death.pdf.

[44] Americans for Gun Safety, *Selling Crime*, *High Crime Gun Stores Fuel Criminals* (Jan. 2004), at 14, 20, *available at* http://www.americansforgunsafety.com/reports/ReportSellingCrime.pdf.

[45] *Id.*

[46] ATF Crime Gun Trace Data, 1993 to 1997.

[47] *NRA Announces New Officers* (Apr. 19, 2005), http://www.nraila.org/News/Read/Releases.aspx?ID=5645 (last visited June 20, 2006); *National Rifle Association: Report of the 2002 Committee on Elections*, http://nrawinningteam.com/bios02/annual/elecrep.html (last visited June 20, 2006); *National Rifle Association: Report of the 1999 Committee on Elections*, http://nrawinningteam.com/meeting99/99elec.html (last visited June 20, 2006).

[48] DOJ Summary Judgment Brief at 3, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[49] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847, slip op. at 4 (D. Md. Feb. 23, 2006).

[50] Federal law mandates that ATF must allow gun dealers to continue operating after ATF issues a Notice of Revocation of a firearms license while the dealer appeals the revocation determination to the Attorney General. *See* 18 U.S.C. § 923(f)(2).

[51] For more on the Brady Center to Prevent Gun Violence's Campaign Against Illegal Guns, see http://www.bradycenter.org/gunindustrywatch/. *See also Trading In Death – Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California*, *available at* http://www.bradycenter.org/xshare/pdf/reports/trading-in-death.pdf.

[52] *See, e.g., Willingham Sports, Inc. v. ATF*, 415 F.3d 1274, 1276 (11th Cir. 2005).

[53] *See* H.R. 5092, at §§ 2, 4.

[54] *See* National Crime Victimization Surveys 1996-2003; FBI Uniform Crime Reports 1996-2003. Estimates applied for the years 2004-05.

[55] ATF, *Commerce in Firearms in the United States* (February 2000), at 2, *available at* http://permanent.access.gpo.gov/lps4006/020400report.pdf.

[56] Americans for Gun Safety, *Selling Crime*: *High Crime Gun Stores Fuel Criminals* (Jan. 2004), at 14, 20, *available at* http://www.americansforgunsafety.com/reports/ReportSellingCrime.pdf .

[57] ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (June 2000), at 41, *available at* http://www.atf.gov/pub/fire-explo_pub/pdf/followingthegun_internet.pdf.

[58] *See, e.g.,* Mike Carter, Steve Miletich and Justin Mayo, *Errant Gun Dealer, Wary Agents Paved Way for Beltway Sniper Tragedy*, Seattle Times (April 20, 2003) (describing Tacoma, Washington gun dealer Bull's Eye Shooter Supply, source of the Washington, D.C.-area snipers' assault weapon, one of 238 firearms "missing" from the store's inventory); Brady Center to Prevent Gun Violence, *Trading In Death – Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California*, see http://www.bradycenter.org/xshare/pdf/reports/trading-in-death.pdf (describing gun dealer Trader Sports' 1,723 "missing" guns).

[59] ATF, 2005 Annual Report (2006), at 17, *available at* http://www.atf.gov/pub/gen_pub/2005annual_report.pdf.

[60] *Id.*

[61] DOJ Reply Mem. at 20-21, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Sep. 9, 2005).

[62] DOJ Summary Judgment Brief at 3, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[63] Americans for Gun Safety, *Selling Crime*: *High Crime Gun Stores Fuel Criminals* (Jan. 2004), at 14, *available at* http://www.americansforgunsafety.com/reports/ReportSellingCrime.pdf.

[64] DOJ Summary Judgment Brief, at 5, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005); Valley Gun website, http://www.valleygun.net/Baltimore_Gun_Shop_Staff.html (last visited June 6, 2006).

[65] Valley Gun website, http://www.valleygun.net/Baltimore_Gun_Shop_Contact.html (last visited June 6, 2006); cover photo.

[66] Matthew Dolan, *Gun Shop Loses Its License*, Baltimore Sun, Feb. 25, 2006.

[67] Dun and Bradstreet Business Background Report for Valley Gun, June 15, 2006.

[68] The Winning Team: Sanford M. Abrams, http://nrawinningteam.com/bios99/abrams.html (last visited June 9, 2006).

[69] *See id.*; *National Rifle Association: Report of the 1999 Committee on Elections*, http://nrawinningteam.com/meeting99/99elec.html (last visited June 9, 2006).

[70] *See* cover photo.

[71] Library of Congress, Thomas Legislative Service, Final Vote Results for Roll Call 92 (Mar. 22, 1996), http://clerk.house.gov/evs/1996/roll092.xml (last visited June 23, 2006).

[72] *See* cover photo.

[73] *See, e.g.*, Julie Bykowicz, *Assault-Gun Ban To Die*, Baltimore Sun, Sep. 11, 2004; Sanford Abrams, Letters To The Editor, Baltimore Sun, Mar. 5, 2004.

[74] WBAL TV, *Lobbyists To Push For Gun Laws In Wake Of Sniper Anniversary Antigun Laws Unsuccessful During Last Legislative Session*, Oct. 1, 2003, http://www.thewbalchannel.com/news/2525412/detail.html (last visited June 23, 2006).

[75] Valley Gun website, http://www.valleygun.net/Baltimore_Gun_Shop_Sale.html (last visited June 20, 2006).

[76] WTOP, *Business Booms for Gun Dealers As Md. Debates Assault Rifle Ban* (Feb. 23, 2004), http://www.wtopnews.com/index.php?nid=25&sid=172434 (last visited June 23, 2006).

[77] Remarks By Charlton Heston, President of the National Rifle Association, Monday, January 25, 1999, http://www.nraila.org/News/Read/Releases.aspx?ID=693 (last visited June 20, 2006).

[78] Wayne LaPierre, *American Rifleman: Official Journal of the National Rifle Association*, May 1997, at 11.

[79] *Id.*

[80] Naftali Bendavid, *Clinton Turns Attention to Gun-Law Enforcement*, Chicago Tribune, Jan. 18, 2000, at 3.

[81] *NRA Announces New Officers* (Apr. 19, 2005), http://www.nraila.org/News/Read/Releases.aspx?ID=5645 (last visited June 20, 2006); *National Rifle Association: Report of the 2002 Committee on Elections*, http://nrawinningteam.com/bios02/annual/elecrep.html (last visited June 20, 2006); *National Rifle Association: Report of the 1999 Committee on Elections*, http://nrawinningteam.com/meeting99/99elec.html (last visited June 20, 2006).

[82] *See RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN slip op. (D. Md. Mar. 2, 2005); *RSM, Inc. v. Buckles*, No. 1:00-cv-00759-MJG slip op. (D.D.C. Mar. 17, 2000).

[83] *Id.*; Citizens Committee for the Right to Keep and Bear Arms: Gun Rights Defender of the Month 1999 (January), http://www.ccrkba.org/defender1999.htm (last visited June 9, 2006); NRA-ILA Current Legislation, letter by Christopher A. Conte, Legislative Counsel NRA/ILA, http://www.nraila.org/CurrentLegislation/Read.aspx?ITNDrop=1374-N (last visited June 9, 2006); NYC Lobbyist Search, http://www.nyc.gov/lobbyistsearch/search?lobbyist=Chris+Conte (last visited June 9, 2006.)

[84] DOJ Summary Judgment Brief, at 5, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[85] DOJ Summary Judgment Brief, at 5, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005); Valley Gun website, http://www.valleygun.net/Baltimore_Gun_Shop_About.html (last visited June 6, 2006).

[86] Valley Gun website, http://www.valleygun.net/Baltimore_Gun_Shop_About.html (last visited June 6, 2006).

[87] *Id.*

[88] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847, slip op. at 2-3 (D. Md. Feb. 23, 2006).

[89] DOJ Summary Judgment Brief at 5, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[90] ATF, *Commerce in Firearms in the United States* (February 2000), at 28, *available at* http://permanent.access.gpo.gov/lps4006/020400report.pdf.

[91] DOJ Summary Judgment Brief at 6, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[92] *Id.*

[93] DOJ Reply Mem. at 20, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Sep. 9, 2005).

[94] ATF, *Commerce in Firearms in the United States* (Feb. 2000), at 28, *available at* http://permanent.access.gpo.gov/lps4006/020400report.pdf.

[95] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847, slip op. at 2-3 (D. Md. Feb. 23, 2006).

[96] DOJ Reply Mem. at 5, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Sep. 9, 2005).

[97] *Id.* at 3.

[98] *Id.*

[99] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847, slip op. at 3 (D. Md. Feb. 23, 2006).

[100] DOJ Reply Mem. at 5, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Sep. 9, 2005).

[101] *Id.* at 6.

[102] *Id.*

[103] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847, slip op. at 9 (D. Md. Feb. 23, 2006).

[104] *See RSM, Inc. v. Buckles*, 254 F.3d 61, 64 (2001).

[105] Complaint at ¶ 19, *RSM, Inc. v. Buckles*, 94 F.Supp.2d 692 (D. Md. 2000) (No. MJG 00 CV 759).

[106] *RSM, Inc. v. Buckles*, 254 F.3d at 63.

[107] Complaint at Count One, Five, & Seven, *RSM, Inc. v. Buckles*, 94 F.Supp.2d 692 (D. Md. 2000) (No. MJG 00 CV 759).

[108] *Id.*

[109] *RSM, Inc. v. Buckles*, 94 F. Supp.2d at 693, 696-97.

[110] *Id.* at 696-97.

[111] *RSM, Inc. v. Buckles*, 254 F.3d at 63.

[112] *Id.* at 69.

[113] *Id.*

[114] DOJ Summary Judgment Brief at 6, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *Id.* at 7.

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *National Rifle Association: Report of the 2002 Committee on Elections*, http://nrawinningteam.com/bios02/annual/elecrep.html (last visited June 20, 2006).

[127] DOJ Summary Judgment Brief at 7, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[128] *Id.*

[129] *Id.*

[130] Valley Gun Opposition to Summary Judgment Brief at 7, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Aug. 26, 2005).

[131] *Id.*

[132] *Id.*

[133] DOJ Summary Judgment Brief at 7, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[134] *Id.* at 29.

[135] *Id.* at 7.

[136] *Id.* at 8.

[137] *Id.* at 7 n.5; 26 U.S.C. § 5801-72.

[138] DOJ Summary Judgment Brief at 9, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[139] *Id.* at 8.

[140] *Id.*

[141] *Id.*

[142] Firearms Owners' Protection Act of 1986, Pub. L. No. 99-308, 100 Stat 449 (1986); 18 U.S.C. § 923(f)(2).

[143] DOJ Summary Judgment Brief at 8, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[144] *Id.*

[145] *Id.*

[146] *Id.* at 15-16.

[147] *Id.* at 9.

[148] *Id.*

[149] *Id.*

[150] *RSM, Inc. v. Herbert*, No.: 1:05-cv-00847-WMN, slip op. (D. Md. Feb. 23, 2006); Citizens Committee for the Right to Keep and Bear Arms: Gun Rights Defender of the Month 1999 (January), http://www.ccrkba.org/defender1999.htm (last visited June 9, 2006); NRA-ILA Current Legislation, letter by Christopher A. Conte, http://www.nraila.org/CurrentLegislation/Read.aspx?ITNDrop=1374-N (last visited June 9, 2006); NYC Lobbyist Search, http://www.nyc.gov/lobbyistsearch/search?lobbyist=Chris+Conte (last visited June 9, 2006).

[151] *NRA Announces New Officers* (Apr. 19, 2005), http://www.nraila.org/News/Read/Releases.aspx?ID=5645 (last visited June 20, 2006).

[152] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN, slip op. at 8 (D. Md. Feb. 23, 2006); DOJ Summary Judgment Brief at 14-17, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[153] *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN, slip op. at 8 (D. Md. Feb. 23, 2006); DOJ Summary Judgment Brief at 17, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[154] Valley Gun Opposition to Summary Judgment Motion at 16, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Aug. 26, 2005).

[155] *Id.* at 18-19.

[156] DOJ Summary Judgment Brief at 29, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[157] Valley Gun Opposition to Summary Judgment Motion at 18, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Aug. 26, 2005).

[158] *Id.*

[159] *Id.* at 18-19.

[160] DOJ Summary Judgment Brief at 13, 18, 23, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. June 3, 2005).

[161] *Id.* at 26.

[162] Matthew Dolan, *Gun Shop Loses Its License*, BALTIMORE SUN, Feb. 25, 2006.

[163] DOJ Reply Mem. at 20-21, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847 (D. Md. Sep. 9, 2005).

[164] *See* http://www.mdarchives.state.md.us/msa/mdmanual/39fed/02usd/senior/html/msa12037.html; *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN, slip op. at 10-11 (D. Md. Feb. 23, 2006).

[165] *Id.* at 7.

[166] *Id.* at 10-11.

[167] *Id.* at 8, 9 n.5.

[168] Defendant's Mem. in Support of Mot. to Dismiss or in the Alternative to Transfer at 3, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. June 15, 2006).

[169] *Id.*

[170] Mot. to Direct Respondent that RSM May Continue to Operate During Pendancy of Judicial Review, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. Feb. 27, 2006).

[171] Opposition to Motion to Continue to Operate at 7, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. March 7, 2005).

[172] Order, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. March 15, 2006).

[173] Transmittal Sheet, Notice of Appellate Action in *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. March 22, 2006).

[174] Order, *RSM, Inc. v. Herbert*, No. 1:05-cv-00847-WMN (D. Md. March 15, 2006).

[175] Truscott Complaint at 2, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. April 7, 2006).

[176] *Id.* at 3.

[177] *Id.*

[178] *Id.* at 1, 4.

[179] *Id.* at 1.

[180] Defendant's Mem. in Support of Mot. to Dismiss or in the Alternative to Transfer at 19-20, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. June 15, 2006).

[181] Truscott Complaint at 2, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. April 7, 2006).

[182] *Id.* at 4.

[183] *Id.* at 5.

[184] *See* 18 U.S.C. § 921(t); Md. Public Safety Code §§ 5-101(p), 5-118.

[185] 18 U.S.C. §§ 921(a)(11), (21)(c), 923(a).

[186] Truscott Complaint at 4, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. April 7, 2006).

[187] DOJ Motion To Dismiss Or In The Alternative To Transfer at 6-7, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. June 15, 2006).

[188] *Id.* at 7.

[189] *U.S. v. White*, 2006 WL 988239 (9th Cir. 2006).

[190] *U.S. v. Orum*, 106 Fed.Appx. 972, 974 (6th Cir. 2004).

[191] Truscott Complaint at 4, *Abrams v. Truscott*, No. 1:06-cv-00643-CKK (D.D.C. April 7, 2006).

[192] Valley Gun website http://www.valleygun.net/Baltimore_Gun_Shop_Contact.html (last visited June 6, 2006); cover photo.

[193] Md. Dept. of Assessments and Taxation, Taxpayer Services Division (Just Guns, Inc. Date of Formation: Apr. 3, 2006), http://sdatcert3.resiusa.org/ucc-charter/CharterSearch_f.asp.

[194] Baltimore Property Tax Assessor Record, Parcel Number 081-02-00685-000-00000-001(sale to Lucille Abrams recorded on Sept. 30, 1976 with Md. Dept. of Assessment and Taxation; Book 5681, Page 489).

[195] For example, Valley Gun's Federal Employer Identification Number, which is issued to employers for income tax withholding purposes, lists Valley Gun's address as "7715-19 Harford Road" as recently as March 2006. *See* FEIN Record for RSM, INC., No. 52-1642373 (Dun and Bradstreet, Inc.). In a loan provided by the First National Bank of Maryland in 1990, the debtor was listed as Valley Gun Shop, located at "7715-7719 Harford Road." *See* Uniform Commercial Code Report, No. 101698134 (filed June 18, 1990 with Md. Dept. of Assessment and Taxation). An additional state filing in 1996 concerning the First National Bank loan repeated the statement that Valley Gun was located at "7715-7719 Harford Road." *See* Uniform Commercial Code Report, No. 111198027 (filed Sept. 12 1996 with Md. Dept. of Assessment and Taxation). A similar Sovereign Bank filing in 1990 listed Valley Gun's address as simply, "7715 Harford Road," the address of the new Just Guns shop. *See* Uniform Commercial Code Report, No. 80978320 (filed Feb. 21, 1990 with Md. Dept. of Assessment and Taxation).

[196] *See Trading In Death– Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California*, http://www.bradycenter.org/xshare/pdf/reports/trading-in-death.pdf.; U.S. Department of Justice, Memorandum of Points and Authorities in Opposition to Motion for Preliminary Injunction at 6-9, *Trader Sports, Inc. v. Gonzales*, No. 3:06-cv-01136-VRW (N.D. Cal. May 4, 2006).

[197] *Id*.

[198] *Id.*

[199] *Id.*

[200] *Trader Sports, Inc. v. Gonzales*, No. 3:06-cv-01136-VRW (N.D. Cal. 2006).

[201] *Johnson v. Bulls Eye Shooter Supply*, 2003 WL 21639244, at *3 (Wash.Super. 2003).

[202] *Id.* at *4.

[203] *Feds Endorse New Owner for Gun Shop*, Seattle Post-Intelligencer, Jul. 23, 2003, at B2.

[204] *Id.*; *see also* Bull's Eye Shooter Supply website, http://bullseyeshooter.com/.

[205] *Oversight Hearing on "The Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE): Reforming Licensing and Enforcement Authorities" Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 109th Cong. (2006) [hereinafter *Oversight Hearing*] (statement of Richard E. Gardiner, Attorney at Law), *available at* http://judiciary.house.gov/media/pdfs/gardiner032806a.pdf.

[206] *Id.*

[207] H.R. 5092, 109th Cong. (2006).

[208] *Id.*; Oversight Hearing at 1.

[209] *See* 18 U.S.C. § 923(f)(2); 27 C.F.R. § 478.78.

[210] *See* 18 U.S.C. §§ 923(e), 924(a); Firearms Owners' Protection Act of 1986, Pub. L. No. 99-308, 100 Stat 449 (1986).

[211] United States Department of Justice, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives, Evaluation and Inspections Report I-2004-005* (July 2004), at vi, *available at* http://www.usdoj.gov/oig/reports/ATF/e0405/final.pdf.

[212] *Id.*

[213] *See Bryan v. U.S.*, 524 U.S. 184 (1998).

[214] H.R. 5092, at § 4.

[215] In *Bryan v. U.S.*, 524 U.S. 184, 195 n.23 (1998), the Supreme Court stated that a change in federal law in 1986 imposing a "willful" standard for gun law violations was "to protect law-abiding citizens who might inadvertently violate the law." It does not require that ATF show specific intent to break the law, as H.R. 5092 mandates.

[Intervening business.]
[Whereupon, at 3:46 p.m., the Committee was adjourned.]

DISSENTING VIEWS

We dissent from the passage of H.R. 5092, the "BATFE Modernization and Reform Act of 2006," and the approach that it takes to deal with this very important issue.

As currently drafted, H.R. 5092 threatens to substantially undermine BATFE's power to revoke the federal firearms licenses of corrupt gun dealers. If enacted, the legislation would make it virtually impossible for BATFE to shut down rogue gun dealers who repeatedly violate federal law. It would largely replace BATFE's revocation powers with minimal fines and temporary license suspensions that BATFE could impose only if it proved that a dealer deliberately intended to violate federal law, an extreme standard for a civil penalty that is more difficult to meet than the prevailing standard in most criminal cases. Moreover, even if BATFE is able to meet this extraordinary new burden of proof to impose minimal fines and temporary suspensions, these sanctions would generally be delayed for years while BATFE conducted new administrative review procedures different from those that apply to other regulated industries, and that strongly favor lawbreakers.

The negative impact that these provisions will undoubtedly have on local municipalities and the efforts of various law enforcement officials has produced a widespread coalition of groups that have spoken out in opposition to this measure. Specific groups or individuals expressing concerns with the legislation include: The International Association of Chiefs of Police; Bill Lockyer, Attorney General of the State of California; Stephen Higgins, Former Director of the ATF; Rex Davis, Former Director of the ATF; Joseph J. Vince, Jr., Former Chief of ATF's Crime Gun Analysis Branch; William Vizzard, Former ATF Special Agent in Charge; Gerald Nunziato, Former ATF Special Agent in Charge; Julius Wachtel, Former ATF Resident Agent in Charge; Frank Wandell, Former ATF Special Agent & District Senior Operations Officer; Gerald C. Benedict, Former ATF Special Agent in Charge; Michael R. Bloomberg, Mayor of New York; Thomas M. Menino, Mayor of Boston; Gregory J. Nickels, Mayor of Seattle; Tom Barrett, Mayor of Milwaukee; the Brady Center to Prevent Gun Violence, and its affiliate, the Brady Campaign to Prevent Gun Violence; the Violence Policy Center; the Coalition to Stop Gun Violence; and Mayors Against Illegal Guns.

It is for these reasons, and those that follow, that we respectfully dissent.

I. H.R. 5092 Offers Greater Protections to Those Corrupt Gun Dealers That Routinely Violate Current Law

Federal law currently places severe restraints on BATFE's ability to revoke licenses from gun dealers who violate federal law. Despite the fact that BATFE inspections often reveal scores of viola-

tions of law by gun dealers, the revocation of a dealer's federal firearms license is a rare event.

In fiscal year 2003, for example, BATFE completed 1,812 inspections that uncovered regulatory violations, with an average of over 80 violations per dealer. Despite this large number of dealers with multiple violations, BATFE issued only 54 notices of license revocation that year. In part, this is due to the overly burdensome requirement that BATFE prove that a dealer "willfully" violated the law, requiring proof that the dealer not only broke the law but also knew that his or her conduct was unlawful. This requirement that a dealer actually know that he is breaking the law is extremely rare even in criminal cases, let alone administrative agency actions. Because of this standard, BATFE generally requires repeated violations of the law over many years before it attempts to revoke a license.

The following examples show the severe limits on BATFE's current power to crack down on rogue gun dealers. As explained below, H.R. 5092 makes a bad situation worse by giving greater protection to gun dealers who violate the law.

BULL'S EYE SHOOTER SUPPLY, TACOMA, WASHINGTON

In fall 2002, John Allen Muhammad and John Lee Malvo engaged in a series of deadly sniper shootings in the Washington, DC area using a Bushmaster XM–15 semi-automatic assault rifle. Muhammad and Malvo obtained the Bushmaster assault rifle from gun dealer Bull's Eye Shooter Supply, even though both snipers were prohibited from buying guns under federal law. Malvo, the seventeen-year-old sniper, told authorities that he simply walked out of the shop with the gun, a scenario suggesting a shameful absence of security measures to prevent theft. The shop had no record that the gun was sold or lost and had never reported it missing. BATFE audits showed that a total of 238 guns, including the snipers' assault rifle, had "disappeared" from Bull's Eye in just three years and over 50 of its guns had been traced to crimes between 1997 and 2001.

Based on Bull's Eye's failure to account for scores of guns, in 2003, BATFE moved to revoke the federal firearms license held by Bull's Eye's owner, Brian Borgelt. Borgelt responded by appealing the revocation, alleging that BATFE had not shown that Bull's Eye committed "willful" violations. Borgelt also transferred operations of the shop to a friend, while continuing to manage an upstairs shooting range. As of 2006, the store remains open and Borgelt continues to appeal his license revocation in federal court. Under current law, BATFE has already faced substantial hurdles in attempting to revoke Borgelt's federal firearms license.

TRADER SPORTS, SAN LEANDRO, CALIFORNIA

Trader Sports has sold at least 337 guns traced to crime, including guns involved in at least 27 homicides, 26 assaults, 2 robberies, and 282 additional gun crimes. Trader Sports has also sold at least 3,091 handguns in "multiple sales"—where more than one handgun is sold to a single buyer within five working days, a recognized indicator of possible gun trafficking. In 2003, BATFE inspected Trader Sports' records and found that an astonishing 7,477 firearms

were missing from the store with no record of sale. After months of searching for records of its lost firearms, Trader Sports still could not account for more then 2,000 of its guns.

Based on repeated violations of federal law relating to these missing guns, BATFE moved to revoke the federal firearms license of Trader Sports' owner, Anthony Cucchiara, in 2004. However, Cucchiara has continued to operate up until this year by challenging BATFE's revocation attempt in court.

VALLEY GUN, BALTIMORE, MARYLAND

Sanford M. Abrams is a National Rifle Association Board Member and has owned Valley Gun of Baltimore since 1996. Valley Gun sold 483 firearms traced to crimes from 2000 to 2003, ranking it in the top 40 of the highest crime gun dealers nationwide.

Less than a year after Abrams began operating the store, BATFE conducted an inspection and found numerous violations of federal law, including 45 firearms that were listed in his inventory books but were "missing" from the store. BATFE re-inspected his store in 1999, 2000, and 2001. Each time BATFE found more violations of federal law, and each time Abrams promised to reform his practices and correct his violations.

In 2003, BATFE again inspected Valley Gun, this time finding massive violations of federal law, including 422 firearms that were "missing" from his store with no record of sale. He also failed to record the disposition of nearly all of the guns that he repaired, recording only 19 out of 475 firearms. Abrams had numerous other violations, including failing to properly fill out gun purchase forms and failing to complete gun disposition records. Based on these hundreds of violations of federal law, BATFE moved to revoke Abrams' license in 2004. Abrams appealed the revocation and his appeal was denied, however, federal law allowed him to continue operating despite the 2004 revocation determination. Abrams now faces revocation, although he has again appealed and asked that the revocation be delayed while he continues his appeals. Under current law, BATFE has already faced substantial hurdles in attempting to revoke Valley Gun's federal firearms license.

II. H.R. 5092 Makes It Harder To Prosecute or Sanction Corrupt Gun Dealers by Elevating Burden of Proof Requirements

H.R. 5092 redefines the burden of proof for violations of federal gun laws to make it virtually impossible to prosecute, sanction or revoke the licenses of corrupt gun dealers and to prosecute all other gun law offenders, including gun traffickers and violent criminals. Current law already imposes a requirement that BATFE prove that violations of federal gun laws are "willful," an incredibly high burden which has greatly hindered BATFE's ability to enforce gun laws and revoke gun dealer licenses. H.R. 5092 redefines the "willful" standard of proof for gun law violations to make it even more difficult to prove a violation of the law.

Since enactment of the Firearm Owners' Protection Act in 1986, the BATFE has relied upon a standard of willfulness before pursuing a possible violation of a federal gun law. The Supreme Court

has held that "willfully" requires proof that a defendant "acted with knowledge that his conduct was unlawful." *Bryan* v. *U.S.*, 524 U.S. 184, 193 (1998). BATFE need not also show that the defendant acted with the intent to break the law. H.R. 5092 changes current law, to require proof that a dealer not only knew the specific law he or she was violating but also a showing of intentional disregard of that specific legal duty. This is a very dangerous provision that is contrary to Supreme Court precedent and would cripple BATFE's ability to enforce federal gun laws.

H.R. 5092's requirement that BATFE prove a lawbreaker's mental state would present a nearly insurmountable burden. The courts have generally rejected this interpretation of the meaning of "willful," explaining that the willful standard "does not require [a person] to set out purposely to violate the Act," because if this was required, any remedy for a willful violation "would be a rare remedy indeed." *Tijerina* v. *Walters*, 821 F.2d 789, 799 (D.C. Cir. 1987). The requirement of intent to violate the law is exceedingly uncommon and is generally limited only to criminal prosecutions of complex and arcane tax laws. See *Cheek* v. *U.S.*, 498 U.S. 192, 199 (1991). There is no reason to extend this unique burden of proof to protect felons who illegally acquire firearms or gun dealers who violate federal laws regulating firearms sales.

The Supreme Court in *Bryan* noted that the Firearm Owners' Protection Act, which imposed the willfulness standard for gun law violations in 1986, "was enacted to protect law-abiding citizens who might inadvertently violate the law." Id. at 195 n.23. BATFE need not prove that a dealer had the "intent to act in violation of a known legal duty," as H.R. 5092 would now mandate.

III. H.R. 5092 Establishes Two New Classifications of Violations and Unwisely Limits BATFE's Enforcement Options According to Each Type of Violation

The bill creates new classifications of federal gun laws as serious and minor, and allows license revocation only for so-called "serious," willful violations. "Serious" violations, as defined by H.R. 5092, would be rare and exclude many violations that are in fact extremely serious and dangerous, such as when a gun dealer has numerous weapons "lost" from its inventory with no record of sale. Even so-called minor violations would be nearly impossible to prove, as these also would require a willful violation. For example, BATFE occasionally revokes the licenses of corrupt dealers who fail to maintain records for hundreds or thousands of firearms. It would be nearly impossible for BATFE to prove that the failure to maintain records was deliberate, purposeful and done with the specific intent to break the law, as would be required to prove both serious and so-called minor violations under H.R. 5092.

The bill defines a violation to be "of a serious nature" only if it is willful, which is newly defined to require specific intent to break the law, see H.R. 5092 § 4, and the violation must also meet one of three definitions:

(1) A dealer specifically intends to break the law and such a violation "results in or could have resulted in the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition under this chapter." Proposed 18 U.S.C.

§ 923(e)(1)(C)(i). This would be extremely difficult for BATFE to prove, as most corrupt gun dealers do not keep records that prove that a firearm was intentionally transferred to a prohibited buyer. Instead, such dealers have been cited for "losing" records for hundreds or thousands of guns. Because it is the transfer of a firearm, and not the act of losing a record, that would cause a firearm to be transferred to a prohibited purchaser, corrupt dealers could evade sanction under this section by "losing" or failing to keep records proving such a violation.

(2) A dealer specifically intends to break the law and the violation "obstructs or could have obstructed a bona fide civil or criminal investigation or prosecution." Proposed 18 U.S.C. § 923(e)(1)(C)(ii). This standard would be very difficult to meet, because it would require proof of intent to violate the law in addition to proof that the willful violation could have obstructed an ongoing investigation. As described above, it would be incredibly difficult to prove that when a dealer violated the law it actually did so with a specific intent to break the law. In addition, while federal gun law violations are serious because they frequently result in scores of guns "disappearing" from gun dealer's shops, it is not the norm that law enforcement is able to link missing firearms to a specific investigation or prosecution, so a dealer's repeated, dangerous violations would nonetheless be treated as minor.

(3) A dealer specifically intends to break the law and the violation "prevents or could have prevented a licensee from complying with subsection (g)(7)." Proposed 18 U.S.C. § 923(e)(1)(C)(iii). This relates to the rare case where a violation would prevent a dealer from responding to an BATFE request within 24 hours. Subsection (g)(7) only requires a dealer to provide information actually contained in its records—it does not address the problem of a dealer failing to keep proper records.

Under H.R. 5092, BATFE would likely not be able to prove that most violations of federal gun laws meet the new definition of "willful" misconduct, as required for both serious and so-called minor violations. Furthermore, most serious violations of federal law would not meet the stringent test for a "serious" violation under H.R. 5092.

A. THE INHERENT PROBLEMS ASSOCIATED WITH IMPOSING FINES UNDER THIS NEW TWO-TIER SYSTEM

For so-called minor violations, H.R. 5095 proposes to establish fines of no more than $1,000 per violation, and fines of no more than $5,000 for all violations "arising from a single inspection or examination." Proposed 18 U.S.C. § 923(e)(1)(A)(i)(I). For "serious" violations, the fines are no more than $2,500 per violation and no more than $15,000 for violations "arising from a single inspection or examination." Proposed 18 U.S.C. § 923(e)(1)(A)(ii)(I). Because all fines first require proof of a willful violation, BATFE could not impose any fines unless it showed a deliberate intent to violate the law, making it unlikely in most cases that BATFE could impose any fines at all.

These fines for willful violations of federal gun laws are also extremely low. For example, the Consumer Product Safety Commission can impose fines on sellers of most unsafe consumer products

of $8,000 per violation, up to $1,825,000 for a related series of violations. See 15 U.S.C. § 2068; 69 Fed. Reg. 68884 (Nov. 2004). The Environmental Protection Agency can impose fines of between $2,500 and $25,000 per day for Clean Water Act violations that are merely negligent. Knowing violations are from $5,000 to $50,000 per day. See 33 U.S.C. § 1318(c). Similarly, the Federal Communications Commission may impose fines for indecency of $32,500 for each violation or each day of a continuing violation, up to $325,000 for continuing violations, for broadcast stations, and $130,000 per violation, up to $1,325,000 for continuing violations, for common carriers. See 47 CFR § 1.80(b)(1).

Another problem with this fine structure is that it limits fines for violations arising from a single inspection or examination. For example, if BATFE conducted an audit and found 1,000 missing firearms, the maximum fine could be only $5,000. These fines reward the worst offenders by capping fines no matter how many related violations have occurred. A gun dealer with six "serious" violations would have the same maximum fine as a gun dealer with 600 or even 6,000 "serious" related violations—only $15,000.

Because of BATFE's extremely limited resources, it rarely conducts inspections. When it does finally conduct an inspection, it may find hundreds or thousands of violations. But, under H.R. 5092, all violations found in the same audit would be grouped together, with a maximum fine of only $15,000 for all so-called serious violations uncovered at the audit. For example, BATFE recently revoked the license of Trader Sports, a notorious California gun dealer. At an inspection, BATFE found 7,477 firearms unaccounted for in inventory and dozens of other willful violations of federal law. If these thousands of violations were found in the same inspection, the maximum fine would be $15,000, or an average fine of only a few dollars per violation, so low as to be meaningless.

Proposed section 18 U.S.C. § 923 (e)(1)(b)(ii) also imposes a limit that the "violation of a provision of this chapter with respect to 2 or more firearms during a single transaction shall be considered a single violation of the provision." If anything, multiple firearms being illegally sold are more serious, as this is a likely indicator of gun trafficking. This should result in a higher penalty, not a lower one.

B. THE PROBLEMS ASSOCIATED WITH PURSUING LICENSE SUSPENSION UNDER THIS NEW SYSTEM

The bill allows license suspension of up to 30 days for so-called minor willful violations and up to 90 days for "serious" willful violations. H.R. 5092 § 2. The bill's new definition of willful would require proof of a deliberate intent to violate the law, making it unlikely that BATFE could meet this difficult burden to suspend licenses in most cases. Moreover, suspensions could only be imposed for so-called minor violations if the gun dealer had violated federal gun laws on two prior occasions.

Even if BATFE could overcome the hurdle of meeting the bill's new definition of willful violations, this suspension authority is extremely weak even compared to BATFE's current, limited power to suspend firearms licenses. In 2005, Congress gave BATFE the power to suspend firearms licenses for up to six months if a li-

censee sells a handgun without providing a secure gun storage or safety device. See 18 U.S.C. §§ 922(z), 924(p). Yet under H.R. 5092, even so-called serious violations could result in only a 90–day suspension. Congress should give BATFE the power to suspend licenses for up to 6 months for all violations of federal firearms laws.

Moreover, because BATFE has extremely limited resources and rarely inspects gun dealers, it would take many years before BATFE could prove three separate occasions in which a dealer violates the law. If BATFE did finally find three separate periods of violations, it would then have to begin the license suspension process, which could take many additional years to complete. In essence, BATFE could spend half a decade or more attempting to temporarily suspend a license for up to 30 days, a monumental effort that would hardly be worth BATFE's limited resources.

Instead of this extremely weak suspension authority, Congress should enact legislation that gives BATFE the power to temporarily suspend licenses for up to 6 months when a gun dealer has violated federal law. H.R. 5092 imposes severe limitations on license suspension that would require an extraordinarily heightened burden of proof to impose a suspension and allows for years of administrative review and litigation before a temporary suspension could be imposed.

C. PURSUING LICENSE REVOCATION UNDER THE NEW SYSTEM

As described above, H.R. 5092 would make it virtually impossible to revoke a gun dealer's license even in cases of repeated, egregious violations of federal gun laws. It would be nearly impossible for BATFE to prove that most violations of federal law, such as the violations of Bull's Eye Shooter Supply, Trader Sports, and Valley Gun in the examples above, were committed with the specific and purposeful intent to break the law.

Moreover, most willful violations are defined under H.R. 5092 as violations that are "not of a serious nature." H.R. 5092 allows revocation only for "serious" violations, so revocation would not be allowed in so-called minor cases. Bull's Eye Shooter Supply, Trader Sports, and Valley Gun "lost" hundreds of firearms from their inventory and they repeatedly failed to keep proper records. After years of egregious violations, BATFE was able to show willful misconduct under current law because of these dealers' pattern of violations over many years. Yet, under H.R. 5092, their violations likely would not have resulted in any sanction, as BATFE could not have proved, under the new definition of "willful," that the dealers not only repeatedly violated the law but also specifically intended to break the law. Even if BATFE overcame this significant hurdle of proving intentional violations, in order to revoke these dealers' licenses BATFE would have to overcome yet another extraordinary burden of proving that these illegal acts met the narrow definition in H.R. 5092 for so-called serious violations.

If BATFE were somehow able to show that these dealers intended to break the law, an outcome which courts recognize "would be a rare [one] indeed," Tijerina, 821 F.2d at 799, BATFE likely still could not have met the narrow definition of a "serious" willful violation required to revoke a license. Under H.R. 5092, a "serious" willful violation would require a specific intent to break the law

and proof that the violation: (1) "results in or could have resulted in the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition," (2) "obstructs or could have obstructed a bona fide civil or criminal investigation or prosecution," or (3) "prevents or could have prevented a licensee from complying with subsection (g)(7) [requiring dealer to provide its records to BATFE]." H.R. 5092 § 2. The dealers described above apparently "lost" records for hundreds of firearms, although BATFE likely could not show that the dealers deliberately "lost" these records with the specific intent to break the law. BATFE also likely could not show that the failure to keep records could have caused a gun transfer to a prohibited buyer, as the act of transferring a gun, rather than "losing" a record, would result in the illegal transfer. Likewise, because it is unusual for law enforcement to link missing guns to a specific investigation or prosecution, a dealer's violation rarely would be a willful violation that also could have obstructed a specific investigation. Finally, 18 U.S.C. § 923(g)(7) merely requires dealers to provide records in their possession, and so could not be used against dealers who had "lost" gun records.

IV. H.R. 5092 Proposes to Unduly Delay BATFE's Ability to Impose Civil Penalties Regardless of the Seriousness of the Underlying Violation

H.R. 5092 would also require BATFE automatically to stay (postpone) a fine, suspension or revocation pending completion of an administrative hearing, no matter how egregious the violation. Proposed section (e)(2)(C). This standard strongly favors the alleged violator. Instead, the burden should be on the alleged violator to prove a likelihood of success on its challenge, as is the standard for stays generally. See *Cabo Distribution Co., Inc.* v. *Brady*, 821 F.Supp. 582, 594–95 (N.D.Cal. 1992) (in appeal of BATFE's revocation of liquor labeling authority, a plaintiff seeking a stay must prove a "likelihood that plaintiff will prevail on the merits and the possible harm to the parties from granting or denying the injunctive relief"); see also *Nelson* v. *Campbell*, 541 U.S. 637, 649 (2004) (even in a case seeking to stay the death penalty, courts require proof that a defendant has a likelihood of success on the merits).

The bill further requires BATFE automatically to stay a fine, suspension or revocation "until there has been a final, nonreviewable judgment with respect to the determination involved." Proposed section (e)(3)(D). Again, this standard strongly favors the alleged violator, allowing him to continue operating, possibly for years, even if an administrative hearing determines that the violation warrants severe penalties. It encourages litigation, as prolonged litigation allows violators to continue operating and avoid all penalties.

These provisions make license suspension and fines essentially meaningless, because such a temporary suspension or small fine would automatically be delayed for years if a licensee asked for a mandatory stay.

V. H.R. 5092 Proposes to Allow Firearm Dealers to Continue Operating (for a Maximum of 60 Days) Even After Their License Has Been Revoked

Section 9 of the bill would allow FFLs who violate federal gun laws to operate and earn a profit by continuing to sell guns even after they have had their license revoked for willful violations of federal gun laws or to continue operating under an expired license, to liquidate their inventory. This makes a mockery of license revocation by essentially allowing FFLs to evade revocation and continue operating even though they committed federal crimes, and allows FFLs to temporarily avoid renewing licenses as required by federal law to continue selling guns. BATFE should have the discretion to allow or disallow a short additional time to liquidate inventory depending on the severity of the violations and likelihood of continuing violations.

VI. H.R. 5092 Eliminates BATFE's Ability to Pursue Civil Penalties, Subsequent to a Failed Criminal Proceeding

The bill greatly discourages BATFE from prosecuting criminal gun dealers who violate federal gun laws. Proposed section (f)(4) requires that if BATFE brings criminal charges against an FFL and the FFL is acquitted, this voids civil fines and penalties. Since the burden of proof on criminal charges is greater than in civil cases, a criminal case should not void civil penalties that have been proven under a civil standard. The bill also prohibits BATFE from imposing fines, suspension or revocation more than one year after an indictment, even if the FFL is found guilty. Proposed section (f)(5). There is no reason why BATFE should be prohibited from imposing civil penalties on an FFL convicted of violating federal gun laws simply because resolution of the criminal case took more than one year.

VII. H.R. 5092 Unnecessarily Complicates the Current Inspection Process

This section redefines Section 922(m) of title 18 to make it more difficult to sanction dealers who fail to keep proper records of their firearms and allows dealers to keep records in disarray, changing the requirement from "properly maintain[ing]" records to simply "retain[ing] custody of" records. If dealers are not required to properly maintain records, it makes it much more difficult for BATFE to determine if firearms are missing or if the dealer is failing to keep proper records of firearm transactions. This provision would allow dealers to attempt to hide missing firearms by maintaining records in disarray, but still in their "custody." For example, a dealer who had been in business for 50 years could simply throw all of its files in a back room, maintaining "custody" of them but making it very difficult for BATFE to audit the dealer's records to discover violations.

DESCRIPTION OF AMENDMENTS OFFERED BY DEMOCRATIC MEMBERS

1. Amendment Offered by Rep. Anthony Weiner (#1)

Description of amendment: The Weiner amendment sought to strike section 8 from the scope of the underlying bill. As currently drafted, section 8 proposes to allow all firearms dealers to continue operating (for a maximum of 60 days) for purposes of liquidating inventories subsequent to a license revocation proceeding.

The amendment was defeated by a vote of 4 to 18. Ayes: Representatives Conyers, Weiner, Schiff, and Wasserman Schultz. Nays: Representatives Coble, Smith, Chabot, Jenkins, Cannon, Inglis, Hostettler, Keller, Forbes, King, Feeney, Franks, Gohmert, Boucher, Scott, Sensenbrenner, Bachus, and Lungren.

2. Amendment Offered by Rep. Anthony Weiner (#2)

Description of amendment: The Weiner amendment sought to amend the provisions of the underlying bill that currently (and automatically) void any and all ongoing civil proceedings against a particular dealer, if he or she is first acquitted on similar criminal proceedings.

The amendment was defeated by a vote of 9 to 16. Ayes: Representatives Conyers, Scott, Waters, Wexler, Weiner, Schiff, Van Hollen, Wasserman Schultz, and Meehan. Nays: Representatives Coble, Smith, Chabot, Jenkins, Cannon, Bachus, Inglis, Keller, Forbes, King, Franks, Gohmert, Boucher, Sensenbrenner, Lungren, and Feeney.

3. Amendment Offered by Rep. Anthony Weiner (#3)

Description of amendment: The Weiner amendment sought to eliminate the bill's current proposed system of fines, and replace it with a maximum fine of up to $10,000 for each gun law violation.

The amendment was defeated by a vote of 8 to 20. Ayes: Representatives Conyers, Jackson Lee, Waters, Wexler, Van Hollen, Wasserman Schultz, Schiff, and Weiner. Nays: Representatives Coble, Smith, Chabot, Jenkins, Cannon, Bachus, Inglis, Keller, Issa, Forbes, King, Franks, Gohmert, Boucher, Scott, Sensenbrenner, Lungren, Flake, Feeney, and Hostettler.

4. Amendment Offered by Rep. Sheila Jackson Lee

Description of amendment: The Jackson Lee amendment sought to eliminate section 4, in its entirety, from the scope of the underlying bill.

The amendment was defeated by a vote of 9 to 17. Ayes: Representatives Conyers, Scott, Jackson Lee, Waters, Wexler, Weiner, Schiff, Van Hollen, and Wasserman Schultz. Nays: Representatives Coble, Smith, Chabot, Jenkins, Cannon, Inglis, Hostettler, Issa, Flake, Forbes, King, Feeney, Franks, Gohmert, Boucher, Sensenbrenner, and Lungren.

5. Amendment Offered by Rep. Anthony Weiner (#4)

Description of amendment: Rep. Weiner offered a substitute amendment to the pending Coble amendment. The second degree substitute proposed to make several changes to the text of the underlying bill. For example, rather than capping fines at a maximum

of $15,000, under the Weiner amendment the BATFE could impose fines of not more than $10,000 per violation for knowing violations of federal law, after notice and a hearing. Additionally, rather than allowing license suspension only for certain rare violations or only after years of violations, under the Weiner amendment the BATFE could suspend a license for up to 6 months if a gun dealer is indicted for knowingly violating federal law or knowingly violates federal law, after notice and a hearing.

The amendment was defeated by a vote of 10 to 16. Ayes: Representatives Conyers, Scott, Jackson Lee, Waters, Meehan, Wexler, Weiner, Schiff, Van Hollen, and Wasserman Schultz. Nays: Representatives Smith, Chabot, Jenkins, Cannon, Inglis, Hostettler, Issa, Flake, Forbes, Feeney, Franks, Gohmert, Boucher, Sensenbrenner, Coble and Lungren.

JOHN CONYERS, Jr.
MAXINE WATERS.
WILLIAM D. DELAHUNT.
ANTHONY D. WEINER.
LINDA T. SANCHEZ.
DEBBIE WASSERMAN SCHULTZ.
SHEILA JACKSON LEE.
MARTIN T. MEEHAN.
ROBERT WEXLER.
CHRIS VAN HOLLEN.

○